

**SB0002/839438/2**

BY: Budget and Taxation Committee

SUBSTITUTE AMENDMENTS TO SENATE BILL 2  
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, strike line 2 in its entirety and substitute “Taxation – Tobacco Tax, Sales and Use Tax, and Digital Advertising Gross Revenues Tax”; in line 3, after “of” insert “altering the definition of “other tobacco products” to include certain consumable products and the components or parts of those products and to exclude certain other products; requiring the Governor, for certain fiscal years, to include in the annual budget bill an appropriation for certain activities; altering the definition of “electronic smoking device” to exclude certain batteries or battery chargers; 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;”; strike beginning with “establishing” in line 4 down through “circumstances;” in line 5 and substitute “providing for the calculation of the part of the annual gross revenues of a person derived from digital advertising services in the State;”; in line 20, after “tax;” insert “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”; in line 21, after “terms;” insert “altering the definition of certain terms;”; in line 22, strike “a tax on digital advertising gross revenues” and substitute “the tobacco tax, sales and use tax, and a digital advertising gross revenues tax”;

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and after line 22, insert:

“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, 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  
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–

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1001(g)  
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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 page 2, strike in their entirety lines 4 through 22, inclusive.

AMENDMENT NO. 2

On page 2, after line 24, insert:

“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) 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]

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(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.

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

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

(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

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(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

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(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;

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(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 \$18,250,000 IN THE ANNUAL BUDGET IN APPROPRIATIONS FOR THE PURPOSES DESCRIBED IN SUBSECTION (A) OF THIS SECTION.

Article – Tax – General

11-104.

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

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

(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;



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(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;

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.

(Over)

**(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.**

12–101.

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

(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.

12-102.

(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;

(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].

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(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.

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

AMENDMENT NO. 3

On page 5, strike in their entirety lines 3 through 9, inclusive, and substitute:

**“(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.”.

AMENDMENT NO. 4

On page 9, after line 15, insert:

“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.”;

in line 16, strike “2.” and substitute “7.”; in the same line, after “That” insert “, except as provided in Section 6 of this Act.”; and in line 17, strike “, and shall be applicable to all taxable years beginning after December 31, 2020”.