



# **CIGAR ASSOCIATION OF AMERICA, INC.**

## **House Ways & Means Committee**

### **Written Testimony**

#### **Senate Bill 883**

#### **Position: Support**

Dear Davis and members of the House Ways and Means 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 Senate Amendments:

- 1- With the veto override of HB732 (2020)/ CH37 of 2021, the bill needed a technical amendment to TG 12-105 to reflect the current statutory provisions in effect as a result of the veto override.
- 2- The amendment maintains the Wayfair thresholds for taxation that are in current law. However, all out-of-State sellers will still be required to be licensed, and the requirement for taxation would remain as it is in current law with the \$100k/200 transactions threshold.

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.



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# Cigar Excise Tax Application for Out-of-State Sellers

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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 1<sup>st</sup> 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.