

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 787

(Senator Ferguson)

Budget and Taxation

Ways and Means

Digital Advertising Gross Revenues Tax and Tobacco Tax - Alterations and
Implementation

This emergency bill (1) exempts a broadcast entity and news media entity from the digital advertising gross revenues tax enacted by Chapter 37 of 2021; (2) prohibits a person from directly passing on the cost of the digital advertising gross revenues tax to a customer through a separate fee, surcharge, or line-item; and (3) alters certain dates and intent language related to the tobacco tax increases enacted by Chapter 37. The bill specifies that the digital advertising gross revenues tax applies to taxable years beginning after December 31, 2021.

Fiscal Summary

State Effect: Special fund revenues may decrease beginning in FY 2022 as a result of the digital advertising gross revenues tax exemption proposed by the bill and the delayed effective date. State expenditures are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary:

Digital Advertising Gross Revenues Tax

The bill exempts a broadcast entity and news media entity from the digital advertising gross revenues tax by establishing that digital advertising services do not include advertisement services on digital interfaces owned or operated by or operated on behalf of a broadcast entity or news media entity.

A broadcast entity is an entity that is primarily engaged in the business of operating a broadcast television or radio station. A news media entity is an entity engaged primarily in the business of newsgathering, reporting, or publishing articles or commentary about news, current events, culture, or other matters of public interest. A news media entity does not include an entity that is primarily an aggregator or republisher of third-party content.

The bill also prohibits a person who derives gross revenues from digital advertising services in the State from directly passing on the cost of the tax imposed to a customer who purchases the digital advertising services by means of a separate fee, surcharge, or line-item.

Tobacco Tax

As part of the increase in certain tobacco taxes, Chapter 37 imposes a one-time floor tax on cigarettes and other tobacco products (OTP) in fiscal 2021. The bill specifies that the floor tax applies to products used, possessed, or held in the State on or after March 14, 2021, and that the Comptroller must remit the revenue attributable to the tax by June 13, 2021. Chapter 37 required the Comptroller to report by December 31, 2020, to the Senate Budget and Taxation Committee and the House Ways and Means Committee the change in consumption of cigarettes, other tobacco products, and electronic smoking devices (ESD) in the State over the immediately preceding 12 months. The bill delays this requirement by one year.

Chapter 37 stated that it is the intent of the General Assembly that the Comptroller distribute, as necessary, fiscal 2021 tobacco taxes generated by the bill, including the sales tax imposed on ESD, to the Rainy Day Fund and to the expenditure accounts of the appropriate units of State government to fund costs associated with COVID-19. The bill eliminates this intent language.

Current Law: House Bill 732 of 2020 passed the General Assembly but was vetoed by the Governor on May 7, 2020, for policy reasons. This veto was subsequently overridden by the General Assembly at the 2021 session and was enacted as Chapter 37 of 2021.

Chapter 37 imposes a tax on the gross revenues of specified digital advertising. Chapter 37 also (1) increases various taxes imposed on cigarettes, ESD, and OTP and (2) requires the Governor to include at least \$18.25 million in annual funding for the Tobacco Use Prevention and Cessation Program beginning in fiscal 2022.

Digital Advertising Gross Revenues Tax

Chapter 37 imposes a tax on the annual gross revenues of a person derived from digital advertising services in the State. Chapter 37 provides for the filing of the tax returns and making tax payments.

The part of the annual gross revenues of a person derived from digital advertising services in the State are to be determined using an apportionment fraction based on the annual gross revenues of a person derived from digital advertising services in the State and the annual gross revenues of a person derived from digital advertising services in the United States. The Comptroller is required to adopt regulations that determine the state from which revenues from digital advertising services are derived.

The digital advertising gross revenues tax is imposed at the following rates:

- 2.5% of the assessable base for a person with global annual gross revenues of \$100.0 million through \$1.0 billion;
- 5% of the assessable base for a person with global annual gross revenues of \$1.0 billion through \$5.0 billion;
- 7.5% of the assessable base for a person with global annual gross revenues of \$5.0 billion through \$15.0 billion; and
- 10% of the assessable base for a person with global annual gross revenues exceeding \$15.0 billion.

Revenues from the digital advertising gross revenues tax are distributed to the Blueprint for Maryland's Future Fund, after the Comptroller's costs to administer the tax are deducted.

Tobacco Taxes

Chapter 37 increases the tobacco tax rate from \$2.00 to \$3.75 per pack of cigarettes and increases the OTP tax rate for all products other than cigars and pipe tobacco from 30% to

53% of the wholesale price. Chapter 37 also increases the sales and use tax rate imposed ESD. These devices are commonly known as e-cigarettes or vaping products.

State Revenues: The fiscal and policy note for Chapter 37 estimated that annual revenues for the Blueprint for Maryland’s Future Fund from the digital advertising gross revenues tax may increase by as much as \$250 million under one set of assumptions. The exemption proposed by the bill may reduce the overall revenue impact of the digital advertising tax provisions of Chapter 37; however, the amount of the revenue decrease cannot be reliably estimated due to a lack of data regarding the amount of digital advertising revenues generated by broadcast and news media entities.

The tobacco tax provisions of the bill do not materially impact State revenues.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 1200 (Delegate Luedtke) - Ways and Means.

Information Source(s): Comptroller’s Office; Department of Legislative Services

Fiscal Note History: First Reader - February 15, 2021
rh/hlb Third Reader - March 24, 2021
Revised - Amendment(s) - March 24, 2021

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