COST
COUNCIL ON STATE TAXATION

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Via MyMGA

Senator Guy Guzzone, Chair
Senator Jim Rosapepe, Vice Chair
Senate Budget and Taxation Committee
Maryland General Assembly

Re: Opposition to SB 904 Data Broker Gross Income Tax

Dear Chair Guzzone, Vice Chair Rosapepe, and members of the Senate Budget and Taxation Committee:

On behalf of the Council On State Taxation (COST), I respectfully submit this testimony opposing the creation of a data broker registry and the imposition of a data broker gross income tax. Rather than fostering a positive environment for businesses to operate in Maryland, this proposed legislation would discourage businesses from seeking to maintain or expand their operations in the State. The regulatory and tax aspects of this proposal violate several principles of sound tax policy – including transparency, fairness, economic neutrality, and competitiveness

About COST

COST is a nonprofit trade association based in Washington, DC. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce and today has an independent membership of approximately 500 major corporations engaged in interstate and international business, many of which have operations in Maryland. COST's objective is to preserve and promote equitable and nondiscriminatory state and local taxation of multistate business entities.

COST Opposes Taxes on Business Inputs

The COST Board of Directors has adopted formal policy statements opposing both gross receipts taxes and other taxes on business inputs.[1] While the position on business inputs primarily concerns states' sales taxes, the same logic also applies to a gross receipts tax on data brokering. The relevant provisions of these policy positions are as follows:

[1] Business inputs constitute intermediate, not final, goods and services because companies either resell these goods and services or use the materials, products, machinery, and services to market or produce other goods or services that subsequently are sold to the final consumer.

> *Gross receipts taxes are widely acknowledged to violate the tax policy principles of transparency, fairness, economic neutrality and competitiveness; generally, such taxes should not be imposed on business.*[2]
>
> *Imposing sales taxes on business inputs violates several tax policy principles and causes significant economic distortions. Taxing business inputs raises production costs and places businesses within a State at a competitive disadvantage to businesses not burdened by such taxes. Taxes on business inputs, including taxes on services purchased by businesses, must be avoided.*[3]

The proposed tax in SB 904 is a direct tax on business inputs that violates important tax policy principles, including transparency, fairness, economic neutrality, and competitiveness. Imposing this type of tax on business inputs causes lack of transparency resulting from pyramiding. Pyramiding occurs when a tax is imposed on multiple intermediate levels, such that the effective (hidden) tax rate on final consumption exceeds the statutory sales tax rate. As a result, companies must either pass these cost increases to consumers or reduce their economic activity in the State to remain competitive with other producers not subject to the same compliance and economic burdens. For example, the tax on data brokering will only increase the cost of products sold in the State, many of which are already subject to the State's sales tax. Besides higher prices, some of the cost is inevitably shifted to labor through lower wages and employment. This proposed legislation could also inadvertently seriously impact businesses that collect a wealth of information needed for their business operations, such as the insurance industry and others.

The Proposed Data Broker Tax Is a Double Tax on Affected Businesses

In Maryland, the business activity of "data brokers" that do business in the State is already subject to the corporate income tax and there is no rational basis for imposing an additional tax on the same business activity. Maryland follows an "economic nexus" approach for its corporate income tax effectively giving the State expansive jurisdiction to impose the corporate income tax without requiring a physical presence in the State. As a result, the same businesses subject to this proposed gross receipts tax are already subject to the State's corporate income tax. Maryland also imposes a market-based sourcing regime for receipts from services and apportions such receipts using a single-sales factor apportionment formula. Market-based sourcing with a single-sales factor apportions income from services based on where the customer receives the benefits from the service rather than the location of the taxpayer. As a result, Maryland's corporate income tax regime sufficiently taxes the same activities that would be subject to this proposed data broker gross income tax.

Administratively Burdensome for Affected Businesses and the State

The COST Board of Directors has adopted a formal policy statement urging states to impose fair, efficient, and customer-focused tax administration:

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[2] See https://www.cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-policy-positions/sales-taxation-of-business-inputs.pdf.

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> *Fair, efficient and customer-focused tax administration is critical to the effectiveness of our voluntary system of tax compliance. A burdensome, unfair, or otherwise biased administrative system negatively impacts tax compliance and hinders economic competitiveness.*[4]

The proposed new and unique data broker gross income tax violates this policy position because it is a burdensome tax that will require most taxpayers to initiate extensive system changes to collect and remit this proposed tax. Businesses already have privacy policies, and this legislation would punitively require many businesses conducting business in the State to register as data brokers and remit this tax even if that business has nominal receipts from data brokering. Accurate sourcing will be problematic for business to administer, especially with the increased use of VPNs. This legislation is extremely likely to lead to expensive and protracted litigation.

Conclusion

For the foregoing reasons, COST strongly urges members of the Committee to reject the creation of a data broker registry and the imposition of a data broker gross income tax.

Respectfully,

Leonore Heavey

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CC: COST Board of Directors
Patrick J. Reynolds, President and Executive Director

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[4] See https://www.cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-policy-positions/sales-taxation-of-business-inputs.pdf.