

HOUSE BILL 1628

Q4

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By: **Delegates Luedtke, B. Barnes, D.E. Davis, M. Jackson, Kaiser, McIntosh, and Washington**

Introduced and read first time: February 20, 2020

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Sales and Use Tax – Rate Reduction and Services**

3 FOR the purpose of altering the definitions of “taxable price” and “taxable service” for the
4 purposes of certain provisions of law governing the sales and use tax to impose the
5 tax on certain labors and services; altering the rate of the sales and use tax; altering
6 the percentage of gross receipts from vending machine sales and from certain sales
7 of dyed diesel fuel to which the sales and use tax is applied; altering the rate of the
8 sales and use tax applied to certain charges made in connection with sales of
9 alcoholic beverages; altering the rate of the sales and use tax applied to certain
10 gratuities and service charges; repealing certain exemptions from the sales and use
11 tax for certain services and contract sales; declaring the intent of the General
12 Assembly; defining certain terms; providing for a delayed effective date; and
13 generally relating to the sales and use tax.

14 BY repealing and reenacting, without amendments,
15 Article – Tax – General
16 Section 11–101(a) and (l)(1)
17 Annotated Code of Maryland
18 (2016 Replacement Volume and 2019 Supplement)

19 BY adding to
20 Article – Tax – General
21 Section 11–101(c–4) and (m)
22 Annotated Code of Maryland
23 (2016 Replacement Volume and 2019 Supplement)

24 BY repealing and reenacting, with amendments,
25 Article – Tax – General
26 Section 11–101(l)(3), 11–104(a), (b), and (g) through (i), and 11–301
27 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2016 Replacement Volume and 2019 Supplement)

BY repealing

Article – Tax – General

Section 11–101(m) and 11–219

Annotated Code of Maryland

(2016 Replacement Volume and 2019 Supplement)

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

Article – Tax – General

11–101.

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

(C-4) “NAICS” MEANS THE NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM, UNITED STATES MANUAL, 2017 EDITION, PUBLISHED BY THE UNITED STATES OFFICE OF MANAGEMENT AND BUDGET.

(1) (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 sold.

(3) “Taxable price” does not include:

(i) a charge that is made in connection with a sale and is stated as a separate item of the consideration for:

1. a delivery, freight, or other transportation service for delivery directly to the buyer by the vendor or by another person acting for the vendor, unless the transportation service is a taxable service;

2. a finance charge, interest, or similar charge for credit extended to the buyer;

3. [a labor or service for application or installation;

4.] a mandatory gratuity or service charge in the nature of a

1 tip for serving food or beverage to a group of 10 or fewer individuals for consumption on the
2 premises of the vendor;

3 [5. a professional service;

4 6.] 4. a tax:

5 A. imposed by a county on the sale of coal, electricity, oil,
6 nuclear fuel assemblies, steam, or artificial or natural gas;

7 B. imposed under § 3–302(a) of the Natural Resources
8 Article, as a surcharge on electricity, and added to an electric bill;

9 C. imposed under §§ 6–201 through 6–203 of the Tax –
10 Property Article, on tangible personal property subject to a lease that is for an initial period
11 that exceeds 1 year and is noncancellable except for cause; or

12 D. imposed under § 4–102 of this article on the gross receipts
13 derived from an admissions and amusement charge; **OR**

14 [7. any service for the operation of equipment used for the
15 production of audio, video, or film recordings; or

16 8.] 5. reimbursement of incidental expenses paid to a third party
17 and incurred in connection with providing a taxable detective service;

18 (ii) the value of a used component or part (core value) received from
19 a purchaser of the following remanufactured truck parts:

20 1. an air brake system;

21 2. an engine;

22 3. a rear axle carrier; or

23 4. a transmission; or

24 (iii) a charge for a nontaxable service that is made in connection with
25 a sale of a taxable communication service, even if the nontaxable charges are aggregated
26 with and not separately stated from the taxable charges for communications services, if the
27 vendor can reasonably identify charges not subject to tax from its books and records that
28 are kept in the regular course of business.

29 [(m) “Taxable service” means:

30 (1) fabrication, printing, or production of tangible personal property by

1 special order;

2 (2) commercial cleaning or laundering of textiles for a buyer who is engaged
3 in a business that requires the recurring service of commercial cleaning or laundering of
4 the textiles;

5 (3) cleaning of a commercial or industrial building;

6 (4) cellular telephone or other mobile telecommunications service;

7 (5) “900”, “976”, “915”, and other “900”-type telecommunications service;

8 (6) custom calling service provided in connection with basic telephone
9 service;

10 (7) a telephone answering service;

11 (8) pay per view television service;

12 (9) credit reporting;

13 (10) a security service, including:

14 (i) a detective, guard, or armored car service; and

15 (ii) a security systems service;

16 (11) a transportation service for transmission, distribution, or delivery of
17 electricity or natural gas, if the sale or use of the electricity or natural gas is subject to the
18 sales and use tax;

19 (12) a prepaid telephone calling arrangement; or

20 (13) the privilege given to an individual under § 4-1102 of the Alcoholic
21 Beverages Article to consume wine that is not purchased from or provided by a restaurant,
22 club, or hotel.]

23 **(M) (1) “TAXABLE SERVICE” MEANS ANY ACTIVITY ENGAGED IN FOR A**
24 **BUYER FOR CONSIDERATION.**

25 **(2) “TAXABLE SERVICE” DOES NOT INCLUDE:**

26 **(I) AN EDUCATIONAL SERVICE (NAICS SECTOR 61);**

27 **(II) A HEALTH CARE OR SOCIAL ASSISTANCE SERVICE (NAICS**
28 **SECTOR 62);**

1 (III) A SERVICE PROVIDED BY A RELIGIOUS ORGANIZATION
2 (NAICS SECTOR 8131);

3 (IV) A GRANTMAKING OR GIVING SERVICE (NAICS SECTOR
4 8132);

5 (V) A SERVICE PROVIDED BY A SOCIAL ADVOCACY
6 ORGANIZATION (NAICS SECTOR 8133);

7 (VI) A SERVICE PROVIDED BY A CIVIC OR SOCIAL ORGANIZATION
8 (NAICS SECTOR 8134); OR

9 (VII) A SERVICE PROVIDED BY A BUSINESS, PROFESSIONAL,
10 LABOR, OR POLITICAL ASSOCIATION (NAICS SECTOR 8139).

11 11–104.

12 (a) Except as otherwise provided in this section, the sales and use tax rate is:

13 (1) for a taxable price of less than \$1:

14 (i) 1 cent if the taxable price is 20 cents; AND

15 (ii) [2 cents if the taxable price is at least 21 cents but less than 34
16 cents;

17 (iii) 3 cents if the taxable price is at least 34 cents but less than 51
18 cents;

19 (iv) 4 cents if the taxable price is at least 51 cents but less than 67
20 cents;

21 (v) 5 cents if the taxable price is at least 67 cents but less than 84
22 cents; and

23 (vi) 6 cents if the taxable price is at least 84 cents] **1 CENT FOR EACH**
24 **ADDITIONAL 20 CENTS OR PART OF 20 CENTS;** and

25 (2) for a taxable price of \$1 or more:

26 (i) [6] **5 cents** for each exact dollar; and

27 (ii) [for that part of a dollar in excess of an exact dollar:

1 (2) If a retail sale of dyed diesel fuel is made by a marina, the sales and use
2 tax rate is [6%] 5%, applied to [94.5%] 95.25% of the gross receipts from the dyed diesel
3 fuel sales.

4 (i) The sales and use tax rate for a mandatory gratuity or service charge in the
5 nature of a tip for serving food or any type of beverage to a group of more than 10 individuals
6 is [6%] 5%.

7 [11–219.

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

10 (1) is not a taxable service; and

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

13 (b) The sales and use tax does not apply to a sale of custom computer software
14 services relating to procedures and programs that:

15 (1) otherwise are taxable under this title;

16 (2) are to be used by a specific person;

17 (3) (i) are created for that person; or

18 (ii) contain standard or proprietary routines that incorporate
19 significant creative input to customize the procedures and programs for that person; and

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

22 (i) the general public; or

23 (ii) persons associated in a trade, profession, or industry.

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

28 (d) The sales and use tax does not apply to the use of a taxable service obtained
29 by using a prepaid telephone calling arrangement.]

30 11–301.

1 The sales and use tax is computed on:

2 (1) the taxable price of each separate sale;

3 (2) if a combined sale is made, the combined taxable price of all retail sales
4 on the same occasion by the same vendor to the same buyer; or

5 (3) if retail sales of tangible personal property or a taxable service are made
6 through vending or other self-service machines, ~~[94.5%]~~ **95.25%** of the gross receipts from
7 the retail sales.

8 SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the General
9 Assembly that the Governor's proposed budget for fiscal year 2022, and for each fiscal year
10 thereafter, shall include funding that is necessary to meet the needs of the Office of the
11 Comptroller to ensure compliance with and enforcement of this Act.

12 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 January 1, 2021.