

September 26, 1950

Mr. Robert T. Marhenke  
248 N. Hilton Street  
Baltimore, Maryland

Dear Mr. Marhenke:

Your letter of September 14th relative to the application of the State of Maryland Sales Tax Law to sales of cigarettes was duly received. The question whether the Sales Tax is applicable to sales of cigarettes was fully considered originally upon the Law becoming effective, and it was felt that such sales are subject to the tax.

A reference to the Sales Tax Law, Section 261, shows that various exemptions are authorized, but there is no mention of exemption of sales of cigarettes from the tax. We believe that the failure to specifically exempt sales of cigarettes from the tax in Section 261 or any place else in the Law must necessarily mean that these sales are subject to the tax. We believe that this is the proper legal view, and as an administrative matter there is nothing else for us to do but hold that the sales of cigarettes are subject to the tax. The Legislature could, in its discretion, exempt cigarettes. Since it is not possible to find anywhere in the law anything on which we could hold that sales of cigarettes are not subject to the tax, there is nothing for us to do but continue collecting the tax. The fact that cigarettes carry a high Federal Tax it is not in itself a justification for our holding that sales of cigarettes are exempt from the Maryland Sales Tax.

I trust you will appreciate the fact that the State Comptroller's Office is an administrative agency of the State and that we must administer the laws as we find them and as they are legally interpreted. We feel at this point that if there is to be any relief from the application of the Sales Tax to sales of cigarettes it must come through a specific exemption, by an amendment to the existing Law.

Very truly yours,

— Comptroller

JOMcG:DH

cc: Wm. Preston Lane, Jr., Governor

248 N. Hilton Street  
Baltimore, Maryland  
September 14, 1950

Hon. J. Millard Taves  
Comptroller of the Treasury  
State of Maryland  
Annapolis, Maryland

Dear Mr. Taves:

I take this opportunity to write you on a matter of fiscal importance which affects the greater majority of the citizens of this great State. After prolonged study and consultation with some of the best minds available to me, I feel compelled to bring this matter to your attention.

As the present Comptroller of Maryland you are not to blame for the inequitable subject I am about to discuss. In your present capacity, however, I do believe that it is within your power, possibly with the aid of the Attorney General, to bring an end to the serious tax injustice which besets a large segment of our population.

The subject tax injustice to which I refer is the Maryland State Sales Tax, as applied to specific articles. I need not call to your attention that the Tax Act, as amended, calls for the levying of the 2% tax on articles costing in excess of 14 cents.

As the chief fiscal officer of this State it should be comparatively simple for you to understand and comprehend the multiplicity of taxes which the public must pay.

During my discussion of this question with the Hon. Hyman A. Pressman, he said, "The application of the Sales Tax on an individual package of cigarettes is vicious and highly improper. The Federal Government has a tax on them, the State taxes them and the City taxes them. The State of Maryland then has the outrageous audacity to collect the Sales Tax on cigarettes, which, in effect, amounts to taxing a tax."

The average national brand of cigarettes costs the consumer 19 cents, plus one cent Sales Tax. The United States Treasury Department, locally and in Washington, declares that the tax stamps across every package of cigarettes is evidence that 7 cents Federal Excise Tax is levied upon them. Both Baltimore City and Baltimore County place a one cent tax on the very same pack of cigarettes.

By simple arithmetic, it is easy to deduct 7 cents Federal tax and one cent city or county tax, a total of 8 cents, from 19 cents. The result is 11 cents. This figure, as you can readily see, is below the 14 cent minimum set by Maryland's Sales Tax Act.

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Our neighbor, Washington, D.C., has a similar 14 cent minimum for its Sales Tax. Yet, no Sales Tax is collected on individual purchases of cigarettes. The reason, D.C. officials explained, is the presence of the high Federal levy.

A court ruling in New York State has held that a Sales Tax cannot be levied against the sale of cigarettes because of the very same high Federal tariff.

Mr. Taves, you should make some arrangement to return the illegally taken monies to the people of this State in some form that can readily be seen. One means would be your suggestion to the Legislature, implemented by the Governor's request, that personal income taxes be reduced.

It is your job to see that the State's revenues are collected. In so doing, precaution must be taken so as not to extract monies illegally from the unsuspecting public.

Unless steps are taken to correct this "obvious mistake," the public will soon be of the opinion that the entire structure of the Sales Tax has been grossly mismanaged.

I hope that you will take prompt steps to rectify this most ineuitable situation and that I shall enjoy the favor and privilege of a prompt reply.

Very truly yours,

Robert T. Marheuke

cc: Mr. Preston Lane, Jr., Governor  
The Press

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