

SENATE BILL 46

Q4

8lr1232

By: ~~Senator Forehand~~ **Senators Forehand and Jones**

Introduced and read first time: January 10, 2008

Assigned to: Budget and Taxation

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 30, 2008

CHAPTER _____

1 AN ACT concerning

2 ~~Sales and Use Tax – Computer Services~~
3 Budget Financing Act

4 FOR the purpose of altering the distribution of the sales and use tax revenue; altering
5 the State income tax rate for certain income of individuals for certain taxable
6 years; altering the definition of “taxable service” under the sales and use tax to
7 repeal the tax on certain computer services; providing certain sales and use tax
8 exemptions relating to certain computer services and certain computer software
9 maintenance contracts; repealing a certain termination date; repealing a certain
10 definition; making a technical correction; requiring the Comptroller to waive
11 certain interest and penalties for a certain taxable year to a certain extent;
12 stating the intent of the General Assembly that the Governor present to the
13 Board of Public Works a certain schedule for reductions to certain expenditures
14 from the State budget for a certain fiscal year; providing for the application of
15 certain provisions of this Act; and generally relating to ~~the repeal of the sales~~
16 and ~~use tax on certain computer services~~ Maryland State taxes and the
17 financing of State government.

18 BY repealing and reenacting, with amendments,

19 Article – Tax – General

20 Section 2-1302.2

21 Annotated Code of Maryland

22 (2004 Replacement Volume and 2007 Supplement)

23 (As enacted by Chapter 6 of the Acts of the General Assembly of the 2007

24 Special Session)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY repealing and reenacting, with amendments,
 2 Article – Tax – General
 3 Section 10–102.1(d)(1)(i), 10–105(a), 11–101(m), and 11–219
 4 Annotated Code of Maryland
 5 (2004 Replacement Volume and 2007 Supplement)
 6 (As enacted by Chapter 3 of the Acts of the General Assembly of the 2007
 7 Special Session)

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

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

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

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

27 **Article – Tax – General**

28 **2–1302.2.**

29 After making the distributions required under §§ 2–1301 through 2–1302.1 of
 30 this subtitle, the Comptroller shall pay [6.5% of the remaining sales and use tax
 31 revenue] into the Transportation Trust Fund established under § 3–216 of the
 32 Transportation Article:

33 **(1) FOR EACH FISCAL YEAR BEGINNING BEFORE JULY 1, 2013,**
 34 **5.3% OF THE REMAINING SALES AND USE TAX REVENUE; AND**

35 **(2) FOR EACH FISCAL YEAR BEGINNING ON OR AFTER JULY 1,**
 36 **2013, 6.5% OF THE REMAINING SALES AND USE TAX REVENUE.**

- 1 (iii) 4% of Maryland taxable income of \$2,001 through \$3,000;
 2 (iv) 4.75% of Maryland taxable income of \$3,001 through
 3 \$200,000;
 4 (v) 5% of Maryland taxable income of \$200,001 through
 5 \$350,000;
 6 (vi) 5.25% of Maryland taxable income of \$350,001 through
 7 \$500,000; and
 8 (vii) 5.5% of Maryland taxable income in excess of \$500,000.

9 **(3) FOR A TAXABLE YEAR BEGINNING AFTER DECEMBER 31,**
 10 **2007, BUT BEFORE JANUARY 1, 2011, THE STATE INCOME TAX FOR AN**
 11 **INDIVIDUAL, INCLUDING SPOUSES FILING A JOINT RETURN OR A SURVIVING**
 12 **SPOUSE OR HEAD OF HOUSEHOLD AS DEFINED IN § 2 OF THE INTERNAL**
 13 **REVENUE CODE, IS:**

14 **(I) FOR MARYLAND TAXABLE INCOME UP TO \$500,000, THE**
 15 **RATE SPECIFIED IN PARAGRAPH (1)(I) THROUGH (VI) OR (2)(I) THROUGH (VI)**
 16 **OF THIS SUBSECTION; AND**

17 **(II) FOR MARYLAND TAXABLE INCOME IN EXCESS OF**
 18 **\$500,000:**

19 **1. 5.5% OF MARYLAND TAXABLE INCOME OF**
 20 **\$500,001 THROUGH \$1,000,000; AND**

21 **2. 6.25% OF MARYLAND TAXABLE INCOME IN**
 22 **EXCESS OF \$1,000,000.**

23 **SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland**
 24 **read as follows:**

25 **Article – Tax – General**

26 11–101.

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

- 28 (i) computer facilities management and operation;
 29 (ii) custom computer programming;

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

3 (iv) computer disaster recovery;

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

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

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

7 (i) Internet access, as defined in the federal Internet Tax
8 Freedom Act;

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

10 (iii) computer training;

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

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

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

18 2. business management, account management,
19 personnel, payroll, employee benefit, or other administrative services;

20 3. educational, legal, accounting, architectural,
21 actuarial, medical, medical diagnostic, or other professional services; or

22 4. telecommunications services.]

23 (m) "Taxable service" means:

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

26 (2) commercial cleaning or laundering of textiles for a buyer who is
27 engaged in a business that requires the recurring service of commercial cleaning or
28 laundering of the textiles;

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

- 1 (4) cellular telephone or other mobile telecommunications service;
- 2 (5) “900”, “976”, “915”, and other “900”-type telecommunications
3 service;
- 4 (6) custom calling service provided in connection with basic telephone
5 service;
- 6 (7) a telephone answering service;
- 7 (8) pay per view television service;
- 8 (9) credit reporting;
- 9 (10) a security service, including:
- 10 (i) a detective, guard, or armored car service; and
- 11 (ii) a security systems service;
- 12 (11) a transportation service for transmission, distribution, or delivery
13 of electricity or natural gas, if the sale or use of the electricity or natural gas is subject
14 to the sales and use tax; **OR**
- 15 (12) a prepaid telephone calling arrangement[; or
- 16 (13) a computer service].

17 11–219.

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

- 20 (1) is not a taxable service; and
- 21 (2) involves a sale as an inconsequential element for which no
22 separate charge is made.

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

- 28 (1) **OTHERWISE ARE TAXABLE UNDER THIS TITLE;**
- 29 (2) **ARE TO BE USED BY A SPECIFIC PERSON;**

1 **(3) (I) ARE CREATED FOR THAT PERSON; OR**
 2 **(II) CONTAIN STANDARD OR PROPRIETARY ROUTINES THAT**
 3 **INCORPORATE SIGNIFICANT CREATIVE INPUT TO CUSTOMIZE THE PROCEDURES**
 4 **AND PROGRAMS FOR THAT PERSON; AND**

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

7 **(I) THE GENERAL PUBLIC; OR**
 8 **(II) PERSONS ASSOCIATED IN A TRADE, PROFESSION, OR**
 9 **INDUSTRY.**

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

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

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

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

22 SECTION 4. AND BE IT FURTHER ENACTED, That the Comptroller shall
 23 waive any interest or penalty imposed on an individual relating to payment of
 24 estimated income tax for calendar year 2008 to the extent that the Comptroller
 25 determines that the interest or penalty would not have been incurred but for an
 26 increase in the income tax rates for calendar year 2008 under Section 2 of this Act.

27 SECTION 5. AND BE IT FURTHER ENACTED, That it is the intent of the
 28 General Assembly that, on or before July 1, 2008, the Governor shall present to the
 29 Board of Public Works a schedule for reduction of at least \$50,000,000 in ongoing
 30 general fund expenditures from the fiscal 2009 State budget in accordance with §
 31 7-213 of the State Finance and Procurement Article.

32 SECTION 6. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall
 33 be applicable to all taxable years beginning after December 31, 2007.

1 SECTION ~~2~~ 7. AND BE IT FURTHER ENACTED, That this Act shall take
2 effect July 1, 2008.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.