

SENATE BILL 41

Q4

8lr1090

By: **Senators Harris, Mooney, and Simonaire**

Introduced and read first time: January 10, 2008

Assigned to: Budget and Taxation

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

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **Article – Tax – General**

2 11–101.

3 [(c–1) (1) “Computer service” includes:

4 (i) computer facilities management and operation;

5 (ii) custom computer programming;

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

8 (iv) computer disaster recovery;

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

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

11 (2) “Computer service” does not include:

12 (i) Internet access, as defined in the federal Internet Tax
13 Freedom Act;

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

15 (iii) computer training;

16 (iv) the installation, maintenance, or repair of tangible personal
17 property other than computer hardware or software that includes computer hardware
18 or software as a component part; or19 (v) a service otherwise described in paragraph (1) of this
20 subsection that is provided as part of or in connection with:21 1. electronic fund transfers, financial transactions,
22 automated teller machine transactions, or other banking or trust services;23 2. business management, account management,
24 personnel, payroll, employee benefit, or other administrative services;25 3. educational, legal, accounting, architectural,
26 actuarial, medical, medical diagnostic, or other professional services; or

27 4. telecommunications services.]

28 (m) “Taxable service” means:

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

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

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

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

8 (5) "900", "976", "915", and other "900"-type telecommunications
9 service;

10 (6) custom calling service provided in connection with basic telephone
11 service;

12 (7) a telephone answering service;

13 (8) pay per view television service;

14 (9) credit reporting;

15 (10) a security service, including:

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

17 (ii) a security systems service;

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

21 (12) a prepaid telephone calling arrangement [; or

22 (13) a computer service].

23 11-219.

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

26 (1) is not a taxable service; and

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

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

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

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

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

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

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

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

15 (II) **PERSONS ASSOCIATED IN A TRADE, PROFESSION, OR**
 16 **INDUSTRY.**

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

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

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

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

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