MARYLAND
Chamber of Commerce

LEGISLATIVE POSITION:
Unfavorable
Senate Bill 2
Digital Advertising Gross Revenues—Taxation
Senate Budget and Taxation Committee

Wednesday, January 29, 2020

Dear Chairman Guzzone and Members of the Committee:

Founded in 1968, the Maryland Chamber of Commerce is the leading voice for business in Maryland. We are a statewide coalition of more than 4,500 members and federated partners, and we work to develop and promote strong public policy that ensures sustained economic growth for Maryland businesses, employees and families. Part of that work includes evaluating, promoting and maintaining the best approaches for tax policy for the state.

Senate Bill 2 would create a gross receipts tax on revenues derived from digital advertising services in Maryland. As defined by the bill, digital advertising services are advertisement services on a digital interface to include any type of software, website or application. Revenues would be sourced to Maryland if the advertising appears on a device with an IP address indicating that the device is in Maryland, or if the user of the device is known or "reasonably suspected" to be using the device in Maryland. The tax would apply to companies that have global annual gross income of $100 million or more, and digital advertising services sourced to Maryland of $1 million or more.

As drafted, SB 2 presents innumerable constitutional and policy concerns, not the least of which is an overt violation of the Permanent Internet Tax Freedom Act. In addition, SB 2 may violate the Equal Protection Clause of the U.S. Constitution due to a lack of rational basis for discriminating against advertising services provided on a digital interface since the law does not impose the same treatment on advertising that does not occur on a digital interface. It also raises concerns relative to the First Amendment, since the tax would effectively regulate commercial speech by forcing only digital advertising service providers in Maryland to either cease allowing Maryland customers to view ads or by substantially increasing fees charged to companies advertising on their platform.

Beyond the legal challenges, of greatest concern to the Chamber is that the economic burden of SB 2 will ultimately be borne by Maryland businesses and consumers of advertising services within a digital interface—including websites and applications. As a result of this tax, advertising service providers will pass through the increased costs to their customers. This includes local Maryland businesses that utilize online platforms to reach new customers. Although the intended targets of this tax are large global corporations, it is Marylanders who will feel it most in the form of higher prices and lower revenues.

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For these reasons, the Maryland Chamber of Commerce respectfully requests an **<u>unfavorable report</u>** on **SB 2**.