Exhibit Q

MBA Position Statement

MISSISSIPPI BANKERS ASSOCIATION

August 22, 2022

As one of the five legislatively appointed members of the Software Tax Legislative Study Committee ("Committee"), the Mississippi Bankers Association ("MBA") welcomes the opportunity to submit its formal summary of our positions on the issues presented before the study committee.

As the only trade group representing the commercial banking industry in Mississippi, the MBA has served as the voice of Mississippi's banking industry for over 130 years. Today, our membership includes more than 80 financial institutions, including sixty-seven members chartered in Mississippi. The vast majority of our members are small, local, community bankers, as all but four of the banks chartered in Mississippi have assets of less than $10 billion. Collectively, MBA member-banks facilitate thousands of business and consumer transactions daily, and member banks currently hold more than $71 billion in combined Mississippi deposits. MBA members are deeply intertwined in communities all over the state and work daily to help move local economies forward.

We hope this letter will assist the study committee in making the Legislature fully aware of many of the challenges the banking industry believe a proposal to begin taxing previously exempt software and cloud-computing services could cause Mississippi banks as they seek to fulfill their mission of supporting economic growth. Importantly, every bank in our state, even those that do not provide branches or hold deposits out of state, could be impacted by recent proposals to tax these cloud-computing services, ultimately impacting Mississippi businesses and customers across the state.

I. Introduction

The MBA was appointed to this legislative study committee to provide the insight and feedback of Mississippi's banking industry. However, we would like to begin by acknowledging the positions discussed in this letter have not yet been formally adopted by the MBA Board of Directors. Therefore, while we provide these suggestions to this study committee in the interest of representing Mississippi's banking industry and helping this committee fulfill its legislative mission, we would like to acknowledge that the MBA cannot commit to a position on any bill until formal positions are adopted by our Board on any such bill.

The MBA appreciates the opportunity to continue contributing to this important conversation that began with a public hearing in November 2021 to discuss DOR's proposed amendments to its regulations on Computer Equipment, Software, and Services (the "Proposed Amendments"), where the MBA joined multiple Mississippi trade associations expressing concerns as to the potential scope and application of the proposed amendments to historic Mississippi tax policy.[1] Then, as now, the MBA believes that any such proposed changes will be best addressed by the Mississippi Legislature after broad public input and debate, rather than by regulation or on an *ad hoc* basis through future taxpayer audits and litigation.

Concerning the issues at hand, the MBA begins by acknowledging the difficult mission this study committee was tasked with to propose a comprehensive framework for the tax treatment of software in Mississippi, especially as many other states across the country grapple with many of these same issues, while less than five states have passed any legislation directly addressing these issues. The MBA is deeply concerned about the potential economic impact of changing Mississippi's taxation of software to tax cloud-computing services, software on out-of-state servers that is not delivered into the state or controlled by in-state users, or services performed outside Mississippi using software never delivered or controlled in-state. We are especially concerned by DOR's Proposed Amendments and any proposal resulting in the presence or use of any underlying software, despite no taxable relationship with Mississippi, being used to justify new tax liability on otherwise previously untaxed services even when performed in Mississippi.

Meanwhile, taxing these services, like SaaS, PaaS, IaaS, and other cloud-computing services, as well as a plethora of services adapting to use cloud computing to scale their services to users all over the world, is even more troubling when the service, and underlying software, all take place outside Mississippi, with only the benefit of the actual service (not the underlying software itself) being purchased and received by the Mississippi user. We hope the committee's proposal will help the Legislature be thorough and deliberative in any action on this issue, while working to continue making our state an attractive destination for businesses and entrepreneurs. This is an excellent opportunity to get this issue right and continue attracting new businesses and jobs as well as improving Mississippi's business climate and overall economic outlook. However, if we get it wrong, the negative economic impact to Mississippi businesses and customers could be significant, especially during a time of such rampant, unprecedented inflation.

With that thought in mind, the MBA is pleased to offer the following insight into Mississippi's banking industry, followed by our suggestions to this study committee to consider in drafting its proposal to the Mississippi Legislature regarding the taxation of software and cloud-computing services in Mississippi. We urge the committee to agree that any broad changes in Mississippi's tax policy should be made by the Legislature, while urging the Legislature to codify existing regulatory exemptions and clarify cloud computing services shall remain nontaxable. We hope

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[1] *Re: Public Comments for Regulatory Hearing, Regulation 35.IV.5.06 – Computer Equipment, Software and Service,* November 3, 2021, Prepared by John Fletcher, Jones Walker LLP, and joined by the Business and Industry Political Education Committee (BIPEC), Mississippi Economic Council, Mississippi Manufacturer's Association, Mississippi Poultry Association, Mississippi Bankers Association, Home Builders Association of Mississippi, Mississippi Association of General Contractors, Mississippi Manufactured Housing Association, National Federation of Independent Businesses, Mississippi Hospitality & Restaurant Association, American Council of Engineering Companies of Mississippi, Electric Cooperatives of Mississippi, Mississippi Realtors Association, Council on State Taxation

our input will be useful to the study committee in drafting a proposal to the Legislature that makes sure Mississippi gets this decision right the first time.

While each state is understandably grappling with the difficulty of adapting its tax laws to the Digital Age and consistently rapid advancements in technology, remaining economically competitive with other states has never been more vital. As a result, the MBA also suggests the study committee include a thorough description to the Legislature of the extensive and significant cost to Mississippi's business community and ultimately Mississippi consumers.

II. Software Plays an Integral Role Software in Banking and Any Proposal to Change Mississippi's Taxation of Software Would Harm Mississippians

The banking industry, through deposit, credit, payment, and various other services, is deeply intertwined in all aspects of Mississippi commerce. Software plays a vital part in not only how banks interact with consumers and businesses at the customer-facing level, but it is also integral to the back-end processing and maintenance of records for every transaction that moves through the banking system. Banks use a core-banking system ("Core") as a back-end system where all customer and account information is accessed, recorded, and housed. The Core is used to process and post various daily banking transactions to customer accounts (e.g., deposit, withdrawals, loans, payment transactions, etc.). All digital and tangible transactions are recorded to the banks' Core – essentially every banking transaction runs through a Core. The processing and posting within the Core involves "*computer data*" and "*uses automatic processing equipment to perform the set of tasks*" – namely updating the customer accounts to reflect the banking transactions initiated by the customers. While a handful of the state's larger banks run their own in-house Cores, most banks purchase Core software from a small group of vendors known as "core providers" – all of which are based out-of-state.

Throughout the lifecycle of any bank transaction, there could be various interfaces that facilitate the workflow by using cloud computing. Some of those cloud computing components could include "services" that are performed by third-party vendors, such as cybersecurity providers, credit score providers, automated loan origination processes and e-signature capabilities among others. Such services involve the exchange of customer "*data*" to "*perform a set of tasks*". Many of these third-party vendors are deemed Software-as-a-Service (SaaS), Platform-as-a-Service (PaaS), and Infrastructure-as-a-Service (IaaS) providers. Thus, while financial services have traditionally not been subject to sales tax, expanding the definition of "computer software" as broadly as recently proposed by DOR, would potentially create a new taxable event every time a transaction is initiated, ultimately creating a new tax on all financial transactions and impacting almost every Mississippian.

We hope this context provides beneficial insight into the crucial role our banks play in facilitating all types of commerce, especially in rural, low-income, and economically depressed areas throughout Mississippi, as well as the integral role software and cloud-computing services play in helping banks provide these services as affordably as possible to customers. We hope this insight assists the committee in understanding how potential changes in the taxation of software and cloud-computing services could harm our customers, both commercial and consumer, by subjecting them to unfair tax increases.

III. Initial Issues Presented

a. Definition of Software

As an initial matter, the MBA supports the Committee's consensus during prior meetings that data should be excluded from the definition of computer software and data processing services should remain nontaxable. Including data within the definition of computer software would capture almost every function of most businesses in the modern age and would increase costs to prohibitive levels. Such action would likely negate any positive movement that Mississippi has taken to becoming a more business-friendly state and could severely cripple our ability to compete with other states, especially in today's economic climate. The MBA also suggests the study committee propose the Legislature specifically codify provisions declaring data and data processing are nontaxable and not included within the definition of computer software.

Further, the MBA would suggest ensuring greater clarity by also defining "data" within the relevant definitions sections in Mississippi's tax code and specifically clarifying data is not included within but rather is the object of "*computer software*", instead of being software in its own right. In doing so, the MBA also suggests including the following definition for "data":

> *"Data" means a representation of information, knowledge, facts, concepts, computer software, computer programs, or instructions. Data may be in any form, in storage media or stored in the memory of the computer, or in transit or presented on a display device."*

The MBA suggests codifying the current regulatory definition of "Computer Program" with the addition of the following sentence at the end of the definition: "*Neither data nor the results or information from the processing of data constitute computer software or a computer program.*"

Meanwhile, the MBA would also suggest replacing the current regulatory definition of "Computer Software" with the following more thorough definition:

> *"Computer Software" means any information, computer program or routine, or any set of one or more programs or routines, or collections of information used or intended for use to convey information or to cause one or more computers or pieces of computer-related peripheral equipment, automatic processing equipment, or any combination thereof, to perform a task or set of tasks.*

b. Treatment of Software-as-a-Service and Cloud-Computing Services

As a preliminary matter, the MBA would suggest the committee propose the Legislature adopt a clear definition of Software-as-a-Service (SaaS), similar to the following language:

> *Software-as-a-Service (SaaS) refers to the capability provided to the consumer to use the provider's applications running on a cloud infrastructure, where the applications are accessible from various client devices through a thin client interface such as a Web browser (e.g., Web-based email) or a program interface,*

and the consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage or individual application capabilities, with the possible exception of limited user-specific application configuration settings.

The MBA suggests the committee highlight the Florida Department of Revenue's emphasis on SaaS not involving any transfer of tangible personal property when the in-state customer "does not receive the software in a tangible format," the in-state customer is "only able to access the server and the software remotely," "the software is never made available to customers by disk or any other tangible medium," and the customer does not receive any hardware from the Seller.[2]

It is the MBA's position that all software based entirely on servers outside Mississippi and accessed only through electronic or remote means by Mississippi users with no tangible personal property delivered into Mississippi or any Mississippi users gaining possession or control over the software, should remain nontaxable. We encourage the study committee to propose the Legislature follow the lead of almost every southeastern state in distinguishing the purchase of a service, performed via the use of computer hardware or software located outside the state, when the output of that service is delivered to a purchaser in the state via the internet, cloud, SaaS, or similar means, and to clarify these computer- or software-related services performed outside the state are not taxable solely because the purchaser or beneficiary of that service is in Mississippi.

While electronic delivery of goods into Mississippi is currently taxable, cloud computing services such as SaaS, present a different issue because the buyer is purchasing access to the service rather than purchasing the underlying software itself. Instead of purchasing software, which is then delivered into Mississippi, such as by paying to electronically download software to run on a computer in Mississippi or paying a technician to upload and install software on a Mississippi computer or server, thereby creating a taxable transaction with software delivered into Mississippi, the purchaser is instead purchasing a service, where the out-of-state vendor uses its underlying software to perform that service though the Mississippi user's remote access.

Indeed, as noted in a presentation at the Council on State Taxation's (COST) Annual Conference, unlike "Traditional" Software transactions where software is delivered into the state through "tangible media or electronic delivery," a SaaS Transaction involves "no delivery" with "access to remote services only."[3] The intent for the use of the software itself is also very much different between "traditional" software transactions and SaaS transactions, and this significant difference in intent and use should be carefully considered to emphasize why SaaS should not be treated the same for tax purposes as traditional software delivered into the state. It should also highlight why this discussion is vastly different from the issue of taxing streaming tv services like traditional cable television services where the intended use is largely the same despite the difference in delivery method. With "traditional" software transactions, the customer's intent is generally "to obtain and use software that will reside on a customer's hardware" and is "generally not scalable," while with SaaS transactions, the intent of the customer is generally "to

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[2] *Re: Technical Assistance Advisement 16A-014, Sales and Use Tax – Computer Software*, Florida Department of Revenue, August 8, 2016

[3] *Looks Like Rain? Apportionment, Nexus, Sourcing, and Other Issues Associated with Cloud Computing*, Council on State Taxation 42nd Annual Meeting

obtain scalable access" to the service whereas the service is giving the company the ability to utilize software or hardware the same company could not afford to so on its own, but the company's purchase is to access this service, not the underlying software or hardware.[4] As one additional key distinction between SaaS taxation and the treatment of streaming services, the MBA highlights that streaming services were only made taxable after the Mississippi Legislature took deliberate action to provide for such tax treatment, rather than giving the Department of Revenue the authority to begin taxing any services not specifically listed in statute.

In this respect, the MBA strongly agrees and supports current law as found in the Department of Revenue's existing regulations in **MS DOR Regulations Subpart 5 - 35.IV.5.06, Computer Equipment, Software, and Services, Section 300**, which currently states: *"However, software maintained on a server located outside the state and accessible for use only via the Internet is not taxable."* The MBA therefore urges this study committee to propose the Legislature codify the existing Department of Revenue regulation exempting software maintained on servers outside the state and clarify in statute that SaaS, and other cloud-computing services, such as PaaS and IaaS, are nontaxable where any such software is accessed only via electronic or remote means and the Mississippi purchaser never gains control over or possession of the underlying software being accessed.

Further, we believe it will be crucial to Mississippi's economic competitiveness in both attracting and retaining businesses for Mississippi to remain one of the nearly two-thirds of states that do not tax SaaS. Indeed, as of July 1, 2022, 30 states do not impose any sales tax on SaaS, while 4 states tax SaaS for personal use only while providing exemptions for commercial use. Meanwhile, only 16 states, plus the District of Columbia, taxed the commercial use of SaaS as of July 1, 2022.[5]

Rather, the MBA urges this study committee to suggest the Mississippi Legislature follow the example of nearly two-thirds of states in treating SaaS and other cloud-computing models as nontaxable. Indeed, the MBA would suggest proposing the Legislature adopt language similar to Wyoming, which does not tax SaaS, so long as there is no tangible personal property exchanged:

> ***Providing a platform where customers can access hosted software via an internet connection, such as the most common cloud computing service models of SaaS, PaaS, and IaaS, are not subject to Mississippi sales tax provided the customer does not receive any tangible personal property or enumerated service that is performed within the State by an out of state vendor embedded within the service.***

The Mississippi Legislature should recognize the distinction between software and cloud computing models such as SaaS, as nearly two-thirds of other states have done. For example, New Jersey provides that cloud computing and SaaS are non-taxable because the software is not "electronically delivered" to the end-user. In New Jersey, so long as the software is hosted in the

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[4] *COST Presentation*

[5] Analysis performed by Eric Bennett, Director of Government Relations, Mississippi Bankers Association, and recorded with relevant legal authorities, as *50 State SaaS Overview* in the Minutes of the June 29, 2022, Meeting of the Software Tax Study Committee.

cloud and not delivered to the end-user, and the customer does not "have the right to download, copy, or modify the software," then it does not fit the definition of taxable personal property.[6] Indeed, in an article published in *The Tax Adviser*, a monthly publication of the American Institute of CPAs, the authors noted that SaaS is "hosted on the vendor's servers and accessed, without electronic delivery or download, by customers over the Internet."[7] With SaaS, as with IaaS and PaaS, the customer generally has no ownership or possession, and receives no delivery of, the operating software, hardware, or network overall.[8]

Further, Platform-as-a-Service ("PaaS") and Infrastructure-as-a-Service ("IaaS") should also be defined and treated differently for tax purposes than computer software. PaaS and IaaS should not be included within the definition of computer software, nor should they be taxable if the servers housing these services are not located within Mississippi. Both PaaS and IaaS are non-software elements of the broader concept of "cloud computing," and should be distinguished as such, with taxability determined by the lack of any transfer of tangible personal property. When PaaS or IaaS is used by a Mississippi customer, the customer is paying only for the service these cloud computing platforms provide, and never takes possession of the underlying software being used to provide these services. Like SaaS, PaaS, and IaaS are easily distinguishable as services rather than tangible goods, and they should be treated as such for taxation purposes. With these models, the "consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, or storage."[9] Therefore, we suggest specifically excluding PaaS and IaaS from the definition of "Software," in addition to our suggestion that the study committee consider excluding SaaS from the definition of "Software" as well.

Thus, the MBA suggests the study committee emphasize in its proposal that the underlying software used by cloud-computing services such as SaaS, PaaS, or IaaS, is never physically or electronically delivered into Mississippi and should therefore not be treated for tax purposes as a good being delivered into the state given only a service (performed outside Mississippi and using software that is maintained, controlled, and possessed outside Mississippi) is received by the Mississippi user rather than any control or possession over the underlying out-of-state software.

The MBA asks this committee to urge the Legislature to maintain the current taxability cloud-computing services in Mississippi and affirmatively recognize these distinctions by codifying the existing language found in the Department of Revenue's current regulation, in Subpart 5 of 35.IV.5.06, "Computer Equipment Software, and Services, Section 300:

> ***Use Tax.*** ***Section 27-67-3(i), defines computer software programs as tangible personal property for use tax purposes. The regular rate of use tax is due and payable from every person using, storing, or consuming such property within this state, possession of which is acquired in any manner. However, software maintained on a server located outside the state and accessible for use only via the Internet is not taxable.***

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[6] *Technical Bulletin – 72, Tax: Sales and Use Tax,* New Jersey Division of Taxation, July 3, 2013
[7] *More Light Shines on State Taxation of SaaS in 2015*, The Tax Adviser, June 1, 2016
[8] *COST Presentation*
[9] *COST Presentation*

Ultimately, the MBA suggests if software is to be taxed, such taxation should be dependent upon whether the software is actually downloaded or controlled inside Mississippi, while DOR's existing exemption for software maintained on servers outside the state with no delivery into the state, should be codified. Further, to address concerns about the difficulty in determining whether the purchaser has control or possession of the underlying software involved in these transactions, the MBA points to the fact that "under the SaaS model, a service agreement is almost always executed (vs. a software license agreement or services agreement for an Application Service Provider).[10] Most such agreements provide the consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage, or application capabilities,[11] but if the agreement provides otherwise such that the underlying software is actually delivered into Mississippi, then tax could be assessed under current law.

Finally, to ensure consistency within the tax code, the MBA also suggests the study committee propose amending Miss. Code § 27-67-7 as follows:

> 27-67-7. The tax levied by this article shall not be collected in the following instances:
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> ...
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> ***(p) On the use by a person or from a location in this state of software, data or information in electronic format that is maintained on a computer, server or equipment located outside the state and accessed via the internet.***

c. Mississippi Should Also Consider the Negative Response in Other States That Dealt With This Issue

Mississippi would not be the first state to consider changing its tax law to tax Software-as-a-Service and other cloud-computing services in an attempt to keep up with the Digital Age and the resulting, often radical, transformations in how businesses operate. The MBA would therefore strongly suggest the study committee also emphasize to the Legislature how similar proposals have met with serious pushback, especially from the business community in these states in response to the economic burden such a change would impose on many businesses.

The current debate involves the opportunity for Mississippi to get this issue right, the first time, and to continue improving the state's economic climate and attractiveness to businesses and the jobs they bring to this state. However, if the state gets this opportunity wrong, Mississippi runs the risk of following in the ill-advised footsteps of New York, California, and similar states in experiencing a rapid exodus of businesses to states offering less onerous tax burdens.

In his 2022 State of the State Address, Governor Reeves echoed sentiments expressed by Lt. Governor Hosemann and Speaker Gunn that Mississippi needs to "consider how to attract those companies and economic projects that transform communities – create generational wealth and lift families out of poverty... I am begging Mississippi legislators to be bold. Give us another arrow in our quiver to attract more capital and to continue to transform our economy. When someone in California or Illinois or even Louisiana decides to start their own business, let's

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[10] *COST Presentation*
[11] *COST Presentation*

make them consider doing it right here in Mississippi... The only way to make Mississippi a magnet for the entrepreneurs of our nation is to show them our unmatched culture – married to an unbeatable tax code."[12]

We whole-heartedly echo this request and urge this study committee to make the same request to the Legislature: The only way to attract our nation's entrepreneurs and continue transforming our economy is with an "unbeatable tax code," not making sweeping changes to Mississippi's historic tax structure that will only strangle businesses and ultimately add to the economic pain Mississippians are already feeling from record inflation. This is not the time to increase costs for businesses and their customers, as other states throughout the South have rapidly discovered over the past decade when dealing with this same issue.

i. Louisiana

For example, the Louisiana Department of Revenue attempted to take similar action in 2010, through the implementation of Revenue Ruling No. 10-001, which would have begun taxing SaaS in Louisiana.[13] However, the state temporarily suspended[14] the rule within a few months following widespread criticism, concern, and opposition from professional organizations, taxpayers, and Louisiana's business community,[15] before the Department of Revenue ultimately revoked the ruling to maintain the status quo of software taxation in the state and avoid imposing significant increases in tax liability for the state's business community and ultimately residents.[16]

In an almost identical situation to the current Mississippi state of affairs, the Louisiana Department of Revenue had already begun assessing sales tax on such software – also retroactively in some cases – against otherwise compliant taxpayers. As is currently being reported in Mississippi, some online vendors and service providers had already begun to charge state and local sales tax as a precautionary measure, at times possibly without even given due consideration to whether the policy statement actually applied to their business activities.

The Louisiana Department of Revenue, in a move similar to the Mississippi Legislature's creation of this study committee, formed a working group to study the policy issues and the impact to businesses and consumers from the Department's attempt to change longstanding tax policy to begin taxing such software that was only being used or accessed by in-state users. Following the responses, client impact statements, continued opposition, the Department of Revenue finally revoked the Revenue Ruling within a year of its issuance and Louisiana has made no effort to tax SaaS and cloud-computing services since that revocation.

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[12] *2022 State of the State Address*, Governor Tate Reeves
[13] *Revenue Ruling No. 10-001, Sales and Use Tax*, Louisiana Department of Revenue, March 23, 2010
[14] *Revenue Information Bulletin No. 10-028, Sales Taxes, Temporary Suspension of Policy Statements Pertaining to Digital Transactions*, Louisiana Department of Revenue, November 15, 2010
[15] *Out of the Clouds and Back to Earth: The Louisiana Department of Revenue Suspends Policy Statement on Sales/Use Tax Aspects of Digital Transactions,* William M. Backstrom, Jr., Jones Walker LLP, December 2010
[16] *Revenue Information Bulletin No. 11-010, Sales Taxes, Repealing Implementation of Revenue Ruling No. 10-001,* Louisiana Department of Revenue, May 23, 2011

ii. Maryland

Meanwhile, earlier this year, the Maryland Legislature passed HB 791 to specifically exempt the commercial use of SaaS and cloud-computing services from sales tax in response to concern from the business community that the Maryland Comptroller had exceeded its authority by including SaaS in its interpretation of digital products[17] made taxable by the Maryland Legislature in 2021 through the passage of HB 932.[18] Following this concern and opposition from many businesses and taxpayers in Maryland over the Comptroller's over-broad interpretation of the Maryland Legislature's intent in HB 932, the Legislature passed HB 791, which took effect July 1, 2022, and essentially reversed the Comptroller's interpretation by confirming SaaS and other cloud-computing services used for commercial use are tax-exempt.[19]

d. Mississippi Should Exempt Software Used as a Business Input

The MBA has heard consistent feedback from many Mississippi banks that from an economic competitiveness standpoint, expanding the tax base to tax SaaS and other cloud computing services will make Mississippi significantly less competitive than our neighboring states. Specifically, amongst the states in the Gulf South region, Texas would be the only other state that taxes SaaS offerings. However, even Texas still includes significant exemptions such as payment card processing being exempt from taxable data processing services purview. Alabama, Florida, Georgia, and Louisiana do not currently tax SaaS. Florida and Georgia have issued letter rulings or information bulletins stating SaaS is not taxable under their current law as it does not constitute "tangible personal property" and the software is not actually delivered into the state (while Alabama and Louisiana do not currently have any definitive legal authority addressing SaaS taxability after Louisiana revoked its Revenue Ruling in 2011 as discussed above).

Based on these concerns, as well as the overwhelming consensus reflected in feedback from other businesses and trade associations throughout the state received by this study committee,[20] the MBA suggests if the current nontaxable nature of such software is to be changed, then this change should only occur through intentional, deliberate, and clear legislative action. However, if the Legislature should ultimately disagree with a proposal to maintain the status quo by codifying the regulatory exemption for SaaS and other software maintained on out-of-state servers, and instead takes action to make all software and cloud-computing services taxable, the MBA then suggests the study committee urge the Legislature to follow the lead of states such as Iowa and Maryland, discussed in greater detail below, to exempt the commercial use of such software as business inputs. The MBA also suggests emphasizing such a commercial exemption would be very much consistent with the nature of a sales and use tax as being a tax generally only imposed on the ultimate consumer, such as when manufacturer are exempted from sales tax on materials purchased as manufacturing inputs. The purchase of SaaS or other cloud computing services are similar business inputs by simply using the benefit of the service being performed outside the state to facilitate the performance of the business's services it provides to customers.

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[17] Maryland Comptroller Business Tax Tip #29, Sales of Digital Products and Digital Codes, published in June 2021
[18] Maryland House Bill 932, passed during 2021 Regular Session and took effect July 1, 2021
[19] Maryland House Bill 791, passed during 2022 Regular Session and took effect July 1, 2022.
[20] *See* Summary of Anonymous Survey Comments Discussed In the Minutes of the June 29, 2022, Software Tax Study Committee Meeting.

As noted above, Mississippi is currently competing with many surrounding states to attract and retain businesses in Mississippi, in recognition of the widespread economic and social benefits of bringing and keeping such jobs in Mississippi. The MBA highlights that many of the most desirable businesses offering higher-paying jobs, room for advancement, and other benefits for both the state and its residents, would likely be the same businesses most impacted by increasing the taxation of software and services that use software, such as cloud computing services. Worse, small businesses across the state would also suffer given the reliance of many small businesses on such cloud computing services as the only affordable option for these small businesses.

Therefore, it is the MBA's suggestion that should the Mississippi Legislature levy sales tax on all software, regardless of the method of delivery or access by a Mississippi purchaser and regardless of whether the software is ever downloaded, controlled, or otherwise possessed in Mississippi, such as cloud computing services, and related services, then the Legislature should exempt the usage of any such software or services used for commercial purposes as business inputs. In proposing such an exemption to avoid serious negative impacts to Mississippi's business community such a change in taxation could likely inflict, the MBA suggests the study committee look to Iowa or Maryland for examples of how such an exemption for commercial use of software as a business input can be designed.

i. Iowa Model for Commercial Use Exemption

While Iowa began taxing additional digital products and services in 2019, the state also created two new sales tax exemptions for businesses that apply specifically to specified digital products and related services.[21]

Commercial Enterprise Exemption – Iowa Code § 423.3(104)

For this exemption, Iowa defines a "commercial enterprise" as any of the following:

- Business and manufacturers (for profit only)
- Insurance companies (nonprofit *and* for-profit)
- Financial institutions (nonprofit *and* for-profit)
- Professions and occupations as defined in Iowa Administrative Code rule 701-230.18(3)(c) (such as medical offices, law firms, farming operations, etc.)

Pursuant to Iowa Code § 423.3(104), the following are exempt from sales tax when purchased by a commercial enterprise and used exclusively by or furnished to that commercial enterprise, so long as any non-commercial uses are de minimis:

- Specified digital products
- Prewritten computer software
- The following services
    - Storage of tangible or electronic files, documents, or other records
    - Information services

[21] *Taxation of Specified Digital Products, Software, and Related Services*, Iowa Department of Revenue

- Services arising from or related to installing, maintaining, servicing, repairing, operating, upgrading, or enhancing specified digital products; and
- Software as a Service

The MBA would suggest clarifying, however, that if a company purchases SaaS to conduct or perform its business or services, then the business is considered the end-user, rather than the customers of the business purchasing the SaaS.

Non-End User Exemption – Iowa Code § 423.3(105)

Pursuant to Iowa Code § 423.3(105), sales of specified digital products are also exempt from sales tax when sold to a "non-end user." For purposes of this exemption, a "non-end user" means any person who contracts to receive specified digital products for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution, or exhibition of the product, in whole or in part, to another person. In other words, only sales of specified digital products to end users are subject to sales tax.

ii. <u>Maryland Model for Commercial Use Exemption</u>

Meanwhile, Maryland recently enacted a commercial use exemption for SaaS and related services in the state within a year after the state originally began taxing all such software and services.

Unless otherwise exempted, Maryland currently taxes "digital products" defined as "a product that is obtained electronically by the buyer or delivered by means other than tangible storage media through the use of technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities."[22] However, Maryland law now also provides for the following three exemptions for digital products:

> ***(iv) A professional service obtained electronically or delivered through the use of technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;***
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> ***(V) A product having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities where the purchaser holds a copyright or other intellectual property interest in the product, in whole or in part, if the purchaser uses the product solely for commercial purposes, including advertising or other marketing activities; or***
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> ***(VI) Computer software or Software as a Service purchased or licensed solely for commercial purposes in an enterprise computer system, including operating programs or application software for the exclusive use of the enterprise software system, that is housed or maintained by the purchaser or on a cloud server, whether hosted by the purchaser, the software vendor, or a third party.***

[22] Maryland HB 791, became law without Governor Hogan's signature on July 1, 2022, amending Maryland Code § 11-101