

CHAPTER 10

(Senate Bill 46)

AN ACT concerning

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

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

BY repealing and reenacting, with amendments,

Article – Tax – General

Section 2–1302.2

Annotated Code of Maryland

(2004 Replacement Volume and 2007 Supplement)

(As enacted by Chapter 6 of the Acts of the General Assembly of the 2007 Special Session)

BY repealing and reenacting, with amendments,

Article – Tax – General

Section 10–102.1(d)(1)(i), 10–105(a), 11–101(m), and 11–219

Annotated Code of Maryland

(2004 Replacement Volume and 2007 Supplement)

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

BY repealing

Article – Tax – General

Section 11–101(c–1)

Annotated Code of Maryland

(2004 Replacement Volume and 2007 Supplement)

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

~~BY repealing and reenacting, with amendments,~~

~~Article - Tax - General~~

~~Section 11-101(m) and 11-219~~

~~Annotated Code of Maryland~~

~~(2004 Replacement Volume and 2007 Supplement)~~

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

BY repealing and reenacting, with amendments,

Chapter 3 of the Acts of the General Assembly of the 2007 Special Session

Section 13

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

Article - Tax - General

2-1302.2.

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

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

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

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

Article - Tax - General

10-102.1.

(d) (1) Except as provided in paragraph (2) of this subsection, the tax imposed under subsection (b) of this section is the sum of:

(i) a rate equal to the sum of the rate of the tax imposed under § 10-106.1 of this subtitle and the top marginal State tax rate for individuals under [§

10-105(a)(4)] § 10-105(A) of this subtitle applied to the sum of each nonresident individual member's distributive share or pro-rata share of a pass-through entity's nonresident taxable income; and

10-105.

(a) (1) [For] EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, FOR an individual other than an individual described in paragraph (2) of this subsection, the State income tax rate is:

- (i) 2% of Maryland taxable income of \$1 through \$1,000;
- (ii) 3% of Maryland taxable income of \$1,001 through \$2,000;
- (iii) 4% of Maryland taxable income of \$2,001 through \$3,000;
- (iv) 4.75% of Maryland taxable income of \$3,001 through \$150,000;
- (v) 5% of Maryland taxable income of \$150,001 through \$300,000;
- (vi) 5.25% of Maryland taxable income of \$300,001 through \$500,000; and
- (vii) 5.5% of Maryland taxable income in excess of \$500,000.

(2) [For] EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, FOR spouses filing a joint return or for a surviving spouse or head of household as defined in § 2 of the Internal Revenue Code, the State income tax rate is:

- (i) 2% of Maryland taxable income of \$1 through \$1,000;
- (ii) 3% of Maryland taxable income of \$1,001 through \$2,000;
- (iii) 4% of Maryland taxable income of \$2,001 through \$3,000;
- (iv) 4.75% of Maryland taxable income of \$3,001 through \$200,000;
- (v) 5% of Maryland taxable income of \$200,001 through \$350,000;
- (vi) 5.25% of Maryland taxable income of \$350,001 through \$500,000; and

(vii) 5.5% of Maryland taxable income in excess of \$500,000.

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

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

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

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

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

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

Article - Tax - General

11-101.

[(c-1) (1) "Computer service" includes:

- (i) computer facilities management and operation;
- (ii) custom computer programming;
- (iii) computer system planning and design that integrate computer hardware, software, and communication technologies;
- (iv) computer disaster recovery;
- (v) data processing, storage, and recovery;
- (vi) hardware or software installation, maintenance, and repair.

(2) "Computer service" does not include:

Freedom Act;

- (i) Internet access, as defined in the federal Internet Tax

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

- (iii) computer training;

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

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

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

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

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

- 4. telecommunications services.]

(m) “Taxable service” means:

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

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

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

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

- (5) “900”, “976”, “915”, and other “900”-type telecommunications service;

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

- (7) a telephone answering service;

- (8) pay per view television service;
- (9) credit reporting;
- (10) a security service, including:
 - (i) a detective, guard, or armored car service; and
 - (ii) a security systems service;

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

- (12) a prepaid telephone calling arrangement[; or
- (13) a computer service].

11-219.

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

- (1) is not a taxable service; and

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

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

- (1) OTHERWISE ARE TAXABLE UNDER THIS TITLE;**
- (2) ARE TO BE USED BY A SPECIFIC PERSON;**
- (3) (I) ARE CREATED FOR THAT PERSON; OR**

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

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

(I) THE GENERAL PUBLIC; OR

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

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

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

Chapter 3 of the Acts of the 2007 Special Session

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

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

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

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

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

Approved by the Governor, April 8, 2008.