

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 1365
Economic Matters

(Delegate Howard, *et al.*)

Pipe Tobacco and Premium Cigars - Direct Sale and Shipment to Consumers

This bill establishes a direct tobacco shipper's permit and a common carrier permit (for the direct sale and shipment to consumers of pipe tobacco and premium cigars) to be issued by the Comptroller's Office.

The bill takes effect July 1, 2013.

Fiscal Summary

State Effect: General fund revenues increase minimally to reflect permit fees collected as well as additional tax collected on tobacco products, as discussed below. The Comptroller's Office can use existing budgeted resources to issue permits to, and generally regulate, direct tobacco shippers and common carriers. The bill's penalty provisions are not expected to materially affect State finances.

Local Effect: The bill's penalty provisions are not expected to materially affect local government finances.

Small Business Effect: Potential meaningful impact to tobacconists to the extent that retail sales of pipe tobacco and premium cigars shift from tobacconists to direct shippers.

Analysis

Bill Summary:

Direct Tobacco Shipper's Permit

A person that is not licensed under Title 16 or Title 16.5 of the Business Regulation Article must be issued a direct tobacco shipper's permit by the Comptroller's Office before engaging in the selling and shipping of pipe tobacco or premium cigars directly to

a consumer in the State. An applicant for a permit must submit a completed application and pay a \$200 fee for initial issuance of the permit, which is valid for one year. A direct tobacco shipper may renew its tobacco shipper's permit annually, for a renewal fee of \$200, if specified requirements are met. The permit entitles the holder to sell and ship pipe tobacco or premium cigars through a holder of a common carrier permit to a consumer in the State by receiving and filling orders that the consumer transmits by electronic or other means.

A direct tobacco shipper is required to (1) ensure that all packages containing pipe tobacco or premium cigars shipped directly to a consumer in the State are labeled as specified by the bill; (2) report quarterly to the Comptroller's Office with the total amount of pipe tobacco or premium cigars shipped in the State, the price charged, and the name and address of each purchaser; (3) file a quarterly tax return; (4) pay quarterly to the Comptroller's Office all tobacco taxes due on sales to consumers in the State and calculate the taxes as if the sales were made in the State; (5) maintain for a period of three years complete and accurate records of all information to verify compliance with specified provisions of law; (6) allow the Comptroller's Office to perform an audit of the shipper's records on request; and (7) consent to the jurisdiction of the Comptroller's Office or other State unit and the State courts concerning enforcement of specified provisions of law.

Common Carrier Permit

A person must be issued a common carrier permit before engaging in the transportation of pipe tobacco or premium cigars from a direct tobacco shipper to a consumer. An applicant for a permit must submit a completed application and pay a \$100 fee for initial issuance of the permit, which is valid for one year. The holder of a common carrier permit may deliver tobacco from a location inside or outside the State to a consumer in the State for the consumer's personal use.

To complete delivery of a shipment, the common carrier must require from a consumer at the address listed on the shipping label (1) the signature of the consumer or another individual at the address who is age 18 or older and (2) government-issued photographic identification showing that the signing individual is age 18 or older. A common carrier is required to refuse delivery when the intended receiving individual appears to be younger than age 18 or refuses to present valid identification. At the time of its initial permit application, a common carrier must submit to the Comptroller's Office information concerning the training of its drivers in verifying the age of recipients of direct tobacco shipments. Furthermore, at least once annually, a holder of a common carrier permit must verify (in a manner acceptable to the Comptroller's Office) that the shipper of tobacco into the State holds a valid direct tobacco shipper's permit.

A common carrier must report quarterly to the Comptroller's Office (1) the date of each delivery of tobacco in the State and (2) the name and address of the direct tobacco shipper and the receiving consumer of each delivery. In addition, a common carrier must maintain, for a period of three years, complete and accurate records of all information needed to verify compliance with specified provisions of law.

Miscellaneous Provisions

To receive a direct shipment of pipe tobacco or premium cigars, a consumer in the State must be age 18 or older. A person who receives a shipment of pipe tobacco or premium cigars must use the shipment for personal consumption only and may not resell it.

Unless otherwise specified, a person that violates any provision of the bill is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to 30 days. Each violation of the bill is a separate violation.

The Comptroller's Office may adopt regulations to carry out the bill.

Current Law/Background: Chapter 388 of 2010 (HB 88) established licensure requirements for other tobacco products (OTPs) wholesalers, manufacturers, storage warehouses, and retailers. OTPs include premium cigars, pipe tobacco, and rolled tobacco products, other than cigarettes, that are intended for consumption by smoking, chewing, or snuff. The Act specified that persons in the business of selling or distributing OTPs may not sell or ship any OTP that is ordered or purchased by mail or over the telephone, Internet, or other electronic network to unlicensed recipients except in limited circumstances.

Chapters 509 and 510 of 2012 (SB 452/HB 570) altered these requirements by exempting out-of-state sellers that sell, hold for sale, ship, or deliver premium cigars or pipe tobacco to consumers in Maryland from the provisions of law relating to the regulation of OTPs. Provisions regulating the sale and distribution of OTPs do not apply to the order, purchase, sale, or shipment of premium cigars or pipe tobacco by a licensed OTP retailer or licensed tobacconist. Additionally, the Comptroller's Office was required to submit to the General Assembly a report, on or before November 1, 2012, on the viability and efficacy of instituting a policy of permitting direct shipment of premium cigars and pipe tobacco to consumers in the State. Recommendations made in the resulting report included (1) the establishment of a State-issued permit for the sale and shipping of premium cigars and pipe tobacco to consumers in the State for personal consumption; (2) payment of the appropriate excise tax as a requirement for the permit; (3) minimum age requirements; and (4) labeling requirements.

The Comptroller's Office advises that, in fiscal 2012, \$411.4 million was remitted to the State in tobacco taxes. Of this amount, \$12.8 million was from taxes paid on OTPs (including pipe tobacco and premium cigars). The Comptroller's Office estimates that 61% of OTPs sold in the State are cigars and that 21% of these are considered premium cigars. The Comptroller's Office further estimates that 1.9% of OTPs are pipe tobacco. The current tax rate on premium cigars is 15% (compared to 70% on nonpremium cigars), while the tax rate on pipe tobacco is 30%.

State Fiscal Effect: General fund revenues increase minimally beginning in fiscal 2014 due to additional tax collected on tobacco products. Based on its recent experience with direct wine shipping, the Comptroller's Office advises that general fund revenues from tobacco taxes collected are not expected to increase significantly. The Department of Legislative Services concurs with this assessment and advises that any increase in tobacco taxes collected under the bill is likely to be minimal.

General fund revenues also increase to reflect permit fees collected. The exact amount of the increase depends on the number of permits issued but is expected to be minimal.

The Comptroller's Office can use existing budgeted resources to issue permits to, and generally regulate, direct tobacco shippers and common carriers.

Additional Information

Prior Introductions: None.

Cross File: SB 823 (Senator Madaleno, *et al.*) - Finance.

Information Source(s): Comptroller's Office, Department of Legislative Services

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mc/ljm

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