

Chapter 535

(Senate Bill 723)

AN ACT concerning

Sales and Use Tax – Digital Product – Definition

FOR the purpose of altering the definition of “digital product” for purposes of the application of the sales and use tax to exclude certain products where the purchaser has a certain property interest and certain types of computer software; and generally relating to the sales and use tax.

BY repealing and reenacting, without amendments,
Article – Tax – General
Section 11–101(a) and 11–102(a)
Annotated Code of Maryland
(2016 Replacement Volume and 2021 Supplement)

BY repealing and reenacting, with amendments,
Article – Tax – General
Section 11–101(c–4)
Annotated Code of Maryland
(2016 Replacement Volume and 2021 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) (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;

(V) A PRODUCT HAVING ELECTRICAL, DIGITAL, MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC, OR SIMILAR CAPABILITIES WHERE THE PURCHASER HOLDS A COPYRIGHT OR OTHER INTELLECTUAL PROPERTY INTEREST IN THE PRODUCT, IN WHOLE OR IN PART, IF THE PURCHASER USES THE PRODUCT

SOLELY FOR COMMERCIAL PURPOSES, INCLUDING ADVERTISING OR OTHER MARKETING ACTIVITIES; OR

(VI) COMPUTER SOFTWARE OR SOFTWARE AS A SERVICE PURCHASED OR LICENSED SOLELY FOR COMMERCIAL PURPOSES IN AN ENTERPRISE COMPUTER SYSTEM, INCLUDING OPERATING PROGRAMS OR APPLICATION SOFTWARE FOR THE EXCLUSIVE USE OF THE ENTERPRISE SOFTWARE SYSTEM, THAT IS HOUSED OR MAINTAINED BY THE PURCHASER OR ON A CLOUD SERVER, WHETHER HOSTED BY THE PURCHASER, THE SOFTWARE VENDOR, OR A THIRD PARTY.

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.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2022.

Enacted under Article II, § 17(c) of the Maryland Constitution, May 29, 2022.