

HOUSE BILL 932

Q4

(0lr3037)

ENROLLED BILL

— *Ways and Means/Budget and Taxation* —

Introduced by **Delegate Korman**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **21st-Century Economy ~~Sales Tax~~ *Fairness Act***

3 FOR the purpose of requiring the Comptroller to distribute the sales and use tax revenue
4 on the sale or use of certain digital products to ~~the Education Trust Fund~~ The
5 Blueprint for Maryland's Future Fund; applying the sales and use tax to a sale or
6 use of certain digital products; ~~providing that the sales and use tax does not apply to~~
7 ~~a certain service~~; providing that the retail sale of a certain digital code or digital
8 product shall be presumed to be made in the state in which a certain customer tax
9 address is located; *stating the intent of the General Assembly*; defining certain terms;
10 repealing an obsolete provision; and generally relating to applying the sales and use
11 tax to digital products.

12 BY repealing and reenacting, without amendments,

13 Article – Education

14 Section 5-219(b)

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.

Italics indicate opposite chamber/conference committee amendments.



1 Annotated Code of Maryland
 2 (2018 Replacement Volume and 2019 Supplement)

3 BY repealing and reenacting, with amendments,
 4 Article – Education
 5 Section 5–219(f)
 6 Annotated Code of Maryland
 7 (2018 Replacement Volume and 2019 Supplement)

8 BY repealing and reenacting, with amendments,
 9 Article – Tax – General
 10 Section 2–1302.1, 11–101, 11–102(a), 11–103, and 11–217(b)
 11 Annotated Code of Maryland
 12 (2016 Replacement Volume and 2019 Supplement)

13 BY adding to
 14 Article – Tax – General
 15 Section 11–221(d) ~~and (e)~~
 16 Annotated Code of Maryland
 17 (2016 Replacement Volume and 2019 Supplement)

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

20 **Article – Education**

21 5–219.

22 (b) There is The Blueprint for Maryland’s Future Fund.

23 (f) The Fund consists of:

24 (1) Revenue distributed to the Fund under §§ 2–605.1, **2–1302.1**, and
 25 2–1303 of the Tax – General Article;

26 (2) Money appropriated in the State budget for the Fund; and

27 (3) Any other money from any other source accepted for the benefit of the
 28 Fund.

29 **Article – Tax – General**

30 2–1302.1.

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

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

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

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

10 **(2) ON THE SALE OR USE OF A DIGITAL PRODUCT OR CODE UNDER**
 11 **TITLE 11 OF THIS ARTICLE THE COMPTROLLER SHALL DISTRIBUTE 100% TO THE**
 12 **~~EDUCATION TRUST FUND ESTABLISHED UNDER § 9-1A-30 OF THE STATE~~**
 13 **~~GOVERNMENT ARTICLE THE BLUEPRINT FOR MARYLAND’S FUTURE FUND~~**
 14 **ESTABLISHED UNDER § 5–219 OF THE EDUCATION ARTICLE.**

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

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

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

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

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

24 11–101.

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

26 (a–1) “Accommodation” means a right to occupy a room or lodgings as a transient
 27 guest.

28 (a–2) (1) “Accommodations intermediary” means a person, other than an
 29 accommodations provider, who facilitates the sale or use of an accommodation and charges
 30 a buyer the taxable price for the accommodation.

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

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

6 (a-4) "Booking transaction" means any transaction in which there is a retail sale of
7 an accommodation.

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

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

10 (2) obtains a taxable service in a sale; **OR**

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

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

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

15 (2) janitorial services.

16 **(c-1) "CUSTOMER TAX ADDRESS" MEANS, WITH RESPECT TO A SALE OF A**
17 **DIGITAL PRODUCT:**

18 **(1) FOR A DIGITAL PRODUCT THAT IS RECEIVED BY A BUYER AT THE**
19 **BUSINESS LOCATION OF THE VENDOR, THE ADDRESS OF THAT BUSINESS LOCATION;**

20 **(2) IF ITEM (1) OF THIS SUBSECTION IS NOT APPLICABLE AND THE**
21 **PRIMARY USE LOCATION OF THE DIGITAL PRODUCT IS KNOWN BY THE VENDOR,**
22 **THAT PRIMARY USE LOCATION;**

23 **(3) IF ITEMS (1) AND (2) OF THIS SUBSECTION ARE NOT APPLICABLE,**
24 **THE LOCATION WHERE THE DIGITAL PRODUCT IS RECEIVED BY THE BUYER, OR BY A**
25 **DONEE OF THE BUYER THAT IS IDENTIFIED BY THE BUYER, IF KNOWN TO THE**
26 **VENDOR AND MAINTAINED IN THE ORDINARY COURSE OF THE VENDOR'S BUSINESS;**

27 **(4) IF ITEMS (1) THROUGH (3) OF THIS SUBSECTION ARE NOT**
28 **APPLICABLE, THE LOCATION INDICATED BY AN ADDRESS FOR THE BUYER THAT IS**
29 **AVAILABLE FROM THE BUSINESS RECORDS OF THE VENDOR THAT ARE MAINTAINED**
30 **IN THE ORDINARY COURSE OF BUSINESS OF THE VENDOR'S BUSINESS, WHEN USE OF**
31 **THE ADDRESS DOES NOT CONSTITUTE BAD FAITH;**

1 (5) IF ITEMS (1) THROUGH (4) OF THIS SUBSECTION ARE NOT
 2 APPLICABLE, THE LOCATION INDICATED BY AN ADDRESS FOR THE BUYER OBTAINED
 3 DURING THE CONSUMMATION OF THE SALE, INCLUDING THE ADDRESS OF THE
 4 BUYER'S PAYMENT INSTRUMENT, WHEN USE OF THE ADDRESS DOES NOT
 5 CONSTITUTE BAD FAITH; OR

6 (6) IF ITEMS (1) THROUGH (5) OF THIS SUBSECTION ARE NOT
 7 APPLICABLE, INCLUDING A CIRCUMSTANCE IN WHICH A VENDOR IS WITHOUT
 8 SUFFICIENT INFORMATION TO APPLY THOSE ITEMS, ONE OF THE FOLLOWING
 9 LOCATIONS, AS SELECTED BY THE VENDOR, PROVIDED THAT THE LOCATION IS
 10 CONSISTENTLY USED BY THE VENDOR FOR ALL SALES TO WHICH THIS ITEM APPLIES:

11 (I) THE LOCATION IN THE UNITED STATES OF THE
 12 HEADQUARTERS OF THE VENDOR'S BUSINESS;

13 (II) THE LOCATION IN THE UNITED STATES WHERE THE
 14 VENDOR HAS THE GREATEST NUMBER OF EMPLOYEES; OR

15 (III) THE LOCATION IN THE UNITED STATES FROM WHICH THE
 16 VENDOR MAKES DIGITAL PRODUCTS AVAILABLE FOR ELECTRONIC TRANSFER.

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

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

20 (I) MAY BE OBTAINED BY ANY MEANS, INCLUDING:

21 1. IN A TANGIBLE FORM, SUCH AS A CARD; OR

22 2. THROUGH E-MAIL; AND

23 (II) PROVIDES A BUYER WITH A RIGHT TO OBTAIN ONE OR MORE
 24 ~~SPECIFIED~~ DIGITAL PRODUCTS.

25 (2) "DIGITAL CODE" DOES NOT INCLUDE A GIFT CERTIFICATE OR
 26 GIFT CARD WITH A MONETARY VALUE THAT ~~IS~~ MAY BE REDEEMABLE FOR ~~A~~
 27 ~~SPECIFIED~~ AN ITEM OTHER THAN A DIGITAL PRODUCT.

28 ~~(e-3)~~ (C-4) (1) "DIGITAL PRODUCT" MEANS A PRODUCT THAT IS OBTAINED
 29 ELECTRONICALLY BY THE BUYER ~~AND~~ OR DELIVERED BY MEANS OTHER THAN
 30 TANGIBLE STORAGE MEDIA THROUGH THE USE OF TECHNOLOGY HAVING

1 ELECTRICAL, DIGITAL, MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC, OR
2 SIMILAR CAPABILITIES.

3 (2) "DIGITAL PRODUCT" INCLUDES:

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

6 1. PRERECORDED OR LIVE MUSIC OR PERFORMANCES,
7 READINGS OF BOOKS OR OTHER WRITTEN MATERIALS, AND SPEECHES; AND

8 2. AUDIO GREETING CARDS SENT BY E-MAIL;

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

12 (III) A SERIES OF RELATED IMAGES THAT, WHEN SHOWN IN
13 SUCCESSION, IMPART AN IMPRESSION OF MOTION, TOGETHER WITH ANY
14 ACCOMPANYING SOUNDS THAT ARE TRANSFERRED ELECTRONICALLY, INCLUDING
15 MOTION PICTURES, MUSICAL VIDEOS, NEWS AND ENTERTAINMENT PROGRAMS, LIVE
16 EVENTS, VIDEO GREETING CARDS SENT BY E-MAIL, AND VIDEO OR ELECTRONIC
17 GAMES;

18 (IV) A BOOK, GENERALLY KNOWN AS AN "E-BOOK", THAT IS
19 TRANSFERRED ELECTRONICALLY; AND

20 (V) A NEWSPAPER, MAGAZINE, PERIODICAL, CHAT ROOM
21 DISCUSSION, WEBLOG, OR ANY OTHER SIMILAR PRODUCT THAT IS TRANSFERRED
22 ELECTRONICALLY.

23 ~~(c-4)~~ (C-5) "END USER" MEANS ANY PERSON OTHER THAN A PERSON WHO
24 RECEIVES BY CONTRACT A DIGITAL PRODUCT TRANSFERRED ELECTRONICALLY FOR
25 FURTHER COMMERCIAL BROADCAST, REBROADCAST, TRANSMISSION,
26 RETRANSMISSION, LICENSING, RELICENSING, DISTRIBUTION, REDISTRIBUTION, OR
27 EXHIBITION OF THE PRODUCT, IN WHOLE OR IN PART, TO ANOTHER PERSON.

28 [(c-2)] ~~(c-5)~~ (C-6) (1) "Marketplace facilitator" means a person that:

29 (i) facilitates a retail sale by a marketplace seller by listing or
30 advertising for sale in a marketplace tangible personal property; and

31 (ii) regardless of whether the person receives compensation or other
32 consideration in exchange for the person's services, directly or indirectly through

1 agreements with third parties, collects payment from a buyer and transmits the payment
2 to the marketplace seller.

3 (2) "Marketplace facilitator" does not include:

4 (i) a platform or forum that exclusively provides Internet
5 advertising services, including listing products for sale, if the platform or forum does not
6 also engage, directly or indirectly, in collecting payment from a buyer and transmitting that
7 payment to the vendor;

8 (ii) a payment processor business appointed by a vendor to handle
9 payment transactions from clients, including credit cards and debit cards, whose only
10 activity with respect to marketplace sales is to handle transactions between two parties;

11 (iii) a peer-to-peer car sharing program, as defined in § 19-520 of
12 the Insurance Article; or

13 (iv) a delivery service company that delivers tangible personal
14 property on behalf of a marketplace seller that is engaged in the business of a retail vendor
15 and holds a license issued under Subtitle 7 of this title.

16 [(c-3)] ~~(C-6)~~ (C-7) "Marketplace seller" means a person that makes a retail
17 sale or sale for use through a physical or electronic marketplace operated by a marketplace
18 facilitator.

19 ~~(C-7) (1) "MULTICHANNEL VIDEO PROGRAMMING SERVICE" INCLUDES:~~

20 ~~(I) CABLE SERVICE, AS DEFINED IN 47 U.S.C. § 522(6);~~

21 ~~(II) DIRECT TO HOME SATELLITE SERVICES, AS DEFINED IN 47~~
22 ~~U.S.C. § 303(V); AND~~

23 ~~(III) PAY PER VIEW TELEVISION SERVICE.~~

24 ~~(2) "MULTICHANNEL VIDEO PROGRAMMING SERVICE" DOES NOT~~
25 ~~INCLUDE DIGITAL AUDIO VISUAL WORKS.~~

26 (C-8) "PERMANENT" MEANS PERPETUAL OR FOR AN INDEFINITE OR
27 UNSPECIFIED LENGTH OF TIME.

28 (d) "Person" includes:

29 (1) this State or a political subdivision, unit, or instrumentality of this
30 State;

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

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

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

8 **(E-1) (1) "PRIMARY USE LOCATION" MEANS THE STREET ADDRESS**
9 **REPRESENTATIVE OF WHERE THE BUYER'S USE OF A DIGITAL PRODUCT WILL**
10 **PRIMARILY OCCUR, AS DETERMINED BY:**

11 **(I) THE RESIDENTIAL STREET ADDRESS OR A BUSINESS STREET**
12 **ADDRESS OF THE ACTUAL END USER OF THE DIGITAL PRODUCT, INCLUDING, IF**
13 **APPLICABLE, THE ADDRESS OF A DONEE OF THE BUYER THAT IS DESIGNATED BY**
14 **THE BUYER; OR**

15 **(II) IF THE BUYER IS NOT AN INDIVIDUAL, THE LOCATION OF**
16 **THE BUYER'S EMPLOYEES OR EQUIPMENT THAT MAKES USE OF THE DIGITAL**
17 **PRODUCT.**

18 **(2) "PRIMARY USE LOCATION" DOES NOT INCLUDE THE LOCATION OF**
19 **A PERSON WHO USES A DIGITAL PRODUCT AS THE PURCHASER OF A SEPARATE GOOD**
20 **OR SERVICE FROM THE BUYER.**

21 (f) (1) "Production activity" means:

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

24 (ii) generating electricity for sale or for use in another production
25 activity;

26 (iii) 1. laundering, maintaining, or preparing textile products for
27 rental; or

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

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

1 (v) establishing or maintaining clean rooms or clean zones as
2 required by applicable provisions of the Federal Food, Drug, and Cosmetic Act, the Public
3 Health Service Act, and the Virus–Serum–Toxin Act, and the regulations adopted
4 thereunder, pertaining to the manufacture of drugs, medical devices, or biologics;

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

6 (vii) providing for quality control.

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

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

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

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

16 (iv) storing the finished product.

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

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

20 (i) tangible personal property; [or]

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

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

23 (2) “Retail sale” includes:

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

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

1 **(III) A SALE OF A DIGITAL PRODUCT THAT IS SOLD WITH RIGHTS**
2 **OF PERMANENT USE OR SOLD WITH RIGHTS OF LESS THAN PERMANENT USE TO AN**
3 **END USER;**

4 **(IV) A SALE OF A DIGITAL PRODUCT THAT IS SOLD WITH RIGHTS**
5 **OF USE CONDITIONED ON CONTINUED PAYMENT BY THE SUBSCRIBER OR BUYER TO**
6 **AN END USER; AND**

7 **(V) A SALE OF SUBSCRIPTION TO, ACCESS TO, STREAMING OF,**
8 **OR THE PURCHASE OF A DIGITAL CODE FOR RECEIVING OR ACCESSING DIGITAL**
9 **PRODUCTS TO AN END USER.**

10 (3) “Retail sale” does not include:

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

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

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

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

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

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

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

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

28 (i) (1) “Sale” means a transaction for a consideration whereby:

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

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

2 (2) “Sale” does not include a transaction whereby an employee performs a
3 service for the employee’s employer.

4 (j) “Sale for use” means a sale in which tangible personal property, **A DIGITAL**
5 **PRODUCT**, or a taxable service that is consumed, possessed, stored, or used in the State is
6 acquired.

7 (j-1) “Short-term rental” means the temporary use of a short-term rental unit to
8 provide accommodation to transient guests for lodging purposes in exchange for
9 consideration.

10 (j-2) “Short-term rental platform” means an Internet-based digital entity that:

11 (1) advertises the availability of short-term rental units for rent; and

12 (2) receives compensation for facilitating reservations or processing
13 booking transactions on behalf of the owner, operator, or manager of a short-term rental
14 unit.

15 (j-3) (1) “Short-term rental unit” means a residential dwelling unit or a portion
16 of the unit used for short-term rentals.

17 (2) “Short-term rental unit” includes a single-family house or dwelling, a
18 multifamily house or dwelling, an apartment, a condominium, or a cooperative.

19 **(J-4) “SUBSCRIPTION” MEANS, WITH RESPECT TO A DIGITAL PRODUCT, AN**
20 **ARRANGEMENT WITH A VENDOR THAT GRANTS A BUYER THE RIGHT TO OBTAIN**
21 **DIGITAL PRODUCTS FROM WITHIN ONE OR MORE PRODUCT CATEGORIES HAVING**
22 **THE SAME TAX TREATMENT, IN A FIXED QUANTITY OR FOR A FIXED PERIOD OF TIME**
23 **OR BOTH.**

24 (k) (1) “Tangible personal property” means:

25 (i) corporeal personal property of any nature;

26 (ii) an accommodation; or

27 (iii) a short-term rental.

28 (2) “Tangible personal property” includes:

29 (i) farm equipment;

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

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

5 (1) (1) "Taxable price" means the value, in money, of the consideration of any
6 kind that is paid, delivered, payable, or deliverable by a buyer to a vendor in the
7 consummation and complete performance of a sale without deduction for any expense or
8 cost, including the cost of:

9 (i) any labor or service rendered;

10 (ii) any material used; or

11 (iii) any property sold.

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

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

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

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

22 2. a finance charge, interest, or similar charge for credit
23 extended to the buyer;

24 3. a labor or service for application or installation;

25 4. a mandatory gratuity or service charge in the nature of a
26 tip for serving food or beverage to a group of 10 or fewer individuals for consumption on the
27 premises of the vendor;

28 5. a professional service;

29 6. a tax:

30 A. imposed by a county on the sale of coal, electricity, oil,
31 nuclear fuel assemblies, steam, or artificial or natural gas;

1 B. imposed under § 3–302(a) of the Natural Resources
2 Article, as a surcharge on electricity, and added to an electric bill;

3 C. imposed under §§ 6–201 through 6–203 of the
4 Tax – Property Article, on tangible personal property subject to a lease that is for an initial
5 period that exceeds 1 year and is noncancellable except for cause; or

6 D. imposed under § 4–102 of this article on the gross receipts
7 derived from an admissions and amusement charge;

8 7. any service for the operation of equipment used for the
9 production of audio, video, or film recordings; or

10 8. reimbursement of incidental expenses paid to a third party
11 and incurred in connection with providing a taxable detective service;

12 (ii) the value of a used component or part (core value) received from
13 a purchaser of the following remanufactured truck parts:

14 1. an air brake system;

15 2. an engine;

16 3. a rear axle carrier; or

17 4. a transmission; or

18 (iii) a charge for a nontaxable service that is made in connection with
19 a sale of a taxable communication service, even if the nontaxable charges are aggregated
20 with and not separately stated from the taxable charges for communications services, if the
21 vendor can reasonably identify charges not subject to tax from its books and records that
22 are kept in the regular course of business.

23 (4) “Taxable price” includes all sales and charges, including insurance,
24 freight handling, equipment and supplies, delivery and pickup, cellular telephone, and
25 other accessories, but not including sales of motor fuel subject to the motor fuel tax, made
26 in connection with:

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

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

1 (5) "Taxable price" includes, for the sale or use of an accommodation
2 facilitated by an accommodations intermediary or a short-term rental platform, the full
3 amount of the consideration paid by a buyer for the sale or use of an accommodation, but
4 not including any tax that is remitted to a taxing authority.

5 (6) "Taxable price" does not include, for the sale or use of an
6 accommodation facilitated by an accommodations intermediary or a short-term rental
7 platform, a commission paid by an accommodations provider to a person after facilitating
8 the sale or use of an accommodation.

9 (m) "Taxable service" means:

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

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

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

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

17 (5) "900", "976", "915", and other "900"-type telecommunications service;

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

20 (7) a telephone answering service;

21 (8) ~~pay per view television service;~~ ~~MULTICHANNEL VIDEO~~
22 ~~PROGRAMMING SERVICE;~~

23 (9) credit reporting;

24 (10) a security service, including:

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

26 (ii) a security systems service;

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

30 (12) a prepaid telephone calling arrangement; or

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

4 (m–1) (1) “Telephone answering service” means a service provided to a customer
5 that consists exclusively of the taking of messages, either by an automated system or by a
6 live operator, and transmitting the messages to the customer.

7 (2) “Telephone answering service” does not include the physical act of
8 answering a telephone on behalf of a customer, if the act is incidental to and less than 5%
9 of the service provider’s total gross receipts in a calendar year.

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

12 (i) tangible personal property; [or]

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

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

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

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

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

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

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

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

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

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

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

14 **(IV) AN EXERCISE OF A RIGHT OR POWER OVER A DIGITAL CODE**
15 **TO RECEIVE OR ACCESS A DIGITAL PRODUCT; ~~OR~~**

16 **(V) AN EXERCISE OF A RIGHT OR POWER OVER A DIGITAL**
17 **PRODUCT ACQUIRED BY A SALE FOR USE IF THE BUYER IS NOT AN END USER; OR**

18 **(VI) THE USE OR TRANSFER OF A DIGITAL PRODUCT OR DIGITAL**
19 **CODE BY THE TRANSFEROR AND OBTAINED BY THE END USER FREE OF CHARGE.**

20 (o) (1) "Vendor" means a person who:

21 (i) engages in the business of an out-of-state vendor, as defined in
22 § 11-701 of this title;

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

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

26 (iv) is an accommodations intermediary;

27 (v) is a short-term rental platform;

28 (vi) engages in the business of a marketplace facilitator; or

29 (vii) engages in the business of a marketplace seller.

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

(i) under whom the agent operates; or

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

~~(P) (1) "VIDEO PROGRAMMING SERVICE" MEANS PROGRAMMING PROVIDED BY, OR GENERALLY CONSIDERED COMPARABLE TO PROGRAMMING PROVIDED BY, A TELEVISION BROADCAST STATION AND INFORMATION THAT THE PROVIDER OF THE SERVICE MAKES AVAILABLE TO ALL SUBSCRIBERS GENERALLY, INCLUDING:~~

~~(I) CABLE SERVICE, AS DEFINED IN 47 U.S.C. § 522(6);~~

~~(II) DIRECT TO HOME SATELLITE SERVICES, AS DEFINED IN 47 U.S.C. § 303(V); AND~~

~~(III) INTERACTIVE ON DEMAND SERVICES, AS DEFINED IN 47 U.S.C. § 522(12);~~

~~(2) "VIDEO PROGRAMMING SERVICE" DOES NOT INCLUDE A DIGITAL PRODUCT.~~

11-102.

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

(1) a retail sale in the State; and

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

11-103.

(a) A rebuttable presumption exists that any sale in the State is subject to the sales and use tax imposed under § 11-102(a)(1) of this subtitle.

(b) The person required to pay the sales and use tax has the burden of proving that a sale in the State is not subject to the sales and use tax.

1 **(C) THE RETAIL SALE OF A DIGITAL CODE OR DIGITAL PRODUCT SHALL BE**
 2 **PRESUMED TO BE MADE IN THE STATE IN WHICH THE CUSTOMER TAX ADDRESS IS**
 3 **LOCATED.**

4 11-217.

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

7 11-221.

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

11 ~~**(E) THE SALES AND USE TAX DOES NOT APPLY TO A RETAIL SALE OF A**~~
 12 ~~**MULTICHANNEL VIDEO PROGRAMMING SERVICE THAT IS SUBJECT TO A FRANCHISE**~~
 13 ~~**FEE DESCRIBED IN 47 U.S.C. § 542(G) OR OTHER TAX, FEE, OR MONETARY**~~
 14 ~~**ASSESSMENT OF ANY KIND IMPOSED BY THIS STATE OR POLITICAL SUBDIVISION OF**~~
 15 ~~**THIS STATE ON A MULTICHANNEL VIDEO PROGRAMMING PROVIDER OR**~~
 16 ~~**SUBSCRIBER, OR BOTH, SOLELY BECAUSE OF THEIR STATUS AS A MULTICHANNEL**~~
 17 ~~**VIDEO PROGRAMMING PROVIDER OR SUBSCRIBER.**~~

18 SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the General
 19 Assembly that, if necessary, the Comptroller distribute the sales and use tax collected in
 20 fiscal year 2021 on the sale or use of a digital product or code under Title 11 of the Tax -
 21 General Article to:

22 (1) the expenditure accounts of the appropriate units of State government to
 23 fund costs associated with the Coronavirus Disease 2019 (COVID-19); and

24 (2) the Revenue Stabilization Account established under § 7-311 of the State
 25 Finance and Procurement Article.

26 SECTION ~~2.~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
 27 July 1, 2020.