

CF SB 342

By: Delegates Klausmeier, Bonsack, Fry, Redmer, DeCarlo, Ports, M. Burns, and Preis

Introduced and read first time: February 6, 1997

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Sales and Use Tax - Property Used in a Production Activity**

3 FOR the purpose of providing a credit against the sales and use tax for certain sales and
4 use tax paid on certain tangible personal property; altering certain definitions under
5 the sales and use tax; altering an exemption under the sales and use tax for certain
6 property used in a production activity; providing for the effective dates of this Act;
7 providing for the termination of part of this Act; and generally relating to the sales
8 and use taxation of certain property used in a production activity.

9 BY adding to

10 Article - Tax - General
11 Section 11-107
12 Annotated Code of Maryland
13 (1988 Volume and 1996 Supplement)

14 BY repealing and reenacting, with amendments,

15 Article - Tax - General
16 Section 11-101(d), (f)(3)(ii), and (l)(3)(ii) and 11-210(b)(1)
17 Annotated Code of Maryland
18 (1988 Volume and 1996 Supplement)

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

21 **Article - Tax - General**

22 11-107.

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

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

28 (2) TANGIBLE PERSONAL PROPERTY THAT WOULD BE PROPERTY
29 DESCRIBED UNDER § 11-101(F)(3)(II)3 AND (L)(3)(II)3 OF THIS SUBTITLE BUT FOR THE

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1 FACT THAT IT IS NOT CONSUMED WITHIN 1 YEAR AFTER THE PROPERTY IS FIRST
2 USED IN A PRODUCTION ACTIVITY;

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

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

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

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

10 (B) A PERSON IS ALLOWED A CREDIT AGAINST THE SALES AND USE TAX
11 THAT THE PERSON IS REQUIRED TO PAY TO THE COMPTROLLER IN AN AMOUNT
12 EQUAL TO:

13 (1) ONE-THIRD OF THE SALES AND USE TAX THAT THE PERSON PAYS
14 ON OR AFTER JULY 1, 1998 BUT BEFORE JULY 1, 1999 ON THE PURCHASE OF TANGIBLE
15 PERSONAL PROPERTY USED IN A MANUFACTURING PROCESS; AND

16 (2) TWO-THIRDS OF THE SALES AND USE TAX THAT THE PERSON PAYS
17 ON OR AFTER JULY 1, 1999 ON THE PURCHASE OF TANGIBLE PERSONAL PROPERTY
18 USED IN A MANUFACTURING PROCESS.

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

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

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

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

32 **Article - Tax - General**

33 11-101.

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

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

37 (ii) generating electricity;

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

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

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

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

7 (VII) PROVIDING FOR QUALITY CONTROL.

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

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

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

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

14 (IV) STORING THE FINISHED PRODUCT.

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

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

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

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

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

27 [4.] 3. transfer the tangible personal property as a part of a
28 taxable service transaction; or

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

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

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

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

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

6 [4.] 3. transfer the tangible personal property as part of a
7 taxable service transaction; or

8 11-210.

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

10 (1) [machinery or equipment, a replacement part of machinery or
11 equipment, or a service for the assembly or fabrication of machinery or equipment or
12 replacement part that:

13 (i) is capitalized to claim depreciation, using acceptable and
14 consistent accounting standards;

15 (ii) at any stage of operation from the handling of raw material or
16 components on the production activity site to the time the product is ready for delivery or
17 storage, is used predominantly in a production activity; and

18 (iii) except for a foundation to support other machinery or equipment
19 or for an item required to conform to an air or water pollution law and normally
20 considered part of real property, is not installed so that it becomes real property]
21 TANGIBLE PERSONAL PROPERTY USED DIRECTLY AND PREDOMINANTLY IN A
22 PRODUCTION ACTIVITY AT ANY STAGE OF OPERATION ON THE PRODUCTION
23 ACTIVITY SITE FROM THE HANDLING OF RAW MATERIAL OR COMPONENTS TO THE
24 MOVEMENT OF THE FINISHED PRODUCT; or

25 SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall
26 take effect July 1, 1998. It shall remain effective for a period of 2 years and, at the end of
27 June 30, 2000, with no further action required by the General Assembly, Section 1 of this
28 Act shall be abrogated and of no further force and effect.

29 SECTION 4. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall
30 take effect July 1, 2000.