



MSBA Main Office
520 West Fayette Street
Baltimore, MD 21201
410-685-7878 | msba.org

Annapolis Office
200 Duke of Gloucester Street
Annapolis, MD 21401
410-269-6464 | msba.org

To: Members of the House Ways and Means Committee
From: Maryland State Bar Association (MSBA)
Subject: HB1515 – Sales and Use Tax – Rate Reduction and Services
Date: March 7, 2024
Position: **Opposed**

The Maryland State Bar Association (MSBA) **opposes House Bill 1515 – Sales and Use Tax – Rate Reduction and Services**. HB 1515 would lower the state sales tax from 6% to 5% but expand the 5% tax to many everyday services that have historically remained untaxed, including legal services, accounting and financial services, appraisals, real estate services, advertising, printing, and media streaming services.

MSBA represents more than 42,000 attorneys and judges across the state. Through its advocacy committees and various practice-specific sections, MSBA monitors and takes positions on legislation that protects the legal profession, preserves the integrity of the judicial system, and ensures access to justice for Marylanders.

MSBA opposes the bill’s attempt to impose a sales tax on professional services, as the burden would fall directly on Maryland residents and businesses, disproportionately harm low-income Marylanders, negatively impact the state’s economic growth and development, promote tax pyramiding, and result in reduced competitiveness for Maryland attorneys and law firms. The same populations that faced the potentially devastating consequences of HB 1628 in 2020 have experienced additional business, financial, and personal challenges during the last four years of the pandemic. HB 1515 would only further their decline.

HB 1515 Imposes a Regressive Tax on the State’s Most Vulnerable Population and Limits Access to Justice

The proposed sales tax is regressive and will most harshly affect low-income taxpayers seeking legal services. Maryland’s Access to Justice Commission reports that ten (10) percent of Maryland households have incomes that fall below the Federal Poverty Line (FPL), and an additional **28%** fall into a household above the FPL but with modest means, unable to earn enough income necessary for basic survival.¹ These “modest means” Marylanders make too much money to qualify for civil legal aid but not enough to pay regular rates for attorneys.

¹ <https://cdn.laruta.io/app/uploads/sites/7/2023/11/14092120/Affordable-Law-Task-Force-Report--MSBA.pdf>, accessed March 7, 2024.

A tax on legal services could be the deciding factor in whether someone can afford to hire an attorney or appear *pro se* on complex legal issues including criminal charges, bankruptcy, divorce, custody, domestic violence, immigration, foreclosure, evictions, personal injury, and estate settlements. Self-represented litigants often lack an understanding of proper trial preparation, evidentiary rules, and courtroom procedures, leading to unwanted case outcomes. Maryland should not course correct funding gaps through a sales tax that increases the cost of legal services, expands the justice gap, and reduces the ability of legal service providers and firms to serve Marylanders with limited financial resources.

HB 1515 Reduces Housing Affordability for Marylanders

Maryland already has some of the highest closing costs in the nation. HB 1515 will tax every aspect of a real estate transaction and make buying a home even more prohibitively expensive than it already is in Maryland, with new taxes on real estate sales, financing, title insurance, settlements, recording services, any related attorneys' fees, and more. Homebuyers will have higher cash requirements at closing due to the higher sales and use tax, likely delaying homeownership for first-time buyers and those in the lower-to-middle income bracket. Every dollar of additional tax on a real estate purchase makes home buying more difficult for Maryland residents, who may choose to relocate to neighboring jurisdictions with more affordable options.

HB 1515 Discriminates Against Small Businesses (Including Solo and Small Law Firms)

Small businesses that seek legal guidance and representation will face financial challenges with the proposed tax as they lack the ability to afford in-house legal departments and must seek outside counsel for legal needs. Small businesses with limited means may forego legal advice altogether on important business considerations, given the increased fees. Corporations and government agencies with in-house counsel will have an unfair advantage, as they will not have to pay a legal services tax.

Many MSBA attorneys practice in solo or small practitioner law firms. HB 1515 will lead to increased administrative costs for these firms, as they will have to purchase additional software and hire administrative staff with greater financial expertise to track, calculate, and process sales tax on billings and receivables. Unlike larger firms, solo and small law firms lack an ability to bring these financial services in-house. Additional firm hours and dollars will be spent on complying with tax collection laws and guidelines, resulting in higher rates for clients and challenges to maintaining a law firm's profitability.

HB 1515 Puts Larger Firms at a Competitive Disadvantage, Incentivizing Them to Relocate Out of State

Most of Maryland's successful law firms have specialized practice groups whose experience leads to out of state clients hiring them as counselors and for representation matters including patent and copyright, taxation, franchising, trademarks, cybersecurity, and data privacy. This business from out of state clients has an overall positive impact on Maryland's economy. The proposed sales tax will discourage out of state clients to continue hiring Maryland law firms, as they would not have to pay a tax with comparable specialists out of state and will look for a more competitive rate in neighboring areas like Virginia, Washington D.C., Delaware, Pennsylvania, and New Jersey. Large law firms and corporations in Maryland will have an incentive to relocate out of state given tax advantages and increased competitiveness. Maryland should not promote an exodus of businesses and jobs out of state.

HB 1515 Creates Complex Administrative and Compliance Issues for Maryland Law Firms

Many Maryland law firms are part of regional, national, or international firms, with legal transactions that include attorneys and contractors providing services from Maryland and other states or countries. Apportioning the percentage of overall legal services, then factoring out Maryland costs, calculating and collecting the sales tax, and maintaining adequate records will be administratively burdensome for both attorneys and clients.

The bill provides no guidance on the taxability of Maryland attorneys who provide legal advice and services on cases in other states. The bill also fails to clarify whether to include the tax on the state providing the service or on the state receiving the service, how to resolve jurisdictional differences on the taxing authority of states, whether the attorney's or client's physical or digital presence in the state triggers the tax, and whether and how the tax applies to attorneys barred in multiple jurisdictions. ***MSBA also attaches testimony from 2020 with further comments and related questions on behalf of the legal profession regarding the bill's scope and implementation.**

For these reasons, MSBA strongly opposes HB 1515 and asks for an Unfavorable Committee Report.

Contact: Shaoli Katana, Advocacy Director (shaoli@msba.org, 410-387-5606)



MARYLAND DEFENSE COUNSEL, INC.
Promoting justice. Providing solutions.

March 2, 2020

Members of the House Ways & Means Committee
6 Bladen Street -131 House Office Building
Annapolis, MD 21401

Subject: House Bill 1628 – Sales & Use Tax – Rate Reduction and Services - Oppose

Dear Committee Members:

We, the undersigned **Presidents of the Maryland Association for Justice (MAJ), Maryland State Bar Association (MSBA), and Maryland Defense Counsel (MDC)** write in **opposition** to both the substance and timing of **House Bill 1628 - Sales and Use Tax - Rate Reduction and Services**. Substantively, we find that the repeal of the longstanding exemption of legal services from the Maryland sales and use tax would have **immediate and far-reaching negative consequences** for virtually every form of delivery of legal services. Additionally, we find HB 1628 ill-timed, having been introduced after the 40th day of the Session. (See attachments for further discussion.)

A tax on legal services constitutes a "misery tax" on Maryland consumers, particularly lower-income families. Most consumers seeking legal services are doing so because they are facing difficult circumstances, such as a criminal charge, bankruptcy, divorce, foreclosure, their rights have been violated, they have been injured, or they are settling the estate of a loved one. Adding a sales tax to their legal fees would increase their expenses at the worst possible time. Expanding the sales tax to legal services would be detrimental to Maryland's economy, making our State less competitive with other states in attracting and retaining key large firm corporate legal service providers. **We urge the House Ways & Means Committee to consider the history of Senate Bill 2 of the 2007 Special Session of the General Assembly**, which sought to impose a sales tax on computer services. That bill was considered over a matter of only a few days and was repealed only months later during the 2008 Regular Session.

For all of the reasons stated above, the **Maryland Association for Justice, Maryland Defense Counsel, and Maryland State Bar Association strongly oppose House Bill 1628, and urge an Unfavorable Committee Report.**

Respectfully,

Handwritten signature of Ellen B. Flynn in black ink.

Ellen B. Flynn
President, MAJ

Handwritten signature of Dana O. Williams in black ink.

Dana O. Williams
President, MSBA

Handwritten signature of Dwight W. Stone II in blue ink.

Dwight W. Stone II
President, MDC



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House Bill 1628 – Sales & Use Tax – Rate Reduction and Services

**Maryland Association for Justice
Maryland State Bar Association
Maryland Defense Counsel**

OPPOSE

**Supplemental Material Submitted to the House Ways &
Means Committee**

March 2, 2020

Access to Justice

In general, sales taxes generally are regressive, and taxes on vital services disproportionately affect low-income taxpayers. This is especially true with respect to legal services. Many Marylanders are members of low-income households but are not eligible to benefit from pro bono legal services because the threshold for income eligibility is too low, or, there simply is not a sufficient supply of lawyers to meet their pro bono needs. A tax on legal services could be the dispositive factor that determines whether someone goes into court with adequate representation.

Solo & Small firm / Small Business Impact

Maryland is home to many small and solo practitioner law firms. The additional burden of collecting and paying taxes will have a detrimental impact upon those small businesses. Many small law firms employ bookkeepers (but not accountants) to handle basic billing and receivables. Under the imposition of a sales tax upon receivables coming as partial bill payments, those firms will be unduly burdened by having to calculate sales tax on very small dollar payments, often received long after an invoice was issued. Such a reality will create new anxiety for solo and small firm practitioners unaccustomed complying with tax collection laws and guidelines set forth by the State Comptroller. Those fears will be compounded by concerns over inadvertent tax misreporting, which could lead to professional sanctions by the Attorney Grievance Commission. As a result, administrative costs will increase for many of these practitioners, as they seek administrative staff with greater tax expertise.

Large firm impact / Economic Climate

1. Most of Maryland's most successful law firms have specialized practice groups whose knowledge and experience leads to out of state clients hiring them as counselors, as well as for representation in transactions and disputes. Obvious examples are patent and copyright matters, which are solely governed by U.S. federal law, but others are taxation, franchising, trademarks, cyber security and data privacy, all of which are governed by a web of federal and state laws. Legal services provided from Maryland to out of state clients have a very positive economic impact on our economy, by bringing funds into the state that then circulate heavily among a variety of its businesses. Imposing a sales tax on out of state clients will discourage them from continuing to utilize the services of Maryland specialists, since they do not have to pay such a tax when using comparable specialists in other states.

2. Many business that operate in Maryland as well as in one or more nearby states are bought and sold each year. For that reason, many legal transaction teams include people providing services from nearby states. Apportioning the percentage of the overall legal service actually provided from Maryland, and then collecting sales taxes on that portion, will be administratively untenable for both lawyer and client.
3. There are several large firms headquartered in Maryland which could easily relocate if there was a tax advantage in doing so. The tax implications of HB 1628 could cause some law firms to move their offices across a state line to gain a competitive advantage.

Taxation Considerations

HB 1628 will result in the pyramiding of taxes. The burden of pyramiding will ultimately be borne by the end user or consumer, who despite the proposed lower sales tax rate, will likely pay more in sales tax than they do currently because the tax paid by one entity will be embedded in its cost of services and passed up the line. The current tax regime reflects the policy that generally taxes should not be pyramided through the existence of a purchase for resale exemption. The pyramiding resulting from this legislation will likely offset the reduction in the sales tax rate and discourage the purchase of services from Maryland-based companies. This result is counter to the State's drive to bring in and promote entities that offer STEM services and is most certainly inconsistent with some of the proposed tax incentives meant to attract these industries.

Contingency Fee Cases - Concerns and Questions

1. Taxing attorneys' services in contingency fee cases (which almost all personal injury cases are) is detrimental to Maryland litigants who will lose a portion of their recovery to taxes. For example, many auto collision cases are handled on a one-third contingency, with litigation costs advanced by the attorney but paid out of the client's share of the recovery upon resolution. The client is also responsible for repayment of medical liens. In a case that settles for \$15,000, the typical lawyers' fee would be \$5,000, and the client would be responsible for reimbursing expenses and the lien out of the remaining \$10,000. In a case with expenses and



- liens of several thousand dollars (a regular occurrence), an additional 5% tax significantly reduces the injured plaintiff's recovery.
2. The only alternative for the above dilemma is for the lawyer to reduce his/her professional fee to provide the injured plaintiff a greater recovery. But the impact of this is that lawyers will be less willing to accept certain cases because they will not be adequately compensated. Injured people who are unable to find a lawyer will be shut out of the court system and denied access to justice.
 3. The bill is also ambiguous. For instance, the bill does not articulate if tax is calculated based on the gross recovery, the client's net recovery, or on the attorney's fee.
 4. Similarly, the proposal provides there is to be no sales tax on medical services, but in most personal injury cases, the services of medical experts are needed to prove the plaintiff's case and those providers charge for their time reviewing records, testifying, and meeting with lawyers. The bill does not specify if those services are taxable. If so, the client would be responsible for a "double tax" by virtue of paying a tax on his lawyers' services and a second tax on expert witness services.
 5. Similarly, in a workers' compensation case, the attorneys' fees are set by statute and paid by the workers' compensation insurer. Does an injured worker who receives an award have to pay the tax, or does the insurer pay it?
 6. In automobile tort cases, the defense is provided by the alleged tortfeasor's insurance company. Is the tax collected from the tortfeasor or the insurer? What if the insurance policy does not address who is responsible for the tax? Also, many auto insurers have "in house counsel" that work directly for the insurer. The bill does not explain how taxes would be paid in that situation.
 7. In a tort case against the State of Maryland, if the Plaintiff wins, he/she would have to remit a portion of his/her award back to the tortfeasor itself, the State of Maryland, in the form of taxes. This is highly unjust, especially given the strict \$400,000 cap on recoverable damages in claims brought against the State.

8. In a divorce case or a consumer protection case, or other such case where attorneys' fees are sometimes shifted to the adverse party, is the sales tax similarly shifted? The bill provides no guidance in this regard and would only serve to create confusion. Similarly, in a case in which attorneys' fees are awarded as a sanction, is the party sanctioned or the party seeking the sanctions responsible for the tax?
9. The bill does not address how are taxes imposed in mass tort cases or class actions that are consolidated in Maryland. Many of those claims are brought on behalf of non-Maryland residents. If there is resolution of those claims, are all claims – including those of non-Maryland residents – taxed, or do only Maryland residents pay tax on their resolved claims?
10. Fee agreements are protected by attorney client privilege and settlement/distribution records are usually protected by confidentiality contracts. Such privileges and confidentiality provisions would be violated if the State requested an audit to determine that the correct amount in tax was collected.
11. The bill does not address whether lawsuits handled by Maryland lawyers in out-of-state jurisdictions are taxed.
12. How are taxes paid by entities that are self-insured/defended, such as Baltimore County or the City of Baltimore, or some other entity that does not incur legal fees? Do they pay tax?

For additional information, contact:

Richard Montgomery

Maryland State Bar Association

Director of Legislative & Governmental Relations

(410) 269-6464

richard@msba.org



MSBA Main Office
520 West Fayette Street
Baltimore, MD 21201
410-685-7878 | msba.org

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200 Duke of Gloucester Street
Annapolis, MD 21401
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To: Members of the House Ways and Means Committee
From: Maryland State Bar Association (MSBA) – Immigration Law Section (Anshu Karki)
Subject: HB1515 – Sales and Use Tax – Rate Reduction and Services
Date: March 7, 2024
Position: **Opposed**

The Maryland State Bar Association (MSBA) Immigration Law Section **opposes House Bill 1515—Sales and Use Tax- Rate Reduction and Services.**

We strongly believe this bill would hinder access to justice for vulnerable communities, undermining the fundamental principle of equal representation under the law. Consumers of legal services who deposit funds into attorney trust (IOLTA) accounts already provide a benefit to the public given that the interest they would have otherwise earned on their money goes to fund legal services for low-income Marylanders. Having to pay a sales tax could lead to the unfair result of them being double taxed.

We believe that expanding sales taxes on legal services, including immigration legal services, would burden an already financially strained sector. Immigration lawyers, often amongst the lowest paid attorneys, already provide extensive pro bono and low bono services. Immigrants, most of whom are fleeing persecution and seeking the protection of the United States typically struggle to make ends meet. They barely have resources to access legal representation. If they were to be taxed additionally, it would make it almost impossible for this vulnerable population to have a fighting chance in this country. Requiring clients to pay sales tax would be a further hindrance in their ability to acquire legal representation and would be against the principles of access to justice.

For these reasons, MSBA’s Immigration Law Section opposes HB 1515 and asks for an Unfavorable Report. If you have questions about the position of the Immigration Section Council, please feel free to address them to Anshu Karki at (202) 713-5659 or anshu@anshukarkilaw.com.



Real Property Section

To: Ways and Means Committee (House)

From: Legislative Committee of the Real Property Section

Date: March 7, 2024 [Hearing Date March 11, 2024]

Subject: **HB 1515 – Sales and Use Tax - Rate Reduction and Services**

Position: **Unfavorable**

The Real Property Section of the Maryland State Bar Association (MSBA) **opposes HB 1515 – Sales and Use Tax - Rate Reduction and Services**. The bill seeks to extend the scope of Maryland’s Sales and Use Tax to apply to many services that have, historically, never been subject to such tax. We join in the opposition filed by the MSBA’s Tax Council and the MSBA.

Maryland already has some of the highest closing costs in the nation. A recent article in the Baltimore Sun, “Transfer taxes in Md. are fifth-highest in U.S., study finds”.

<https://www.baltimoresun.com/2003/01/19/transfer-taxes-in-md-are-fifth-highest-in-us-study-finds/>

Other studies have shown Maryland as the third highest. This is mostly due to Maryland’s Recordation and Transfer tax scheme applicable to real estate transactions. Consumers in Maryland must pay a combination of State Transfer Taxes, County Transfer Taxes and Maryland Recordation Taxes in order to effect and record their purchase or refinance transactions. Adding additional taxes for services provided as part of the closing process would only serve to make it more difficult for first time homebuyers to achieve the American dream. It would also cause existing homeowners to rethink plans to move which in turn affects the supply of housing which in turn leads to higher prices for those that are for sale.

Real estate sales, financing, title insurance, abstracting, surveying, and settlements, are service industries. Enacting HB 1515 will apply the tax to virtually every step taken in the overall home sale and financing process: the title searcher’s service in preparing a title abstract, the title insurer’s services provided to its agents; the closing services provided by the title agents; the recording services to have documents placed on record; the surveyor who prepares a location drawing for the buyer. If buyer or seller elect to be represented by counsel, attorneys’ services would also be taxed. Each of these will not only directly impact consumers through the tax, itself, but the administrative costs of collecting and remitting the tax will add yet another layer

of costs, ultimately passed onto the consumer. Every dollar of additional tax or fee on the purchase of real estate makes home buying that much more difficult for the average Maryland Resident.

The changes proposed warrant further study due to their potential social, economic and regulatory impact. In the past, this body has established commissions to study issues far less sweeping and life changing than the measures proposed under this bill. For these reasons we oppose HB1515 and request that you issue an **unfavorable** report.

For these reasons, the Real Property Section Counsel of the MSBA **opposes** House Bill 1515 – Sales and Use Tax - Rate Reduction and Services and asks for an **unfavorable report**. Thank you for your consideration.