MD Center on Economic Policy_FAV_SB1001

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Position: FAV

MARCH 10, 2020

Maryland Needs an Effective, 21st Century Tax Code

Position Statement in Support of Senate Bill 1001

Given before the Senate Budget and Taxation Committee

Maryland's economy has changed in important ways during the last half century, but our revenue system has not always kept up. Operating a 20th century tax code in a 21st century economy has caused Maryland's revenue growth to stagnate, falling further behind on meeting Marylanders' needs. We should comprehensively reform our tax code to close corporate loopholes, end ineffective tax breaks, and modernize outdated policies. As one part of that effort, expanding our sales tax base to include digital products such as apps and streaming video would bring our tax code more in line with today's economy. This reform could generate as much as $117 million in fiscal year 2021 and $147 million in fiscal year 2025, meaningfully increasing our ability to invest in vital services.[i] For these reasons, the Maryland Center on Economic Policy supports Senate Bill 1001.

Maryland has been underinvesting in the foundations of our communities ever since the Great Recession. We chipped away at public school funding, allowing the number of school districts that were close to full funding under the Thornton formula to fall from 23 out of 24 in fiscal year 2008 to only six by 2017—with more than half of the state's Black students going to school in a district that was underfunded by 15 percent or more. At the same time, we have allowed our investments in other essential services to erode, from public health to reliable transit. Marylanders now face a choice: We can stay the course, skimp on the basics, and watch our economy weaken over time, or we can fix our revenue system to build a thriving future.

Building a truly effective revenue system will require multiple steps, such as closing corporate loopholes, ending ineffective business tax breaks, and fixing a system that currently allows the wealthiest 1 percent of Maryland households to pay a smaller share of their income in state and local taxes than the rest of us do. Updating our sales tax to include the modern iterations of goods that have always been part of the tax base would a step in the right direction, especially if paired with other revenue reforms to ensure our tax code is both effective and equitable.

Only about 30 percent of consumer sales nationwide are subject to sales taxes today, down from about 40 percent throughout the 1970s.[ii] In the music industry alone, worldwide sales of physical media like CDs fell by three-quarters from 2002 to 2017.[iii] Streaming and digital downloads now account for more than 80 percent of all music industry revenue.[iv] Exempting digital products from the sales tax costs Maryland millions of dollars in lost revenue every year—and we can expect to miss out on even more revenue in future years as the economy continues to digitize.

Modernizing our sales tax to include digital products will put Maryland in good company. As early as 2012, 33 states plus the District of Columbia taxed one or more types of digital product—including states as disparate as Alabama, Massachusetts, and Wyoming.[v] Tax policy experts of all ideological stripes recommend applying the same standards to similar activities, without arbitrary exemptions. Maryland's current treatment of digital products violates this principle.

Our tax code today is increasingly outdated, making it unable to raise the resources we need to support a healthy economy. As Marylanders consider the major investments we will need to strengthen the foundations of our

economy in future years—from world-class schools to high-quality health care—we should assess how well each component of our revenue system reflects our values as well as today's economy. Applying the same standards to physical and digital products will bring our revenue system into the 21st century and help build thriving communities across Maryland.

For these reasons, the Maryland Center on Economic Policy respectfully requests that the Budget and Taxation Committee make a favorable report on Senate Bill 1001.

Equity Impact Analysis: Senate Bill 1001

Bill summary

Senate Bill 1001 would expand Maryland's sales tax base to include digital products including apps, streaming video, ebooks, digital editions of newspapers and magazines, and other products.

Background

Maryland's sales tax is based primarily on the tangible goods that dominated our economy throughout the 20th century. As our economy has digitized and transitioned toward services, sales tax revenues increasingly lag economic growth and Marylanders' needs for public investments such as education and health care. About 30 states currently include at least some types of digital product in their sales tax base.

Equity Implications

Our growing underinvestment in essential services like education, health care, and transportation harms all Marylanders, and at the same time has outsized impacts on people who face economic roadblocks because of low income or the ongoing legacy of racist policy. Reforming Maryland's tax code to raise adequate revenue would strengthen our ability to invest in the foundations of our economy and reduce barriers that hold back too many Marylanders.

At the same time, sales taxes are known to be among the most lopsided sources of state and local revenue, generally asking more of families who live paycheck to paycheck than of those who have the resources to invest their income. Because digital technology is so pervasive in our lives today—one of the most important reasons why taxing digital products is prudent policy—updating our sales tax would reduce many working Marylanders' purchasing power. Policymakers can mitigate this effect by pairing sales tax reform with more comprehensive tax reforms to ensure that the most powerful among us pay their share, and by strengthening working family tax credits that help many Marylanders afford necessities.

Impact

Senate Bill 1001 would likely **have mixed effects on racial and economic equity** in Maryland.

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[i] Senate Bill 1001 Fiscal and Policy Note.

[ii] Michael Leachman and Michael Mazerov, "Four Steps to Moving State Sales Taxes into the 21st Century," Center on Budget and Policy Priorities, 2013, https://www.cbpp.org/research/state-budget-and-tax/four-steps-to-moving-state-sales-taxes-into-the-21st-century

[iii] "Global Music Report 2018: Annual State of the Industry," IFPI, 2018, https://www.ifpi.org/downloads/GMR2018.pdf

[iv] Recording Industry Association of America, 2019, https://www.riaa.com/facts/

[v] Michael Mazerov, "States Should Embrace 21st Century Economy by Extending Sales Taxes to Digital Goods and Services," Center on Budget and Policy Priorities, 2012, https://www.cbpp.org/sites/default/files/atoms/files/12-13-12sfp.pdf

MSEA_FAV_SB1001
Uploaded by: zwerling, samantha
Position: FAV

msea maryland state education association

EDUCATORS TOGETHER

140 Main Street
Annapolis, MD 21401-2003
marylandeducators.org

Testimony in Support of Senate Bill 1001
21st Century Economy Sales Tax Act

Senate Budget & Taxation Committee
March 10, 2020

Samantha Zwerling
Government Relations

The Maryland State Education Association supports Senate Bill 1001 proposing to impose a tax on digital products that will directly benefit the Education Trust Fund and serve as a new dedicated funding source to implement the new school funding formula our students and schools need.

MSEA represents 75,000 educators and school employees who work in Maryland's public schools, teaching and preparing our 896,837 students for the careers and jobs of the future. MSEA also represents 39 local affiliates in every county across the state of Maryland, and our parent affiliate is the 3 million-member National Education Association (NEA).

MSEA supports passage of an adequate, sustainable, predictable revenue stream that will adequately fund both the operating and construction costs of our public schools. A great public school for every child means our students have updated technology, small manageable classes, safe and modern schools, proper healthcare and nutrition, and have highly qualified and highly effective educators. The work of the Commission on Innovation and Excellence in Education (Kirwan Commission) further recommends improvements to access to Pre-K and Career Technology Education, as well as expansion of the educator workforce and increased salaries to help deliver individualized instruction and recruit and retain the best workforce in the country.

The Kirwan Commission has determined that Maryland will need to invest substantially more resources into education for our citizens to become truly successful in the very competitive national and global economies. This is the time to be locating and allocating more resources to education, and Senate Bill 1001 is part of that dedicated funding solution. Our kids can't wait.

As the state looks to fund the schools of the future, it is prudent to look to efforts to modernize our tax code like the sponsors of this legislation aim to do. This proves that we can dedicate critical new funds for our schools without broad based or regressive tax increases. **We urge a favorable report of Senate Bill 1001.**

DISH opposition to SB 1001

Uploaded by: Boston, Frank

Position: UNF

Testimony of Jon Mandel
On behalf of
DISH Network L.L.C.
Before the Senate Budget and Taxation Committee
March 10, 2020

Thank you Chairman Guzzone, Vice-Chair Rosapepe and members of the Committee. My name is Jon Mandel of the Law firm Orrick, Herrington and Sutcliffe. I am here today on behalf of DISH Network and its tens of thousands of subscribers here in the state. In total, over 350,000 Maryland families and businesses subscribe to satellite TV, and the satellite video industry comprises approximately 30% of the pay TV market.

Thank you for allowing me the time to share with you our concerns regarding SB 1001, the 21-st Century Economy Sales Tax Act. As a principle of fundamental fairness, we believe that the imposition of any digital goods tax on a video provider and their services, such as Pay Per View and Video on Demand, should be imposed equally on all customers of such products, satellite and cable alike.

Unfortunately, the bill as written exempts cable from such tax. Specifically, it does so by stating that the tax “does not apply to a retail sale of a multichannel video programming service that is subject to a franchise fee…” We see this argument all too often, that cable should receive some form of special tax treatment, because they pay franchise fees to municipalities in order to access the right of way and satellite does not.

Typically, the argument goes like this: cable asserts that franchise fees are taxes, they pay them, satellite does not, and so in the name of “parity” or “fairness”, they are entitled to a credit or in this case, an exemption, with respect to other taxes that may be imposed.

The crux of this argument relies on a single premise: that franchise fees are taxes. If they are not, then cable’s argument falls apart; there is no justification for avoiding the burdens of their competitors’ customers.

As you might expect, we can assure you that franchise fees are not taxes. Rather, they are payments cable makes to a municipality to gain access to the right of way. Why? Cable technology requires it. That is, the way a cable service works is that video signals are sent to one or several centralized locations in a given city, called a “headend.” From there, physical lines—cable lines—are run from the headend to each and every customer home and business, snaking miles and miles throughout the city. They are typically placed under city streets and sidewalks.

But when a cable company comes to town, do they just find any building or warehouse with an empty floor and move their headend equipment in? Of course not. They would find the buildings owner, the landlord, and request permission to occupy space in the building. A landlord would grant such permission, conditioned, of course, on the payment of rent, for cable’s use of his or her property.

It is no different with respect to the laying of cable. Cable companies don't just get a backhoe and start digging up streets and sidewalks, obviously. First, they must seek permission from a municipality to access the right of way, the street and sidewalks, to place their infrastructure. Permission, as you might expect, is granted upon the payment of a fee, or essentially rent, for the right to access the municipal right of way. That rent, or fee, is called a franchise fee—in some, but not all, circumstances, to be discussed below. The franchise fee is capped at 5% of gross revenues, as defined, via federal statute.

Why doesn't satellite pay franchise fees? Because satellite technology obviates the need to access the right of way. Instead of constructing headends, digging up streets and sidewalks, and running physical cables to customer residences, DISH transmits its signal directly to its customers' homes. The video signals are sent from an uplink center in Cheyenne, WY to a fleet of satellites in geosynchronous orbit over the continental U.S. Those signals are then, in turn, beamed directly to customers satellite antennas located on roofs or sides of houses. There literally is no right of way access utilized for which a payment would be required.

However, one should not assume that satellite companies don't have their own significant infrastructure costs. They pay hundreds of millions to design, build, launch and maintain a fleet of satellites in orbit. But we are not asking for tax exemptions due to the fact that we have to pay for rocket fuel and cable does not. We each have our own costs related to the technology we employ to provide our service, but that fact should not enter into tax policymaking decisions.

Furthermore, even cable companies don't consider franchise fees to be a tax. True, that's what they say when they are in the Statehouse seeking an exemption, but significantly, every year, in writing and under oath, they characterize franchise fees quite differently.

Every public company, in including cable companies and satellite companies, must file a year report to the Securities and Exchange Commission, called a "10k." This is a snapshot of a given corporations financial condition, assets, liabilities, risks and inherent market strengths. These reports are available to investors, potential investors, and the general public, and are filed under oath, with civil and criminal penalties for false or even misleading statements.

If, for example, you look through Comcast's or Charter's 10k, you might be surprised to find that there are no references to "franchise taxes." Indeed, there are not that many references to "franchise fees." However, both companies 10k's are replete with references to "franchise rights."

That is, in reality, instead of considering franchise fees as a tax, cable companies actually list franchise rights *as their largest asset.* It makes sense—both companies gain a legal right to access the municipal right of way, which obviously has vast commercial value. How vast? Comcast values its franchise rights at *$60 billion.* Charter values its franchise rights at *$67 billion.* Furthermore, cable companies are free to sell such rights; as noted in Charter's 2017 10k filing, when it purchased Time Warner Cable, it paid over $54 billion for TWC's franchise rights.

No one spends billions to purchase tax liability, and except when trying to avoid the same tax obligations as everyone else, cable companies don't even pretend that their franchise rights are anything but the largest asset on their books. Franchise fees cannot be both a tax and a multibillion dollar asset that can be bought and sold. Franchise fees simply are not a tax.

Thus, there is no reason to provide the state's dominant video provider, with 70% market share, any form of special treatment that exempts them from have to help support the Blueprint for Maryland's Future Fund like every other video provider.

We respectfully ask that if you proceed with this bill, or any other form of taxation on satellite or our customers, that you treat us fairly compared to our competitors, and tax us all the same.

Thank you.

DISH opposition to SB 1001
Uploaded by: Mandel, Jon
Position: UNF

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Thank you.

MACo_INFO_SB1001
Uploaded by: Kinnally, Kevin
Position: INFO

Senate Bill 1001

21st-Century Economy Sales Tax Act

MACo POLICY STATEMENT
(Letter of Information)

To: Budget and Taxation Committee

Date: March 10, 2020

From: Kevin Kinnally

Equity with New Revenue Sources

The State's commitment to substantial new education investments has inspired legislation to authorize new activities that carry substantial new revenue potential. The costs of these ambitious school initiatives, as proposed, will also carry a major cost to county governments, many of whom are already straining their current revenue structures.

Only with sufficient funding will county governments be able to work in partnership with the State to advance our schools' competitiveness and outcomes. **As such, any new funding source identified and approved by the State to support new education initiatives should have a commensurate authority or equitable distribution to support county governments statewide as true partners in education investments.**

MACo advocates for adequate, fair, and reasonable funding for all of Maryland's students, and urges State policymakers to sustain a robust level of public education funding without unduly burdening county budgets or slighting other essential local services.

MACo and county governments stand ready to work with State policymakers toward a productive funding partnership to ensure a world-class education system for all Maryland students.