

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 723

(Senators King and Guzzone)

Budget and Taxation

Ways and Means

Sales and Use Tax - Digital Product - Definition

This bill alters the definition of digital product for purposes of the State sales and use tax.
The bill takes effect July 1, 2022.

Fiscal Summary

State Effect: Special fund revenues (Blueprint for Maryland's Future Fund) may decrease beginning in FY 2023 to the extent that transactions under the bill are currently subject to the State sales and use tax. State expenditures are not affected.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill specifies that the following are not digital products:

- a product having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities where the purchaser holds a copyright or other intellectual property interest in the product, in whole or in part, if the purchaser uses the product solely for commercial purposes, including advertising or other marketing activities; and
- computer software or software as a service purchased or licensed solely for commercial purposes in an enterprise computer system, including operating programs or application software for the exclusive use of the enterprise software

system, that is housed or maintained by the purchaser or on a cloud server, whether hosted by the purchaser, the software vendor, or a third party.

Current Law: Chapter 38 of 2021 imposed the State sales and use tax on specified digital products and codes and required the sales and use tax revenue from each sale to be distributed to the Blueprint for Maryland's Future Fund.

A digital product is defined as a product that is obtained electronically by the buyer or delivered by means other than tangible storage media through the use of technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

A digital product includes:

- a work that results from the fixation of a series of sounds that are transferred electronically, including prerecorded or live music or performances, readings of books or other written materials, and speeches and audio greeting cards sent by email;
- a digitized sound file, such as a ring tone, that is downloaded onto a device and may be used to alert the user of the device with respect to a communication;
- a series of related images that, when shown in succession, impart an impression of motion, together with any accompanying sounds, that are transferred electronically, including motion pictures, musical videos, news and entertainment programs, live events, video greeting cards sent by email, and video or electronic games;
- a book, generally known as an “e-book,” that is transferred electronically; and
- a newspaper, magazine, periodical, chat room discussion, weblog, or other similar product that is transferred electronically.

A digital code is defined as a code that may be obtained by any means, including in a tangible form, such as a card or through email, and provides a buyer with a right to obtain one or more digital products. A digital code does not include a gift certificate or gift card with a monetary value that may be redeemable for an item other than a digital product.

An end user is any person other than a person who receives by contract a digital product transferred electronically for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution, or exhibition of the product, in whole or in part, to another person.

Chapter 38 required that the retail sale of a digital code or digital product must be presumed to be made in the state in which the customer's tax address is located. A customer tax address, as it relates to a sale of a digital product, will vary according to the nature of the sale, as well as information that is available to a vendor at the time of sale of a digital product. Customer tax address may be (1) the address of the business location, for a digital product that is received by a buyer at the business location of the vendor; (2) the primary use location of the digital product; (3) the location where the digital product is received by the buyer, or donee of the buyer; (4) the location indicated by the address for the buyer according to specified business records; (5) the location indicated by an address for the buyer obtained during the sale, as specified; or (6) other locations determined by the vendor, provided that the location is consistently used by the vendor for all sales to which an item applies, as specified.

Primary use location is the street address that is representative of where the buyer's use of a digital product will primarily occur, as determined by (1) the residential street address or a business address of the actual end user of the digital product, as specified or (2) the location of the buyer's employees or equipment that makes use of the digital product if the buyer is not an individual. A primary use location does not include the location of a person who uses a digital product as the purchaser of a separate good or service from the buyer.

Subscription, as it relates to a digital product, is an arrangement with a vendor that grants a buyer the right to obtain digital products from within one or more product categories having the same tax treatment, in a fixed quantity or for a fixed period of time, or both.

Chapter 669 of 2021 specified which sales and use tax exemptions and other provisions of law governing the sales and use tax applied to digital products and codes. In addition, the definitions of digital product and digital code were altered. Certain types of digital instruction, seminars, discussions, and professional services were excluded from the definition of digital product. A digital code is defined to include a number, symbol, alphanumeric sequence, barcode, or similar code.

State Fiscal Effect: Special fund revenues (Blueprint for Maryland's Future Fund) may decrease beginning in fiscal 2023 to the extent that certain transactions under the bill are currently taxable. However, information published on the Comptroller's website indicates that many, if not all, of these transactions are exempt from the sales and use tax under current law ([Business Tax Tip #29 Sales of Digital Products and Digital Code \(marylandtaxes.gov\)](https://marylandtaxes.gov)). As a result, the amount of the revenue decrease is not anticipated to be significant.

As a point of reference, the State revenue forecast assumes \$117.6 million in fiscal 2022 and \$105.1 million in fiscal 2023 from the State sales and use tax imposed on the sale or use of digital products.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 791 (Delegate Luedtke) - Ways and Means.

Information Source(s): Comptroller's Office; Department of Legislative Services

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Analysis by: Michael Sanelli

Direct Inquiries to:
(410) 946-5510
(301) 970-5510