

HOUSE BILL 1354

Q4

0lr3057

By: **Delegates Charkoudian and Palakovich Carr**

Introduced and read first time: February 7, 2020

Assigned to: Ways and Means

Committee Report: Favorable with amendments

House action: Adopted with floor amendments

Read second time: March 10, 2020

CHAPTER _____

1 AN ACT concerning

2 **Sales and Use Tax and Personal Property Tax – Services, Aircraft Parts and**
3 **Equipment, and Data Centers**

4 FOR the purpose of altering the definition of “taxable service” under the sales and use tax
5 to impose the tax on certain services; providing an exemption from the sales and use
6 tax for certain materials, parts, and equipment used to repair, maintain, or upgrade
7 aircraft or certain aircraft systems under certain circumstances; requiring the
8 Comptroller to report to the General Assembly on or before a certain date each year;
9 providing an exemption from the sales and use tax for certain sales of certain
10 qualified data center personal property for use at certain qualified data centers
11 under certain circumstances; requiring an individual or a corporation to apply to the
12 Department of Commerce for an exemption certificate for the exemption; requiring
13 that the application include certain information; requiring the Department of
14 Commerce to certify eligibility for the exemption and each year to submit to the
15 Comptroller a list of eligible individuals and corporations; requiring the Comptroller
16 to issue a certificate of eligibility for the exemption within a certain number of days
17 after receiving the eligibility list; requiring that the certificate be renewed each year;
18 providing that the certificate may not be renewed for more than a certain number of
19 consecutive years; requiring certificate holders to maintain certain records and allow
20 the Department of Commerce to inspect the records for a minimum number of years
21 after the certificate expires; authorizing the Department of Commerce, under certain
22 circumstances, to revoke the certificate; requiring that the individual or corporation
23 be afforded a certain appeal before the Comptroller is notified of the revocation;
24 authorizing the Comptroller to make a certain assessment; authorizing the
25 governing body of a county or municipal corporation to reduce or eliminate the

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.



1 assessment of certain personal property used in certain qualified data centers;
 2 requiring the governing body of a county or municipal corporation to submit a copy
 3 of a certain law to the State Department of Assessments and Taxation; providing
 4 that, if the State Department of Assessments and Taxation receives a copy of the law
 5 on or before a certain date, the law is effective for the next taxable year; requiring
 6 the State Department of Assessments and Taxation, under certain circumstances, to
 7 provide a municipal corporation with a certain assessment of certain personal
 8 property; defining certain terms; providing for the application of certain provisions
 9 of this Act; and generally relating to the application of and exemptions from the sales
 10 and use tax ~~to services~~ and personal property tax.

11 BY repealing and reenacting, without amendments,
 12 Article – Tax – General
 13 Section 11–101(a) and 11–102(a)
 14 Annotated Code of Maryland
 15 (2016 Replacement Volume and 2019 Supplement)

16 BY adding to
 17 Article – Tax – General
 18 Section 11–101(c–4), 11–236, and 11–237
 19 Annotated Code of Maryland
 20 (2016 Replacement Volume and 2019 Supplement)

21 BY repealing and reenacting, with amendments,
 22 Article – Tax – General
 23 Section 11–101(m)
 24 Annotated Code of Maryland
 25 (2016 Replacement Volume and 2019 Supplement)

26 BY adding to
 27 Article – Tax – Property
 28 Section 7–246
 29 Annotated Code of Maryland
 30 (2019 Replacement Volume)

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

33 **Article – Tax – General**

34 11–101.

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

36 (C–4) “NAICS” MEANS THE NORTH AMERICAN INDUSTRIAL CLASSIFICATION
 37 SYSTEM, UNITED STATES MANUAL, 2017 EDITION, PUBLISHED BY THE UNITED
 38 STATES OFFICE OF MANAGEMENT AND BUDGET.

- 1 (m) "Taxable service" means:
- 2 (1) fabrication, printing, or production of tangible personal property by
3 special order;
- 4 (2) commercial cleaning or laundering of textiles for a buyer who is engaged
5 in a business that requires the recurring service of commercial cleaning or laundering of
6 the textiles;
- 7 (3) cleaning of a commercial or industrial building;
- 8 (4) cellular telephone or other mobile telecommunications service;
- 9 (5) "900", "976", "915", and other "900"-type telecommunications service;
- 10 (6) custom calling service provided in connection with basic telephone
11 service;
- 12 (7) a telephone answering service;
- 13 (8) pay per view television service;
- 14 (9) credit reporting;
- 15 (10) a security service, including:
- 16 (i) a detective, guard, or armored car service; and
- 17 (ii) a security systems service;
- 18 (11) a transportation service for transmission, distribution, or delivery of
19 electricity or natural gas, if the sale or use of the electricity or natural gas is subject to the
20 sales and use tax;
- 21 (12) a prepaid telephone calling arrangement; [or]
- 22 (13) the privilege given to an individual under § 4-1102 of the Alcoholic
23 Beverages Article to consume wine that is not purchased from or provided by a restaurant,
24 club, or hotel;
- 25 ~~(14) FOR CLEANING OR STORAGE SERVICES;~~
- 26 ~~(15) A GOLF COURSE OR COUNTRY CLUB MEMBERSHIP;~~
- 27 ~~(16) A MARINA SERVICE;~~

- 1 ~~(17) ART MOVING OR STORAGE SERVICES;~~
- 2 ~~(18) TANNING;~~
- 3 ~~(19) TATTOOING OR PIERCING;~~
- 4 ~~(20) INTERIOR DESIGN OR DECORATING SERVICES;~~
- 5 ~~(21) DOG WALKING;~~
- 6 ~~(22) A BOAT REPAIR SERVICE;~~
- 7 ~~(23) A WATCH, CLOCK, OR JEWELRY REPAIR SERVICE;~~
- 8 ~~(24) SCHEDULED OR NONSCHEDULED AIR TRANSPORTATION;~~
- 9 ~~(25) A TRAVEL ARRANGEMENT OR RESERVATION SERVICE; OR~~
- 10 ~~(26) LOBBYING, AS DEFINED IN § 5-101 OF THE GENERAL PROVISIONS~~
 11 ~~ARTICLE.~~
- 12 ~~(14) FUR CLEANING, STORAGE, OR REPAIR;~~
- 13 ~~(15) ART MOVING, CLEANING, OR STORAGE;~~
- 14 ~~(16) AN ART AND ANTIQUE COLLECTING ADVISORY OR BROKERAGE~~
 15 ~~SERVICE;~~
- 16 ~~(17) A SWIMMING POOL CLEANING OR MAINTENANCE SERVICE;~~
- 17 ~~(18) A SCENIC OR SIGHTSEEING TRANSPORTATION SERVICE (NAICS~~
 18 ~~SECTORS 4871, 4872, OR 4879);~~
- 19 ~~(19) AN INTERIOR DESIGN OR DECORATING SERVICE (NAICS SECTOR~~
 20 ~~541410);~~
- 21 ~~(20) A TELEMARKETING BUREAU OR OTHER CONTACT CENTER~~
 22 ~~SERVICE (NAICS SECTOR 561422); OR~~
- 23 ~~(21) A TOUR OPERATOR (NAICS SECTOR 561520);~~
- 24 ~~(22) (15) A LOBBYING OR PUBLIC RELATIONS SERVICE (NAICS~~
 25 ~~SECTOR 541820);~~

~~(23) A GOLF COURSE OR COUNTRY CLUB MEMBERSHIP OR SERVICE
(NAICS SECTOR 713910);~~

~~(24) WATCH, CLOCK, OR JEWELRY REPAIR (NAICS SECTOR 811490);~~

~~(25) A TANNING OR DAY SPA SERVICE (NAICS SECTOR 812199);~~

~~(26) A HAIR REMOVAL OR HAIR REPLACEMENT SERVICE (NAICS
SECTOR 812199);~~

~~(27) A TATTOOING, PIERCING, OR PERMANENT MAKEUP SERVICE
(NAICS SECTOR 812199);~~

~~(28) A NONVETERINARY PET CARE SERVICE (NAICS SECTOR 812910);~~

~~(29) AN ASTROLOGY, FORTUNE TELLING, OR PSYCHIC SERVICE
(NAICS SECTOR 812990);~~

~~(30) A SOCIAL ESCORT SERVICE (NAICS SECTOR 812990); OR~~

~~(31) A PERSONAL CHEF SERVICE (NAICS SECTOR 812990).~~

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 or a taxable service.

11-236.

**(A) THE SALES AND USE TAX DOES NOT APPLY TO THE SALE OF MATERIALS,
PARTS, OR EQUIPMENT USED TO REPAIR, MAINTAIN, OR UPGRADE AIRCRAFT OR THE
AVIONICS SYSTEMS OF AIRCRAFT IF THE MATERIALS, PARTS, OR EQUIPMENT ARE
INSTALLED ON AN AIRCRAFT THAT:**

**(1) HAS A MAXIMUM GROSS TAKEOFF WEIGHT OF LESS THAN 12,500
POUNDS; OR**

**(2) (I) HAS A MAXIMUM GROSS TAKEOFF WEIGHT OF 12,500
POUNDS OR MORE; AND**

**(II) IS PRIMARILY USED IN INTERSTATE OR FOREIGN
COMMERCE.**

1 **(B) ON OR BEFORE DECEMBER 31 EACH YEAR, THE COMPTROLLER SHALL**
2 **REPORT TO THE GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1257 OF THE**
3 **STATE GOVERNMENT ARTICLE, ON:**

4 **(1) THE AMOUNT OF SALES AND USE TAX REVENUE LOST FROM THE**
5 **EXEMPTION UNDER THIS SECTION; AND**

6 **(2) ANY CHANGE TO THE NUMBER OF AVIATION TECHNICIANS**
7 **EMPLOYED IN THE STATE AS A RESULT OF THE EXEMPTION UNDER THIS SECTION.**

8 **11-237.**

9 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**
10 **INDICATED.**

11 **(2) “DATA CENTER” MEANS A BUILDING OR GROUP OF BUILDINGS**
12 **USED TO HOUSE COMPUTER SYSTEMS, COMPUTER STORAGE EQUIPMENT, AND**
13 **ASSOCIATED INFRASTRUCTURE THAT BUSINESSES OR OTHER ORGANIZATIONS USE**
14 **TO ORGANIZE, PROCESS, STORE, AND DISSEMINATE LARGE AMOUNTS OF DATA.**

15 **(3) “DEPARTMENT” MEANS THE DEPARTMENT OF COMMERCE.**

16 **(4) “OPPORTUNITY ZONE” MEANS AN AREA THAT HAS BEEN**
17 **DESIGNATED AS A QUALIFIED OPPORTUNITY ZONE IN THE STATE UNDER § 1400Z-1**
18 **OF THE INTERNAL REVENUE CODE.**

19 **(5) (I) “QUALIFIED DATA CENTER” MEANS A DATA CENTER**
20 **LOCATED IN THE STATE IN WHICH AN INDIVIDUAL OR A CORPORATION, WITHIN 3**
21 **YEARS AFTER SUBMITTING AN APPLICATION FOR THE SALES AND USE TAX**
22 **EXEMPTION UNDER THIS SECTION, HAS:**

23 **1. FOR A DATA CENTER LOCATED WITHIN A TIER I AREA,**
24 **INVESTED AT LEAST \$2,000,000 IN QUALIFIED DATA CENTER PERSONAL PROPERTY**
25 **AND CREATED AT LEAST FIVE QUALIFIED POSITIONS; OR**

26 **2. FOR A DATA CENTER LOCATED IN ANY OTHER AREA OF**
27 **THE STATE, INVESTED AT LEAST \$5,000,000 IN QUALIFIED DATA CENTER PERSONAL**
28 **PROPERTY AND CREATED AT LEAST FIVE QUALIFIED POSITIONS.**

29 **(II) “QUALIFIED DATA CENTER” INCLUDES:**

1 1. A DATA CENTER THAT IS A CO-LOCATED OR HOSTING
2 DATA CENTER WHERE EQUIPMENT, SPACE, AND BANDWIDTH ARE AVAILABLE TO
3 LEASE TO MULTIPLE CUSTOMERS; AND

4 2. AN ENTERPRISE DATA CENTER OWNED AND
5 OPERATED BY THE COMPANY IT SUPPORTS.

6 (6) (I) "QUALIFIED DATA CENTER PERSONAL PROPERTY" MEANS
7 PERSONAL PROPERTY PURCHASED OR LEASED TO ESTABLISH OR OPERATE A DATA
8 CENTER.

9 (II) "QUALIFIED DATA CENTER PERSONAL PROPERTY"
10 INCLUDES:

11 1. COMPUTER EQUIPMENT OR ENABLING SOFTWARE
12 USED FOR THE PROCESSING, STORAGE, RETRIEVAL, OR COMMUNICATION OF DATA,
13 INCLUDING SERVERS, ROUTERS, CONNECTIONS, AND OTHER ENABLING HARDWARE
14 USED IN THE OPERATION OF THAT EQUIPMENT;

15 2. HEATING, VENTILATION, AND AIR-CONDITIONING
16 AND MECHANICAL SYSTEMS, INCLUDING CHILLERS, COOLING TOWERS,
17 AIR-HANDLING UNITS, PUMPS, ENERGY STORAGE OR ENERGY EFFICIENCY
18 TECHNOLOGY, AND OTHER CAPITAL EQUIPMENT USED IN THE OPERATION OF THAT
19 EQUIPMENT; AND

20 3. EQUIPMENT NECESSARY FOR THE GENERATION,
21 TRANSFORMATION, TRANSMISSION, DISTRIBUTION, OR MANAGEMENT OF
22 ELECTRICITY, INCLUDING EXTERIOR SUBSTATIONS, GENERATORS, TRANSFORMERS,
23 UNIT SUBSTATIONS, UNINTERRUPTIBLE POWER SUPPLY SYSTEMS, BATTERIES,
24 POWER DISTRIBUTION UNITS, REMOTE POWER PANELS, AND ANY OTHER CAPITAL
25 EQUIPMENT NECESSARY FOR THESE PURPOSES.

26 (7) (I) "QUALIFIED POSITION" MEANS A POSITION THAT:

27 1. IS A FULL-TIME POSITION OF INDEFINITE DURATION;

28 2. PAYS AT LEAST 150% OF THE STATE MINIMUM WAGE;

29 3. IS NEWLY CREATED BECAUSE A DATA CENTER BEGINS
30 OR EXPANDS IN A SINGLE LOCATION IN THE STATE; AND

31 4. IS FILLED.

32 (II) "QUALIFIED POSITION" DOES NOT INCLUDE A POSITION:

1 **1. CREATED IF AN EMPLOYMENT FUNCTION IS SHIFTED**
2 **FROM AN EXISTING DATA CENTER IN THE STATE TO ANOTHER DATA CENTER OF**
3 **RELATED OWNERSHIP IF THE POSITION IS NOT A NET NEW JOB IN THE STATE;**

4 **2. CREATED THROUGH A CHANGE IN OWNERSHIP OF A**
5 **TRADE OR BUSINESS;**

6 **3. CREATED THROUGH A CONSOLIDATION, MERGER, OR**
7 **RESTRUCTURING OF A BUSINESS ENTITY IF THE POSITION IS NOT A NET NEW JOB IN**
8 **THE STATE;**

9 **4. CREATED IF AN EMPLOYMENT FUNCTION IS**
10 **CONTRACTUALLY SHIFTED FROM AN EXISTING BUSINESS ENTITY IN THE STATE TO**
11 **ANOTHER BUSINESS ENTITY IF THE POSITION IS NOT A NET NEW JOB IN THE STATE;**
12 **OR**

13 **5. FILLED FOR A PERIOD OF LESS THAN 12 MONTHS.**

14 **(8) “TIER I AREA” MEANS:**

15 **(I) A TIER I COUNTY AS DEFINED IN § 1-101 OF THE ECONOMIC**
16 **DEVELOPMENT ARTICLE; OR**

17 **(II) AN OPPORTUNITY ZONE.**

18 **(B) THE SALES AND USE TAX DOES NOT APPLY TO THE SALE OF QUALIFIED**
19 **DATA CENTER PERSONAL PROPERTY FOR USE AT A QUALIFIED DATA CENTER IF THE**
20 **BUYER PROVIDES THE VENDOR WITH EVIDENCE OF ELIGIBILITY FOR THE**
21 **EXEMPTION ISSUED BY THE COMPTROLLER.**

22 **(C) (1) TO QUALIFY FOR THE SALES AND USE TAX EXEMPTION UNDER**
23 **SUBSECTION (B) OF THIS SECTION, AN INDIVIDUAL OR A CORPORATION SHALL FILE**
24 **AN APPLICATION FOR AN EXEMPTION CERTIFICATE WITH THE DEPARTMENT.**

25 **(2) THE APPLICATION MUST:**

26 **(I) DEMONSTRATE THAT THE APPLICANT INTENDS TO MEET**
27 **THE REQUIREMENTS OF A QUALIFIED DATA CENTER; AND**

28 **(II) INCLUDE ANY INFORMATION THE DEPARTMENT REQUIRES**
29 **TO EVIDENCE THE CAPACITY AND INTENTION OF THE APPLICANT TO FULFILL THE**
30 **COMMITMENTS SET FORTH IN THE APPLICANT’S APPLICATION.**

1 **(3) IF, BASED ON THE INFORMATION AND SUPPORTING**
2 **DOCUMENTATION PROVIDED IN THE APPLICATION, THE DEPARTMENT DETERMINES**
3 **THE APPLICANT IS ELIGIBLE FOR THE SALES AND USE TAX EXEMPTION UNDER**
4 **SUBSECTION (B) OF THIS SECTION, THE DEPARTMENT SHALL CERTIFY THE**
5 **ELIGIBILITY OF THE APPLICANT.**

6 **(D) (1) EACH YEAR, THE DEPARTMENT SHALL PROVIDE THE**
7 **COMPTROLLER WITH A LIST OF INDIVIDUALS AND CORPORATIONS THAT THE**
8 **DEPARTMENT DETERMINES ARE ELIGIBLE FOR THE SALES AND USE TAX EXEMPTION**
9 **UNDER SUBSECTION (B) OF THIS SECTION.**

10 **(2) WITHIN 30 DAYS AFTER RECEIVING THE LIST DESCRIBED IN**
11 **PARAGRAPH (1) OF THIS SUBSECTION, THE COMPTROLLER SHALL ISSUE TO EACH**
12 **INDIVIDUAL AND CORPORATION LISTED A CERTIFICATE OF ELIGIBILITY FOR THE**
13 **SALES AND USE TAX EXEMPTION UNDER SUBSECTION (B) OF THIS SECTION.**

14 **(3) THE CERTIFICATE OF ELIGIBILITY ISSUED UNDER PARAGRAPH**
15 **(2) OF THIS SUBSECTION:**

16 **(I) MUST BE RENEWED EACH YEAR; AND**

17 **(II) MAY NOT BE RENEWED FOR MORE THAN 10 CONSECUTIVE**
18 **YEARS.**

19 **(E) FOR AT LEAST 3 YEARS AFTER THE TERMINATION OF A CERTIFICATE**
20 **ISSUED UNDER SUBSECTION (D) OF THIS SECTION, EACH INDIVIDUAL OR**
21 **CORPORATION THAT RECEIVES THE CERTIFICATE SHALL:**

22 **(1) MAINTAIN A RECORD OF:**

23 **(I) THE AMOUNT OF SALES AND USE TAX THAT WAS NOT PAID**
24 **AS A RESULT OF THE CERTIFICATE;**

25 **(II) THE NUMBER OF QUALIFIED POSITIONS CREATED; AND**

26 **(III) THE INVESTMENT IN QUALIFIED DATA CENTER PERSONAL**
27 **PROPERTY; AND**

28 **(2) ALLOW THE DEPARTMENT TO INSPECT THE RECORDS DESCRIBED**
29 **IN ITEM (1) OF THIS SUBSECTION.**

30 **(F) (1) THE DEPARTMENT MAY REVOKE A CERTIFICATE OF ELIGIBILITY**
31 **UNDER SUBSECTION (D) OF THIS SECTION IF ANY REPRESENTATION MADE IN**
32 **CONNECTION WITH THE APPLICATION FOR THE CERTIFICATE IS DETERMINED BY**

1 THE DEPARTMENT TO HAVE BEEN FALSE WHEN MADE OR IF THE APPLICANT HAS
2 FAILED TO FULFILL THE APPLICANT'S COMMITMENTS UNDER THE APPLICATION.

3 (2) THE REVOCATION MAY BE IN FULL OR IN PART AS THE
4 DEPARTMENT MAY DETERMINE.

5 (3) THE INDIVIDUAL OR CORPORATION SHALL HAVE AN
6 OPPORTUNITY TO APPEAL ANY REVOCATION TO THE DEPARTMENT BEFORE
7 NOTIFICATION OF THE COMPTROLLER.

8 (4) THE COMPTROLLER MAY MAKE AN ASSESSMENT AGAINST THE
9 INDIVIDUAL OR CORPORATION TO RECAPTURE ANY AMOUNT OF SALES AND USE TAX
10 THAT THE INDIVIDUAL OR CORPORATION HAS NOT PAID AS A RESULT OF AN
11 EXEMPTION UNDER SUBSECTION (B) OF THIS SECTION.

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

14 Article – Tax – Property

15 7-246.

16 (A) IN THIS SECTION, “QUALIFIED DATA CENTER” AND “QUALIFIED DATA
17 CENTER PERSONAL PROPERTY” HAVE THE MEANINGS STATED IN § 11-237 OF THE
18 TAX – GENERAL ARTICLE.

19 (B) THE GOVERNING BODY OF A COUNTY OR MUNICIPAL CORPORATION MAY
20 REDUCE OR ELIMINATE, BY LAW, THE PERCENTAGE OF THE ASSESSMENT OF ANY
21 QUALIFIED DATA CENTER PERSONAL PROPERTY USED IN A QUALIFIED DATA
22 CENTER THAT IS SUBJECT TO THE COUNTY OR MUNICIPAL CORPORATION PROPERTY
23 TAX UNDER THIS TITLE.

24 (C) (1) A COUNTY OR MUNICIPAL CORPORATION THAT REDUCES OR
25 ELIMINATES THE PERCENTAGE OF ASSESSMENT OF TAXABLE QUALIFIED DATA
26 CENTER PERSONAL PROPERTY UNDER SUBSECTION (B) OF THIS SECTION SHALL
27 SUBMIT A COPY OF THE LAW TO THE DEPARTMENT.

28 (2) IF THE DEPARTMENT RECEIVES A COPY OF THE LAW ON OR
29 BEFORE MAY 1, THE CHANGE WILL BE EFFECTIVE FOR THE TAXABLE YEAR
30 FOLLOWING THE DATE THE LAW IS ENACTED.

31 (D) IF ANY QUALIFIED DATA CENTER PERSONAL PROPERTY IS EXEMPT
32 UNDER SUBSECTION (C) OF THIS SECTION FROM COUNTY PROPERTY TAX BUT IS
33 SUBJECT TO MUNICIPAL CORPORATION PROPERTY TAX, THE DEPARTMENT OR THE

1 SUPERVISOR SHALL PROVIDE THE MUNICIPAL CORPORATION WITH THE
2 ASSESSMENT OF THE QUALIFIED DATA CENTER PERSONAL PROPERTY.

3 SECTION 3. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall be
4 applicable to all taxable years beginning after June 30, 2020.

5 SECTION ~~2~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 July 1, 2020.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.