



Legislative Updates, 2021

Delaware Fed/State Tax Conference
December 6, 2021

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Agenda

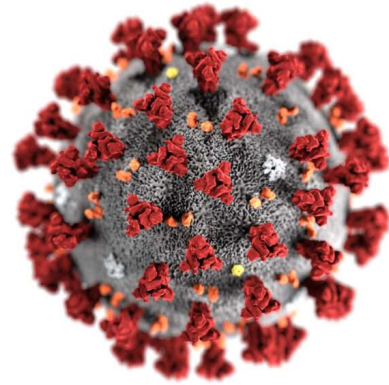


1. RELIEF Act, SB 218 – Child Tax Credit and Expansion of the Earned Income Tax Credit
2. Credits
3. Additions/Subtractions
4. Economic Development SUT Exemptions
5. Pass-Through Entity Tax
6. Sales and Use Tax – Digital Codes and Digital Products
7. Digital Advertising Gross Revenues
8. Whistleblower Law

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RELIEF ACT

- SB0469 – February 15, 2021
- \$ Maryland Economic Impact Payments \$
- Unemployment Compensation Subtraction
- Coronavirus Relief Grants Subtraction
- Earned Income Tax Credit Expansion
- Unemployment Determination Grants
- Sales and Use Tax Credit
- Changes to Pass-Through Entity Tax
- See RELIEF Act Tax Alert on MarylandTaxes.gov - https://marylandtaxes.gov/RELIEFAct/docs/RELIEF_Act_Tax_Alert.pdf



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SB 218 - CHILD TAX CREDIT AND EXPANSION OF THE EARNED INCOME CREDIT

- Effective for Tax Years 2020, 2021, 2022
- ITIN Filers eligible for the Maryland Earned Income Credit
- Created Maryland Child Tax Credit



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CREDITS

[HB0007](#) Income Tax Credit - Venison Donation Expenses - Montgomery County Deer Donation Program

[SB769/HB1017](#) Income Tax Credit for Venison Donation - Reporting Requirement and Testing for Chronic Wasting Disease



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CREDITS

[HB0278](#) Economic Development – Job Creation Tax Credit – Qualified Position **VETOED**

[SB0019](#) Economic Development – Biotechnology Investment Incentive Tax Credit Program – Alterations

[SB0102/HB1252](#) Income Tax - Credits for Preceptors in Areas With Health Care Workforce Shortages

[SB0186](#) Economic Development – Job Creation Tax Credit – Credit for Hiring Veterans

[SB0196](#) Economic Development – Research and Development Tax Credit – Alterations

[HB0752](#) Income Tax Credit - Food Donation Pilot Program - Extension

[SB0160](#) Economic Development – Cybersecurity Investment Incentive Tax Credit Program – Expansion and Extension

[SB0778/HB1279](#) Regional Institution Strategic Enterprise Zone Program - Alterations

[SB659/HB865](#) Historic Revitalization Tax Credit - Small Commercial Projects – Alterations

[SB 447/HB428](#) Historic Revitalization Tax Credit – Certified Historic Structure and Single-Family, Owner-Occupied Residence - Definitions

[SB0885](#) Economic and Community Development - Income Tax Credit for Catalytic Revitalization Projects

[SB0218](#) Income Tax - Child Tax Credit and Expansion of the Earned Income Credit

[SB539/HB752](#) Income Tax Credit – Food Donation Pilot Program - Extension

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ADDITION OR SUBTRACTION MODIFICATIONS

[HB0495](#) Income Tax - Internal Revenue Code Amendments - Decoupling

[SB0048/HB0010](#) Income Tax - Subtraction Modification - Living Organ Donors



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ADDITION OR SUBTRACTION MODIFICATIONS

[SB622/HB0711](#) Income Tax – Subtraction Modification – Donations to Diaper Banks and Other Charitable Entities

xx.  Amount of donations of certain disposable **diapers**, certain hygiene products, and certain monetary gifts made by a taxpayer during the taxable year to certain qualified charitable entities that are registered with the Comptroller. To qualify for this subtraction, you must enter the value of the donation and the name of each qualified charitable entity to which a donation was made. The Comptroller may verify the donation with the qualified charitable entity.

[HB1178](#) Income Tax – Subtraction Modification – First-Time Homebuyer Savings Accounts

ww.  A qualified individual may subtract up to \$5,000 per year of the amount contributed to a designated First-Time Homebuyer Savings Account plus the earnings, including interest and other income on the principal, on such account. The First-Time Homebuyer Savings Account must be opened for the sole purpose of paying or reimbursing eligible costs for the purchase of a home in the State. The subtraction may be claimed for a period not to exceed 10 years, and total earnings may not exceed \$50,000 during that 10-year period. For more information, visit www.marylandtaxes.gov

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SALES AND USE TAX

[HB0337](#) Sales and Use Tax - Vendor Collection Credit - Job Training

[SB0294](#) Cecil County - Sales and Use Tax Exemption - Federal Facilities Redevelopment Areas

[HB 932 \(2020\)](#) Veto override - 21st Century Economic Fairness Act

[HB1209](#) Sales and Use Tax – Peer-to-Peer Car Sharing – Alterations
VETOED

[HB732 \(2020\)](#) Veto override - Tobacco Tax, Sales and Use Tax, and Digital 4 Advertising Gross Revenues Tax

[SB0883 Tobacco Tax](#) - Out-of-State Sales of Premium Cigars and Pipe Tobacco

When you sell something



ECONOMIC REDEVELOPMENT SUT EXEMPTIONS FOR TARGET REDEVELOPMENT AREAS AND OPPORTUNITY ZONES

§§ 11-232, 11-236, 11-238, 11-241, and 11-242 of the Tax General Article of the Maryland Annotated Code permit an exemption from sales and use tax on certain **construction materials** and **warehousing equipment** for use in certain areas. These areas include:

- § 11-232 - Target redevelopment areas in Baltimore County that were previously owned by Bethlehem Steel Corporation, or any of its subsidiaries, and are participating in the Voluntary Cleanup Program under the Environment Article;
- § 11-236 - Laurel Park racing facility site in Anne Arundel County, and Pimlico site in Baltimore City;
- § 11-238 - Qualified opportunity zones in Baltimore County that have been designated as an enterprise zone under the Economic Development Article, designated an opportunity zone under the Internal Revenue Code, and were previously owned by the United States; and target redevelopment areas in Washington County that have been designated enterprise zones under the Economic Development Article, and were previously owned by the United States or CSX Railroad.
- § 11-241 – Public school facilities managed by the Maryland Stadium Authority in Baltimore City;
- § 11-242 – Real property in Cecil County that was previously owned by the federal government.

PASS-THROUGH ENTITY TAX

- **2020 Senate Bill 523:**

- SB 523 introduced option to elect to pay entity-level tax on resident members' shares of income; mandatory nonresident tax remained paid on behalf of nonresident members.
- The Comptroller's Office prepared 2020 Form 510 to conform with SB 523. The form was to be used by both electing and non-electing PTEs.

- **2021 SB 496 – The Recovery for the Economy, Livelihoods, Industries, Entrepreneurs, and Families (RELIEF) Act:**

- Clarified tax would be on entity itself, on *all* members' shares.
- Included addition modification, at the member level, equal to the amount of the credit received by the member.
- Became effective immediately upon the Governor's signature on February 15, 2021, and applied to taxable years beginning after December 31, 2019. This made new 2020 forms necessary.

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PASS-THROUGH ENTITY TAX – CHANGE TO DEFINITION

- **2021 SB 787 – Digital Advertising Gross Revenues, Income, Sales and Use, and Tobacco Taxes – Alterations and Implementation (and also changes to PTE tax)**

- SB 787 altered the definition of pass-through entity's taxable income as follows: "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."
- Required further changes to the forms.
- Became law May 30, 2021.

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PASS-THROUGH ENTITY TAX – BASIS

Electing PTEs taxable income:

“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.”

Non-Electing PTEs:

- No change to nonelecting PTE tax basis.

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PASS-THROUGH ENTITY TAX – APPORTIONMENT

Electing PTEs:

- All multistate electing PTEs apportion their income, regardless of the residence of the members.
- Allocation of income is found on lines 3a. and 3b. of Form 511.

Non-electing PTEs:

- Multistate nonelecting PTEs apportion only if they have *at least one nonresident member*.
- Allocation of income is found on lines 3a. and 3b. of Form 510.

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PASS-THROUGH ENTITY TAX – PASSING THROUGH CREDITS

Electing PTEs:

- Tax is on the entity itself.
- Passed to member on 510 K-1, Part D, Line 2 or 4.
- Member takes credit on Form 502CR, Part CC, Line 7.
- Member adds back amount of credit on 502LU or 500LU.

Non-electing PTEs:

- Taxes are paid “on behalf of” the nonresident members.
- Passed to member on 510 K-1, Part D, Line 1 or 3.
- Member takes credit on Form 502CR, Part CC, Line 5.
- No addback for members of non-electing PTEs.

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PASS-THROUGH ENTITY TAX – REFUNDS

Electing PTEs:

- Overpayment of electing PTE tax is refunded to the PTE, or applied to next year’s estimated payments.
- Overpayment may not be passed to members.
- See 511 Lines 13 – 19.

Non-electing PTEs:

- Refunds to entity not permitted, unless payment made in error.
- All payments passed to members, unless paid in error.
- See 510 Line 16 – 22.

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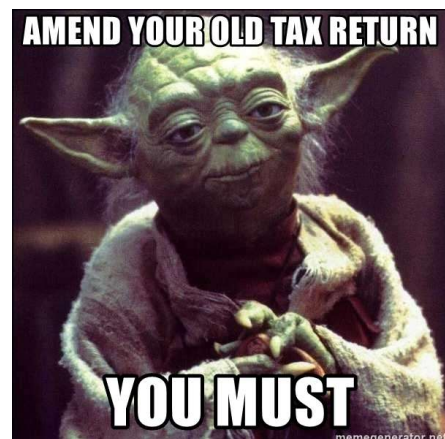
PASS-THROUGH ENTITY TAX – COVID GRANT SUBTRACTIONS

- A PTE's RELIEF Act subtraction is treated like any other PTE subtraction.
- A PTE does NOT need form 500LU to report and pass-through a RELIEF Act subtraction.
- An individual member receiving a K-1 that includes a RELIEF Act subtraction simply reports on the 502 (or 505) the subtraction reported to them by the PTE.
- If a PTE receives a subtractable grant, an individual member does NOT need to file Form 502LU for that item. An individual may need to file Form 502LU if the individual themselves has subtraction items provided for in the RELIEF Act
- An individual member of an Electing PTE must file Form 502LU to report the addback of the credit for taxes paid by the Electing PTE.

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PASS-THROUGH ENTITY TAX – AMENDING

- The 510 that had been published prior to June 29, 2021, may only be filed by a non-electing PTE that did not make estimated payments on resident member shares of income in tax year 2020 **and** by an electing PTE that made no estimated payments in 2020; PTEs paying the only nonresident tax can file the 510 that was published prior to June 29, 2021.
- "Un-electing" PTEs must file the new Form 510. An un-electing PTE may request a refund of estimated payments to the extent payments exceed the mandatory tax owed on non-resident member shares.
- An electing PTE that filed form 510 must amend by filing Form 511.



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**SB0257
SALES AND USE
TAX – VENDOR
COLLECTION
CREDIT – JOB
TRAINING**

- A Qualified Job Training Organization who timely files a sales and use tax return is allowed a credit equal to 100% of the gross amount of sales and use tax that the vendor is to pay to the Comptroller's office
- The total amount of credits that a vendor may claim may not exceed \$100,000 per year
- Must apply to secretary of labor to be a qualified organization

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**SB0257
SALES AND USE
TAX – VENDOR
COLLECTION
CREDIT – JOB
TRAINING**

QUALIFIED JOB TRAINING ORGANIZATION

- Must be located in Maryland;
- Is exemption from tax under Section 501(c)(3) of the IRC;
- Conduct retail sales of donated items;
- Provides job training and employment services to individuals with workplace disadvantages or disabilities; and
- Uses a majority of its revenue for job training and job placement programs:
 - That assist individuals with growth in employment hours;
 - For individuals with low income, workplace disadvantages, disabilities, or barriers to employment; or
 - For veterans.

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**SB0257
SALES AND USE
TAX – VENDOR
COLLECTION
CREDIT – JOB
TRAINING**

LIMITATIONS

- The total amount of credits that a vendor may claim may not exceed \$100,000 per year
- Must apply to secretary of labor to be a qualified organization

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2020 TAX LEGISLATION PASSED, VETOED BY GOVERNOR LARRY HOGAN



HB 932 - 21st Century Fairness Act

Sales and Use Tax would apply to sale of a digital product or digital code
Sourcing Rules for Customers



HB 732 Tobacco Tax, Sales and Use Tax, and Digital Advertising Gross Revenues Tax

Tobacco Tax Rate Change
Sales and use Tax on Electronic Vaping Devices and Vaping Liquid
Digital Advertising Tax



Both Vetoed by Governor Hogan on May 7, 2020



Vetoed Overridden in 2021 Legislative Session on February 12, 2021

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Tobacco Tax

- Excise Tax on Cigarettes increased from \$2.00 per pack to \$3.75 per pack
- Excise Tax on Other Tobacco Products increased from 30% to 53% of wholesale cost
- New tax rate applied to all cigarette and OTP floor stock in Maryland as of 12:01 a.m. on March 14, 2021.
- [See TT-78 \(February 24, 2021\) for FAQs](#)
- Tobacco Floor Tax returns due were due on June 13, 2021 (Tax Alert 3-11-2021)
- No action is required to request a waiver of interest or late payment penalty; it will be automatically granted for TPs who file the returns and pay the taxes listed above on or before the due dates listed in Tax Alert 3-11-2021.

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HB 732 TOBACCO TAX, SALES AND USE TAX, AND DIGITAL ADVERTISING GROSS REVENUES TAX

- Effective March 14, 2021, the sale of electronic smoking devices (ESDs) is subject to sales and use tax at a rate of 12%
- The sales and use tax rate for vaping liquid sold in a container that contains five milliliters or less of vaping liquid is 60% of the taxable price.

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HB 732 TOBACCO TAX, SALES AND USE TAX, AND DIGITAL ADVERTISING GROSS REVENUES TAX

ESD is “a device that can be used to deliver aerosolized or vaporized nicotine to an individual inhaling from the device.”

- an electronic cigarette
- an electronic cigar
- an electronic cigarillo
- an electronic pipe
- an electronic hookah
- a vape pen
- **vaping liquid**
- any component, part, or accessory of such a device regardless of whether it is sold separately, including any substance intended to be aerosolized or vaporized during use of the device

When ads start popping up for stuff I've only thought about inside my head.



HB 732 TOBACCO TAX, SALES AND USE TAX, AND DIGITAL ADVERTISING GROSS REVENUES TAX

- If an electronic smoking device is sold bundled with a container that contains five milliliters or less of vaping liquid, then the entire sales price is subject to sales and use tax rate of 12%.
- If a vaping liquid is sold in a disposable cartridge or similar device as part of a closed system, the tax rate is 12% regardless of the amount of vaping liquid is contained in that device.
- See TT-78 published on Feb. 24, 2021
https://marylandtaxes.gov/forms/Tax_Publications/Tax_Bulletins/Tobacco_Tax_Bulletins/bl_tt78.pdf

2021 HB 1324 – TOBACCO TAX AND SALES AND USE TAX – OUT-OF-STATE SALES OF PREMIUM CIGARS AND PIPE TOBACCO AND TOBACCO SMOKING DEVICES

- The sales and use tax of 12% applies to Electronic Smoking Devices *and Tobacco Pipes*
- Tobacco Pipe means a pipe made primarily of meerschaum, wood, or porcelain with a bowl designed to be used without a screen or filter

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HB 932 – 21ST CENTURY FAIRNESS ACT

- Effective March 14, 2021, Maryland sales and use tax applies to sales of digital codes & digital products
- 100% of the sales and use tax goes to the education trust fund established for the Blueprint for Maryland's Future Fund

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HB 932 – 21ST CENTURY FAIRNESS ACT

- Digital code may be obtained by any means, including in a tangible form, such as a card; or through e-mail
- 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.

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HB 932 – 21ST CENTURY FAIRNESS

Examples of Digital Codes

- Gift cards sold at grocery or convenience stores to purchase music online
- Gift certificate received via e-mail for online games

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HB 932 – 21ST CENTURY FAIRNESS

“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, or similar capabilities.

Digital Product includes...

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HB 932 – 21ST CENTURY FAIRNESS

“Digital Product” includes:

(l) 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 e-mail;

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**HB 932 –
21ST CENTURY FAIRNESS**

(II) “Digital Product” includes: 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;

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**HB 932 –
21ST CENTURY FAIRNESS**

“Digital Product” includes:

(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;

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HB 932 – 21ST CENTURY FAIRNESS

“Digital product” includes:

(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;

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HB 932 – 21ST CENTURY FAIRNESS

- Business Tax Tip #29 Issued on March 9, 2021
- SUT Bulletin #21-1 Issued on Friday, March 26, 2021
- concerns were raised about online classes and other digital products

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HB 932 – 21ST CENTURY FAIRNESS

- Maryland General Assembly issued corrective legislation, SB 787, to narrow the scope of the tax on digital products.
- The Comptroller's Office promptly issued revised Tax Tip #29 on June 3, 2021
- Tax Tip #29 revised on July 14, 2021, in response to practitioner comments
- Additional revisions to follow

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SB 787 – DIGITAL ADVERTISING GROSS REVENUES, INCOME, SALES AND USE, AND TOBACCO TAXES- ALTERATION AND IMPLEMENTATION

Technical Corrections

- 11-101 Updates to the definition of Digital Code
- 11-303 Depreciation allowance for Purchases OOS before coming into Maryland
- 11-401 Vendor Liability for Sales of Digital Products and Digital Code
- 11-405 Vending Machine Sales
- 11-408 Resale Certificate for Digital Products and Digital Code
- 11-501 Requirement to report Digital Code or Digital Product
- 11-502.1 Marketplace Facilitators Definition
- 11-701 License Requirement for OOS Vendors of Digital Code/Products
- 11-703 License Requirement to sell digital code or digital product
- 11-707 Authorizes Comptroller to issue Special License

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SB 787 – DIGITAL ADVERTISING GROSS REVENUES, INCOME, SALES AND USE, AND TOBACCO TAXES- ALTERATION AND IMPLEMENTATION

Technical Corrections – Exemption Statutes

- 11-204 Sales to nonprofit parent-teacher associations
- 11-208 Use in Television Broadcasting by a Television Station
- 11-209 Casual & Isolated Sales/Distributions/Reorganizations
- 11-210 Production Activity
- 11-214 Nonresident Property (less than 30 days)
- 11-216 Temporary Storage
- 11-217 Research & Development
- 11-219 Services & Custom Computer Services
- 11-220 State or Political Subdivisions
- 11-221 Taxation by Another State
- 11-227 Film Production Activities

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SB 787 – DIGITAL ADVERTISING GROSS REVENUES, INCOME, SALES AND USE, AND TOBACCO TAXES- ALTERATION AND IMPLEMENTATION

“DIGITAL PRODUCT” DOES NOT INCLUDE:

- Prerecorded or live instruction by a public, private, or parochial elementary or secondary school or a public or private institution of higher education;
- Instruction in a skill or profession in a buyer’s current or prospective business, occupation, or trade if the instruction:
 - Is not prerecorded; and
 - Features an interactive element between the buyer and the instructor or other buyers contemporaneous with the instruction;

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SB 787 – DIGITAL ADVERTISING GROSS REVENUES, INCOME, SALES AND USE, AND TOBACCO TAXES- ALTERATION AND IMPLEMENTATION

DIGITAL PRODUCT” DOES NOT INCLUDE:

- A seminar, discussion, or similar event hosted by a nonprofit organization or business association, if the seminar, discussion or event:
 - Is not prerecorded; and
 - Features an interactive element between the buyer and host or other buyers contemporaneous with the seminar, discussion, or event; Or
- A professional service obtained electronically or delivered through the use of technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

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MAJOR ISSUES – DIGITAL PRODUCTS

ADVERTISING

- An advertising agency is providing non-taxable advertising services when the transaction with the client is for the preparation and placement of advertising in print, broadcast or digital media
- An advertising agency is selling digital products when the transaction with the client is for the production and electronic delivery of specific property, including property that the client uses:
 - In its business, signage, letterhead stationery, business cards, annual reports, or audio or videos;
 - To convey its commercial message, such as brochures, flyers, posters, displays, or finished artwork; or
 - Any digital products including but not limited to photographs, artwork, illustrations, graphics, and videos.

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MAJOR ISSUES – DIGITAL PRODUCTS

Photography and Videography

- The sale of a photograph, stock photographs or stock artwork, clip art, portrait and wedding photography, pictures and similar products are digital products if delivered electronically
- The services to produce photography, artwork, clip art, portrait and wedding photography, pictures, videos, and similar digital products, when separately charged from the digital product result of such services, are non-taxable services.
- Fair Market Value of the photograph or video
- Bundled Transaction or not separately stated is entirely taxable

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MAJOR ISSUES – DIGITAL PRODUCTS

Professional Services

Example 1 An attorney is engaged to provide estate planning services for a client in Maryland. A will and related documents are executed by the client. The attorney provides a copy of the will and the related documents to the client. The client also downloads a PDF of the estate planning documents from the tax preparer's client portal. The invoice reads for "\$900 for will drafting and estate planning services." Legal service is a non-enumerated, non-taxable service. The PDFs of the estate planning documents are an inconsequential element to the service. The charge for the creation and execution of the estate planning documents are not subject to the sales and use tax.

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MAJOR ISSUES – DIGITAL PRODUCTS

Professional Services

Example 2 An attorney or CPA provides tax preparation services to a client located in Maryland. The client downloads a PDF of the tax return from the client portal. The requests additional copies of the tax return. The invoice reads as: “\$500 for preparation of tax return preparation, \$40 charge for software use and \$25 for multiple copies of a 250-page tax return”. As a nonenumerated, non-taxable service, for which the electronically obtained tax return is an inconsequential element to the service there is no sales tax due on the tax preparation service. The sales and use tax does not apply to the separate charge for software use but sales and use tax applies to the separately stated charge for multiple copies of the tax return which is tangible personal property. The answer would be different if there was a single \$565 charge or single line-item on the invoice for “tax preparation and related services.” The entire charge is not subject to the sales and use tax because the tax preparation service is the dominant purpose of the transaction.

MAJOR ISSUES – DIGITAL PRODUCTS

Professional Services

Example 5 A patient makes an appointment with a doctor to discuss a medical concern. The patient chooses to hold the appointment through a video conference rather than appear in person at the doctor’s office. Health care is a non-enumerated, non-taxable service. The doctor’s professional service is not subject to the sales and use tax because the service is delivered electronically

MAJOR ISSUES – DIGITAL PRODUCTS

Continuing Education Classes, Seminars or Conferences

A charge for attending a continuing education class, seminar or conference **in-person** is not subject to sales and use tax. In general, charges for viewing or attending prerecorded or live continuing education classes, seminars or conferences that are delivered electronically are subject to sales and use tax.

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MAJOR ISSUES – DIGITAL PRODUCTS

Continuing Education Classes, Seminars or Conferences

A digital product does not include “instruction in a skill or profession in a buyer’s current or prospective business, occupation, or trade if the instruction is not prerecorded and features an interactive element between the buyer and the instructor or other buyers contemporaneous with the instruction. Thus, a charge for prerecorded instruction is subject to the sales and use tax while a live instruction is not taxable.

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MAJOR ISSUES – DIGITAL PRODUCTS

Continuing Education Classes, Seminars or Conferences

A charge for viewing or attending live continuing education classes, seminars or conferences provided electronically is not subject to the sales and use tax if sold by a non-profit organization or business association.

A charge for viewing or attending prerecorded continuing education classes, seminars or conferences provided electronically is subject to sales and use tax even if sold by a non-profit organization or business association. However, the sales and use tax does not apply to a sale of a prerecorded or live seminar by a bona fide church or religious organization, if the sale is made for the general purposes of the church or organization.

MAJOR ISSUES – DIGITAL PRODUCTS

Charges for the Sale of Textbooks

The sale of a textbook, whether in tangible form or delivered electronically, is subject to the Maryland sales and use tax.

The purchase of an access code to view and/or download an electronic book is also taxable as the sale of a digital book.

Unless a specific exemption applies, sales tax must be charged whether the sales is made by an educational institution or a commercial vendor.

MAJOR ISSUES – DIGITAL PRODUCTS

Pre-recorded Audio and Video Content

A charge to download or access pre-recorded audio and video content is subject to the sales and use tax.

Example 1 A for profit company operates a website that allows customers to purchase and view prerecorded music concerts. The charge to view the prerecorded music concert is subject to the sales and use tax.

Example 2 A nonprofit professional organization operates a website that allows customers to purchase and view prerecorded music concerts. The charge to view the prerecorded music concert is subject to the sales and use tax.

Example 3 A religious organization charges a fee to watch a prerecorded event to raise funds for its organization. The prerecorded concert is delivered electronically through the organization's website. The charge for the concert is not subject to the sales and use tax

MAJOR ISSUES – DIGITAL PRODUCTS

Live Music Performances

A charge to view a live music performance of any type that is accessed electronically is subject to sales and use tax. However, a charge to view a live music performance of any type in-person is not subject to the sales and use tax. A charge to view a live music performance in-person may be subject to Maryland's admissions and amusement tax.

Example 1 A for profit company operates a website that allows customers to view live music concerts at any time. The charge to view the live music concert is subject to the sales and use tax. The charge for live streams of music concerts.

MAJOR ISSUES – DIGITAL PRODUCTS

Live Music Performances

Example 2 A non-profit organization holds a live music concert to raise funds for its organization. The live concert is delivered electronically through a video conferencing platform. The attendees cannot interact with the musicians. The charge for the concert is subject to the sales and use tax.

Example 3 A religious organization holds a live music concert to raise funds for its organization. The live concert is delivered electronically through a video conferencing platform. The attendees cannot interact with the musicians. The charge for the concert is not subject to the sales and use tax.

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MAJOR ISSUES – DIGITAL PRODUCTS

Software

- The sale of canned or commercial off-the-shelf (“COTS”) software if delivered in tangible form is subject to the sales and use tax.
- Effective March 14, 2021, the sale of canned or COTS software obtained electronically by the buyer is a digital product and is subject to the Maryland sales and use tax.
- The sale of software as a service (SaaS) is also subject to the sales and use tax if the exemption for customized software does not apply.

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MAJOR ISSUES – DIGITAL PRODUCTS

Software

- The sale of software that is customized, configured or modified and does not immediately perform the functions to operate as required by the buyer is exempt from the sales and use tax.
- The duty of the vendor to collect the sales and use tax is waived if the vendor performs the customization, configuration or modification of the software on behalf of the buyer.
- If the customization, configuration or modification is done by the buyer or a third-party on behalf of the buyer, the buyer must notify the vendor that the software will be customized, configured or modified in order to operate as required by the buyer. If the buyer notifies the vendor, the duty of the vendor to collect the sales and use tax is waived.

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SOURCING RULES – CUSTOMER TAX ADDRESS

The retail sale of a digital code or digital product shall be presumed to be made in the state in which the customer tax address is located. The “customer tax address” for the sale of a digital product means:

- address of the vendor’s business location if the digital product is received by a buyer at the business location of the vendor
- the address of the primary use location if the buyer does not receive the digital product at the vendor’s business location and the vendor knows the primary use location of the digital product
- If the above do not apply, then a series of rules apply

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SOURCING RULES – PRIMARY USE LOCATION

Primary use location means the street address representative of where the buyer's use of a digital product will primarily occur, as determined by:

- The residential street address or a business street address of the actual end user of the digital product, including, if applicable, the address of a donee of the buyer that is designated by the buyer; or
- If the buyer is not an individual, the location of the buyer's employees or equipment that makes use of the digital product.

Primary use location does not include the location of a person who used a digital product as the purchaser of a separate good or service from the buyer.

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SALES TAX ON DIGITAL PRODUCTS

What will happen in 2022?

Repeal?

Corrective Bills?

Nothing at all?

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SALES AND USE TAX GUIDANCE

- List of TPP and Services Subject to Sales and Use Tax available at marylandtaxes.gov
- Questions on specific sales tax?
Sut@marylandtaxes.gov
- Business Tax Tip 29 - Digital Codes and Digital Products:
https://www.marylandtaxes.gov/forms/Business_Tax_Tips/bustip29.pdf

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DIGITAL ADVERTISING GROSS RECEIPTS (“DAGR”) TAX

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

- “Annual gross revenues” means income or revenue from all sources, before any expenses or taxes, computed according to generally accepted accounting principles.
- “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.
- “Digital interface” means any type of software, including a website, part of a website, or application, that a user is able to access.

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DIGITAL ADVERTISING GROSS RECEIPTS (“DAGR”) TAX

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

- The part of the annual gross revenues of a person derived from digital advertising services in the State shall be determined using an apportionment fraction:
 - the numerator of which is the annual gross revenues of a person derived from digital advertising services in the State; and
 - the denominator of which is the annual gross revenues of a person derived from digital advertising services in the United States.
- The Comptroller shall adopt regulations that determine the state from which revenues from digital advertising services are derived.

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WHISTLEBLOWER PROGRAM

- Whistleblower = individual or entity that voluntarily provides information in a sworn affidavit relating to a violation of State tax law, rule or regulation.
- Whistleblower entitled to monetary award in the case of a successful collection.
- Must provide original information.
- Taxes in dispute must exceed \$250,000 for individuals whose FAGI is at least \$250,000 or business whose annual gross receipts are at least \$2,000,000.
- Whistleblower protected.
- WHISTLEBLOWER@marylandtaxes.gov
- Comptroller of Maryland
Attn: Tax Whistleblower Program
301 W. Preston Street, Room 203
Baltimore, Maryland 21201



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FOR MORE INFORMATION...

- On the RELIEF ACT: see RELIEF Act Tax Alert - https://marylandtaxes.gov/RELIEFAct/docs/RELIEF_Act_Tax_Alert.pdf
- Non-exhaustive list of COVID-19 Relief Programs eligible for subtraction - https://www.marylandtaxes.gov/RELIEFAct/docs/COVID_19_Relief_Programs.pdf
- On the Pass-Through Entity Tax: see PTE FAQ - <https://www.marylandtaxes.gov/business/docs/PTE-FAQs.pdf>