

HB791 Sponsor Testimony .pdf

Uploaded by: Eric Luedtke

Position: FAV

ERIC LUEDTKE
Legislative District 14
Montgomery County

MAJORITY LEADER

Ways and Means Committee
Chair, Revenues Subcommittee



The Maryland House of Delegates
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THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

SPONSOR TESTIMONY

House Bill 791 - Sales and Use Tax – Digital Product – Definition

Chair Atterbeary, Vice Chair Washington, Members of the Ways and Means Committee,

In 2020, the General Assembly addressed the issue of taxation of digital products by passing House Bill 932. The passage of this legislation updated our sales tax to accommodate the buying habits of the 21st century.

The intention of House Bill 932 was to tax products which the sales and use tax previously applied to when physically bought and sold. But since this update was a novel measure, some products that were not previously taxed ultimately found the sales and use tax applying to them. Some corrective language was passed during the 2021 Legislative Session to address this and House Bill 791 seeks to make further technical corrections.

This legislation seeks to 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. House Bill 791 is also intended to 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 reduce tax compliance burdens that were unintentionally created through House Bill 932.

The language of this legislation was crafted by a group of experts and stakeholders during the interim. This bill is a technical correction and seeks to support the original intent of House Bill 932. For these reasons, I thank the Committee for your consideration and ask for a favorable report.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Luedtke".

Delegate Eric Luedtke.

HB 791_MDCC_Sales and Use Tax-Digital Product-Defi

Uploaded by: Maddy Voytek

Position: FAV



MARYLAND
Chamber of Commerce

LEGISLATIVE POSITION:

Favorable

House Bill 791

Sales and Use Tax – Digital Product - Definition

House Ways and Means Committee

Wednesday, February 23, 2022

Dear Chairwoman Atterbeary 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.

HB 791 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. HB 791 is in response to the ‘digital products tax’ passed in 2020 and is intended to increase clarity and help with compliance. HB 791 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.

HB 791 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 787 of 2021. HB 791 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 **HB 791**.

MDCHAMBER.ORG

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

HB0791_2022_Marriott_FAV.pdf

Uploaded by: Marta Harting

Position: FAV

**HOUSE BILL 791:
SALES AND USE TAX-DIGITAL PRODUCT DEFINITION
WAYS AND MEANS COMMITTEE**

STATEMENT OF SUPPORT

February 23, 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 House Bill 791, 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 HB791.

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 HB791.

The clarity provided by HB791 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 HB791.

Thank you for your consideration.

Contact:
Travis Cutler
Senior Director, State Government Affairs

HB791 digital products definition- MACPA Written T

Uploaded by: MB Halpern

Position: FAV



Feb. 23, 2022

The Honorable Vanessa E. Atterbeary, Chair
Ways and Means Committee
House Office Building
Annapolis, Md. 21401

Re: HB 791, “Sales and Use Tax – Digital Product – Definition”
Favorable

Dear Chairman Atterbeary 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 HB 791. 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.

HB 791 addresses two categories of items that have resulted in many questions and much controversy in the law’s application as discussed in the aforementioned group, by clarifying that the two items are outside of the definition of taxable digital products. The Bill picks up where amendments in 2021 left off by adding clarifying language for the two items: 1) enterprise software used by a business or other organization, and 2) self-created marketing materials.

The Bill should be scored as “revenue neutral” because its provisions are simply clarifications of the definitions of items that the legislature intended are not subject to sales tax, as 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, HB791 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 HB791 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 HB791 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 HB791.

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

HB791

Uploaded by: Pam Kasemeyer

Position: FAV



MARYLAND TECH COUNCIL

TO: The Honorable Vanessa E. Atterbeary, Chair
Members, House Ways and Means Committee
The Honorable Eric G. Luedtke

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

DATE: February 23, 2022

RE: **SUPPORT** – House Bill 791 – *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 House Bill 791.

House Bill 791 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. House Bill 791 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

Choice Hotels HB0791 digital sales and use tax 02.

Uploaded by: Rolf Lundberg

Position: FAV



February 18, 2022

Del. Vanessa E. Atterbeary
Chair
Committee on Ways & Means
Room 131
House Office Building
Annapolis MD 21401

Dear Chair Atterbeary:

Choice Hotels International, Inc. submits this statement in support of HB0791, introduced by Del. Eric G. Luedtke, a bill relating to the definition of “digital products” for purposes of the application of the sales and use tax.

Choice Hotels believes that the clarifications set forth in HB0791 will facilitate tax compliance and will ease the administrative burden of compliance with the new digital sales tax requirements. For these reasons, Choice Hotels supports the passage and enactment of the bill.

Thank you for the opportunity to submit this statement for consideration by the Committee.

Sincerely,

Rolf T. Lundberg, Jr.
Vice President & Assistant General Counsel
Choice Hotels Int’l, Inc.
One Choice Hotels Circle
Rockville MD 20850

Michael T. Raymond
Vice President & Head of Tax
Choice Hotels Int’l, Inc
One Choice Hotels Circle
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