

# HOUSE BILL 1354

Q4

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By: **Delegates Charkoudian and Palakovich Carr**

Introduced and read first time: February 7, 2020

Assigned to: Ways and Means

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Committee Report: Favorable with amendments

House action: Adopted with floor amendments

Read second time: March 10, 2020

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Sales and Use Tax and Personal Property Tax – Services, Aircraft Parts and**  
3 **Equipment, and Data Centers**

4 FOR the purpose of altering the definition of “taxable service” under the sales and use tax  
5 to impose the tax on certain services; providing an exemption from the sales and use  
6 tax for certain materials, parts, and equipment used to repair, maintain, or upgrade  
7 aircraft or certain aircraft systems under certain circumstances; requiring the  
8 Comptroller to report to the General Assembly on or before a certain date each year;  
9 providing an exemption from the sales and use tax for certain sales of certain  
10 qualified data center personal property for use at certain qualified data centers  
11 under certain circumstances; requiring an individual or a corporation to apply to the  
12 Department of Commerce for an exemption certificate for the exemption; requiring  
13 that the application include certain information; requiring the Department of  
14 Commerce to certify eligibility for the exemption and each year to submit to the  
15 Comptroller a list of eligible individuals and corporations; requiring the Comptroller  
16 to issue a certificate of eligibility for the exemption within a certain number of days  
17 after receiving the eligibility list; requiring that the certificate be renewed each year;  
18 providing that the certificate may not be renewed for more than a certain number of  
19 consecutive years; requiring certificate holders to maintain certain records and allow  
20 the Department of Commerce to inspect the records for a minimum number of years  
21 after the certificate expires; authorizing the Department of Commerce, under certain  
22 circumstances, to revoke the certificate; requiring that the individual or corporation  
23 be afforded a certain appeal before the Comptroller is notified of the revocation;  
24 authorizing the Comptroller to make a certain assessment; authorizing the  
25 governing body of a county or municipal corporation to reduce or eliminate the

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



assessment of certain personal property used in certain qualified data centers; requiring the governing body of a county or municipal corporation to submit a copy of a certain law to the State Department of Assessments and Taxation; providing that, if the State Department of Assessments and Taxation receives a copy of the law on or before a certain date, the law is effective for the next taxable year; requiring the State Department of Assessments and Taxation, under certain circumstances, to provide a municipal corporation with a certain assessment of certain personal property; defining certain terms; providing for the application of certain provisions of this Act; and generally relating to the application of and exemptions from the sales and use tax to services and personal property 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 2019 Supplement)

BY adding to  
Article – Tax – General  
Section 11–101(c–4), 11–236, and 11–237  
Annotated Code of Maryland  
(2016 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, with amendments,  
Article – Tax – General  
Section 11–101(m)  
Annotated Code of Maryland  
(2016 Replacement Volume and 2019 Supplement)

BY adding to  
Article – Tax – Property  
Section 7–246  
Annotated Code of Maryland  
(2019 Replacement Volume)

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

### **Article – Tax – General**

11–101.

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

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

(m) “Taxable service” means:

(1) fabrication, printing, or production of tangible personal property by special order;

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

(3) cleaning of a commercial or industrial building;

(4) cellular telephone or other mobile telecommunications service;

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

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

(7) a telephone answering service;

(8) pay per view television service;

(9) credit reporting;

(10) a security service, including:

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

(ii) a security systems service;

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

(12) a prepaid telephone calling arrangement; [or]

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

~~(14) FOR CLEANING OR STORAGE SERVICES;~~

~~(15) A GOLF COURSE OR COUNTRY CLUB MEMBERSHIP;~~

~~(16) A MARINA SERVICE;~~

~~(17) ART MOVING OR STORAGE SERVICES;~~

~~(18) TANNING;~~

~~(19) TATTOOING OR PIERCING;~~

~~(20) INTERIOR DESIGN OR DECORATING SERVICES;~~

~~(21) DOG WALKING;~~

~~(22) A BOAT REPAIR SERVICE;~~

~~(23) A WATCH, CLOCK, OR JEWELRY REPAIR SERVICE;~~

~~(24) SCHEDULED OR NONSCHEDULED AIR TRANSPORTATION;~~

~~(25) A TRAVEL ARRANGEMENT OR RESERVATION SERVICE; OR~~

~~(26) LOBBYING, AS DEFINED IN § 5-101 OF THE GENERAL PROVISIONS~~

~~ARTICLE.~~

~~(14) FUR CLEANING, STORAGE, OR REPAIR;~~

~~(15) ART MOVING, CLEANING, OR STORAGE;~~

~~(16) AN ART AND ANTIQUE COLLECTING ADVISORY OR BROKERAGE SERVICE;~~

~~(17) A SWIMMING POOL CLEANING OR MAINTENANCE SERVICE;~~

~~(18) A SCENIC OR SIGHTSEEING TRANSPORTATION SERVICE (NAICS SECTORS 4871, 4872, OR 4879);~~

~~(19) AN INTERIOR DESIGN OR DECORATING SERVICE (NAICS SECTOR 541410);~~

~~(20) A TELEMARKETING BUREAU OR OTHER CONTACT CENTER SERVICE (NAICS SECTOR 561422); OR~~

~~(21) A TOUR OPERATOR (NAICS SECTOR 561520);~~

~~(22) (15) A LOBBYING OR PUBLIC RELATIONS SERVICE (NAICS SECTOR 541820);~~

~~(23) A GOLF COURSE OR COUNTRY CLUB MEMBERSHIP OR SERVICE  
(NAICS SECTOR 713910);~~

~~(24) WATCH, CLOCK, OR JEWELRY REPAIR (NAICS SECTOR 811490);~~

~~(25) A TANNING OR DAY SPA SERVICE (NAICS SECTOR 812199);~~

~~(26) A HAIR REMOVAL OR HAIR REPLACEMENT SERVICE (NAICS  
SECTOR 812199);~~

~~(27) A TATTOOING, PIERCING, OR PERMANENT MAKEUP SERVICE  
(NAICS SECTOR 812199);~~

~~(28) A NONVETERINARY PET CARE SERVICE (NAICS SECTOR 812910);~~

~~(29) AN ASTROLOGY, FORTUNE TELLING, OR PSYCHIC SERVICE  
(NAICS SECTOR 812990);~~

~~(30) A SOCIAL ESCORT SERVICE (NAICS SECTOR 812990); OR~~

~~(31) A PERSONAL CHEF SERVICE (NAICS SECTOR 812990).~~

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 or a taxable service.

11-236.

(A) THE SALES AND USE TAX DOES NOT APPLY TO THE SALE OF MATERIALS,  
PARTS, OR EQUIPMENT USED TO REPAIR, MAINTAIN, OR UPGRADE AIRCRAFT OR THE  
AVIONICS SYSTEMS OF AIRCRAFT IF THE MATERIALS, PARTS, OR EQUIPMENT ARE  
INSTALLED ON AN AIRCRAFT THAT:

(1) HAS A MAXIMUM GROSS TAKEOFF WEIGHT OF LESS THAN 12,500  
POUNDS; OR

(2) (I) HAS A MAXIMUM GROSS TAKEOFF WEIGHT OF 12,500  
POUNDS OR MORE; AND

(II) IS PRIMARILY USED IN INTERSTATE OR FOREIGN  
COMMERCE.

(B) ON OR BEFORE DECEMBER 31 EACH YEAR, THE COMPTROLLER SHALL REPORT TO THE GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE, ON:

(1) THE AMOUNT OF SALES AND USE TAX REVENUE LOST FROM THE EXEMPTION UNDER THIS SECTION; AND

(2) ANY CHANGE TO THE NUMBER OF AVIATION TECHNICIANS EMPLOYED IN THE STATE AS A RESULT OF THE EXEMPTION UNDER THIS SECTION.

11-237.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “DATA CENTER” MEANS A BUILDING OR GROUP OF BUILDINGS USED TO HOUSE COMPUTER SYSTEMS, COMPUTER STORAGE EQUIPMENT, AND ASSOCIATED INFRASTRUCTURE THAT BUSINESSES OR OTHER ORGANIZATIONS USE TO ORGANIZE, PROCESS, STORE, AND DISSEMINATE LARGE AMOUNTS OF DATA.

(3) “DEPARTMENT” MEANS THE DEPARTMENT OF COMMERCE.

(4) “OPPORTUNITY ZONE” MEANS AN AREA THAT HAS BEEN DESIGNATED AS A QUALIFIED OPPORTUNITY ZONE IN THE STATE UNDER § 1400Z-1 OF THE INTERNAL REVENUE CODE.

(5) (I) “QUALIFIED DATA CENTER” MEANS A DATA CENTER LOCATED IN THE STATE IN WHICH AN INDIVIDUAL OR A CORPORATION, WITHIN 3 YEARS AFTER SUBMITTING AN APPLICATION FOR THE SALES AND USE TAX EXEMPTION UNDER THIS SECTION, HAS:

1. FOR A DATA CENTER LOCATED WITHIN A TIER I AREA, INVESTED AT LEAST \$2,000,000 IN QUALIFIED DATA CENTER PERSONAL PROPERTY AND CREATED AT LEAST FIVE QUALIFIED POSITIONS; OR

2. FOR A DATA CENTER LOCATED IN ANY OTHER AREA OF THE STATE, INVESTED AT LEAST \$5,000,000 IN QUALIFIED DATA CENTER PERSONAL PROPERTY AND CREATED AT LEAST FIVE QUALIFIED POSITIONS.

(II) “QUALIFIED DATA CENTER” INCLUDES:

1                   1.     A DATA CENTER THAT IS A CO-LOCATED OR HOSTING  
2 DATA CENTER WHERE EQUIPMENT, SPACE, AND BANDWIDTH ARE AVAILABLE TO  
3 LEASE TO MULTIPLE CUSTOMERS; AND

4                   2.     AN ENTERPRISE DATA CENTER OWNED AND  
5 OPERATED BY THE COMPANY IT SUPPORTS.

6                   (6)    (I)   “QUALIFIED DATA CENTER PERSONAL PROPERTY” MEANS  
7 PERSONAL PROPERTY PURCHASED OR LEASED TO ESTABLISH OR OPERATE A DATA  
8 CENTER.

9                   (II)   “QUALIFIED DATA CENTER PERSONAL PROPERTY”  
10 INCLUDES:

11                   1.     COMPUTER EQUIPMENT OR ENABLING SOFTWARE  
12 USED FOR THE PROCESSING, STORAGE, RETRIEVAL, OR COMMUNICATION OF DATA,  
13 INCLUDING SERVERS, ROUTERS, CONNECTIONS, AND OTHER ENABLING HARDWARE  
14 USED IN THE OPERATION OF THAT EQUIPMENT;

15                   2.     HEATING, VENTILATION, AND AIR-CONDITIONING  
16 AND MECHANICAL SYSTEMS, INCLUDING CHILLERS, COOLING TOWERS,  
17 AIR-HANDLING UNITS, PUMPS, ENERGY STORAGE OR ENERGY EFFICIENCY  
18 TECHNOLOGY, AND OTHER CAPITAL EQUIPMENT USED IN THE OPERATION OF THAT  
19 EQUIPMENT; AND

20                   3.     EQUIPMENT NECESSARY FOR THE GENERATION,  
21 TRANSFORMATION, TRANSMISSION, DISTRIBUTION, OR MANAGEMENT OF  
22 ELECTRICITY, INCLUDING EXTERIOR SUBSTATIONS, GENERATORS, TRANSFORMERS,  
23 UNIT SUBSTATIONS, UNINTERRUPTIBLE POWER SUPPLY SYSTEMS, BATTERIES,  
24 POWER DISTRIBUTION UNITS, REMOTE POWER PANELS, AND ANY OTHER CAPITAL  
25 EQUIPMENT NECESSARY FOR THESE PURPOSES.

26                   (7)    (I)   “QUALIFIED POSITION” MEANS A POSITION THAT:

27                   1.     IS A FULL-TIME POSITION OF INDEFINITE DURATION;

28                   2.     PAYS AT LEAST 150% OF THE STATE MINIMUM WAGE;

29                   3.     IS NEWLY CREATED BECAUSE A DATA CENTER BEGINS  
30 OR EXPANDS IN A SINGLE LOCATION IN THE STATE; AND

31                   4.     IS FILLED.

32                   (II)   “QUALIFIED POSITION” DOES NOT INCLUDE A POSITION:

1                    1.     CREATED IF AN EMPLOYMENT FUNCTION IS SHIFTED  
2 FROM AN EXISTING DATA CENTER IN THE STATE TO ANOTHER DATA CENTER OF  
3 RELATED OWNERSHIP IF THE POSITION IS NOT A NET NEW JOB IN THE STATE;

4                    2.     CREATED THROUGH A CHANGE IN OWNERSHIP OF A  
5 TRADE OR BUSINESS;

6                    3.     CREATED THROUGH A CONSOLIDATION, MERGER, OR  
7 RESTRUCTURING OF A BUSINESS ENTITY IF THE POSITION IS NOT A NET NEW JOB IN  
8 THE STATE;

9                    4.     CREATED IF AN EMPLOYMENT FUNCTION IS  
10 CONTRACTUALLY SHIFTED FROM AN EXISTING BUSINESS ENTITY IN THE STATE TO  
11 ANOTHER BUSINESS ENTITY IF THE POSITION IS NOT A NET NEW JOB IN THE STATE;  
12 OR

13                    5.     FILLED FOR A PERIOD OF LESS THAN 12 MONTHS.

14                    (8)    “TIER I AREA” MEANS:

15                    (I)    A TIER I COUNTY AS DEFINED IN § 1-101 OF THE ECONOMIC  
16 DEVELOPMENT ARTICLE; OR

17                    (II)   AN OPPORTUNITY ZONE.

18                    (B)   THE SALES AND USE TAX DOES NOT APPLY TO THE SALE OF QUALIFIED  
19 DATA CENTER PERSONAL PROPERTY FOR USE AT A QUALIFIED DATA CENTER IF THE  
20 BUYER PROVIDES THE VENDOR WITH EVIDENCE OF ELIGIBILITY FOR THE  
21 EXEMPTION ISSUED BY THE COMPTROLLER.

22                    (C)   (1)   TO QUALIFY FOR THE SALES AND USE TAX EXEMPTION UNDER  
23 SUBSECTION (B) OF THIS SECTION, AN INDIVIDUAL OR A CORPORATION SHALL FILE  
24 AN APPLICATION FOR AN EXEMPTION CERTIFICATE WITH THE DEPARTMENT.

25                    (2)   THE APPLICATION MUST:

26                    (I)    DEMONSTRATE THAT THE APPLICANT INTENDS TO MEET  
27 THE REQUIREMENTS OF A QUALIFIED DATA CENTER; AND

28                    (II)   INCLUDE ANY INFORMATION THE DEPARTMENT REQUIRES  
29 TO EVIDENCE THE CAPACITY AND INTENTION OF THE APPLICANT TO FULFILL THE  
30 COMMITMENTS SET FORTH IN THE APPLICANT’S APPLICATION.

1           (3) IF, BASED ON THE INFORMATION AND SUPPORTING  
2 DOCUMENTATION PROVIDED IN THE APPLICATION, THE DEPARTMENT DETERMINES  
3 THE APPLICANT IS ELIGIBLE FOR THE SALES AND USE TAX EXEMPTION UNDER  
4 SUBSECTION (B) OF THIS SECTION, THE DEPARTMENT SHALL CERTIFY THE  
5 ELIGIBILITY OF THE APPLICANT.

6           (D) (1) EACH YEAR, THE DEPARTMENT SHALL PROVIDE THE  
7 COMPTROLLER WITH A LIST OF INDIVIDUALS AND CORPORATIONS THAT THE  
8 DEPARTMENT DETERMINES ARE ELIGIBLE FOR THE SALES AND USE TAX EXEMPTION  
9 UNDER SUBSECTION (B) OF THIS SECTION.

10           (2) WITHIN 30 DAYS AFTER RECEIVING THE LIST DESCRIBED IN  
11 PARAGRAPH (1) OF THIS SUBSECTION, THE COMPTROLLER SHALL ISSUE TO EACH  
12 INDIVIDUAL AND CORPORATION LISTED A CERTIFICATE OF ELIGIBILITY FOR THE  
13 SALES AND USE TAX EXEMPTION UNDER SUBSECTION (B) OF THIS SECTION.

14           (3) THE CERTIFICATE OF ELIGIBILITY ISSUED UNDER PARAGRAPH  
15 (2) OF THIS SUBSECTION:

16                   (I) MUST BE RENEWED EACH YEAR; AND

17                   (II) MAY NOT BE RENEWED FOR MORE THAN 10 CONSECUTIVE  
18 YEARS.

19           (E) FOR AT LEAST 3 YEARS AFTER THE TERMINATION OF A CERTIFICATE  
20 ISSUED UNDER SUBSECTION (D) OF THIS SECTION, EACH INDIVIDUAL OR  
21 CORPORATION THAT RECEIVES THE CERTIFICATE SHALL:

22                   (1) MAINTAIN A RECORD OF:

23                           (I) THE AMOUNT OF SALES AND USE TAX THAT WAS NOT PAID  
24 AS A RESULT OF THE CERTIFICATE;

25                           (II) THE NUMBER OF QUALIFIED POSITIONS CREATED; AND

26                           (III) THE INVESTMENT IN QUALIFIED DATA CENTER PERSONAL  
27 PROPERTY; AND

28                   (2) ALLOW THE DEPARTMENT TO INSPECT THE RECORDS DESCRIBED  
29 IN ITEM (1) OF THIS SUBSECTION.

30           (F) (1) THE DEPARTMENT MAY REVOKE A CERTIFICATE OF ELIGIBILITY  
31 UNDER SUBSECTION (D) OF THIS SECTION IF ANY REPRESENTATION MADE IN  
32 CONNECTION WITH THE APPLICATION FOR THE CERTIFICATE IS DETERMINED BY

THE DEPARTMENT TO HAVE BEEN FALSE WHEN MADE OR IF THE APPLICANT HAS FAILED TO FULFILL THE APPLICANT'S COMMITMENTS UNDER THE APPLICATION.

(2) THE REVOCATION MAY BE IN FULL OR IN PART AS THE DEPARTMENT MAY DETERMINE.

(3) THE INDIVIDUAL OR CORPORATION SHALL HAVE AN OPPORTUNITY TO APPEAL ANY REVOCATION TO THE DEPARTMENT BEFORE NOTIFICATION OF THE COMPTROLLER.

(4) THE COMPTROLLER MAY MAKE AN ASSESSMENT AGAINST THE INDIVIDUAL OR CORPORATION TO RECAPTURE ANY AMOUNT OF SALES AND USE TAX THAT THE INDIVIDUAL OR CORPORATION HAS NOT PAID AS A RESULT OF AN EXEMPTION UNDER SUBSECTION (B) OF THIS SECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Tax – Property

7-246.

(A) IN THIS SECTION, “QUALIFIED DATA CENTER” AND “QUALIFIED DATA CENTER PERSONAL PROPERTY” HAVE THE MEANINGS STATED IN § 11-237 OF THE TAX – GENERAL ARTICLE.

(B) THE GOVERNING BODY OF A COUNTY OR MUNICIPAL CORPORATION MAY REDUCE OR ELIMINATE, BY LAW, THE PERCENTAGE OF THE ASSESSMENT OF ANY QUALIFIED DATA CENTER PERSONAL PROPERTY USED IN A QUALIFIED DATA CENTER THAT IS SUBJECT TO THE COUNTY OR MUNICIPAL CORPORATION PROPERTY TAX UNDER THIS TITLE.

(C) (1) A COUNTY OR MUNICIPAL CORPORATION THAT REDUCES OR ELIMINATES THE PERCENTAGE OF ASSESSMENT OF TAXABLE QUALIFIED DATA CENTER PERSONAL PROPERTY UNDER SUBSECTION (B) OF THIS SECTION SHALL SUBMIT A COPY OF THE LAW TO THE DEPARTMENT.

(2) IF THE DEPARTMENT RECEIVES A COPY OF THE LAW ON OR BEFORE MAY 1, THE CHANGE WILL BE EFFECTIVE FOR THE TAXABLE YEAR FOLLOWING THE DATE THE LAW IS ENACTED.

(D) IF ANY QUALIFIED DATA CENTER PERSONAL PROPERTY IS EXEMPT UNDER SUBSECTION (C) OF THIS SECTION FROM COUNTY PROPERTY TAX BUT IS SUBJECT TO MUNICIPAL CORPORATION PROPERTY TAX, THE DEPARTMENT OR THE

1 SUPERVISOR SHALL PROVIDE THE MUNICIPAL CORPORATION WITH THE  
2 ASSESSMENT OF THE QUALIFIED DATA CENTER PERSONAL PROPERTY.

3 SECTION 3. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall be  
4 applicable to all taxable years beginning after June 30, 2020.

5 SECTION ~~2~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take effect  
6 July 1, 2020.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.