

SENATE BILL 3

Q7, C2

0lr1476
CF 0lr1568

By: **Senator McCray**

Introduced and read first time: January 8, 2020

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Electronic Smoking Devices, Other Tobacco Products, and Cigarettes –**
3 **Taxation and Regulation**

4 FOR the purpose of applying certain provisions of tax law regulating the sale, manufacture,
5 distribution, possession, and use of cigarettes and other tobacco products to certain
6 electronic smoking devices; altering the definition of “other tobacco products” to
7 include certain consumable products and the components or parts of those products
8 and to exclude certain other products; requiring the Governor, for a certain fiscal
9 year and for each fiscal year thereafter, to include at least a certain appropriation in
10 the annual budget for certain activities; altering the definition of “electronic smoking
11 device” to exclude certain batteries or battery chargers; imposing the tobacco tax on
12 certain electronic smoking devices; repealing the prohibition on a county, a
13 municipal corporation, a special taxing district, or any other political subdivision
14 from imposing a tax on cigarettes or tobacco products; establishing a presumption
15 that an electronic smoking device is subject to the tobacco tax; establishing that
16 certain electronic smoking devices are contraband products; establishing the burden
17 of proving that an electronic smoking device is not subject to the tobacco tax;
18 providing exemptions from the tobacco tax for certain electronic smoking devices;
19 altering the tobacco tax rate for certain cigarettes and other tobacco products; setting
20 the tobacco tax rate for electronic smoking devices; requiring certain persons to pay
21 the tobacco tax on certain electronic smoking devices and to file certain returns;
22 requiring certain wholesalers to keep and allow inspection of certain records for
23 certain sales of electronic smoking devices; making certain electronic smoking
24 devices subject to certain enforcement provisions applicable to cigarettes and other
25 tobacco products; prohibiting certain acts relating to electronic smoking devices;
26 authorizing the Comptroller to require an electronic smoking devices wholesaler to
27 post security in a certain amount; imposing certain requirements relating to certain
28 transportation of other tobacco products; clarifying that all electronic smoking
29 devices used, possessed, or held in the State on or after a certain date are subject to
30 the tax enacted under this Act; authorizing the Comptroller to determine the method
31 of assessing and collecting certain additional taxes; requiring certain additional

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



taxes to be remitted to the Comptroller by a certain date; making conforming changes; defining certain terms; altering certain definitions; repealing certain obsolete provisions; making stylistic changes; and generally relating to the taxation and regulation of electronic smoking devices, other tobacco products, and cigarettes.

BY repealing and reenacting, without amendments,
Article – Business Regulation
Section 16.5–101(a) and 16.7–101(a), (d) through (g), and (j)
Annotated Code of Maryland
(2015 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, with amendments,
Article – Business Regulation
Section 16.5–101(i) and 16.7–101(c)
Annotated Code of Maryland
(2015 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, with amendments,
Article – Health – General
Section 13–1015
Annotated Code of Maryland
(2019 Replacement Volume)

BY repealing and reenacting, with amendments,
Article – Tax – General
Section 12–101 through 12–302, 13–408, 13–825(h), 13–834(c), 13–836(b)(2), 13–837, 13–839, 13–1014, and 13–1015
Annotated Code of Maryland
(2016 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, without amendments,
Article – Tax – General
Section 13–834(a) and 13–836(a)(1)
Annotated Code of Maryland
(2016 Replacement Volume and 2019 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:**

1 [(1) any cigar or roll for smoking, other than a cigarette, made in whole or
2 in part of tobacco; or

3 (2) any other tobacco or product made primarily from tobacco, other than a
4 cigarette, that is intended for consumption by smoking or chewing or as snuff]

5 (I) INTENDED FOR HUMAN CONSUMPTION OR LIKELY TO BE
6 CONSUMED, WHETHER SMOKED, HEATED, CHEWED, ABSORBED, DISSOLVED,
7 INHALED, OR INGESTED IN ANY OTHER MANNER, AND THAT IS MADE OF OR DERIVED
8 FROM, OR THAT CONTAINS:

9 1. TOBACCO; OR

10 2. NICOTINE; OR

11 (II) A COMPONENT OR PART USED IN A CONSUMABLE PRODUCT
12 DESCRIBED UNDER ITEM (I) OF THIS PARAGRAPH.

13 (2) “OTHER TOBACCO PRODUCTS” INCLUDES:

14 (I) CIGARS, PREMIUM CIGARS, PIPE TOBACCO, CHEWING
15 TOBACCO, SNUFF, AND SNUS; AND

16 (II) FILTERS, ROLLING PAPERS, PIPES, AND HOOKAHS.

17 (3) “OTHER TOBACCO PRODUCTS” DOES NOT INCLUDE:

18 (I) CIGARETTES;

19 (II) ELECTRONIC SMOKING DEVICES; OR

20 (III) DRUGS, DEVICES, OR COMBINATION PRODUCTS
21 AUTHORIZED FOR SALE BY THE U. S. FOOD AND DRUG ADMINISTRATION UNDER
22 THE FEDERAL FOOD, DRUG, AND COSMETIC ACT.

23 16.7–101.

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

25 (c) (1) “Electronic smoking device” means a device that can be used to deliver
26 aerosolized or vaporized nicotine to an individual inhaling from the device.

27 (2) “Electronic smoking device” includes:

(i) an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, a vape pen, and vaping liquid; and

(ii) **EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION**, 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.

(3) “Electronic smoking device” does not include:

(I) a drug, device, or combination product authorized for sale by the U.S. Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act; **OR**

(II) **A BATTERY OR BATTERY CHARGER WHEN SOLD SEPARATELY.**

(d) “Electronic smoking devices manufacturer” means a person that:

(1) manufactures, mixes, or otherwise produces electronic smoking devices intended for sale in the State, including electronic smoking devices intended for sale in the United States through an importer; and

(2) (i) sells electronic smoking devices to a consumer, if the consumer purchases or orders the devices through the mail, a computer network, a telephonic network, or another electronic network, a licensed electronic smoking devices wholesaler distributor, or a licensed electronic smoking devices wholesaler importer in the State;

(ii) if the electronic smoking devices manufacturer also holds a license to act as an electronic smoking devices retailer or a vape shop vendor, sells electronic smoking devices to consumers located in the State; or

(iii) unless otherwise prohibited or restricted under local law, this article, or the Criminal Law Article, distributes sample electronic smoking devices to a licensed electronic smoking devices retailer or vape shop vendor.

(e) “Electronic smoking devices retailer” means a person that:

(1) sells electronic smoking devices to consumers;

(2) holds electronic smoking devices for sale to consumers; or

(3) unless otherwise prohibited or restricted under local law, this article, the Criminal Law Article, or § 24–305 of the Health – General Article, distributes sample electronic smoking devices to consumers in the State.

(f) “Electronic smoking devices wholesaler distributor” means a person that:

(1) obtains at least 70% of its electronic smoking devices from a holder of an electronic smoking devices manufacturer license under this subtitle or a business entity located in the United States; and

(2) (i) holds electronic smoking devices for sale to another person for resale; or

(ii) sells electronic smoking devices to another person for resale.

(g) “Electronic smoking devices wholesaler importer” means a person that:

(1) obtains at least 70% of its electronic smoking devices from a business entity located in a foreign country; and

(2) (i) holds electronic smoking devices for sale to another person for resale; or

(ii) sells electronic smoking devices to another person for resale.

(j) “Vape shop vendor” means an electronic smoking devices business that derives at least 70% of its revenues, measured by average daily receipts, from the sale of electronic smoking devices and related accessories.

Article – Health – General

13–1015.

(a) For fiscal year 2011 and fiscal year 2012, the Governor shall include at least \$6,000,000 in the annual budget in appropriations for activities aimed at reducing tobacco use in Maryland as recommended by the Centers for Disease Control and Prevention, including:

(1) Media campaigns aimed at reducing smoking initiation and encouraging smokers to quit smoking;

(2) Media campaigns educating the public about the dangers of secondhand smoke exposure;

(3) Enforcement of existing laws banning the sale or distribution of tobacco products to individuals under the age of 21 years;

(4) Promotion and implementation of smoking cessation programs; and

(5) Implementation of school–based tobacco education programs.

(b) **(1)** For fiscal [year 2013 and each fiscal year thereafter,] **YEARS 2013 THROUGH 2021**, the Governor shall include at least \$10,000,000 in the annual budget in appropriations for the purposes described in subsection (a) of this section.

(2) FOR FISCAL YEAR 2022 AND EACH FISCAL YEAR THEREAFTER, THE GOVERNOR SHALL INCLUDE AT LEAST \$21,000,000 IN THE ANNUAL BUDGET IN APPROPRIATIONS FOR THE PURPOSES DESCRIBED IN SUBSECTION (A) OF THIS SECTION.

Article – Tax – General

12–101.

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

(b) “Cigarette” means any size or shaped roll for smoking that is made of tobacco or tobacco mixed with another ingredient and wrapped in paper or in any other material except tobacco.

(C) “ELECTRONIC SMOKING DEVICE” HAS THE MEANING STATED IN § 16.7–101 OF THE BUSINESS REGULATION ARTICLE.

(D) “ELECTRONIC SMOKING DEVICES RETAILER” HAS THE MEANING STATED IN § 16.7–101 OF THE BUSINESS REGULATION ARTICLE.

[(c)] (E) “Manufacturer” means a person who acts as:

(1) a manufacturer as defined in § 16–201 of the Business Regulation Article [or as];

(2) an other tobacco products manufacturer as defined in § 16.5–101 of the Business Regulation Article; **OR**

(3) AN ELECTRONIC SMOKING DEVICES MANUFACTURER AS DEFINED IN § 16.7–101 OF THE BUSINESS REGULATION ARTICLE.

[(d)] (F) “Other tobacco product” [means:

(1) any cigar or roll for smoking, other than a cigarette, made in whole or in part of tobacco; or

(2) any other tobacco or product made primarily from tobacco, other than a cigarette, that is intended for consumption by smoking or chewing or as snuff] HAS THE MEANING STATED IN § 16.5–101 OF THE BUSINESS REGULATION ARTICLE.

1 [(e)] (G) “Other tobacco products retailer” means a person authorized under §
2 16.5–205(b) of the Business Regulation Article to purchase other tobacco products on which
3 the tobacco tax has not been paid.

4 [(f)] (H) “Out-of-state seller” means a person located outside the State that
5 sells, holds for sale, ships, or delivers premium cigars or pipe tobacco to consumers in the
6 State if, during the previous calendar year or the current calendar year:

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

9 (2) the person sold premium cigars or pipe tobacco into the State in 200 or
10 more separate transactions.

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

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

15 [(i)] (K) “Sell” means to exchange or transfer, or to make an agreement to
16 exchange or transfer, title or possession of property, in any manner or by any means, for
17 consideration.

18 [(j)] (L) “Tax stamp” means a device in the design and denomination that the
19 Comptroller authorizes by regulation for the purpose of being affixed to a package of
20 cigarettes as evidence that the tobacco tax is paid.

21 [(k)] (M) “Tobacconist” means a person authorized under § 16.5–205(e) of the
22 Business Regulation Article to purchase other tobacco products on which the tobacco tax
23 has not been paid.

24 [(l)] (N) “Unstamped cigarettes” means a package of cigarettes to which tax
25 stamps are not affixed in the amount and manner required in § 12–304 of this title.

26 (O) **“VAPE SHOP VENDOR” HAS THE MEANING STATED IN § 16.7–101 OF THE**
27 **BUSINESS REGULATION ARTICLE.**

28 [(m)] (P) “Wholesale price” means the price for which a wholesaler buys other
29 tobacco products, exclusive of any discount, trade allowance, rebate, or other reduction.

30 [(n)] (Q) “Wholesaler” means, unless the context requires otherwise, a person
31 who acts as:

32 (1) a wholesaler as defined in § 16–201 of the Business Regulation Article
33 [or as];

(2) an other tobacco products wholesaler as defined in § 16.5–101 of the Business Regulation Article;

(3) AN ELECTRONIC SMOKING DEVICES WHOLESALER DISTRIBUTOR, AS DEFINED IN § 16.7–101 OF THE BUSINESS REGULATION ARTICLE; OR

(4) AN ELECTRONIC SMOKING DEVICES WHOLESALER IMPORTER, AS DEFINED IN § 16.7–101 OF THE BUSINESS REGULATION ARTICLE.

12–102.

[(a)] Except as provided in § 12–104 of this subtitle, a tax is imposed on cigarettes [and], other tobacco products, AND ELECTRONIC SMOKING DEVICES in the State.

[(b)] A county, municipal corporation, special taxing district, or other political subdivision of the State may not impose a tax on cigarettes or, other tobacco products.]

12–103.

(a) A rebuttable presumption exists that any cigarette [or], other tobacco product, OR ELECTRONIC SMOKING DEVICE in the State is subject to the tobacco tax.

(b) Cigarettes [or], other tobacco products, OR ELECTRONIC SMOKING DEVICES 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 16.7 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, OR ELECTRONIC SMOKING DEVICES has the burden of proving that the cigarettes [or], other tobacco products, OR ELECTRONIC SMOKING DEVICES are not subject to the tobacco tax.

12–104.

(a) “Consumer” means a person who possesses cigarettes [or], other tobacco products, OR ELECTRONIC SMOKING DEVICES for a purpose other than selling or transporting the cigarettes [or], other tobacco products, OR ELECTRONIC SMOKING DEVICES.

(b) The tobacco tax does not apply to:

(1) cigarettes that a licensed wholesaler under Title 16 of the Business Regulation Article is holding for sale outside the State or to a United States armed forces exchange or commissary;

(2) other tobacco products that an other tobacco products wholesaler licensed under Title 16.5 of the Business Regulation Article is holding for sale outside the State or to a United States armed forces exchange or commissary; [or]

(3) ELECTRONIC SMOKING DEVICES THAT AN ELECTRONIC SMOKING DEVICES WHOLESALE LICENSED UNDER TITLE 16.7 OF THE BUSINESS REGULATION ARTICLE IS HOLDING FOR SALE OUTSIDE THE STATE OR TO A UNITED STATES ARMED FORCES EXCHANGE OR COMMISSARY; OR

[(3)] (4) cigarettes [or], other tobacco products, OR ELECTRONIC SMOKING DEVICES that:

(i) a consumer brings into the State:

1. if the quantity brought from another state does not exceed [other tobacco products having] a retail value of \$100 **FOR OTHER TOBACCO PRODUCTS AND ELECTRONIC SMOKING DEVICES** or 5 cartons of cigarettes; or

2. if the quantity brought from a United States armed forces installation or reservation does not exceed [other tobacco products having] a retail value of \$100 **FOR OTHER TOBACCO PRODUCTS AND ELECTRONIC SMOKING DEVICES** or 5 cartons of cigarettes;

(ii) a person is transporting by vehicle in the State if the person has, 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; or

(iii) are held in storage in a licensed storage warehouse on behalf of a licensed cigarette manufacturer [or], an other tobacco products manufacturer, **OR AN ELECTRONIC SMOKING DEVICES MANUFACTURER.**

12–105.

(a) The tobacco tax rate for cigarettes is:

(1) [\$1.00 for each package of 10 or fewer cigarettes;

(2) \$2.00] **\$4.00** for each package of [at least 11 and not more than] 20 cigarettes; **AND**

1 [(3)] (2) [10.0] **20.0** cents for each cigarette in a package of more than 20
2 cigarettes[; and

3 (4) 10.0 cents for each cigarette in a package of free sample cigarettes].

4 (b) [(1) Except as provided in paragraph (2) of this subsection, the] **THE**
5 tobacco tax rate for other tobacco products is [30%] **86%** of the wholesale price of the
6 tobacco products.

7 [(2) (i) In this paragraph, “premium cigars” has the meaning stated in §
8 16.5–101 of the Business Regulation Article.

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

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

13 **(C) THE TOBACCO TAX RATE FOR ELECTRONIC SMOKING DEVICES IS 86%**
14 **OF THE WHOLESALE PRICE OF THE ELECTRONIC SMOKING DEVICES.**

15 12–201.

16 (a) A manufacturer shall complete and file with the Comptroller a tobacco tax
17 return[;

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

20 (2)] **ON A DATE** if the Comptroller so specifies, by regulation[, on other
21 dates for each month in which the manufacturer does not distribute any sample cigarettes].

22 (b) A licensed other tobacco products manufacturer **AND A LICENSED**
23 **ELECTRONIC SMOKING DEVICES MANUFACTURER** shall file the information return that
24 the Comptroller requires.

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

27 12–202.

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

29 (1) for cigarettes:

30 (i) on or before the 21st day of the month that follows the month in

1 which the wholesaler has the first possession, in the State, of unstamped cigarettes for
2 which tax stamps are required; and

3 (ii) if the Comptroller so specifies, by regulation, on other dates for
4 each month in which the wholesaler does not have the first possession of any unstamped
5 cigarettes in the State; [and]

6 (2) for other tobacco products, on or before the 21st day of the month that
7 follows the month in which the wholesaler has possession of other tobacco products on
8 which the tobacco tax has not been paid; AND

9 **(3) FOR ELECTRONIC SMOKING DEVICES, ON OR BEFORE THE 21ST**
10 **DAY OF THE MONTH THAT FOLLOWS THE MONTH IN WHICH THE WHOLESALER HAS**
11 **POSSESSION OF ELECTRONIC SMOKING DEVICES ON WHICH THE TOBACCO TAX HAS**
12 **NOT BEEN PAID.**

13 (b) Each return shall state the quantity of cigarettes or the wholesale price of
14 other tobacco products sold during the period that the return covers.

15 12–203.

16 (a) Each wholesaler shall:

17 (1) keep an invoice for each purchase of tax stamps;

18 (2) maintain a daily record of the tax stamps affixed to cigarette packages;

19 and

20 (3) maintain a complete and accurate record of each sale of cigarettes [or],
21 other tobacco products, **OR ELECTRONIC SMOKING DEVICES** for resale outside of the
22 State.

23 (b) A wholesaler shall:

24 (1) keep the records required under subsection (a) of this section for a
25 period of 6 years or for a shorter period that the Comptroller authorizes; and

26 (2) allow the Comptroller to examine the records.

27 12–301.

28 In this subtitle, “licensed wholesaler” means a wholesaler who is licensed under:

29 **(1) Title 16, Subtitle 2 of the Business Regulation Article to act as a**
30 **wholesaler [or under];**

(2) Title 16.5, Subtitle 2 of the Business Regulation Article to act as an other tobacco products wholesaler;

**(3) TITLE 16.7, SUBTITLE 2 OF THE BUSINESS REGULATION ARTICLE
AS AN ELECTRONIC SMOKING DEVICES WHOLESALER DISTRIBUTOR; OR**

**(4) TITLE 16.7, SUBTITLE 2 OF THE BUSINESS REGULATION ARTICLE
AS AN ELECTRONIC SMOKING DEVICES WHOLESALER IMPORTER.**

12–302.

(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.

(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.

(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.

(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.

(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.

(F) THE TOBACCO TAX ON ELECTRONIC SMOKING DEVICES SHALL BE PAID BY THE WHOLESALER WHO SELLS ELECTRONIC SMOKING DEVICES TO A RETAILER OR VAPE SHOP VENDOR IN THE STATE.

(G) (1) A LICENSED ELECTRONIC SMOKING DEVICES RETAILER OR A LICENSED VAPE SHOP VENDOR SHALL PAY THE TOBACCO TAX ON ELECTRONIC SMOKING DEVICES 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 ELECTRONIC SMOKING DEVICES RETAILER OR A LICENSED VAPE SHOP VENDOR REQUIRED TO FILE A TAX RETURN UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL PAY A TOBACCO TAX AT THE RATE PROVIDED IN § 12-105(C) OF THIS TITLE BASED ON THE INVOICE AMOUNT CHARGED BY THE LICENSED ELECTRONIC SMOKING DEVICES MANUFACTURER, EXCLUSIVE OF ANY DISCOUNT, TRADE ALLOWANCE, REBATE, OR OTHER REDUCTION.

13-408.

(a) If the Comptroller determines that a person has failed to keep the records of out-of-state cigarette [or], other tobacco product, OR ELECTRONIC SMOKING DEVICE sales required under § 12-203 of this article, the Comptroller shall:

(1) compute the tobacco tax as if the cigarettes [or], other tobacco products, OR ELECTRONIC SMOKING DEVICES were sold in the State; and

(2) assess the tax due.

(b) If the Comptroller determines that a person has possessed or transported cigarettes [or], other tobacco products, OR ELECTRONIC SMOKING DEVICES on which the tobacco tax has not been paid as required under Title 12 of this article, the Comptroller shall assess the tobacco tax due.

13-825.

(h) (1) The Comptroller may require a person subject to the tobacco tax to post

1 security for the tax in the following amounts:

2 (i) for a manufacturer or wholesaler:

3 1. \$10,000[,]; plus

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

6 (ii) for a subwholesaler or vending machine operator:

7 1. \$1,000[,]; plus

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

10 (iii) for an other tobacco products wholesaler:

11 1. \$5,000[,]; plus

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

14 (IV) FOR AN ELECTRONIC SMOKING DEVICES WHOLESALER
15 DISTRIBUTOR OR AN ELECTRONIC SMOKING DEVICES WHOLESALER IMPORTER:

16 1. \$5,000; PLUS

17 2. THE AMOUNT, IF ANY, BY WHICH THE TOBACCO TAX
18 DUE FOR ANY 1 MONTH EXCEEDS \$5,000.

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

22 (i) licensed as required under § 16–202 of the Business Regulation
23 Article to act as a wholesaler [or], § 16.5–201 to act as an other tobacco products wholesaler,
24 **§ 16.7–201 TO ACT AS AN ELECTRONIC SMOKING DEVICES WHOLESALER**
25 **DISTRIBUTOR, OR § 16.7–201 TO ACT AS AN ELECTRONIC SMOKING DEVICES**
26 **WHOLESALER IMPORTER; and**

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

29 2. in continuous compliance with the conditions of the
30 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 16.7** 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.

13-834.

(a) In this Part VI of this subtitle the following words have the meanings indicated.

(c) "Contraband tobacco products" means cigarettes [or], other tobacco products, **OR ELECTRONIC SMOKING DEVICES**, as defined in § 12-101 of this article:

(1) on which tobacco tax is not paid; and

(2) that are delivered, possessed, sold, or transported in the State in a manner not authorized under Title 12 of this article or Title 16, **TITLE 16.5, OR TITLE**

1 **16.7** of the Business Regulation Article.

2 13–836.

3 (a) (1) If contraband alcoholic beverages or contraband tobacco products are
4 seized:

5 (i) the Comptroller or police officer shall give a notice of seizure to
6 the person from whom the property is seized at the time of the seizure; and

7 (ii) the Comptroller shall:

8 1. where possible, give a notice of seizure to the registered
9 owner of a seized conveyance; and

10 2. publish a notice of seizure of the conveyance in a
11 newspaper of general circulation in the county where the seizure occurred.

12 (b) (2) A police officer who seizes any contraband tobacco products or
13 conveyance used to transport contraband tobacco products shall deliver the seized
14 cigarettes [or], other tobacco products, **OR ELECTRONIC SMOKING DEVICES** and
15 conveyance to the Comptroller.

16 13–837.

17 The owner or another person with an interest in seized property may file a claim for
18 the return of the property with the Comptroller within 30 days after:

19 (1) the seizure of alcoholic beverages, cigarettes, other tobacco products,
20 **ELECTRONIC SMOKING DEVICES, OR** motor fuel or conveyances used to transport motor
21 fuel; or

22 (2) a notice of seizure of a conveyance used to transport alcoholic beverages,
23 cigarettes, [or] other tobacco products, **OR ELECTRONIC SMOKING DEVICES** is published.

24 13–839.

25 (a) If a person files a claim for return of seized alcoholic beverages, cigarettes,
26 other tobacco products, **ELECTRONIC SMOKING DEVICES**, or a conveyance used for their
27 transportation under § 13–837 of this subtitle, the Comptroller or the Comptroller's
28 designee shall:

29 (1) promptly act on the request and hold an informal hearing;

30 (2) direct the return of alcoholic beverages, cigarettes, [or] other tobacco
31 products, **OR ELECTRONIC SMOKING DEVICES** unless the Comptroller or Comptroller's

designee has satisfactory proof that the person was not in compliance with any provisions of Title 5 or Title 12 of this article at the time of seizure; and

(3) direct the return of the conveyance if the Comptroller or Comptroller's designee has satisfactory proof that the owner of the conveyance was not willfully evading any provisions of Title 5 or Title 12 of this article at the time of seizure.

(b) The Comptroller or Comptroller's designee shall grant or deny the application for return of seized alcoholic beverages, cigarettes, other tobacco products, **ELECTRONIC SMOKING DEVICES**, or a conveyance in accordance with subsection (a) of this section by mailing the person a notice of final determination.

13–1014.

(a) (1) A person who willfully possesses, sells, or attempts to sell unstamped or improperly stamped cigarettes in the State in violation of Title 12 of this article is guilty of a misdemeanor.

(2) If the number of unstamped or improperly stamped cigarettes that a person possesses, sells, or attempts to sell is 30 cartons or less, the person on conviction is subject to a fine not exceeding \$500 or imprisonment not exceeding 3 months or both.

(3) If the number of unstamped or improperly stamped cigarettes that a person possesses, sells, or attempts to sell is more than 30 cartons, the person on conviction is subject to a fine not exceeding \$1,000 or imprisonment not exceeding 1 year or both.

(b) A person who willfully possesses, sells, or attempts to sell other tobacco products on which the tobacco tax has not been paid in the State in violation of Title 12 of this article is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$500 or imprisonment not exceeding 3 months or both.

(C) A PERSON WHO WILLFULLY POSSESSES, SELLS, OR ATTEMPTS TO SELL ELECTRONIC SMOKING DEVICES ON WHICH THE TOBACCO TAX HAS NOT BEEN PAID IN THE STATE IN VIOLATION OF TITLE 12 OF THIS ARTICLE IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$500 OR IMPRISONMENT NOT EXCEEDING 3 MONTHS OR BOTH.

[(c)] (D) Each day that a violation under this section continues constitutes a separate offense.

13–1015.

(a) A person who willfully ships, imports, sells into or within, or transports within, this State cigarettes [or], other tobacco products, **OR ELECTRONIC SMOKING DEVICES** on which the tobacco tax has not been paid in violation of Title 12 of this article or § 16–219, § 16–222, § 16.5–215, or § 16.5–216 of the Business Regulation Article is guilty

1 of a felony and, on conviction, is subject to the penalties set forth in subsections (b) and (c)
2 of this section.

3 (b) (1) For a first violation, a person is subject to a mandatory fine of \$150 for
4 each carton of cigarettes [or], each package of other tobacco products, **OR EACH PACKAGE**
5 **OF ELECTRONIC SMOKING DEVICES** transported.

6 (2) For each subsequent violation, a person is subject to a mandatory fine
7 of \$300 for each carton of cigarettes [or], each package of other tobacco products, **OR EACH**
8 **PACKAGE OF ELECTRONIC SMOKING DEVICES** transported.

9 (c) In addition to the mandatory fine set forth in subsection (b) of this section, for
10 a first or subsequent violation, a person may be subject to imprisonment not exceeding 2
11 years.

12 SECTION 2. AND BE IT FURTHER ENACTED, That:

13 (1) as provided in § 12–105 of the Tax – General Article, as enacted by
14 Section 1 of this Act, all electronic smoking devices used, possessed, or held in the State on
15 or after July 1, 2020, by any person for sale or use in the State shall be subject to the tax
16 on electronic smoking devices as enacted under this Act;

17 (2) the Comptroller may provide an alternative method of assessing and
18 collecting the additional tax; and

19 (3) the revenue attributable to this requirement shall be remitted to the
20 Comptroller no later than September 30, 2020.

21 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July
22 1, 2020.