

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	03/25/2022	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 5/6/2022

2. COMAR Codification

Title Subtitle Chapter Regulation

03 06 01 01, .03, .04, .07, .09, .11, .12, .13, .14, .16

03 06 01 18, .21, .22, .26, .28, .30, .31, .32-2, .33, .34

03 06 01 35, .38, .39, .41, .46

3. Name of Promulgating Authority

Comptroller of Maryland

4. Name of Regulations Coordinator

John Werner

Telephone Number

4102606112

Mailing Address

110 Carrol St Room 102

City State Zip Code

Annapolis MD 21411

Email

Jwerner@marylandtaxes.gov

5. Name of Person to Call About this Document

Krista Sermon

Telephone No.

(410) 260-7319

Email Address

ksermon@marylandtaxes.gov

6. Check applicable items:

New Regulations

Amendments to Existing Regulations

Subtitle 06 SALES AND USE TAX

03.06.01 Sales and Use Tax

Subtitle 06 SALES AND USE TAX

03.06.01 Sales and Use Tax

Subtitle 06 SALES AND USE TAX

03.06.01 Sales and Use Tax

Authority: Tax-General Article, §§2-102, 2-103, 11-102, 11-104(h), 11-204, 11-206, 11-226, 11-228, 11-407, 11-410, and 11-701, Annotated Code of Maryland

Notice of Proposed Action

□

The Comptroller of the Treasury proposes to Amend regulations .01, .03, .04, .07, .09, .11, .12, .13, .14, .16, .18, .21, .22, .26, .28, .30, .31, .32-2, .33, .34, .35, .38, .39, .41, and .46 of COMAR 03.06.01 Sales and Use Tax.

Statement of Purpose

The purpose of this action is to amend regulations to update outdated language, reflect legislative changes regarding digital products, digital codes, and the definition of detective, and clarify ambiguous regulatory language.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Krista Sermon, Office of Law and Policy, Comptroller of Maryland, 80 Calvert St. Room 409b, Annapolis, MD 21401, or call 410-260-7319, or email to ksermon@marylandtaxes.gov, or fax to . Comments will be accepted through June 6, 2022. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 22

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

No

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

No additional funding is necessary for the implementation of these regulations.

E. If these regulations have no economic impact under Part A, indicate reason briefly:

These regulations are proposed for the purpose of providing guidance and do not themselves alter the obligations of any individuals or businesses.

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

These regulations are proposed for the purpose of providing guidance and do not themselves alter the obligations of any individuals or businesses.

G. Small Business Worksheet:

Because the proposed actions seek to reflect procedures for already existing law, neither households nor businesses will be affected by the proposed action.

No other direct or indirect adverse impacts are anticipated by this proposal.

No other direct or indirect positive impacts are anticipated by this proposal.

No long-term impacts are anticipated by this proposal.

(1) There is no anticipated effect on the cost of providing goods and services; (2) There is no anticipated effect on the work force; (3) There is no anticipated effect on the cost of housing; (4) There is no anticipated effect on efficiency in production and marketing; (5) There is no anticipated capital investment, taxation, competition, and economic development; and (6) There is no anticipated effect on consumer choice.

Attached Document:

Title 03 COMPTROLLER OF THE TREASURY

Subtitle 06 SALES AND USE TAX

03.06.01 Sales and Use Tax

Authority: Tax-General Article, §§2-102, 2-103, 11-102, 11-104(h), 11-204, 11-206, 11-226, 11-228, 11-407, 11-410, and 11-701, Annotated Code of Maryland

.01 Personal, Professional, or Insurance Services.

A. Except for taxable services set forth in Tax-General Article, §11-101[(k)](m), Annotated Code of Maryland, the tax does not apply to a personal, professional, or insurance service that involves a sale as an inconsequential element for which no separate charge is made. Examples of services to which the tax does not apply are services customarily rendered by physicians, dentists, lawyers, accountants, insurance agents, pest exterminators, barbers, beauticians, and funeral directors, and storage [warehousemen] *warehouseperson*.

B. Purchases.

(1) (text unchanged)

(2) A person providing taxable services shall pay tax on purchases of materials, supplies, tools, [and] equipment, and *digital codes or digital products* used by the person but may issue a resale certificate for the purchase of tangible personal property transferred as part of a taxable service and taxable services resold in unchanged form. For example, a janitorial company may purchase paper towels tax-free by issuing a resale certificate if those towels are used to stock the bathroom of a customer receiving taxable cleaning services. The janitorial company shall pay tax on its purchase of cleaning agents which the janitorial company uses to clean the bathroom of a customer receiving taxable cleaning services.

C. Sales.

(1) If a person providing services also makes independent sales of tangible personal property, *digital codes, or digital products*, that person shall collect and remit the sales and use tax on those sales unless a specific statutory exemption applies.

(2) (text unchanged)

.03 Repairs of Tangible Personal Property, Digital Codes, and Digital Products

A. General.

(1) The charge for labor to repair or alter existing tangible personal property, a *digital code, or a digital product* belonging to another for the purpose of restoring the property, *digital code, or digital product* to its original condition or usefulness is not subject to tax.

(2) (text unchanged)

B. Persons engaged in repairing tangible personal property, *digital code, or digital product* of others' for a consideration may handle the sales and use tax on their transactions in either of the following ways:

(1) If separate charges are made for materials incorporated in the property *or digital code, or digital product* being repaired, the tax shall be applied to the charges for the materials. The resale exclusion may be claimed on purchases of materials transferred to customers under these circumstances.

(2) If separate charges are not made for materials incorporated in the property, *digital code, or digital product* being repaired, that is, the repair is charged for on a lump-sum basis, the tax may not apply to any portion of the charge to the customer. The resale exclusion may not be claimed on purchases of materials transferred to customers under these circumstances. A person making a repair of tangible personal property, *digital code, or digital product* who charges for the repair on a lump-sum basis shall pay the tax on purchases of materials used in performing the repair. The taxability of purchases for lump-sum contracts is not affected by the fact that the person for whom the repair work is performed would not have been required to pay the tax on a separately stated charge for materials.

C. Maintenance Contracts.

(1) The tax does not apply to a charge for a maintenance contract unless it is required to be purchased as a condition of a sale of other tangible personal property, *digital code, or digital product*.

(2)-(3) (text unchanged)

(4) A person performing repairs under a mandatory maintenance contract or a taxable optional maintenance contract as described in §C(2) of this regulation may claim the resale exclusion on all materials passing to customers.

D. Persons engaged in repairing tangible personal property, *digital code, or digital product* shall pay the tax on all purchases of equipment, tools, consumables and other materials used in performing the repair work which are not transferred to customers, without regard to the method of billing employed.

E. The circumstances under which resale certificates may be issued by persons engaged in repairing tangible personal property, *digital code, or digital product* who utilize both separately stated materials and lump-sum charge bases for those repairs are set forth in Regulation .07 of this chapter.

F. (text unchanged)

.04 [Newspapers.] Published Material.

A. *Definition.*

(1) "Published material" means any textual or graphic material disseminated to another person or persons through printed, electronic, or other media.

(2) "Published material" includes a newspaper, magazine, periodical, chat room discussion, weblog, or any other similar product.

B. The sale of published material for a charge is subject to the sales and use tax, except as described in section C of this regulation.

C. *Printing and Sale of Newspapers.*

(1)—(2) (text unchanged)

[B.]D. Requirements for Classification as a Newspaper.

(1) A publication is not a newspaper unless:

(a)—(c) (text unchanged)

(d) It contains news items, legal and general intelligence, reports of current events, editorial comments, advertising matter, [and]or other miscellaneous information of public interest.[generally found in an ordinary newspaper.]

(2) The criteria set forth in [§B(1)]§D(1) of this regulation are minimum requirements, the meeting of which does not necessarily result in a publication being classified as a newspaper. A publication which meets the criteria set forth in [§B(1)]§D(1) of this regulation, but which is in fact a magazine, shopping advertiser, community newsletter, tip sheet, or other publication which is not a newspaper in the common and popularly accepted usage of the term, is not a newspaper for the purpose of this exemption. A publication is not disqualified solely because it is devoted primarily to matters of specialized interest, such as legal, mercantile, political, religious, or sporting matters.

[C.]E. The taxability of sales of photographic materials and certain other tangible personal property used in the [printing]publication of [newspapers]published material is described in Regulation .11 of this chapter.

.07 Sales Where It Is Impractical to Establish the Amount of Property to be Resold.

A. If, at the time of a sale, it is impractical for the buyer to establish the actual amount of the property, *digital code, or digital product* being purchased which is to be resold, the tax shall be paid on the entire amount of the sale, either if the buyer has reason to believe that a majority of the tangible personal property, *digital code, or digital product* will not be resold, or if the buyer cannot determine whether or not a majority of the tangible personal property, *digital code, or digital product* will be resold. If any portion of the property is later resold without having first been used by the buyer, the buyer may apply for a refund of the taxes attributable to this property, within 4 years of the date of purchase.

B. If no tax is paid upon the purchase of tangible personal property, *digital code, or digital product* pursuant to §A of this regulation, the buyer shall include the cost of that portion converted to the buyer's personal use as a purchase subject to the sales and use tax on the return to be filed for the period in which the property was converted.

C. The procedure described in §B shall also be followed by any person who purchases tangible personal property, *digital code, or digital product* for resale without paying the tax, and who subsequently converts the property to personal use.

.09 Sale of Medicines, Medical Supplies, Tobacco Cessation Products, Sickroom Equipment, and Certain Medical Equipment.

A. (text unchanged)

B. For the purposes of Tax-General Article, Title 11, Annotated Code of Maryland, the following terms have the meanings indicated:

(1) (text unchanged)

(2) "Medical supplies" means an article used in the cure, mitigation, treatment, prevention, or diagnosis of illnesses. Disposable medical supplies are medical *or surgical* supplies consumed in a single usage and do not include skin care creams or cleansers. Medical supplies do not include *non-disposable* surgical supplies, or medical or surgical equipment.

(3)—(5) (text unchanged)

.11 Printing.

A. *Printed material means material produced by a mechanical process involving the transfer of text, images, or designs to tangible personal property.*

[A.]B. Charges for Printing and Sales of Printed Material.

(1)—(3) (text unchanged)

[B.]C. Sales to a Person Engaged in Printing and Sales of Photographic Materials.

(1) Tangible personal property *or digital products* which will be incorporated into printed material which is to be resold, such as ink, paper, staples, stapling wire, [and] binding materials, *and digital artwork*, or which will be consumed in manufacturing printed material which is to be resold, may be purchased free of tax through the issuance of resale certificates.

(2) (text unchanged)

(3) A sale of art work, hand or machine compositions, lithographic plates or negatives, or typographies, *whether in tangible or digital form*, to a person engaged in the printing of tangible personal property for sale and for direct use by the person to produce that property for sale is exempt from the tax. The following apply:

(a)—(b) (text unchanged)

.12 Casual and Isolated Sales.

The sales and use tax does not apply to a casual and isolated sale by a person who regularly does not sell tangible personal property, *a digital code, a digital product* or a taxable service if the sale price is less than \$1,000 and the sale is not made through an auctioneer or a dealer. In determining whether or not the \$1,000 limitation has been exceeded, all sales made on the same occasion or as part of the same transaction by the same vendor to the same buyer shall be combined.

.13 Certain Capital Transactions.

A. (text unchanged)

B. For the purpose of these exemptions:

(1) (text unchanged)

(2) The term "transfer" means a transfer of personal property, *a digital code, or a digital product*:

(a)—(d) (text unchanged)

(3) A transfer of tangible personal property, *a digital code, or a digital product* to a corporation upon its organization is "principally in consideration for the issuance of its stock", if the aggregate value in money of the consideration other than its stock, issued, paid, or transferred by the corporation in exchange for the tangible personal property, is less than 50 percent of the fair market value of the tangible personal property received by the corporation. The transfer to or assumption of liability by a corporation upon its organization is not "consideration other than its stock", if, without regard to any dollar limitation, the entire transaction would otherwise qualify as an exempt casual and isolated sale.

C. Transactions Not Subject to the Tax.

(1) A transfer of tangible personal property, *a digital code, or a digital product* to a corporation or joint-stock company upon its organization, principally in consideration for the issuance of its stock, is not subject to tax. The transfer will not be considered to be upon the organization of a corporation unless the Articles of Incorporation were filed for record with the appropriate State authority not more than 6 months before the transfer, and the corporation has not been actively engaged in business for more than 30 days before the transfer.

(2) A transfer of tangible personal property, *a digital code, or a digital product* to a limited liability company only as a capital contribution or in consideration for an interest in the limited liability company is not subject to tax.

(3) A transfer of tangible personal property, *a digital code, or a digital product* made pursuant to a reorganization within the meaning of §368(a) of the Internal Revenue Code is not subject to tax. An Internal Revenue Service ruling or opinion of counsel as to qualification under these sections is evidence of entitlement to this exclusion.

(4) A distribution of tangible personal property, *a digital code, or a digital product* by a corporation to its stockholders as a complete or partial liquidating distribution, whether or not made pursuant to the dissolution of the corporation, is not subject to tax. The transfer of tangible personal property is not a liquidating distribution if any consideration, other than the surrender of stock of the corporation, is paid for the property transferred.

(5) A transfer of tangible personal property, *a digital code, or a digital product* to a partnership solely as a contribution to the capital of a partnership, or in consideration for a partnership interest, made at any time, by any existing or new partner, is not subject to tax. If any consideration is paid for the property transferred other than an interest in the partnership, the transfer is subject to tax. The transfer to or assumption of liability by a partnership is not consideration paid by the partnership, if, without regard to any dollar limitation, the entire transaction would otherwise qualify as an exempt casual and isolated sale.

(6) A distribution of tangible personal property, *a digital code, or a digital product* by a partnership to its partners or by a limited liability company to a member is not subject to tax. A transfer which is not in the nature of a distribution of earnings or profits or a return of capital (such as a sale in the ordinary course of business) is subject to tax.

.14 Resale Certificates.

A. (text unchanged)

B. Except as provided in §§C and D of this regulation, the duty of a vendor to collect the sales and use tax from a buyer is waived if the buyer provides the vendor with a signed resale certificate. The resale certificate need not be in a particular form, but it shall state the name, address, and the Maryland sales and use tax registration number of the buyer, and state that the tangible personal property, *digital code, digital product*, or taxable service is bought for the purpose of resale.

C. Purchases for Less Than \$200.

(1) A vendor may not accept a resale certificate from a buyer for purchases of less than \$200 using cash, check, [or] credit card, *debit card, or electronic transfer of funds*, unless the vendor delivers the goods directly to the buyer's retail place of business.

(2) (text unchanged)

D. Sale of an Antique or Used Collectible.

(1) For the sale of an antique or used collectible, the duty of a vendor to collect the sales and use tax from the buyer is waived if the buyer provides the vendor with a signed resale certificate that contains the information set forth in §B of this regulation, except instead of a Maryland sales and use tax registration number, the certificate states that the buyer is an out-of-State vendor who does not sell or deliver tangible personal property or a taxable service for use in Maryland; [and] does not otherwise engage in the business of an out-of-State vendor as described in Tax-General Article, §11-701(b)(2), Annotated Code of Maryland; or meets the thresholds for economic nexus as defined in 03.06.01.33B(5), and:

(a)—(b) (text unchanged)

(2) (text unchanged)

E.—J. (text unchanged)

.16 Photography.

A. The sale of a photograph, [photostatic copy] *photocopy*, or blueprint is [a sale of tangible personal property subject to tax] *is subject to tax whether delivered to the buyer electronically or in tangible form. When the product is delivered in tangible form,* [The] *the* tax also applies to *separately stated* charges for portrait photography, motion picture and videotaping production, and the development and printing of a picture.

B. (text unchanged)

.18 Florists.

The tax shall be collected on orders taken by a Maryland florist or [nurseryman] *nursery* to be [telegraphed] *sent* to the second florist or [nurseryman] *nursery*, whether the delivery is to be made within or without the State. A florist or [nurseryman] *nursery* making deliveries pursuant to [telegraph] orders received from another florist or [nurseryman] *nursery* may not collect the tax regardless of whether the florist or [nurseryman] *nursery* forwarding the order is within or without this State.

.21 Time of Collection.

A. A sale is a transaction for the present or future transfer of title or possession of tangible personal property, *a digital code, a digital product* or for the performance of certain services, for a consideration, and the tax imposed on a retail sale applies when the transaction is entered into, regardless of when the consideration is to be paid, the tangible personal property, *digital code, or digital product* is to be delivered, or the services are to be performed. Except as provided by this regulation or for a rental or lease, the vendor shall collect the tax from the buyer when the sale occurs.

B. Exception for Certain Credit or Installment Sales.

(1) If a vendor makes a credit or installment sale of tangible personal property, *digital code, or digital product* which the vendor must manufacture, custom-alter, or order from a third party, collection of the tax may be deferred at the option of the vendor until the property is delivered. Among other things, this exception does not apply to a sale, such as a lay-away sale, when delivery of existing property in the possession of the vendor is delayed pending full payment.

(2) The vendor may not defer collection of the tax beyond the time of full payment for or delivery of the property, *digital code, or digital product* whichever occurs first. A vendor obligated to make more than one delivery as a result of a single sale of property which the vendor must manufacture, custom-alter, or order from a third party may defer collection of the tax on the portion of the price attributable to each delivery until payment of that portion of the price or the date of that delivery, whichever occurs first.

(3)—(4) (text unchanged)

.22 Exempt Charitable or Nonprofit Organizations.

A. (text unchanged)

B. Purchases by an Organization.

(1)—(3) (text unchanged)

(4) A purchase of tangible personal property, *a digital code, or a digital product* by a nonprofit parent-teacher association located in the State is exempt from the tax if the association contributes the purchase to a public or nonprofit elementary or secondary school. A parent-teacher association may present the exemption number of its school to a vendor to claim the exemption.

(5) (text unchanged)

C. Sales by an Organization.

(1) Generally, a sale of tangible personal property, *a digital code, a digital product*, or a taxable service by an exempt organization is subject to tax.

(2) The following sales are not subject to the tax:

(a)—(g) (text unchanged)

(h) Auction sales by or on behalf of a bona fide church, religious organization, or other qualified nonprofit organization, if the proceeds of the sale are used to carry on the exempt purposes of the church or organization. Unless the auction is held directly by a bona fide church or other religious organization, the exemption is limited to only that portion of the sale price that exceeds the fair market value of the tangible personal property, *digital code, or digital product*, and therefore qualifies for a deduction under the federal income tax as a charitable contribution under the

regulations and guidelines of the Internal Revenue Service. In auctions held by an auctioneer or any person or organization other than a bona fide church or other religious organization, the exemption is subject to limitation. This exemption requires that the portion of the sale price that qualifies for a deduction under the federal income tax must be separately stated from the fair market value portion of the sales price. If the two components of the sale price are not separately stated, then the sale price is subject to the tax in its entirety.

(i) (text unchanged)

D.—E. (text unchanged)

.26 Aircraft, Motor Vehicles, Railroad Rolling Stock, and Vessels used in Interstate and Foreign Commerce.

A. The sale or a sale for use of an aircraft, motor vehicle, railroad rolling stock, or vessel that is used principally in interstate or foreign commerce and a sale or a sale for use of a replacement part,[or] other tangible personal property, *or digital product* to be used physically in, on, or by it, are exempt from the tax.

B. (text unchanged)

C. Repealed.

D. If tax is not paid at the time of purchase or use of tangible personal property *or digital product* on the basis that one of the tests set forth in §B of this regulation will be met, but in fact none of these tests is met, the exemption does not apply. The tax shall be payable to the Comptroller from the buyer as of the date the buyer has reason to believe that the exemption does not apply.

E.—F. (text unchanged)

.28 Lease of Tangible Personal Property.

A. The transfer of possession, absolutely or conditionally by any means, of tangible personal property *or digital product* for a consideration, by way of lease, rental, royalty agreement, or grant of a license for use, referred to in this regulation as a "lease", is included within the statutory definition of the term "sale" and is thus subject to the tax in the absence of a specific exemption or exclusion.

B.—D. (text unchanged)

E. Service Charges.

(1) The tax applies to the entire lease payment if a charge for lease or rental of tangible personal property *or digital product* includes a charge for a service, whether the charge for service is separately stated or not, if the dominant purpose of the transaction is to obtain the tangible personal property *or digital product* and the service is a mandatory charge imposed by the vendor as a condition of renting the item or is incidental and is not the dominant purpose of the transaction. For example, a charge for the lease of a portable toilet that includes a mandatory charge for cleaning is subject to the tax whether the cleaning charge is separately stated or not. The dominant purpose for the lease of the toilet is to provide a specific item of tangible personal property and not to provide cleaning or servicing of the toilet. Separately stated charges for the services enumerated in §F(2) of this regulation are excluded from taxable price.

(2) The tax does not apply to a charge for a service that includes a charge for lease or rental of tangible personal property *or digital product*, whether the charge for the tangible personal property *or digital product* is separately stated or not, or whether the charge is mandatory or not, if the dominant purpose of the transaction is to obtain a service, and the provision of the tangible personal property *or digital product* is incidental to the service. For example, a charge for trash removal service where a trash receptacle is provided in conjunction with the service is not a taxable lease of tangible personal property. The dominant purpose of the lease is to remove trash from a premise and not to lease a trash receptacle.

F. (text unchanged)

G. A person who buys tangible personal property *or digital product* for the dual purpose of leasing it to others and also for personal use, or who buys tangible personal property with the sole intention of leasing it but in fact also employs the property for personal purposes, shall pay the tax on the purchase price and shall also collect the tax on all leases. The fact that the buyer may simultaneously or subsequently offer this property for outright sale does not create an exemption for the original purchase.

.30 Fabrication or Production.

A. The tax shall be charged on the full selling price for the production or fabrication of tangible personal property *or a digital product* on a special order for a consideration. This is true even though charges for labor are segregated from the cost of the materials.

B.—D. (text unchanged)

.31 Direct Payment Permits.

A. General Provisions.

(1) Authority to Issue a Direct Payment Permit.

(a) Except as provided in §A(1)(c) of this regulation[, on or after July 1, 1993], the Comptroller may not grant the authority to make direct payment, to the Comptroller, of sales and use tax due on purchases by a vendor or issue permits evidencing this authority.

(b)—(c) (text unchanged)

(2) (text unchanged)

(3) Holders of Direct Payment Permits shall notify their vendors that they hold this permit and may furnish to each vendor a [photostatic] *photocopy or electronic* copy of that permit. In making purchases the permit holder shall furnish to vendors a certificate of exemption bearing the holder's Direct Payment Permit number.

(4) (text unchanged)

B. Repealed.

C.—D. (text unchanged)

.32-2 Tangible Personal Property Used in a Production Activity.

A.—B. (text unchanged)

C. Applicability of the Sales and Use Tax. The sales and use tax does not apply to a sale or lease of:

(1) Tangible personal property, *a digital code, or a digital product* used directly and predominantly in a production activity at any stage of operation on the production activity site, from the handling of raw material or components to the movement of finished product, if the tangible personal property, *digital code, or digital product* is not installed so that it becomes real property;

(2)—(5) (text unchanged)

D.—G. (text unchanged)

.33 Out-of-State Vendor.

A. (text unchanged)

B. A person engages in the business of an out-of-State vendor if the person:

(1) Permanently or temporarily maintains, occupies, or uses any office, sales or sample room, or distribution, storage, warehouse, or other place for the sale of tangible personal property, *a digital code, a digital product, or a taxable service* directly or indirectly through an agent or subsidiary;

(2) Has an agent, canvasser, representative, salesman, or solicitor operating in the State for the purpose of delivering, selling, or taking orders for tangible personal property, *a digital code, a digital product, or a taxable service*;

(3) Enters the State on a regular basis to provide service or repair for tangible personal property, either directly or indirectly through an agent, independent contractor, or subsidiary;

(4) Regularly uses the person's vehicles to sell or deliver tangible personal property, *digital code, digital product* or a taxable service for use in the State; or

(5) Sells tangible personal property or taxable services for delivery in the State, if, during the previous calendar year or the current calendar year, the person satisfies either of the following criteria:

(a) The person's gross revenue from the sale of tangible personal property, *digital codes, digital products, or taxable services* delivered in the State exceeds \$100,000; or

(b) The person sold tangible personal property, *digital codes, or digital products, or taxable services* for delivery into the State in 200 or more separate transactions.

C. (text unchanged)

.34 Special Use Tax on Certain Electricity.

A. Definitions.

(1) (text unchanged)

(2) Terms Defined.

(a) "On site generated electricity" has the meaning stated in Tax-General Article, §11-1A-01(b)[(2)](1), Annotated Code of Maryland.

(b)—(d) (text unchanged)

B.—H. (text unchanged)

.35 Property and Services Used in a Film Production Activity.

A. (text unchanged)

B. The following tangible personal property *or digital products, or a digital code to purchase the following*, when sold to a certified film producer or film production company and used directly in connection with a film production activity, [is] *are* exempt from sales and use tax:

(1)—(29) (text unchanged)

C. The following are examples of tangible personal property not eligible for the film production exemption set forth in Tax-General Article, §[11-226(b)]11-227(b), Annotated Code of Maryland:

(1)—(10) (text unchanged)

D.—G. (text unchanged)

.38 Advertising Agencies.

A. In General.

(1) An advertising agency is providing nontaxable advertising services when the transaction with the client is for:

(a) The preparation and placement of advertising in print, [or] broadcast, *or digital* media;

(b)—(e) (text unchanged)

(2) An advertising agency is selling tangible personal property *or a digital product* when the transaction with the client is for the production and transfer of specific property, including property that the client uses:

(a)—(b) (text unchanged)

B. Advertising Agency Purchases.

(1) (text unchanged)

(2) [Materials] *Purchases* Used or Consumed in Providing Advertising Services. When the transaction with its client is for advertising services, the advertising agency shall pay sales and use tax on its *taxable* purchases [of taxable materials] and taxable services that it uses or consumes in providing those services, such as:

(a)—(e) (text unchanged)

(3) [Materials] *Purchases* Used in Producing Tangible Personal Property *or Digital Product* for Sale. When the transaction with its client is for the sale of tangible personal property *or a digital product*, the advertising agency shall pay sales and use tax on its *taxable* purchases [of taxable materials] and *taxable* services that it uses in producing the property *or digital product*, unless the material purchased is to be [physically] incorporated as a component or part of other property *or digital product* produced for sale as set forth in §B(4)(b) of this regulation.

(4) [Materials Purchased] *Purchases* for Resale. When the transaction with its client is for the sale of tangible personal property *or a digital product*, an advertising agency may claim the resale exclusion for:

(a) Tangible personal property, *digital products*, and taxable services purchased solely for resale to a client in the same form in which it receives the property, *digital product*, or services, such as:

(i)—(iii) (text unchanged)

(iv) Specialty advertising items; [and]

(v) Signs; and

(vi) *Digital images*; and

(b) Tangible personal property, *digital products*, or taxable services that are [physically] incorporated as a part or component of property produced for sale, such as poster board and lettering for signs or displays.

C.—D. (text unchanged)

.39 Detective, Guard, Armored Car Services, and Security Systems.

A. (text unchanged)

B. Terms Defined.

(1) (text unchanged)

(2) Detective Service.

(a) "*Detective*" means a person who is authorized to provide private detective services under Title 13 of the *Business Occupations and Professions Article*.

[(a)](b) "Detective service" means [to conduct] an investigation *conducted by a detective* concerning:

(i)—(ix) (text unchanged)

[(b)](c)—(d) (text unchanged)

(3)—(4) (text unchanged)

C. (text unchanged)

.41 Sales of Appliances Meeting Certain Efficiency Requirements and Multifuel Pellet Stoves.

A. [Sales of Qualifying Electrical Appliances. The sales and use tax does not apply to the sale of the following electrical appliances that meet or exceed applicable Energy Star efficiency requirements developed by the United States Environmental Protection Agency and the United States Department of Energy:] *Repealed*.

[(1) Clothes washers purchased on or after July 1, 2000, but before July 1, 2003;

(2) Room air conditioners purchased on or after January 1, 2001, but before July 1, 2004; and

(3) Standard size refrigerators purchased on or after July 1, 2001, but before July 1, 2004.]

B. [Sales of Qualifying Fuel Cells, Heat Pumps, Air Conditioners and Water Heaters. The sales and use tax does not apply to the following sales:] *Repealed*.

[(1) A fuel cell sold on or before July 1, 2004 that:

(a) Generates electricity and heat using an electrochemical process;

(b) Has an electricity-only generation efficiency greater than 35 percent; and

(c) Has a generating capacity of at least 2 kilowatts;

(2) A heat pump that is:

(a) A natural gas heat pump sold on or before July 1, 2004, that has a coefficient of performing of at least 1.25 for heating and at least 0.70 for cooling; or

(b) An electric heat pump sold on or before July 1, 2004, that has a heating system performance factor of at least 7.5 and a cooling seasonal energy efficiency rating of at least 13.5;

(3) A central air conditioner sold on or before July 1, 2004, that has a cooling seasonal energy efficiency ratio of at least 13.5; and

(4) A water heater that is an:

(a) Advanced natural gas water heater sold on or before July 1, 2004 that has an energy factor of at least 0.65;

or

(b) Electric heat pump hot water heater sold on or before July 1, 2004 that yields an energy factor of at least 1.7.]

C. The sales and use tax does not apply to a sale of a multifuel pellet stove designed to burn agricultural field corn. The fact that agricultural field corn can be burned in a stove not specifically designed for the burning of agricultural field corn does not exempt the sale of that stove from the tax. *Vendors and purchasers of multifuel pellet stoves shall keep records or documentation identifying the items as meeting the requirements for the exemption under this regulation.*

D. [Collection of Tax.] *Repealed.*

[(1) A vendor shall collect the tax on sales of electric appliances as described in §A of this regulation that do not meet the Energy Star efficiency requirements. Evidence that the appliance is listed by the Environmental Protection Agency as a qualifying high efficiency Energy Star appliance is sufficient for the vendor not to collect the tax.

(2) A vendor shall collect the tax on sales of fuel cells, heat pumps, air conditioners, and water heaters that do not meet the energy factors or energy efficiency ratings described in §B of this regulation.

(3) Fuel cells, heat pumps, air conditioners, and water heaters installed by the purchaser so that they meet the requirements of §B of this regulation are exempt from sales tax.

(4) Certification by the manufacturer that the equipment in §B of this regulation meets the required energy efficiency rating may be relied upon by the vendor to make a determination of whether the sale of that equipment qualifies for the tax exemption.

(5) If all component parts are certified by the manufacturer as meeting the specifications in §B of this regulation, the parts are exempt from sales tax. Component parts not certified by the manufacturer as meeting the requirements for exemption as stated in §B of this regulation are subject to the tax, and the vendor shall charge and collect the tax.

(6) Component parts or equipment, or both, not certified by the manufacturer as meeting the requirements in §B of this regulation that qualify the equipment for the exemption upon installation shall be certified by a licensed engineer or similar professional that they have performed the appropriate tests to determine that the assembled unit meets or exceeds the minimum qualifications stated in §B of this regulation.

(7) If it is determined after sales or use tax has been paid that the sale should have been exempt, the person paying the tax may apply to the Comptroller for a refund pursuant to COMAR 03.06.03.05.]

E. [Records. Vendors and purchasers of electric appliances, fuel cells, heat pumps, air conditioners, water heaters, and multifuel pellet stoves shall keep records or documentation identifying the items as meeting the requirements for the exemption under this regulation.] *Repealed.*

.46 Parent-Teacher Organization Fundraisers.

A.—B. (text unchanged)

C. A sale of tangible personal property, *digital code, or digital product* by any of the following organizations is exempt from the tax:

(1)—(4) (text unchanged)