

HOUSE BILL 908

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Q4

1999 Regular Session
9r2238

By: **Delegates Klausmeier, C. Davis, Redmer, Mitchell, O'Donnell, Klima,
Ports, DeCarlo, Finifter, Hammen, Kach, Morhaim, Dewberry, Barve,
and Boutin**

Introduced and read first time: February 12, 1999

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 altering the effective date of a certain change to certain
4 definitions under the sales and use tax and a certain change to the exemption
5 under the sales and use tax for certain sales of property used in a production
6 activity; repealing a certain credit against the sales and use tax for certain sales
7 and use tax paid on certain property; and generally relating to the sales and use
8 taxation of certain sales of property used in certain production activities.

9 BY repealing and reenacting, without amendments,
10 Article - Tax - General
11 Section 11-101(d), (f)(3), and (l)(3) and 11-210(b)
12 Annotated Code of Maryland
13 (1997 Replacement Volume and 1998 Supplement)
14 (As enacted by Chapter 4 of the Acts of the General Assembly of 1997)

15 BY repealing
16 Article - Tax - General
17 Section 11-107
18 Annotated Code of Maryland
19 (1997 Replacement Volume and 1998 Supplement)

20 BY repealing and reenacting, with amendments,
21 Chapter 4 of the Acts of the General Assembly of 1997
22 Section 6

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

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
6 resale;

7 (ii) generating electricity;

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

10 (iv) producing or repairing production machinery or equipment;

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

16 (vi) providing for the safety of employees; or

17 (vii) providing for quality control.

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

19 (i) servicing or repairing tangible personal property, except for
20 servicing or repairing production machinery or equipment;21 (ii) maintaining tangible personal property, except textile products
22 for rental and production machinery and equipment;

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

24 (iv) storing the finished product.

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

26 (i) a transfer of title to tangible personal property after its use as
27 facilities, tools, tooling, machinery, or equipment, including dies, molds, and patterns,
28 if:29 1. at the time of purchase, the buyer is obligated, under the
30 terms of a written contract, to make the transfer; and31 2. the transfer is made for the same or greater consideration
32 to the person for whom the buyer manufactures goods or performs work;

- 1 (ii) a sale of tangible personal property if the buyer intends to:
- 2 1. resell the tangible personal property in the form that the
3 buyer receives or is to receive the property;
- 4 2. use or incorporate the tangible personal property in a
5 production activity as a material or part of other tangible personal property to be
6 produced for sale; or
- 7 3. transfer the tangible personal property as a part of a
8 taxable service transaction; or

9 (iii) a sale of a taxable service if the buyer intends to resell the
10 taxable service in the form that the buyer receives or is to receive the service.

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

- 12 (i) a transfer of title to tangible personal property after its use as
13 facilities, tools, tooling, machinery, or equipment, including dies, molds, and patterns,
14 if:
- 15 1. at the time of purchase, the buyer is obligated, under the
16 terms of a written contract, to make the transfer; and
- 17 2. the transfer is made for the same or greater consideration
18 to the person for whom the buyer manufactures goods or performs work;

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

- 21 1. resell the tangible personal property in the form that the
22 buyer receives or is to receive the property;
- 23 2. use or incorporate the tangible personal property in a
24 production activity as a material or part of other tangible personal property to be
25 produced for sale; or
- 26 3. transfer the tangible personal property as part of a taxable
27 service transaction; or

28 (iii) an exercise of a right or power over a taxable service acquired
29 by a sale for use if the buyer intends to resell the taxable service in the form that the
30 buyer receives or is to receive the service.

31 [11-107.

32 (a) In this section, "tangible personal property used in a manufacturing
33 process" means:

- 34 (1) noncapitalized machinery or equipment that would qualify for the
35 exemption under § 11-210(b)(1) of this title if it were capitalized;

1 (2) tangible personal property that would be property described under §
2 11-101(f)(3)(ii)3 and (l)(3)(ii)3 of this subtitle but for the fact that it is not consumed
3 within 1 year after the property is first used in a production activity;

4 (3) equipment that is used physically to move a finished product on the
5 production activity site;

6 (4) machinery and equipment that is used to maintain machinery and
7 equipment that is exempt under § 11-210(b)(1) of this title;

8 (5) safety equipment used on the production activity site; or

9 (6) machinery and equipment used in quality control on a production
10 activity site.

11 (b) A person is allowed a credit against the sales and use tax that the person
12 is required to pay to the Comptroller in an amount equal to:

13 (1) one-third of the sales and use tax that the person pays on or after
14 July 1, 1998 but before July 1, 1999 on the purchase of tangible personal property
15 used in a manufacturing process; and

16 (2) two-thirds of the sales and use tax that the person pays on or after
17 July 1, 1999 on the purchase of tangible personal property used in a manufacturing
18 process.

19 (c) (1) Except as provided in subsection (d) of this section, a person shall
20 claim the credit under subsection (b) of this section on the person's sales and use tax
21 return within 4 years after the due date of the sales and use tax return for the period
22 during which the sales and use tax on the purchase was paid.

23 (2) A claim for a credit under this section shall be made in the manner
24 that the Comptroller requires by regulation.

25 (d) The Comptroller by regulation shall provide for refunds in lieu of the credit
26 allowed under this section for persons whose annual sales and use tax payments to
27 the Comptroller are insufficient to use the full amount of the credit within 1 year.]

28 11-210.

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

30 (1) tangible personal property used directly and predominantly in a
31 production activity at any stage of operation on the production activity site from the
32 handling of raw material or components to the movement of the finished product; or

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

1

Chapter 4 of the Acts of 1997

2 SECTION 6. AND BE IT FURTHER ENACTED, That Section 3 of this Act shall
3 take effect July 1, [2000] 1999.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 July 1, 1999.