

SENATE BILL 735

Q4

EMERGENCY BILL

2lr1632

By: **Senators Simonaire, Ready, Salling, Hough, Carozza, Corderman, Gallion, and Bailey**

Introduced and read first time: February 7, 2022

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Repeal the Netflix Tax Act of 2022**

3 FOR the purpose of repealing the application of the sales and use tax to certain digital
4 codes and digital products; and generally relating to the sales and use tax.

5 BY repealing and reenacting, without amendments,
6 Article – Education
7 Section 5–206(a)
8 Annotated Code of Maryland
9 (2018 Replacement Volume and 2021 Supplement)

10 BY repealing and reenacting, with amendments,
11 Article – Education
12 Section 5–206(f)
13 Annotated Code of Maryland
14 (2018 Replacement Volume and 2021 Supplement)

15 BY repealing and reenacting, with amendments,
16 Article – Tax – General
17 Section 2–1302.1, 11–101(b), (c–2), (c–6), (c–7), (h) through (j), (l)(1) and (2), (m)(1),
18 (n), and (o), 11–102(a), 11–204(a)(6), 11–208(b) and (c), 11–209, 11–210(b)(1),
19 11–214, 11–216(a)(1), 11–217(b), 11–220, 11–221(b) and (c), 11–227, 11–303,
20 11–401(b), 11–405, 11–408(b) and (c), 11–501(b), 11–502.1(b), 11–701,
21 11–703(1), and 11–707(a)(2)
22 Annotated Code of Maryland
23 (2016 Replacement Volume and 2021 Supplement)

24 BY repealing and reenacting, without amendments,
25 Article – Tax – General
26 Section 11–101(a)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2016 Replacement Volume and 2021 Supplement)

3 BY repealing

4 Article – Tax – General

5 Section 11–101(c–1), (c–3) through (c–5), (c–8), (e–1), and (j–4), 11–103(c), and
6 11–221(d)

7 Annotated Code of Maryland
8 (2016 Replacement Volume and 2021 Supplement)

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

11 **Article – Education**

12 5–206.

13 (a) In this section, “Fund” means the Blueprint for Maryland’s Future Fund.

14 (f) The Fund consists of:

15 (1) Revenue distributed to the Fund under Title 9, Subtitles 1D and 1E of
16 the State Government Article and §§ 2–4A–02, 2–605.1, [2–1302.1,] and 2–1303 of the Tax
17 – General Article;

18 (2) Money appropriated in the State budget for the Fund; and

19 (3) Any other money from any other source accepted for the benefit of the
20 Fund.

21 **Article – Tax – General**

22 2–1302.1.

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

25 (1)] under § 11–104(c) and (c–1) of this article on short–term vehicle rentals
26 and peer–to–peer car sharing, the Comptroller shall distribute:

27 [(i)] (1) 45% to the Transportation Trust Fund established under
28 § 3–216 of the Transportation Article; and

29 [(ii)] (2) the remainder to the Chesapeake and Atlantic Coastal
30 Bays 2010 Trust Fund[; and

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

4 11–101.

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

6 (b) “Buyer” means a person who:

7 (1) acquires tangible personal property in a sale; **OR**

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

9 (3) acquires a digital code or digital product in a sale].

10 [(c–1) “Customer tax address” means, with respect to a sale of a digital code or digital
11 product:

12 (1) for a digital code or digital product that is received by a buyer at the
13 business location of the vendor, the address of that business location;

14 (2) if item (1) of this subsection is not applicable and the primary use
15 location of the digital code or digital product is known by the vendor, that primary use
16 location;

17 (3) if items (1) and (2) of this subsection are not applicable, the location
18 where the digital code or digital product is received by the buyer, or by a donee of the buyer
19 that is identified by the buyer, if known to the vendor and maintained in the ordinary
20 course of the vendor's business;

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

25 (5) if items (1) through (4) of this subsection are not applicable, the location
26 indicated by an address for the buyer obtained during the consummation of the sale,
27 including the address of the buyer's payment instrument, when use of the address does not
28 constitute bad faith; or

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

1 (i) the location in the United States of the headquarters of the
2 vendor's business;

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

5 (iii) the location in the United States from which the vendor makes
6 digital products available for electronic transfer.]

7 [(c-2)] (C-1) "Detective" means a person who is authorized to provide private
8 detective services under Title 13 of the Business Occupations and Professions Article.

9 [(c-3) (1) "Digital code" means a number, symbol, alphanumeric sequence,
10 barcode, or similar code that:

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

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

13 2. through e-mail; and

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

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

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

22 (2) "Digital product" includes:

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

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

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

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

30 (iii) a series of related images that, when shown in succession, impart
31 an impression of motion, together with any accompanying sounds that are transferred

1 electronically, including motion pictures, musical videos, news and entertainment
2 programs, live events, video greeting cards sent by e-mail, and video or electronic games;

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

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

7 (3) “Digital product” does not include:

8 (i) prerecorded or live instruction by a public, private, or parochial
9 elementary or secondary school or a public or private institution of higher education;

10 (ii) instruction in a skill or profession in a buyer’s current or
11 prospective business, occupation, or trade if the instruction:

12 1. is not prerecorded; and

13 2. features an interactive element between the buyer and the
14 instructor or other buyers contemporaneous with the instruction;

15 (iii) a seminar, discussion, or similar event hosted by a nonprofit
16 organization or business association, if the seminar, discussion, or event:

17 1. is not prerecorded; and

18 2. features an interactive element between the buyer and
19 host or other buyers contemporaneous with the seminar, discussion, or event; or

20 (iv) a professional service obtained electronically or delivered
21 through the use of technology having electrical, digital, magnetic, wireless, optical,
22 electromagnetic, or similar capabilities.

23 (c-5) (1) “End user” means any person who receives or accesses a digital code or
24 digital product code for use.

25 (2) “End user” does not include any person who receives a digital code or
26 digital product for further commercial broadcast, rebroadcast, transmission,
27 retransmission, licensing, relicensing, distribution, redistribution, or exhibition of the
28 digital product.]

29 [(c-6)] (C-2) (1) “Marketplace facilitator” means a person that:

30 (i) facilitates a retail sale by a marketplace seller by listing or
31 advertising for sale in a marketplace tangible personal property[, digital code, or a digital
32 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
3 agreements with third parties, collects payment from a buyer and transmits the payment
4 to the marketplace seller.

5 (2) "Marketplace facilitator" does not include:

6 (i) a platform or forum that exclusively provides Internet
7 advertising services, including listing products for sale, if the platform or forum does not
8 also engage, directly or indirectly, in collecting payment from a buyer and transmitting that
9 payment to the vendor;

10 (ii) a payment processor business appointed by a vendor to handle
11 payment transactions from clients, including credit cards and debit cards, whose only
12 activity with respect to marketplace sales is to handle transactions between two parties; or

13 (iii) a delivery service company that delivers tangible personal
14 property on behalf of a marketplace seller that is engaged in the business of a retail vendor
15 and holds a license issued under Subtitle 7 of this title.

16 [(c-7)] (C-3) "Marketplace seller" means a person that makes a retail sale or
17 sale for use through a physical or electronic marketplace operated by a marketplace
18 facilitator.

19 [(c-8) "Permanent" means perpetual or for an indefinite or unspecified length of
20 time.]

21 [(e-1) (1) "Primary use location" means the street address representative of
22 where the buyer's use of a digital code or digital product will primarily occur, as determined
23 by:

24 (i) the residential street address or a business street address of the
25 actual end user of the digital code or digital product, including, if applicable, the address of
26 a donee of the buyer that is designated by the buyer; or

27 (ii) if the buyer is not an individual, the location of the buyer's
28 employees or equipment that makes use of the digital code or digital product.

29 (2) "Primary use location" does not include the location of a person who
30 uses a digital code or digital product as the purchaser of a separate good or service from the
31 buyer.]

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

33 (i) tangible personal property; **OR**

1 (ii) a taxable service[;

2 (iii) a digital code; or

3 (iv) a digital product].

4 (2) "Retail sale" includes:

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

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

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

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

15 (v) a sale to an end user of a digital code or a subscription to, access
16 to, receipt of, or streaming of a digital product].

17 (3) "Retail sale" does not include:

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

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

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

24 (ii) a sale of tangible personal property[, a digital code, or a digital
25 product] if the buyer intends to:

26 1. resell the tangible personal property[, digital code, or
27 digital product] in the form that the buyer receives or is to receive the property[, digital
28 code, or digital product];

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

4 3. transfer the tangible personal property[, digital code, or
5 digital product] as a part of a taxable service transaction; or

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

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

9 (i) title to or possession of property[, a digital code, or a digital
10 product] is transferred or is to be transferred absolutely or conditionally by any means,
11 including by lease, rental, royalty agreement, or grant of a license for use; or

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

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

15 (j) “Sale for use” means a sale in which tangible personal property[, a digital code,
16 a digital product,] or a taxable service that is consumed, possessed, stored, or used in the
17 State is acquired.

18 [(j–4) “Subscription” means, with respect to a digital product, an arrangement with
19 a vendor that grants a buyer the right to obtain digital products from within one or more
20 product categories having the same tax treatment, in a fixed quantity or for a fixed period
21 of time or both.]

22 (1) (1) “Taxable price” means the value, in money, of the consideration of any
23 kind that is paid, delivered, payable, or deliverable by a buyer to a vendor in the
24 consummation and complete performance of a sale without deduction for any expense or
25 cost, including the cost of:

26 (i) any labor or service rendered;

27 (ii) any material used; or

28 (iii) any property[, digital code, or digital product] sold.

29 (2) “Taxable price” includes, for tangible personal property[, a digital code,
30 or a digital product] acquired by a sale for use in the State by the person who assembles,
31 fabricates, or manufactures the property [or digital product], only the price of the raw
32 materials and component parts contained in the property [or digital product].

1 (m) "Taxable service" means:

2 (1) fabrication, printing, or production of tangible personal property [or a
3 digital product] by special order;

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

6 (i) tangible personal property; **OR**

7 (ii) a taxable service[;

8 (iii) a digital code; or

9 (iv) a digital product].

10 (2) "Use" includes an exercise of a right or power to use, consume, possess,
11 or store that is acquired by a sale for use of tangible personal property[, a digital code, or a
12 digital product]:

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

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

19 (3) "Use" does not include:

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

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

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

26 (ii) an exercise of a right or power over tangible personal property[,
27 a digital code, or a digital product] acquired by a sale for use if the buyer intends to:

28 1. resell the tangible personal property[, digital code, or
29 digital product] in the form that the buyer receives or is to receive the property[, digital
30 code, or digital product];

1 (ii) from whom the agent obtains the tangible personal property[, a
2 digital code, a digital product,] or taxable service for sale.

3 11-102.

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

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

6 (2) a use, in the State, of tangible personal property[, a digital code, a
7 digital product,] or a taxable service.

8 11-103.

9 [(c) The retail sale of a digital code or digital product shall be presumed to be made
10 in the state in which the customer tax address is located.]

11 11-204.

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

13 (6) a sale of tangible personal property[, a digital code, or a digital product]
14 to a nonprofit parent-teacher association located in the State if the association makes the
15 purchase to contribute the property to a school to which a sale is exempt under item (3) of
16 this subsection or § 11-220 of this subtitle;

17 11-208.

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

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

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

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

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

30 11-209.

1 (a) The sales and use tax does not apply to a casual and isolated sale by a person
2 who regularly does not sell tangible personal property[, a digital code, a digital product,]
3 or a taxable service if:

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

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

6 (b) The sales and use tax does not apply to a distribution of tangible personal
7 property[, a digital code, or a digital product] by:

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

10 (2) a partnership to a partner; or

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

12 (c) (1) The sales and use tax does not apply to a transfer of tangible personal
13 property[, a digital code, or a digital product]:

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

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

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

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

22 (2) For a transfer that would qualify as a casual and isolated sale under
23 subsection (a) of this section if the sale price limitation were disregarded, the amount of
24 liability transferred to or assumed by a corporation, joint-stock company, partnership, or
25 limited liability company shall be excluded from the consideration transferred by the
26 corporation, joint-stock company, partnership, or limited liability company in exchange for
27 the tangible personal property[, digital code, or digital product] to determine whether the
28 transfer is made:

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

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

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

3 11-210.

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

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

10 11-214.

11 The sales and use tax does not apply to use of tangible personal property[, a digital
12 code, a digital product,] or a taxable service that:

13 (1) a nonresident:

14 (i) acquires before the property[, digital code, digital product,] or
15 service enters the State; and

16 (ii) uses:

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

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

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

22 11-216.

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

24 (1) a sale for use of tangible personal property[, a digital code, or a digital
25 product] that:

26 (i) is bought outside this State;

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

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

1 11-217.

2 (b) The sales and use tax does not apply to a sale of tangible personal property[,
3 a digital code, or a digital product] for use or consumption in research and development.

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 sale
14 is made, the person is not required to pay the tax again when the person uses that tangible
15 personal property[, digital code, digital product,] or taxable service in the State.

16 (c) (1) To the extent that a buyer pays another state a tax on a sale or gross
17 receipts from a sale of tangible personal property[, a digital code, a digital product,] or a
18 taxable service that the buyer acquires before the property[, digital code, digital product,]
19 or service enters this State, the sales and use tax does not apply to use of the property or
20 service in this State.

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

24 [(d) A retail sale of a digital product subject to tax under this title does not include
25 a retail sale that is subject to tax in accordance with any other provision of this article.]

26 11-227.

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

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

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

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

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

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

8 (3) “Tangible personal property[, a digital code, a digital product,] or a
9 taxable service used directly in connection with a film production activity” includes:

10 (i) camera equipment and supplies;

11 (ii) film and tape;

12 (iii) lighting and stage equipment and supplies;

13 (iv) sound equipment and supplies;

14 (v) recording equipment and supplies;

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

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

17 (viii) design supplies and equipment;

18 (ix) drafting supplies and equipment;

19 (x) special effects supplies and equipment;

20 (xi) short-term vehicle rentals; and

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

23 (b) The sales and use tax does not apply to a sale of tangible personal property[,
24 a digital code, a digital product,] or a taxable service used directly in connection with a film
25 production activity by a film producer or production company certified by the Department
26 of Commerce under Title 6, Subtitle 2 of the Economic Development Article.

27 11-303.

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

3 (1) tangible personal property[, a digital code, a digital product,] or a
4 taxable service is acquired before the tangible personal property[, digital code, or digital
5 product] is brought into the State for use in the State or before the taxable service is used
6 in the State; and

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

8 (b) The allowance under subsection (a) of this section for each full year that
9 follows the date of purchase is 10% of the taxable price paid to acquire the tangible personal
10 property[, digital code, digital product,] or taxable service.

11 11-401.

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
14 vendor would have if the sales and use tax were a part of the purchase price of the tangible
15 personal 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 product,] or
18 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 (b) (1) Except as provided in paragraph (3) of this subsection, the duty of a
24 vendor to collect the sales and use tax from a buyer is waived if the buyer provides the
25 vendor with a signed resale certificate that:

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

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

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

30 2. for the sale of an antique or used collectible, provides a
31 sales and use tax registration number of another state and states that the buyer is an

1 out-of-state vendor who does not engage in the business of an out-of-state vendor, as
2 defined in § 11-701 of this title; and

3 (iv) contains a statement to the effect that the tangible personal
4 property[, digital code, digital product,] or taxable service is bought for the purpose of
5 resale.

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

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

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

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

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

18 2. the tangible personal property[, digital code, digital
19 product,] or taxable service is not delivered by the vendor directly to the buyer's retail place
20 of business.

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

22 (i) before the sale is consummated; or

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

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

28 (c) If the taxable price is less than \$200 for a cash, check, or credit card sale or
29 sale for use that is not a retail sale and the tangible personal property[, digital code, digital
30 product,] or taxable service is not delivered by the vendor directly to the buyer's retail place
31 of business:

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

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

3 11-501.

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

5 (1) the total value of the tangible personal property[, digital code, digital
6 product,] or taxable service that is subject to the sales and use tax; and

7 (2) the sales and use tax due.

8 11-502.1.

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

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

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

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

16 (iii) the sales and use tax due; and

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

18 (i) the total value of the tangible personal property[, digital code,
19 digital product,] or taxable service sold by marketplace sellers the use of which became
20 subject to the sales and use tax; and

21 (ii) the sales and use tax due.

22 11-701.

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

24 (b) (1) "Engage in the business of an out-of-state vendor" means to sell or
25 deliver tangible personal property or a taxable service for use in the State [or a digital
26 product or digital code to a customer tax address in the State].

27 (2) "Engage in the business of an out-of-state vendor" includes:

1 (i) permanently or temporarily maintaining, occupying, or using
2 any office, sales or sample room, or distribution, storage, warehouse, or other place for the
3 sale of tangible personal property[, a digital code, a digital product,] or a taxable service
4 directly or indirectly through an agent or subsidiary;

5 (ii) having an agent, canvasser, representative, salesman, or
6 solicitor operating in the State for the purpose of delivering, selling, or taking orders for
7 tangible personal property[, a digital code, a digital product,] or a taxable service; or

8 (iii) entering the State on a regular basis to provide service or repair
9 for tangible personal property [or a digital product].

10 (c) (1) “Engage in the business of a retail vendor” means to sell or deliver
11 tangible personal property[, a digital code, a digital product,] or a taxable service in the
12 State.

13 (2) “Engage in the business of a retail vendor” includes liquidating a
14 business that sells tangible personal property[, a digital code, a digital product,] or a
15 taxable service, when the liquidator holds out to the public that the business is conducted
16 by the liquidator.

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

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

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

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

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

23 11-703.

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

27 (1) for each place of business in the State where the applicant sells tangible
28 personal property[, a digital code, a digital product,] or a taxable service;

29 11-707.

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

1 (2) operates out of the State and sells tangible personal property[, a digital
2 code, a digital product,] or a taxable service for use in the State; and

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