

SB 723_MDCC_Sales and Use Tax-Digital Product-Defi

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Position: FAV



MARYLAND
Chamber of Commerce

LEGISLATIVE POSITION:

Favorable

Senate Bill 723

Sales and Use Tax – Digital Product - Definition

Senate Budget & Taxation Committee

Wednesday, March 9, 2022

Dear Chairman Guzzone and Members of the Committee:

Founded in 1968, the Maryland Chamber of Commerce is the leading voice for business in Maryland. We are a statewide coalition of more than 5,500 members and federated partners working to develop and promote strong public policy that ensures sustained economic health and growth for Maryland businesses, employees, and families.

SB 723 alters the definition of digital product to exclude certain products such as software, software as a service, or a product where the purchaser holds a copyright for that produce or some other intellectual property interest. SB 723 is in response to the 'digital products tax' passed in 2020 and is intended to increase clarity and help with compliance. SB 723 seeks to reduce unintended taxation while maintaining the legislative intent of the original policy passed in 2020 by making clear that certain business purchases, which were not intended to be subject to sales and use tax, will remain non-taxable.

SB 723 is the product of a year-long work group representing many different industry sectors of Maryland's business community. The work group was formed in response to the 2020 law to find ways of seeking clarity and guidance, much of which was addressed in SB 723 of 2021. SB 723 is a consensus solution, while remaining revenue neutral, to the final outstanding clarity issues in the original legislative text.

The legislation before you is a **Maryland Chamber of Commerce priority for the 2022 legislative session**, therefore, we respectfully requests a **favorable report** on **SB 723**.

MDCHAMBER.ORG

60 West Street, Suite 100, Annapolis 21401 | 410-269-0642

SB 723 & HB 791 Sales and Use Tax – Digital Produc

Uploaded by: Christopher Costello

Position: FAV

March 9, 2022

Honorable Guy Guzzone
Chair, Senate Budget & Tax Committee
3 West, Miller Senate Office Bldg.
Annapolis, Maryland 21401
Guy.Guzzone@Senate.State.MD.US

Honorable Vanessa Atterbeary
Chair, Ways & Means Committee
Room 131 House Office Building
Annapolis, Maryland 21401
Vanessa.Atterbeary@House.State.MD.US

Re: **SB 723 & HB 791** Sales and Use Tax – Digital Product – Definition
Position: **SUPPORT**

Dear Committee Chairs Guzzone and Atterbeary:

The members of the American Council of Engineering Companies/MD (ACEC/MD), want to thank the sponsors and express their support for SB 723 and HB 791 Sales and Use Tax – Digital Product – Definition.

The American Council of Engineering Companies/MD (ACEC/MD) consists of 90 multi-sized consulting engineering firms located throughout the state serving both the public and private sectors. Many of our firms are engaged in the design of our public water and wastewater systems, bridges, highways, building structures and environmental projects. 45% of ACEC/MD's members are certified small, minority or women-owned businesses. Member firms employ approximately 7,000 employees statewide.

All ACEC/MD member companies provide professional services using complex software (digital) products. Each year, these companies incur significant costs to acquire, maintain and update these software products so they can provide the highest quality service to their clients which include various state and municipal governmental agencies. The cost of acquiring and updating these software products can be among the highest costs incurred by these engineering companies. These sales taxes that ACEC/MD companies would pay on digital products would be passed on to commercial and government consumers. Additionally, these sales taxes would raise prices paid by state and municipal agencies from higher overhead cost rates which are used to determine costs incurred on contracts, since these costs would be included in the overhead rate.

This legislation is also not without precedent. It would treat the exclusion of the digital products used by design professionals and others from the Maryland Sales and Use Tax in similar manner to the way it excludes a digital product in § 11-210. Machinery and equipment (b) (1):

*“(b) **Production generally.** -- The sales and use tax does not apply to a sale of:*

(1) tangible personal property, a digital code, or a digital product used directly and predominantly in a production activity at any stage of operation on the production activity site from the handling of raw material or components to the movement of the finished product, if the tangible personal property, digital code, or digital product is not installed so that it becomes real property;”

For these reasons, members of ACEC.MD request a favorable vote on SB 723 and HB 791.

Christopher B Costello
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SB0723_2022_Marriott_FAV.pdf

Uploaded by: Marta Harting

Position: FAV

**SENATE BILL 723:
SALES AND USE TAX- DIGITAL PRODUCT DEFINITION
BUDGET AND TAXATION COMMITTEE**

STATEMENT OF SUPPORT

March 9, 2022

Marriott International, Inc. is a global lodging leader headquartered in Bethesda, Maryland. Since its founding in the 1920s as a small restaurant chain in Washington, DC, the company has grown to comprise more than 8,000 lodging properties in 139 countries and territories, including 98 hotels in Maryland.

Marriott wishes to express strong support for Senate Bill 723, as it would provide much needed clarity to the state's sales and use tax law as it relates to certain digital inputs and commercial transactions involving enterprise software and software services.

Several years ago, the Maryland General Assembly enacted legislation which subjected the purchase of certain digital products to the state sales tax. In passing this measure, the legislature clearly indicated that the intent of the bill was to ensure that certain products, which had long been subject to sales tax when purchased by end user consumers in tangible form, would also be taxable when purchased in a digital format. This included downloadable versions of books, magazines, newspapers, movies, and music. Alternatively, we know the measure did not intend to suddenly impact commercial transactions involving enterprise level software or digital inputs, as described in SB723.

As a global company supporting hotel operations around the world, the backbone of our enterprise software capabilities is based right here in Maryland. Over the past two years, Marriott has experienced significant challenges and compliance burdens involving enterprise software providers and vendors whose services are critical to helping us operate an international network of hotels. Those challenges have stemmed from confusing and conflicting interpretations of the law as currently written, which fortunately can be alleviated by the clarifications offered in SB723.

The clarity provided by SB723 will better align statutory language with clear legislative intent. As a result, businesses across Maryland will benefit substantially by being relieved of any ongoing complications attributable to clear misunderstandings of state tax law.

Therefore, we respectfully urge the committee for a Favorable Report on SB723.

Thank you for your consideration.

Contact:
Travis Cutler
Senior Director, State Government Affairs

SB723 digital products- MACPA Written Testimony -

Uploaded by: MB Halpern

Position: FAV



March 9, 2022

The Honorable Guy Guzzone, Chair
Budget and Taxation Committee
Senate Office Building
Annapolis, MD 21401

Re: SB 723, “Sales and Use Tax – Digital Product – Definition”
Favorable

Dear Chairman Guzzone and Members of the Committee,

The Maryland Association of Certified Public Accountants (MACPA), founded in 1901, has nearly 9,000 members who work in public accounting, industry, government and education. Our members serve thousands of individual and business clients throughout the state.

The MACPA and our members wholeheartedly support SB 723. The Bill provides needed and helpful clarifications to the definition of “digital product” for determining what items are subject to Maryland’s sales tax, or not.

Members of the MACPA were part of a group of approximately three dozen tax professionals -- business tax directors, tax attorneys and CPAs -- who worked together on sharing information as we all attempted to implement Maryland’s new sales tax on digital products that was enacted in the 2021 General Assembly session. Our group also shared information and suggestions for topics to be addressed by the Comptroller’s Office in their Tax Tip #29 for providing guidance to the public on the new provisions of Maryland tax law.

SB 723 adds clarifying language for two categories of items that were intended by the Legislature to not be subject to sales tax, and yet have resulted in many questions and much controversy in the law’s application as discussed in the aforementioned group over the last year. The Bill picks up where amendments in 2021 left off by clearly specifying that the two items are outside of the definition of taxable digital products: 1) enterprise software used by a business or other organization, and 2) marketing and other commercial materials that are developed for the purchaser to own (through copyright, etc.) and use solely.

The Bill should be scored as “revenue neutral,” and the Fiscal Note says as much. The Bill does not result in a tax decrease or a tax increase but rather simply provides clarification of the Legislature’s intentions evidenced in the proceedings for last year’s Bills.

Enterprise software is software that is used to satisfy the needs of an entire organization rather than individual users; they are software programs that collectively form the computer-based

information system that serves the organization as a whole (businesses, schools, governments, etc.), and as such the enterprise software must be installed and used in such a way as to work with all of the components of the organization's information system. This is what differentiates it from the downloaded software that is the equivalent of what a user would formerly have purchased on a disc for installation on his/her computer from the disc. The current statute wording such as "requiring significant creative input to customize, configure, or modify the procedures and programs" has created much conflict through differing interpretations, resulting in compliance burdens for the sellers and purchasers trying to come to agreement on what is taxable. Enterprise software was intended not to be subject to tax, per the record for last year's enacted legislation; however, because the phrase is not included in the statutory language, SB 723 clarifies that intent by adding the phraseology. The downloaded software that is the equivalent of the prior tangible disc version and is not enterprise software remains subject to the sales tax, the same as the tangible disc would have been taxed when purchased.

Digital products used solely for commercial purposes including advertising or other marketing activities are also addressed in SB 723 as being outside the definition of taxable products. These are digital items that a commercial entity has commissioned to be created for use in their own, or their related entities', commercial activities such as advertising, marketing, and e-commerce, and that the entity ends up owning a property interest in the digital product (through copyright, etc.). The digital products are not sold to the general public or end users. They are therefore distinguishable from digital stock photos, digital videos, digital music, and other publicly available digital products that are sold to end users, whether purchased by businesses or individuals; these digital items remain subject to the sales tax.

The passage of SB 723 will provide much clarity for the sellers and purchasers of these items, as well, we believe, for the Comptroller's Office, in administration of the sales tax on digital products. The clarity will prevent more of the additional time and stress that has been expended in discussing various parties' differing interpretations of the law's provisions, which to CPAs is a very good thing.

We appreciate your consideration and request a favorable report for SB 723.

Should you have any questions, please contact Mary Beth Halpern at the MACPA at marybeth@macpa.org or 443-632-2330.

Sincerely,

MACPA State Tax Committee

cc: Nick Manis, Manis Canning & Associates

SB0723_FAV_MTC_Sales and Use Tax - Digital Product

Uploaded by: Pam Kasemeyer

Position: FAV



MARYLAND TECH COUNCIL

TO: The Honorable Guy Guzzone, Chair
Members, Senate Budget and Taxation Committee
The Honorable Nancy J. King

FROM: Pamela Metz Kasemeyer
J. Steven Wise
Danna L. Kauffman
Christine K. Krone

DATE: March 9, 2022

RE: **SUPPORT** – Senate Bill 723 – *Sales and Use Tax – Digital Product – Definition*

The Maryland Tech Council (MTC) is a collaborative community, actively engaged in building stronger life science and technology companies by supporting the efforts of our individual members who are saving and improving lives through innovation. We support our member companies who are driving innovation through advocacy, education, workforce development, cost savings programs, and connecting entrepreneurial minds. The valuable resources we provide to our members help them reach their full potential making Maryland a global leader in the life sciences and technology industries. On behalf of MTC, we submit this letter of **support** for Senate Bill 723.

Senate Bill 723 provides exemptions from the definition of a taxable “digital product” the purchase of certain software and digital products which are business to business transactions for purposes of Maryland’s sales and use tax. The intent of imposing sales and use tax on “digital products” should be to only impose tax on purchases made by end customers and not on business inputs. These exemptions will eliminate a tax on businesses that was not intended and create more consistency across Maryland’s sales and use tax as a whole. For example, manufacturers are not required to pay sales or use tax on purchases of items that become a component part of their manufactured products or on equipment that is used directly in the manufacturing process. Senate Bill 723 would create an analogous exemption, whereby the purchase of a digital product that will be used by a business in creating their products or services will not be subject to Maryland sales or use tax. Thus, this legislation will help improve Maryland’s economic development climate, and at the same time maintain the taxability of consumer purchases of digital products. A favorable report is requested.

For more information call:

Pamela Metz Kasemeyer
J. Steven Wise
Danna L. Kauffman
Christine K. Krone
410-244-7000

SB723 King Sponsor Testimony.pdf

Uploaded by: Senator Nancy King

Position: FAV

NANCY J. KING
Legislative District 39
Montgomery County

MAJORITY LEADER

Budget and Taxation Committee

Chair
Education, Business and
Administration Subcommittee



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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

SPONSOR STATEMENT

Senate Bill 723 – Sales and Use Tax – Digital Products - Definitions

March 8, 2022

Mister Chairman and Members of the Budget and Taxation Committee:

In 2020 the General Assembly passed House Bill 932 – The 21st Century Economic Fairness Act. The passage of this legislation addressed the issue of taxation of digital products and updated our sales tax to reflect the buying habits of today's economy.

The intent of that legislation was to apply a sales and use tax to products that were previously taxed when physically bought and sold. Interpretation of the legislation strayed somewhat from the intent of the legislation and some products that were not previously taxed were ultimately taxed. Some corrective language was passed in the 2021 Legislative Session to address this, but there are still some technical corrections needed.

Senate Bill 723 seeks to further clarify that purchases of computer software, software as a service, (SaaS), and other similar service models used in an enterprise computer system, where the software is purchased exclusively for commercial services, remain non-taxable. Senate Bill 723 will also clarify that purchases of self-created digital products used in advertising or marketing, where the advertiser holds a copyright or other intellectual property interest, remain non-taxable. Together, these two provisions reduce the tax burden that was unintentionally created through 2020's House Bill 932.

This legislation provides technical corrections and supports the intent of The 21st Century Economic Fairness Act, and so I respectfully request a favorable report on Senate Bill 723.