

SB0284/673521/1

BY: Senator Hershey

AMENDMENTS TO SENATE BILL 284
(First Reading File Bill – Committee Reprint)

AMENDMENT NO. 1

On page 1, in line 24, after “Account;” insert “repealing the sales and use tax imposed on certain data or information technology services and system software or application software publishing services.”

On page 6, in line 14, strike “and 10–740(a), (b), and (i)” and substitute “, 10–740(a), (b), and (i), and 11–101(a)”; in line 19, after “2–606(i)” insert “, 2–1303”; in the same line, strike “and 10–740(c) and (g)” and substitute “10–740(c) and (g), 11–101(c–1), (c–5), (c–13), (e–1), and (m)(12) and (13), 11–103(c), 11–219, and 11–403(a)”; and after line 21, insert:

“BY repealing

Article - Tax - General

Section 2–1302.5, 11–101(c–12) and (m)(14) and (15), 11–104(l), 11–246, and 11–403(e)

Annotated Code of Maryland

(2022 Replacement Volume and 2025 Supplement)”.

AMENDMENT NO. 2

On page 47, after line 15, insert:

“Article – Tax – General

[2–1302.5.

After making the distributions required under §§ 2–1301 through 2–1302.4 of this subtitle, of the sales and use tax collected under § 11–104(l) of this article, the Comptroller shall distribute the revenue to the General Fund of the State.]

2–1303.

After making the distributions required under §§ 2–1301 through [2–1302.5] 2–1302.4 of this subtitle, the Comptroller shall pay:

(1) revenues from the hotel surcharge into the Dorchester County Economic Development Fund established under § 10–130 of the Economic Development Article;

(2) to the Blueprint for Maryland’s Future Fund established under § 5–206 of the Education Article, the following percentage of the remaining sales and use tax revenues:

(i) for fiscal year 2023, 9.2%;

(ii) for fiscal year 2024, 11.0%;

(iii) for fiscal year 2025, 11.3%;

(iv) for fiscal year 2026, 11.7%; and

(v) for fiscal year 2027 and each fiscal year thereafter, 12.1%; and

(3) the remaining sales and use tax revenue into the General Fund of the State.

11–101.

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

(c-1) “Customer tax address” means, with respect to a sale of a digital code[,]
OR digital product[, or taxable service described under subsection (m)(14) or (15) of this
section]:

(1) for a digital code[,]
OR digital product[, or taxable service described
under subsection (m)(14) or (15) of this section] that is received by a buyer at the
business location of the vendor, the address of that business location;

(2) if item (1) of this subsection is not applicable and the primary use
location of the digital code[,]
OR digital product[, or taxable service described under
subsection (m)(14) or (15) of this section] is known by the vendor, that primary use
location;

(3) if items (1) and (2) of this subsection are not applicable, the location
where the digital code[,]
OR digital product[, or taxable service described under
subsection (m)(14) or (15) of this section] is received by the buyer, or by a donee of the
buyer that is identified by the buyer, if known to the vendor and maintained in the
ordinary course of the vendor’s business;

(4) if items (1) through (3) of this subsection are not applicable, the
location indicated by an address for the buyer that is available from the business records
of the vendor that are maintained in the ordinary course of business of the vendor’s
business, when use of the address does not constitute bad faith;

(5) if items (1) through (4) of this subsection are not applicable, the
location indicated by an address for the buyer obtained during the consummation of the
sale, including the address of the buyer’s payment instrument, when use of the address
does not constitute bad faith; or

(Over)

(6) if items (1) through (5) of this subsection are not applicable, including a circumstance in which a vendor is without sufficient information to apply those items, one of the following locations, as selected by the vendor, provided that the location is consistently used by the vendor for all sales to which this item applies:

(i) the location in the United States of the headquarters of the vendor's business;

(ii) the location in the United States where the vendor has the greatest number of employees; or

(iii) the location in the United States from which the vendor makes digital products available for electronic transfer.

(c-5) (1) "End user" means any person who receives or accesses a digital code[,] OR digital product code[, or taxable service described under subsection (m)(14) or (15) of this section] for use.

(2) "End user" does not include any person who receives a digital code[,] OR digital product[, or taxable service described under subsection (m)(14) or (15) of this section] for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution, or exhibition of the digital product.

[(c-12) "NAICS" means the North American Industrial Classification System, United States Manual, 2022 Edition, published by the United States Office of Management and Budget.]

[(c-13)] (C-12) "Permanent" means perpetual or for an indefinite or unspecified length of time.

(e-1) (1) “Primary use location” means the street address representative of where the buyer’s use of a digital code[,] OR digital product[, or taxable service described under subsection (m)(14) or (15) of this section] will primarily occur, as determined by:

(i) the residential street address or a business street address of the actual end user of the digital code[,] OR digital product[, or taxable service described under subsection (m)(14) or (15) of this section] including, if applicable, the address of a donee of the buyer that is designated by the buyer; or

(ii) if the buyer is not an individual, the location of the buyer’s end users, including employees, or equipment that makes use of the digital code[,] OR digital product[, or taxable service described under subsection (m)(14) or (15) of this section].

(2) “Primary use location” does not include the location of a person who is not any end user or who uses a digital code[,] OR digital product[, or taxable service described under subsection (m)(14) or (15) of this section] as the purchaser of a separate good or service from the buyer.

(m) “Taxable service” means:

(12) a prepaid telephone calling arrangement; OR

(13) the privilege given to an individual under § 4-1102 of the Alcoholic Beverages and Cannabis Article to consume wine that is not purchased from or provided by a restaurant, club, or hotel[;

(14) a data or information technology service described under NAICS Sector 518, 519, or 5415; or

(Over)

(15) a system software or application software publishing service described under NAICS Sector 5132].

11-103.

(c) The retail sale of a digital code[,] OR digital product[, or taxable service described under § 11-101(m)(14) or (15) of this subtitle] shall be presumed to be made in the state in which the customer tax address is located.

11-104.

[(1) (1) The sales and use tax for a sale of a taxable service described under § 11-101(m)(14) and (15) of this subtitle is 3% of the taxable price.

(2) If a different rate from the rate specified under paragraph (1) of this subsection could be applied to a sale or use of tangible personal property, a digital code, a digital product, or a taxable service, the higher rate shall apply to the sale.]

11-219.

(a) The sales and use tax does not apply to a personal, professional, or insurance service that:

(1) is not a taxable service; and

(2) involves a sale as an inconsequential element for which no separate charge is made.

(b) THE SALES AND USE TAX DOES NOT APPLY TO A SALE OF CUSTOM COMPUTER SOFTWARE, REGARDLESS OF THE METHOD TRANSFERRED OR ACCESSED, OR A SERVICE RELATING TO CUSTOM COMPUTER SOFTWARE THAT:

(1) WOULD OTHERWISE BE TAXABLE UNDER THIS TITLE;

(2) IS TO BE USED BY A SPECIFIC PERSON;

(3) (I) IS CREATED FOR THAT PERSON; OR

(II) CONTAINS STANDARD OR PROPRIETARY ROUTINES REQUIRING SIGNIFICANT CREATIVE INPUT TO CUSTOMIZE, CONFIGURE, OR MODIFY THE PROCEDURES AND PROGRAMS THAT ARE NECESSARY TO PERFORM THE FUNCTIONS REQUIRED FOR THE SOFTWARE TO OPERATE AS INTENDED; AND

(4) DO NOT CONSTITUTE A PROGRAM, A PROCEDURE, OR DOCUMENTATION THAT IS MASS PRODUCED AND SOLD TO:

(I) THE GENERAL PUBLIC; OR

(II) PERSONS ENGAGED IN A TRADE, A PROFESSION, OR AN INDUSTRY, EXCEPT AS PROVIDED IN ITEM (3) OF THIS SUBSECTION.

(C) The sales and use tax does not apply to the sale of an optional computer software maintenance contract if the buyer does not have a right, as part of the contract, to receive at no additional cost software products that are separately priced and marketed by the vendor.

~~[(c)]~~ (D) The sales and use tax does not apply to the use of a taxable service obtained by using a prepaid telephone calling arrangement.

[(d)] (1) (i) In this subsection the following words have the meanings indicated.

(ii) “Cloud computing” means a service that enables on-demand, self-service network access to a shared pool of configurable computer resources, including data storage, analytics, commerce, streaming, e-mail, document sharing, and document editing.

(iii) “Qualified cybersecurity business” means an entity organized for profit that is engaged primarily in the development of innovative proprietary cybersecurity technology or the provision of cybersecurity services.

(2) The sales and use tax imposed on a taxable service described under § 11-101(m)(14) or (15) of this title does not apply to a sale of cloud computing to a qualified cybersecurity business.]

[11-246.

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

(2) “Emerging technology development area” means the University of Maryland’s Discovery District located in Prince George’s County.

(3) “Qualified company” means a company that contracts with the University of Maryland’s Applied Research Laboratory for Intelligence and Security to develop systems and technologies to advance the use of quantum computers.

(b) The sales and use tax imposed on a taxable service described under § 11-101(m)(14) or (15) of this title does not apply to a sale:

(1) to a qualified company located in an emerging technology development area made in connection with the work of the company; or

(2) by a qualified company located in an emerging technology development area.]

11-403.

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

(2) “Affiliated group” has the meaning stated under § 1504 of the Internal Revenue Code and includes related parties described under § 267(b)(10), (11), or (12) of the Internal Revenue Code.

(3) “Pass-through entity” has the meaning stated in § 10-102.1 of this article.

(4) “Related pass-through entities” means one or more pass-through entities connected through ownership with a common parent pass-through entity but only if the common parent:

(i) possesses at least 80% of the total voting power of the pass-through entity; and

(ii) has a value equal to at least 80% of the total value of the pass-through entity.

(5) “Sales”], “SALES” includes a booking transaction made through a short-term rental platform.

[(e) (1) A buyer may present to the vendor a certificate indicating multiple points of use of a digital code, digital product, or taxable service described under § 11-101(m)(14) or (15) of this title, if:

(Over)

(i) the buyer knows at the time of purchase that the digital code, digital product, or taxable service described under § 11–101(m)(14) or (15) of this title will be:

1. concurrently available for use by the buyer in more than one taxing jurisdiction; or

2. resold in its original form to a member of an affiliated group or a related pass-through entity of which the buyer is also a member; and

(ii) the buyer delivers to the vendor the certificate indicating multiple points of use at the time of purchase.

(2) On receipt of the fully completed certificate indicating multiple points of use, the vendor is relieved of the obligation to collect, pay, or remit the applicable tax to the Comptroller and, subject to paragraph (4) of this subsection, the buyer is obligated to collect, pay, or remit the applicable tax to the Comptroller.

(3) The buyer delivering the certificate indicating multiple points of use may use any reasonable but consistent and uniform method of apportionment that is supported by the buyer’s records as they exist at the time of the sale and accurately reflects the primary use location in the State.

(4) (i) If the apportionment on the certificate indicating multiple points of use is determined based on a subsequent resale to one or more members of an affiliated group or related pass-through entities, the affiliated member or related pass-through entity reselling the digital code, digital product, or taxable service described under § 11–101(m)(14) or (15) of this title to another affiliated member or related pass-through entity shall:

1. assume or absorb the sales and use tax due from the affiliated member or members or related pass-through entity or entities on that portion

of the sale apportioned to the State and pay the sales and use tax due on behalf of the affiliated member or members or related pass-through entity or entities; or

2. be liable for the sales and use tax due from the affiliated member or members or related pass-through entity or entities if the sales and use tax due is not paid by the affiliated member or members or related pass-through entity or entities.

(ii) If the sales and use tax is paid as provided in subparagraph (i) of this paragraph, the affiliated member end user or related pass-through entity end user is relieved of the obligation to pay or remit the applicable tax to the Comptroller.

(5) Notwithstanding any other provision of this subsection, if the taxable price of a subsequent resale of a digital code, digital product, or taxable service described under § 11-101(m)(14) or (15) of this title to an affiliated group member or related pass-through entity is higher than the taxable price on which the sales and use tax was paid, the end user shall be liable for the additional sales and use tax due on the difference in the taxable price.

(6) The certificate indicating multiple points of use shall include all information required by the Comptroller.】