

SB883 - Cigar Excise Tax Application for Out-of-St

Uploaded by: Lininger, Brett

Position: FAV



CIGAR ASSOCIATION OF AMERICA, INC.

Senate Budget & Taxation Committee

Written Testimony

Senate Bill 883

Position: Support

Dear Chairman Guzzone and members of the Senate Budget & Taxation Committee:

The Cigar Association of America (CAA) appreciates the opportunity to provide this written testimony in support of SB 883. CAA is the premier voice of the cigar industry in the United States representing cigar manufacturers, importers, distributors, major suppliers to the industry, as well as other supporting members of the association. CAA has spent more than 80 years helping to ensure a strong, vibrant and growing cigar industry that is currently responsible for billions of dollars in annual revenue and hundreds of thousands of quality jobs.

This bill is a result of legislation passed by the General Assembly in 2019 requiring online premium cigar establishments to pay excise tax as provided in Section 12-302 of the Tax-General Article. In the ensuing year, the CAA, has worked diligently with the Comptroller's office, soon to be the Maryland Alcohol Tobacco Commission, to address the difficulties in properly calculating the correct amount of tax owed. Pursuant to the attached report from the Comptroller's Tax Enforcement Division, this bill provides the state with the tools needed to validate the actual tax base for these sales. It provides a clear path to tax compliance for out of state online premium cigar sellers who sell to Maryland consumers and is likely to become the model for other states to follow as they struggle to find ways to solve these same compliance problems in their state.

The Cigar Association of America (CAA) appreciates the work that has gone into this issue already and requests a favorable report from this committee on SB 883.



COMPTROLLER
of MARYLAND
Serving the People

Cigar Excise Tax Application for Out-of-State Sellers

February 8, 2021



Peter Franchot

Comptroller of Maryland

Purpose

During the 2020 legislative session, the Maryland General Assembly tasked the Comptroller of Maryland, in consultation with online premium cigar companies (out-of-state sellers), to study ways to solve the difficulties in properly calculating the correct amount of excise tax owed to the State.

Excise Tax Compliance for Online Premium Cigar Sales: Chapter 735 of 2019 required online premium cigar establishments to pay excise tax as provided in Section 12-302 of the Tax-General Article. It is recognized that compliance has not been possible due to difficulties in properly calculating the correct amount of tax owed. The committees request the Comptroller, in consultation with online premium cigar companies, to study ways in which to solve this compliance problem and report to the committees by December 31, 2020.

Definitions

Actual Cost - The actual price paid by an out-of-state seller for an individual Stock Keeping Unit (SKU).

Actual Cost List - An annual list of the cost of each SKU (updated quarterly with any new SKUs) that is prepared, maintained, and certified by each out-of-state seller. Costs contained in the Actual Cost List are the average of the Actual Cost paid by the out-of-state seller for each SKU over the twelve calendar months prior to January 1st of the year in which the online occurs.

Out-of-state seller – For the purpose of this report, an out-of-state seller is an online premium cigar company.

Premium cigars – Premium cigars has the meaning stated in § 16.5-101 of the Business Regulation Article and the Code of Maryland Regulations 03.02.02.09.

Remedies

The difficulties that the out-of-state sellers are experiencing in calculating the appropriate excise taxes seem to arise from identifying where in their chain of purchasing cigars the tax applies and how that taxable amount is determined. Below are two suggested remedies that

have been reviewed by representation for the out-of-state sellers (Mark Triplett on behalf of the Cigar Association of America) and the Office of the Comptroller (Comptroller). These remedies are intended to solve the difficulties of properly calculating the excise tax on premium cigars. Lastly, for consistent application and enforcement, once the out-of-state seller selects an appropriate remedy, that same remedy must be used each subsequent year.

1. Taxes applied based on the **Actual Cost**. The tax shall be calculated by applying the State tax rate (currently 15% of the wholesale price) to the “Actual Cost” of each SKU. Out-of-state sellers shall keep all purchasing records required to establish, to the Comptroller’s satisfaction, the “Actual Cost” of each SKU sold online directly to Maryland consumers.
2. Taxes applied based on the **Actual Cost List**. The tax shall be calculated by applying the State tax rate (currently 15% of the wholesale price) to the cost established for each SKU in the out-of-state seller’s “Actual Cost List.” Out-of-state sellers shall keep all purchasing records required to establish, to the Comptroller’s satisfaction, the “Actual Cost List” value of each SKU sold online directly to Maryland consumers.

Tax General Article (for reference)

§ 12-105. Tax rate

Base rate

(a) The tobacco tax rate for cigarettes is:

- (1) \$1.00 for each package of 10 or fewer cigarettes;
- (2) \$2.00 for each package of at least 11 and not more than 20 cigarettes;
- (3) 10.0 cents for each cigarette in a package of more than 20 cigarettes; and
- (4) 10.0 cents for each cigarette in a package of free sample cigarettes.

Supplemental rate

(b)(1) Except as provided in paragraph (2) of this subsection, the tobacco tax rate for other tobacco products is 30% of the wholesale price of the tobacco products.

(2)(i) In this paragraph, “premium cigars” has the meaning stated in § 16.5-101 of the Business Regulation Article.

(ii) Except as provided in subparagraph (iii) of this paragraph, the tobacco tax rate for cigars is 70% of the wholesale price of the cigars.

(iii) The tobacco tax rate for premium cigars is 15% of the wholesale price of the premium cigars.

§ 12-302. Tobacco tax payments required

Manufacturer

(a) A manufacturer of sample cigarettes shall pay the tobacco tax on those cigarettes distributed in the State without charge, in the manner that the Comptroller requires by regulation, with the return that covers the period in which the manufacturer distributed those cigarettes.

Wholesaler

(b) The wholesaler who first possesses in the State unstamped cigarettes for which tax stamps are required shall pay the tobacco tax on those cigarettes by buying and affixing tax stamps.

Other tobacco products

(c) The tobacco tax on other tobacco products shall be paid by the wholesaler who sells the other tobacco products to a retailer in the State.

Other tobacco products retailer or tobacconist

(d)(1) A licensed other tobacco products retailer or a licensed tobacconist shall pay the tobacco tax on other tobacco products on which the tobacco tax has not been paid by filing a quarterly tax return, with any supporting schedules, on forms provided by the Comptroller on the following dates covering tax liabilities in the preceding quarter:

- (i) January 21;
- (ii) April 21;
- (iii) July 21; and
- (iv) October 21.

(2) A licensed other tobacco products retailer or a licensed tobacconist required to file a tax return under paragraph (1) of this subsection shall pay a tobacco tax at the rate provided in § 12-105(b) of this title based on the invoice amount charged by the licensed other tobacco products manufacturer, exclusive of any discount, trade allowance, rebate, or other reduction.

Out-of-state seller

(e) An out-of-state seller shall pay the tobacco tax on pipe tobacco or premium cigars on which the tobacco tax has not been paid.

SB 883 - Amendment - Premium cigar retailers.pdf

Uploaded by: Bohle, Matthew

Position: FWA

BY: Premium Cigar Retailers Association of Maryland

AMENDMENT TO SENATE BIL 883
(First Reading File Bill)

AMENDMENT NO. 1

On page 11 after "Unit" in line 4 strike Lines 4 through 9.

SB 883 - MD Premium Cigar Retailers - FWA.pdf

Uploaded by: Bohle, Matthew

Position: FWA

March 3, 2021

Aphelion Cigar Lounge 410-721-1700
2510 Conway Road, Ste. 106, Gambrills 21054
Broadleaf Tobacco 410-315-8118
487 Ritchie Highway, #101, Severna Park 21146
Burnt Leaf 443-272-7206
487 Ritchie Highway, #101, Severna Park 21146
Cross Street Tobacco 410-752-9220
1103 Light Street, Baltimore 21230
Dan's Cigar Lounge 410-780-5959
8300-B Pulaski Highway, Rosedale 21237
Davidus Cigars 301-865-1000
2134 Generals Highway, Annapolis 21401
1300 Bank Street, Baltimore 21231
1716 Liberty Road, Eldersburg 21784
9180 Baltimore National Pike, Ellicott City 21042 529
West South Street, Frederick 21701
25 Olney Sandy-Spring Road, Ashton 20861
10810 Reisterstown Road, Owings Mills 21117
11632 Rockville Pike, Rockville 20852
15922 Shady Grove Road, Gaithersburg 20832 8925
Fingerboard Road, Urbana 21704
23 East Main Street, Westminster 21157 25
Allegheny Avenue, Towson 21204
Easton Cigar & Smokeshop 410-770-5084
6 Glenwood Ave, Easton 21601
Etch-Art Awards 410-202-6616
931 Mount Hermon Road, Salisbury 21804
Fire & Smoke Cigar Parlor 443-970-6634
6827 Loch Raven Blvd., Towson 21286
Leonardtwn Cigar 240-309-4108
40955 Merchants Lane #14, Leonardtown 20650
Main Street Cigar Company 410-734-4494
2217 E. Churchville Road, Bel Air 21015
Mount Vernon Tobacco 410-728-5669
221 W. Read Street, Baltimore 21201
Mt. Washington Cigar Co. 410-377-4711
5909 Falls Road, Baltimore 21209
Oakleigh Beach Tobacco 410-388-8080
702 Wise Avenue, Dundalk 21222
Office Cigar Lounge at QG 410-685-7428
31 S Calvert St, Ste 300, Baltimore 21202
Quartermasters Cigars 410-898-2134
880 Northeast St, Frederick 21701
Senor Cigars 410-524-2069
11805 Coastal Highway, Ocean City 21842
3314 Coastal Highway, Ocean City 21842
Signature Cigars 301-424-8833
1331 Rockville Pike, Rockville 20852
4919 Cordell Avenue, Bethesda 20814
Spartan Cigar Lounge 443-350-9808
128 East Pulaski Highway, Elkton 21921
The Book Center 301-722-8345
15 North Centre Street, Cumberland 21502
The Humidour Cigar Shoppe 410-666-3212
2 Sherwood Road, Cockeysville 21030
TinderBox #398 301-374-9100
2754 Crain Highway, Waldorf 20601
Titan Cigar 410-721-2944
2634 Chapel Lake Drive, Gambrills 21056
Tobacco Leaf 410-799-2094
7351 Assateague Drive, Jessup 20794
W. Curtis Draper Tobacconist 301-907-7990
4916 Del Ray Avenue, Bethesda 20814

Favorable With Amendment on SB 883

Mr. Chair and members of the Committee,

The Premium Cigar Retailers Association of Maryland represents over 30 adult only brick and mortar premium cigar specialty stores in the State. Members of the PCRA have appeared before your committee on several matters in previous years and we thank you for the opportunity to testify again.

We write today as Favorable With Amendment on SB 883.

We thank the Chair for bringing this bill and we support the intent of this bill.

Our narrow amendment is limited to subsection II of page 11.

We are concerned that this subsection creates an opportunity for out-of-state premium cigar sellers to substantially avoid paying the wholesale tax in Maryland. Subsection II of page 11 states:

“If the actual price paid by an out-of-state seller for a stock keeping unit is not available, the average of the actual price paid by an out-of-state seller for a stock keeping unit over the 12 calendar months before January 1 of the year in which the sale occurs.”

We are uncertain as to how the actual price paid for a certain cigar would be unknown to the out-of-state seller. If the actual price paid is unknown, how would the Comptroller determine the average price of the prior twelve-month period? What if the cigar is a unique stock keeping unit? How would the price paid be determined?

This subsection creates ambiguity and we prefer that:

- the subsection be struck from the bill or
- leave it to the Comptroller to address this scenario through regulations should it be needed or
- clarifying language be added as to how exactly the price for taxation purposes would be determined if the actual price is unknown.

We believe that our amendment tightens up the language up the bill and ensures that there is a level playing field between out-of-state and in staller sellers.

For these reasons we respectfully ask for our amendment to be adopted on SB 883.

Sincerely

Matthew Bohle, Patrick Roddy and Obie Chinemere of RWL – 410-269-5066

SB 883_ACS CAN, AHA, ALA_LOI.pdf

Uploaded by: Collins, Jocelyn

Position: INFO



March 3, 2021

TO: The Honorable Guy Guzzone, Chair
The Honorable Jim Rosapepe, Vice Chair
Members of the Senate Budget and Taxation Committee
3 West
Miller Senate Office Building
Annapolis, MD 21401

FROM: Jocelyn Collins, Maryland and DC Government Relations Director
American Cancer Society Cancer Action Network, Inc.
jocelyn.collins@cancer.org
(301)254-0072 (cell)

Laura Hale, Maryland Government Relations Director
American Heart Association
laura.hale@heart.org
(336)480-4829 (cell)

Aleks Casper, Director of Advocacy, Maryland
American Lung Association
aleks.casper@lung.org
(302)983-9697 (cell)

SUBJECT: SB 883 Tobacco Tax – Out-of-State Sales of Premium Cigars and Pipe Tobacco

Position: Letter of Information

We thank you for the opportunity to provide comments on **SB 883 Tobacco Tax—Out-of-state Sales of Premium Cigars and Pipe Tobacco**.

Enforcement of existing law against online sellers is more complicated than traditional enforcement against in-person sellers. Although the U.S. Food and Drug Administration (FDA) has an inspection system in place to monitor and enforce compliance with age-verification laws by brick-and-mortar licensed retailers, no equally robust compliance program for internet-based tobacco retailers exists. Unfortunately, substantial evidence has shown that youth can and have acquired tobacco products from internet vendors.

The Prevent All Cigarette Trafficking Act of 2009 (PACT Act) was an important step in the regulation of internet sales of tobacco, but opportunities for improvement remain. Significantly, while the Act regulates (and mostly prohibits) internet sales of cigarettes¹ and smokeless tobacco, electronic smoking

¹ Defined to include roll-your-own tobacco under 15 U.S.C. § 375(2) (2014)



devices (e-cigarettes) and other tobacco products from similar restrictions. In addition, it leaves serious loopholes regarding delivery carriers, and constrains state authority to fill the gaps.

The PACT Act, discussed more fully below, specifically preserves state authority to prohibit commercial tobacco sellers from shipping tobacco to individual customers and personal residences within the state. At least twelve states have such a law: Arizona, Arkansas, Connecticut, Indiana, Maine, Maryland, New York, Ohio, South Dakota, Utah, Vermont and Washington. Five of these states, Arkansas, Maine, South Dakota, Utah, and Vermont, have enacted more comprehensive laws, extending these prohibitions to e-cigarettes.

The PACT Act limits the ability of states and local governments to regulate the common carriers involved in these delivery transactions.² The Act allows a state to make it illegal for internet-based retailers to ship tobacco product orders to customers.

In 2012, the FDA issued what is called an “Advance Notice of Proposed Rulemaking” to ask for comments from the public on how it could best regulate internet sales of tobacco. Among others, the National Association of Attorneys General (NAAG) submitted a comment to the FDA on this topic.³ NAAG explained that despite the enactment of the PACT Act, the existing laws on internet sales of tobacco do not adequately protect public health, and states’ efforts to enforce their laws continue to be frustrated by jurisdictional limitations and the ability of internet-based sellers to put up new websites as fast as old ones are shut down by states.⁴

The NAAG comment highlights problems with existing age-verification methods and concludes that unless technology can meet the challenges posed by tech-savvy youth, a complete prohibition on non-face-to-face sales of tobacco products may be the only way to prevent online tobacco sales to youth.

Again, states have the authority to prohibit internet-based retailers from selling and shipping tobacco products to customers within their borders. Federal regulation could remove the PACT Act loopholes that currently exclude cigars, and some other tobacco products from the provisions of that law, as well as the exemptions for common carriers, thus closing some gaps. **But given the ease at which underage persons have been able to circumvent existing age verification techniques, it is best for all tobacco products and all tobacco retailers to be regulated the same. Therefore, it is best for all tobacco products to be shipped directly to licensed brick-and-mortar stores and not shipped directly to consumers. This shows greater promise as an effective way to prevent underage access to these dangerous products.**

² PACT Act § 2A(e)(5)(A), 124 Stat. 1087, 1097 (codified at 15 U.S.C. § 376a(e)(5)(A)).

³ National Association of Attorneys General [hereinafter NAAG], Appendix 1, Comment Letter on Proposed Rule on Non-Face-to-Face Sale and Distribution of Tobacco Products and Advertising, Promotion, and Marketing of Tobacco Products, Docket No. FDA-2011-N-0467, at 1-2 (Feb 23, 2013), <https://www.regulations.gov/#!documentDetail;D=FDA-2011-N-0467-0110>.

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Moreover, all tobacco license fees should be carefully constructed and reviewed. The fees assessed for a tobacco retail license should be set at an amount that takes into account the government's cost of

administering and enforcing the law. For example, annual licensing fees should be used to offset employee salaries, the cost of performing compliance checks and related inspections, and other overhead and logistical aspects of properly administering, implementing, and enforcing the law.

The American Cancer Society Cancer Action Network, American Heart Association, and American Lung Association, again thank the committee for the opportunity to provide comments on SB 883.

AHA letter of information sb 883 .pdf

Uploaded by: Hale, Laura

Position: INFO



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