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March 10, 2025

Chair Guy Guzzone
Senate Budget and Taxation Committee
Miller Senate Office Building, 3 West
11 Bladen Street
Annapolis, Maryland 21401

Re: SB 1045 – Sales and Use Tax – Taxable Business Services -
Alterations

Chair Guzzone, Vice-Chair Rosapepe, and members of the Committee:

I am writing to urge your support for an amendment to the above bill (the “Taxable Business Services Bill”) currently under consideration by the legislature. The purpose of the proposed amendment is to exclude from taxation certain business services sold by a business entity to an affiliated/related business entity that cannot deduct expenses under Section 280E of the Internal Revenue Code. The reasons for this request are set forth below.

In 2015, I formed SunMed Growers, LLC (“SunMed”) and applied for a medical cannabis grower license. SunMed received one of the 15 grower licenses originally awarded by the MMCC. Although medical (and, later, adult-use) cannabis was made legal in Maryland, it remains illegal under federal law. As a result of federal illegality, most banks and financial institutions will not accept cannabis deposits, or provide banking services for cannabis businesses, or accept monies where the source of such funds come from cannabis businesses.

The banking limitations surrounding funds from cannabis businesses posed very practical problems for me and my employees. How would I pay my employees if banks won’t open a payroll account for me to pay my employees? How would my employees be able to cash their checks if their bank won’t accept paychecks drawn on a cannabis company? How would my employees be able to pay rent, obtain loans and pay ordinary expenses if their source of income comes from a cannabis company?



To solve this problem, I created a separate management company (“MGT”). All workers at SunMed are employed by MGT, MGT runs payroll for SunMed, and all SunMed workers payroll checks are drawn on accounts of MGT (not SunMed). MGT is solely a management/payroll company – it does not actively engage in cannabis cultivation, processing or sales. For each payroll period, SunMed transfers funds to MGT for MGT to issue payroll checks for the SunMed workers. It is important to recognize that MGT was formed solely as a solution to the cannabis banking problem, so that SunMed could pay its workers, and so that SunMed workers could deposit their paychecks, pay rent, obtain loans and otherwise engage in ordinary economic activity without the taint of funds coming from cannabis activity. It is my understanding that this solution – having a separate company for handling payroll/employment – has become common in the cannabis industry to resolve the banking limitations that impact cannabis businesses.

Under the proposed Taxable Business Services Bill, I am concerned that the payments by SunMed to MGT to fund worker payroll could become subject to taxation. Although the term “business entity” is not defined, both SunMed and MGT would likely be deemed a “business entity”. Although it is not clear, the payroll/employment services that MGT provides to SunMed could arguably fall within the meaning of a “taxable service”. If my reading is correct and the transfer of funds for payroll from SunMed to MGT is subject to taxation, this would add an additional 2.5% to our payroll expense. I cannot believe that this result is intended by the legislature. It is my understanding that the legislative intent is to tax certain business services provided between unrelated third-party businesses, not to create an additional tax upon the payroll of cannabis companies who might have created separate companies solely to solve a federal banking problem.

I would urge that the legislature amend the Taxable Business Services Bill to make clear that the sales tax does not apply to the circumstance described above. I believe that this issue and need for amendment arises solely in the cannabis business arena (due to federal banking issues) and is not a specific concern of a wider spectrum of businesses. I believe that the amendment can be narrowly tailored and not have a significant economic impact on revenues from the broader business services community. A draft of a proposed amendment to address my concern is attached.

I recognize the significant revenue and budget issues that Maryland is facing. I also recognize that the legislature and citizens of Maryland have overwhelmingly supported the development of adult-use cannabis in the State. I do not believe that the legislature or its citizenry would intend to impose a services tax on a cannabis business related company transaction, where the transaction (payroll funds from SMG to MGT) is created solely to solve a problem arising from a federal illegality of state-legal cannabis. Indeed, the legislature specifically eliminated the disability of 280E for Maryland-filed tax returns.



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Thank you for your consideration and I look forward to discussing any questions or issues that you might have.

Sincerely,
SunMed Growers, LLC

by: /s/ Jacob J. Van Wingerden
Jacob J. Van Wingerden
Manager



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BY:
(To be offered in the Budget and Taxation Committee)

AMENDMENT TO SENATE BILL 1045
(First Reading File Bill)

AMENDMENT NO. 1

On page XX, after line XX, insert:

BY adding to
Article – Tax – General
Section 11-219(e)
Annotated Code of Maryland
(2022 Replacement Volume and 2024 Supplement)

AMENDMENT NO. 2

Article – Tax General

11-219.

(E) THE SALES AND USE TAX DOES NOT APPLY TO THE SALE OF A TAXABLE SERVICE UNDER SECTION 11-101(M)(14) IF THE BUYER IS:

(1) A BUSINESS ENTITY THAT CANNOT DEDUCT ITS EXPENSES UNDER SECTION 280(E) OF THE INTERNAL REVENUE CODE; OR

(2) AN AFFILIATED BUSINESS ENTITY SHARING COMMON OWNERSHIP WITH A BUSINESS ENTITY UNDER PARAGRAPH (1) OF THIS SUBSECTION.