

SENATE BILL 2

Q7

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By: **Senators Miller and Ferguson**

Introduced and read first time: January 8, 2020

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Digital Advertising Gross Revenues – Taxation**

3 FOR the purpose of imposing a tax on certain annual gross revenues derived from certain
4 digital advertising services in the State; establishing a presumption that digital
5 advertising services are provided in the State under certain circumstances; providing
6 for the calculation of the tax; requiring certain persons that have certain annual
7 gross revenues derived from digital advertising services in the State to complete and
8 file with the Comptroller a certain return in a certain manner; requiring certain
9 persons that reasonably expect the person's annual gross revenues derived from
10 digital advertising services to exceed a certain amount to complete and file with the
11 Comptroller a certain declaration of estimated tax in a certain manner; requiring a
12 person required to file a certain return to maintain certain records; requiring a
13 person to pay the digital advertising gross revenues tax in a certain manner;
14 requiring the Comptroller to distribute digital advertising gross revenues tax
15 revenue in a certain manner; requiring the Comptroller to make an assessment of
16 certain digital advertising gross revenues tax due under certain circumstances;
17 requiring the Comptroller to assess interest on unpaid digital advertising gross
18 revenues taxes in a certain manner; providing certain criminal penalties for failing
19 to file a certain return or filing a certain false return; requiring that the Comptroller
20 administer the laws that relate to the digital advertising gross revenues tax; defining
21 certain terms; making certain conforming changes; providing for the application of
22 this Act; and generally relating to a tax on digital advertising gross revenues.

23 BY repealing and reenacting, without amendments,
24 Article – Education
25 Section 5–219(b)
26 Annotated Code of Maryland
27 (2018 Replacement Volume and 2019 Supplement)

28 BY repealing and reenacting, with amendments,
29 Article – Education

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 5–219(f)
 2 Annotated Code of Maryland
 3 (2018 Replacement Volume and 2019 Supplement)

4 BY repealing and reenacting, without amendments,
 5 Article – Tax – General
 6 Section 1–101(a) and (p)
 7 Annotated Code of Maryland
 8 (2016 Replacement Volume and 2019 Supplement)

9 BY adding to
 10 Article – Tax – General
 11 Section 1–101(g–1); 2–4A–01 and 2–4A–02 to be under the new subtitle “Subtitle 4A.
 12 Digital Advertising Gross Revenues Tax Revenue Distribution”; 7.5–101
 13 through 7.5–301 to be under the new title “Title 7.5. Digital Advertising Gross
 14 Revenues Tax”; and 13–402(a)(6) and 13–1001(g)
 15 Annotated Code of Maryland
 16 (2016 Replacement Volume and 2019 Supplement)

17 BY repealing and reenacting, with amendments,
 18 Article – Tax – General
 19 Section 2–102, 13–402(a)(4) and (5), 13–602(a), 13–702(a), 13–1002(b) and (c), and
 20 13–1101(b) and (c)
 21 Annotated Code of Maryland
 22 (2016 Replacement Volume and 2019 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
 24 That the Laws of Maryland read as follows:

25 **Article – Education**

26 5–219.

27 (b) There is The Blueprint for Maryland’s Future Fund.

28 (f) The Fund consists of:

29 (1) Revenue distributed to the Fund under §§ **2–4A–02**, 2–605.1, and
 30 2–1303 of the Tax – General Article;

31 (2) Money appropriated in the State budget for the Fund; and

32 (3) Any other money from any other source accepted for the benefit of the
 33 Fund.

34 **Article – Tax – General**

1 1–101.

2 (a) In this article the following words have the meanings indicated.

3 **(G–1) “DIGITAL ADVERTISING GROSS REVENUES TAX” MEANS THE TAX**
4 **IMPOSED UNDER TITLE 7.5 OF THIS ARTICLE.**

5 (p) (1) “Person” means an individual, receiver, trustee, guardian, personal
6 representative, fiduciary, or representative of any kind and any partnership, firm,
7 association, corporation, or other entity.

8 (2) “Person”, unless expressly provided otherwise, does not include a
9 governmental entity or a unit or instrumentality of a governmental entity.

10 2–102.

11 In addition to the duties set forth elsewhere in this article and in other articles of the
12 Code, the Comptroller shall administer the laws that relate to:

13 (1) the admissions and amusement tax;

14 (2) the alcoholic beverage tax;

15 (3) the boxing and wrestling tax;

16 (4) **THE DIGITAL ADVERTISING GROSS REVENUES TAX;**

17 **(5)** the income tax;

18 **[(5)] (6)** the Maryland estate tax;

19 **[(6)] (7)** the Maryland generation–skipping transfer tax;

20 **[(7)] (8)** the motor carrier tax;

21 **[(8)] (9)** the motor fuel tax;

22 **[(9)] (10)** the sales and use tax;

23 **[(10)] (11)** the savings and loan association franchise tax; and

24 **[(11)] (12)** the tobacco tax.

25 **SUBTITLE 4A. DIGITAL ADVERTISING GROSS REVENUES TAX REVENUE**
26 **DISTRIBUTION.**

1 **2-4A-01.**

2 FROM THE DIGITAL ADVERTISING GROSS REVENUES TAX REVENUE, THE
3 COMPTROLLER SHALL DISTRIBUTE EACH QUARTER THE AMOUNT NECESSARY TO
4 ADMINISTER THE DIGITAL ADVERTISING GROSS REVENUES TAX LAWS IN THE
5 PREVIOUS QUARTER TO AN ADMINISTRATIVE COST ACCOUNT.

6 **2-4A-02.**

7 AFTER MAKING THE DISTRIBUTION REQUIRED UNDER § 2-4A-01 OF THIS
8 SUBTITLE, THE COMPTROLLER SHALL DISTRIBUTE THE REMAINING DIGITAL
9 ADVERTISING GROSS REVENUES TAX REVENUE TO THE BLUEPRINT FOR
10 MARYLAND'S FUTURE FUND ESTABLISHED UNDER § 5-219 OF THE EDUCATION
11 ARTICLE.

12 **TITLE 7.5. DIGITAL ADVERTISING GROSS REVENUES TAX.**

13 **SUBTITLE 1. DEFINITIONS; GENERAL PROVISIONS.**

14 **7.5-101.**

15 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS
16 INDICATED.

17 (B) "ANNUAL GROSS REVENUES" MEANS INCOME OR REVENUE FROM ALL
18 SOURCES, BEFORE ANY EXPENSES OR TAXES, COMPUTED ACCORDING TO
19 GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

20 (C) "ASSESSABLE BASE" MEANS THE ANNUAL GROSS REVENUES DERIVED
21 FROM DIGITAL ADVERTISING SERVICES IN THE STATE.

22 (D) "DIGITAL ADVERTISING SERVICES" INCLUDES ADVERTISEMENT
23 SERVICES ON A DIGITAL INTERFACE, INCLUDING ADVERTISEMENTS IN THE FORM OF
24 BANNER ADVERTISING, SEARCH ENGINE ADVERTISING, INTERSTITIAL
25 ADVERTISING, AND OTHER COMPARABLE ADVERTISING SERVICES.

26 (E) "DIGITAL INTERFACE" MEANS ANY TYPE OF SOFTWARE, INCLUDING A
27 WEBSITE, PART OF A WEBSITE, OR APPLICATION, THAT A USER IS ABLE TO ACCESS.

28 (F) "USER" MEANS AN INDIVIDUAL OR ANY OTHER PERSON WHO ACCESSES
29 A DIGITAL INTERFACE WITH A DEVICE.

30 **7.5-102.**

1 (A) A TAX IS IMPOSED ON ANNUAL GROSS REVENUES OF A PERSON DERIVED
2 FROM DIGITAL ADVERTISING SERVICES IN THE STATE.

3 (B) FOR PURPOSES OF THIS TITLE, DIGITAL ADVERTISING SERVICES ARE
4 PROVIDED IN THE STATE IF THE DIGITAL ADVERTISING SERVICES APPEAR ON THE
5 DEVICE OF A USER:

6 (1) WITH AN INTERNET PROTOCOL ADDRESS THAT INDICATES THAT
7 THE USER'S DEVICE IS LOCATED IN THE STATE; OR

8 (2) WHO IS KNOWN OR REASONABLY SUSPECTED TO BE USING THE
9 DEVICE IN THE STATE.

10 7.5-103.

11 THE DIGITAL ADVERTISING GROSS REVENUES TAX RATE IS:

12 (1) 2.5% OF THE ASSESSABLE BASE FOR A PERSON WITH GLOBAL
13 ANNUAL GROSS REVENUES OF \$100,000,000 THROUGH \$1,000,000,000;

14 (2) 5% OF THE ASSESSABLE BASE FOR A PERSON WITH GLOBAL
15 ANNUAL GROSS REVENUES OF \$1,000,000,001 THROUGH \$5,000,000,000;

16 (3) 7.5% OF THE ASSESSABLE BASE FOR A PERSON WITH GLOBAL
17 ANNUAL GROSS REVENUES OF \$5,000,000,001 THROUGH \$15,000,000,000; AND

18 (4) 10% OF THE ASSESSABLE BASE FOR A PERSON WITH GLOBAL
19 ANNUAL GROSS REVENUES EXCEEDING \$15,000,000,000.

20 SUBTITLE 2. RETURNS.

21 7.5-201.

22 (A) EACH PERSON THAT, IN A CALENDAR YEAR, HAS ANNUAL GROSS
23 REVENUES DERIVED FROM DIGITAL ADVERTISING SERVICES IN THE STATE OF AT
24 LEAST \$1,000,000 SHALL COMPLETE, UNDER OATH, AND FILE WITH THE
25 COMPTROLLER A RETURN, ON OR BEFORE APRIL 15 THE NEXT YEAR.

26 (B) (1) EACH PERSON THAT REASONABLY EXPECTS THE PERSON'S
27 ANNUAL GROSS REVENUES DERIVED FROM DIGITAL ADVERTISING SERVICES IN THE
28 STATE TO EXCEED \$1,000,000 SHALL COMPLETE, UNDER OATH, AND FILE WITH THE

1 **COMPTROLLER A DECLARATION OF ESTIMATED TAX, ON OR BEFORE APRIL 15 OF**
2 **THAT YEAR.**

3 **(2) A PERSON REQUIRED UNDER PARAGRAPH (1) OF THIS**
4 **SUBSECTION TO FILE A DECLARATION OF ESTIMATED TAX FOR A TAXABLE YEAR**
5 **SHALL COMPLETE AND FILE WITH THE COMPTROLLER A QUARTERLY ESTIMATED**
6 **TAX RETURN ON OR BEFORE JUNE 15, SEPTEMBER 15, AND DECEMBER 15 OF THAT**
7 **YEAR.**

8 **(C) A PERSON REQUIRED TO FILE A RETURN UNDER THIS SECTION SHALL**
9 **FILE WITH THE RETURN AN ATTACHMENT THAT STATES ANY INFORMATION THAT**
10 **THE COMPTROLLER REQUIRES TO DETERMINE ANNUAL GROSS REVENUES DERIVED**
11 **FROM DIGITAL ADVERTISING SERVICES IN THE STATE.**

12 **7.5-202.**

13 **A PERSON REQUIRED TO FILE A RETURN UNDER § 7.5-201 OF THIS SUBTITLE**
14 **SHALL MAINTAIN RECORDS OF DIGITAL ADVERTISING SERVICES PROVIDED IN THE**
15 **STATE AND THE BASIS FOR THE CALCULATION OF THE DIGITAL ADVERTISING GROSS**
16 **REVENUES TAX OWED.**

17 **SUBTITLE 3. TAX PAYMENT.**

18 **7.5-301.**

19 **(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, EACH**
20 **PERSON REQUIRED TO FILE A RETURN UNDER § 7.5-201 OF THIS TITLE SHALL PAY**
21 **THE DIGITAL ADVERTISING GROSS REVENUES TAX WITH THE RETURN THAT COVERS**
22 **THE PERIOD FOR WHICH THE TAX IS DUE.**

23 **(B) A PERSON REQUIRED TO FILE ESTIMATED DIGITAL ADVERTISING GROSS**
24 **REVENUES TAX RETURNS UNDER § 7.5-201(B) OF THIS TITLE SHALL PAY:**

25 **(1) AT LEAST 25% OF THE ESTIMATED DIGITAL ADVERTISING GROSS**
26 **REVENUES TAX SHOWN ON THE DECLARATION OR AMENDED DECLARATION FOR A**
27 **TAXABLE YEAR:**

28 **(I) WITH THE DECLARATION OR AMENDED DECLARATION THAT**
29 **COVERS THE YEAR; AND**

30 **(II) WITH EACH QUARTERLY RETURN FOR THAT YEAR; AND**

1 **(2) ANY UNPAID DIGITAL ADVERTISING GROSS REVENUES TAX FOR**
2 **THE YEAR SHOWN ON THE PERSON'S RETURN THAT COVERS THAT YEAR WITH THE**
3 **RETURN.**

4 13-402.

5 (a) If a notice and demand for a return is made under § 13-303 of this title and
6 the person or governmental unit fails to file the return, the tax collector shall:

7 (4) for motor carrier tax:

8 (i) compute the tax by using a miles per gallon factor based on the
9 use, in the State, of 40 gallons of motor fuel for each commercial motor vehicle in the
10 person's fleet on each day during the period for which the return is not filed; and

11 (ii) assess the tax due; [and]

12 (5) for public service company franchise tax:

13 (i) estimate gross receipts from the best information in the
14 possession of the tax collector; and

15 (ii) assess the tax due on the estimated gross receipts; **AND**

16 **(6) FOR DIGITAL ADVERTISING GROSS REVENUES TAX:**

17 **(I) ESTIMATE GROSS REVENUES FROM THE BEST**
18 **INFORMATION IN POSSESSION OF THE TAX COLLECTOR; AND**

19 **(II) ASSESS THE TAX DUE ON THE ESTIMATED ASSESSABLE**
20 **BASE.**

21 13-602.

22 (a) Except as provided in subsections (b) and (c) of this section, a tax collector
23 shall assess interest on unpaid tax from the due date to the date on which the tax is paid if
24 a person who is required to estimate and pay **DIGITAL ADVERTISING GROSS REVENUES**
25 **TAX**, financial institution franchise tax, public service company franchise tax, or income
26 tax under **§ 7.5-301**, § 8-210(b), § 8-405(b), or § 10-902 of this article:

27 (1) fails to pay an installment when due; or

28 (2) estimates a tax that is:

29 (i) less than 90% of the tax required to be shown on the return for
30 the current taxable year; and

1 (ii) less than 110% of the tax paid for the prior taxable year, reduced
2 by the credit allowed under § 10–703 of this article.

3 13–702.

4 (a) Except as provided in subsections (b) and (c) of this section, a tax collector
5 shall assess a penalty not exceeding 25% of the amount underestimated, if a person who is
6 required to estimate and pay **DIGITAL ADVERTISING GROSS REVENUES TAX**, financial
7 institution franchise tax, public service company franchise tax, or income tax under §
8 **7.5–301**, § 8–210(b), § 8–405(b), or § 10–902 of this article:

9 (1) fails to pay an installment when due; or

10 (2) estimates a tax that is:

11 (i) less than 90% of the tax required to be shown on the return for
12 the current taxable year; and

13 (ii) less than 110% of the tax paid for the prior taxable year, reduced
14 by the credit allowed under § 10–703 of this article.

15 13–1001.

16 **(G) A PERSON WHO IS REQUIRED TO FILE A DIGITAL ADVERTISING GROSS**
17 **REVENUES TAX RETURN AND WHO WILLFULLY FAILS TO FILE THE RETURN AS**
18 **REQUIRED UNDER TITLE 7.5 OF THIS ARTICLE IS GUILTY OF A MISDEMEANOR AND,**
19 **ON CONVICTION, IS SUBJECT TO A FINE NOT EXCEEDING \$5,000 OR IMPRISONMENT**
20 **NOT EXCEEDING 5 YEARS OR BOTH.**

21 13–1002.

22 (b) A person, including an officer of a corporation, who willfully files **A FALSE**
23 **DIGITAL ADVERTISING GROSS REVENUES TAX RETURN**, a false financial institution
24 franchise tax return, a false public service company franchise tax return, or a false income
25 tax return with the intent to evade the payment of tax due under this article is guilty of
26 perjury and, on conviction, is subject to the penalty for perjury.

27 (c) Subsections (a) and (b) of this section apply to the alcoholic beverage, **DIGITAL**
28 **ADVERTISING GROSS REVENUES**, financial institution franchise, public service company
29 franchise, and income taxes.

30 13–1101.

31 (b) An assessment of **DIGITAL ADVERTISING GROSS REVENUES TAX**, financial
32 institution franchise tax, public service company franchise tax, income tax, or estate tax

1 may be made at any time if:

2 (1) a false return is filed with the intent to evade the tax;

3 (2) a willful attempt is made to evade the tax;

4 (3) a return is not filed as required under Title 7, **TITLE 7.5**, Title 8, or
5 Title 10 of this article;

6 (4) an amended estate tax return is not filed as required under Title 7 of
7 this article;

8 (5) an incomplete return is filed; or

9 (6) a report of federal adjustment is not filed within the period required
10 under § 13–409 of this title.

11 (c) If a report of federal adjustment is filed within the time required under §
12 13–409 of this title, the tax collector shall assess the **DIGITAL ADVERTISING GROSS**
13 **REVENUES TAX**, financial institution franchise tax, public service company franchise tax,
14 income tax, or estate tax within 1 year after the date on which the tax collector receives the
15 report.

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
17 1, 2020, and shall be applicable to all taxable years beginning after December 31, 2020.