

SENATE BILL 1011

Q4

8lr3510

By: **Senators Zirkin, Brinkley, DeGrange, Forehand, Kramer, and Mooney**
Constitutional Requirements Complied with for Introduction in the last 35 Days of
Session

Introduced and read first time: March 13, 2008

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

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

3 FOR the purpose of delaying the effective date of certain provisions of law imposing
4 the sales and use tax on certain computer services; altering the definition of
5 “taxable service” under the sales and use tax to repeal the tax on certain
6 computer services; providing certain sales and use tax exemptions relating to
7 certain computer services and certain computer software maintenance
8 contracts; repealing a certain termination date; repealing a certain definition;
9 making certain provisions of this Act subject to a certain contingency; providing
10 for a delayed effective date for certain provisions of this Act; and generally
11 relating to the repeal of the sales and use tax on certain computer services.

12 BY repealing and reenacting, with amendments,
13 Chapter 3 of the Acts of the General Assembly of the 2007 Special Session
14 Section 13

15 BY repealing
16 Article – Tax – General
17 Section 11–101(c–1)
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 Article – Tax – General
24 Section 11–101(m) and 11–219
25 Annotated Code of Maryland
26 (2004 Replacement Volume and 2007 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (As enacted by Chapter 3 of the Acts of the General Assembly of the 2007
2 Special Session)

3 BY repealing and reenacting, with amendments,
4 Chapter 3 of the Acts of the General Assembly of the 2007 Special Session
5 Section 13
6 (As enacted by Section 1 of this Act)

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

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

10 SECTION 13. AND BE IT FURTHER ENACTED, That Section 3 of this Act
11 shall take effect July 1, [2008] **2009**. Section 3 shall remain effective for a period of
12 [5] 4 years and, at the end of June 30, 2013, with no further action required by the
13 General Assembly, Section 3 of this Act shall be abrogated and of no further force and
14 effect.

15 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
16 read as follows:

17 **Article – Tax – General**

18 11–101.

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

20 (i) computer facilities management and operation;

21 (ii) custom computer programming;

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

24 (iv) computer disaster recovery;

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

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

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

28 (i) Internet access, as defined in the federal Internet Tax
29 Freedom Act;

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

- 1 (iii) computer training;
- 2 (iv) the installation, maintenance, or repair of tangible personal
3 property other than computer hardware or software that includes computer hardware
4 or software as a component part; or
- 5 (v) a service otherwise described in paragraph (1) of this
6 subsection that is provided as part of or in connection with:
- 7 1. electronic fund transfers, financial transactions,
8 automated teller machine transactions, or other banking or trust services;
- 9 2. business management, account management,
10 personnel, payroll, employee benefit, or other administrative services;
- 11 3. educational, legal, accounting, architectural,
12 actuarial, medical, medical diagnostic, or other professional services; or
- 13 4. telecommunications services.]
- 14 (m) "Taxable service" means:
- 15 (1) fabrication, printing, or production of tangible personal property by
16 special order;
- 17 (2) commercial cleaning or laundering of textiles for a buyer who is
18 engaged in a business that requires the recurring service of commercial cleaning or
19 laundering of the textiles;
- 20 (3) cleaning of a commercial or industrial building;
- 21 (4) cellular telephone or other mobile telecommunications service;
- 22 (5) "900", "976", "915", and other "900"-type telecommunications
23 service;
- 24 (6) custom calling service provided in connection with basic telephone
25 service;
- 26 (7) a telephone answering service;
- 27 (8) pay per view television service;
- 28 (9) credit reporting;
- 29 (10) a security service, including:

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

2 (ii) a security systems service;

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

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

7 (13) a computer service].

8 11-219.

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

11 (1) is not a taxable service; and

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

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

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

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

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

22 (II) **CONTAIN STANDARD OR PROPRIETARY ROUTINES THAT**
23 **INCORPORATE SIGNIFICANT CREATIVE INPUT TO CUSTOMIZE THE PROCEDURES**
24 **AND PROGRAMS FOR THAT PERSON; AND**

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

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

28 (II) **PERSONS ASSOCIATED IN A TRADE, PROFESSION, OR**
29 **INDUSTRY.**

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

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

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

9 SECTION 13. AND BE IT FURTHER ENACTED, That Section 3 of this Act
10 shall take effect July 1, 2009. [Section 3 shall remain effective for a period of 4 years
11 and, at the end of June 30, 2013, with no further action required by the General
12 Assembly, Section 3 of this Act shall be abrogated and of no further force and effect.]

13 SECTION 3. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall
14 take effect July 1, 2009, contingent on the ratification by the voters of the State of
15 Chapter 5 of the Acts of the General Assembly of the 2007 Special Session, a
16 constitutional amendment.

17 SECTION 4. AND BE IT FURTHER ENACTED, That, subject to Section 3 of
18 this Act, this Act shall take effect June 1, 2008.