

March 2, 2020

TO: The Honorable Anne R. Kaiser, Chair
Members, House Ways and Means Committee
The Honorable Eric G. Luedtke

DATE: March 2, 2020

RE: House Bill 1628 – *Sales and Use Tax – Rate Reduction and Services*
Clarifications Regarding Potential Applicability to Senior Living

Brightview Senior Living is headquartered in Baltimore City, and we have over 4,400 employees. We develop, own and manage senior living communities along the East Coast, including 16 in Maryland. Our communities are of two types: (1) communities that provide assisted living and dementia care (“AL/ALZ”) and (2) communities that provide a continuum of options within a single building including independent living, assisted living and dementia care (“Continuums”).

House Bill 1628 is intended to provide funding for Kirwan other significant initiatives. We fully support Kirwan, and you might be aware that our Chairman Arnie Richman and CEO Marilyn Duker were among a group of local business leaders who joined Strong Schools in signing a letter of support published in the Sun and a smaller group of business leaders who signed a recent Commentary piece published in Maryland Matters to counter a statement from the Maryland Chamber.

We are not commenting on the whether or not there should be a change in sales tax generally. However, we do have concerns regarding the potential applicability to Continuums such as those we provide.

There is an exemption in the proposed bill for “health care or social assistance services” by reference to NAICS Sector 62. Sector 62 has specific subsectors for “Continuing Care Retirement Communities” and “Assisted Living Facilities”. The definitions are broad and are not expressly limited to communities licensed under those specific licenses and contemplate a wide range of senior living. In fact, we do report our AL/ALZ and Continuum communities under Sector 62 for income tax purposes.

However, “Continuums” like ours are a relatively new product. We cannot be certain how the State will implement this bill if passed, and we are concerned that there might be a conclusion that the exemption is only for licensed CCRC’s or Assisted Living (even though Sector 62 is substantially broader). If the State took that position, it would be fundamentally unfair. In our Continuums and in CCRC’s, there are residents who live in an independent living (as opposed to

AL/ALZ/Nursing) portions of the community. The only practical differences between our Continuums and a CCRC are (1) CCRC's require an up-front entry fee and monthly service fee but our Continuums only require a monthly rental fee; (2) CCRC's have a nursing component but our Continuums do not; and (3) CCRC's are licensed but only the AL & ALZ portions of our Continuums require a license. We do not understand any reason why these differences should result in differing impact on the residents in terms of paying sales tax. If sales taxes were required in our Continuums but not a CCRC, that would give CCRC's an inherent competitive and pricing advantage for providing the exact same services to the residents living in IL.

Additionally, if sales tax would apply to our Continuums, it is unclear how that would work. We we operate the buildings as a single enterprise and do not have separate cost accounting between the types of units and residents pay a single monthly fee that covers all services on a bundled basis and we do not track or break out the cost of various services. It is not clear how the State could implement a tax on a portion of otherwise bundled services in a consistent and fair manner.

Conclusion:

It seems like the bill's intention is to exempt senior living communities that provide services from the sales tax. If so, this should be clarified. If for some reason it is not clear that a building like one of our Continuums is included in the exemption, then it should be made clear so that there is not a fundamentally unfair disparate treatment of virtually identical types of communities (CCRC v. Continuum). Finally, if the State does intend to tax services in independent living portions of communities with a continuum of care, there would need to be very clear regulations as to how you tax services that are included in a bundled package within a broader facility. At a minimum, we would suggest that this last point would require significant study that should be considered before incorporating into the bill or regulations.

For more information call:

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