



520 W Fayette St., Baltimore, MD 21201
1-800-492-1964

To: Members of The House Ways and Means Committee
From: Glen Frost, Tax Council Chair-Elect
Date: February 27, 2020
Subject: **HB1628** – Sales and Use Tax -Rate Reduction and Services
Position: **Oppose**

The Maryland State Bar Association (MSBA) Tax Council opposes **HB1628 – Sales and Use Tax – Rate Reduction and Services**.

This bill is not simply an expansion of the tax base. It proposes a fundamental shift in taxation that is almost a complete reversal from the current, well-honed regime. The changes proposed warrant further study due to their potential social, economic and administrative consequences. In the past, this body has established commissions to study issues of far less range and consequence than the measures proposed under this bill.

The current tax regime generally taxes the purchase of tangible personal property and a handful of very specific services. This legislation flips the current regime on its head and taxes all transactions subject to very few exemptions. The council cautions the legislators to consider the fact that legislators have contemplated and debated the expansion of taxation to services over multiple sessions. Understanding the consequences of enacting a broad expansion to all services, legislators have carefully considered and identified those services that it deemed luxurious, and thus, appropriate to tax. The current regime is the result of many years of well-reasoned, educated debates that considered many issues, including but not limited to, the repeal of Maryland legislation that imposed a tax on computer services, situs, regressivity, and pyramiding.

In 2007, the Maryland legislature imposed a sales tax on computer services, effective on July 1, 2008. The tax applied to web design, facilities management, custom computer programming, data center support, systems integration, installation, and maintenance, but not internet access, computer training, and data entry. Prior to the imposition of this tax, other states, such as Pennsylvania and Florida had already repealed their version of this tax due to difficulties in implementation. Not only were there issues such as situs, but questions as to whether a service was one of the services identified as taxable, and when it morphed into or ceased being that taxable service. More obvious issues included the identification of where the service was rendered, the situs of the sale or its delivery, and the handling of transactions between affiliates. A tremendous backlash ensued from the tech community and many businesses expressed an intent



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to move over state lines to remain competitive. In light of these occurrences, the tax was repealed before it became effective.

HB1628 is administratively burdensome. It is burdensome for all parties in the transaction and those with the responsibility for interpreting and enforcing the law. This bill is particularly burdensome for companies with locations in multiple states, and even for companies that have employees and contractors out of state. For example, when an accountant based in Maryland provides a telephone consultation to a client in Texas, does that constitute a transaction subject to sales tax in Maryland? If so, it will surely have the unanticipated consequence of chilling service transactions between Maryland businesses and its out-of-state clients. When the facts are reversed and the accountant in Texas provides a telephone consultation to a Maryland resident who takes the call in DC, is that transaction a sale taxable in Maryland? The burden on entities to keep records for the purposes of complying with this law would be onerous. How can a large multi-state company keep track of the location from where each of its calls or email consultations originated and the location of the recipient of the service in each transaction?

Although sales taxes generally are intrinsically regressive, taxes on vital services disproportionately effect low-income taxpayers. This is especially true with respect to legal services. Many Maryland constituents are members of low-income households but are not eligible to benefit from pro bono legal services because the threshold for eligibility is too low, or, there simply isn't 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.

HB1628 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.

If you have questions about the position of the Tax Council Legislative Committee, please feel free to address them to Glen Frost at (410) 497-5947 or glen.frost@frosttaxlaw.com.

Should you have other questions, please contact The MSBA's Legislative Office at (410) 269-6464 / (410)-685-7878 ex.t: 3066 or at Richard@MSBA.org and Parker@MSBA.org