
INTRODUCTION TO MARYLAND BUSINESS TAXES
for Economic Development Professionals

Maryland Economic Development Association
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Maryland Sales and Use Tax

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MARYLAND SALES AND USE TAX
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I. Recent Developments

A. Increase in Sales and Use Tax Rate

1. Effective January 3, 2008 the sales and use tax rate increased from 5% to 6%.
2. Sales contracts entered into before January 3, 2008 are taxable at the 5% rate.
3. Real property contractors and subcontractors may still purchase materials at the 5% rate under contracts entered into prior to January 3, 2008.

B. Computer Services Tax Repealed

1. The Computer Services Tax enacted by the 2007 Special Session has been repealed and the former exceptions for certain computer software systems has been restored. (See *supra*, Section V.H.).

C. Vendor Absorption of Sales and Use Tax

1. Effective January 3, 2008 a vendor may now absorb all or any part of the sales tax on a retail sale and pay the sales tax on behalf of the buyer.
2. Sales tax must still be separately stated.

D. New Exemption for Geothermal or Solar Energy Equipment

1. Qualified geothermal and solar energy equipment are exempt from sales tax effective July 1, 2008. Geothermal and solar energy equipment are also exempt from state and local property taxes.¹

II. Maryland Sales and Use Tax Overview

A. Imposition of Sales Tax

1. The sales tax is imposed on retail sales of tangible personal property or taxable services, in Maryland.
2. Maryland law creates a presumption that any sale of tangible personal property is subject to tax, and the burden of proving a sale is not taxable is on the vendor.

¹ Md. Code Ann., Tax-Gen. (“TGA”), §11-230.

B. Imposition of Use Tax

1. The use tax is imposed on the use in Maryland of tangible personal property or the use of a taxable service.²
2. Tangible personal property on which a retail sales tax has been paid in Maryland is exempt from use tax.³
3. Vendors (usually out of state) are required by statute to collect the use tax from the consumer.⁴

C. Definitions

1. “Sale” – is defined to include any transaction for consideration where a service is performed or where title or possession of property is transferred, including a lease, rental, royalty agreement, or grant of license.⁵
2. “Tangible Personal Property” – is defined to include all personal property of any nature.⁶ The sale of intangible personal property is not subject to sales and use tax. Therefore, contract rights, goodwill, and accounts receivable have been ruled intangible personal property not subject to tax.
3. “Retail Sale” – generally includes most “sales” of “tangible personal property,” unless otherwise excepted.⁷ The following items are specifically excluded from the definition of “retail sale” (See *supra* Section VI.A.).
 - a) Sales for resale (if the purpose of the purchaser is to resell the property in the same form).
 - b) Sales for use in a production activity (includes assembly, manufacturing, processing, or refining, or repairing).
 - c) Sales for consumption (includes sales of food for human consumption, and sales of goods used or consumed in production and manufacturing).
 - d) Sales of tangible personal property as part of a taxable service.
 - e) Sales of a taxable service for resale.

² TGA, §11-102.

³ TGA, §11-221(b).

⁴ TGA, §11-403.

⁵ TGA, §11-101(i).

⁶ TGA, §11-101(k).

⁷ TGA, §11-101(h).

D. Taxation of Services

Taxable services include the following services:⁸

1. Fabrication, printing, production of tangible personal property by special order.
2. Commercial cleaning or laundering, or cleaning of a commercial or industrial building.
3. Cellular telephone services, “900” number type services, custom calling services such as call forwarding, telephone answering services, or prepaid telephone calling arrangements.
4. Pay per view television.
5. Credit reporting services.
6. Security services.
7. Transportation services for electricity or natural gas.

E. How is Sales and Use Tax Computed

1. Sales and use tax is generally computed based on the “taxable price” of each separate sale.
 - a) “Taxable price” is computed without any deduction for expenses or cost (including labor, material, or property).
 - b) Items specifically included in “taxable price”:
 - (1) Delivery, assembly, cleaning, or customization charges to bring product to retail.
 - (2) Discounts for prompt payment.
 - (3) Commissions paid to a consultant or broker.
 - (4) Charges for warranties, maintenance or service agreements required as a condition of sale.
 - (5) Rebates or returns and exchanges.

⁸ TGA, §11-101(m)(1-12).

- c) Items not included in “taxable price” if separately stated:
 - (1) Delivery, freight, or other transportation charges for delivery directly to the buyer.
 - (2) Finance or similar charges.
 - (3) Labor or service charge for installation.
 - (4) Mandatory gratuity or service charge for food and beverages.
 - (5) Professional services.
 - (6) Charges for warranties, maintenance, service agreements, etc. if not required by the vendor as a condition of sale.
 - (7) Other exemptions relating to film/audio recordings, remanufactured truck parts, deposits to secure merchandise, and volume or employee discounts.

2. Multiple Sales

- a) Sales tax on multiple sales is computed based on the combined taxable price of all retail sales on the same occasion by the same vendor to the same buyer.

3. Sales through vending or other self service machines

- a) Sales tax on sales through vending (or similar) self-service machines is computed based on the gross receipts from retail sales of tangible personal property or a taxable service made through such machines.

III. How Sales and Use Tax Is Collected

A. Licensing and Registration with the Maryland Comptroller

- 1. All retail vendors are required to register with the Maryland Comptroller before engaging in sales in Maryland.⁹

⁹ TGA, §11-712.

2. Licenses are obtained by filling out a Maryland Combined Registration Application, available at www.marylandtaxes.com. Once obtained, a license is effective until surrendered or revoked.

B. Obligation to Pay and Collect Sales and Use Tax

1. Generally, it is the purchaser's obligation to pay the sales tax at the time of purchase, but it is the vendor's obligation to collect the tax in their role as trustee for the state.¹⁰

2. The vendor has an absolute responsibility for ensuring that the proper tax reaches the Comptroller.¹¹

C. Reporting and Recordkeeping Requirements

1. Vendor Sales and Use Tax Returns are required on a monthly basis, and may be filed electronically at www.marylandtaxes.com.¹²

2. Buyer Use Tax Returns are required when buyers fail to pay sales or use tax on a taxable purchase, and may be filed electronically at www.marylandtaxes.com.¹³

3. Vendors are required to keep complete and accurate records of all retail sales as well as taxes collected. As a general rule, taxpayers are advised to maintain records for four years.¹⁴

IV. Exclusions and Exemptions

A. Certain types of transactions are excluded from the definition of a “taxable sale” and such exclusions are construed in favor of the taxpayer. Other types of transactions are exempted from sales and use taxation, and such exemptions are strictly construed against the taxpayer.

B. Exemptions and exclusions generally fall into three categories:

1. Type of Product or Item
2. Type of Transaction
3. Type of Entity

¹⁰ TGA, §11-401.

¹¹ Rockwoer Brothers, Inc. v. Comptroller, 240 Md. 379, 214 A.2d 581 (1965).

¹² TGA, §11-502; COMAR, §03.06.03.03(A)(1).

¹³ TGA, §11-501.

¹⁴ TGA, §11-504; COMAR, §03.06.03.02(E).

V. Exemptions for Certain Products or Items

A. Manufacturing Exemptions

1. Maryland generally exempts from the sales and use tax purchases of items used in manufacturing and production activities to encourage manufacturing in the state and to minimize the multiplication of the tax at various levels in the distribution chain.
2. Property that is being transferred after it was used as machinery, equipment, facilities, tools or tooling is excluded from sales and use tax if, at the time of purchase, the buyer is obligated by written contract to make the transfer; the transfer must be made for the same or greater consideration to the person for whom the buyer manufactures goods or performs work.¹⁵
3. The manufacturing exemption applies to items purchased to be predominantly used (at least 50% of the time)¹⁶ in a production activity at any stage of operations, beginning with the handling of raw materials until the product is ready for delivery or storage.¹⁷
4. A production activity includes:
 - a) manufacturing, assembling, processing, or refining products for resale;
 - b) generating electricity for sale or use in another production activity;
 - c) laundering, maintaining, or preparing textile products for rental;
 - d) producing or repairing production machinery or equipment; or
 - e) establishing certain clean rooms required by federal law for the manufacture of drugs, medical devices, or biologics.¹⁸
5. The manufacturing exemption also applies to equipment that is used physically to move a finished product on the production activity site; machinery and equipment that is used to maintain manufacturing machinery; safety equipment used on the production activity site; and machinery and equipment used in quality control on a production activity site.

¹⁵ TGA, §11-101(h)(3)(i).

¹⁶ COMAR, §03.06.01.32-2.

¹⁷ TGA, §11-210(b)(1).

¹⁸ TGA, §11-101(f)(1).

6. Digital mapping equipment used to scan the terrain from an airplane in order to compile data in digital format for its customers was held by the Tax Court to be equipment used to manufacture tangible personal property and therefore exempt from sales and use tax.¹⁹

B. Other Exemptions Applicable to Machinery and Equipment

1. The sale of machinery and equipment used to produce bituminous concrete or, in some cases, for use by a retail food vendor to manufacture or process bread or bakery goods for resale is exempt.²⁰
2. A sale of a melting, smelting, heating, or annealing coke oven, aluminum furnace, anode bake oven, electrolytic pot, cathode, refractory, or other material used in relining and rebuilding a furnace or oven is exempt.²¹
3. Sales of fabrication, processing, or service by a sawmill, of wood products for mine use in which the miner retains title are exempt.²²
4. Foundations that support machinery and equipment and any machinery, device, or equipment required to conform to air or water pollution laws or regulations if they are installed so as to become part of real estate.²³

C. Construction Materials

1. Although generally subject to the sales and use tax, construction materials are exempt if purchased:
 - a) to be incorporated into the real property of a private, nonprofit religious, charitable or educational organization, or volunteer fire, ambulance or rescue service in Maryland.²⁴
 - (1) Purchases to be incorporated into real property of the State of Maryland, the US Government and its agencies and instrumentalities which may be exempt from tax on its own purchases are not entitled to the exemption for contractors.²⁵

¹⁹ EarthData International of MD, LLC, et al v. Comptroller – oral decision.

²⁰ TGA, §11-210(a)(1) & (c).

²¹ TGA, §11-210(b)(2).

²² TGA, §11-212(1).

²³ TGA, §11-210(b).

²⁴ COMAR §03.06.01.19(D).

²⁵ COMAR, §03.06.01.19(E). Opinion of the Attorney General, Opinion No. 86-061 (Nov. 19, 1986) (contractors who purchase materials to be incorporated into real property owned by the American Red Cross are not exempt from sales tax because the American Red Cross is a federal instrumentality rather than a charitable organization).

b) To be incorporated into out-of-state real property where the purchase or use of that property is not subject to sales, use or similar tax.²⁶

c) Outside of Maryland, and they are intended solely for use in another state, and are stored in Maryland pending shipment to another state.²⁷

2. All materials purchased for incorporation into real property or which are used to improve real property are subject to sales and use tax, however, if appropriate, the sales may qualify as exempt under the exemption for sales for resale discussed below.

D. Agricultural Purposes and Products

1. Certain sales to a farmer or for agricultural purposes are exempt from the sales and use tax.

a) The sale and use tax does not apply to sales of livestock; feed or bedding for livestock; seed, fertilizer, fungicide, herbicide, or insecticide; baler twine or wire; fuel for use in farm equipment or a farm tractor if sale is for an agricultural purpose.²⁸

b) The following items, when purchased by a farmer for agricultural purposes are exempt from the sales and use tax:²⁹

(1) A container to transport farm products that the farmer raises to market;

(2) A farm vehicle, when used in farming;

(3) A milking machine, when used in farming;

(4) Fabrication, processing, or service, by a sawmill, of wood products for farm use in which the farmer retains title.

²⁶ TGA, §11-216(a).

²⁷ Id.

²⁸ TGA, §11-201(a)(1)-(5).

²⁹ TGA, §11-201(a)(6)(i)-(iv).

c) Farm equipment purchased by a farmer is exempt if used to raise livestock; prepare, irrigate, or tend the soil; or plant, service, harvest, store, clean, dry, or transport seeds or crops.³⁰

2. The sales and use tax does not apply to sales by a farmer of agricultural products other than flowers, sod, decorative trees and shrubs and any other product usually sold by a nursery or horticulturist.³¹

E. Medicine and Medical Supplies

1. Drugs and medical supplies sold to or by physicians and hospitals are not subject to the sales and use tax.³²

2. Sales of medicine, disposable medical supplies, or sales of a patient's medical records to the patient or the patient's representative are exempt from the sales and use tax.³³

a) Medical supplies means an article used in the cure, mitigation, treatment, prevention or diagnosis of illnesses. Disposable medical supplies are consumed in a single usage and do not include skin care creams or cleansers.³⁴

b) Medicine means a preparation or substance intended for use in the cure, mitigation, treatment, or prevention of illnesses and includes both prescription and over the counter drugs and proprietary and patent medicines.³⁵

c) The exemption for sales of medicines does not apply to diet items and insecticide powders and sprays for dogs and cats sold by a veterinarian to a pet owner, or to a veterinarian for his or her own use in treating pets.³⁶

3. The sales and use tax does not apply to certain health and physical aids, including sickroom and medical equipment that is specified by regulation.³⁷

³⁰ TGA, §11-201(a)(6)(v).

³¹ TGA, §11-201(b).

³² TGA, §11-211(a)(1).

³³ TGA, §11-211(a)(2)-(4).

³⁴ COMAR, §03.06.01.09(B)(2). Disposable medical supplies include, but are not limited to: adhesive tape; bandages; gauze and gauze pads; antiseptics; disposable gloves; lubricating jelly; colostomy supplies; absorbent pads; incontinent pants, diapers and other incontinent supplies for adults; dressing supplies; spray bandages; disposable syringes; condoms; and glucose monitoring strips. Sales and Use Tax Bulletin 97-1.

³⁵ COMAR, §03.06.01.09(B)(3).

³⁶ Attorney General Opinion No. 83-026, 68 Md. Op. Atty. Gen. 402 (1983).

- a) Equipment needed to make cars accessible to the handicapped are exempt.³⁸
- b) Tobacco use cessation products, such as, nicotine patches and nicotine gum are exempt from the sales and use tax.³⁹
- c) Property that is made for the purpose of initiating, supporting, or sustaining breast-feeding.⁴⁰

F. Research and Development

- 1. Property to be used or consumed in research and development is exempt from the sales and use tax.⁴¹
- 2. Research and development means basic and applied research in the sciences and engineering; and the design, development, and governmentally required pre-market testing of prototypes, products, and processes.⁴²
- 3. Research and development does not include market research; research in the social sciences or psychology and other nontechnical activities; routine product testing; sales services; or technical and nontechnical services.⁴³

G. Transportation Services

- 1. Transportation services and the sales of buses to be used in the operation of public transportation are exempt from the sales and use tax.⁴⁴ This exemption does not apply to the rent that a taxi driver may pay for the lease of his taxicab.⁴⁵

H. Computers/Software

- 1. Although computers and software are generally subject to the sales and use tax, certain uses of computer hardware or types of software are entitled to an exemption.

³⁷ TGA, §11-211(b); COMAR 03.06.01.09(B)(1) contains a list of medical and sickroom equipment that qualifies for the exemption.

³⁸ TGA, §11-211(b)(16).

³⁹ TGA, §11-211(b)(18).

⁴⁰ TGA, §11-211(b).

⁴¹ TGA, §11-217(b).

⁴² TGA, §11-217(a)(1).

⁴³ TGA, §11-217(a)(2).

⁴⁴ TGA, §11-223.

⁴⁵ Hooks v. Comptroller, 265 Md. 380, 289 A.2d 332 (1972).

2. Computer hardware that is capitalized and used in a production or research and development activity is exempt under the manufacturing or research and development exemptions.

3. Custom computer software services are exempt from the sales and use tax if they relate to procedures and programs that otherwise are taxable; are to be used by a specific person; are created for that person or contain standard or proprietary routines that incorporate significant creative input to customize the procedures and programs for that person; and do not constitute a program, procedure, or documentation that is mass produced and sold to the general public or persons associated in a trade, profession or industry.⁴⁶

4. It has been held that where computer hardware was supplied to enable customers to have access to services provided through the computers, the primary purpose was providing the non-taxable services and not the leasing or transfer of computer hardware. As a result, the computer hardware was not subject to sales and use tax.⁴⁷

5. There is no sales tax on the sale of a computer program that is legally permitted to be and is intended to be reproduced for sale or incorporated in part into another computer program intended for sale.⁴⁸

6. Optional computer software maintenance contracts, so long as the purchaser does not have a right under the contract to receive at no additional cost software products that are separately priced and marketed by the vendor are not subject to tax.⁴⁹

I. Sales that are subject to taxation under other laws may be exempt from the sales and use tax.

1. Certain sales subject to the admissions and amusement tax; the federal excise tax for communication services under the Internal Revenue Code; the motor fuel tax or the motor carrier tax; the motor vehicle excise tax and the Natural Resources Articles are exempt from tax.⁵⁰

2. Sales tax paid in another jurisdiction is credited against any use tax payable with respect to the property in Maryland.⁵¹

⁴⁶ TGA, §11-219(b).

⁴⁷ Quotron Systems, Inc. v. Comptroller, 287 Md. 178, 411 A.2d 439 (1980). Cf., Motta v. Comptroller, 1995 WL 670136 (Md. Tax 1995) (No. 826) (holding that the provision of taxicabs by a taxi service to drivers is a taxable conditional lease rather than incidental transfers of the taxicabs in connection with nontaxable transportation services).

⁴⁸ TGA, §11-225.

⁴⁹ TGA, §11-219(c).

⁵⁰ TGA, §11-221(a).

⁵¹ TGA, §11-221(c).

VI. Exemptions for Certain Types of Transactions

A. Sales for Resale

1. The sales and use tax does not apply to sales of tangible personal property when the buyer intends to resell the property in the same form, or use or incorporate the property in a production activity as part of other tangible personal property to be produced for sale.⁵² A taxable service is also not subject to the sales and use tax if the buyer intends to resell the service in the form that it is received.⁵³

a) Because the purpose of the resale exclusion is to avoid a pyramiding of taxes, paper plates, cups, bowls and lids used as containers for food items sold through vending machines and in cafeteria lines are not subject to the sales tax.⁵⁴

b) The sale of intermediate goods used in producing items that are not intended for sale is not entitled to exemption for sales for resale.⁵⁵

c) Product inventory that was used for training and for demonstrations both at trade shows and to potential customers for the purpose of selling the same or similar products has been held not qualify for the resale exclusion.⁵⁶

2. Generally, the duty of a vendor to collect the sales and use tax is waived if the buyer provides the vendor with a resale certificate.⁵⁷

a) A resale certificate must be signed and state the name, address, and Maryland sales and use tax registration number of the buyer; and state that the tangible personal property or taxable service is bought for the purpose of resale.⁵⁸

b) A vendor may not accept a resale certificate from a buyer for purchases of less than \$200 using cash, check, or credit card unless the vendor delivers the goods directly to the buyer's retail place of business. The buyer may claim a credit or a refund for any resulting sales tax paid.⁵⁹

⁵² TGA, §11-101(h)(3)(ii).

⁵³ TGA, §11-101(h)(3)(iii).

⁵⁴ Macke Co. v. Comptroller, 302 Md. 18, 485 A.2d 254 (1984).

⁵⁵ Attorney General Opinion No. 87-043, 72 Md. Op. Atty. Gen. 344 (1987) (ruling that sales tax is imposed on components used in the production of free publications).

⁵⁶ See Foss Nirsystems, Inc. v. Comptroller of the Treasury, 151 Md. App. 44, 822 A.2d 1297 (2003).

⁵⁷ TGA, §11-408(b).

⁵⁸ COMAR, §03.06.01.14(A), (B).

⁵⁹ COMAR, §03.06.01.14(C).

- c) The vendor is required to obtain a resale certificate before consummating a sale, however, there is a 60 day grace period for the vendor to obtain the resale certificate after it receives a notice of intent to assess tax on a transaction from the Comptroller.⁶⁰
- d) A vendor may not accept a resale certificate if the vendor knows or should know that the sale is not for the purpose of resale.⁶¹
- e) A contractor purchasing items that will be resold to the consumer may qualify for the sale for resale exemption.

B. Casual and Isolated Sales and Capital Transactions

- 1. A casual and isolated sale by a person who does not regularly sell tangible personal property or a taxable service is exempt if the sales price is less than \$1,000 and the sale is not made through an auctioneer or other regular dealer.⁶²
- 2. The \$1,000 sales price limitation is determined by taking the aggregate of the total sales price on all sales made on the same occasion, or as part of the same transactions, by the same vendor to the same purchaser.⁶³
- 3. Certain capital transactions are exempt

a) Corporations or Joint Stock Companies:

- (1) Transfers of property to a corporation upon its organization, principally in consideration for the issuance of stock are exempt. The transfer must occur within six months of when the Articles of Incorporation were filed and the corporation or joint stock company must not have been actively engaged in business for more than 30 days before the transfer.⁶⁴
- (2) Transfers made pursuant to a reorganization within the meaning of Section 368(a) of the Internal Revenue Code are exempt.⁶⁵
- (3) Liquidating distributions to stockholders are exempt. The transfer is not a liquidating distribution if any consideration other than surrender of the stock is paid.⁶⁶

⁶⁰ COMAR, §03.06.01.14(F).

⁶¹ COMAR, §03.06.01.14(G).

⁶² TGA, §11-209(a).

⁶³ COMAR, §03.06.01.12

⁶⁴ TGA, §11-209(c)(1)(ii); COMAR, §03.06.01.13(C)(1).

⁶⁵ TGA, §11-209(c)(1)(i); COMAR, §03.06.01.13(C)(3).

⁶⁶ TGA, §11-209(b)(1); COMAR, §03.06.01.13(C)(4).

b) Partnerships and Limited Liability Companies

(1) Contributions to the capital of a partnership or limited liability company or transfers in consideration for an interest in the entity are exempt.⁶⁷

(2) Transfers made pursuant to a reorganization within the meaning of Section 368(a) of the Internal Revenue Code are exempt.⁶⁸

(3) A distribution of property by a partnership to its partners or by a limited liability company to its members is exempt.⁶⁹

c) Assumption of Liability

(1) If transfers to corporations, partnerships or limited liability companies would have qualified as casual or isolated sales if the price limitation were disregarded, any liability assumed will be excluded from the determination of consideration for purposes of the capital transaction exemptions.⁷⁰

C. Interstate or Foreign Commerce or Use in Another State

1. There are constitutional, as well as state, limitations on the taxation of items in interstate commerce.

2. To be constitutional, a tax that is applied to multistate transactions must satisfy the following requirements:

- a) The activity that is taxed has substantial nexus with the taxing state;
- b) The tax is fairly apportioned;
- c) The tax does not discriminate against interstate commerce; and
- d) The tax is fairly related to services provided by the taxing state.⁷¹

⁶⁷ TGA, §11-209(c)(1)(iii) & (iv); COMAR, §03.06.01.13(C)(2).

⁶⁸ TGA, §11-209(c)(1)(i).

⁶⁹ TGA, §11-209(b)(2) & (3).

⁷⁰ TGA, §11-209(c)(2).

⁷¹ Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977).

3. Catalog and internet sales are exempt from the sales tax unless the vendor has sufficient nexus with the State of Maryland.

- a) Currently there is a moratorium on taxing internet sales.
- b) Even if the sale is exempt from the sales tax, the buyer may be responsible for paying a use tax on the item purchased.

4. Maryland exempts the following interstate transactions from sales and use tax:

- a) Sales made in-state where possession is taken by the purchaser out-of-state.⁷²
- b) The sale of equipment or machinery used only to load, unload, and handle cargo of ocean-going vessels within an international marine terminal.⁷³
- c) The rental of equipment or machinery that is owned by the Maryland Port Administration and used only to load and unload ocean-going vessels.⁷⁴
- d) The sale of film or video tape for use only in broadcasting by a television station licensed specifically by the Federal Communications Commission to broadcast to cities or towns outside the state.⁷⁵
- e) Sales of aircraft, motor vehicles, railroad rolling stock or vessels used principally to cross state lines in interstate or foreign commerce.⁷⁶

(1) To be used principally in interstate or foreign commerce, one of the following test must be met during its first year of use:

(a) More than 50% of total mileage is between a pickup and delivery point in two different states or the District of Columbia or outside the US.

(b) More than 50% of all trips between a pickup and delivery point are between two different states or the District of Columbia or outside the US.

⁷² COMAR, §03.06.01.25(B).

⁷³ TGA, §11-208(a).

⁷⁴ Id.

⁷⁵ TGA, §11-208(b).

⁷⁶ TGA, §11-208(c).

*(c) More than 50% of the total days of use are days during which there has occurred or is occurring a trip between a pickup and delivery in two different states, the District of Columbia or outside the US.*⁷⁷

(2) The Court of Appeals held that airplanes used regularly and exclusively primarily for transporting executives and customers across state lines and national boundaries were not subject to the use tax.⁷⁸ The Maryland Tax Court has held that the purchase of a helicopter for use in the business of transporting individuals and cargo qualified for exemption.⁷⁹

f) Sales of motor vehicles, other than house or office trailers that will be titled or registered in another state.⁸⁰

g) Tangible personal property or taxable service that a nonresident acquires before the property or service enters the state and is used for either personal enjoyment or in a presentation of an exhibit, show, sporting event, or other performance or display. The property or service must not remain in Maryland for more than 30 days in order to qualify for the exemption.⁸¹

h) Sales of direct mail advertising literature and mail order catalog that will be distributed out of state.⁸²

i) Sales of tangible property that is bought out of state, is intended solely for use in another state, and is stored in the state pending shipment out of state.⁸³

j) Sales to a person contractually obligated to incorporate the property into out of state real property where the purchase or use of the property is not taxable.⁸⁴

k) Sales of a series of images stored on video tape or in other optical or digital forms or electronic signals generated from these images to a cable or other nonbroadcast television network, where the images are intended

⁷⁷ COMAR, §03.06.01.26(B).

⁷⁸ W.R. Grace & Co. v. Comptroller, 255 Md. 550, 258 A.2d 740 (1969) (decision based on constitutional limits on state taxation).

⁷⁹ Dover Int'l Machine, Ltd. v. Comptroller, M.T.C. Sales Tax No. 268 (1986).

⁸⁰ Id.

⁸¹ TGA, §11-214.

⁸² TGA, §11-215(d).

⁸³ TGA, §11-216(a). The taxpayer is required to pay the tax, but is entitled to a refund when the property is removed from Maryland or when proof of the exemption in the other state is submitted.

⁸⁴ Id. The taxpayer is required to pay the tax, but is entitled to a refund when the property is removed from Maryland or when proof of the exemption in the other state is submitted.

for viewing by television viewers located outside Maryland, except for the portion of the purchase price allocable to intended viewing in Maryland.⁸⁵

D. Sales of Food

1. Although retail sales of food are generally subject to the sales and use tax, there are many exemptions for food and food transactions.
2. Sales of food for consumption off the premises by a food vendor who operates a substantial grocery or market business at the same location where the food is sold are exempt except for food that the vendor serves for consumption on the premises of the buyer or of a third party or food for immediate consumption.⁸⁶
 - a) The definition of food includes beverages and condiments but specifically excludes alcohol, soft drinks and candy.⁸⁷
 - b) Food for immediate consumption means food obtained from a salad, soup, or dessert bar; party platters; heated food; sandwiches; or ice cream, frozen yogurt and other frozen desserts sold in containers of less than one pint.⁸⁸
 - c) A substantial grocery or market business is defined as a business at which at least 10% of all sales of food are sales of grocery or market food items, not including food normally consumed on the premises even though it is packaged to carry out.⁸⁹
3. Sales of food by certain organizations such as hospitals, churches and schools are exempt from the sales and use tax.⁹⁰
4. Sales of snack food, milk, fresh fruit, fresh vegetables, or yogurt through vending machines are exempt from the sales and use tax.⁹¹
5. Items purchased with food stamps are not subject to the sales and use tax.⁹²

⁸⁵ *Id.*

⁸⁶ TGA, §11-206(c).

⁸⁷ TGA, §11-206(a)(4).

⁸⁸ TGA, §11-206(a)(2).

⁸⁹ TGA, §11-206(a)(6).

⁹⁰ TGA, §11-206(d).

⁹¹ TGA, §§11-206(g) & (h).

⁹² TGA, §11-206(b).

E. Alterations/Repairs

1. Labor charges for repairing or altering property for the purpose of restoring the property to its original condition or usefulness is not subject to tax.⁹³
2. Labor expended to result in the creation of a new or different item is subject to tax.⁹⁴

VII. Exemptions for Certain Types of Entities

A. Charitable Organizations

1. Charitable organizations are generally exempt from paying Maryland sales and use tax on purchases.
 - a) In order to qualify for an exemption on its purchases, a nonprofit organization must be a charitable, religious, or educational organization located in Maryland or an adjacent jurisdiction.⁹⁵ The organization must have an exemption certificate from the Comptroller.
 - b) If located in an adjacent jurisdiction, the organization qualifies for the exemption if:
 - (1) It provides services within Maryland on a routine and regular basis or;
 - (2) The jurisdiction in which the organization is located does not impose a sales or use tax on a sale to a nonprofit organization made to carry on its work or contains a reciprocal exemption from sales and use tax for sales to nonprofit organizations located in adjacent jurisdictions.
2. Sales by certain organizations such as churches, hospitals and schools may be exempt from the sales and use tax.⁹⁶

B. Sales to a Section 501(c)(13) cemetery company are exempt from sales and use tax.⁹⁷

C. Sales to a credit union organized under Maryland or federal law are exempt from sales and use tax.⁹⁸

⁹³ COMAR, §03.06.01.03(A).

⁹⁴ Id.

⁹⁵ TGA, §11-204(a)(3).

⁹⁶ TGA, §11-204(b).

⁹⁷ TGA, §11-204(a)(1).

D. Sales to the State of Maryland or a political subdivision thereof are exempt from the sales and use tax.⁹⁹ However, this exemption doesn't extend to sales of materials to state contractors for use in the construction, repair, or alteration of real property.¹⁰⁰

VIII. Amounts Excluded from the Taxable Price

A. The sales and use tax does not apply to charges in connection with a sale that are separately stated as consideration for:¹⁰¹

1. Delivery, freight or other transportation service (unless the transportation is a taxable service);
2. Finance charge, interest or similar charge for credit;
3. Labor or service for application or installation;
 - a) The Tax Court recently reversed an assessment of sales tax on the charges for labor and installation of carpet sold at or below cost by the taxpayer, despite the Comptroller's argument that those charges included the actual profit on the sale of the carpet. The Court found that so long as the charge for labor and installation is separately stated on the invoice, the Comptroller could not arbitrarily revise those charges.¹⁰²
4. Certain mandatory gratuities;
5. Professional services;
6. A tax imposed:
 - a) by a county on the sale of coal, electricity, oil, nuclear fuel assemblies, steam, or artificial or natural gas;
 - b) under the natural resources act as a surcharge on the generation of electricity;
 - c) under the Personal Property Tax on a lease for an initial period exceeding one year that is noncancellable except for cause;

⁹⁸ TGA, §11-204(a)(2).

⁹⁹ TGA, §11-220(a). The exemption does not include sales to contractors to be used under a contract with the State or political subdivision. TGA, §11-220(b).

¹⁰⁰ TGA, §11-220; *James McHugh Const. Co. v. Comptroller*, 291 Md. 48, 431 A.2d 1353, *cert. denied*, 454 U.S. 1099, 70 L. Ed. 2d 640, 102 S. Ct. 673 (1981); COMAR, §03.06.01.19D.

¹⁰¹ TGA, §11-101(l).

¹⁰² *Carter's Carpet & Flooring, Inc. v. Comptroller* – oral decision.

d) for admission fees, when sold by a person whose gross receipts from the sale are subject to the admissions and amusement tax;

7. Operating equipment used for the production of audio, video, or film recordings;

8. Reimbursement of incidental expenses paid to a third party and incurred in connection with providing a taxable detective service; or

9. Mandatory gratuity or service charges in the nature of tips made in connection with sales of food or beverages to groups of ten or fewer.

B. The value of a used component or part received from a purchaser of certain remanufactured truck parts is not subject to tax.¹⁰³

IX. Claiming Exemptions

A. Presumption of taxability

1. A rebuttable presumption exists that any sale in the State is subject to the sales and use tax.

2. The person required to pay the sales and use tax has the burden of proving that a sale in the State is not subject to the sales and use tax.

B. A request for a refund or credit must be made within four years of when the tax is paid.¹⁰⁴

C. A claim for refund may be made in the following circumstances.

1. A tax, penalty, or interest is erroneously overpaid.¹⁰⁵

2. A tax is paid that was erroneously, illegally, or wrongfully assessed or collected.¹⁰⁶

3. Tax was paid on a sale exempt because the property was for use in another state.¹⁰⁷

4. The vendor refunded the tax to a buyer on a cancelled or rescinded sale.¹⁰⁸

¹⁰³ TGA, §11-101(j)(3).

¹⁰⁴ COMAR, §03.06.03.05(A)(2).

¹⁰⁵ TGA, §13-901(a)(1).

¹⁰⁶ TGA, §13-901(a)(2).

¹⁰⁷ TGA, §13-901(g)(1).

¹⁰⁸ TGA, §13-901(g)(2).

5. A tax paid on a cancelled or rescinded sale for which the vendor refuses to give a refund to the customer.¹⁰⁹

6. A tax paid on a cash sale or sale for use that is not a retail sale, where the vendor could not accept a resale certificate because the taxable price was under \$200.¹¹⁰

D. When claim is for more or less than \$1000

1. If a claim does not exceed \$1000, a licensed taxpayer may request a refund by deducting the amount from the total tax due with any return provided the refund is not greater than the amount owed.¹¹¹

2. If a claim exceeds \$1000 or the amount to be reported on a return, a claim for refund must be filed.¹¹²

X. Miscellaneous Exemptions

A. There are numerous miscellaneous exemptions to Maryland sales and use tax. The following items are entitled to exemptions:

1. Art works, electros, electrotypes, hand or machine compositions, lithographic plates or negatives, mats, photoengravings, stereotypes, or typographies to be reproduced.¹¹³

2. Commercial fishing: sales of certain fishing paraphernalia; sales of fuel or repair parts for vessels.¹¹⁴

3. Corrective eyeglasses.¹¹⁵

4. Financial institutions: certain state and federal banks.¹¹⁶

5. Flags, state and federal.¹¹⁷ Prisoner of war and missing in action flags are also exempt.¹¹⁸

¹⁰⁹ TGA, §13-901(g)(3).

¹¹⁰ TGA, §13-901(g)(4).

¹¹¹ COMAR, §03.06.03.05(B)(1).

¹¹² COMAR, §03.06.03.05(B)(2).

¹¹³ TGA, §11-215(b).

¹¹⁴ TGA, §11-218.

¹¹⁵ TGA, §11-211(b)(7).

¹¹⁶ TGA, §11-204(a)(2).

¹¹⁷ TGA, §11-205.

¹¹⁸ TGA, §11-205(3).

6. Fuel: for use in commercial fishing vessels, diesel fuel used for mining reclamation,¹¹⁹ motor fuel subject to motor fuel or motor carrier tax, energy fuels used by diplomatic personnel or under specified conditions.¹²⁰
7. Installation services: installation of units for tangible personal property each of which constitutes a complete, separable, and functioning unit at the jobsite.¹²¹
8. Insurance services.¹²²
9. Laundry and dry cleaning services for individuals on their personal laundry.¹²³
10. Mail order: catalogs for distribution out of state, computerized mailing lists for distribution out of state, direct mail advertising literature for distribution out of state.¹²⁴
11. Maintenance agreements, other than mandatory contracts.¹²⁵
12. Manufactured homes, except for the first sale.¹²⁶
13. Rentals of motion pictures, motion picture trailers, or movie advertising posters by persons whose gross receipts from activities related to the rentals are subject to the admissions and amusement tax.¹²⁷
14. Newspapers that are distributed by the publisher free of charge.¹²⁸
15. Charges for services to operate audio recording, video recording or film recording equipment, if separately stated, identified, and made known to the buyer at the time of sale.¹²⁹
16. Printing: printing of tangible personal property, or sales of printed material, for resale or incorporation into a product for sale; sales of photographic materials used in printing; sales of nonphotographic materials to printers of tangible personal property for sale; sales to or use by printers of printing equipment.¹³⁰

¹¹⁹ TGA, §11-212(2).

¹²⁰ COMAR, §03.06.01.10(B).

¹²¹ COMAR, §03.06.03.30(D).

¹²² TGA, §11-219(a).

¹²³ COMAR, §03.06.01.17.

¹²⁴ TGA, §11-215(d).

¹²⁵ COMAR, §03.06.01.03(C).

¹²⁶ TGA, §11-213.

¹²⁷ TGA, §11-221(a)(6).

¹²⁸ TGA, §11-215(c).

¹²⁹ COMAR, §03.06.01.16(B).

¹³⁰ TGA, §11-215.

17. Rentals and leases by the Maryland Port Authority of machinery and equipment.¹³¹
18. Charges for the privilege of bowling, golf, swimming, billiards, ping pong, tennis, squash, badminton, and similar sports.¹³²
19. Water delivered through conduits or pipes.¹³³
20. Property or services used in a film production activity.¹³⁴
21. Certain energy efficient appliances and heating and cooling equipment purchased before 2004, or the purchase of certain energy star products between February 19 and February 21, 2011.¹³⁵
22. Sales through a bulk vending machine of 25¢ or less.¹³⁶
23. Gas, electricity, or steam delivered sold for use in residential condominiums.¹³⁷ Additionally, the sale of heating oil, propane gas, firewood, and coal for the use in residential properties.¹³⁸
24. Precious metal or bullion coins if sale exceeds \$1,000.¹³⁹
25. Seafood harvesting purposes.¹⁴⁰
26. “Back to School” Items: clothing or footwear, excluding certain specified accessory items, with a price of less than \$100 will be exempt from sales tax between August 8 and August 14, 2010.¹⁴¹
27. Electricity, fuel, and other utilities used in the production of snow used for commercial purposes.¹⁴²
28. Charges for fire and flood restoration services.¹⁴³

¹³¹ TGA, §11-208(a).

¹³² COMAR, §03.06.01.20(A).

¹³³ TGA, §11-224.

¹³⁴ TGA, §11-227.

¹³⁵ TGA, §11-226.

¹³⁶ TGA, §11-201.

¹³⁷ TGA, §11-207(a)(1), (a)(2).

¹³⁸ TGA, §11-11-207(a)(3); COMAR, §03.06.01.10E.

¹³⁹ TGA, §11-11-214.1(b). To determine whether the sale is greater than \$1,000, a vendor may combine separate sales if made to the same person on the same day.

¹⁴⁰ TGA, §11-218.

¹⁴¹ TGA, §11-228.

¹⁴² TGA, §11-229.

¹⁴³ Note this is not a statutory exclusion. See Popowski Brothers, Inc. v. Comptroller – oral decision.