

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1067 (Delegate Feldmark)
 Ways and Means

Digital Advertising Gross Revenues Tax - Assessments - Appeals and Corrections

This bill establishes a specified appeals process for persons who are subject to the digital advertising gross revenues tax (DAGR) and receive a notice of assessment from the Comptroller. The bill authorizes the Comptroller or the Comptroller’s designee to issue an order to correct an erroneous assessment of the DAGR tax, subject to specified conditions. As a result, the bill makes the administration and appeals process of the DAGR tax the same as for other taxes collected by the Comptroller. **The bill takes effect July 1, 2024, and applies to assessments of the digital advertising gross revenues tax made after June 30, 2024.**

Fiscal Summary

State Effect: General fund expenditures increase by approximately \$328,100 in FY 2025 for personnel expenditures at the Comptroller’s Office. Future year increases reflect annualization and inflation. Revenues are not directly affected.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	328,100	391,800	409,300	427,200	445,900
Net Effect	(\$328,100)	(\$391,800)	(\$409,300)	(\$427,200)	(\$445,900)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law:

Digital Advertising Gross Revenues Tax

Chapter 37 of 2021 imposed a tax on the annual gross revenues of a person derived from digital advertising services in the State. The part of the annual gross revenues of a person derived from digital advertising services in the State must 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 DAGR 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 DAGR tax are distributed to the Blueprint for Maryland's Future Fund, after the Comptroller's costs to administer the tax are deducted.

Chapter 669 of 2021 exempts a broadcast entity and news media entity from DAGR 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.

Chapter 669 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.

Assessment and Appeals for Taxes Collected by the Comptroller

Taxes administered by the Comptroller are subject to an appeals process. Within 30 days after the date on which a tax assessment notice is mailed, a person or governmental unit may submit to the tax collector: an application for revision of the assessment; or if the assessment is paid, a claim for refund. If a person or governmental unit fails to submit an application for revision or claim for refund within the time allowed, the assessment becomes final.

Upon receiving the application, the Comptroller (or designee) must promptly hold an informal hearing and act on the application. In addition, the Comptroller may assess any additional tax, penalty, and interest due. A notice of final determination must then be mailed to the person or governmental unit.

Notwithstanding a person's failure to file a timely application for revision or claim for refund of an assessment of the admissions and amusement tax, alcoholic beverage tax, boxing and wrestling tax, income tax, motor carrier tax, motor fuel tax, sales and use tax, or tobacco tax, the Comptroller (or designee) may issue an order decreasing or abating an assessment to correct an erroneous assessment.

State Fiscal Effect: General fund expenditures for the Comptroller's Office increase in fiscal 2025 for personnel costs to handle appeals of the DAGR tax. The Comptroller's Office reports that the Hearing and Appeals Division receives approximately 4,500 appeals each year, the majority (89%) of which are simple individual income tax appeals. Due to the volume of income tax appeals, there is a backlog of 5,500 open appeals.

The Comptroller's Office advises that the DAGR appeals resulting from the bill may involve multiple constitutional issues, legal determinations on what constitutes taxable digital advertising, and an extensive review of electronic files on consumer use of digital advertising in Maryland. Though the number of appeals would likely be small, the appeals will be labor-intensive and require more time than individual income tax appeals. The Comptroller's Office indicates that there are 12 attorneys in the Hearing and Appeals Division and the division handles approximately 3,000 appeals per year. There have been 85 DAGR tax appeals filed in Maryland Tax Court since the law took effect in 2021. It is estimated that each attorney would handle approximately 10 to 12 DAGR appeals per year. As a result, the Comptroller's Office estimates that general fund expenditures would increase by approximately \$790,100 in fiscal 2025, which reflects the cost of hiring eight senior tax attorneys to handle DAGR appeals.

However, the Department of Legislative Services advises that until the volume of DAGR appeals resulting from the bill is better known, the office can likely handle these appeals with fewer than eight senior tax attorneys. As a result, general fund expenditures for the Comptroller’s Office increase by \$328,077 in fiscal 2025. This estimate reflects a 90-day start-up delay due to the bill’s July 1, 2024 effective date, and the cost of hiring four senior tax attorneys to handle DAGR tax appeals. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Regular Positions	4
Salary and Fringe Benefits	\$299,053
Other Operating Expenses	<u>29,024</u>
Total FY 2025 General Fund Expenditures	\$328,077

Future year expenditures reflect full salaries and annual increases in ongoing operating expenses.

To the extent that the volume of appeals is higher and/or the level of complexity in each case is greater than expected, additional resources can be requested through the annual budget process.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

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

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km/hlb

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