

Without detailing all of the problems presented by this legislation, we do wish to draw your attention to the following, which we deem to be among the most significant:

1. The legislation creates two new tax statutes, a "Cigarette Sales Tax" and a "Cigarette Use Tax", each imposing a tax upon sales of cigarettes at the projected "retail cost" on a "per-pack" basis. For no apparent reason, the term "retail cost" is defined to include the existing 10¢ per pack State cigarette tax in proposed Section 371A(c) but to exclude this tax in proposed Section 401A(c). Under present market conditions, and assuming a 5% tax rate, this difference results in a 3¢ per pack tax on transactions subject to the "Cigarette Sales Tax" and a 2¢ per pack tax on transactions subject to the "Cigarette Use Tax".

In general, the 3¢ tax would be imposed upon any sale by a Maryland wholesaler to a retailer, vending machine operator or sub-wholesaler, whereas the 2¢ tax would be imposed upon retail sales by persons other than Maryland wholesalers who acquired their cigarettes from out-of-state wholesalers or manufacturers.

2. The different taxes imposed under the "Cigarette Sales Tax" and "Cigarette Use Tax" would appear to make that portion of the title of the bills which declares that the legislation imposes "... a certain use tax on cigarettes equal to the sales tax..." affirmatively misleading and thus potentially violative of Article III, Section 29, of the Maryland Constitution. We are advised that the Attorney General's Office is presently looking into this aspect of the legislation.

3. The rate of the tax imposed by this legislation is described by proposed Section 371A(c) as "... the same as the tax levied upon sales at retail as set forth in § 325 of this Article...." When one turns to Section 325, however, one discovers that two different tax rates are imposed: at the rate of 5% under subsection (a) and at the rate of 2% under subsections (c) and (d). As it turns out, there are presently before the Governor two bills which would repeal the 2% rate subsections, effective July 1, 1979 (House Bill 1687 and Senate Bill 926). If the Governor signs either one of these bills, we believe that the imposition of the tax at the 5% rate can probably be sustained in the courts, although the courts will have to assume that the General Assembly knew that either House Bill 1687 or Senate Bill 926 would not only pass but would be signed by the Governor.

4. The legislation does not say by whom it is to be administered. We are writing to you on the assumption that it is this office which is to administer the statute, but we note that the word "Comptroller" is not mentioned. This