



MOTION PICTURE ASSOCIATION – AMERICA Opposition to Maryland Senate Bill 2

Senate Bill 2's ("SB 2") proposal to establish a tax on gross revenues of digital advertising services is radical, constitutionally suspect, and it would harm the Maryland economy, harm consumers as well as large and small businesses. This gross revenue tax on digital advertising services is discriminatory on streaming services, cable-satellite program services and broadcast network programming as well as the Motion Picture Association – America's member company studio and programming owners and distributors.

- **SB 2 includes a hidden tax and will hurt small businesses.** Digital advertising is a cost-effective means of selling a product or service. It is especially important to the success of new and small businesses, which can least afford such increased costs. Today, internet distribution and marketing are as important to a company's success as production of its items for sale. Imposing an unnecessary cost increase as a result of this new tax, is counterproductive as digital advertising is a vital ingredient in sales strategy in the modern competitive on-line marketplace.

- **No other state imposes a targeted punitive tax on the gross revenue of digital advertising services.** SB 2 would impose a new one-of-a-kind tax on the annual gross revenue of digital advertising services that are deemed to be provided in the State. Broad advertising taxes in other states have largely been unsuccessful. For example, Iowa enacted an advertising services tax, and then repealed it. Robert Ray, Governor at the time, said the repeal of the tax on advertising was the best economic development step taken by that year's legislature. Arizona never taxed advertising directly, but included in its gross receipts tax income from advertising. The Arizona legislature later exempted advertising income from taxation, because they concluded it was an economic deterrent. The tiered tax, which imposes the highest tax burden on larger companies only on digital advertising and does not impose a corresponding tax on revenues from tangible advertising. Additionally, the legislation uses a random threshold of a company's global annual gross revenues.

- **Proposed tax on digital advertising will ultimately hurt consumers:** Although the proposed tax appears to fall only on large non-resident Internet advertising providers, this new tax initially will fall on Maryland advertisers through increased prices of up to 10% on Internet-based advertising. Eventually, the tax will fall on Maryland consumers who will suffer higher prices for goods and services they purchase from the companies advertising on the digital interface. The proposed tax on digital advertising gross revenues is discriminatory.

- **Proposed tax in SB 2 is constitutionally suspect.** The proposed tax on digital advertising gross revenues is discriminatory and poses serious constitutional concerns. In addition to being constitutionally suspect under the dormant Commerce Clause, the proposed tax would likely run afoul of the First Amendment. The fairness issue is a particularly telling one: In *Baltimore v. A. S. Abell Co.*, 218 Md. 273 (1958), the Maryland Court of Appeals held that a 1957 Baltimore city ordinance which imposed a four percent tax on the gross sales price of every sale of space for advertising, constituted an unconstitutional restraint on the freedom of speech and of the press. In support of its decision, the court pointed out that the tax did not cover 41.7 percent of the estimated dollar volume of advertising done in the area.

We recommend the Maryland Legislature undertake a broad-based policy review of best practices to fairly and equitably develop a digital goods and services taxing regime, and work with business and industry to achieve that goal.

Accordingly, SB 2 should be rejected.