

SENATE BILL 523

Q3

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By: **Senator Manno**

Introduced and read first time: February 3, 2012

Assigned to: Budget and Taxation

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 14, 2012

CHAPTER _____

1 AN ACT concerning

2 ~~**Income Tax — Repeal of the 1997 Income Tax Reduction**~~
3 ~~**State and Local Revenue and Financing Act of 2012**~~

4 FOR the purpose of altering the State income tax rate on certain income of
5 individuals; ~~requiring the Comptroller to waive certain interest and penalties~~
6 ~~for a certain calendar year to a certain extent~~; altering, for certain taxable
7 years, the percentage of the federal earned income credit used for determining
8 the amount that an individual may claim as a refund under the State earned
9 income tax credit under certain circumstances; altering a certain definition for
10 certain purposes under the sales and use tax; providing that for purposes of
11 certain provisions of the sales and use tax law certain persons shall be
12 presumed under certain circumstances to have an agent, canvasser,
13 representative, salesman, independent contractor, or solicitor operating in the
14 State for certain purposes; providing that a certain presumption may be
15 rebutted by certain proof; altering certain tax rates for certain cigars and
16 certain tobacco products; providing that, for purposes of the recordation tax,
17 secured debt with respect to certain mortgages, deeds of trust, and other
18 security interests in real property securing a guarantee of repayment of a loan
19 for a certain amount is deemed to be incurred as debt is incurred on the
20 guaranteed loan and, with respect to those mortgages, deeds of trust, and other
21 security interests, the recordation tax applies in a certain manner; altering
22 certain grants to counties under the Aging Schools Program for certain fiscal
23 years; providing for the distribution of certain income tax revenue in a certain
24 manner; altering certain maintenance of effort amounts required for a certain
25 fiscal year under certain circumstances; altering the amount of a certain fee;

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.



repealing a certain exemption to the sales and use tax for certain sales in the form of a demurrage charge; repealing a certain modification for purposes of determining Maryland taxable income for certain public utilities; repealing a certain credit against the State income tax for certain public utilities; repealing an obsolete provision; ~~providing for the application of this Act; and generally relating to altering the calculation of the State income tax~~ requiring the Comptroller to waive certain interest and penalties for a certain calendar year to a certain extent; authorizing the Comptroller to provide an alternative method of assessing and collecting a certain additional tax; requiring certain revenue to be remitted to the Comptroller by a certain date; defining certain terms; providing for the application and construction of certain provisions of this Act; and generally relating to ~~altering certain taxes and fees~~ State and local revenues and finances.

BY repealing and reenacting, with amendments,

Article – Tax – General

Section 2–609, 10–105(a) and (d), 10–704(b), 11–701(b), and 12–105(b)

Annotated Code of Maryland

(2010 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, without amendments,

Article – Tax – General

Section 10–704(a)

Annotated Code of Maryland

(2010 Replacement Volume and 2011 Supplement)

BY adding to

Article – Tax – General

Section 2–608.2 and 11–701.1

Annotated Code of Maryland

(2010 Replacement Volume and 2011 Supplement)

BY adding to

Article – Tax – Property

Section 12–105(f)(7)

Annotated Code of Maryland

(2007 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,

Article – Education

Section 5–206(f)(2)

Annotated Code of Maryland

(2008 Replacement Volume and 2011 Supplement)

(As enacted by Chapter _____ (S.B. 152) of the Acts of the General Assembly of 2012)

BY repealing and reenacting, with amendments,

Article – State Government
Section 9–1604(b)(1)(vi)
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

BY repealing

Article – Tax – General
Section 10–306(c), 10–708, and 11–202
Annotated Code of Maryland
(2010 Replacement Volume and 2011 Supplement)

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

Article – Tax – General

10–105.

(a) (1) ~~Except as provided in paragraph (3) of this subsection, for~~ **FOR** an individual other than an individual described in paragraph (2) of this subsection, the State income tax rate is:

(i) 2% of Maryland taxable income of \$1 through \$1,000;

(ii) 3% of Maryland taxable income of \$1,001 through \$2,000;

(iii) 4% of Maryland taxable income of \$2,001 through \$3,000;

(iv) ~~[4.75%] 5%~~ **4.9%** of Maryland taxable income of \$3,001 through ~~\$150,000~~ **\$25,000**;

(V) 4.95% OF MARYLAND TAXABLE INCOME OF \$25,001 THROUGH \$75,000;

(VI) 5% OF MARYLAND TAXABLE INCOME OF \$75,001 THROUGH \$150,000;

~~(v) (VII)~~ **[5%] 5.25%** of Maryland taxable income of \$150,001 through \$300,000; **AND**

~~(vi) (VIII)~~ **[5.25%] 5.5%** of Maryland taxable income of \$300,001 through \$500,000; ~~and~~

~~(vii) (IX) [5.5%] 5.75% of Maryland taxable income in excess of \$500,000.~~

(2) ~~Except as provided in paragraph (3) of this subsection, for~~ **For** spouses filing a joint return or for a surviving spouse or head of household as defined in § 2 of the Internal Revenue Code, the State income tax rate is:

(i) 2% of Maryland taxable income of \$1 through \$1,000;

(ii) 3% of Maryland taxable income of \$1,001 through \$2,000;

(iii) 4% of Maryland taxable income of \$2,001 through \$3,000;

(iv) ~~[4.75%] 5%~~ **4.9%** of Maryland taxable income of \$3,001 through ~~\$200,000~~ **\$50,000**;

(V) 4.95% OF MARYLAND TAXABLE INCOME OF \$50,001 THROUGH \$100,000;

(VI) 5% OF MARYLAND TAXABLE INCOME OF \$100,001 THROUGH \$200,000;

~~(vii) (VII)~~ **[5%] 5.25%** of Maryland taxable income of \$200,001 through \$350,000; **AND**

~~(viii) (VIII)~~ **[5.25%] 5.5%** of Maryland taxable income of \$350,001 through \$500,000; ~~and~~

~~(vii) (IX) [5.5%] 5.75% of Maryland taxable income in excess of \$500,000.~~

[(3) For a taxable year beginning after December 31, 2007, but before January 1, 2011, the State income tax for an individual, including spouses filing a joint return or a surviving spouse or head of household as defined in § 2 of the Internal Revenue Code, is:

(i) for Maryland taxable income up to \$500,000, the rate specified in paragraph (1)(i) through (vi) or (2)(i) through (vi) of this subsection; and

(ii) for Maryland taxable income in excess of \$500,000:

1. 5.5% of Maryland taxable income of \$500,001 through \$1,000,000; and

2. 6.25% of Maryland taxable income in excess of \$1,000,000.]

1 **(3) THE STATE INCOME TAX RATE IS 5.75% APPLIED TO ALL OF**
2 **THE INDIVIDUAL'S MARYLAND TAXABLE INCOME IF AN INDIVIDUAL HAS**
3 **MARYLAND TAXABLE INCOME IN EXCESS OF \$500,000.**

4 (d) **(1) [For] SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, FOR**
5 **a nonresident:**

6 **[(1)] (I) the rates specified in subsection (a) of this section apply to**
7 **the nonresident's Maryland taxable income, calculated without regard to the**
8 **subtractions under § 10-210(b), (e), and (f) of this title; and**

9 **[(2)] (II) the State income tax imposed equals the result obtained**
10 **under item [(1) of this subsection] (I) OF THIS PARAGRAPH multiplied times a**
11 **fraction:**

12 (i) **the numerator of which is the nonresident's Maryland**
13 **taxable income, calculated with the subtractions under § 10-210(b), (e), and (f) of this**
14 **title; and**

15 (ii) **the denominator of which is the nonresident's Maryland**
16 **taxable income, calculated without regard to the subtractions under § 10-210(b), (e),**
17 **and (f) of this title.**

18 **(2) IF A NONRESIDENT HAS MARYLAND TAXABLE INCOME,**
19 **CALCULATED WITHOUT REGARD TO THE SUBTRACTIONS UNDER § 10-210(B),**
20 **(E), AND (F) OF THIS TITLE, IN EXCESS OF \$500,000, THE STATE INCOME TAX**
21 **IMPOSED EQUALS THE STATE INCOME TAX RATE SPECIFIED IN SUBSECTION**
22 **(A)(3) OF THIS SECTION APPLIED TO ALL OF THE NONRESIDENT'S MARYLAND**
23 **TAXABLE INCOME, CALCULATED WITH THE SUBTRACTIONS UNDER § 10-210(B),**
24 **(E), AND (F) OF THIS TITLE.**

25 **10-704.**

26 (a) **(1) An individual may claim a credit against the State income tax for a**
27 **taxable year in the amount determined under subsection (b) of this section for earned**
28 **income.**

29 **(2) An individual may claim a credit against the county income tax for**
30 **a taxable year in the amount determined under subsection (c) of this section for earned**
31 **income.**

32 (b) **(1) Except as provided in paragraph (2) of this subsection and subject**
33 **to subsection (d) of this section, the credit allowed against the State income tax under**
34 **subsection (a)(1) of this section is the lesser of:**

1 (i) 50% of the earned income credit allowable for the taxable
2 year under § 32 of the Internal Revenue Code; or

3 (ii) the State income tax for the taxable year.

4 (2) **(I) An individual may claim a refund in the amount, if any, by**
5 **which [25%] THE APPLICABLE PERCENTAGE SPECIFIED IN SUBPARAGRAPH (II)**
6 **OF THIS PARAGRAPH of the earned income credit allowable for the taxable year**
7 **under § 32 of the Internal Revenue Code exceeds the State income tax for the taxable**
8 **year.**

9 **(II) THE APPLICABLE PERCENTAGE OF THE EARNED**
10 **INCOME CREDIT ALLOWABLE UNDER § 32 OF THE INTERNAL REVENUE CODE TO**
11 **BE USED FOR PURPOSES OF DETERMINING THE REFUND PROVIDED UNDER THIS**
12 **PARAGRAPH IS:**

13 **1. 26% FOR A TAXABLE YEAR BEGINNING AFTER**
14 **DECEMBER 31, 2011, BUT BEFORE JANUARY 1, 2013;**

15 **2. 27% FOR A TAXABLE YEAR BEGINNING AFTER**
16 **DECEMBER 31, 2012, BUT BEFORE JANUARY 1, 2014;**

17 **3. 28% FOR A TAXABLE YEAR BEGINNING AFTER**
18 **DECEMBER 31, 2013, BUT BEFORE JANUARY 1, 2015;**

19 **4. 29% FOR A TAXABLE YEAR BEGINNING AFTER**
20 **DECEMBER 31, 2014, BUT BEFORE JANUARY 1, 2016; AND**

21 **5. 30% FOR A TAXABLE YEAR BEGINNING AFTER**
22 **DECEMBER 31, 2015.**

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

25 **Article – Tax – General**

26 **11-701.**

27 (b) (1) **“Engage in the business of an out-of-state vendor” means to sell or**
28 **deliver tangible personal property or a taxable service for use in the State.**

29 (2) **“Engage in the business of an out-of-state vendor” includes:**

30 (i) **permanently or temporarily maintaining, occupying, or**
31 **using any office, sales or sample room, or distribution, storage, warehouse, or other**

1 place for the sale of tangible personal property or a taxable service directly or
2 indirectly through an agent or subsidiary;

3 (ii) having an agent, canvasser, representative, salesman,
4 INDEPENDENT CONTRACTOR, or solicitor operating in the State for the purpose of
5 delivering, selling, or taking orders for tangible personal property or a taxable service;
6 or

7 (iii) entering the State on a regular basis to provide service or
8 repair for tangible personal property.

9 **11-701.1.**

10 **(A) IN THIS SECTION, “SELLER” MEANS A PERSON MAKING SALES OF**
11 **TANGIBLE PERSONAL PROPERTY OR A TAXABLE SERVICE.**

12 **(B) FOR PURPOSES OF § 11-701(B)(2)(II) OF THIS SUBTITLE, A SELLER**
13 **SHALL BE PRESUMED TO HAVE AN AGENT, CANVASSER, REPRESENTATIVE,**
14 **SALESMAN, INDEPENDENT CONTRACTOR, OR SOLICITOR OPERATING IN THE**
15 **STATE FOR THE PURPOSE OF SELLING OR TAKING ORDERS FOR TANGIBLE**
16 **PERSONAL PROPERTY OR A TAXABLE SERVICE IF:**

17 **(1) THE SELLER ENTERS INTO AN AGREEMENT WITH A RESIDENT**
18 **OF THE STATE UNDER WHICH THE RESIDENT, FOR A COMMISSION OR OTHER**
19 **CONSIDERATION, DIRECTLY OR INDIRECTLY REFERS POTENTIAL CUSTOMERS**
20 **TO THE SELLER, WHETHER BY A LINK ON AN INTERNET WEB SITE, OR**
21 **OTHERWISE; AND**

22 **(2) THE CUMULATIVE GROSS RECEIPTS FROM SALES BY THE**
23 **SELLER TO CUSTOMERS IN THE STATE WHO ARE REFERRED TO THE SELLER BY**
24 **ALL RESIDENTS HAVING AN AGREEMENT WITH THE SELLER AS DESCRIBED IN**
25 **ITEM (1) OF THIS SUBSECTION IS GREATER THAN \$10,000 DURING THE**
26 **PRECEDING FOUR QUARTERLY PERIODS ENDING ON THE LAST DAY OF**
27 **FEBRUARY, MAY, AUGUST, AND NOVEMBER.**

28 **(C) THE PRESUMPTION UNDER THIS SECTION MAY BE REBUTTED BY**
29 **PROOF THAT THE RESIDENT WITH WHOM THE SELLER HAS AN AGREEMENT AS**
30 **DESCRIBED IN SUBSECTION (B)(1) OF THIS SECTION DID NOT ENGAGE IN ANY**
31 **SOLICITATION IN THE STATE ON BEHALF OF THE SELLER THAT WOULD SATISFY**
32 **THE NEXUS REQUIREMENT OF THE UNITED STATES CONSTITUTION DURING**
33 **THE FOUR QUARTERLY PERIODS IN QUESTION.**

34 **(D) THIS SECTION MAY NOT BE CONSTRUED TO NARROW THE SCOPE OF**
35 **THE TERMS “AGENT”, “CANVASSER”, “REPRESENTATIVE”, “SALESMAN”,**
36 **“INDEPENDENT CONTRACTOR”, AND “SOLICITOR” FOR PURPOSES OF §**

11-701(B)(2)(II) OF THIS SUBTITLE OR FOR PURPOSES OF ANY OTHER
PROVISION OF LAW.

12-105.

(b) (1) [The] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
SUBSECTION, THE tobacco tax rate for other tobacco products is [15%] 20% 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 20%
OF THE WHOLESALE PRICE OF THE PREMIUM CIGARS.

SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland
read as follows:

Article – Tax – Property

12-105.

(f) (7) (I) IN THIS PARAGRAPH, “INDEMNITY MORTGAGE”
INCLUDES ANY MORTGAGE, DEED OF TRUST, OR OTHER SECURITY INTEREST IN
REAL PROPERTY THAT SECURES A GUARANTEE OF REPAYMENT OF A LOAN FOR
WHICH THE GUARANTOR IS NOT PRIMARILY LIABLE.

(II) EXCEPT AS PROVIDED IN SUBPARAGRAPH (III) OF THIS
PARAGRAPH:

1. SECURED DEBT WITH RESPECT TO AN INDEMNITY
MORTGAGE IS DEEMED TO BE INCURRED FOR PURPOSES OF THIS SUBSECTION
WHEN AND TO THE SAME EXTENT AS DEBT IS INCURRED ON THE GUARANTEED
LOAN; AND

2. THE RECORDATION TAX APPLIES UNDER THIS
SUBSECTION IN THE SAME MANNER AS IF THE GUARANTOR WERE PRIMARILY
LIABLE FOR THE GUARANTEED LOAN.

(III) THIS PARAGRAPH DOES NOT APPLY:

1 **1. TO THE EXTENT THAT RECORDATION TAX IS PAID**
2 **ON ANOTHER INSTRUMENT OF WRITING THAT SECURES PAYMENT OF THE**
3 **GUARANTEED LOAN; OR**

4 **2. TO AN INDEMNITY MORTGAGE THAT SECURES A**
5 **GUARANTEE OF REPAYMENT OF A LOAN FOR LESS THAN \$1,000,000.**

6 **SECTION 4. AND BE IT FURTHER ENACTED, That the Laws of Maryland**
7 **read as follows:**

8 **Article – Education**

9 **5–206.**

10 **(f) (2) In fiscal year 2013 and in each fiscal year thereafter, the funding**
11 **level for a county is the following amounts for the following counties:**

- 12 **(i) Allegany County.....[\$97,791] \$478,000;**
13 **(ii) Anne Arundel County[\$506,038] \$2,472,000;**
14 **(iii) Baltimore City.....[\$1,387,924] \$6,781,000;**
15 **(iv) Baltimore County.....[\$874,227] \$5,874,000;**
16 **(v) Calvert County.....[\$38,292] \$187,000;**
17 **(vi) Caroline County[\$50,074] \$245,000;**
18 **(vii) Carroll County[\$137,261] \$670,000;**
19 **(viii) Cecil County[\$96,024] \$469,000;**
20 **(ix) Charles County[\$50,074] \$245,000;**
21 **(x) Dorchester County[\$38,292] \$187,000;**
22 **(xi) Frederick County[\$182,622] \$893,000;**
23 **(xii) Garrett County.....[\$38,292] \$187,000;**
24 **(xiii) Harford County[\$217,379] \$1,062,000;**
25 **(xiv) Howard County[\$87,776] \$429,000;**

1	(xv) Kent County	[\$38,292]	\$187,000;
2	(xvi) Montgomery County	[\$602,651]	\$4,603,000;
3	(xvii) Prince George's County.....	[\$1,209,426]	\$5,909,000;
4	(xviii) Queen Anne's County	[\$50,074]	\$245,000;
5	(xix) St. Mary's County	[\$50,074]	\$245,000;
6	(xx) Somerset County.....	[\$38,292]	\$187,000;
7	(xxi) Talbot County.....	[\$38,292]	\$187,000;
8	(xxii) Washington County	[\$134,904]	\$659,000;
9	(xxiii) Wicomico County.....	[\$106,627]	\$521,000; and
10	(xxiv) Worcester County.....	[\$38,292]	\$187,000.

Article – State Government

9–1604.

(b) (1) The Chief Administrative Law Judge may:

(vi) assess fees to cover administrative expenses as follows:

1. to file an appeal, a fee not exceeding:

A. [\$125] **\$150** for an appeal of a driver's license suspension or revocation related to a violation of the Maryland Vehicle Law; and

B. \$50 for all other types of appeals; and

2. to process a subpoena, a fee not exceeding \$5.

Article – Tax – General

2–608.2.

(A) FOR FISCAL YEAR 2013, AFTER MAKING THE DISTRIBUTION REQUIRED UNDER § 2–604 THROUGH § 2–608.1 OF THIS SUBTITLE, THE COMPTROLLER SHALL DISTRIBUTE \$3,000,000 TO ELIGIBLE MUNICIPALITIES

1 IN ACCORDANCE WITH THE ALLOCATION UNDER § 8-405 OF THE
2 TRANSPORTATION ARTICLE.

3 (B) A DISTRIBUTION UNDER SUBSECTION (A) OF THIS SECTION MAY
4 ONLY BE USED FOR THE PURPOSES SPECIFIED IN § 8-408 OF THE
5 TRANSPORTATION ARTICLE.

6 2-609.

7 After making the distributions required under §§ 2-604 through [2-608.1]
8 2-608.2 of this subtitle, the Comptroller shall distribute the remaining income tax
9 revenue from individuals to the General Fund of the State.

10 SECTION 5. AND BE IT FURTHER ENACTED, That Section(s) 10-306(c) and
11 10-708 of Article – Tax – General of the Annotated Code of Maryland be repealed.

12 SECTION 6. AND BE IT FURTHER ENACTED, That Section(s) 11-202 of
13 Article – Tax – General of the Annotated Code of Maryland be repealed.

14 SECTION ~~2~~ 7. AND BE IT FURTHER ENACTED, That the Comptroller shall
15 waive any interest or penalty imposed on an individual relating to payment of
16 estimated income tax for calendar year 2012 to the extent that the Comptroller
17 determines that the interest or penalty would not have been incurred but for an
18 increase in the income tax rates for calendar year 2012 under Section 1 of this Act.

19 SECTION 8. AND BE IT FURTHER ENACTED, That, as provided in §
20 12-105 of the Tax – General Article, all other tobacco products used, possessed, or held
21 in the State on or after July 1, 2012, by any person for sale or use in the State, shall be
22 subject to the full tax on other tobacco products, as enacted under this Act. The
23 Comptroller may provide an alternative method of assessing and collecting the
24 additional tax. The revenue attributable to this requirement shall be remitted to the
25 Comptroller by October 15, 2012.

26 SECTION ~~3~~ 9. AND BE IT FURTHER ENACTED, That Sections 1 and 5 of
27 this Act shall take effect July 1, 2012, and shall be applicable to all taxable years
28 beginning after December 31, 2011.

29 SECTION 10. AND BE IT FURTHER ENACTED, That, for fiscal year 2016, the
30 additional maintenance of effort amount for a county required in Ch. (S.B. 152) of
31 the Acts of the General Assembly of 2012 shall be reduced by the amount that total
32 funding for the Aging Schools Program exceeds \$6,100,000 in fiscal year 2016,
33 multiplied by the proportion for that county of the total allocation under Section 4 of
34 this Act.

35 SECTION ~~10~~ 11. AND BE IT FURTHER ENACTED, That Sections 2 and 6 of
36 this Act shall take effect July 1, 2012.

1 SECTION ~~11~~ 12. AND BE IT FURTHER ENACTED, That Section 3 of this Act
2 shall take effect July 1, 2012, and shall be applicable to all instruments of writing
3 recorded on or after July 1, 2012.

4 SECTION ~~12~~ 13. AND BE IT FURTHER ENACTED, That, except as otherwise
5 provided in this Act, this Act shall take effect June 1, 2012.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.