

HOUSE BILL 810

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Q4
HB 416/96 - W&M

1998 Regular Session
8lr2449

By: **Delegate Hixson**
Introduced and read first time: February 12, 1998
Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Sales and Use Tax - Exemptions**

3 FOR the purpose of repealing certain exemptions under the sales and use tax;
4 altering the definition of "taxable price" under the sales and use tax; repealing a
5 special sales and use tax rate for the first retail sale of a mobile home; altering
6 certain exemptions under the sales and use tax; and generally relating to the
7 repeal of certain exemptions under the sales and use tax.

8 BY repealing and reenacting, with amendments,
9 Article - Tax - General
10 Section 11-101(j)(3), 11-204, 11-208, 11-209, 11-215, and 11-216
11 Annotated Code of Maryland
12 (1997 Replacement Volume)

13 BY repealing
14 Article - Tax - General
15 Section 11-104(d), 11-202, 11-210, 11-212, 11-213, 11-214.1, 11-217, and
16 11-222
17 Annotated Code of Maryland
18 (1997 Replacement Volume)

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 11-101.

23 (j) (3) "Taxable price" does not include[:

24 (i)] a charge that is made in connection with a sale and is stated as
25 a separate item of the consideration for:

1 [1.] (I) a delivery, freight, or other transportation service for
 2 delivery directly to the buyer by the vendor or by another person acting for the
 3 vendor;

4 [2.] (II) a finance charge, interest, or similar charge for
 5 credit extended to the buyer;

6 [3.] (III) a labor or service for application or installation;

7 [4.] (IV) a mandatory gratuity or service charge in the nature
 8 of a tip for serving food or beverage to a group of 10 or fewer individuals for
 9 consumption on the premises of the vendor;

10 [5.] (V) a professional service;

11 [6.] (VI) a tax:

12 [A.] 1. imposed by a county on the sale of coal, electricity,
 13 oil, nuclear fuel assemblies, steam, or artificial or natural gas;

14 [B.] 2. imposed under § 3-302(a) of the Natural Resources
 15 Article, as a surcharge on the generation of electricity, and added to an electric bill; or

16 [C.] 3. imposed under §§ 6-201 through 6-203 of the Tax -
 17 Property Article, on tangible personal property subject to a lease that is for an initial
 18 period that exceeds 1 year and is noncancellable except for cause;

19 [7.] (VII) any service for the operation of equipment used for
 20 the production of audio, video, or film recordings; or

21 [8.] (VIII) reimbursement of incidental expenses paid to a third
 22 party and incurred in connection with providing a taxable detective service[; or

23 (ii) the value of a used component or part (core value) received from
 24 a purchaser of the following remanufactured truck parts:

25 1. an air brake system;

26 2. an engine;

27 3. a rear axle carrier; or

28 4. a transmission].

29 11-104.

30 [(d) The sales and use tax rate for the first retail sale of a mobile home, as
 31 defined in Article 83B, § 6-202(g) of the Code, is the rate imposed under subsection (a)
 32 of this section applied to 60% of the taxable price.]

1 [11-202.

2 The sales and use tax does not apply to a sale in the form of a demurrage charge
3 made in the nature of a penalty for failure to return a gas cylinder within a
4 designated period.]

5 11-204.

6 (a) The sales and use tax does not apply to:

7 [(1) a sale to a cemetery company, as described in § 501(c)(13) of the
8 Internal Revenue Code in effect on July 1, 1987;

9 (2) a sale to a credit union organized under the laws of the State or of the
10 United States;]

11 [(3)] (1) a sale to a nonprofit organization made to carry on its work, if
12 the organization:

13 (i) 1. is located in the State; or

14 2. is located in an adjacent jurisdiction and provides its
15 services within the State on a routine and regular basis;

16 (ii) is a charitable, educational, or religious organization;

17 (iii) is not the United States; and

18 (iv) except for the American National Red Cross, is not a unit or
19 instrumentality of the United States;

20 [(4)] (2) a sale, not exceeding \$500, to a nonprofit incorporated senior
21 citizens' organization made to carry on its work, if the organization:

22 (i) is located in the State; and

23 (ii) receives funding from the State or a political subdivision of the
24 State;

25 [(5)] (3) a sale to a volunteer fire company or department or volunteer
26 ambulance company or rescue squad located in the State made to carry on the work of
27 the company, department, or squad;

28 [(6)] (4) a sale of tangible personal property to a nonprofit
29 parent-teacher association located in the State if the association makes the purchase
30 to contribute the property to a school to which a sale is exempt under item (3) of this
31 subsection or § 11-220 of this subtitle; or

32 [(7)] (5) a sale to a nonprofit organization made to carry on its work, if
33 the organization:

1 (i) is qualified as tax exempt under § 501(c)(4) of the Internal
2 Revenue Code; and

3 (ii) is engaged primarily in providing a program to render its best
4 efforts to contain, clean up, and otherwise mitigate spills of oil or other substances
5 occurring in United States coastal and tidal waters.

6 (b) The sales and use tax does not apply to a sale by:

7 (1) a bona fide church or religious organization, if the sale is made for
8 the general purposes of the church or organization;

9 (2) [a gift shop at a mental hospital that the Department of Health and
10 Mental Hygiene operates;

11 (3)] a hospital thrift shop that:

12 (i) is operated by all volunteer staff;

13 (ii) sells only donated articles;

14 (iii) contributes the profits from sales to the hospital with which the
15 shop is associated; and

16 (iv) is not operated in conjunction with a gift shop or another retail
17 establishment;

18 [(4)] (3) a vending facility operated under the Maryland Vending
19 Program for the Blind if:

20 (i) the facility is located on property held or acquired by or for the
21 use of the United States for any military or naval purpose; and

22 (ii) a post exchange or other tax exempt concession is located and
23 operated on the same property; or

24 [(5)] (4) an elementary or secondary school in the State or a nonprofit
25 parent-teacher organization or other nonprofit organization within an elementary or
26 secondary school in the State for the sale of magazine subscriptions in a fund-raising
27 campaign, if the net proceeds are used solely for the educational benefit of the school
28 or its students, including a sale resulting from an agreement or contract with an
29 organization to participate in a fund-raising campaign for a percentage of the gross
30 receipts under which students act as agents or salespersons for the organization by
31 selling or taking orders for the sale.

32 (c) To qualify as an organization to which a sale is exempt under subsection
33 [(a)(3) or (5)] (A)(1) OR (3) of this section, the organization shall file an application for
34 an exemption certificate with the Comptroller.

35 (d) The Comptroller may treat the possession of an effective determination
36 letter of status under § 501(c)(3) [or (13)] of the Internal Revenue Code from the

1 Internal Revenue Service as evidence that an organization qualifies under subsection
2 [(a)(3) or (5) or (1)] (A)(1) OR (3) of this section[, respectively].

3 11-208.

4 (a) The sales and use tax does not apply to:

5 (1) a sale of equipment or machinery that is used only to load, unload,
6 and handle cargo of ocean going vessels within an international marine terminal; or

7 (2) a rental of equipment or machinery that:

8 (i) is owned by the Maryland Port Administration; and

9 (ii) is used only to load and unload ocean going vessels.

10 [(b) The sales and use tax does not apply to a sale of film or video tape for use
11 only in television broadcasting by a television station that the Federal
12 Communications Commission licenses specifically to broadcast to a city or town
13 outside the State.]

14 [(c)] (B) The sales and use tax does not apply[:

15 (1) to a sale of an aircraft, motor vehicle, railroad rolling stock, or vessel
16 that is used principally to cross State lines in interstate or foreign commerce;

17 (2) to a sale of a replacement part or other tangible personal property to
18 be used physically in, on, or by a conveyance described in item (1) of this subsection;
19 or

20 (3) except for a rental,] to a sale, OTHER THAN A RENTAL, of a motor
21 vehicle, other than a house or office trailer, that will be titled or registered in another
22 state.

23 11-209.

24 [(a)] The sales and use tax does not apply to a casual and isolated sale by a
25 person who regularly does not sell tangible personal property or a taxable service if:

26 (1) the sale price is less than \$1,000; and

27 (2) the sale is not made through an auctioneer or a dealer.

28 [(b) The sales and use tax does not apply to a distribution of tangible personal
29 property by:

30 (1) a corporation or joint-stock company to its stockholders as a
31 liquidating distribution;

32 (2) a partnership to a partner; or

1 (3) a limited liability company to a member.

2 (c) (1) The sales and use tax does not apply to a transfer of tangible personal
3 property:

4 (i) under a reorganization within the meaning of § 368(a) of the
5 Internal Revenue Code;

6 (ii) on organization of a corporation or joint-stock company, to the
7 corporation or company principally in consideration for the issuance of its stock;

8 (iii) to a partnership only as a contribution to its capital or in
9 consideration for a partnership interest in the partnership; or

10 (iv) to a limited liability company only as a capital contribution or in
11 consideration for an interest in the limited liability company.

12 (2) For a transfer that would qualify as a casual and isolated sale under
13 subsection (a) of this section if the sale price limitation were disregarded, the amount
14 of liability transferred to or assumed by a corporation, joint-stock company,
15 partnership, or limited liability company shall be excluded from the consideration
16 transferred by the corporation, joint-stock company, partnership, or limited liability
17 company in exchange for the tangible personal property to determine whether the
18 transfer is made:

19 (i) principally in consideration for the issuance of stock of a
20 corporation or joint-stock company;

21 (ii) only as a contribution to the capital of a partnership or in
22 consideration for a partnership interest; or

23 (iii) only as a capital contribution to a limited liability company or
24 in consideration for an interest in a limited liability company.]

25 [11-210.

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

27 (1) machinery or equipment used to produce bituminous concrete; or

28 (2) electricity, fuel, and other utilities used to operate that machinery or
29 equipment.

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

31 (1) machinery or equipment, a replacement part of machinery or
32 equipment, or a service for the assembly or fabrication of machinery or equipment or
33 replacement part that:

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

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

4 (iii) except for a foundation to support other machinery or
5 equipment or for an item required to conform to an air or water pollution law and
6 normally considered part of real property, is not installed so that it becomes real
7 property; or

8 (2) a melting, smelting, heating, or annealing coke oven, aluminum
9 furnace, anode bake oven, electrolytic pot, cathode, refractory, or other material used
10 in relining and rebuilding a furnace or oven.

11 (c) The sales and use tax does not apply to a sale of equipment that is used by
12 a retail food vendor to manufacture or process bread or bakery goods for resale if:

13 (1) the taxable price of each piece of equipment is at least \$2,000; and

14 (2) the retail food vendor operates a substantial grocery or market
15 business, as defined in § 11-206(a) of this subtitle, at the same location where the
16 food is sold.]

17 [11-212.

18 The sales and use tax does not apply to a sale of:

19 (1) fabrication, processing, or service, by a sawmill, of wood products for
20 mine use in which the miner retains title; or

21 (2) diesel fuel for use in reclamation of land that has been mined for coal
22 by strip or open-pit mining.]

23 [11-213.

24 Except for the 1st retail sale of the mobile home, the sales and use tax does not
25 apply to a sale of a mobile home, as defined in Article 83B, § 6-202(g) of the Code.]

26 [11-214.1.

27 (a) In this section:

28 (1) "precious metal bullion or coins" means:

29 (i) any precious metal that has gone through a refining process
30 and is in a state or condition such that its value depends on its precious metal content
31 and not on its form; or

32 (ii) except as provided in paragraph (2) of this subsection,
33 monetized bullion, coins, or other forms of money that:

34 1. are manufactured from precious metals; and

1 11-216.

2 (a) The sales and use tax does not apply to:

3 [(1) a sale for use of tangible personal property that:

4 (i) is bought outside this State;

5 (ii) is intended solely for use in another state; and

6 (iii) is stored in this State pending shipment to another state;

7 (2)] (1) a sale of tangible personal property to a person obligated under
8 a contract to incorporate that property into real property located in another state
9 where the purchase or use of that property would not be subject to a sales tax, use tax,
10 or similar tax; or

11 [(3)] (2) Except for that portion of the purchase price allocable to
12 intended viewing in this State, a sale of a series of images stored on video tape or in
13 other optical or digital forms or electronic signals generated from these images to a
14 cable or other nonbroadcast television network, if the images are intended for viewing
15 by television viewers located outside the State.

16 (b) The sales and use tax shall be paid[:

17 (1) on a sale under subsection (a)(1) of this section, when the tangible
18 personal property is imported or stored in the State; and

19 (2)] on a sale under subsection [(a)(2)] (A)(1) of this section[,] when the
20 sale is made.

21 (c) A person who pays the sales and use tax under subsection (b) of this
22 section may obtain the exemption by:

23 (1) filing a claim for refund with the Comptroller when the property is
24 removed from the State; and

25 (2) providing the Comptroller with the evidence that the Comptroller
26 requires by regulation, including:

27 (i) evidence of use or removal of the property from the State; and

28 (ii) satisfactory proof of entitlement to exemption in another state.

29 [11-217.

30 (a) (1) In this section, "research and development" means:

31 (i) basic and applied research in the sciences and engineering; and

1 (ii) the design, development, and governmentally required
2 pre-market testing of prototypes, products, and processes.

3 (2) "Research and development" does not include:

4 (i) market research;

5 (ii) research in the social sciences or psychology and other
6 nontechnical activities;

7 (iii) routine product testing;

8 (iv) sales services; or

9 (v) technical and nontechnical services.

10 (b) The sales and use tax does not apply to a sale of tangible personal property
11 for use or consumption in research and development.]

12 [11-222.

13 The sales and use tax does not apply to a sale of deliverable end item testing
14 equipment that is used to perform a contract for the United States Department of
15 Defense and that, under the terms of the contract, is to be transferred to the federal
16 government, if the contract is awarded as a result of a bid submitted after June 1,
17 1986.]

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
19 effect July 1, 1998.