

# HOUSE BILL 1324

Q7, C2

EMERGENCY BILL

1lr2580  
CF SB 883

By: **Delegate P. Young**

Introduced and read first time: February 8, 2021

Assigned to: Ways and Means and Economic Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 23, 2021

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House action: Adopted with floor amendments

Read second time: March 24, 2021

## CHAPTER \_\_\_\_\_

1 AN ACT concerning

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

4 FOR the purpose of altering the definition of “other tobacco products” to exclude certain  
5 items; requiring a person located outside the State to have an appropriate license  
6 whenever the person sells premium cigars or pipe tobacco to a consumer in the State;  
7 authorizing the Executive Director of the Alcohol and Tobacco Commission to  
8 delegate certain duties; authorizing the holder of a remote tobacco seller license to  
9 sell premium cigars and pipe tobacco to consumers in the State; establishing the  
10 requirements for an applicant for a remote tobacco seller license; providing for  
11 license application procedures and fees; prohibiting a person from applying for a  
12 license within a certain period of time after the person’s license was revoked;  
13 requiring the Executive Director to issue remote tobacco seller licenses under certain  
14 circumstances; providing for the renewal of a license; prohibiting the assignment of  
15 a remote tobacco seller license; authorizing the Executive Director to deny an  
16 application for a license for certain reasons; requiring the Executive Director to give  
17 certain notice of certain final actions; providing for a certain hearing process  
18 regarding a final decision; authorizing the Executive Director to revoke a license for  
19 certain reasons; requiring the Executive Director to give certain notice of a  
20 revocation; authorizing a licensee to make a certain offer of compromise in lieu of  
21 revocation of a license; authorizing the Executive Director to accept certain offers of  
22 compromise; providing for judicial review of a final decision of the Executive

**EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



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)

1 ~~BY repealing and reenacting, with amendments,~~  
 2 ~~Article – Tax – General~~  
 3 ~~Section 11–104(j) and 12–105(b)~~  
 4 ~~Annotated Code of Maryland~~  
 5 ~~(2016 Replacement Volume and 2020 Supplement)~~  
 6 ~~(As enacted by Chapter 37 of the Acts of the General Assembly of 2021)~~

7 BY repealing and reenacting, with amendments,  
 8 Article – Tax – General  
 9 Section 12–101(f), 12–103, ~~12–105(b)~~, 12–201, 12–302(e), and 13–825(h)  
 10 Annotated Code of Maryland  
 11 (2016 Replacement Volume and 2020 Supplement)

12 BY repealing and reenacting, without amendments,  
 13 Article – Tax – General  
 14 Section 12–101(g) and (h)  
 15 Annotated Code of Maryland  
 16 (2016 Replacement Volume and 2020 Supplement)

17 BY adding to  
 18 Article – Tax – General  
 19 Section 12–105(c) and 12–204  
 20 Annotated Code of Maryland  
 21 (2016 Replacement Volume and 2020 Supplement)

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

24 **Article – Business Regulation**

25 16.5–101.

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

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

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

32 1. tobacco; or

33 2. nicotine; or

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

- 1           (2)    “Other tobacco products” includes[:  
 2                    (i) cigars, premium cigars, pipe tobacco, chewing tobacco, snuff, and  
 3 snus[: and  
 4                    (ii) filters, rolling papers, pipes, and hookahs].  
 5           (3)    “Other tobacco products” does not include:  
 6                    (i)    cigarettes;  
 7                    (ii)   electronic smoking devices; or  
 8                    (iii) drugs, devices, or combination products authorized for sale by  
 9 the U.S. Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act.

10                                    **Article – Tax – General**

11 11–104.

- 12           (j)    (1)    (i)    In this subsection, the following words have the meanings  
 13 indicated.  
 14                                    (ii)   “Electronic smoking device” has the meaning stated in §  
 15 16.7–101 of the Business Regulation Article.  
 16                                    (iii) “Vaping liquid” has the meaning stated in § 16.7–101 of the  
 17 Business Regulation Article.

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

20                                    **(I)    ELECTRONIC SMOKING DEVICES;**

21                                    **(II)   TOBACCO FILTERS;**

22                                    **(III)   TOBACCO ROLLING PAPERS;**

23                                    **(IV)   TOBACCO PIPES; AND**

24                                    **(V)    TOBACCO HOOKAHS.**

25           (3)    The sales and use tax for vaping liquid sold in a container that contains  
 26 5 milliliters or less of vaping liquid is 60% of the taxable price.

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

3                                **Article – Business Regulation**

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

5                                **SUBTITLE 1. DEFINITIONS; GENERAL PROVISIONS.**

6        **16.9–101.**

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

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

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

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

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

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

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

22        **16.9–102.**

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

25        **16.9–103.**

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

28                                **SUBTITLE 2. REMOTE TOBACCO SELLER LICENSES.**

1 **16.9–201.**

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

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

10 **16.9–202.**

11 AN APPLICANT FOR A REMOTE TOBACCO SELLER LICENSE SHALL:

12 (1) IDENTIFY THE PREMIUM CIGARS AND PIPE TOBACCO THAT THE  
13 REMOTE TOBACCO SELLER INTENDS TO SELL AND SHIP INTO THE STATE;

14 (2) UTILIZE THIRD–PARTY AGE VERIFICATION FOR PURCHASES AND  
15 DELIVERIES; AND

16 (3) CONSENT TO BEING SUBJECT TO THE TOBACCO TAX UNDER TITLE  
17 12 OF THE TAX – GENERAL ARTICLE.

18 **16.9–203.**

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

20 (1) SUBMIT AN APPLICATION TO THE EXECUTIVE DIRECTOR ON THE  
21 FORM AND CONTAINING THE INFORMATION THAT THE EXECUTIVE DIRECTOR  
22 REQUIRES; AND

23 (2) PAY TO THE EXECUTIVE DIRECTOR A FEE OF:

24 (I) \$25; OR

25 (II) AN AMOUNT SET BY REGULATION.

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

29 **16.9–204.**

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

4 **16.9–205.**

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

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

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

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

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

17                   **(1) OTHERWISE IS ENTITLED TO BE LICENSED;**

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

20                   **(3) PAYS TO THE ISSUING OFFICIAL THE LICENSE FEE REQUIRED**  
21 **UNDER § 16.9–203 OF THIS SUBTITLE.**

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

24 **16.9–206.**

25           **A REMOTE TOBACCO SELLER LICENSEE MAY NOT ASSIGN THE LICENSE.**

26 **16.9–207.**

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

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

3           **(2) FRAUDULENTLY OR DECEPTIVELY USES A LICENSE;**

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

6                 **(I) A FELONY; OR**

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

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

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

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

16           **(7) VIOLATES THIS TITLE OR REGULATIONS ADOPTED UNDER THIS**  
17 **TITLE.**

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

21                 **(1) 1 YEAR HAS PASSED SINCE THE LICENSE WAS REVOKED; AND**

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

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

27                 **(1) THE APPLICANT;**

28                 **(2) THE BUSINESS TO BE OPERATED; AND**

29                 **(3) THE FACTS SET FORTH IN THE APPLICATION.**



1 **16.9–208.**

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

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

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

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

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

17 **16.9–209.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 **16.9–210.**

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

26 **16.9–211.**

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

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



~~(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;~~

~~(II) TOBACCO FILTERS;~~

~~(III) TOBACCO ROLLING PAPERS;~~

~~(IV) TOBACCO PIPES; AND~~

~~(V) TOBACCO HOOKAHS.~~

~~(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.

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

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

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

9 12–105.

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

12 ~~(I) the wholesale price of the tobacco products; OR~~

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

15 ~~(2) (i) In this paragraph, “premium cigars” has the meaning stated in §~~  
 16 ~~16.5–101 of the Business Regulation Article.~~

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

19 ~~(iii) The tobacco tax rate for premium cigars is 15% of:~~

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

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

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

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

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

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

30 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.**

12-201.

**(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.**

1 12-204.

2 (A) THE COMPTROLLER SHALL ADOPT REGULATIONS THAT:

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

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

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

11 12-302.

12 (e) (1) An out-of-state seller shall pay the tobacco tax on pipe tobacco or  
13 premium cigars on which the tobacco tax has not been paid.

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

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

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

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

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

25 (II) FOR EACH STOCK KEEPING UNIT:

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

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

1 13-825.

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

4 (i) for a manufacturer or wholesaler:

5 1. \$10,000; plus

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

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

9 1. \$1,000; plus

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

12 (iii) for an other tobacco products wholesaler:

13 1. \$5,000; plus

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

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

17 1. \$5,000; PLUS

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

27           (a) Section 1 of this Act shall be construed to apply retroactively and shall be  
28 applied to and interpreted to affect any tax imposed on other tobacco products under Title  
29 12 of the Tax – General Article on or after March 14, 2021; and

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

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

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

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.