

Chapter 669

(Senate Bill 787)

AN ACT concerning

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

FOR the purpose of exempting, from a certain tax on certain annual gross revenues derived from certain digital advertising services in the State, certain advertisement services on certain digital interfaces; prohibiting a person who derives gross revenues from digital advertising services in the State from passing on the cost of the tax to a certain customer in a certain manner; allowing, for a certain taxable year, a subtraction under the Maryland income tax for certain utility arrearages forgiven during that taxable year; altering certain terms governing the application of the sales and use tax to certain digital codes and certain digital products; requiring a certain marketplace facilitator, under certain circumstances, to collect the sales and use tax on certain sales of digital codes and digital products; exempting the sale or use of digital codes and digital products from the sales and use tax under certain circumstances; clarifying the application of certain provisions of law governing administration of the sales and use tax to certain sales of digital codes and digital products; altering the definition of “pass-through entity’s taxable income” for purposes of certain provisions of law concerning the State income tax imposed on certain pass-through entities; altering the date on which certain cigarettes and other tobacco products are required to be subject to a certain tax; altering the date by which certain revenue is required to be remitted to the Comptroller; altering the date by which the Comptroller’s Office must submit a certain report to certain committees of the General Assembly; repealing a certain statement of the intent of the General Assembly; altering the taxable years to which a certain tax on certain annual gross revenues derived from digital advertising services in the State applies; declaring the intent of the General Assembly; defining certain terms; making conforming changes; making technical corrections; providing for the application of certain provisions of this Act; ~~providing for the application of this Act; making this Act subject to a certain contingency; an emergency measure; and generally relating to a tax on digital advertising gross revenues, the income tax, the sales and use tax, and the tobacco tax.~~

BY repealing and reenacting, with amendments,

Article – Tax – General

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

Annotated Code of Maryland

(2016 Replacement Volume and 2020 Supplement)

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

BY repealing and reenacting, with amendments,
Article – Tax – General

Section 7.5–101
 Annotated Code of Maryland
 (2016 Replacement Volume and 2020 Supplement)
 (As enacted by Chapter ~~==== (H.B. 732 of the 2020 Regular Session)~~ 37 of the Acts of
 the General Assembly of 2021)

BY repealing and reenacting, without amendments,
 Article – Tax – General
 Section 7.5–102(a)
 Annotated Code of Maryland
 (2016 Replacement Volume and 2020 Supplement)
 (As enacted by Chapter ~~==== (H.B. 732 of the 2020 Regular Session)~~ 37 of the Acts of
 the General Assembly of 2021)

BY adding to
 Article – Tax – General
 Section 7.5–102(c)
 Annotated Code of Maryland
 (2016 Replacement Volume and 2020 Supplement)
 (As enacted by Chapter ~~==== (H.B. 732 of the 2020 Regular Session)~~ 37 of the Acts of
 the General Assembly of 2021)

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

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

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

BY repealing and reenacting, with amendments,
Article – Tax – General
Section 11–204(a)(6), 11–208(b) and (c), 11–209, 11–210(b)(1), 11–214, 11–216(a),
11–219(b), 11–220, 11–221(b) and (c), 11–227, 11–303, 11–401, 11–405, 11–408,
11–501, 11–502.1, 11–701, 11–703, and 11–707

Annotated Code of Maryland
(2016 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, without amendments,

Article – Tax – General

Section 10–102.1(a)(1)

Annotated Code of Maryland

(2016 Replacement Volume and 2020 Supplement)

(As enacted by Chapter 39 of the Acts of the General Assembly of 2021)

BY repealing and reenacting, with amendments,

Article – Tax – General

Section 10–102.1(a)(8)

Annotated Code of Maryland

(2016 Replacement Volume and 2020 Supplement)

(As enacted by Chapter 39 of the Acts of the General Assembly of 2021)

BY repealing and reenacting, with amendments,

Chapter 37 of the Acts of the General Assembly of 2021

Section 3, 4, and 6

BY repealing

Chapter 37 of the Acts of the General Assembly of 2021

Section 5

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

Article – Tax – General

2–1302.1.

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

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

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

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

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

7.5-101.

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

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

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

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

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

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

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

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

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

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

7.5-102.

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

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

10-207.

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

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

11-101.

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

(b) “Buyer” means a person who:

(1) acquires tangible personal property in a sale;

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

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

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

(1) for a **DIGITAL CODE OR** digital product 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 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 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

(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-3) (1) "Digital code" means a NUMBER, SYMBOL, ALPHANUMERIC SEQUENCE, BARCODE, OR SIMILAR code that:

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

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

2. through e-mail; and

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

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

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

(2) "Digital product" includes:

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

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

2. audio greeting cards sent by e-mail;

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

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

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

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

(3) “DIGITAL PRODUCT” DOES NOT INCLUDE:

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

(II) INSTRUCTION IN A SKILL OR PROFESSION IN A BUYER’S CURRENT OR PROSPECTIVE BUSINESS, OCCUPATION, OR TRADE IF THE INSTRUCTION:

1. IS NOT PRERECORDED; AND

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

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

1. IS NOT PRERECORDED; AND

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

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

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

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

(c-6) (1) “Marketplace facilitator” means a person that:

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

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

(e-1) (1) “Primary use location” means the street address representative of where the buyer’s use of a DIGITAL CODE OR digital product 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, 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 employees or equipment that makes use of the DIGITAL CODE OR digital product.

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

(h) (1) “Retail sale” means the sale of:

(i) tangible personal property;

(ii) a taxable service; [or]

(III) A DIGITAL CODE; OR

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

(2) "Retail sale" includes:

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

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

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

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

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

(3) "Retail sale" does not include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) any labor or service rendered;

(ii) any material used; or

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

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

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

(i) tangible personal property;

(ii) a taxable service; [or]

(III) A DIGITAL CODE; OR

~~(iii)~~ **(IV) a digital product.**

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

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

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

(3) “Use” does not include:

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

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

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

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

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

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

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

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

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

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

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

(o) (1) “Vendor” means a person who:

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

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

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

(iv) is an accommodations intermediary;

(v) is a short-term rental platform;

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

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

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

(i) under whom the agent operates; or

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

11-102.

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

(1) a retail sale in the State; and

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

11-204.

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

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

11-208.

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

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

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

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

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

11-209.

(a) 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:

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

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

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

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

(2) a partnership to a partner; or

(3) a limited liability company to a member.

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

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

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

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

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

(2) For a transfer that would qualify as a casual and isolated sale under subsection (a) of this section if the sale price limitation were disregarded, the amount of liability transferred to or assumed by a corporation, joint-stock company, partnership, or limited liability company shall be excluded from the consideration transferred by the corporation, joint-stock company, partnership, or limited liability company in exchange for the tangible personal property, **DIGITAL CODE, OR DIGITAL PRODUCT** to determine whether the transfer is made:

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

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

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

11-210.

(b) The sales and use tax does not apply to a sale 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 the finished product, if the tangible personal property, **DIGITAL CODE, OR DIGITAL PRODUCT** is not installed so that it becomes real property;

11-214.

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

(1) a nonresident:

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

(ii) uses:

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

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

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

11-216.

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

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

(i) is bought outside this State;

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

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

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

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

11-217.

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

11-219.

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

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

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

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

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

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

(i) the general public; or

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

11-220.

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

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

11-221.

(b) If a person who buys tangible personal property, A DIGITAL CODE, A DIGITAL PRODUCT, or a taxable service in a retail sale pays the sales and use tax when the retail

sale is made, the person is not required to pay the tax again when the person uses that tangible personal property, **DIGITAL CODE, DIGITAL PRODUCT**, or taxable service in the State.

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

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

11-227.

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

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

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

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

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

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

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

(i) camera equipment and supplies;

(ii) film and tape;

(iii) lighting and stage equipment and supplies;

(iv) sound equipment and supplies;

(v) recording equipment and supplies;

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

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

(viii) design supplies and equipment;

(ix) drafting supplies and equipment;

(x) special effects supplies and equipment;

(xi) short-term vehicle rentals; and

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

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

11-303.

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

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

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

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

11-401.

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

(b) A vendor has the same rights to collect the sales and use tax from a buyer and the same rights regarding the nonpayment of the sales and use tax by a buyer that the vendor

would have if the sales and use tax were a part of the purchase price of the tangible personal property, **DIGITAL CODE, DIGITAL PRODUCT**, or taxable service at the time of the sale.

11-405.

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

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

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

11-408.

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

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

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

(b) (1) Except as provided in paragraph (3) of this subsection, 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 that:

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

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

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

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

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

(2) (i) If a buyer provides a resale certificate with a sales and use tax registration number of another state as provided under paragraph (1)(iii)2 of this subsection,

the buyer shall also provide a copy of a sales and use tax registration license issued to the buyer from that state.

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

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

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

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

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

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

(i) before the sale is consummated; or

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

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

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

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

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

11-501.

(a) A buyer who fails to pay the sales and use tax on a purchase or use subject to the tax to the vendor as required in § 11-403 of this title or to a marketplace facilitator as required in § 11-403.1 of this title or who is required by regulation to file a return for a

purchase or use subject to the tax shall complete, under oath, and file with the Comptroller a sales and use tax return:

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

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

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

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

(2) the sales and use tax due.

11-502.1.

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

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

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

(b) A return shall state, for the period that the return covers:

(1) for a marketplace facilitator facilitating a retail sale or a sale for use:

(i) the marketplace facilitator's gross revenues from the sales of marketplace sellers that the marketplace facilitator has facilitated and delivered in the State;

(ii) the taxable price of sales of those marketplace sellers on which the sales and use tax is computed; and

(iii) the sales and use tax due; and

(2) for a marketplace facilitator facilitating a sale for use:

(i) the total value of the tangible personal property, **DIGITAL CODE, DIGITAL PRODUCT**, or taxable service sold by marketplace sellers the use of which became subject to the sales and use tax; and

(ii) the sales and use tax due.

(c) If the Comptroller approves, a marketplace facilitator engaging in more than one business in which the marketplace facilitator facilitates retail sales or sales for use may file a consolidated return covering the activities of the businesses.

11-701.

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

(b) (1) “Engage in the business of an out-of-state vendor” means to sell or deliver tangible personal property or a taxable service for use in the State **OR A DIGITAL PRODUCT OR DIGITAL CODE TO A CUSTOMER TAX ADDRESS IN THE STATE.**

(2) “Engage in the business of an out-of-state vendor” includes:

(i) permanently or temporarily maintaining, occupying, or using 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;

(ii) having 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; or

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

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

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

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

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

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

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

(2) "License" includes a special license issued under § 11-707 of this subtitle.

11-703.

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

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

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

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

11-707.

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

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

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

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

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

Chapter 37 of the Acts of 2021

SECTION 3. AND BE IT FURTHER ENACTED, That:

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

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

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

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

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

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

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

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

~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be applicable to 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 ye 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.

Enacted under Article II, § 17(c) of the Maryland Constitution, May 30, 2021.