

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1372
Ways and Means

(Delegate Martinez)

Health and Taxation - Digital Social Media Services and the Mental Health Care
Fund for Children and Youth

This bill imposes a tax on the gross revenues of specified digital social media services. After making deductions for the administration of the tax, the Comptroller is required to deposit the revenues received from the tax to the Mental Health Care Fund for Children and Youth, which is established by the bill. The bill provides for the filing of the tax returns and making tax payments. **The bill takes effect July 1, 2024, and applies to taxable years beginning after December 31, 2024.**

Fiscal Summary

State Effect: Special fund revenues increase by a significant amount beginning in FY 2025. Under one set of assumptions, State revenues increase by approximately \$30 million in the first full year that the digital social media gross revenues tax is imposed and collected. By year four of full implementation, State revenues could increase by \$45 million. Special fund expenditures increase by \$3.1 million in FY 2025 and by \$147,400 in FY 2029. Future year expenditures reflect annualization and inflation.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Digital Social Media Gross Revenues Tax

The bill imposes a tax on the annual gross revenues of a person derived from digital social media services in the State. The part of the annual gross revenues of a person derived from digital social media services in the State is determined using an apportionment fraction: (1) the numerator of which is the annual gross revenues of a person derived from digital social media services in the State and (2) the denominator of which is the annual gross revenues of a person derived from digital social media services in the United States. The Comptroller must adopt regulations that determine the state from which revenues from digital social media services are derived.

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

- 5% of the assessable base for a person with global annual gross revenues of \$500.0 million through \$1.0 billion;
- 7.5% of the assessable base for a person with global annual gross revenues of \$1.0 billion through \$10.0 billion;
- 10% of the assessable base for a person with global annual gross revenues exceeding \$10.0 billion.

Revenues from the digital social media gross revenues tax are distributed to the Mental Health Care Fund for Children and Youth, after the Comptroller's administrative costs are deducted.

Tax Returns

Each person that has annual gross revenues derived from digital social media services in the State of at least \$1.0 million in a calendar year must complete, under oath, and file a return with the Comptroller on or before April 15 of the next year.

Each person that reasonably expects annual gross revenues derived from digital social media services in the State to exceed \$1.0 million must complete, under oath, and file with the Comptroller a declaration of estimated tax, on or before April 15 of that year. A person required to file a declaration of estimated tax for a taxable year must complete and file a quarterly estimated tax return on or before June 15, September 15, and December 15 of that year.

A person required to file a return must include an attachment with the return that states any information that the Comptroller requires to determine annual gross revenues derived from digital social media services in the State. A person must maintain records of digital social media services provided in the State and the basis for the calculation of the digital social media gross revenues tax owed.

Payment of Digital Social Media Gross Revenues Tax

Each person required to file a return must pay the digital social media gross revenues tax with the return that covers the period for which the tax is due. A person filing an estimated digital social media gross revenues tax return must pay (1) at least 25% of the estimated digital social media gross revenues tax shown on the declaration or amended declaration for a taxable year with the declaration or amended declaration that covers the year and with each quarterly return for that year and (2) any unpaid digital social media gross revenues tax for the year shown on the person's return.

Penalties

A person who willfully fails to file a digital social media gross revenues tax return is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$5,000 and/or imprisonment of up to five years.

Definitions

Annual gross revenues are defined as income or revenue from all sources, before any expenses or taxes, computed according to generally accepted accounting principles.

Assessable base is defined as the annual gross revenues derived from digital social media services in the State.

Digital social media service is defined as a service provided to the public through an Internet website or a mobile application that: (1) includes features that allow a user to share images, text, or video through the Internet with other users of the service whom the user has met, identified, or become aware of through the use of the service; and (2) has more than 1.0 million monthly active users in the United States or generates more than \$500.0 million in annual gross revenue, adjusted annually for inflation. A digital social media service does not include a service that is primarily used for (1) the sale or provision of professional services; (2) the sale of commercial products; or (3) if the service does not include the ability for content to be sent by a user directly to another user, the provision of news or information.

A user is defined as an individual or any other person who accesses a digital interface with a device.

Mental Health Care Fund for Children and Youth

The bill establishes the Mental Health Care Fund for Children and Youth for the purpose of improving access to mental health care services for children and youth in the State. Money expended from the fund can only be used for this purpose and is supplemental to and is not intended to take the place of funding that otherwise would be appropriated for improving access to mental health care for children and youth in the State.

Current Law: Chapter 37 of 2021 imposed a digital advertising gross revenues 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 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 tax are distributed to the Blueprint for Maryland's Future Fund, after the Comptroller's costs to administer the tax are deducted.

State Revenues: The bill requires businesses that have at least \$500.0 million in global annual gross revenues to pay a tax on gross revenues derived from digital social media services in the State. After a deduction for administrative costs for the Comptroller's Office, revenue from the tax is distributed to the Mental Health Care Fund for Children and Youth. As a result, State special fund revenues may increase by a significant amount beginning in fiscal 2025.

Under one set of assumptions, special fund revenues could increase by approximately \$30 million in the first full year that the digital social media gross revenues tax is imposed and collected. By year four of full implementation, special fund revenues could increase by \$45 million. The assumptions used in the estimate are outlined below:

- Global digital social media revenues for the nine largest social media companies totaled \$204.4 billion in 2023.
- The United States represents 6.4% of global social media users.
- Maryland represents 1.9% of the total U.S. population.
- Revenues are estimated to increase by 14.5% annually.

Potential Litigation

The Comptroller’s Office notes that the imposition of the tax could face legal challenges, which may impact the amount of revenue the State collects, particularly in the short term. While it is not possible to determine when potential legal challenges may arise, and how long they would take to resolve, this could limit the amount of any revenues collected from the tax while litigation is pending.

State Expenditures: The bill requires the Comptroller to distribute funds necessary to administer the digital social media gross revenues tax to an administrative cost account. As a result, special fund expenditures increase by \$3.1 million in fiscal 2025 and by \$147,400 in fiscal 2029. This includes the cost to hire two revenue examiners to administer the new tax as well as additional computer programming and modification expenses.

The Comptroller’s Office is currently in the process of upgrading the Compass/Relevant Passthrough Entity (known as Compass/RPE) tax system. However, due to the bill’s effective date, the computer mechanisms needed to administer the new tax proposed by the bill, such as creating forms and processing returns and payments, will have to be done on the current system as well as on the updated version of the system. Based on information that the Comptroller’s Office has received from vendors for adding other new tax types to the system, it is estimated that the cost of adding the digital social media gross revenues tax to the tax system will total approximately \$3.0 million in fiscal 2025. This cost includes discovery, design, development, testing, and interfaces.

The increase in State expenditures shown below includes salaries, fringe benefits, one-time start-up costs, ongoing operating expenses, and computer programming and modification expenses.

Positions	2
Salaries and Fringe Benefits	\$97,853
Computer Programming and Modification	3,000,000
Operating Expenses	<u>14,512</u>
Total FY 2025 State Expenditures	\$3,112,365

Future year expenditures increase by \$129,400 in fiscal 2026 and \$147,400 in fiscal 2029, which reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

The bill may also require additional expenditures for the following units within the Comptroller's Office: (1) the legal division will be required to draft regulations; (2) the fraud detection and business development division will need to develop new reporting mechanisms for the new tax; and (3) the hearing and appeals division may have to handle an increased number of appeals that may result from the new tax.

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; Maryland Department of Health; Department of Legislative Services

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