

---

**By: Senators Amoss, Hoffman, Middleton, Kasemeyer, Lawlah, McFadden, Ruben, Munson, Van Hollen, Currie, Boozer, Hogan, and Cade**

Introduced and read first time: January 19, 1996

Assigned to: Budget and Taxation

---

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 21, 1996

---

CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 ~~Sales and Use Tax – Machinery or Equipment Used in Production Activity–~~

3 ~~Capitalization Requirement~~

4 Sales and Use Tax - Property Used in a Production Activity

5 ~~FOR the purpose of altering an exemption under the sales and use tax for certain~~

6 ~~machinery and equipment used in a production activity to eliminate a requirement~~

7 ~~that the machinery or equipment be capitalized to claim depreciation.~~

8 FOR the purpose of providing a credit against the sales and use tax for certain sales and

9 use tax paid on certain tangible personal property; altering certain definitions under

10 the sales and use tax; altering an exemption under the sales and use tax for certain

11 property used in a production activity; providing for the effective dates of this Act;

12 providing for the termination of part of this Act; and generally relating to the sales

13 and use taxation of certain property used in a production activity.

14 BY adding to

15 Article - Tax - General

16 Section 11-107

17 Annotated Code of Maryland

18 (1988 Volume and 1995 Supplement)

19 BY repealing and reenacting, with amendments,

20 Article - Tax - General

21 Section 11-101(d), (f)(3)(ii), and (l)(3)(ii) and 11-210(b)(1)

22 Annotated Code of Maryland

23 (1988 Volume and 1995 Supplement)

2

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

3 **Article - Tax - General**

4 11-107.

5 (A) IN THIS SECTION, "TANGIBLE PERSONAL PROPERTY USED IN A  
6 MANUFACTURING PROCESS" MEANS:

7 (1) NONCAPITALIZED MACHINERY OR EQUIPMENT THAT WOULD  
8 QUALIFY FOR THE EXEMPTION UNDER § 11-210(B)(1) OF THIS TITLE IF IT WERE  
9 CAPITALIZED;

10 (2) TANGIBLE PERSONAL PROPERTY THAT WOULD BE PROPERTY  
11 DESCRIBED UNDER § 11-101(F)(3)(II)3 AND (L)(3)(II)3 OF THIS SUBTITLE BUT FOR THE  
12 FACT THAT IT IS NOT CONSUMED WITHIN 1 YEAR AFTER THE PROPERTY IS FIRST  
13 USED IN A PRODUCTION ACTIVITY;

14 (3) EQUIPMENT THAT IS USED PHYSICALLY TO MOVE A FINISHED  
15 PRODUCT ON THE PRODUCTION ACTIVITY SITE;

16 (4) MACHINERY AND EQUIPMENT THAT IS USED TO MAINTAIN  
17 MACHINERY AND EQUIPMENT THAT IS EXEMPT UNDER § 11-210(B)(1) OF THIS TITLE;

18 (5) SAFETY EQUIPMENT USED ON THE PRODUCTION ACTIVITY SITE; OR

19 (6) MACHINERY AND EQUIPMENT USED IN QUALITY CONTROL ON A  
20 PRODUCTION ACTIVITY SITE.

21 (B) A PERSON IS ALLOWED A CREDIT AGAINST THE SALES AND USE TAX  
22 THAT THE PERSON IS REQUIRED TO PAY TO THE COMPTROLLER IN AN AMOUNT  
23 EQUAL TO 50% OF THE SALES AND USE TAX THAT THE PERSON PAYS AS SALES AND  
24 USE TAX ON THE PURCHASE OF TANGIBLE PERSONAL PROPERTY USED IN A  
25 MANUFACTURING PROCESS.

26 (C) (1) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, A  
27 PERSON SHALL CLAIM THE CREDIT UNDER SUBSECTION (B) OF THIS SECTION ON  
28 THE PERSON'S SALES AND USE TAX RETURN WITHIN 4 YEARS AFTER THE DUE DATE  
29 OF THE SALES AND USE TAX RETURN FOR THE PERIOD DURING WHICH THE SALES  
30 AND USE TAX ON THE PURCHASE WAS PAID.

31 (2) A CLAIM FOR A CREDIT UNDER THIS SECTION SHALL BE MADE IN  
32 THE MANNER THAT THE COMPTROLLER REQUIRES BY REGULATION.

33 (D) THE COMPTROLLER BY REGULATION SHALL PROVIDE FOR REFUNDS IN  
34 LIEU OF THE CREDIT ALLOWED UNDER THIS SECTION FOR PERSONS WHOSE  
35 ANNUAL SALES AND USE TAX PAYMENTS TO THE COMPTROLLER ARE INSUFFICIENT  
36 TO USE THE FULL AMOUNT OF THE CREDIT WITHIN 1 YEAR.

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

3

1 **Article - Tax - General**

2 11-101.

3 (d) (1) "Production activity" means:

4 (i) except for processing food or a beverage by a retail food vendor,  
5 assembling, manufacturing, processing, or refining tangible personal property for resale;

6 (ii) generating electricity;

7 (iii) laundering, maintaining, or preparing textile products for rental;

8 (iv) producing or repairing production machinery or equipment; [or]

9 (v) establishing or maintaining clean rooms or clean zones as required  
10 by applicable provisions of the federal Food, Drug, and Cosmetic Act, the Public Health  
11 Service Act, and the Virus-Serum-Toxin Act, and the regulations adopted thereunder,  
12 pertaining to the manufacture of drugs, medical devices, or biologics;

13 (VI) PROVIDING FOR THE SAFETY OF EMPLOYEES; OR

14 (VII) PROVIDING FOR QUALITY CONTROL.

15 (2) "Production activity" does not include:

16 (i) servicing or repairing tangible personal property, except for  
17 servicing or repairing production machinery or equipment;

18 (ii) maintaining tangible personal property, except textile products for  
19 rental AND PRODUCTION MACHINERY AND EQUIPMENT; [or]

20 (iii) providing for the comfort or health of employees; OR

21 (IV) STORING THE FINISHED PRODUCT.

22 (f) (3) "Retail sale" does not include:

23 (ii) a sale of tangible personal property if the buyer intends to:

24 1. resell the tangible personal property in the form that the  
25 buyer receives or is to receive the property;

26 2. use or incorporate the tangible personal property in a  
27 production activity as a material or part of other tangible personal property to be  
28 produced for sale; OR

29 [3. consume the tangible personal property directly and  
30 predominantly in a production activity by destroying, using up, or wearing out the  
31 property, other than through obsolescence, to the extent that the property cannot be  
32 rendered fit for further use in a production activity, if the consumption occurs within 1  
33 year after the property is first used in a production activity; or]

34 [4.] 3. transfer the tangible personal property as a part of a  
35 taxable service transaction; or

4

1           (l) (3) "Use" does not include:

2                           (ii) an exercise of a right or power over tangible personal property  
3 acquired by a sale for use if the buyer intends to:

4                           1. resell the tangible personal property in the form that the  
5 buyer receives or is to receive the property;

6                           2. use or incorporate the tangible personal property in a  
7 production activity as a material or part of other tangible personal property to be  
8 produced for sale; OR

9                           [3. consume the tangible personal property directly and  
10 predominantly in a production activity by destroying, using up, or wearing out the  
11 property, other than through obsolescence, to the extent that the property cannot be  
12 rendered fit for further use in a production activity, if the consumption occurs within 1  
13 year after the property is first used in a production activity; or]

14                           [4.] 3. transfer the tangible personal property as part of a  
15 taxable service transaction; or

16 11-210.

17           (b) The sales and use tax does not apply to a sale of:

18                           (1) ~~machinery or equipment, a replacement part of machinery or~~  
19 ~~equipment, or a service for the assembly or fabrication of machinery or equipment or~~  
20 ~~replacement part that:~~

21                           ~~{(i) is capitalized to claim depreciation, using acceptable and~~  
22 ~~consistent accounting standards;}~~

23                           ~~{(ii)} (I) is not used in administration, management, sales, or any other~~  
24 ~~nonoperational activity;~~

25                           ~~{(iii)} (II) at any stage of operation from the handling of raw material or~~  
26 ~~components on the production activity site to the time the product is ready for delivery or~~  
27 ~~storage, is used in a production activity; and~~

28                           ~~{(iv)} (III) except for a foundation to support other machinery or~~  
29 ~~equipment or for an item required to conform to an air or water pollution law and~~  
30 ~~normally considered part of real property, is not installed so that it becomes real property~~  
31 TANGIBLE PERSONAL PROPERTY USED DIRECTLY AND PREDOMINANTLY IN A  
32 PRODUCTION ACTIVITY AT ANY STAGE OF OPERATION ON THE PRODUCTION  
33 ACTIVITY SITE FROM THE HANDLING OF RAW MATERIAL OR COMPONENTS TO THE  
34 MOVEMENT OF THE FINISHED PRODUCT; or

35           SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall  
36 take effect July 1, 1997. It shall remain effective for a period of 2 years and, at the end of  
37 June 30, 1999, with no further action required by the General Assembly, Section 1 of this  
38 Act shall be abrogated and of no further force and effect.

39           SECTION 2- 4. AND BE IT FURTHER ENACTED, That Section 2 of this Act  
40 shall take effect July 1, 1996 1999.

