

SENATE BILL 787

Q7

EMERGENCY BILL
ENROLLED BILL

(11r2632)

— Budget and Taxation / Ways and Means —

Introduced by **Senator Ferguson**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Digital Advertising Gross Revenues ~~Tax~~, *Income, Sales and Use*, ~~Exemption~~**
3 **~~and Restriction~~ and Tobacco ~~Tax~~ *Taxes* – Alterations and Implementation**

4 FOR the purpose of exempting, from a certain tax on certain annual gross revenues derived
5 from certain digital advertising services in the State, certain advertisement services
6 on certain digital interfaces; prohibiting a person who derives gross revenues from
7 digital advertising services in the State from passing on the cost of the tax to a
8 certain customer in a certain manner; allowing, for a certain taxable year, a
9 subtraction under the Maryland income tax for certain utility arrearages forgiven
10 during that taxable year; altering certain terms governing the application of the sales
11 and use tax to certain digital codes and certain digital products; requiring a certain
12 marketplace facilitator, under certain circumstances, to collect the sales and use tax
13 on certain sales of digital codes and digital products; exempting the sale or use of
14 digital codes and digital products from the sales and use tax under certain
15 circumstances; clarifying the application of certain provisions of law governing

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.

Italics indicate opposite chamber / conference committee amendments.



1 administration of the sales and use tax to certain sales of digital codes and digital
 2 products; altering the definition of “pass-through entity’s taxable income” for
 3 purposes of certain provisions of law concerning the State income tax imposed on
 4 certain pass-through entities; altering the date on which certain cigarettes and other
 5 tobacco products are required to be subject to a certain tax; altering the date by which
 6 certain revenue is required to be remitted to the Comptroller; altering the date by
 7 which the Comptroller’s Office must submit a certain report to certain committees of
 8 the General Assembly; repealing a certain statement of the intent of the General
 9 Assembly; altering the taxable years to which a certain tax on certain annual gross
 10 revenues derived from digital advertising services in the State applies; declaring the
 11 intent of the General Assembly; defining certain terms; making conforming changes;
 12 making technical corrections; providing for the application of certain provisions of
 13 this Act; ~~providing for the application of this Act;~~ making this Act subject to a certain
 14 ~~contingency;~~ an emergency measure; and generally relating to a tax on digital
 15 advertising gross revenues, the income tax, the sales and use tax, and the tobacco tax.

16 BY repealing and reenacting, with amendments,

17 Article – Tax – General

18 Section 2–1302.1, 11–101(b), (c–1), (c–3) through (c–5), (c–6)(1), (e–1), (h), (i), (j), (l)(1)
 19 and (2), (n), and (o), 11–102(a), and 11–217(b)

20 Annotated Code of Maryland

21 (2016 Replacement Volume and 2020 Supplement)

22 (As enacted by Chapter 38 of the Acts of the General Assembly of 2021)

23 BY repealing and reenacting, with amendments,

24 Article – Tax – General

25 Section 7.5–101

26 Annotated Code of Maryland

27 (2016 Replacement Volume and 2020 Supplement)

28 (As enacted by Chapter ~~===== (H.B. 732 of the 2020 Regular Session)~~ 37 of the Acts of
 29 the General Assembly of 2021)

30 BY repealing and reenacting, without amendments,

31 Article – Tax – General

32 Section 7.5–102(a)

33 Annotated Code of Maryland

34 (2016 Replacement Volume and 2020 Supplement)

35 (As enacted by Chapter ~~===== (H.B. 732 of the 2020 Regular Session)~~ 37 of the Acts of
 36 the General Assembly of 2021)

37 BY adding to

38 Article – Tax – General

39 Section 7.5–102(c)

40 Annotated Code of Maryland

41 (2016 Replacement Volume and 2020 Supplement)

42 (As enacted by Chapter ~~===== (H.B. 732 of the 2020 Regular Session)~~ 37 of the Acts of
 43 the General Assembly of 2021)

1 BY repealing and reenacting, without amendments,
2 Article – Tax – General
3 Section 10–207(a)
4 Annotated Code of Maryland
5 (2016 Replacement Volume and 2020 Supplement)

6 BY adding to
7 Article – Tax – General
8 Section 10–207(ll)
9 Annotated Code of Maryland
10 (2016 Replacement Volume and 2020 Supplement)

11 BY repealing and reenacting, without amendments,
12 Article – Tax – General
13 Section 11–101(a)
14 Annotated Code of Maryland
15 (2016 Replacement Volume and 2020 Supplement)
16 (As enacted by Chapter 38 of the Acts of the General Assembly of 2021)

17 BY repealing and reenacting, with amendments,
18 Article – Tax – General
19 Section 11–204(a)(6), 11–208(b) and (c), 11–209, 11–210(b)(1), 11–214, 11–216(a),
20 11–219(b), 11–220, 11–221(b) and (c), 11–227, 11–303, 11–401, 11–405, 11–408,
21 11–501, 11–502.1, 11–701, 11–703, and 11–707
22 Annotated Code of Maryland
23 (2016 Replacement Volume and 2020 Supplement)

24 BY repealing and reenacting, without amendments,
25 Article – Tax – General
26 Section 10–102.1(a)(1)
27 Annotated Code of Maryland
28 (2016 Replacement Volume and 2020 Supplement)
29 (As enacted by Chapter 39 of the Acts of the General Assembly of 2021)

30 BY repealing and reenacting, with amendments,
31 Article – Tax – General
32 Section 10–102.1(a)(8)
33 Annotated Code of Maryland
34 (2016 Replacement Volume and 2020 Supplement)
35 (As enacted by Chapter 39 of the Acts of the General Assembly of 2021)

36 BY repealing and reenacting, with amendments,
37 Chapter 37 of the Acts of the General Assembly of 2021
38 Section 3, 4, and 6

39 BY repealing

1 Chapter 37 of the Acts of the General Assembly of 2021
 2 Section 5

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

5 **Article – Tax – General**

6 2-1302.1.

7 After making the distributions required under §§ 2-1301 and 2-1302 of this subtitle,
 8 of the sales and use tax collected:

9 (1) on short-term vehicle rentals under § 11-104(c) of this article the
 10 Comptroller shall distribute:

11 (i) 45% to the Transportation Trust Fund established under § 3-216
 12 of the Transportation Article; and

13 (ii) the remainder to the Chesapeake and Atlantic Coastal Bays 2010
 14 Trust Fund; and

15 (2) on the sale or use of a digital product or DIGITAL code under Title 11 of
 16 this article the Comptroller shall distribute 100% to The Blueprint for Maryland's Future
 17 Fund established under [§ 5-219] § 5-206 of the Education Article.

18 7.5-101.

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

20 (b) “Annual gross revenues” means income or revenue from all sources, before any
 21 expenses or taxes, computed according to generally accepted accounting principles.

22 (c) “Assessable base” means the annual gross revenues derived from digital
 23 advertising services in the State.

24 **(D) “BROADCAST ENTITY” MEANS AN ENTITY THAT IS PRIMARILY ENGAGED**
 25 **IN THE BUSINESS OF OPERATING A BROADCAST TELEVISION OR RADIO STATION.**

26 **[(d)] (E) (1) “Digital advertising services” includes advertisement services on**
 27 **a digital interface, including advertisements in the form of banner advertising, search**
 28 **engine advertising, interstitial advertising, and other comparable advertising services.**

29 **(2) “DIGITAL ADVERTISING SERVICES” DOES NOT INCLUDE**
 30 **ADVERTISEMENT SERVICES ON DIGITAL INTERFACES OWNED OR OPERATED BY OR**
 31 **OPERATED ON BEHALF OF A BROADCAST ENTITY OR NEWS MEDIA ENTITY.**

1 [(e)] (F) “Digital interface” means any type of software, including a website, part
2 of a website, or application, that a user is able to access.

3 (G) (1) “NEWS MEDIA ENTITY” MEANS AN ENTITY ENGAGED PRIMARILY
4 IN THE BUSINESS OF NEWSGATHERING, REPORTING, OR PUBLISHING ARTICLES OR
5 COMMENTARY ABOUT NEWS, CURRENT EVENTS, CULTURE, OR OTHER MATTERS OF
6 PUBLIC INTEREST.

7 (2) “NEWS MEDIA ENTITY” DOES NOT INCLUDE AN ENTITY THAT IS
8 PRIMARILY AN AGGREGATOR OR REPUBLISHER OF THIRD-PARTY CONTENT.

9 [(f)] (H) “User” means an individual or any other person who accesses a digital
10 interface with a device.

11 7.5–102.

12 (a) A tax is imposed on annual gross revenues of a person derived from digital
13 advertising services in the State.

14 (C) A PERSON WHO DERIVES GROSS REVENUES FROM DIGITAL
15 ADVERTISING SERVICES IN THE STATE MAY NOT DIRECTLY PASS ON THE COST OF
16 THE TAX IMPOSED UNDER THIS SECTION TO A CUSTOMER WHO PURCHASES THE
17 DIGITAL ADVERTISING SERVICES BY MEANS OF A SEPARATE FEE, SURCHARGE, OR
18 LINE-ITEM.

19 10–207.

20 (a) To the extent included in federal adjusted gross income, the amounts under
21 this section are subtracted from the federal adjusted gross income of a resident to determine
22 Maryland adjusted gross income.

23 (LL) FOR A TAXABLE YEAR BEGINNING AFTER DECEMBER 31, 2020, BUT
24 BEFORE JANUARY 1, 2022, THE SUBTRACTION UNDER SUBSECTION (A) OF THIS
25 SECTION INCLUDES THE AMOUNT OF UTILITY ARREARAGES FORGIVEN DURING THE
26 TAXABLE YEAR, IF THE FORGIVENESS OF THE UTILITY ARREARAGES WAS OFFERED
27 THROUGH GRANTS PROVIDED TO UTILITIES IN ACCORDANCE WITH SECTIONS 9 AND
28 10 OF CHAPTER 39 OF THE ACTS OF THE GENERAL ASSEMBLY OF 2021.

29 11–101.

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

31 (b) “Buyer” means a person who:

1 (1) acquires tangible personal property in a sale;

2 (2) obtains a taxable service in a sale; or

3 (3) acquires a **DIGITAL CODE OR** digital product in a sale.

4 (c-1) “Customer tax address” means, with respect to a sale of a **DIGITAL CODE OR**
5 digital product:

6 (1) for a **DIGITAL CODE OR** digital product that is received by a buyer at
7 the business location of the vendor, the address of that business location;

8 (2) if item (1) of this subsection is not applicable and the primary use
9 location of the **DIGITAL CODE OR** digital product is known by the vendor, that primary use
10 location;

11 (3) if items (1) and (2) of this subsection are not applicable, the location
12 where the **DIGITAL CODE OR** digital product is received by the buyer, or by a donee of the
13 buyer that is identified by the buyer, if known to the vendor and maintained in the ordinary
14 course of the vendor’s business;

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

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

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

27 (i) the location in the United States of the headquarters of the
28 vendor’s business;

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

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

1 (c-3) (1) “Digital code” means a NUMBER, SYMBOL, ALPHANUMERIC
2 SEQUENCE, BARCODE, OR SIMILAR code that:

3 (i) may be obtained by any means, including:

4 1. in a tangible form, such as a card; or

5 2. through e-mail; and

6 (ii) provides a buyer with a right to obtain one or more digital
7 products.

8 (2) “Digital code” does not include a gift certificate or gift card with a
9 monetary value that may be redeemable for an item other than a digital product.

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

14 (2) “Digital product” includes:

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

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

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

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

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

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

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

30 (3) “DIGITAL PRODUCT” DOES NOT INCLUDE:

1 (I) PRERECORDED OR LIVE INSTRUCTION BY A PUBLIC,
 2 PRIVATE, OR PAROCHIAL ELEMENTARY OR SECONDARY SCHOOL OR A PUBLIC OR
 3 PRIVATE INSTITUTION OF HIGHER EDUCATION;

4 (II) INSTRUCTION IN A SKILL OR PROFESSION IN A BUYER'S
 5 CURRENT OR PROSPECTIVE BUSINESS, OCCUPATION, OR TRADE IF THE
 6 INSTRUCTION;

7 1. IS NOT PRERECORDED; AND

8 2. FEATURES AN INTERACTIVE ELEMENT BETWEEN THE
 9 BUYER AND THE INSTRUCTOR OR OTHER BUYERS CONTEMPORANEOUS WITH THE
 10 INSTRUCTION;

11 (III) A SEMINAR, DISCUSSION, OR SIMILAR EVENT HOSTED BY A
 12 NONPROFIT ORGANIZATION OR BUSINESS ASSOCIATION, IF THE SEMINAR,
 13 DISCUSSION, OR EVENT:

14 1. IS NOT PRERECORDED; AND

15 2. FEATURES AN INTERACTIVE ELEMENT BETWEEN THE
 16 BUYER AND HOST OR OTHER BUYERS CONTEMPORANEOUS WITH THE SEMINAR,
 17 DISCUSSION, OR EVENT; OR

18 (IV) A PROFESSIONAL SERVICE OBTAINED ELECTRONICALLY OR
 19 DELIVERED THROUGH THE USE OF TECHNOLOGY HAVING ELECTRICAL, DIGITAL,
 20 MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC, OR SIMILAR CAPABILITIES.

21 (c-5) (1) "End user" means any person [other than a] WHO RECEIVES OR
 22 ACCESSES A DIGITAL CODE OR DIGITAL PRODUCT CODE FOR USE.

23 (2) "END USER" DOES NOT INCLUDE ANY person who receives [by
 24 contract] a DIGITAL CODE OR digital product [transferred electronically] for further
 25 commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing,
 26 distribution, redistribution, or exhibition of the DIGITAL product[, in whole or in part, to
 27 another person].

28 (c-6) (1) "Marketplace facilitator" means a person that:

29 (i) facilitates a retail sale by a marketplace seller by listing or
 30 advertising for sale in a marketplace tangible personal property, DIGITAL CODE, OR A
 31 DIGITAL PRODUCT; and

1 (ii) regardless of whether the person receives compensation or other
2 consideration in exchange for the person's services, directly or indirectly through agreements
3 with third parties, collects payment from a buyer and transmits the payment to the
4 marketplace seller.

5 (e-1) (1) "Primary use location" means the street address representative of where
6 the buyer's use of a **DIGITAL CODE OR** digital product will primarily occur, as determined
7 by:

8 (i) the residential street address or a business street address of the
9 actual end user of the **DIGITAL CODE OR** digital product, including, if applicable, the
10 address of a donee of the buyer that is designated by the buyer; or

11 (ii) if the buyer is not an individual, the location of the buyer's
12 employees or equipment that makes use of the **DIGITAL CODE OR** digital product.

13 (2) "Primary use location" does not include the location of a person who uses
14 a **DIGITAL CODE OR** digital product as the purchaser of a separate good or service from the
15 buyer.

16 (h) (1) "Retail sale" means the sale of:

17 (i) tangible personal property;

18 (ii) a taxable service; [or]

19 **(III) A DIGITAL CODE; OR**

20 [(iii)] **(IV)** a digital product.

21 (2) "Retail sale" includes:

22 (i) a sale of tangible personal property for use or resale in the form of
23 real estate by a builder, contractor, or landowner;

24 (ii) except as provided in paragraph (3)(i) of this subsection, use of
25 tangible personal property as facilities, tools, tooling, machinery, or equipment, including
26 dies, molds, and patterns, even if the buyer intends to transfer title to the property before or
27 after that use;

28 (iii) a sale of a digital product that is sold with rights of permanent
29 use or sold with rights of less than permanent use to an end user;

30 (iv) a sale of a digital product that is sold with rights of use
31 conditioned on continued payment by the subscriber or buyer to an end user; and

1 (v) a sale **TO AN END USER** of **A DIGITAL CODE OR A** subscription
2 to, access to, **RECEIPT OF, OR** streaming of **A DIGITAL PRODUCT**], or the purchase of a
3 digital code for receiving or accessing digital products to an end user].

4 (3) “Retail sale” does not include:

5 (i) a transfer of title to tangible personal property after its use as
6 facilities, tools, tooling, machinery, or equipment, including dies, molds, and patterns, if:

7 1. at the time of purchase, the buyer is obligated, under the
8 terms of a written contract, to make the transfer; and

9 2. the transfer is made for the same or greater consideration
10 to the person for whom the buyer manufactures goods or performs work;

11 (ii) a sale of tangible personal property, **A DIGITAL CODE**, or a digital
12 product if the buyer intends to:

13 1. resell the tangible personal property, **DIGITAL CODE**, or
14 digital product in the form that the buyer receives or is to receive the property, **DIGITAL**
15 **CODE**, or **DIGITAL** product;

16 2. use or incorporate the tangible personal property, **DIGITAL**
17 **CODE**, or digital product in a production activity as a material or part of other tangible
18 personal property or another digital product to be produced for sale; or

19 3. transfer the tangible personal property, **DIGITAL CODE**, or
20 digital product as a part of a taxable service transaction; or

21 (iii) a sale of a taxable service if the buyer intends to resell the taxable
22 service in the form that the buyer receives or is to receive the service.

23 (i) (1) “Sale” means a transaction for a consideration whereby:

24 (i) title **TO** or possession of property, **A DIGITAL CODE, OR A**
25 **DIGITAL PRODUCT** is transferred or is to be transferred absolutely or conditionally by any
26 means, including by lease, rental, royalty agreement, or grant of a license for use; or

27 (ii) a person performs a service for another person.

28 (2) “Sale” does not include a transaction whereby an employee performs a
29 service for the employee’s employer.

30 (i) “Sale for use” means a sale in which tangible personal property, **A DIGITAL**
31 **CODE**, a digital product, or a taxable service that is consumed, possessed, stored, or used in
32 the State is acquired.

1 (1) (1) “Taxable price” means the value, in money, of the consideration of any
2 kind that is paid, delivered, payable, or deliverable by a buyer to a vendor in the
3 consummation and complete performance of a sale without deduction for any expense or cost,
4 including the cost of:

5 (i) any labor or service rendered;

6 (ii) any material used; or

7 (iii) any property, **DIGITAL CODE, OR DIGITAL PRODUCT** sold.

8 (2) “Taxable price” includes, for tangible personal property, **A DIGITAL**
9 **CODE**, or a digital product acquired by a sale for use in the State by the person who
10 assembles, fabricates, or manufactures the property or digital product, only the price of the
11 raw materials and component parts contained in the property or digital product.

12 (n) (1) “Use” means an exercise of a right or power to use, consume, possess, or
13 store that is acquired by a sale for use of:

14 (i) tangible personal property;

15 (ii) a taxable service; ~~or~~

16 (III) **A DIGITAL CODE; OR**

17 ~~[(iii)]~~ (IV) a digital product.

18 (2) “Use” includes an exercise of a right or power to use, consume, possess,
19 or store that is acquired by a sale for use of tangible personal property, **A DIGITAL CODE**, or
20 a digital product:

21 (i) for use or resale in the form of real estate by a builder, contractor,
22 or landowner; or

23 (ii) except as provided in paragraph (3)(i) of this subsection, as
24 facilities, tools, tooling, machinery, or equipment, including dies, molds, and patterns, even
25 if the buyer intends to transfer title to the property, **DIGITAL CODE**, or digital product before
26 or after that use.

27 (3) “Use” does not include:

28 (i) a transfer of title to tangible personal property after its use as
29 facilities, tools, tooling, machinery, or equipment, including dies, molds, and patterns, if:

1 1. at the time of purchase, the buyer is obligated, under the
2 terms of a written contract, to make the transfer; and

3 2. the transfer is made for the same or greater consideration
4 to the person for whom the buyer manufactures goods or performs work;

5 (ii) an exercise of a right or power over tangible personal property, A
6 DIGITAL CODE, or a digital product acquired by a sale for use if the buyer intends to:

7 1. resell the tangible personal property, DIGITAL CODE, or
8 digital product in the form that the buyer receives or is to receive the property, DIGITAL
9 CODE, or digital product;

10 2. use or incorporate the tangible personal property or digital
11 product in a production activity as a material or part of other tangible personal property or
12 another digital product to be produced for sale; or

13 3. transfer the tangible personal property, DIGITAL CODE, or
14 digital product as part of a taxable service transaction;

15 (iii) an exercise of a right or power over a taxable service acquired by
16 a sale for use if the buyer intends to resell the taxable service in the form that the buyer
17 receives or is to receive the service;

18 (iv) an exercise of a right or power over a digital code to receive or
19 access a digital product;

20 (v) an exercise of a right or power over a digital product acquired by
21 a sale for use if the buyer is not an end user; or

22 (vi) the use or transfer of a digital product or digital code by the
23 transferor and obtained by the end user free of charge.

24 (o) (1) “Vendor” means a person who:

25 (i) engages in the business of an out-of-state vendor, as defined in §
26 11-701 of this title;

27 (ii) engages in the business of a retail vendor, as defined in § 11-701
28 of this title;

29 (iii) holds a special license issued under § 11-707 of this title;

30 (iv) is an accommodations intermediary;

31 (v) is a short-term rental platform;

1 (vi) engages in the business of a marketplace facilitator; or

2 (vii) engages in the business of a marketplace seller.

3 (2) "Vendor" includes, for an out-of-state vendor, a salesman,
4 representative, peddler, or canvasser whom the Comptroller, for the efficient administration
5 of this title, elects to treat as an agent jointly responsible with the dealer, distributor,
6 employer, or supervisor:

7 (i) under whom the agent operates; or

8 (ii) from whom the agent obtains the tangible personal property, A
9 DIGITAL CODE, a digital product, or taxable service for sale.

10 11-102.

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

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

13 (2) a use, in the State, of tangible personal property, A DIGITAL CODE, a
14 digital product, or a taxable service.

15 11-204.

16 (a) The sales and use tax does not apply to:

17 (6) a sale of tangible personal property, A DIGITAL CODE, OR A DIGITAL
18 PRODUCT to a nonprofit parent-teacher association located in the State if the association
19 makes the purchase to contribute the property to a school to which a sale is exempt under
20 item (3) of this subsection or § 11-220 of this subtitle;

21 11-208.

22 (b) The sales and use tax does not apply to a sale of film, [or] video tape, OR A
23 DIGITAL PRODUCT for use only in television broadcasting by a television station that the
24 Federal Communications Commission licenses specifically to broadcast to a city or town
25 outside the State.

26 (c) The sales and use tax does not apply:

27 (1) to a sale of an aircraft, motor vehicle, railroad rolling stock, or vessel
28 that is used principally to cross State lines in interstate or foreign commerce;

1 (2) to a sale of a replacement part, [or] other tangible personal property, OR
2 A DIGITAL PRODUCT to be used physically in, on, or by a conveyance described in item (1)
3 of this subsection; or

4 (3) except for a rental, to a sale of a motor vehicle, other than a house or
5 office trailer, that will be titled or registered in another state.

6 11-209.

7 (a) The sales and use tax does not apply to a casual and isolated sale by a person
8 who regularly does not sell tangible personal property, A DIGITAL CODE, A DIGITAL
9 PRODUCT, or a taxable service if:

10 (1) the sale price is less than \$1,000; and

11 (2) the sale is not made through an auctioneer or a dealer.

12 (b) The sales and use tax does not apply to a distribution of tangible personal
13 property, A DIGITAL CODE, OR A DIGITAL PRODUCT by:

14 (1) a corporation or joint-stock company to its stockholders as a liquidating
15 distribution;

16 (2) a partnership to a partner; or

17 (3) a limited liability company to a member.

18 (c) (1) The sales and use tax does not apply to a transfer of tangible personal
19 property, A DIGITAL CODE, OR A DIGITAL PRODUCT:

20 (i) under a reorganization within the meaning of § 368(a) of the
21 Internal Revenue Code;

22 (ii) on organization of a corporation or joint-stock company, to the
23 corporation or company principally in consideration for the issuance of its stock;

24 (iii) to a partnership only as a contribution to its capital or in
25 consideration for a partnership interest in the partnership; or

26 (iv) to a limited liability company only as a capital contribution or in
27 consideration for an interest in the limited liability company.

28 (2) For a transfer that would qualify as a casual and isolated sale under
29 subsection (a) of this section if the sale price limitation were disregarded, the amount of
30 liability transferred to or assumed by a corporation, joint-stock company, partnership, or
31 limited liability company shall be excluded from the consideration transferred by the

1 corporation, joint-stock company, partnership, or limited liability company in exchange for
2 the tangible personal property, **DIGITAL CODE, OR DIGITAL PRODUCT** to determine
3 whether the transfer is made:

4 (i) principally in consideration for the issuance of stock of a
5 corporation or joint-stock company;

6 (ii) only as a contribution to the capital of a partnership or in
7 consideration for a partnership interest; or

8 (iii) only as a capital contribution to a limited liability company or in
9 consideration for an interest in a limited liability company.

10 11-210.

11 (b) The sales and use tax does not apply to a sale of:

12 (1) tangible personal property, **A DIGITAL CODE, OR A DIGITAL PRODUCT**
13 used directly and predominantly in a production activity at any stage of operation on the
14 production activity site from the handling of raw material or components to the movement
15 of the finished product, if the tangible personal property, **DIGITAL CODE, OR DIGITAL**
16 **PRODUCT** is not installed so that it becomes real property;

17 11-214.

18 The sales and use tax does not apply to use of tangible personal property, **A DIGITAL**
19 **CODE, A DIGITAL PRODUCT, or a taxable service that:**

20 (1) a nonresident:

21 (i) acquires before the property, **DIGITAL CODE, DIGITAL**
22 **PRODUCT, or service enters the State; and**

23 (ii) uses:

24 1. for personal enjoyment or use or for a use that the
25 Comptroller specifies by regulation, other than for a business purpose; or

26 2. in a presentation or in conjunction with a presentation of
27 an exhibit, show, sporting event, or other public performance or display; and

28 (2) does not remain in the State for more than 30 days.

29 11-216.

30 (a) The sales and use tax does not apply to:

1 (1) a sale for use of tangible personal property, A **DIGITAL CODE, OR A**
 2 **DIGITAL PRODUCT** that:

3 (i) is bought outside this State;

4 (ii) is intended solely for use in another state; and

5 (iii) is stored in this State pending shipment to another state;

6 (2) a sale of tangible personal property to a person obligated under a
 7 contract to incorporate that property into real property located in another state where the
 8 purchase or use of that property would not be subject to a sales tax, use tax, or similar tax;
 9 or

10 (3) except for that portion of the purchase price allocable to intended viewing
 11 in this State, a sale of a series of images stored on video tape or in other optical or digital
 12 forms or electronic signals generated from these images to a cable or other nonbroadcast
 13 television network, if the images are intended for viewing by television viewers located
 14 outside the State.

15 11-217.

16 (b) The sales and use tax does not apply to a sale of tangible personal property, A
 17 **DIGITAL CODE**, or a digital product for use or consumption in research and development.

18 11-219.

19 (b) The sales and use tax does not apply to a sale of custom computer software,
 20 **REGARDLESS OF THE METHOD TRANSFERRED OR ACCESSED, OR [services] A SERVICE**
 21 relating to [procedures and programs] **CUSTOM COMPUTER SOFTWARE** that:

22 (1) **WOULD** otherwise [are] **BE** taxable under this title;

23 (2) [are] **IS** to be used by a specific person;

24 (3) (i) [are] **IS** created for that person; or

25 (ii) [contain] **CONTAINS** standard or proprietary routines [that
 26 incorporate] **REQUIRING** significant creative input to customize, **CONFIGURE, OR MODIFY**
 27 the procedures and programs [for that person] **THAT ARE NECESSARY TO PERFORM THE**
 28 **FUNCTIONS REQUIRED FOR THE SOFTWARE TO OPERATE AS INTENDED; and**

29 (4) do not constitute a program, procedure, or documentation that is mass
 30 produced and sold to:

1 (i) the general public; or

2 (ii) persons [associated] **ENGAGED** in a trade, profession, or
3 industry, **EXCEPT AS PROVIDED IN ITEM (3) OF THIS SUBSECTION.**

4 11-220.

5 (a) The sales and use tax does not apply to a sale to the State or a political
6 subdivision of the State.

7 (b) The exemption under subsection (a) of this section may not be construed to
8 exempt any sale of tangible personal property, **A DIGITAL CODE, OR A DIGITAL PRODUCT,**
9 otherwise taxable under this title, to a contractor to be used under a contract with the State
10 or a political subdivision of the State for construction, repair, or alteration of real property.

11 11-221.

12 (b) If a person who buys tangible personal property, **A DIGITAL CODE, A DIGITAL**
13 **PRODUCT,** or a taxable service in a retail sale pays the sales and use tax when the retail
14 sale is made, the person is not required to pay the tax again when the person uses that
15 tangible personal property, **DIGITAL CODE, DIGITAL PRODUCT,** or taxable service in the
16 State.

17 (c) (1) To the extent that a buyer pays another state a tax on a sale or gross
18 receipts from a sale of tangible personal property, **A DIGITAL CODE, A DIGITAL PRODUCT,**
19 or a taxable service that the buyer acquires before the property, **DIGITAL CODE, DIGITAL**
20 **PRODUCT,** or service enters this State, the sales and use tax does not apply to use of the
21 property or service in this State.

22 (2) If the tax paid to another state is less than the sales and use tax, the
23 buyer shall pay the difference between the sales and use tax and the amount paid to the other
24 state in accordance with the formula under § 11-303(b) of this title.

25 11-227.

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

27 (2) (i) “Film production activity” means the production or
28 postproduction of film or video projects including feature films, television projects,
29 commercials, corporate films, infomercials, music videos, or other projects for which the
30 producer or production company will be compensated, and which are intended for
31 nationwide commercial distribution.

32 (ii) “Film production activity” includes the production or
33 postproduction of digital, animation, and multimedia projects.

1 (iii) “Film production activity” does not include:

2 1. production or postproduction of student films or
3 noncommercial personal videos; or

4 2. any activity not necessary to and undertaken directly and
5 exclusively for the making of a master film, tape, or image.

6 (3) “Tangible personal property, A DIGITAL CODE, A DIGITAL PRODUCT,
7 or a taxable service used directly in connection with a film production activity” includes:

8 (i) camera equipment and supplies;

9 (ii) film and tape;

10 (iii) lighting and stage equipment and supplies;

11 (iv) sound equipment and supplies;

12 (v) recording equipment and supplies;

13 (vi) costumes, wardrobes, and materials to construct them;

14 (vii) props, scenery, and materials to construct them;

15 (viii) design supplies and equipment;

16 (ix) drafting supplies and equipment;

17 (x) special effects supplies and equipment;

18 (xi) short-term vehicle rentals; and

19 (xii) fabrication, printing, or production of scripts, storyboards,
20 costumes, wardrobes, props, scenery, or special effects.

21 (b) The sales and use tax does not apply to a sale of tangible personal property, A
22 DIGITAL CODE, A DIGITAL PRODUCT, or a taxable service used directly in connection with
23 a film production activity by a film producer or production company certified by the
24 Department of Commerce under Title 6, Subtitle 2 of the Economic Development Article.

25 11-303.

26 (a) A buyer is allowed a depreciation allowance as an adjustment to taxable price
27 if:

1 (1) tangible personal property, **A DIGITAL CODE, A DIGITAL PRODUCT**, or
2 a taxable service is acquired before the tangible personal property, **DIGITAL CODE, OR**
3 **DIGITAL PRODUCT** is brought into the State for use in the State or before the taxable service
4 is used in the State; and

5 (2) the use first occurs in another state or federal jurisdiction.

6 (b) The allowance under subsection (a) of this section for each full year that follows
7 the date of purchase is 10% of the taxable price paid to acquire the tangible personal
8 property, **DIGITAL CODE, DIGITAL PRODUCT**, or taxable service.

9 11-401.

10 (a) A vendor is a trustee for the State and is liable for the collection of the sales
11 and use tax for and on account of the State.

12 (b) A vendor has the same rights to collect the sales and use tax from a buyer and
13 the same rights regarding the nonpayment of the sales and use tax by a buyer that the vendor
14 would have if the sales and use tax were a part of the purchase price of the tangible personal
15 property, **DIGITAL CODE, DIGITAL PRODUCT**, or taxable service at the time of the sale.

16 11-405.

17 A vendor who sells tangible personal property, **A DIGITAL CODE, A DIGITAL**
18 **PRODUCT**, or a taxable service through a vending or other self-service machine:

19 (1) shall pay the sales and use tax to the Comptroller; and

20 (2) may not collect the sales and use tax from the buyer as a separately
21 stated item.

22 11-408.

23 (a) If a buyer is required under Subtitle 2 of this title or by regulation to provide a
24 vendor with evidence of an exemption, the vendor may not recognize the exemption unless
25 the buyer, before the sale is consummated, provides the vendor with:

26 (1) evidence that the buyer has an exemption certificate; or

27 (2) the evidence that the Comptroller requires by regulation.

28 (b) (1) Except as provided in paragraph (3) of this subsection, the duty of a
29 vendor to collect the sales and use tax from a buyer is waived if the buyer provides the vendor
30 with a signed resale certificate that:

31 (i) is in the form that the Comptroller requires by regulation;

1 (ii) states the name and address of the buyer;

2 (iii) 1. provides the Maryland sales and use tax registration
3 number of the buyer; or

4 2. for the sale of an antique or used collectible, provides a
5 sales and use tax registration number of another state and states that the buyer is an
6 out-of-state vendor who does not engage in the business of an out-of-state vendor, as defined
7 in § 11-701 of this title; and

8 (iv) contains a statement to the effect that the tangible personal
9 property, **DIGITAL CODE, DIGITAL PRODUCT**, or taxable service is bought for the purpose
10 of resale.

11 (2) (i) If a buyer provides a resale certificate with a sales and use tax
12 registration number of another state as provided under paragraph (1)(iii)2 of this subsection,
13 the buyer shall also provide a copy of a sales and use tax registration license issued to the
14 buyer from that state.

15 (ii) If a buyer is from a state without a sales and use tax, that buyer
16 shall provide a copy of a trader's license from that state or a comparable type of
17 identification.

18 (3) (i) A vendor may not accept a resale certificate if the vendor knows
19 or should know that the sale is not for the purpose of resale.

20 (ii) A vendor may not accept a resale certificate for a cash, check, or
21 credit card sale if:

22 1. the taxable price is less than \$200; and

23 2. the tangible personal property, **DIGITAL CODE, DIGITAL**
24 **PRODUCT**, or taxable service is not delivered by the vendor directly to the buyer's retail place
25 of business.

26 (4) A vendor shall obtain a resale certificate from a buyer:

27 (i) before the sale is consummated; or

28 (ii) if the vendor receives a notice of the Comptroller's intent to assess
29 sales and use tax for failure to obtain a proper resale certificate, within 60 days after the
30 date on which the notice is mailed.

31 (5) If the vendor fails to obtain the resale certificate as required, the
32 Comptroller's assessment under paragraph (4)(ii) of this subsection is final.

1 (c) If the taxable price is less than \$200 for a cash, check, or credit card sale or sale
2 for use that is not a retail sale and the tangible personal property, **DIGITAL CODE, DIGITAL**
3 **PRODUCT**, or taxable service is not delivered by the vendor directly to the buyer's retail place
4 of business:

5 (1) the sales and use tax shall be paid when the sale is made or when the
6 use becomes taxable; and

7 (2) the buyer who pays the sales and use tax may file a claim for a refund
8 with the Comptroller.

9 11-501.

10 (a) A buyer who fails to pay the sales and use tax on a purchase or use subject to
11 the tax to the vendor as required in § 11-403 of this title or to a marketplace facilitator as
12 required in § 11-403.1 of this title or who is required by regulation to file a return for a
13 purchase or use subject to the tax shall complete, under oath, and file with the Comptroller
14 a sales and use tax return:

15 (1) on or before the 20th day of the month that follows the month in which
16 the buyer makes that purchase or use; and

17 (2) for other periods and on other dates that the Comptroller specifies, by
18 regulation, including periods in which the buyer does not make any purchase or use subject
19 to the sales and use tax.

20 (b) The return shall state for the period that the return covers:

21 (1) the total value of the tangible personal property, **DIGITAL CODE,**
22 **DIGITAL PRODUCT**, or taxable service that is subject to the sales and use tax; and

23 (2) the sales and use tax due.

24 11-502.1.

25 (a) Each marketplace facilitator shall complete, under oath, and file with the
26 Comptroller a sales and use tax return:

27 (1) on or before the 20th day of the month that follows the month in which
28 a marketplace seller makes any retail sale or sale for use through the marketplace facilitator;
29 and

30 (2) for other periods and on other dates that the Comptroller specifies by
31 regulation, including periods in which a marketplace seller does not make any retail sale or
32 sale for use through the marketplace facilitator.

- 1 **(b)** A return shall state, for the period that the return covers:
- 2 **(1)** for a marketplace facilitator facilitating a retail sale or a sale for use:
- 3 **(i)** the marketplace facilitator's gross revenues from the sales of
4 marketplace sellers that the marketplace facilitator has facilitated and delivered in the
5 State;
- 6 **(ii)** the taxable price of sales of those marketplace sellers on which the
7 sales and use tax is computed; and
- 8 **(iii)** the sales and use tax due; and
- 9 **(2)** for a marketplace facilitator facilitating a sale for use:
- 10 **(i)** the total value of the tangible personal property, **DIGITAL CODE,**
11 **DIGITAL PRODUCT,** or taxable service sold by marketplace sellers the use of which became
12 subject to the sales and use tax; and
- 13 **(ii)** the sales and use tax due.
- 14 **(c)** If the Comptroller approves, a marketplace facilitator engaging in more than
15 one business in which the marketplace facilitator facilitates retail sales or sales for use may
16 file a consolidated return covering the activities of the businesses.
- 17 11-701.
- 18 **(a)** In this subtitle the following words have the meanings indicated.
- 19 **(b)** **(1)** "Engage in the business of an out-of-state vendor" means to sell or
20 deliver tangible personal property or a taxable service for use in the State **OR A DIGITAL**
21 **PRODUCT OR DIGITAL CODE TO A CUSTOMER TAX ADDRESS IN THE STATE.**
- 22 **(2)** "Engage in the business of an out-of-state vendor" includes:
- 23 **(i)** permanently or temporarily maintaining, occupying, or using any
24 office, sales or sample room, or distribution, storage, warehouse, or other place for the sale
25 of tangible personal property, **A DIGITAL CODE, A DIGITAL PRODUCT,** or a taxable service
26 directly or indirectly through an agent or subsidiary;
- 27 **(ii)** having an agent, canvasser, representative, salesman, or solicitor
28 operating in the State for the purpose of delivering, selling, or taking orders for tangible
29 personal property, **A DIGITAL CODE, A DIGITAL PRODUCT,** or a taxable service; or

1 (iii) entering the State on a regular basis to provide service or repair
2 for tangible personal property OR A DIGITAL PRODUCT.

3 (c) (1) “Engage in the business of a retail vendor” means to sell or deliver
4 tangible personal property, A DIGITAL CODE, A DIGITAL PRODUCT, or a taxable service in
5 the State.

6 (2) “Engage in the business of a retail vendor” includes liquidating a
7 business that sells tangible personal property, A DIGITAL CODE, A DIGITAL PRODUCT, or
8 a taxable service, when the liquidator holds out to the public that the business is conducted
9 by the liquidator.

10 (d) (1) “License” means a license issued by the Comptroller:

11 (i) to engage in the business of an out-of-state vendor;

12 (ii) to engage in the business of a retail vendor; or

13 (iii) to engage in the business of a marketplace facilitator.

14 (2) “License” includes a special license issued under § 11-707 of this
15 subtitle.

16 11-703.

17 An applicant for a license to engage in the business of an out-of-state vendor, to
18 engage in the business of a retail vendor, or to engage in the business of a marketplace
19 facilitator shall submit an application to the Comptroller:

20 (1) for each place of business in the State where the applicant sells tangible
21 personal property, A DIGITAL CODE, A DIGITAL PRODUCT, or a taxable service;

22 (2) if the applicant has no fixed place of business and sells from 1 or more
23 vehicles, for each vehicle; or

24 (3) if the applicant has no fixed place of business and does not sell from a
25 vehicle, for the place designated as the address to which notices are to be mailed.

26 11-707.

27 (a) The Comptroller may issue a special license to an applicant who:

28 (1) is not required to be licensed as an out-of-state vendor or a retail vendor;

29 (2) operates out of the State and sells tangible personal property, A DIGITAL
30 CODE, A DIGITAL PRODUCT, or a taxable service for use in the State; and

1 (3) submits to the Comptroller an application on the form that the
 2 Comptroller requires.

3 (b) While it is effective, a special license authorizes the licensee to collect the sales
 4 and use tax.

5 **Chapter 37 of the Acts of 2021**

6 **SECTION 3. AND BE IT FURTHER ENACTED, That:**

7 (1) as provided in § 12–105 of the Tax – General Article, as enacted by
 8 Section 1 of this Act, all cigarettes and other tobacco products used, possessed, or held in
 9 the State on or after [July 1, 2020] **MARCH 14, 2021**, by any person for sale or use in the
 10 State shall be subject to the tax on cigarettes and other tobacco products as enacted under
 11 Section 1 of this Act;

12 (2) the Comptroller may provide an alternative method of assessing and
 13 collecting the additional tax; and

14 (3) the revenue attributable to this requirement shall be remitted to the
 15 Comptroller no later than [September 30, 2020] **JUNE 13, 2021**.

16 **SECTION 4. AND BE IT FURTHER ENACTED, That on or before December 31,**
 17 **[2020] **2021**, the Comptroller’s Office shall report to the Senate Budget and Taxation**
 18 **Committee and the House Committee on Ways and Means, in accordance with § 2–1257 of**
 19 **the State Government Article, on the change in consumption of cigarettes, other tobacco**
 20 **products, and electronic smoking devices in the State over the immediately preceding 12**
 21 **months.**

22 **[SECTION 5. AND BE IT FURTHER ENACTED, That it is the intent of the General**
 23 **Assembly that the Comptroller distribute, as necessary, the sales and use tax and tobacco**
 24 **tax collected in fiscal year 2021 under Section 1 of this Act to:**

25 (1) the expenditure accounts of the appropriate units of State government
 26 to fund costs associated with the Coronavirus Disease 2019 (COVID–19); and

27 (2) the Revenue Stabilization Account established under § 7–311 of the
 28 State Finance and Procurement Article.]

29 **SECTION 6. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall be**
 30 **applicable to all taxable years beginning after December 31, [2020] **2021**.**

31 ~~**SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be applicable to**~~
 32 ~~**all taxable years beginning after December 31, 2020.**~~

~~SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2021, contingent on the taking effect of Chapter _____ (H.B. 732 of 2020 Regular Session) of the Acts of the General Assembly of 2021, and if Chapter _____ (H.B. 732 of the 2020 Regular Session) does not become effective, this Act, with no further action required by the General Assembly, shall be null and void.~~

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

Article – Tax – General

10–102.1.

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

(8) “Pass-through entity’s taxable income” means the portion of a pass-through entity’s income under the federal Internal Revenue Code, CALCULATED WITHOUT REGARD TO ANY DEDUCTION FOR TAXES BASED ON NET INCOME THAT ARE IMPOSED BY ANY STATE OR POLITICAL SUBDIVISION OF A STATE, that is derived from or reasonably attributable to the trade or business of the pass-through entity in this State.

SECTION 3. AND BE IT FURTHER ENACTED, That the General Assembly declares that this Act conforms the provisions of the Tax – General Article, as enacted by Section 1 of this Act, to reflect the intent of the General Assembly at the time of the enactment of Chapters 37 and 38 of the Acts of the General Assembly of 2021.

SECTION 4. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall be applicable to all taxable years beginning after December 31, 2019.

SECTION ~~2~~ 5. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.