

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.

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