

Department of Legislative Services
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2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 410
Finance

(Senator Kramer)

**Cigarettes, Other Tobacco Products, and Electronic Smoking Devices - Local
Law Authorization**

This bill expressly authorizes a county or municipality to enact and enforce local laws that are at least as stringent as State laws that regulate the sale and distribution of cigarettes, other tobacco products (OTP), and electronic smoking devices (ESD), except for the issuance of cigarette, OTP, and ESD licenses and the taxation of cigarettes and OTP. The bill further states that it is the intent of the General Assembly that the bill be applied and interpreted to abrogate the holding of the Court of Appeals in *Altadis U.S.A., Inc. et al. v. Prince George's County, Maryland* 431 Md. 307 (2013).

Fiscal Summary

State Effect: State general fund revenues may be affected, as discussed below.

Local Effect: Local government revenues and expenditures may increase, as discussed below.

Small Business Effect: Potential meaningful.

Analysis

Current Law: Titles 16, 16.5, and 16.7 of the Business Regulation Article govern tobacco licensing and the sale and distribution of cigarettes, OTP, and ESD. "ESD" is defined as a device that can be used to deliver aerosolized or vaporized nicotine to an individual inhaling from the device. It includes (1) an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, a vape pen and vaping liquid, and (2) 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. “ESD” excludes a drug, device, or combination product authorized for sale by the U.S. Food and Drug Administration under the Food, Drug, and Cosmetic Act. “OTP” is defined as any cigar or roll for smoking, other than a cigarette, made in whole or in part of tobacco or 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.

Pursuant to Chapter 12 of 2019 and Chapters 359 and 360 of 2020, alcohol and tobacco enforcement duties are transferred from the Comptroller’s Field Enforcement Division to the Alcohol and Tobacco Commission (ATC) effective January 1, 2021. Thus, ATC is responsible for monitoring and enforcement activity related to tobacco licenses. The Comptroller’s Office, however, retains duties related to enforcement of tobacco taxes.

Tobacco Product Taxes

Cigarettes are taxed at a rate of \$2.00 per pack. Generally, the tax rate for OTP is 30% of the wholesale price, which is the price for which a wholesaler buys OTP, exclusive of any discount, trade allowance, rebate, or other reduction. The tax rate for cigars is 70% of the wholesale price of the cigars. The tax rate for premium cigars is 15% of the wholesale price of the premium cigars.

ESD and their components are subject to the State sales and use tax but are not subject to a State excise tax. Montgomery County imposes a 30% tax on the wholesale value of vaping products.

Altadis U.S.A., Inc. et al. v. Prince George’s County, Maryland

In *Altadis U.S.A., Inc. et al. v. Prince George’s County, Maryland* 431 Md. 307 (2013), the petitioners challenged the validity of two Prince George’s County ordinances regulating the packaging, sale, or other distribution of cigars, contending that the ordinances conflicted with State statutes regulating the packaging and sale of cigars. The Court of Appeals held that State law occupied the field of regulating the packaging and sale of tobacco products, including cigars, and so preempted the two ordinances. Thus, the Prince George’s County ordinances were invalid.

State/Local/Small Business Effect: The bill expressly authorizes a county or a municipality to enact and enforce local laws regulating the sale and distribution of tobacco products, as specified. Some jurisdictions in the State have considered and/or enacted local legislation relating to the sale and distribution of tobacco products. The bill’s impact depends on the extent to which local governments enact local laws that are more stringent than State law and the extent to which such laws are successfully implemented as a result of the bill (or the extent to which such laws would be successfully *challenged* in the

absence of the bill). As discussed above, in *Altadis* (2013), the Court of Appeals struck down two Prince George’s County ordinances governing the distribution of cigars, holding that the ordinances were impliedly preempted by State law.

Thus, to the extent that local governments successfully enact and enforce local laws that are more stringent than State law as a result of the bill, local government revenues and expenditures may increase. Similarly, small businesses that sell tobacco products in jurisdictions that enact such laws are potentially affected to the extent they are subject to additional local regulation as a result of the bill.

Additionally, to the extent that local governments successfully enact and enforce local laws that have the effect of restricting or reducing the sale and consumption of tobacco products, State general fund revenues may be affected due to forgone tax revenues collected from the sale of these products. Any such impact, however, cannot be reliably predicted.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 1011 (Delegate Rosenberg) - Economic Matters.

Information Source(s): Maryland Association of County Health Officers; Baltimore City; Montgomery and Prince George’s counties; City of Bowie; Maryland Municipal League; Comptroller’s Office; Judiciary (Administrative Office of the Courts); *Baltimore Sun*; Department of Legislative Services

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