

Chapter 768

(Senate Bill 883)

AN ACT concerning

Tobacco Tax and Sales and Use Tax – Out-of-State Sales of Premium Cigars and Pipe Tobacco and Tobacco Smoking Devices

FOR the purpose of altering the definition of “other tobacco products” to exclude a certain item; requiring a person located outside the State to have an appropriate license whenever the person sells premium cigars or pipe tobacco to a consumer in the State; authorizing the Executive Director of the Alcohol and Tobacco Commission to delegate certain duties; authorizing the holder of a remote tobacco seller license to sell premium cigars and pipe tobacco to consumers in the State; establishing the requirements for an applicant for a remote tobacco seller license; providing for license application procedures and fees; prohibiting a person from applying for a license within a certain period of time after the person’s license was revoked; requiring the Executive Director to issue remote tobacco seller licenses under certain circumstances; providing for the renewal of a license; prohibiting the assignment of a remote tobacco seller license; authorizing the Executive Director to deny an application for a license for certain reasons; requiring the Executive Director to give certain notice of certain final actions; providing for a certain hearing process regarding a final decision; authorizing the Executive Director to revoke a license for certain reasons; requiring the Executive Director to give certain notice of a revocation; authorizing a licensee to make a certain offer of compromise in lieu of revocation of a license; authorizing the Executive Director to accept certain offers of compromise; providing for judicial review of a final decision of the Executive Director; prohibiting a person from acting, or attempting to act, as a licensed remote tobacco seller without a license; requiring the Executive Director to remit certain license fees to the General Fund of the State; stating the intent of the General Assembly; requiring the Executive Director to adopt certain regulations; providing for certain penalties; altering the sales and use tax rate imposed on sales of certain tobacco-related items; specifying that certain premium cigars and pipe tobacco are contraband; altering the price used to calculate the tobacco tax for certain premium cigars and pipe tobacco sold by an out-of-state seller; requiring an out-of-state seller to pay the tobacco tax in a certain manner; requiring an out-of-state seller to file certain tax returns and provide certain information; requiring an out-of-state seller to maintain certain records; requiring the Comptroller to adopt certain regulations; authorizing the Comptroller to require a certain bond from an out-of-state seller; authorizing the Comptroller to waive the requirement for the bond under certain circumstances; defining certain terms; altering a certain definition; providing for the application of certain provisions of this Act; requiring the Comptroller to issue a certain refund to certain persons on application; making this Act an emergency measure; providing for a delayed effective date for certain provisions of this Act; and generally relating to ~~out-of-state sales of premium cigars and pipe tobacco.~~ taxation of tobacco and tobacco smoking devices.

BY repealing and reenacting, without amendments,

Article – Business Regulation

Section 16.5–101(a)

Annotated Code of Maryland

(2015 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, with amendments,

Article – Business Regulation

Section 16.5–101(i)

Annotated Code of Maryland

(2015 Replacement Volume and 2020 Supplement)

(As enacted by Chapter 37 of the Acts of the General Assembly of 2021)

BY repealing and reenacting, with amendments,

Article – Tax – General

Section 11–104(j) and 12–105(b)

Annotated Code of Maryland

(2016 Replacement Volume and 2020 Supplement)

(As enacted by Chapter 37 of the Acts of the General Assembly of 2021)

BY adding to

Article – Business Regulation

Section 16.9–101 through 16.9–214 to be under the new title “Title 16.9.
Out-of-State Sales of Premium Cigars and Pipe Tobacco”

Annotated Code of Maryland

(2015 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, with amendments,

Article – Tax – General

Section 12–101(f), 12–103, ~~12–105(b)~~, 12–201, 12–302(e), and 13–825(h)

Annotated Code of Maryland

(2016 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, without amendments,

Article – Tax – General

Section 12–101(g) and (h)

Annotated Code of Maryland

(2016 Replacement Volume and 2020 Supplement)

~~BY repealing and reenacting, with amendments,~~

~~Article – Tax – General~~

~~Section 12–105(b)~~

~~Annotated Code of Maryland~~

~~(2016 Replacement Volume and 2020 Supplement)~~

~~(As enacted by Chapter 37 of the Acts of the General Assembly of 2021)~~

BY adding to

Article – Tax – General
 Section 12–105(c) and 12–204
 Annotated Code of Maryland
 (2016 Replacement Volume and 2020 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
 That the Laws of Maryland read as follows:

Article – Business Regulation

16.5–101.

(a) In this title the following words have the meanings indicated.

(i) (1) “Other tobacco products” means, except as provided in paragraph (3) of this subsection, a product that is:

(i) intended for human consumption or likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested in any other manner, and that is made of or derived from, or that contains:

1. tobacco; or

2. nicotine; or

(ii) a component or part used in a consumable product described under item (i) of this paragraph.

(2) “Other tobacco products” includes:

(i) cigars, premium cigars, pipe tobacco, chewing tobacco, snuff, and snus; and

(ii) filters, rolling papers, pipes, and hookahs.

(3) “Other tobacco products” does not include:

(i) cigarettes;

(ii) electronic smoking devices; [or]

(iii) drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act; OR

(IV) TOBACCO PIPES, AS DEFINED UNDER § 11-104 OF THE TAX – GENERAL ARTICLE.

Article – Tax – General

11-104.

(i) (1) (i) In this subsection, the following words have the meanings indicated.

(ii) “Electronic smoking device” has the meaning stated in § 16.7-101 of the Business Regulation Article.

(iii) “TOBACCO PIPE” MEANS A PIPE MADE PRIMARILY OF MEERSCHAUM, WOOD, OR PORCELAIN, WITH A BOWL DESIGNED TO BE USED WITHOUT A SCREEN OR FILTER.

(IV) “Vaping liquid” has the meaning stated in § 16.7-101 of the Business Regulation Article.

(2) Except as provided in paragraph (3) of this subsection, the sales and use tax rate [for electronic smoking devices] is 12% of the taxable price FOR:

(I) ELECTRONIC SMOKING DEVICES; AND

(II) TOBACCO PIPES.

(3) The sales and use tax for vaping liquid sold in a container that contains 5 milliliters or less of vaping liquid is 60% of the taxable price.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Business Regulation

TITLE 16.9. OUT-OF-STATE SALES OF PREMIUM CIGARS AND PIPE TOBACCO.

SUBTITLE 1. DEFINITIONS; GENERAL PROVISIONS.

16.9-101.

(A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “EXECUTIVE DIRECTOR” MEANS THE EXECUTIVE DIRECTOR OF THE ALCOHOL AND TOBACCO COMMISSION.

(C) “LICENSE” MEANS A REMOTE TOBACCO SELLER LICENSE ISSUED BY THE EXECUTIVE DIRECTOR UNDER SUBTITLE 2 OF THIS TITLE.

(D) “PIPE TOBACCO” HAS THE MEANING STATED IN § 16.5–101 OF THIS ARTICLE.

(E) “PREMIUM CIGARS” HAS THE MEANING STATED IN § 16.5–101 OF THIS ARTICLE.

(F) “REMOTE TOBACCO SELLER” MEANS THE HOLDER OF A REMOTE TOBACCO SELLER LICENSE ISSUED UNDER THIS TITLE.

(G) “SELL” MEANS TO EXCHANGE OR TRANSFER, OR TO AGREE TO EXCHANGE OR TRANSFER, TITLE OR POSSESSION OF PROPERTY, IN ANY MANNER OR BY ANY MEANS, FOR CONSIDERATION.

16.9–102.

THE EXECUTIVE DIRECTOR MAY DELEGATE ANY POWER OR DUTY OF THE EXECUTIVE DIRECTOR.

16.9–103.

THIS TITLE APPLIES ONLY TO A PERSON LOCATED OUTSIDE THE STATE WHEN SELLING PREMIUM CIGARS OR PIPE TOBACCO TO A CONSUMER IN THE STATE.

SUBTITLE 2. REMOTE TOBACCO SELLER LICENSES.

16.9–201.

(A) A PERSON LOCATED OUTSIDE THE STATE MUST HAVE A REMOTE TOBACCO SELLER LICENSE BEFORE THE PERSON MAY SELL PREMIUM CIGARS OR PIPE TOBACCO TO A CONSUMER IN THE STATE.

(B) A REMOTE TOBACCO SELLER LICENSE AUTHORIZES THE LICENSEE TO SELL PREMIUM CIGARS AND PIPE TOBACCO THROUGH A COMMON CARRIER OR PRIVATE DELIVERY SERVICE TO A CONSUMER IN THE STATE BY RECEIVING AND FILLING ORDERS THAT THE CONSUMER TRANSMITS BY ELECTRONIC OR OTHER MEANS.

16.9–202.

AN APPLICANT FOR A REMOTE TOBACCO SELLER LICENSE SHALL:

- (1) IDENTIFY THE PREMIUM CIGARS AND PIPE TOBACCO THAT THE REMOTE TOBACCO SELLER INTENDS TO SELL AND SHIP INTO THE STATE;**
- (2) UTILIZE THIRD-PARTY AGE VERIFICATION FOR PURCHASES AND DELIVERIES; AND**
- (3) CONSENT TO BEING SUBJECT TO THE TOBACCO TAX UNDER TITLE 12 OF THE TAX – GENERAL ARTICLE.**

16.9–203.

(A) AN APPLICANT FOR A REMOTE TOBACCO SELLER LICENSE SHALL:

- (1) SUBMIT AN APPLICATION TO THE EXECUTIVE DIRECTOR ON THE FORM AND CONTAINING THE INFORMATION THAT THE EXECUTIVE DIRECTOR REQUIRES; AND**
- (2) PAY TO THE EXECUTIVE DIRECTOR A FEE OF:**
 - (I) \$25; OR**
 - (II) AN AMOUNT SET BY REGULATION.**

(B) IF A PERSON HAS HAD A LICENSE REVOKED UNDER § 16.9–207 OF THIS SUBTITLE, THE PERSON MAY NOT REAPPLY FOR A LICENSE WITHIN 1 YEAR AFTER THE DATE WHEN THE PRIOR LICENSE WAS REVOKED.

16.9–204.

THE EXECUTIVE DIRECTOR SHALL ISSUE A REMOTE TOBACCO SELLER LICENSE TO EACH APPLICANT WHO MEETS THE REQUIREMENTS OF THIS SUBTITLE FOR A LICENSE TO ACT AS A REMOTE TOBACCO SELLER.

16.9–205.

(A) UNLESS A LICENSE IS RENEWED FOR A 1-YEAR TERM AS PROVIDED IN THIS SECTION, THE LICENSE EXPIRES ON THE FIRST JUNE 30 AFTER ITS EFFECTIVE DATE.

(B) AT LEAST 1 MONTH BEFORE A LICENSE ISSUED UNDER THIS SUBTITLE EXPIRES, THE ISSUING OFFICIAL SHALL MAIL TO THE LICENSEE, AT THE LAST KNOWN ADDRESS OF THE LICENSEE, A RENEWAL NOTICE THAT STATES:

(1) THE DATE ON WHICH THE CURRENT LICENSE EXPIRES; AND

(2) THE DATE BY WHICH THE ISSUING OFFICIAL MUST RECEIVE THE RENEWAL APPLICATION FOR THE RENEWAL TO BE ISSUED AND MAILED BEFORE THE LICENSE EXPIRES.

(C) BEFORE A LICENSE ISSUED UNDER THIS SUBTITLE EXPIRES, THE LICENSEE MAY RENEW IT FOR AN ADDITIONAL 1-YEAR TERM, IF THE LICENSEE:

(1) OTHERWISE IS ENTITLED TO BE LICENSED;

(2) SUBMITS TO THE ISSUING OFFICIAL A RENEWAL APPLICATION ON THE FORM THAT THE ISSUING OFFICIAL REQUIRES; AND

(3) PAYS TO THE ISSUING OFFICIAL THE LICENSE FEE REQUIRED UNDER § 16.9-203 OF THIS SUBTITLE.

(D) THE ISSUING OFFICIAL SHALL RENEW THE LICENSE OF EACH LICENSEE WHO MEETS THE REQUIREMENTS OF THIS SECTION.

16.9-206.

A REMOTE TOBACCO SELLER LICENSEE MAY NOT ASSIGN THE LICENSE.

16.9-207.

(A) SUBJECT TO THE HEARING PROVISIONS OF § 16.9-208 OF THIS SUBTITLE, THE EXECUTIVE DIRECTOR MAY DENY A LICENSE TO AN APPLICANT, REPRIMAND A LICENSEE, OR REVOKE A LICENSE IF THE APPLICANT OR LICENSEE:

(1) FRAUDULENTLY OR DECEPTIVELY OBTAINS OR ATTEMPTS TO OBTAIN A LICENSE FOR THE APPLICANT OR LICENSEE OR FOR ANOTHER PERSON;

(2) FRAUDULENTLY OR DECEPTIVELY USES A LICENSE;

(3) IS CONVICTED, UNDER THE LAWS OF THE UNITED STATES OR OF ANY OTHER STATE, OF:

(I) A FELONY; OR

(II) A MISDEMEANOR THAT IS A CRIME OF MORAL TURPITUDE AND IS DIRECTLY RELATED TO THE FITNESS AND QUALIFICATION OF THE APPLICANT OR LICENSEE;

(4) IS CONVICTED OF A VIOLATION UNDER § 10-107 OF THE CRIMINAL LAW ARTICLE;

(5) VIOLATES TITLE 12 OF THE TAX – GENERAL ARTICLE OR REGULATIONS ADOPTED UNDER THAT TITLE;

(6) FAILS TO UTILIZE THIRD-PARTY AGE VERIFICATION FOR PURCHASES AND DELIVERIES; OR

(7) VIOLATES THIS TITLE OR REGULATIONS ADOPTED UNDER THIS TITLE.

(B) SUBJECT TO THE HEARING PROVISIONS OF § 16.9-208 OF THIS SUBTITLE, THE EXECUTIVE DIRECTOR SHALL DENY A LICENSE TO ANY APPLICANT WHO HAS HAD A LICENSE REVOKED UNDER THIS SECTION UNTIL:

(1) 1 YEAR HAS PASSED SINCE THE LICENSE WAS REVOKED; AND

(2) IT SATISFACTORILY APPEARS TO THE EXECUTIVE DIRECTOR THAT THE APPLICANT WILL COMPLY WITH THIS TITLE AND ANY REGULATIONS ADOPTED UNDER THIS TITLE.

(C) BEFORE THE ISSUANCE OR RENEWAL OF ANY LICENSE, THE EXECUTIVE DIRECTOR SHALL CONDUCT AN INVESTIGATION WITH REGARD TO:

(1) THE APPLICANT;

(2) THE BUSINESS TO BE OPERATED; AND

(3) THE FACTS SET FORTH IN THE APPLICATION.

16.9-208.

(A) EXCEPT AS OTHERWISE PROVIDED IN § 10-226 OF THE STATE GOVERNMENT ARTICLE, BEFORE THE EXECUTIVE DIRECTOR TAKES ANY FINAL ACTION UNDER § 16.9-207 OF THIS SUBTITLE, THE EXECUTIVE DIRECTOR SHALL GIVE THE PERSON AGAINST WHOM THE ACTION IS CONTEMPLATED AN OPPORTUNITY FOR A HEARING BEFORE THE EXECUTIVE DIRECTOR.

(B) THE EXECUTIVE DIRECTOR SHALL GIVE NOTICE AND HOLD THE HEARING IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

(C) THE EXECUTIVE DIRECTOR MAY ADMINISTER OATHS IN A PROCEEDING UNDER THIS SECTION.

(D) THE PERSON AGAINST WHOM THE ACTION IS CONTEMPLATED MAY BE REPRESENTED AT THE HEARING BY COUNSEL.

(E) IF, AFTER DUE NOTICE, THE PERSON AGAINST WHOM THE ACTION IS CONTEMPLATED DOES NOT APPEAR, NEVERTHELESS THE EXECUTIVE DIRECTOR MAY HEAR AND DETERMINE THE MATTER.

16.9-209.

(A) SUBJECT TO THE NOTICE REQUIREMENT UNDER SUBSECTION (B) OF THIS SECTION, THE EXECUTIVE DIRECTOR MAY REVOKE A LICENSE IF A LICENSEE:

(1) ENGAGES IN AN ACT OR OMISSION THAT IS A GROUND FOR DISCIPLINE UNDER § 16.9-207(A) OF THIS SUBTITLE; OR

(2) VIOLATES THIS TITLE OR TITLE 12 OF THE TAX – GENERAL ARTICLE OR REGULATIONS ADOPTED UNDER THESE TITLES.

(B) IF A LICENSE IS REVOKED UNDER THIS SECTION:

(1) THE EXECUTIVE DIRECTOR SHALL GIVE THE LICENSEE NOTICE OF THE REVOCATION; AND

(2) THE REVOCATION MAY NOT TAKE EFFECT UNTIL AT LEAST 5 BUSINESS DAYS FOLLOWING NOTICE OF THE REVOCATION.

(C) THE RENEWAL OR EXPIRATION OF A LICENSE WILL NOT BAR OR ABATE A DISCIPLINARY ACTION UNDER THIS SECTION.

(D) (1) EXCEPT FOR A VIOLATION OF § 10-107 OF THE CRIMINAL LAW ARTICLE, WHENEVER ANY LICENSE ISSUED UNDER THE PROVISIONS OF THIS SUBTITLE IS REVOKED BY THE EXECUTIVE DIRECTOR, THE LICENSEE MAY, BEFORE THE EFFECTIVE DATE OF THE REVOCATION, PETITION THE EXECUTIVE DIRECTOR FOR PERMISSION TO MAKE AN OFFER OF COMPROMISE CONSISTING OF A SUM OF MONEY IN LIEU OF SERVING THE REVOCATION.

(2) MONEY PAID IN LIEU OF REVOCATION SHALL BE PAID INTO THE GENERAL FUND OF THE STATE.

(3) AN OFFER OF COMPROMISE MAY NOT EXCEED AN AMOUNT SET BY REGULATION.

(4) THE EXECUTIVE DIRECTOR MAY ACCEPT THE OFFER OF COMPROMISE IF:

(I) THE PUBLIC WELFARE AND MORALS WOULD NOT BE IMPAIRED BY ALLOWING THE LICENSEE TO OPERATE DURING THE PERIOD SET FOR THE REVOCATION; AND

(II) THE PAYMENT OF THE SUM OF MONEY WILL ACHIEVE THE DESIRED DISCIPLINARY PURPOSES.

(5) THE EXECUTIVE DIRECTOR SHALL ADOPT REGULATIONS TO CARRY OUT THIS SUBSECTION.

16.9-210.

A PARTY TO A PROCEEDING BEFORE THE EXECUTIVE DIRECTOR WHO IS AGGRIEVED BY A FINAL DECISION OF THE EXECUTIVE DIRECTOR IN A CONTESTED CASE, AS DEFINED IN § 10-202 OF THE STATE GOVERNMENT ARTICLE, IS ENTITLED TO JUDICIAL REVIEW AS PROVIDED IN §§ 10-222 AND 10-223 OF THE STATE GOVERNMENT ARTICLE.

16.9-211.

(A) A PERSON MAY NOT ACT, ATTEMPT TO ACT, OR OFFER TO ACT AS A LICENSED REMOTE TOBACCO SELLER UNLESS THE PERSON HAS AN APPROPRIATE LICENSE.

(B) (1) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$1,000 OR IMPRISONMENT NOT EXCEEDING 30 DAYS OR BOTH.

(2) EACH DAY THAT A VIOLATION OF THIS SECTION CONTINUES IS A SEPARATE OFFENSE.

16.9-212.

(A) THE EXECUTIVE DIRECTOR SHALL PAY INTO THE GENERAL FUND OF THE STATE ALL LICENSE FEES COLLECTED UNDER THIS TITLE.

(B) THE GENERAL ASSEMBLY INTENDS THAT THESE LICENSE FEES BE USED TO ADMINISTER THIS TITLE.

16.9-213.

(A) THE EXECUTIVE DIRECTOR SHALL ADOPT REGULATIONS TO IMPLEMENT THIS TITLE.

(B) THE REGULATIONS ADOPTED UNDER SUBSECTION (A) OF THIS SECTION SHALL INCLUDE:

(1) MINIMUM STANDARDS FOR THIRD-PARTY AGE VERIFICATION SERVICES A REMOTE TOBACCO SELLER IS REQUIRED TO USE; AND

(2) MINIMUM STANDARDS FOR THE TYPES OF DELIVERY SERVICES A REMOTE TOBACCO SELLER IS AUTHORIZED TO USE.

16.9-214.

UNLESS OTHERWISE SPECIFIED IN THIS TITLE, A PERSON WHO VIOLATES ANY PROVISION OF THIS TITLE IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$1,000 OR IMPRISONMENT NOT EXCEEDING 30 DAYS OR BOTH.

Article – Tax – General

12-101.

(f) “Out-of-state seller” means a person:

(1) located outside the State that sells, holds for sale, ships, or delivers premium cigars or pipe tobacco to consumers in the State ~~if~~, during the previous calendar year or the current calendar year:

~~(1)~~ **(I) the person’s gross revenue from the sale of premium cigars or pipe tobacco in the State exceeds \$100,000; or**

~~(2)~~ **(II) the person sold premium cigars or pipe tobacco into the State in 200 or more separate transactions}; AND**

(2) WHO IS REQUIRED TO HOLD A REMOTE TOBACCO SELLER LICENSE UNDER TITLE 16.9 OF THE BUSINESS REGULATION ARTICLE.

(g) “Pipe tobacco” has the meaning stated in § 16.5–101 of the Business Regulation Article.

(h) “Premium cigars” has the meaning stated in § 16.5–101 of the Business Regulation Article.

12–103.

(a) A rebuttable presumption exists that any cigarette or other tobacco product in the State is subject to the tobacco tax.

(b) Cigarettes or other tobacco products are contraband tobacco products if they:

(1) are possessed or sold in the State in a manner that is not authorized under this title or under Title 16 [or], Title 16.5, **OR TITLE 16.9** of the Business Regulation Article; or

(2) are transported by vehicle in the State by a person who does not have, in the vehicle, the records required by § 16–219 or § 16.5–215 of the Business Regulation Article for the transportation of cigarettes or other tobacco products.

(c) A person who possesses cigarettes or other tobacco products has the burden of proving that the cigarettes or other tobacco products are not subject to the tobacco tax.

12–105.

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

~~(i) the wholesale price of the tobacco products; OR~~

~~(ii) FOR PIPE TOBACCO SOLD BY AN OUT-OF-STATE SELLER, THE PRICE DETERMINED UNDER SUBSECTION (C) OF THIS SECTION.~~

~~(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:~~

~~1. the wholesale price of the premium cigars; OR~~

~~2. FOR PREMIUM CIGARS SOLD BY AN OUT-OF-STATE SELLER, THE PRICE DETERMINED UNDER SUBSECTION (C) OF THIS SECTION.~~

(b) (1) Except as provided in paragraph (2) of this subsection, the tobacco tax rate for other tobacco products is 53% of the wholesale price of the tobacco products.

(2) (i) In this paragraph, “pipe tobacco” and “premium cigars” have the meanings stated in § 16.5–101 of the Business Regulation Article.

(ii) 1. Except as provided in subparagraph 2 of this subparagraph, the tobacco tax rate for cigars is 70% of the wholesale price of the cigars.

2. The tobacco tax rate for premium cigars is 15% of:

A. the wholesale price of the premium cigars; OR

B. FOR PREMIUM CIGARS SOLD BY AN OUT-OF-STATE SELLER, THE PRICE DETERMINED UNDER SUBSECTION (C) OF THIS SECTION.

(iii) The tobacco tax rate for pipe tobacco is 30% of:

1. the wholesale price of the pipe tobacco; OR

2. FOR PIPE TOBACCO SOLD BY AN OUT-OF-STATE SELLER, THE PRICE DETERMINED UNDER SUBSECTION (C) OF THIS SECTION.

(C) (1) **FOR PREMIUM CIGARS AND PIPE TOBACCO SOLD BY AN OUT-OF-STATE SELLER, THE TOBACCO TAX RATE APPLIES TO:**

(I) **THE ACTUAL PRICE PAID BY AN OUT-OF-STATE SELLER FOR A STOCK KEEPING UNIT; OR**

(II) **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.**

(2) **THE COMPTROLLER SHALL ADOPT REGULATIONS TO IMPLEMENT THIS SUBSECTION.**

(a) A manufacturer shall complete and file with the Comptroller a tobacco tax return:

(1) on or before the 15th day of the month that follows the month in which the manufacturer distributes in the State free sample cigarettes of the manufacturer; and

(2) if the Comptroller so specifies, by regulation, on other dates for each month in which the manufacturer does not distribute any sample cigarettes.

(b) A licensed other tobacco products manufacturer shall file the information return that the Comptroller requires.

(c) A licensed storage warehouse operator and a licensed other tobacco products storage warehouse operator shall file the information return that the Comptroller requires.

(D) AN OUT-OF-STATE SELLER SHALL FILE THE INFORMATION RETURN THAT THE COMPTROLLER REQUIRES.

12-204.

(A) THE COMPTROLLER SHALL ADOPT REGULATIONS THAT:

(1) REQUIRE AN OUT-OF-STATE SELLER TO MAINTAIN RECORDS OF THE COST OF PREMIUM CIGARS AND PIPE TOBACCO ACQUIRED FOR SALE INTO THE STATE; AND

(2) SPECIFY THE PERIOD FOR WHICH AN OUT-OF-STATE SELLER MUST MAINTAIN THE RECORDS REQUIRED UNDER ITEM (1) OF THIS SUBSECTION.

(B) AN OUT-OF-STATE SELLER SHALL ALLOW THE COMPTROLLER TO EXAMINE THE RECORDS MAINTAINED IN ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION.

12-302.

(e) **(1)** 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.

(2) AN OUT-OF-STATE SELLER SHALL PAY THE TOBACCO TAX ON PIPE TOBACCO AND PREMIUM CIGARS BY FILING A TAX RETURN, WITH ANY SUPPORTING SCHEDULES, ON FORMS PROVIDED BY THE COMPTROLLER:

(I) ON OR BEFORE THE 21ST DAY OF THE MONTH AFTER A SALE OF PREMIUM CIGARS OR PIPE TOBACCO IS MADE; OR

(II) ON DATES SPECIFIED BY THE COMPTROLLER BY REGULATION.

(3) FOR THE PERIOD THAT THE RETURN COVERS, THE RETURN SHALL STATE:

(I) THE STOCK KEEPING UNIT NUMBER FOR ANY PREMIUM CIGARS AND PIPE TOBACCO SOLD; AND

(II) FOR EACH STOCK KEEPING UNIT:

1. THE QUANTITY OF PREMIUM CIGARS AND PIPE TOBACCO SOLD DURING THE RETURN PERIOD; AND

2. THE PRICE OF THE PREMIUM CIGARS AND PIPE TOBACCO SOLD, AS DETERMINED UNDER § 12-105(C) OF THIS TITLE.

13-825.

(h) (1) The Comptroller may require a person subject to the tobacco tax to post security for the tax in the following amounts:

(i) for a manufacturer or wholesaler:

1. \$10,000; plus
2. the amount, if any, by which the tobacco tax due for any 1 month exceeds \$10,000;

(ii) for a subwholesaler or vending machine operator:

1. \$1,000; plus
2. the amount, if any, by which the tobacco tax due for any 1 month exceeds \$1,000; [and]

(iii) for an other tobacco products wholesaler:

1. \$5,000; plus
2. the amount, if any, by which the tobacco tax due for any 1 month exceeds \$5,000; AND

(IV) FOR AN OUT-OF-STATE SELLER:

1. \$5,000; PLUS

2. THE AMOUNT, IF ANY, BY WHICH THE TOBACCO TAX DUE FOR ANY REPORTING PERIOD EXCEEDS \$5,000.

(2) Except as provided in paragraph (5) of this subsection, the Comptroller may exempt a person from posting security for the tobacco tax if the person is and has been for the past 5 years:

(i) licensed as required under § 16–202 of the Business Regulation Article to act as a wholesaler [or], § 16.5–201 to act as an other tobacco products wholesaler, **OR § 16.9–201 TO ACT AS A REMOTE TOBACCO SELLER**; and

(ii) 1. in continuous compliance with the tobacco tax laws, as determined under paragraph (3) of this subsection; and

2. in continuous compliance with the conditions of the person's security posted under this subsection.

(3) For purposes of paragraph (2) of this subsection, a person is in continuous compliance with the tobacco tax laws for a period if the person has not, at any time during that period:

(i) failed to pay any tobacco tax or any tobacco tax assessment when due;

(ii) failed to file a tobacco tax return when due; or

(iii) otherwise violated any of the provisions of this title, Title 12 of this article, or Title 16 [or], Title 16.5, **OR TITLE 16.9** of the Business Regulation Article.

(4) (i) An exemption granted under paragraph (2) of this subsection is effective only to the extent that a person's potential tobacco tax liability does not exceed an amount determined by the Comptroller based on the person's experience during the 5-year compliance period under paragraph (2) of this subsection.

(ii) The Comptroller may revoke an exemption granted to a person under paragraph (2) of this subsection if the person at any time fails to be in continuous compliance with the tobacco tax laws, as described in paragraph (3) of this subsection.

(iii) The Comptroller may reinstate an exemption revoked under subparagraph (ii) of this paragraph if the person meets the requirements of paragraph (2)(i) and (ii) of this subsection for a period of 2 years following the revocation.

(5) The Comptroller may not exempt a person from posting a bond or other security for the tobacco tax unless the Comptroller determines that the person is solvent and financially able to pay the person's potential tobacco tax liability.

(6) If a corporation is granted an exemption from posting a bond or other security for the tobacco tax, any officer of the corporation who exercises direct control over its fiscal management is personally liable for any tobacco tax, interest and penalties owed by the corporation.

SECTION 3. AND BE IT FURTHER ENACTED, That:

(a) Section 1 of this Act shall be construed to apply retroactively and shall be applied to and interpreted to affect any tax imposed on other tobacco products under Title 12 of the Tax – General Article on or after March 14, 2021; and

(b) On application by a person who paid the tobacco tax on tobacco pipes sold on or after March 14, 2021, but before the effective date of Section 1 of this Act, the Comptroller shall issue a refund of that amount to the person.

SECTION ~~2~~ 4. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take effect July 1, 2022.

SECTION 5. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and, except as provided in Section 4 of this Act, shall take effect from the date it is enacted.

Enacted under Article II, § 17(c) of the Maryland Constitution, May 30, 2021.