

# SENATE BILL 723

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CF HB 791

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By: **Senators King and Guzzone**

Introduced and read first time: February 7, 2022

Assigned to: Budget and Taxation

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Committee Report: Favorable

Senate action: Adopted

Read second time: March 5, 2022

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Sales and Use Tax – Digital Product – Definition**

3 FOR the purpose of altering the definition of “digital product” for purposes of the  
4 application of the sales and use tax to exclude certain products where the purchaser  
5 has a certain property interest and certain types of computer software; and generally  
6 relating to the sales and use tax.

7 BY repealing and reenacting, without amendments,  
8 Article – Tax – General  
9 Section 11–101(a) and 11–102(a)  
10 Annotated Code of Maryland  
11 (2016 Replacement Volume and 2021 Supplement)

12 BY repealing and reenacting, with amendments,  
13 Article – Tax – General  
14 Section 11–101(c–4)  
15 Annotated Code of Maryland  
16 (2016 Replacement Volume and 2021 Supplement)

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

19 **Article – Tax – General**

20 11–101.

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

2 (c-4) (1) “Digital product” means a product that is obtained electronically by the  
3 buyer or delivered by means other than tangible storage media through the use of  
4 technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar  
5 capabilities.

6 (2) “Digital product” includes:

7 (i) a work that results from the fixation of a series of sounds that  
8 are transferred electronically, including:

9 1. prerecorded or live music or performances, readings of  
10 books or other written materials, and speeches; and

11 2. audio greeting cards sent by e-mail;

12 (ii) a digitized sound file, such as a ring tone, that is downloaded onto  
13 a device and may be used to alert the user of the device with respect to a communication;

14 (iii) a series of related images that, when shown in succession, impart  
15 an impression of motion, together with any accompanying sounds that are transferred  
16 electronically, including motion pictures, musical videos, news and entertainment  
17 programs, live events, video greeting cards sent by e-mail, and video or electronic games;

18 (iv) a book, generally known as an “e-book”, that is transferred  
19 electronically; and

20 (v) a newspaper, magazine, periodical, chat room discussion, weblog,  
21 or any other similar product that is transferred electronically.

22 (3) “Digital product” does not include:

23 (i) prerecorded or live instruction by a public, private, or parochial  
24 elementary or secondary school or a public or private institution of higher education;

25 (ii) instruction in a skill or profession in a buyer’s current or  
26 prospective business, occupation, or trade if the instruction:

27 1. is not prerecorded; and

28 2. features an interactive element between the buyer and the  
29 instructor or other buyers contemporaneous with the instruction;

30 (iii) a seminar, discussion, or similar event hosted by a nonprofit  
31 organization or business association, if the seminar, discussion, or event:

1                   1.     is not prerecorded; and

2                   2.     features an interactive element between the buyer and  
3 host or other buyers contemporaneous with the seminar, discussion, or event; [or]

4                   (iv) a professional service obtained electronically or delivered  
5 through the use of technology having electrical, digital, magnetic, wireless, optical,  
6 electromagnetic, or similar capabilities;

7                   **(V) A PRODUCT HAVING ELECTRICAL, DIGITAL, MAGNETIC,  
8 WIRELESS, OPTICAL, ELECTROMAGNETIC, OR SIMILAR CAPABILITIES WHERE THE  
9 PURCHASER HOLDS A COPYRIGHT OR OTHER INTELLECTUAL PROPERTY INTEREST  
10 IN THE PRODUCT, IN WHOLE OR IN PART, IF THE PURCHASER USES THE PRODUCT  
11 SOLELY FOR COMMERCIAL PURPOSES, INCLUDING ADVERTISING OR OTHER  
12 MARKETING ACTIVITIES; OR**

13                   **(VI) COMPUTER SOFTWARE OR SOFTWARE AS A SERVICE  
14 PURCHASED OR LICENSED SOLELY FOR COMMERCIAL PURPOSES IN AN ENTERPRISE  
15 COMPUTER SYSTEM, INCLUDING OPERATING PROGRAMS OR APPLICATION  
16 SOFTWARE FOR THE EXCLUSIVE USE OF THE ENTERPRISE SOFTWARE SYSTEM, THAT  
17 IS HOUSED OR MAINTAINED BY THE PURCHASER OR ON A CLOUD SERVER, WHETHER  
18 HOSTED BY THE PURCHASER, THE SOFTWARE VENDOR, OR A THIRD PARTY.**

19 11–102.

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

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

22                   (2)     a use, in the State, of tangible personal property, a digital  
23 product, or a taxable service.

24           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July  
25 1, 2022.