

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 120 (Chair, Budget and Taxation Committee)(By Request -
Departmental - Comptroller)

Budget and Taxation

Tobacco Products - Tobacco Tax - Exemptions and Penalties

This departmental bill increases the amount of cigarettes and other tobacco products that a consumer may bring into the State without being required to pay the tobacco tax. The bill also increases criminal penalties associated with willfully shipping, importing, selling into or within, or transporting within the State cigarettes or other tobacco products on which the tobacco tax has not been paid. Specifically, the bill (1) increases and makes mandatory the monetary penalties for both first and subsequent offenses; and (2) increases the maximum term of imprisonment for subsequent offenses.

Fiscal Summary

State Effect: General fund revenues increase significantly beginning in FY 2013 – by as much as \$1.6 million on an annualized basis – due to the collection of monetary penalties that are increased and made mandatory by the bill. Enforcement can be handled with existing resources.

Local Effect: None.

Small Business Effect: The Comptroller’s Office has determined that this bill has minimal or no impact on small businesses (attached). Legislative Services concurs with this assessment.

Analysis

Bill Summary/Current Law: Under current law, the tobacco tax does not apply to cigarettes or other tobacco products brought into the State by a *nonresident* consumer

traveling through the State if the quantity of cigarettes does not exceed one carton or the retail value of other tobacco products does not exceed \$25. For any other consumer to be exempt from the tobacco tax, the quantity of cigarettes must not exceed two packages and the retail value of other tobacco products must not exceed \$5. The bill increases these limits and repeals the distinction between nonresident and other consumers. Specifically, under the bill, the tobacco tax does not apply to cigarettes or other tobacco products brought into the State by any consumer if the quantity of cigarettes does not exceed one carton and the retail value of other tobacco products does not exceed \$50.

The tobacco tax also does not apply, under current law, to cigarettes or other tobacco products brought into the State from a U.S. armed forces installation or reservation by a consumer who is a member of the armed forces (and is entitled by law to make a purchase at an armed forces exchange) if the quantity of cigarettes does not exceed two cartons and the retail value of other tobacco products does not exceed \$50. For any other consumer to be exempt from the tobacco tax on products bought at an armed forces exchange or commissary, the quantity of cigarettes must not exceed two packages and the retail value of other tobacco products must not exceed \$5. The bill increases the limit on the retail value of other tobacco products to \$100 for a consumer who is a member of the armed forces; for any other consumer, the bill increases the limit on the quantity of cigarettes to one carton and the retail value of other tobacco products to \$50.

Current law specifies that an individual who willfully ships, imports, sells into or within, or transports within the State cigarettes or other tobacco products on which the tobacco tax has not been paid in violation of specified laws is guilty of a felony and, on conviction, is subject to a fine of up to \$50 for each carton of cigarettes or each package of other tobacco products transported, or imprisonment for up to two years, or both. The bill increases these penalties to (1) for a first violation, a mandatory fine of \$150 for each carton or package transported and (as under current law) imprisonment for up to two years; and (2) for a subsequent violation, a mandatory fine of \$300 for each carton or package transported and imprisonment for up to five years.

Background: Tobacco products are subject to varying levels of taxation in different jurisdictions. According to the U.S. Government Accountability Office (GAO), this creates opportunities and incentives for illicit trade. The Comptroller's Office advises that its field enforcement agents have, in recent years, seized large quantities of contraband cigarettes; this is largely attributable to Maryland's location on the I-95 corridor immediately north of Virginia (which has the second-lowest tobacco tax in the nation) and south of the comparatively high-tax northeast.

According to GAO, another incentive to engage in the illicit trade of tobacco products is that penalties for the activity are comparatively less severe than penalties for other forms of illicit trade. The Comptroller's Office advises that the State's current fine (\$50 per

carton) is inadequate to deter smuggling, given that it is exceeded by the average profit (over \$55) per carton purchased in Virginia and sold in New York City. The Comptroller's Office further advises that the proposed increases in fines for engaging in the illicit trade of tobacco products would correspond with increases in the cigarette tax rate that took place between 1999 and 2008 as well as with the federal tax increase on other tobacco products that occurred in 2009.

State Fiscal Effect: The Comptroller's Office advises that, from fiscal 2007 to 2011, its Field Enforcement Division charged an average of 15 initial incidents and 3 subsequent incidents of illicit tobacco trade annually. The Comptroller's Office further advises that, on average, each incident involved 505 cartons of cigarettes and resulted in a fine of \$1,515. The bill's increased penalties may have a deterrent effect on the illicit trade of tobacco, resulting in fewer incidents being charged per year. However, based on the current average volume of cartons seized per year, the bill's increased (and mandatory) monetary penalties are likely to result in a significant increase in general fund revenues of up to \$1.6 million on an annualized basis beginning in fiscal 2013.

The Department of Public Safety and Correctional Services' Division of Parole and Probation advises that an additional agent position is needed to implement the bill because the bill may expand the offender population (thereby increasing caseloads for the division). However, Legislative Services notes that, although the bill increases penalties for the illicit trade of tobacco products, the bill also increases exemptions from those penalties. Because the bill is unlikely, therefore, to expand the offender population (and given that the bill may in fact have a deterrent effect), Legislative Services advises that no additional positions are needed to implement the bill.

The Comptroller's Office advises that none of the incidents charged over the past five years resulted in imprisonment. Accordingly, neither the Comptroller's Office nor Legislative Services anticipates any increase in incarceration costs under the bill.

Additional Information

Prior Introductions: None.

Cross File: HB 346 (Chair, Ways and Means Committee)(By Request - Departmental - Comptroller) - Economic Matters and Ways and Means.

Information Source(s): U.S. Government Accountability Office; Baltimore, Carroll, Cecil, Montgomery, Queen Anne's, and St. Mary's counties; Commission on Criminal Sentencing Policy; Comptroller's Office; Judiciary (Administrative Office of the Courts); Department of State Police; Office of the Public Defender; Department of Public Safety

and Correctional Services; State's Attorneys' Association; Department of Legislative Services

Fiscal Note History: First Reader - February 5, 2012
ncs/mwc

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Tobacco Products – Tobacco Tax – Exemptions and Penalties

BILL NUMBER: SB 120

PREPARED BY: Comptroller

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.