



Maryland | Delaware | DC Press Association

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To: Budget and Taxation Committee

From: Rebecca Snyder, Executive Director, MDDC Press Association

Date: January 29, 2020

Re: **SB 2 – OPPOSE**

The Maryland-Delaware-District of Columbia Press Association represents a diverse membership of news media organizations, from large, metro dailies like the Washington Post and the Baltimore Sun, to hometown newspapers such as The Frederick News Post and the Hagerstown Herald Mail to publications such as The Daily Record, the Oakland Republican, and online-only publications such as Maryland Matters and Bethesda Beat.

The Press Association opposes SB 2 for three reasons: one, this bill will choke advertising revenues; two, the bill as written is vague and impractical to comply with; and three, we believe it violates the First Amendment and overreaches in other areas.

Advertising taxes choke economic growth.

Maryland would be the first in the nation to tax digital advertising. Although the specificity of digital advertising is new, we can look to other states for the results of an advertising tax. They have failed. Arizona, Iowa and Florida each passed broad advertising taxes years ago and each state later repealed the tax. Since 1987, when Florida repealed its advertising sales tax, 40 states have considered and rejected the idea. Florida's experience is instructive. Advertising fell by 12 percent, and the tax was extremely difficult to administer. The tax was repealed in a special session five months after it took effect. **A sales tax on advertising would slow economic growth.** When the cost of advertising goes up, there is less advertising, which leads to less consumer demand. Lower consumer demand reduces revenue, creates fewer jobs, slows the economy and reduces its usefulness as a revenue source. The members of MDDC Press Association connect many local small businesses to advertising in a variety of forms, both digital and print, and many act as agencies to secure the best value for clients' marketing dollars. Our members rely on advertising revenues to be able to cover their local markets and any diminishment of that revenue could prove catastrophic.

FACTS

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**We believe a strong news media is
central to a strong and open society.**

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Further, we believe our members would be disadvantaged when bidding on marketing and advertising contracts from out of state advertisers. **Will Maryland be as attractive to those advertisers when their marketing dollar does not go as far? We believe the answer is no.**

Vague language and complex administration create confusion.

The bill, as currently written, would be difficult for our members to comply with, and would create an undue burden. A tiered tax rate on digital advertising is confusing in the marketplace and to those who need to comply with the law. Sales and use tax is usually imposed on an end product, not on an intermediate step such as advertising. Advertising is a communications process that helps produce the final sale of a product, which is most like already subject to the state sales tax, thus layering tax upon tax.

On a practical level, the term digital advertising may encompass many services, including not only the ads one sees within a browser or app, but also targeting technology, website creation, email marketing search engine optimization, branded content and others. The field is rapidly changing and new services are being developed all the time. **How will the state manage the complex administration required to ensure that the tax is being reported properly?** In addition, simply locating the data required to comply with the tax is a burden. Some members report that there is no way to pull digital revenue by state; only by zip code, and even that is a huge lift. For many Maryland residents, their IP address does not accurately reflect their location, and our members do not currently track IP addresses by location and would have to develop tools to make that happen. Finally, a significant amount of digital advertising comes from national networks, where local publications do not have a lot of control – or any – over what is tracked and reported.

Singling out digital advertising speech is a violation of the First Amendment.

This bill would tax speech itself (the advertising) rather than the underlying economic or business transactions. Additionally, it places a **discriminatory burden on digital speech made in advertising**, treating it very differently from the same speech in any other medium for no apparent reason. For example, the Maryland Court of Appeals has held that municipal taxes on advertising media were unconstitutional for singling out for taxation newspapers and radio and television stations entitled to first amendment immunities. (*City of Baltimore v. A.S. Abell Co.*, 218 Md. 273, 145 A.2d 111 (1958)). **The same constitutional concerns that the court found in that case apply here - just in the context of digital advertising.**

The members of Press Association are opposed to SB 3 and ask for an unfavorable report.