

# HOUSE BILL 426

Q5, Q4, R1

9lr0855

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By: **Delegate Korman**

Introduced and read first time: January 31, 2019

Assigned to: Ways and Means

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## A BILL ENTITLED

1 AN ACT concerning

2 **21st Century Transportation Funding Act**

3 FOR the purpose of requiring the Comptroller to calculate a certain sales and use tax  
4 equivalent rate under the motor fuel tax in a certain manner; applying the sales and  
5 use tax to a sale or use of certain digital products; requiring the Comptroller to  
6 distribute the sales and use tax revenue on the sale or use of certain digital products  
7 to the Transportation Trust Fund; requiring the Department of Transportation to  
8 apply to the United States Department of Transportation to participate in a certain  
9 program; repealing an obsolete provision; and generally relating to transportation  
10 funding.

11 BY repealing and reenacting, with amendments,  
12 Article – Tax – General  
13 Section 2–1302.1, 9–306, 11–101, 11–102(a), and 11–217(b)  
14 Annotated Code of Maryland  
15 (2016 Replacement Volume and 2018 Supplement)

16 BY adding to  
17 Article – Tax – General  
18 Section 11–221(d)  
19 Annotated Code of Maryland  
20 (2016 Replacement Volume and 2018 Supplement)

21 BY adding to  
22 Article – Transportation  
23 Section 8–509  
24 Annotated Code of Maryland  
25 (2015 Replacement Volume and 2018 Supplement)

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



## Article – Tax – General

2 2–1302.1.

3 [(a) Except as otherwise provided in this section, after] **AFTER** making the  
4 distributions required under §§ 2–1301 and 2–1302 of this subtitle, of the sales and use tax  
5 collected:

6 **(1)** on short–term vehicle rentals under § 11–104(c) of this article the  
7 Comptroller shall distribute:

8 **[(1)] (I)** 45% to the Transportation Trust Fund established under § 3–216  
9 of the Transportation Article; and

10 **[(2)] (II)** the remainder to the Chesapeake and Atlantic Coastal Bays 2010  
11 Trust Fund; **AND**

12 **(2) ON THE SALE OR USE OF A DIGITAL PRODUCT OR CODE UNDER**  
13 **TITLE 11 OF THIS ARTICLE THE COMPTROLLER SHALL DISTRIBUTE 100% TO THE**  
14 **TRANSPORTATION TRUST FUND ESTABLISHED UNDER § 3–216 OF THE**  
15 **TRANSPORTATION ARTICLE.**

16 [(b) For each fiscal year beginning on or before July 1, 2015, after the distribution  
17 required under subsection (a)(1) of this section, the Comptroller shall distribute the  
18 remainder of the sales and use tax collected on short–term vehicle rentals under § 11–104(c)  
19 of this article as follows:

20 (1) to the General Fund of the State:

21 (i) \$9,249,199 for the fiscal year beginning July 1, 2014; and

22 (ii) \$8,639,632 for the fiscal year beginning July 1, 2015; and

23 (2) the remainder to the Chesapeake and Atlantic Coastal Bays 2010 Trust  
24 Fund.]

25 9–306.

26 (a) (1) In this section the following words have the meanings indicated.

27 (2) “Average annual retail price” means the 12–month average retail price  
28 per gallon of motor fuel purchased in the State determined in accordance with subsection  
29 (d) of this section.

1 (3) "Sales and use tax equivalent rate" means the per gallon tax rate  
2 calculated based on a percentage of the average annual retail price of motor fuel in  
3 accordance with subsection (e) of this section.

4 (b) On or before December 1, 2015, June 1, 2016, and June 1 of each subsequent  
5 year, the Comptroller shall determine and announce:

6 (1) the average annual retail price of motor fuel; and

7 (2) the sales and use tax equivalent rate effective on the first day of the  
8 following month.

9 (c) (1) The sales and use tax equivalent rate shall be added to the motor fuel  
10 tax rates specified in § 9-305(a)(2), (3), and (5) of this subtitle and collected in the same  
11 manner as the motor fuel tax.

12 (2) Except as otherwise expressly provided by law, all references to the  
13 motor fuel tax in State law and regulations apply to the sales and use tax equivalent rate  
14 imposed under this section.

15 (d) (1) The Comptroller shall determine the average annual retail price of  
16 motor fuel:

17 [(1)] (I) using data compiled by the Oil Price Information Service or  
18 another generally recognized and reliable source of information; and

19 [(2)] (II) based on prices for regular unleaded motor fuel, excluding  
20 federal and State taxes, reported during the 12 months ending on the last day of the second  
21 immediately preceding month.

22 (2) **TO DETERMINE THE SALES AND USE TAX EQUIVALENT RATE**  
23 **UNDER SUBSECTION (E) OF THIS SECTION, THE COMPTROLLER SHALL USE THE**  
24 **GREATER OF:**

25 (I) **THE AVERAGE ANNUAL RETAIL PRICE OF MOTOR FUEL**  
26 **CALCULATED UNDER PARAGRAPH (1) OF THIS SUBSECTION; OR**

27 (II) **THE AVERAGE ANNUAL RETAIL PRICE OF MOTOR FUEL USED**  
28 **TO CALCULATE THE SALES AND USE TAX EQUIVALENT RATE FOR THE PRIOR YEAR.**

29 (e) The Comptroller shall determine the sales and use tax equivalent rate by:

30 (1) multiplying the average annual retail price by the percentage rate  
31 specified in subsection (f) of this section; and

32 (2) rounding the product to the nearest tenth of a cent.

1 (f) The percentage rate used to calculate the sales and use tax equivalent rate  
2 shall be:

3 (1) 4% for the determination made on December 1, 2015; and

4 (2) 5% for the determination made on June 1, 2016, and June 1 of each  
5 subsequent year.

6 (g) The Comptroller shall require any person possessing tax-paid motor fuel for  
7 sale at the start of business on the date of an increase in the sales and use tax equivalent  
8 rate under this section to compile and file an inventory of the motor fuel held at the close  
9 of business on the immediately preceding date and remit within 30 days any additional tax  
10 that is due on the motor fuel under this section.

11 11-101.

12 (a) In this title the following words have the meanings indicated.

13 (a-1) "Accommodation" means a right to occupy a room or lodgings as a transient  
14 guest.

15 (a-2) (1) "Accommodations intermediary" means a person, other than an  
16 accommodations provider, who facilitates the sale or use of an accommodation and charges  
17 a buyer the taxable price for the accommodation.

18 (2) For purposes of this subsection, a person shall be considered to facilitate  
19 the sale or use of an accommodation if the person brokers, coordinates, or in any other way  
20 arranges for the sale or use of an accommodation by a buyer.

21 (a-3) "Accommodations provider" means a person that owns, operates, or manages  
22 an accommodation and makes the accommodation available for sale or use to a buyer.

23 (b) "Buyer" means a person who:

24 (1) acquires tangible personal property in a sale; [or]

25 (2) obtains a taxable service in a sale; OR

26 **(3) ACQUIRES A DIGITAL PRODUCT IN A SALE.**

27 (c) "Cleaning of a commercial or industrial building" means the following services  
28 performed to a commercial or industrial building:

29 (1) floor, carpet, wall, window, ceiling, and exterior cleaning; and

30 (2) janitorial services.

1 (c-1) "Detective" means a person who is authorized to provide private detective  
2 services under Title 13 of the Business Occupations and Professions Article.

3 (C-2) (1) "DIGITAL CODE" MEANS A CODE THAT:

4 (I) MAY BE OBTAINED:

- 5 1. IN A TANGIBLE FORM, SUCH AS A CARD; OR
- 6 2. THROUGH E-MAIL; AND

7 (II) PROVIDES A BUYER WITH A RIGHT TO OBTAIN ONE OR MORE  
8 SPECIFIED DIGITAL PRODUCTS.

9 (2) "DIGITAL CODE" DOES NOT INCLUDE A GIFT CERTIFICATE OR  
10 GIFT CARD WITH A MONETARY VALUE THAT IS REDEEMABLE FOR A SPECIFIED  
11 DIGITAL PRODUCT.

12 (C-3) (1) "DIGITAL PRODUCT" MEANS A PRODUCT THAT IS OBTAINED  
13 ELECTRONICALLY BY THE BUYER AND DELIVERED BY MEANS OTHER THAN  
14 TANGIBLE STORAGE MEDIA THROUGH THE USE OF TECHNOLOGY HAVING  
15 ELECTRICAL, DIGITAL, MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC, OR  
16 SIMILAR CAPABILITIES.

17 (2) "DIGITAL PRODUCT" INCLUDES:

18 (I) A WORK THAT RESULTS FROM THE FIXATION OF A SERIES OF  
19 SOUNDS THAT ARE TRANSFERRED ELECTRONICALLY, INCLUDING:

- 20 1. PRERECORDED OR LIVE MUSIC OR PERFORMANCES,  
21 READINGS OF BOOKS OR OTHER WRITTEN MATERIALS, AND SPEECHES; AND
- 22 2. AUDIO GREETING CARDS SENT BY E-MAIL;

23 (II) A DIGITIZED SOUND FILE, SUCH AS A RING TONE, THAT IS  
24 DOWNLOADED ONTO A DEVICE AND MAY BE USED TO ALERT THE USER OF THE  
25 DEVICE WITH RESPECT TO A COMMUNICATION;

26 (III) A SERIES OF RELATED IMAGES THAT, WHEN SHOWN IN  
27 SUCCESSION, IMPART AN IMPRESSION OF MOTION, TOGETHER WITH ANY  
28 ACCOMPANYING SOUNDS, THAT ARE TRANSFERRED ELECTRONICALLY, INCLUDING  
29 MOTION PICTURES, MUSICAL VIDEOS, NEWS AND ENTERTAINMENT PROGRAMS, LIVE

1 **EVENTS, VIDEO GREETING CARDS SENT BY E-MAIL, AND VIDEO OR ELECTRONIC**  
2 **GAMES;**

3 **(IV) A BOOK, GENERALLY KNOWN AS AN “E-BOOK”, THAT IS**  
4 **TRANSFERRED ELECTRONICALLY; AND**

5 **(V) A NEWSPAPER, MAGAZINE, PERIODICAL, CHAT ROOM**  
6 **DISCUSSION, WEBLOG, OR OTHER SIMILAR PRODUCT THAT IS TRANSFERRED**  
7 **ELECTRONICALLY.**

8 (d) “Person” includes:

9 (1) this State or a political subdivision, unit, or instrumentality of this  
10 State;

11 (2) another state or a political subdivision, unit, or instrumentality of that  
12 state; and

13 (3) a unit or instrumentality of a political subdivision of this State or of  
14 another state.

15 (e) “Prepaid telephone calling arrangement” means the right to use  
16 telecommunications services, paid for in advance, that enables the origination of calls using  
17 an access number or authorization code, whether manually or electronically dialed.

18 (f) (1) “Production activity” means:

19 (i) except for processing food or a beverage by a retail food vendor,  
20 assembling, manufacturing, processing, or refining tangible personal property for resale;

21 (ii) generating electricity for sale or for use in another production  
22 activity;

23 (iii) 1. laundering, maintaining, or preparing textile products for  
24 rental; or

25 2. laundering, maintaining, or preparing textile products in  
26 providing the taxable service of commercial cleaning or laundering of textiles for a buyer  
27 who is engaged in a business that requires the recurring service of commercial cleaning or  
28 laundering of the textiles;

29 (iv) producing or repairing production machinery or equipment;

30 (v) establishing or maintaining clean rooms or clean zones as  
31 required by applicable provisions of the Federal Food, Drug, and Cosmetic Act, the Public

1 Health Service Act, and the Virus–Serum–Toxin Act, and the regulations adopted  
2 thereunder, pertaining to the manufacture of drugs, medical devices, or biologics;

3 (vi) providing for the safety of employees; or

4 (vii) providing for quality control.

5 (2) “Production activity” does not include:

6 (i) servicing or repairing tangible personal property, except for  
7 servicing or repairing production machinery or equipment;

8 (ii) maintaining tangible personal property other than textile  
9 products for rental and production machinery and equipment, except for maintaining  
10 tangible personal property in providing the taxable service of commercial cleaning or  
11 laundering of textiles for a buyer who is engaged in a business that requires the recurring  
12 service of commercial cleaning or laundering of the textiles;

13 (iii) providing for the comfort or health of employees; or

14 (iv) storing the finished product.

15 (g) “Production machinery or equipment” means machinery or equipment used in  
16 a production activity.

17 (h) (1) “Retail sale” means the sale of:

18 (i) tangible personal property; [or]

19 (ii) a taxable service; **OR**

20 **(III) A DIGITAL PRODUCT.**

21 (2) “Retail sale” includes:

22 (i) a sale of tangible personal property for use or resale in the form  
23 of real estate by a builder, contractor, or landowner; [and]

24 (ii) except as provided in paragraph (3)(i) of this subsection, use of  
25 tangible personal property as facilities, tools, tooling, machinery, or equipment, including  
26 dies, molds, and patterns, even if the buyer intends to transfer title to the property before  
27 or after that use;

28 **(III) A SALE OF A DIGITAL PRODUCT THAT IS SOLD WITH RIGHTS**  
29 **OF PERMANENT USE OR SOLD WITH RIGHTS OF LESS THAN PERMANENT USE;**

1 (IV) A SALE OF A DIGITAL PRODUCT THAT IS SOLD WITH RIGHTS  
2 OF USE CONDITIONED ON CONTINUED PAYMENT BY THE SUBSCRIBER OR BUYER;  
3 AND

4 (V) A SALE OF SUBSCRIPTION TO, ACCESS TO, OR THE  
5 PURCHASE OF A DIGITAL CODE FOR RECEIVING OR ACCESSING DIGITAL PRODUCTS.

6 (3) "Retail sale" does not include:

7 (i) a transfer of title to tangible personal property after its use as  
8 facilities, tools, tooling, machinery, or equipment, including dies, molds, and patterns, if:

9 1. at the time of purchase, the buyer is obligated, under the  
10 terms of a written contract, to make the transfer; and

11 2. the transfer is made for the same or greater consideration  
12 to the person for whom the buyer manufactures goods or performs work;

13 (ii) a sale of tangible personal property **OR A DIGITAL PRODUCT** if  
14 the buyer intends to:

15 1. resell the tangible personal property **OR DIGITAL**  
16 **PRODUCT** in the form that the buyer receives or is to receive the property **OR PRODUCT**;

17 2. use or incorporate the tangible personal property **OR**  
18 **DIGITAL PRODUCT** in a production activity as a material or part of other tangible personal  
19 property **OR ANOTHER DIGITAL PRODUCT** to be produced for sale; or

20 3. transfer the tangible personal property **OR DIGITAL**  
21 **PRODUCT** as a part of a taxable service transaction; or

22 (iii) a sale of a taxable service if the buyer intends to resell the taxable  
23 service in the form that the buyer receives or is to receive the service.

24 (i) (1) "Sale" means a transaction for a consideration whereby:

25 (i) title or possession of property is transferred or is to be  
26 transferred absolutely or conditionally by any means, including by lease, rental, royalty  
27 agreement, or grant of a license for use; or

28 (ii) a person performs a service for another person.

29 (2) "Sale" does not include a transaction whereby an employee performs a  
30 service for the employee's employer.



1 (j) "Sale for use" means a sale in which tangible personal property, **A DIGITAL**  
2 **PRODUCT**, or a taxable service that is consumed, possessed, stored, or used in the State is  
3 acquired.

4 (k) (1) "Tangible personal property" means:

5 (i) corporeal personal property of any nature; or

6 (ii) an accommodation.

7 (2) "Tangible personal property" includes:

8 (i) farm equipment;

9 (ii) wall-to-wall carpeting that is installed into real estate,  
10 regardless of the purpose, method, or permanency of its installation; and

11 (iii) coal, electricity, oil, nuclear fuel assemblies, steam, and artificial  
12 or natural gas.

13 (l) (1) "Taxable price" means the value, in money, of the consideration of any  
14 kind that is paid, delivered, payable, or deliverable by a buyer to a vendor in the  
15 consummation and complete performance of a sale without deduction for any expense or  
16 cost, including the cost of:

17 (i) any labor or service rendered;

18 (ii) any material used; or

19 (iii) any property sold.

20 (2) "Taxable price" includes, for tangible personal property **OR A DIGITAL**  
21 **PRODUCT** acquired by a sale for use in the State by the person who assembles, fabricates,  
22 or manufactures the property **OR PRODUCT**, only the price of the raw materials and  
23 component parts contained in the property **OR PRODUCT**.

24 (3) "Taxable price" does not include:

25 (i) a charge that is made in connection with a sale and is stated as  
26 a separate item of the consideration for:

27 1. a delivery, freight, or other transportation service for  
28 delivery directly to the buyer by the vendor or by another person acting for the vendor,  
29 unless the transportation service is a taxable service;



1 vendor can reasonably identify charges not subject to tax from its books and records that  
2 are kept in the regular course of business.

3 (4) "Taxable price" includes all sales and charges, including insurance,  
4 freight handling, equipment and supplies, delivery and pickup, cellular telephone, and  
5 other accessories, but not including sales of motor fuel subject to the motor fuel tax, made  
6 in connection with:

7 (i) a short-term vehicle rental, as defined in § 11-104(c) of this  
8 subtitle; or

9 (ii) a shared motor vehicle used for peer-to-peer car sharing and  
10 made available on a peer-to-peer car sharing program, as defined in § 19-520 of the  
11 Insurance Article.

12 (5) "Taxable price" includes, for the sale or use of an accommodation  
13 facilitated by an accommodations intermediary, the full amount of the consideration paid  
14 by a buyer for the sale or use of an accommodation, but not including any tax that is  
15 remitted to a taxing authority.

16 (6) "Taxable price" does not include, for the sale or use of an  
17 accommodation facilitated by an accommodations intermediary, a commission paid by an  
18 accommodations provider to a person after facilitating the sale or use of an accommodation.

19 (m) "Taxable service" means:

20 (1) fabrication, printing, or production of tangible personal property **OR A**  
21 **DIGITAL PRODUCT** by special order;

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

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

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

27 (5) "900", "976", "915", and other "900"-type telecommunications service;

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

30 (7) a telephone answering service;

31 (8) pay per view television service;

32 (9) credit reporting;

1 (10) a security service, including:

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

3 (ii) a security systems service;

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

7 (12) a prepaid telephone calling arrangement; or

8 (13) the privilege given to an individual under § 4–1102 of the Alcoholic  
9 Beverages Article to consume wine that is not purchased from or provided by a restaurant,  
10 club, or hotel.

11 (n) (1) “Use” means an exercise of a right or power to use, consume, possess,  
12 or store that is acquired by a sale for use of:

13 (i) tangible personal property; [or]

14 (ii) a taxable service; **OR**

15 **(III) A DIGITAL PRODUCT.**

16 (2) “Use” includes an exercise of a right or power to use, consume, possess,  
17 or store that is acquired by a sale for use of tangible personal property **OR A DIGITAL**  
18 **PRODUCT:**

19 (i) for use or resale in the form of real estate by a builder, contractor,  
20 or landowner; or

21 (ii) except as provided in paragraph (3)(i) of this subsection, as  
22 facilities, tools, tooling, machinery, or equipment, including dies, molds, and patterns, even  
23 if the buyer intends to transfer title to the property **OR PRODUCT** before or after that use.

24 (3) “Use” does not include:

25 (i) a transfer of title to tangible personal property after its use as  
26 facilities, tools, tooling, machinery, or equipment, including dies, molds, and patterns, if:

27 1. at the time of purchase, the buyer is obligated, under the  
28 terms of a written contract, to make the transfer; and

1                   2.     the transfer is made for the same or greater consideration  
2 to the person for whom the buyer manufactures goods or performs work;

3                   (ii)    an exercise of a right or power over tangible personal property  
4 **OR A DIGITAL PRODUCT** acquired by a sale for use if the buyer intends to:

5                   1.     resell the tangible personal property **OR DIGITAL**  
6 **PRODUCT** in the form that the buyer receives or is to receive the property **OR PRODUCT**;

7                   2.     use or incorporate the tangible personal property **OR**  
8 **DIGITAL PRODUCT** in a production activity as a material or part of other tangible personal  
9 property **OR ANOTHER DIGITAL PRODUCT** to be produced for sale; or

10                  3.     transfer the tangible personal property **OR DIGITAL**  
11 **PRODUCT** as part of a taxable service transaction; [or]

12                  (iii)   an exercise of a right or power over a taxable service acquired by  
13 a sale for use if the buyer intends to resell the taxable service in the form that the buyer  
14 receives or is to receive the service; **OR**

15                  **(IV) AN EXERCISE OF A RIGHT OR POWER OVER A DIGITAL CODE**  
16 **TO RECEIVE OR ACCESS A DIGITAL PRODUCT.**

17           (o)   (1)   “Vendor” means a person who:

18                   (i)     engages in the business of an out-of-state vendor, as defined in  
19 § 11-701 of this title;

20                   (ii)    engages in the business of a retail vendor, as defined in § 11-701  
21 of this title;

22                   (iii)   holds a special license issued under § 11-707 of this title; or

23                   (iv)    is an accommodations intermediary.

24           (2)   “Vendor” includes, for an out-of-state vendor, a salesman,  
25 representative, peddler, or canvasser whom the Comptroller, for the efficient  
26 administration of this title, elects to treat as an agent jointly responsible with the dealer,  
27 distributor, employer, or supervisor:

28                   (i)     under whom the agent operates; or

29                   (ii)    from whom the agent obtains the tangible personal property, **A**  
30 **DIGITAL PRODUCT**, or taxable service for sale.

31 11-102.

1 (a) Except as otherwise provided in this title, a tax is imposed on:

2 (1) a retail sale in the State; and

3 (2) a use, in the State, of tangible personal property, **A DIGITAL PRODUCT,**  
4 or a taxable service.

5 11-217.

6 (b) The sales and use tax does not apply to a sale of tangible personal property  
7 **OR A DIGITAL PRODUCT** for use or consumption in research and development.

8 11-221.

9 **(D) A RETAIL SALE OF A DIGITAL PRODUCT SUBJECT TO TAX UNDER THIS**  
10 **TITLE DOES NOT INCLUDE A RETAIL SALE THAT IS SUBJECT TO TAX IN ACCORDANCE**  
11 **WITH ANY OTHER PROVISION OF THIS ARTICLE.**

12 **Article – Transportation**

13 **8-509.**

14 **THE DEPARTMENT SHALL APPLY TO THE UNITED STATES DEPARTMENT OF**  
15 **TRANSPORTATION TO PARTICIPATE IN THE SURFACE TRANSPORTATION SYSTEM**  
16 **FUNDING ALTERNATIVES PROGRAM ESTABLISHED BY THE FEDERAL FIXING**  
17 **AMERICA’S SURFACE TRANSPORTATION ACT.**

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July  
19 1, 2019.