

HB0732/549037/1

BY: Budget and Taxation Committee

AMENDMENTS TO HOUSE BILL 732
(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, strike line 2 in its entirety; in line 3, strike “and Regulation” and substitute “– Tobacco Tax, Sales and Use Tax, and Digital Advertising Gross Revenues Tax”; in line 8, strike “a”; strike beginning with “year” in line 9 down through “budget” in line 10 and substitute “years, to include in the annual budget bill an appropriation”; strike beginning with “establishing” in line 10 down through “devices;” in line 11; and in line 20, strike “altering the tobacco tax rate for certain cigarettes and other tobacco products;”.

On pages 1 and 2, strike beginning with “altering” in line 24 on page 1 down through “cigarettes” in line 21 on page 2 and substitute “altering the sales and use tax rate imposed on sales of certain electronic smoking devices and vaping liquid; prohibiting a county, a municipal corporation, a special taxing district, or any other political subdivision, subject to a certain exception, from imposing a tax on electronic smoking devices; altering the tobacco tax rate for certain cigarettes and other tobacco products; imposing a tax on certain annual gross revenues derived from certain digital advertising services in the State; providing for the calculation of the part of the annual gross revenues of a person derived from digital advertising services in the State; providing for the calculation of the tax; requiring certain persons that have certain annual gross revenues derived from digital advertising services in the State to complete and file with the Comptroller a certain return in a certain manner; requiring certain persons that reasonably expect the person’s annual gross revenues derived from digital advertising services to exceed a certain amount to complete and file with the Comptroller a certain declaration of estimated tax in a certain manner; requiring a person required to file a certain return to maintain certain records; requiring a person to pay the digital advertising gross revenues tax in a certain manner; requiring the Comptroller to distribute digital advertising gross revenues tax revenue in a certain

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manner; requiring the Comptroller to make an assessment of certain digital advertising gross revenues tax due under certain circumstances; requiring the Comptroller to assess interest on unpaid digital advertising gross revenues taxes in a certain manner; providing certain criminal penalties for failing to file a certain return or filing a certain false return; requiring that the Comptroller administer the laws that relate to the digital advertising gross revenues tax; requiring that all cigarettes and other tobacco products used, possessed, or held in the State on or after a certain date are subject to the tax enacted under certain sections of this Act; authorizing the Comptroller to determine the method of assessing and collecting certain additional taxes; requiring certain additional taxes to be remitted to the Comptroller by a certain date; requiring the Comptroller to report to certain committees of the General Assembly on or before a certain date; requiring the Governor, for certain fiscal years, to include in the annual budget bill certain appropriations; declaring the intent of the General Assembly; defining certain terms; altering the definition of certain terms; making certain conforming changes; providing for the application of this Act; and generally relating to the tobacco tax, sales and use tax, and a digital advertising gross revenues tax”.

On page 2, after line 31, insert:

“BY repealing and reenacting, with amendments,

Article – Health – General

Section 13–1015

Annotated Code of Maryland

(2019 Replacement Volume)

BY repealing and reenacting, without amendments,

Article – Tax – General

Section 1–101(a) and (p), 11–104(a), and 12–101(a)

Annotated Code of Maryland

(2016 Replacement Volume and 2019 Supplement)

BY adding to

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Article – Tax – General

Section 1–101(g–1); 2–4A–01 and 2–4A–02 to be under the new subtitle “Subtitle 4A. Digital Advertising Gross Revenues Tax Revenue Distribution”; 7.5–101 through 7.5–301 to be under the new title “Title 7.5. Digital Advertising Gross Revenues Tax”; and 11–104(j), 13–402(a)(6), and 13–1001(g)

Annotated Code of Maryland

(2016 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, with amendments,

Article – Tax – General

Section 2–102, 12–101(d), 12–102, 12–105, 13–402(a)(4) and (5), 13–602(a), 13–702(a), 13–1002(b) and (c), and 13–1101(b) and (c)

Annotated Code of Maryland

(2016 Replacement Volume and 2019 Supplement)”.

On pages 2 and 3, strike in their entirety the lines beginning with line 42 on page 2 through line 21 on page 3, inclusive.

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On page 6, strike in their entirety lines 10 through 18, inclusive.

On page 7, in line 7, strike “\$12,500,000” and substitute “\$18,250,000”.

On pages 7 and 8, strike in their entirety the lines beginning with line 11 on page 7 through line 5 on page 8, inclusive.

On page 8, strike in their entirety lines 7 through 18, inclusive, and substitute:

“(a) Except as otherwise provided in this section, the sales and use tax rate is:

(1) for a taxable price of less than \$1:

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- (i) 1 cent if the taxable price is 20 cents;
 - (ii) 2 cents if the taxable price is at least 21 cents but less than 34 cents;
 - (iii) 3 cents if the taxable price is at least 34 cents but less than 51 cents;
 - (iv) 4 cents if the taxable price is at least 51 cents but less than 67 cents;
 - (v) 5 cents if the taxable price is at least 67 cents but less than 84 cents; and
 - (vi) 6 cents if the taxable price is at least 84 cents; and
- (2) for a taxable price of \$1 or more:
 - (i) 6 cents for each exact dollar; and
 - (ii) for that part of a dollar in excess of an exact dollar:
 - 1. 1 cent if the excess over an exact dollar is at least 1 cent but less than 17 cents;
 - 2. 2 cents if the excess over an exact dollar is at least 17 cents but less than 34 cents;
 - 3. 3 cents if the excess over an exact dollar is at least 34 cents but less than 51 cents;

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4. 4 cents if the excess over an exact dollar is at least 51 cents but less than 67 cents;

5. 5 cents if the excess over an exact dollar is at least 67 cents but less than 84 cents; and

6. 6 cents if the excess over an exact dollar is at least 84 cents.

(J) (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) “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.

(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.”.

On pages 8 through 10, strike in their entirety the lines beginning with line 20 on page 8 through line 23 on page 10, inclusive, and substitute:

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

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(d) “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 FOR “OTHER TOBACCO PRODUCTS” IN § 16.5–101 OF THE BUSINESS REGULATION ARTICLE.”.**

On page 10, strike in their entirety lines 25 through 28, inclusive, and substitute:

“(a) Except as provided in § 12–104 of this subtitle, a tax is imposed on cigarettes and other tobacco products in the State.

(b) (1) [A] **EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, 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, OR ELECTRONIC SMOKING DEVICES AS DEFINED UNDER § 16.7–101 OF THE BUSINESS REGULATION ARTICLE.**

(2) **IF A COUNTY IMPOSED A TAX ON ELECTRONIC SMOKING DEVICES ON JANUARY 1, 2020, THE COUNTY MAY CONTINUE TO IMPOSE A TAX ON ELECTRONIC SMOKING DEVICES AT THE SAME RATE THAT WAS IN EFFECT ON JANUARY 1, 2020.**

12–105.

(a) The tobacco tax rate for cigarettes is:

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

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(2) ~~\$2.00~~ **\$3.75** for each package of [at least 11 and not more than] 20 cigarettes; AND

~~[(3)] (2)~~ [10.0] 17.5 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].

(b) (1) Except as provided in paragraph (2) of this subsection, the tobacco tax rate for other tobacco products is [30%] 53% 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.”.

On pages 12 through 16, strike in their entirety the lines beginning with line 16 on page 12 through line 15 on page 16, inclusive, and substitute:

“Article – Education

5–219.

(b) There is The Blueprint for Maryland’s Future Fund.

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(f) The Fund consists of:

(1) Revenue distributed to the Fund under §§ 2-4A-02, 2-605.1, and 2-1303 of the Tax – General Article;

(2) Money appropriated in the State budget for the Fund; and

(3) Any other money from any other source accepted for the benefit of the Fund.

Article – Tax – General

1-101.

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

(G-1) “DIGITAL ADVERTISING GROSS REVENUES TAX” MEANS THE TAX IMPOSED UNDER TITLE 7.5 OF THIS ARTICLE.

(p) (1) “Person” means an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind and any partnership, firm, association, corporation, or other entity.

(2) “Person”, unless expressly provided otherwise, does not include a governmental entity or a unit or instrumentality of a governmental entity.

2-102.

In addition to the duties set forth elsewhere in this article and in other articles of the Code, the Comptroller shall administer the laws that relate to:

(1) the admissions and amusement tax;

- (2) the alcoholic beverage tax;
- (3) the boxing and wrestling tax;
- (4) **THE DIGITAL ADVERTISING GROSS REVENUES TAX;**
- (5) the income tax;
- ~~[(5)]~~ (6) the Maryland estate tax;
- ~~[(6)]~~ (7) the Maryland generation–skipping transfer tax;
- ~~[(7)]~~ (8) the motor carrier tax;
- ~~[(8)]~~ (9) the motor fuel tax;
- ~~[(9)]~~ (10) the sales and use tax;
- ~~[(10)]~~ (11) the savings and loan association franchise tax; and
- ~~[(11)]~~ (12) the tobacco tax.

SUBTITLE 4A. DIGITAL ADVERTISING GROSS REVENUES TAX REVENUE
DISTRIBUTION.

2-4A-01.

FROM THE DIGITAL ADVERTISING GROSS REVENUES TAX REVENUE, THE
COMPTROLLER SHALL DISTRIBUTE EACH QUARTER THE AMOUNT NECESSARY TO

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ADMINISTER THE DIGITAL ADVERTISING GROSS REVENUES TAX LAWS IN THE PREVIOUS QUARTER TO AN ADMINISTRATIVE COST ACCOUNT.

2-4A-02.

AFTER MAKING THE DISTRIBUTION REQUIRED UNDER § 2-4A-01 OF THIS SUBTITLE, THE COMPTROLLER SHALL DISTRIBUTE THE REMAINING DIGITAL ADVERTISING GROSS REVENUES TAX REVENUE TO THE BLUEPRINT FOR MARYLAND'S FUTURE FUND ESTABLISHED UNDER § 5-219 OF THE EDUCATION ARTICLE.

TITLE 7.5. DIGITAL ADVERTISING GROSS REVENUES TAX.

SUBTITLE 1. DEFINITIONS; GENERAL PROVISIONS.

7.5-101.

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

(B) "ANNUAL GROSS REVENUES" MEANS INCOME OR REVENUE FROM ALL SOURCES, BEFORE ANY EXPENSES OR TAXES, COMPUTED ACCORDING TO GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

(C) "ASSESSABLE BASE" MEANS THE ANNUAL GROSS REVENUES DERIVED FROM DIGITAL ADVERTISING SERVICES IN THE STATE.

(D) "DIGITAL ADVERTISING SERVICES" INCLUDES ADVERTISEMENT SERVICES ON A DIGITAL INTERFACE, INCLUDING ADVERTISEMENTS IN THE FORM

OF BANNER ADVERTISING, SEARCH ENGINE ADVERTISING, INTERSTITIAL
ADVERTISING, AND OTHER COMPARABLE ADVERTISING SERVICES.

(E) “DIGITAL INTERFACE” MEANS ANY TYPE OF SOFTWARE, INCLUDING
A WEBSITE, PART OF A WEBSITE, OR APPLICATION, THAT A USER IS ABLE TO
ACCESS.

(F) “USER” MEANS AN INDIVIDUAL OR ANY OTHER PERSON WHO
ACCESSES A DIGITAL INTERFACE WITH A DEVICE.

7.5-102.

(A) A TAX IS IMPOSED ON ANNUAL GROSS REVENUES OF A PERSON
DERIVED FROM DIGITAL ADVERTISING SERVICES IN THE STATE.

(B) (1) FOR PURPOSES OF THIS TITLE, THE PART OF THE ANNUAL
GROSS REVENUES OF A PERSON DERIVED FROM DIGITAL ADVERTISING SERVICES
IN THE STATE SHALL BE DETERMINED USING AN APPORTIONMENT FRACTION:

(I) THE NUMERATOR OF WHICH IS THE ANNUAL GROSS
REVENUES OF A PERSON DERIVED FROM DIGITAL ADVERTISING SERVICES IN THE
STATE; AND

(II) THE DENOMINATOR OF WHICH IS THE ANNUAL GROSS
REVENUES OF A PERSON DERIVED FROM DIGITAL ADVERTISING SERVICES IN THE
UNITED STATES.

(2) THE COMPTROLLER SHALL ADOPT REGULATIONS THAT
DETERMINE THE STATE FROM WHICH REVENUES FROM DIGITAL ADVERTISING
SERVICES ARE DERIVED.

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7.5-103.

THE DIGITAL ADVERTISING GROSS REVENUES TAX RATE IS:

(1) 2.5% OF THE ASSESSABLE BASE FOR A PERSON WITH GLOBAL ANNUAL GROSS REVENUES OF \$100,000,000 THROUGH \$1,000,000,000;

(2) 5% OF THE ASSESSABLE BASE FOR A PERSON WITH GLOBAL ANNUAL GROSS REVENUES OF \$1,000,000,001 THROUGH \$5,000,000,000;

(3) 7.5% OF THE ASSESSABLE BASE FOR A PERSON WITH GLOBAL ANNUAL GROSS REVENUES OF \$5,000,000,001 THROUGH \$15,000,000,000; AND

(4) 10% OF THE ASSESSABLE BASE FOR A PERSON WITH GLOBAL ANNUAL GROSS REVENUES EXCEEDING \$15,000,000,000.

SUBTITLE 2. RETURNS.

7.5-201.

(A) EACH PERSON THAT, IN A CALENDAR YEAR, HAS ANNUAL GROSS REVENUES DERIVED FROM DIGITAL ADVERTISING SERVICES IN THE STATE OF AT LEAST \$1,000,000 SHALL COMPLETE, UNDER OATH, AND FILE WITH THE COMPTROLLER A RETURN, ON OR BEFORE APRIL 15 THE NEXT YEAR.

(B) (1) EACH PERSON THAT REASONABLY EXPECTS THE PERSON'S ANNUAL GROSS REVENUES DERIVED FROM DIGITAL ADVERTISING SERVICES IN THE STATE TO EXCEED \$1,000,000 SHALL COMPLETE, UNDER OATH, AND FILE

WITH THE COMPTROLLER A DECLARATION OF ESTIMATED TAX, ON OR BEFORE APRIL 15 OF THAT YEAR.

(2) A PERSON REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION TO FILE A DECLARATION OF ESTIMATED TAX FOR A TAXABLE YEAR SHALL COMPLETE AND FILE WITH THE COMPTROLLER A QUARTERLY ESTIMATED TAX RETURN ON OR BEFORE JUNE 15, SEPTEMBER 15, AND DECEMBER 15 OF THAT YEAR.

(C) A PERSON REQUIRED TO FILE A RETURN UNDER THIS SECTION SHALL FILE WITH THE RETURN AN ATTACHMENT THAT STATES ANY INFORMATION THAT THE COMPTROLLER REQUIRES TO DETERMINE ANNUAL GROSS REVENUES DERIVED FROM DIGITAL ADVERTISING SERVICES IN THE STATE.

7.5-202.

A PERSON REQUIRED TO FILE A RETURN UNDER § 7.5-201 OF THIS SUBTITLE SHALL MAINTAIN RECORDS OF DIGITAL ADVERTISING SERVICES PROVIDED IN THE STATE AND THE BASIS FOR THE CALCULATION OF THE DIGITAL ADVERTISING GROSS REVENUES TAX OWED.

SUBTITLE 3. TAX PAYMENT.

7.5-301.

(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, EACH PERSON REQUIRED TO FILE A RETURN UNDER § 7.5-201 OF THIS TITLE SHALL PAY THE DIGITAL ADVERTISING GROSS REVENUES TAX WITH THE RETURN THAT COVERS THE PERIOD FOR WHICH THE TAX IS DUE.

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(B) A PERSON REQUIRED TO FILE ESTIMATED DIGITAL ADVERTISING GROSS REVENUES TAX RETURNS UNDER § 7.5-201(B) OF THIS TITLE SHALL PAY:

(1) AT LEAST 25% OF THE ESTIMATED DIGITAL ADVERTISING GROSS REVENUES TAX SHOWN ON THE DECLARATION OR AMENDED DECLARATION FOR A TAXABLE YEAR:

(i) WITH THE DECLARATION OR AMENDED DECLARATION THAT COVERS THE YEAR; AND

(ii) WITH EACH QUARTERLY RETURN FOR THAT YEAR; AND

(2) ANY UNPAID DIGITAL ADVERTISING GROSS REVENUES TAX FOR THE YEAR SHOWN ON THE PERSON'S RETURN THAT COVERS THAT YEAR WITH THE RETURN.

13-402.

(a) If a notice and demand for a return is made under § 13-303 of this title and the person or governmental unit fails to file the return, the tax collector shall:

(4) for motor carrier tax:

(i) compute the tax by using a miles per gallon factor based on the use, in the State, of 40 gallons of motor fuel for each commercial motor vehicle in the person's fleet on each day during the period for which the return is not filed; and

(ii) assess the tax due; [and]

(5) for public service company franchise tax:

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(i) estimate gross receipts from the best information in the possession of the tax collector; and

(ii) assess the tax due on the estimated gross receipts; AND

(6) FOR DIGITAL ADVERTISING GROSS REVENUES TAX:

(I) ESTIMATE GROSS REVENUES FROM THE BEST INFORMATION IN POSSESSION OF THE TAX COLLECTOR; AND

(II) ASSESS THE TAX DUE ON THE ESTIMATED ASSESSABLE BASE.

13-602.

(a) Except as provided in subsections (b) and (c) of this section, a tax collector shall assess interest on unpaid tax from the due date to the date on which the tax is paid if a person who is required to estimate and pay **DIGITAL ADVERTISING GROSS REVENUES TAX**, financial institution franchise tax, public service company franchise tax, or income tax under **§ 7.5-301**, § 8-210(b), § 8-405(b), or § 10-902 of this article:

(1) fails to pay an installment when due; or

(2) estimates a tax that is:

(i) less than 90% of the tax required to be shown on the return for the current taxable year; and

(ii) less than 110% of the tax paid for the prior taxable year, reduced by the credit allowed under § 10-703 of this article.

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13-702.

(a) Except as provided in subsections (b) and (c) of this section, a tax collector shall assess a penalty not exceeding 25% of the amount underestimated, if a person who is required to estimate and pay **DIGITAL ADVERTISING GROSS REVENUES TAX**, financial institution franchise tax, public service company franchise tax, or income tax under **§ 7.5-301**, § 8-210(b), § 8-405(b), or § 10-902 of this article:

(1) fails to pay an installment when due; or

(2) estimates a tax that is:

(i) less than 90% of the tax required to be shown on the return for the current taxable year; and

(ii) less than 110% of the tax paid for the prior taxable year, reduced by the credit allowed under § 10-703 of this article.

13-1001.

(G) A PERSON WHO IS REQUIRED TO FILE A DIGITAL ADVERTISING GROSS REVENUES TAX RETURN AND WHO WILLFULLY FAILS TO FILE THE RETURN AS REQUIRED UNDER TITLE 7.5 OF THIS ARTICLE IS GUILTY OF A MISDEMEANOR AND, ON CONVICTION, IS SUBJECT TO A FINE NOT EXCEEDING \$5,000 OR IMPRISONMENT NOT EXCEEDING 5 YEARS OR BOTH.

13-1002.

(b) A person, including an officer of a corporation, who willfully files **A FALSE DIGITAL ADVERTISING GROSS REVENUES TAX RETURN**, a false financial institution

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franchise tax return, a false public service company franchise tax return, or a false income tax return with the intent to evade the payment of tax due under this article is guilty of perjury and, on conviction, is subject to the penalty for perjury.

(c) Subsections (a) and (b) of this section apply to the alcoholic beverage, DIGITAL ADVERTISING GROSS REVENUES, financial institution franchise, public service company franchise, and income taxes.

13-1101.

(b) An assessment of DIGITAL ADVERTISING GROSS REVENUES TAX, financial institution franchise tax, public service company franchise tax, income tax, or estate tax may be made at any time if:

- (1) a false return is filed with the intent to evade the tax;
- (2) a willful attempt is made to evade the tax;
- (3) a return is not filed as required under Title 7, TITLE 7.5, Title 8, or Title 10 of this article;
- (4) an amended estate tax return is not filed as required under Title 7 of this article;
- (5) an incomplete return is filed; or
- (6) a report of federal adjustment is not filed within the period required under § 13-409 of this title.

(c) If a report of federal adjustment is filed within the time required under § 13-409 of this title, the tax collector shall assess the DIGITAL ADVERTISING GROSS REVENUES TAX, financial institution franchise tax, public service company franchise

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tax, income tax, or estate tax within 1 year after the date on which the tax collector receives the report.”.

On page 22, strike in their entirety lines 7 through 27, inclusive, and substitute:

“SECTION 3. AND BE IT FURTHER ENACTED, That:

(1) as provided in § 12–105 of the Tax – General Article, as enacted by Section 1 of this Act, all cigarettes and other tobacco products used, possessed, or held in the State on or after July 1, 2020, by any person for sale or use in the State shall be subject to the tax on cigarettes and other tobacco products as enacted under Section 1 of this Act;

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

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

SECTION 4. AND BE IT FURTHER ENACTED, That on or before December 31, 2020, the Comptroller’s Office shall report to the Senate Budget and Taxation Committee and the House Committee on Ways and Means, in accordance with § 2–1257 of the State Government Article, on the change in consumption of cigarettes, other tobacco products, and electronic smoking devices in the State over the immediately preceding 12 months.

SECTION 5. AND BE IT FURTHER ENACTED, That it is the intent of the General Assembly that the Comptroller distribute, as necessary, the sales and use tax and tobacco tax collected in fiscal year 2021 under Section 1 of this Act to:

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(1) the expenditure accounts of the appropriate units of State government to fund costs associated with the Coronavirus Disease 2019 (COVID-19); and

(2) the Revenue Stabilization Account established under § 7-311 of the State Finance and Procurement Article.

SECTION 6. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take effect July 1, 2021, and shall be applicable to all taxable years beginning after December 31, 2020.

SECTION 7. AND BE IT FURTHER ENACTED, That, except as provided in Section 6 of this Act, this Act shall take effect July 1, 2020.”.