

HOUSE BILL 811

Q4

9lr2531

By: **Delegates Buckel, Hornberger, Long, Reilly, Rose, and Shoemaker**

Introduced and read first time: February 8, 2019

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Sales Tax Reform Act of 2019**

3 FOR the purpose of providing an exemption from the sales and use tax for the sale of certain
4 bottles of water; clarifying that the exemption does not apply to certain sales of
5 bottled water; increasing the amount of the sales price of certain sales that are
6 eligible for an exemption under the sales and use tax for casual and isolated sales;
7 exempting from the sales and use tax the sale of diapers; designating certain periods
8 each year to be tax-free periods during which an exemption from the sales and use
9 tax is provided for the sale of certain textbooks purchased by certain individuals;
10 altering the definition of “engage in the business of an out-of-state vendor”, for
11 purposes of establishing nexus under the sales and use tax law, to include vendors
12 who sell or deliver, during a certain period of time, tangible personal property or
13 taxable services to customers in the State under certain circumstances; providing for
14 the prospective application of certain provisions of this Act; defining certain terms;
15 and generally relating to the application of and exemptions from the sales and use
16 tax in the State.

17 BY repealing and reenacting, with amendments,
18 Article – Tax – General
19 Section 11-206(a) and (c), 11-209(a), 11-211(c), and 11-701(b)
20 Annotated Code of Maryland
21 (2016 Replacement Volume and 2018 Supplement)

22 BY adding to
23 Article – Tax – General
24 Section 11-235
25 Annotated Code of Maryland
26 (2016 Replacement Volume and 2018 Supplement)

27 BY repealing and reenacting, without amendments,
28 Article – Tax – General

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 11–701(a)
2 Annotated Code of Maryland
3 (2016 Replacement Volume and 2018 Supplement)

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

6 **Article – Tax – General**

7 11–206.

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

9 **(2) “BOTTLED WATER” MEANS WATER THAT:**

10 **(I) COMES PACKAGED IN ANY CLOSED OR SEALED CONTAINER**
11 **OF ANY SIZE OR SHAPE;**

12 **(II) DOES NOT CONTAIN:**

13 **1. CALORIES;**

14 **2. ADDED NUTRITIVE OR NONNUTRITIVE SWEETENERS;**

15 **3. ARTIFICIAL FLAVORS, NATURAL FLAVORS, OR**
16 **ESSENCES;**

17 **4. PRESERVATIVES;**

18 **5. DYES; OR**

19 **6. STIMULANTS OR DEPRESSANTS; AND**

20 **(III) IS STILL OR NOT CARBONATED.**

21 **[(2)] (3)** “Facility for food consumption” does not include parking spaces
22 for vehicles as the sole accommodation.

23 **[(3)] (4)** (i) “Food” means food for human consumption.

24 (ii) “Food” includes the following foods and their products:

25 1. beverages, including coffee, coffee substitutes, cocoa, fruit
26 juices, and tea;

- 1 2. condiments;
- 2 3. eggs;
- 3 4. fish, meat, and poultry;
- 4 5. fruit, grain, and vegetables;
- 5 6. milk, including ice cream; and
- 6 7. sugar.

7 (iii) “Food” does not include:

- 8 1. an alcoholic beverage as defined in § 5–101 of this article;
- 9 2. a soft drink or carbonated beverage; or
- 10 3. candy or confectionery.

11 **[(4)] (5)** “Food for immediate consumption” means:

- 12 (i) food obtained from a salad, soup, or dessert bar;
- 13 (ii) party platters;
- 14 (iii) heated food;
- 15 (iv) sandwiches suitable for immediate consumption; or
- 16 (v) ice cream, frozen yogurt, and other frozen desserts, sold in
- 17 containers of less than 1 pint.

18 **[(5)] (6)** “Premises” includes any building, grounds, parking lot, or other

19 area that:

- 20 (i) a food vendor owns or controls; or
- 21 (ii) another person makes available primarily for the use of the
- 22 patrons of 1 or more food vendors.

23 **[(6)] (7)** “Substantial grocery or market business” means a business at

24 which at least 10% of all sales of food are sales of grocery or market food items, not including

25 food normally consumed on the premises even though it is packaged to carry out.

26 (c) (1) Except as provided in paragraph (2) of this subsection, the sales and

27 use tax does not apply to a sale of **BOTTLED WATER OR** food for consumption off the

1 premises by a food vendor who operates a substantial grocery or market business at the
2 same location where the **BOTTLED WATER OR** food is sold.

3 (2) The exemption under paragraph (1) of this subsection does not apply to:

4 (i) food **OR BOTTLED WATER** that the vendor serves for
5 consumption on the premises of the buyer or of a third party; [or]

6 (ii) food for immediate consumption; **OR**

7 **(III) BOTTLED WATER SOLD WITH FOOD FOR IMMEDIATE**
8 **CONSUMPTION.**

9 11-209.

10 (a) The sales and use tax does not apply to a casual and isolated sale by a person
11 who regularly does not sell tangible personal property or a taxable service if:

12 (1) the sale price is less than [~~\$1,000~~] **\$5,000**; and

13 (2) the sale is not made through an auctioneer or a dealer.

14 11-211.

15 (c) The sales and use tax does not apply to a sale of:

16 (1) baby oil or baby powder; [or]

17 **(2) DIAPERS; OR**

18 ~~[(2)]~~ **(3)** sanitary pads, tampons, menstrual sponges, menstrual cups, or
19 other similar feminine hygiene products.

20 **11-235.**

21 **(A) IN THIS SECTION, "TEXTBOOK" MEANS A BOOK:**

22 **(1) WRITTEN, DESIGNED, AND PRODUCED FOR EDUCATIONAL,**
23 **INSTRUCTIONAL, OR PEDAGOGICAL PURPOSES; AND**

24 **(2) REQUIRED FOR A COURSE AT A COMMUNITY COLLEGE**
25 **ESTABLISHED UNDER TITLE 16 OF THE EDUCATION ARTICLE, A PRIVATE**
26 **NONPROFIT INSTITUTION OF HIGHER EDUCATION AS DEFINED IN § 10-101(K) OF**
27 **THE EDUCATION ARTICLE, A PUBLIC SENIOR HIGHER EDUCATION INSTITUTION AS**
28 **DEFINED IN § 10-101(M) OF THE EDUCATION ARTICLE, OR A REGIONAL HIGHER**

1 EDUCATION CENTER AS DEFINED IN § 10-101(N) OF THE EDUCATION ARTICLE.

2 (B) (1) BEGINNING IN CALENDAR YEAR 2019, THE LAST 7 DAYS OF
3 AUGUST SHALL BE A TAX-FREE PERIOD FOR RETURN-TO-SCHOOL SHOPPING IN
4 MARYLAND DURING WHICH THE EXEMPTION UNDER PARAGRAPH (3) OF THIS
5 SUBSECTION SHALL APPLY.

6 (2) BEGINNING IN CALENDAR YEAR 2020, IN ADDITION TO THE
7 TAX-FREE PERIOD ESTABLISHED IN PARAGRAPH (1) OF THIS SUBSECTION, THE
8 LAST 7 DAYS OF JANUARY SHALL BE A TAX-FREE PERIOD FOR RETURN-TO-SCHOOL
9 SHOPPING IN MARYLAND DURING WHICH THE EXEMPTION UNDER PARAGRAPH (3)
10 OF THIS SUBSECTION SHALL APPLY.

11 (3) DURING THE TAX-FREE PERIODS FOR RETURN-TO-SCHOOL
12 SHOPPING ESTABLISHED UNDER PARAGRAPHS (1) AND (2) OF THIS SUBSECTION,
13 THE SALES AND USE TAX DOES NOT APPLY TO THE SALE OF A TEXTBOOK THAT IS
14 PURCHASED BY A FULL-TIME OR PART-TIME STUDENT ENROLLED AT:

15 (i) A COMMUNITY COLLEGE ESTABLISHED UNDER TITLE 16 OF
16 THE EDUCATION ARTICLE; OR

17 (ii) A PRIVATE NONPROFIT INSTITUTION OF HIGHER
18 EDUCATION, PUBLIC SENIOR HIGHER EDUCATION INSTITUTION, OR REGIONAL
19 HIGHER EDUCATION CENTER AS DEFINED IN § 10-101 OF THE EDUCATION ARTICLE.

20 (C) AN INDIVIDUAL MAY ESTABLISH FULL-TIME OR PART-TIME STUDENT
21 STATUS BY PRODUCING A VALID STUDENT IDENTIFICATION CARD AT THE TIME OF
22 PURCHASE OF THE TEXTBOOK.

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

25 **Article – Tax – General**

26 11-701.

27 (a) In this subtitle the following words have the meanings indicated.

28 (b) (1) “Engage in the business of an out-of-state vendor” means to sell or
29 deliver tangible personal property or a taxable service for use in the State.

30 (2) “Engage in the business of an out-of-state vendor” includes:

31 (i) permanently or temporarily maintaining, occupying, or using
32 any office, sales or sample room, or distribution, storage, warehouse, or other place for the

1 sale of tangible personal property or a taxable service directly or indirectly through an
2 agent or subsidiary;

3 (ii) having an agent, canvasser, representative, salesman, or
4 solicitor operating in the State for the purpose of delivering, selling, or taking orders for
5 tangible personal property or a taxable service; [or]

6 (iii) entering the State on a regular basis to provide service or repair
7 for tangible personal property; OR

8 (IV) SELLING OR DELIVERING TANGIBLE PERSONAL PROPERTY
9 OR TAXABLE SERVICES TO CUSTOMERS IN THE STATE IF, DURING THE PRECEDING
10 FOUR QUARTERLY PERIODS ENDING ON THE LAST DAY OF MARCH, JUNE,
11 SEPTEMBER, AND DECEMBER:

12 1. THE CUMULATIVE GROSS RECEIPTS FROM THE SALES
13 OR DELIVERIES ARE GREATER THAN \$100,000; OR

14 2. THE SALES OR DELIVERIES ARE MADE IN AT LEAST
15 200 SEPARATE TRANSACTIONS.

16 SECTION 3. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall be
17 construed to apply only prospectively and may not be applied or interpreted to require an
18 out-of-state vendor who meets the nexus threshold under this Act to collect the sales and
19 use tax on sales or deliveries made to customers in the State before the effective date of this
20 Act.

21 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect July
22 1, 2019.