HOUSE BILL 187

Q4   8lr1084

By: **Delegates Bates, Aumann, Beidle, Beitzel, Elliott, Frank, George, Haddaway, Impallaria, Kelly, King, Kipke, Krebs, McConkey, McDonough, Miller, O'Donnell, Shank, Stocksdale, and Walkup**
Introduced and read first time: January 21, 2008
Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2   **Sales and Use Tax – Computer Services**

3 FOR the purpose of altering the definition of "taxable service" under the sales and use
4   tax to repeal the tax on certain computer services; providing certain sales and
5   use tax exemptions relating to certain computer services and certain computer
6   software maintenance contracts; repealing a certain termination date; repealing
7   a certain definition; and generally relating to the repeal of the sales and use tax
8   on certain computer services.

9 BY repealing
10   Article – Tax – General
11   Section 11–101(c–1)
12   Annotated Code of Maryland
13   (2004 Replacement Volume and 2007 Supplement)
14   (As enacted by Chapter 3 of the Acts of the General Assembly of the 2007
15   Special Session)

16 BY repealing and reenacting, with amendments,
17   Article – Tax – General
18   Section 11–101(m) and 11–219
19   Annotated Code of Maryland
20   (2004 Replacement Volume and 2007 Supplement)
21   (As enacted by Chapter 3 of the Acts of the General Assembly of the 2007
22   Special Session)

23 BY repealing and reenacting, with amendments,
24   Chapter 3 of the Acts of the General Assembly of the 2007 Special Session
25   Section 13

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 11–101.

5   **[**(c–1) (1)   "Computer service" includes:

6   (i)   computer facilities management and operation;

7   (ii)   custom computer programming;

8   (iii)   computer system planning and design that integrate
9 computer hardware, software, and communication technologies;

10   (iv)   computer disaster recovery;

11   (v)   data processing, storage, and recovery;

12   (vi)   hardware or software installation, maintenance, and repair.

13   (2)   "Computer service" does not include:

14   (i)   Internet access, as defined in the federal Internet Tax
15 Freedom Act;

16   (ii)   typing or data entry on word processing equipment;

17   (iii)   computer training;

18   (iv)   the installation, maintenance, or repair of tangible personal
19 property other than computer hardware or software that includes computer hardware
20 or software as a component part; or

21   (v)   a service otherwise described in paragraph (1) of this
22 subsection that is provided as part of or in connection with:

23   1.   electronic fund transfers, financial transactions,
24 automated teller machine transactions, or other banking or trust services;

25   2.   business   management,   account   management,
26 personnel, payroll, employee benefit, or other administrative services;

27   3.   educational,   legal,   accounting,   architectural,
28 actuarial, medical, medical diagnostic, or other professional services; or

1   4.   telecommunications services.**]**

2   (m)   "Taxable service" means:

3   (1)   fabrication, printing, or production of tangible personal property by
4 special order;

5   (2)   commercial cleaning or laundering of textiles for a buyer who is
6 engaged in a business that requires the recurring service of commercial cleaning or
7 laundering of the textiles;

8   (3)   cleaning of a commercial or industrial building;

9   (4)   cellular telephone or other mobile telecommunications service;

10   (5)   "900", "976", "915", and other "900"–type telecommunications
11 service;

12   (6)   custom calling service provided in connection with basic telephone
13 service;

14   (7)   a telephone answering service;

15   (8)   pay per view television service;

16   (9)   credit reporting;

17   (10)   a security service, including:

18   (i)   a detective, guard, or armored car service; and

19   (ii)   a security systems service;

20   (11)   a transportation service for transmission, distribution, or delivery
21 of electricity or natural gas, if the sale or use of the electricity or natural gas is subject
22 to the sales and use tax; **OR**

23   (12)   a prepaid telephone calling arrangement**[**; or

24   (13)   a computer service**]**.

25 11–219.

26   (a)   The sales and use tax does not apply to a personal, professional, or
27 insurance service that:

28   (1)   is not a taxable service; and

1   (2)   involves a sale as an inconsequential element for which no
2   separate charge is made.

3   (b)   The sales and use tax does not apply to a sale of [computer services for
4   use by an individual participating in a home school program as an alternative to
5   attendance at public or private school for elementary or secondary education]
6   **CUSTOM COMPUTER SOFTWARE SERVICES RELATING TO PROCEDURES AND**
7   **PROGRAMS THAT:**

8   **(1)   OTHERWISE ARE TAXABLE UNDER THIS TITLE;**

9   **(2)   ARE TO BE USED BY A SPECIFIC PERSON;**

10   **(3)   (I)   ARE CREATED FOR THAT PERSON; OR**

11   **(II)   CONTAIN STANDARD OR PROPRIETARY ROUTINES THAT**
12   **INCORPORATE SIGNIFICANT CREATIVE INPUT TO CUSTOMIZE THE PROCEDURES**
13   **AND PROGRAMS FOR THAT PERSON; AND**

14   **(4)   DO   NOT   CONSTITUTE   A   PROGRAM,   PROCEDURE,   OR**
15   **DOCUMENTATION THAT IS MASS PRODUCED AND SOLD TO:**

16   **(I)   THE GENERAL PUBLIC; OR**

17   **(II)   PERSONS ASSOCIATED IN A TRADE, PROFESSION, OR**
18   **INDUSTRY**.

19   **(C)   THE SALES AND USE TAX DOES NOT APPLY TO THE SALE OF AN**
20   **OPTIONAL COMPUTER SOFTWARE MAINTENANCE CONTRACT IF THE BUYER**
21   **DOES NOT HAVE A RIGHT, AS PART OF THE CONTRACT, TO RECEIVE AT NO**
22   **ADDITIONAL COST SOFTWARE PRODUCTS THAT ARE SEPARATELY PRICED AND**
23   **MARKETED BY THE VENDOR.**

24   [(c)] **(D)**   The sales and use tax does not apply to the use of a taxable service
25   obtained by using a prepaid telephone calling arrangement.

26   **Chapter 3 of the Acts of the 2007 Special Session**

27   SECTION 13. AND BE IT FURTHER ENACTED, That Section 3 of this Act
28   shall take effect July 1, 2008. [Section 3 shall remain effective for a period of 5 years
29   and, at the end of June 30, 2013, with no further action required by the General
30   Assembly, Section 3 of this Act shall be abrogated and of no further force and effect.]

1   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2   July 1, 2008.