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FISCAL AND POLICY NOTE
First Reader

Senate Bill 279
Finance

Baltimore City - Cigarettes, Other Tobacco Products, and Electronic Smoking Devices - Local Laws Authorization

This bill expressly authorizes the Baltimore City Council to enact and the Mayor of Baltimore City to enforce local laws that are at least as stringent as State laws that regulate the sale and distribution of cigarettes, other tobacco products (OTP), and electronic smoking devices (ESD), except for the issuance of cigarette, OTP, and ESD licenses and the taxation of cigarettes and OTP.

Fiscal Summary

State Effect: State general fund revenues may be affected, as discussed below. State expenditures are not anticipated to be materially affected.

Local Effect: Baltimore City revenues and expenditures may increase, as discussed below.

Small Business Effect: Potential meaningful.

Analysis

Current Law: Titles 16, 16.5, and 16.7 of the Business Regulation Article govern tobacco licensing and the sale and distribution of cigarettes, OTP, and ESD.

“ESD” is defined as a device that can be used to deliver aerosolized or vaporized nicotine to an individual inhaling from the device. It includes (1) an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, a vape pen, and vaping liquid and (2) any component, part, or accessory of such a device

regardless of whether or not it is sold separately, including any substance intended to be aerosolized or vaporized during use of the device. “ESD” excludes a drug, device, or combination product authorized for sale by the U.S. Food and Drug Administration (FDA) under the Food, Drug, and Cosmetic Act or a battery or battery charger when sold separately.

“OTP” is defined as any product that is intended for human consumption or likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested in any manner that is made of, derived from, or contains tobacco or nicotine, with specified exclusions. “OTP” (1) includes cigars, premium cigars, pipe tobacco, snuff, snus, filters, rolling papers, pipes, and hookahs and (2) excludes cigarettes, ESD, tobacco pipes (as defined in the Tax – General Article), or drugs, devices, or combination products authorized for sale by FDA under the federal Food, Drug, and Cosmetic Act.

The Alcohol, Tobacco, and Cannabis Commission is responsible for monitoring and enforcement activity related to tobacco licenses. The Comptroller’s Office is responsible for enforcement of tobacco taxes.

Tobacco Product Taxes

The Budget Reconciliation and Financing Act (BRFA) of 2024 increased (1) the tobacco tax rate for cigarettes from \$3.75 to \$5.00 per package of 20 cigarettes and from 17.5 cents to 25.0 cents for each cigarette in a package of more than 20 cigarettes and (2) the tobacco tax rate for OTP, other than cigars and pipe tobacco, from 53% to 60% of the wholesale price. Generally, the tax rate for cigars is 70% of the wholesale price of the cigars. The tax rate for premium cigars is 15% of the wholesale price of the premium cigars, and the tax rate for pipe tobacco is 30% of the wholesale price of the pipe tobacco. For out-of-state sellers of premium cigars and pipe tobacco, the tobacco tax rate applies to the actual price paid by the out-of-state seller for a stock keeping unit or, if the actual price paid is not available, the average of the actual price paid for such a unit over the 12 calendar months before January 1 of the year in which the sale occurs.

ESD and their components are subject to the State sales and use tax but are not subject to a State excise tax. The BRFA of 2024 increased the sales and use tax rate that generally applies to these products from 12% to 20% of the taxable price. The sales and use tax rate for vaping liquid sold in a container that contains up to 5 milliliters of vaping liquid is 60% of the taxable price. Montgomery County imposes a 30% tax on the wholesale value of vaping products.

Altadis U.S.A., Inc. et al. v. Prince George's County, Maryland

In *Altadis U.S.A., Inc. et al. v. Prince George's County, Maryland* 431 Md. 307 (2013), the petitioners challenged the validity of two Prince George's County ordinances regulating the packaging, sale, or other distribution of cigars, contending that the ordinances conflicted with State statutes regulating the packaging and sale of cigars. The (then) Court of Appeals held that State law occupied the field of regulating the packaging and sale of tobacco products, including cigars, and so preempted the two ordinances. Thus, the Prince George's County ordinances were invalid.

State/Local/Small Business Effect: The bill expressly authorizes Baltimore City to enact and enforce local laws regulating the sale and distribution of tobacco products, as specified. Baltimore City has considered and adopted local legislation relating to the sale and distribution of tobacco products. The bill's impact depends on the extent to which the city enacts local laws that are more stringent than State law and the extent to which such laws are successfully implemented as a result of the bill (or the extent to which such laws would be successfully *challenged* in the *absence of the bill*). As discussed above, in *Altadis* (2013), the (then) Court of Appeals struck down two Prince George's County ordinances governing the distribution of cigars, holding that the ordinances were impliedly preempted by State law.

Thus, to the extent that the city successfully enacts and enforces local laws that are more stringent than State law as a result of the bill, city revenues and expenditures may increase. Similarly, small businesses that sell tobacco products in Baltimore City are potentially affected to the extent they are subject to additional local regulation as a result of the bill.

Additionally, to the extent that Baltimore City successfully enacts and enforces local laws that have the effect of restricting or reducing the sale and consumption of tobacco products, State general fund revenues may be affected due to forgone tax revenues collected from the sale of these products. Any such impact, however, cannot be reliably predicted.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 918 (Delegate Young, *et al.*) - Economic Matters.

Information Source(s): Maryland Association of County Health Officers; Baltimore City; Alcohol, Tobacco, and Cannabis Commission; Comptroller's Office; Judiciary (Administrative Office of the Courts); Department of Legislative Services

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jg/jc

Analysis by: Toni Heo

Direct Inquiries to:
(410) 946-5510
(301) 970-5510