

Department of Legislative Services  
 Maryland General Assembly  
 2022 Session

FISCAL AND POLICY NOTE  
 First Reader

Senate Bill 735 (Senator Simonaire, *et al.*)  
 Budget and Taxation

Repeal the Netflix Tax Act of 2022

This emergency bill repeals provisions of Chapter 38 of 2021, which imposed the State sales and use tax on specified digital products and codes and required the sales and use tax revenue from each sale to be distributed to the Blueprint for Maryland’s Future Fund.

Fiscal Summary

**State Effect:** Special fund revenues (Blueprint for Maryland’s Future Fund) decrease by approximately \$29.4 million in FY 2022, by \$105.1 million in FY 2023, and \$127.1 million in FY 2027. General fund expenditures increase by \$241,300 in FY 2022.

(\$ in millions)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
SF Revenue	(\$29.4)	(\$105.1)	(\$113.0)	(\$118.6)	(\$123.4)
GF Expenditure	\$0.2	\$0	\$0	\$0	\$0
Net Effect	(\$29.6)	(\$105.1)	(\$113.0)	(\$118.6)	(\$123.4)

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease*

**Local Effect:** None.

**Small Business Effect:** Potential meaningful.

Analysis

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

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

A digital product includes:

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

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

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

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

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

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

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

**State Revenues:** The bill repeals the sales and use tax on specified digital products and codes. As a result, special fund revenues (Blueprint for Maryland’s Future Fund) decrease by \$29.4 million in fiscal 2022, which assumes a three-month revenue loss, and by \$105.1 million in fiscal 2023 and by \$127.1 million in fiscal 2027. The estimate is based on the current revenue forecast, as shown in **Exhibit 1**.

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**Exhibit 1**  
**Blueprint for Maryland’s Future Fund**  
**Revenue Decrease**  
**(\$ in Millions)**

<b>Fiscal Year</b>	<b>Amount</b>
2022	(\$29.4)
2023	(105.1)
2024	(113.0)
2025	(118.6)
2026	(123.4)
2027	(127.1)

Source: Bureau of Revenue Estimates, December 2021

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**State Expenditures:** The Comptroller's Office will incur a one-time expenditure increase of \$241,300 in fiscal 2022 to undo changes that were required to implement the sales and use tax on digital products. These costs include \$50,000 for the redesign of the sales and use tax form, \$110,000 for programming and testing of the tax processing system, and \$81,300 for notifying vendors of the sales and use tax change. The Comptroller's Office advises that due to the emergency nature of the bill, other costs could be incurred to implement the necessary changes.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Comptroller's Office; Department of Budget and Management; Maryland State Department of Education; Department of Legislative Services

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Analysis by: Michael Sanelli

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