AFT_FAV_SB2
Uploaded by: English, Marietta
Position: FAV

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AFT-Maryland

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Written Testimony from the AFT-Maryland
SB 2– Digital Advertising Gross Revenues - Taxation
Senate Budget and Taxation Committee
January 29, 2020

SUPPORT

Good afternoon Mr. Chair and members of the Senate Budget and Taxation Committee. On behalf of the 20,000 state, municipal, and public education workers residing in Maryland, AFT-Maryland enthusiastically calls for a favorable report for SB 2, the bill that would fairly tax digital advertisements that appear in the state.

As the statewide organization for the Baltimore Teachers Union, as well as unions representing thousands of state employees, AFT-Maryland supports bills that modernize and bring our tax code to meet the realities of technological change to our state's economy. Simply put, our members—as educators and professionals employed by the state to provide vital services to its residents—are expected to provide these services to residents in a digital age; those advertising businesses that have flourished in this changed economic setting also be asked to pay their fair share?

Members of the committee: As the recommendations of the Kirwan Commission have demonstrated, our state is facing important challenges in providing the education our students deserve. In order to overcome these challenges, we must take the initiative to pass this bill and modernize our tax code to account for an increasingly digitized economy. In addition, this bill will create a more equal playing field with respect to tax code and allow undertaxed digital corporations to finally pay their fair share.

As the Fiscal note for this bill demonstrates, passage of this bill will create billions of dollars in revenues needed to fund the sweeping policy recommendations of the Kirwan Commission.
It is for these reasons that we ask that this committee give a favorable report to SB 2, Digital Advertising – Gross revenues – Taxation.

Romer NYT Op-Ed
Uploaded by: Ferguson, Senate President Bill
Position: FAV

Opinion

A Tax That Could Fix Big Tech

Putting a levy on targeted ad revenue would give Facebook and Google a real incentive to change their dangerous business models.

By Paul Romer

Mr. Romer received a Nobel in economics in 2018.

- May 6, 2019

It is the job of government to prevent a tragedy of the commons. That includes the commons of shared values and norms on which democracy depends. The dominant digital platform companies, including Facebook and Google, make their profits using business models that erode this commons. They have created a haven for dangerous misinformation and hate speech that has undermined trust in democratic institutions. And it is troubling when so much information is controlled by so few companies.

What is the best way to protect and restore this public commons? Most of the proposals to change platform companies rely on either antitrust law or regulatory action. I propose a different solution. Instead of banning the current business model — in which platform companies harvest user information to sell targeted digital ads — new legislation could establish a tax that would encourage platform companies to shift toward a healthier, more traditional model.

The tax that I propose would be applied to revenue from sales of targeted digital ads, which are the key to the operation of Facebook, Google and the like. At the federal level, Congress could add it as a surcharge to the corporate income tax. At the state level, a legislature could adopt it as a type of sales tax on the revenue a company collects for displaying ads to residents of the state.

There are several advantages to using tax legislation, rather than antitrust law or regulation, as a strategy. Senator Elizabeth Warren, for example, has called for breaking up big tech companies. But the antitrust remedies that Ms. Warren and other policy experts are suggesting ask prosecutors and judges to make policy decisions best left to legislatures. Existing antitrust law in the United States addresses mainly the harm from price gouging, not the other kinds of harm caused by these platforms, such as stifling innovation and undermining the institutions of democracy.

Of course, companies are incredibly clever about avoiding taxes. But in this case, that's a good thing for all of us. This tax would spur their creativity. Ad-driven platform companies could avoid the tax entirely by switching to the business model that many digital companies already offer: an ad-free subscription. Under this model, consumers know what they give up, and the success of the business would not hinge on tracking customers with ever more sophisticated surveillance techniques. A company could succeed the old-fashioned way: by delivering a service that is worth more than it costs.

Some corporations will persist with the targeted ad model if it yields more profit, even after paying the tax. To limit the size of those businesses, the tax could be progressive, with higher rates for larger companies. This would have the added benefit of creating a corporate version of a marriage penalty. When two companies combine, their total tax bill would go up.

A progressive digital ad revenue tax would also make sure that dominant social media platforms bear the brunt of the tax. That's important: It makes it easier for new companies to enter the market, so consumers will have more choices. A new entrant would also be less likely to be acquired if there's a tax penalty. A large company might reduce its tax bill by breaking itself into several smaller companies. It would be up to Congress or state legislatures to decide where to place the thresholds at which higher tax rates kick in.

If these measures aren't enough, Congress has the power to create new laws that address specific problems. It could follow the Wall Street reforms of Dodd-Frank and define "systemically important social media platforms" that would be required to meet stringent transparency standards or be subject to a "fairness doctrine" for balanced reporting, similar to what broadcasters once faced.

From the very beginning, Americans have refused to tolerate unchecked power. We must now press our legislators to protect us from the unchecked power of dominant digital platforms. The bigger they get and the more they know, the greater the threat to our social and political way of life.

Paul Romer, a recipient of the 2018 Nobel Memorial Prize in Economic Science, advised the Department of Justice in its antitrust case against Microsoft.

SB 2 - Ferguson Testimony
Uploaded by: Ferguson, Senate President Bill
Position: FAV

Bill Ferguson
President of the Senate
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The Senate of Maryland
Annapolis, Maryland 21401-1991

SB 2 - Digital Advertising Gross Revenues - Taxation
Testimony of Senate President Bill Ferguson
On January 29, 2020
Before the Budget and Taxation Committee

Why This Bill Matters:

Massive technology corporations have ballooned in influence over the last two decades. Over that time, innovative companies and platforms have grown on their ability to monetize personal data for targeted advertising. While Maryland is a state that fosters innovation, we must ensure that it is done in way that maximizes individuals' potential. As more people shop, consume news, and generally engage online, these companies' profits will continue to grow exponentially.

Right now, the growth of these companies has resulted in negative externalities socialized and borne by the public. In order for a more efficient and fair marketplace to exist in this new media environment, externalities created by private actors' actions must be borne by that actor. At the federal level, there has been conversation about antitrust laws, or targeted regulatory action. That is a discussion for a different forum.

The problem we're seeking to solve is ensuring that innovative companies like these are helping to build the future of democracy in Maryland. The basis of this solution is based off a model originally built by Paul Romer, a Nobel Prize winner in Economics, is to levy a progressive tax on the currently untaxed revenues of companies' revenue from digital ad revenue. This tax is specifically geared towards large multinational corporations with at least $100 million in annual digital ad revenues each year.

What This Bill Does:

As drafted, Senate Bill 2 creates a progressive tax on companies which bring in at least $100 million a year in global digital ad revenue. The tax is applied proportionately to Maryland's population in comparison to the total U.S. population.

It is broken into the four tax brackets below and corresponding rates:

- 2.5% assessable rate on companies which bring in between $100 million and $1 billion in annual global ad revenue
- 5% assessable rate on companies which bring in between $1 billion and $5 billion in annual global ad revenue
- 7.5% assessable rate on companies which bring in between $5 billion and $15 billion in annual global ad revenue

- 10% assessable rate on companies which bring in over $15 billion in annual global ad revenue

The revenues raised from this bill would then be placed into the Blueprint for Maryland's Future Fund.

We recognize that the formula and technical language in the bill is not perfect and are working to offer amendments which fix these issues.

Why You Should Support This Bill:

The lack of action at the federal level has allowed these companies to continue collecting and monetizing users' personal data and leaves a void in leadership for states to fill. By levying this tax on digital ad revenues, ad-driven platform companies will contribute a projected $250 million a year to Maryland's public education system while ensuring that future generations are technology literate and can distinguish between credible and subversive content.

These innovative technology companies will continue collecting more personal user data in new and sophisticated ways which can then end up in the hands of those wishing to influence the political process at the detriment of our society. Maryland should lead the way in creating novel policies to fundamentally change the way these companies contribute back to public society.

This bill, which is increasingly relevant in a 21st century economy built on innovative platforms and the sharing of content, is one of the strongest mechanism we have to fund the Kirwan Commission's recommendations in a way that does not impact Marylander's day to day lives.

SB2 Graphic

Uploaded by: Ferguson, Senate President Bill

Position: FAV

Senate Bill 2 (2020)

Senators: Thomas V. Mike Miller, Jr. and Bill Ferguson

Taxation – Digital Advertising Gross Revenues – Taxation

Funding Digital Literacy and Protecting Democracy

Only applies to companies making at least $100 million in digital ad revenue each year

Projected to raise over $250 million per year to improve Maryland public education

Ensures companies using private data to sell targeted advertising also contribute to the public good

SB 2 - Strong Schools Maryland - Favorable
Uploaded by: Francaviglia, Joe
Position: FAV

Testimony in Support of Senate Bill 2 - Digital Advertising Gross Revenues

Senate Budget and Taxation Committee
January 29th, 2020 - 1:00 pm

Strong Schools Maryland supports SB 2 proposing to raise revenue from certain digital advertising services active in Maryland.

Strong Schools Maryland is a nonpartisan, nonprofit, 501(c)(3) organization whose sole mission is to establish a world-class public education system for every student in Maryland. We are composed of thousands of volunteers and supporters in nearly every county in the state. Our supporters consist of parents, grandparents, small business owners, religious leaders and their congregations, retirees, students, teachers, and Marylanders from every background and age. We have built support for implementing and fully funding the 10-year phase in of the Kirwan Commission's recommendations.

A strong public school system is critical to the long term success of our state. In order to build strong schools in every Maryland community, we must implement a new, equitable, accountable, and sustainable funding formula based on the Kirwan Commission's recommendations. We fully support SB 2 as a fair and measured response to the changing economy. We have a compelling need to create a sustainable revenue source necessary to drive our state's educational transformation over the next 10 years.

Of note, according to a 2018 report commissioned by the Interactive Advertising Bureau and completed by PriceWaterhouseCoopers[1], mobile digital advertising revenue grew to $70 billion in 2018, up from just $7 billion in 2013. It is estimated that this market will swell to *over* $235 billion by 2024. This is in addition to the nearly $40 billion from desktop digital advertising. Moreover, the 10 largest ad companies were responsible for 75% of all internet ad revenues in Q4 of 2018.

SB 2 recognizes the dramatic shifts occurring in our economy and tailors a modern solution to this growing inequity. This is good for Maryland schools, good for Maryland families, and good for Maryland's economy. Recognizing that no one revenue source is sufficient, the strategy envisioned by SB 2 will make an important contribution to fully funding the 10-year phase in of the Kirwan Commission's recommendations.

We cannot expect to fund a 21st century education system relying on 20th century ideas. **We urge the committee to issue a favorable report on SB 2.**

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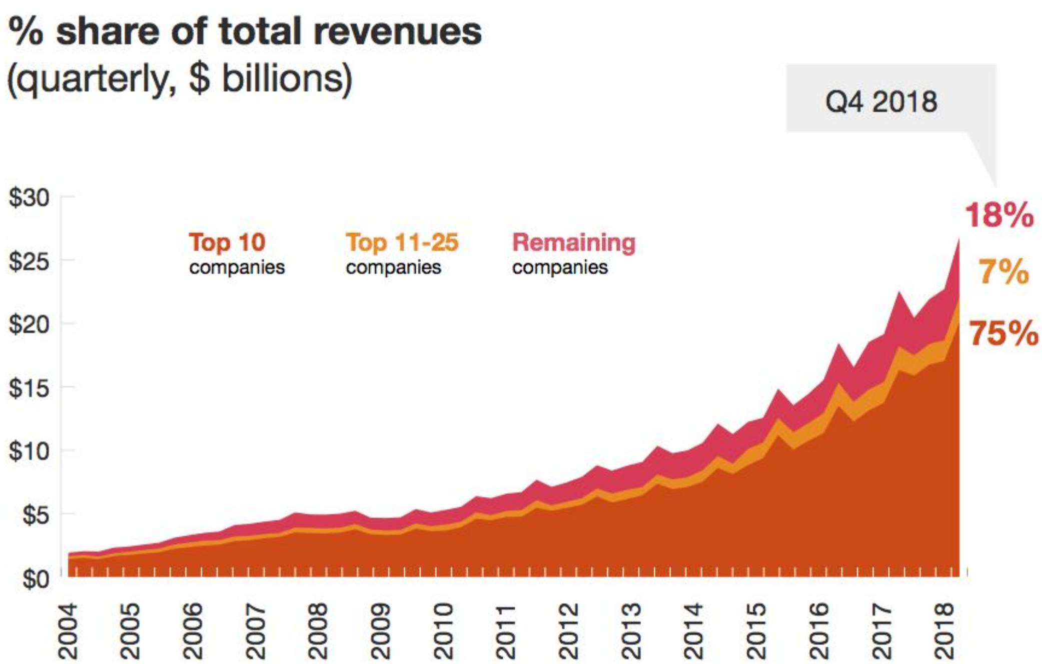
1 https://www.iab.com/wp-content/uploads/2019/05/Full-Year-2018-IAB-Internet-Advertising-Revenue-Report.pdf

Supporting Graphs and Data (courtesy of the 2018 IAB report provided in footnotes):

Top 10 companies account for three-quarters of total ad revenues in Q4 2018

75% of internet advertising revenues in Q4 2018 remain concentrated with the top 10 leading ad-selling companies. This is 3% higher from the percentage reported in Q4 2017 (72%). Companies ranked 11th to 25th accounted for 7% of revenues in Q4 2018, a one percentage point decrease from the 8% reported in Q4 2017.

The concentration of top 10 revenues has fluctuated between 69% and 77% over the past ten years.



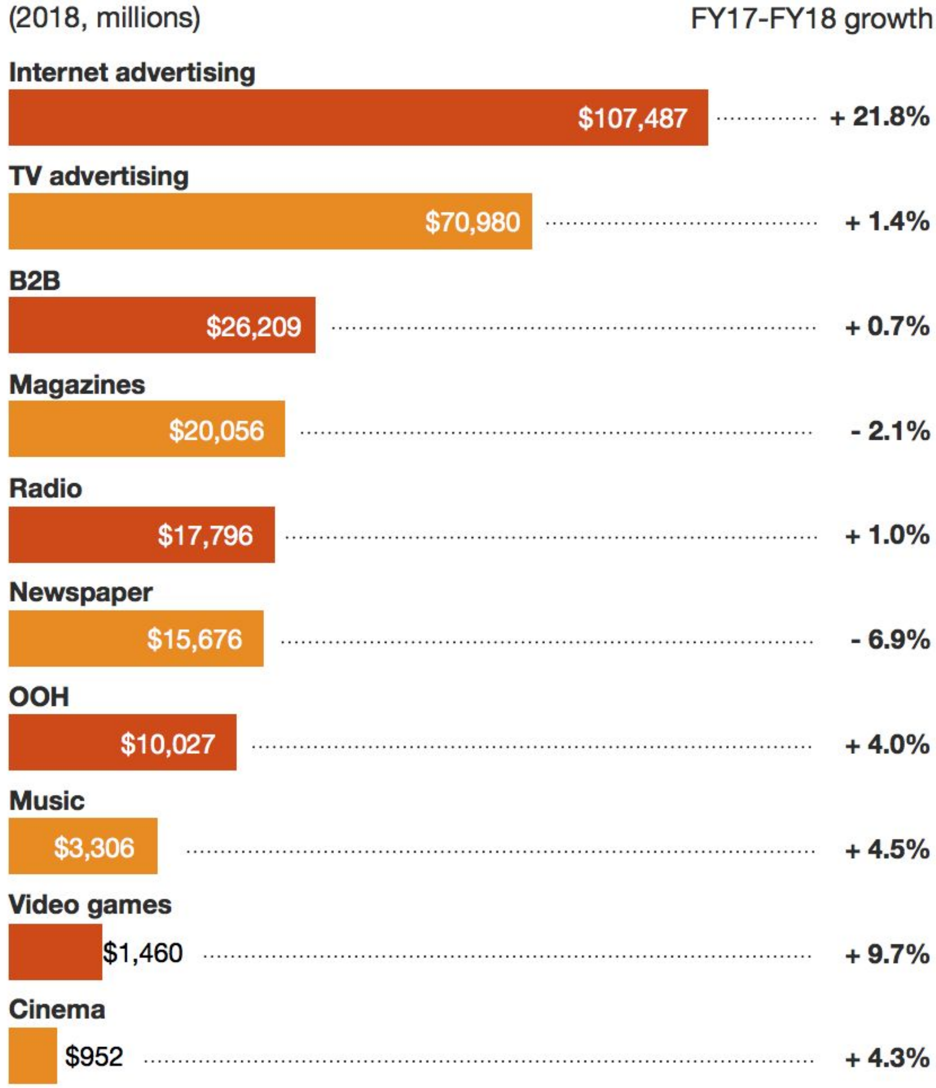
Note: Totals may not equal 100% due to rounding.

Source: IAB/PwC Internet Ad Revenue Report, FY 2018

Internet advertising passed the $100 billion mark for the first time in history

Internet advertising continues to grow its share of the total advertising market. Internet advertising leads TV advertising by $36.5 billion in FY 2018.

Advertising market share by media

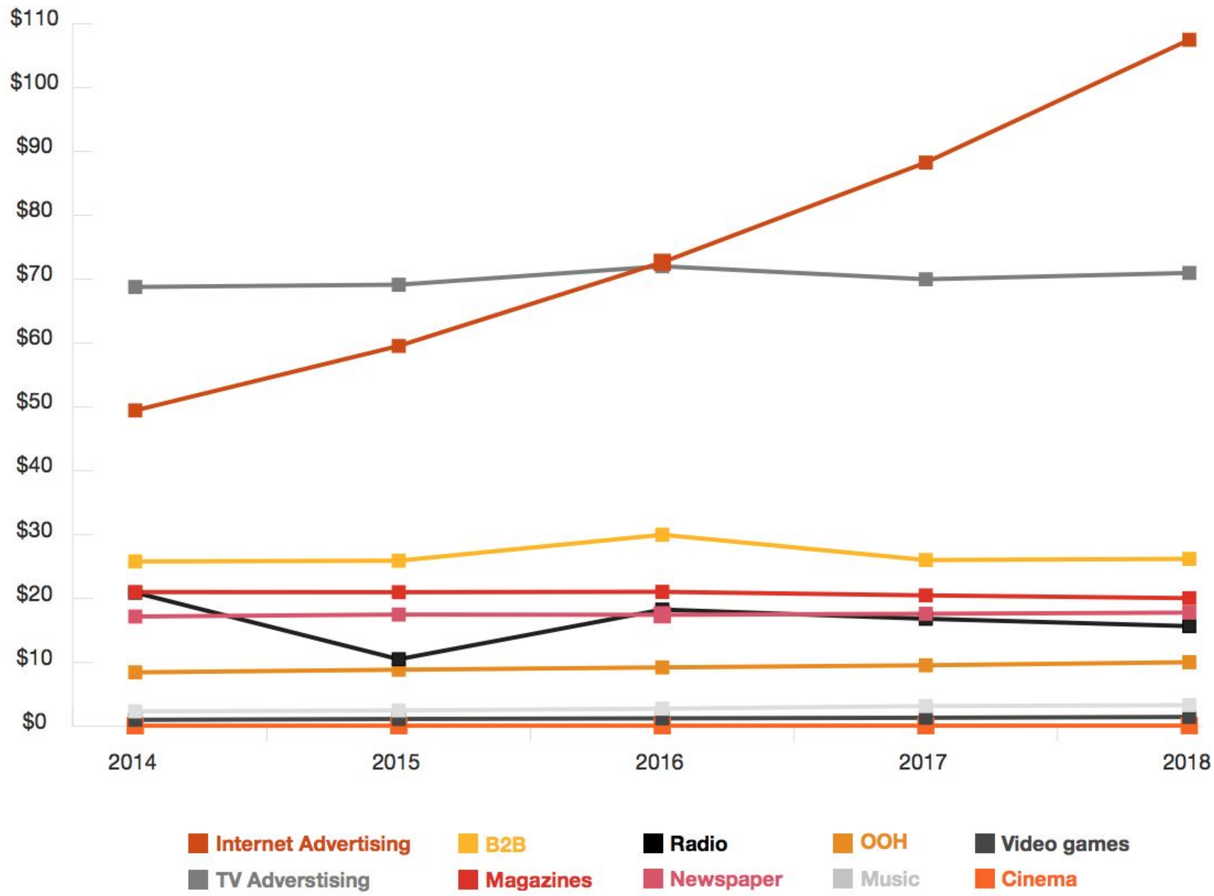


Source: PwC, IAB/PwC Internet Ad Revenue Report, FY 2018

Internet advertising is the only media type that has experienced double digit growth year-over-year

Besides internet advertising, the year-over-year growth rate for all media types is in the single digits. Internet advertising has sustained its growth in part by the mainstream emergence of existing digital formats.

Historical advertising market share

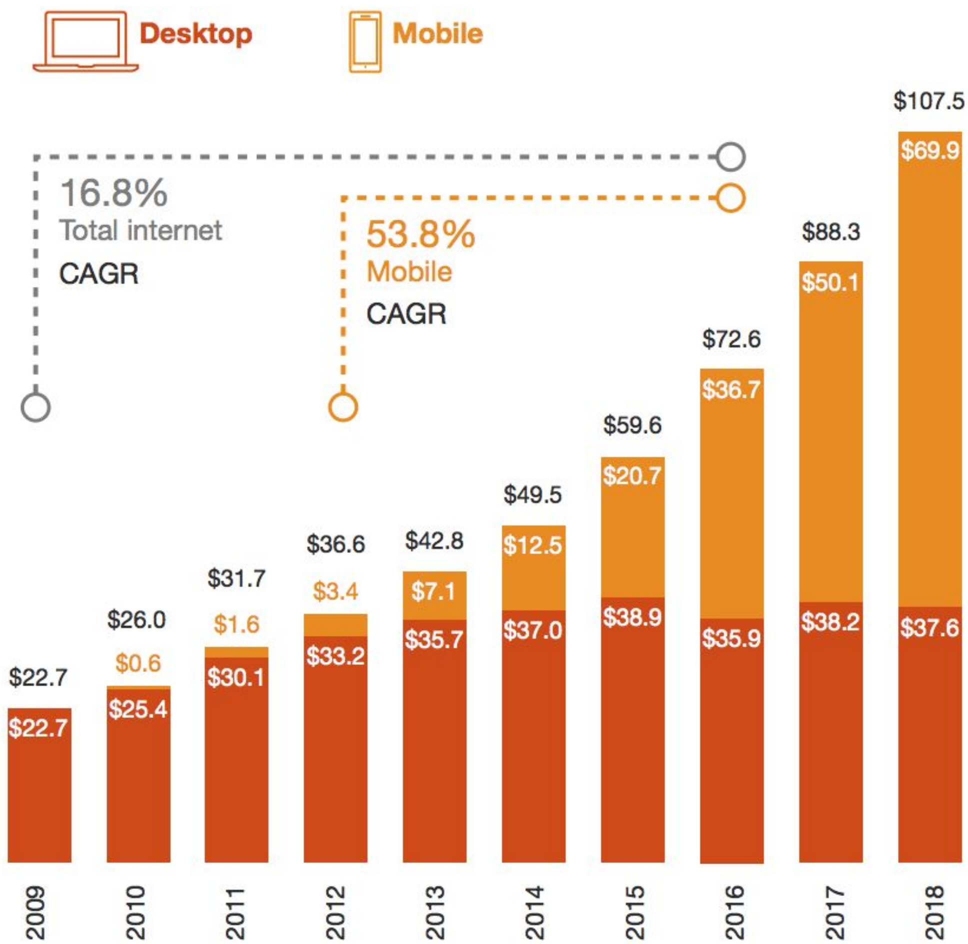


Source: PwC, IAB/PwC Internet Ad Revenue Report, FY 2018

Advertising revenues from mobile devices continue to grow faster than the overall market, with mobile increasing its revenue share to 65.1% in 2018.

As consumers continue to shift their viewing behavior, advertisers have followed them. On a year-over-year basis, mobile internet advertising revenues increased 39.7%, increasing its share of total revenues from 56.7% in FY 2017 to 65.1% in FY 2018. Reflecting the industry's overall growth is a compounded annual growth rate (CAGR) over the past 10 years of 16.8% which over the past few years has been largely driven by the growth of mobile. The rapid growth of the mobile advertising platform has resulted in a CAGR of 53.8% over the past five years. Mobile revenues continue to benefit from advancements in single-click eCommerce, creative ad formats and placements on social media sites.

Desktop vs. mobile internet advertising revenue
(Full year results, $ billions)



GBC_FAV_SB2
Uploaded by: Fry, Donald
Position: FAV

POSITION STATEMENT

TESTIMONY PRESENTED TO THE SENATE BUDGET AND TAXATION COMMITTEE

SENATE BILL 2 -- DIGITAL ADVERTISING GROSS REVENUES - TAXATION

January 29, 2020

DONALD C. FRY
PRESIDENT & CEO
GREATER BALTIMORE COMMITTEE

Senate Bill 2 imposes a tax on annual gross revenues derived from digital advertising services such as advertisement services on a digital interface, including advertisements in the form of banner advertising, search engine advertising, and other comparable advertising services.

The Greater Baltimore Committee (GBC) commends the sponsors of Senate Bill 2 for acknowledging that as Maryland's economy continues to evolve so must the manner in which revenues are collected for essential government services. Maryland's tax structure remains largely a product of a decades old economy based on the taxation of goods. The state's current tax structure is not built to raise revenue from a modern economy largely derived from services and online commerce. While Senate Bill 2 seeks to address taxation on a small portion of today's economy, the GBC contends that taxing one type of product, service, or industry without careful examination of Maryland's entire tax structure is premature.

The legislative approach proposed in this bill is inconsistent with the GBC's report, *Gaining the Competitive Edge: Keys to Economic Growth and Job Creation in Maryland.* The report identifies eight pillars for a competitive business environment. One of the pillars is:

> **Tax structure that is fair and competitive.** Maryland's tax policy must be perceived by business as being competitive and devoid of elements that unreasonably target specific businesses or business sectors.

The GBC instead calls for policymakers to undertake a careful and comprehensive examination of Maryland's tax structure.

Maryland faces long-term fiscal challenges with looming structural deficits and a need to create sufficient revenue to provide funding for education reform. Maryland's policymakers have an opportunity to undertake a serious discussion about transformative change in the form of comprehensive tax reform. A vehicle for such reform is Senate Bill 223 -- *Commission on Tax Policy, Reform, and Fairness*. This bill calls for the creation of a commission that will conduct a comprehensive examination of Maryland's tax structure and make recommendations for reform by December 1, 2021. The GBC strongly supports the proposal advanced in SB 223 and urges the Senate Budget and Taxation Committee to seriously consider such an approach rather than a piecemeal effort.

The Greater Baltimore Committee (GBC) is a non-partisan, independent, regional business advocacy organization comprised of hundreds of businesses -- large, medium and small -- educational institutions, nonprofit organizations and foundations located in Anne Arundel, Baltimore, Carroll, Harford, and Howard counties as well as Baltimore City. The GBC is a 65-year-old, private-sector membership organization with a rich legacy of working with government to find solutions to problems that negatively affect our competitiveness and viability.

SB 2_ACY_Support_Gardiner
Uploaded by: Gardiner, Shamoyia
Position: FAV

To: Chair Guzzone and members of the Budget and Taxation Committee
From: Shamoyia Gardiner, Education Policy Director
Re: Senate Bill 2: Digital Advertising Gross Revenues - Taxation
Date: January 29, 2020
Position: Support

Income inequality is at the root of many challenges facing Maryland's public school students. In the 2018-2019 school year, 42.7% of students benefited from Free and Reduced-Price Meals, indicating that they live in households earning less than 185% of the federal poverty level annually, or $47,638 for a family of four.[1] This figure does not include the currently incalculable number of children from mixed-status or immigrant families who would otherwise qualify for the program, but do not enroll for fear of retaliation from the current federal administration. Maryland has achieved no progress on addressing the number of children it has living in concentrated poverty, with 9,000 more children falling into such circumstances between 2012 and 2017.[2]

From birth, poverty impacts a child's ability to achieve at their maximum academic potential, setting them on a path that will ultimately endanger the likelihood of them growing into a thriving adult. Poverty is correlated with poor birth outcomes, preterm birth, disparate health outcomes, delays in cognitive development, maladaptive behavior, poor academic performance, and a higher likelihood of compounded adverse childhood experiences (ACEs).[3] In Maryland, poverty disproportionately affects Black families, who comprise 37.7% of the Marylanders living in poverty and just 29.8% of the state's population.[4] **The status quo is unconscionable and illogical.**

Senate Bill 2 would take a critical step in mitigating the impact of poverty on Maryland's children—potentially with the long-term impact of eliminating income inequality in the state altogether. SB 2 takes a 21st-century problem—large corporations' use of individuals' personal data to yield private profit—and offers an appropriate solution: imposing a tax on that private profit for investment in a public good.

The Blueprint for Maryland's Future Fund is integral to ushering in a new era of public education in Maryland; one which starts with a world-class system of public education and ensures equitable access to opportunities so all students thrive. For all the reasons above, **ACY strongly urges a favorable report on this bill.**

[1] Maryland State Department of Education. *Free and Reduced-Price Meal Statistics.* SY 2018-2019.
[2] Annie E. Casey Foundation, Kids COUNT Data Snapshot: *Children Living in High-Poverty, Low-Opportunity Neighborhoods.* September 2019.
[3] Larson, Charles P. *Poverty during pregnancy: Its effects on child health outcomes.* Paediatrics Child Health.
[4] Census Bureau ACS 5-Year Estimate *Maryland*.

SB 2_MSEA_ FAV_Sean Johnson.docx
Uploaded by: Johnson, Sean
Position: FAV

maryland state education association

140 Main Street
Annapolis, MD 21401-2003
marylandeducators.org

Testimony in Support of Senate Bill 2
Digital Advertising Gross Revenues - Taxation

Senate Budget and Taxation Committee
January 29, 2020
1:00 PM

Sean Johnson
Government Relations

The Maryland State Education Association supports Senate Bill 2 proposing to impose a tax on annual gross revenues from digital advertising services that will directly benefit the Blueprint for Maryland's Future Fund and serve as a new dedicated funding source to implement the new school funding formula our students and schools need.

MSEA represents 75,000 educators and school employees who work in Maryland's public schools, teaching and preparing our 896,837 students for the careers and jobs of the future. MSEA also represents 39 local affiliates in every county across the state of Maryland, and our parent affiliate is the 3 million-member National Education Association (NEA).

MSEA supports passage of an adequate, sustainable, predictable revenue stream that will adequately fund both the operating and construction costs of our public schools. A great public school for every child means our students have updated technology, small manageable classes, safe and modern schools, proper healthcare and nutrition, and have highly qualified and highly effective educators. The work of the Commission on Innovation and Excellence in Education (Kirwan Commission) further recommends improvements to access to Pre-K and Career Technology Education, as well as expansion of the educator workforce and increased salaries to help deliver individualized instruction and recruit and retain the best workforce in the country.

The Kirwan Commission has determined that Maryland will need to invest substantially more resources into education for our citizens to become truly successful in the very competitive national and global economies. This is the time to be locating and allocating more resources to education, and Senate Bill 2 is part of that dedicated funding solution. Our kids can't wait.

As the state looks to fund the schools of the future, it is prudent to look to efforts to modernize our tax code like the sponsors of this legislation aim to do. This proves that we can dedicate critical new funds for our schools without broad based or regressive tax increases. **We urge a favorable report of Senate Bill 2.**

SEIU_FAV_SB2
Uploaded by: Kildee, Dolly
Position: FAV

Hearing Testimony January 29, 2020

Senate Budget and Tax Committee
Senate Bill 2: Digital Advertising Gross Revenues – Taxation

IN FAVOR

Service Employees International Union, Local 500, CTW, CLC

Good Afternoon members of the Senate Budget and Tax Committee. I am here today as a proud member and leader of SEIU Local 500. SEIU Local 500 represents over 20,000 working people in Maryland, Washington D.C., and Virginia.

Our union is made up of support staff at the Montgomery County Public School system, Family Child Care Providers, Adjunct Faculty at several Maryland colleges and universities, staff at non-profits and many other working people across the region.

Thousands of our members and I work or have worked as educators. Collectively, we have spent years teaching and caring for the future generations of our state.

It's the reason I'm here today to support Senate Bill 2, which would raise revenues from digital advertising in the state to help fund our schools. It's a measure that isn't just the right thing to do - it makes sense.

Small businesses all across our state contribute to our children's future by helping to fund our public schools. The questions remains though, what about the online transactions that happen every day? Is it fair that we ask brick and mortar Maryland businesses to pay their share without asking online advertisers to do the same?

Last session, the General Assembly succeeded in righting part of this wrong by making sure online retailers could no longer avoid paying sales tax. Now, it's time to complete this process by making sure another class of online businesses, advertisers, also pay their fair share.

As we undertake the most comprehensive transformation of our education system in a generation, Maryland will need to find new and innovative ways to gather the revenues necessary to give our children the education they deserve.

Service Employees International Union, Local 500, CtW, CLC
12 Taft Court, Rockville, MD 20850
301-740-7100 www.seiu500.org
Pia Morrison, President

That's exactly what SB 2 offers: a way to raise revenues for our children that keeps up with the changes in our technology, our economy and the digital marketplace. It's time for our tax code to start catching up with the new economy - and what better motivation than caring for our children?

Today, we're asking the members of the Senate Budget and Taxation Committee to consider the benefits that SB 2 will offer for children in public schools across Maryland and to support this innovative piece of legislation. Thank you.

Service Employees International Union, Local 500, CtW, CLC
12 Taft Court, Rockville, MD 20850
301-740-7100 www.seiu500.org
Pia Morrison, President

MD Center on Economic Policy_FWA_SB2
Uploaded by: Orr, Benjamin
Position: FAV

Maryland Needs an Effective, 21st Century Tax Code

Position Statement in Support of Senate Bill 2 with Amendment

Given before the Senate Budget and Taxation Committee

Maryland's economy has changed in important ways during the last half century, but our revenue system has not always kept up. Operating a 20th century tax code in a 21st century economy has caused Maryland's revenue growth to stagnate, falling further behind on meeting Marylanders' needs. We should comprehensively reform our tax code to close corporate loopholes, end ineffective tax breaks, and modernize outdated policies. As one part of that effort, taxing advertising revenues of the largest corporations—across all platforms—is an important step in the right direction. For these reasons, the Maryland Center on Economic Policy supports Senate Bill 2 with amendment to apply to all types of advertising activity.

Maryland has been underinvesting in the foundations of our communities ever since the Great Recession. We chipped away at public school funding, allowing the number of school districts that were close to full funding under the Thornton formula to fall from 23 out of 24 in fiscal year 2008 to only six by 2017—with more than half of the state's Black students going to school in a district that was underfunded by 15 percent or more. At the same time, we have allowed our investments in other essential services to erode, from public health to reliable transit. Marylanders now face a choice: We can stay the course, skimp on the basics, and watch our economy weaken over time, or we can fix our revenue system to build a thriving future.

Building a truly effective revenue system will require multiple steps, such as closing corporate loopholes, ending ineffective business tax breaks, and fixing a system that currently allows the wealthiest 1 percent of Maryland households to pay a smaller share of their income in state and local taxes than the rest of us do. As an important part of this process, Senate Bill 2 can end the counterproductive carve-out for advertising sales, provided that it is designed effectively.

Digital advertising has become a pervasive part of modern life. Many essential activities—checking your email, applying for a job, or shopping online for necessities, to name a few—are close to impossible without consenting to opaque terms of service agreements, generating mounds of data to be mined by parties unknown for purposes unknown, and of course, viewing ads. The drive for advertising revenue has contributed to rising anxiety, the spread of false news stories, and even potential threats to democracy. By bringing this industry into our tax system—on an equal basis with print, television, and other forms of advertising—and investing the revenue in world-class schools, we can begin to mitigate these harms.

It is essential that an advertising tax be designed thoughtfully. Whenever possible, tax policy should seek to apply similar standards to similar activities. In line with this principle, a general advertising tax is preferable to one focused only on digital advertising. This is especially important to avoid conflict with federal law that restricts states' ability to create tailored policies for the online economy. Amending Senate Bill 2 to cover all types of advertising, while continuing to exempt smaller businesses, would mean a better-designed bill and a lower risk of costly litigation.

For these reasons, the Maryland Center on Economic Policy respectfully requests that the Senate Budget and Taxation Committee make a favorable report on Senate Bill 2 with amendment.

Equity Impact Analysis: Senate Bill 2

Bill summary

Senate Bill 2 applies a graduated tax rate to any gross revenue related to digital advertising of business entities that have at least $100 million in annual sales. The proposed amendment expands this tax to cover advertising on all platforms, such as print, television, and radio.

Background

Targeted advertising is an increasingly pervasive part of the digital economy that exploits user-generated data—anything from voluntarily submitted personal information to tracked, unrelated web browsing—to draw inferences about what ads may lead a user to make a purchase. This practice has raised significant privacy concerns because of its unavoidable reliance on capturing voluminous personal information.

The federal Internet Tax Freedom Act, enacted in 1998, prohibits states from taxing online activities differently from otherwise-similar activities conducted offline. Amending Senate Bill 2 to apply to advertising activity more broadly would reduce the risk that the tax generates costly litigation.

Equity Implications

Our growing underinvestment in essential services like education, health care, and transportation harms all Marylanders, and at the same time has outsized impacts on people who face economic roadblocks because of low income or the ongoing legacy of racist policy. Reforming Maryland's tax code to raise adequate revenue would strengthen our ability to invest in the foundations of our economy and reduce barriers that hold back too many Marylanders.

Impact

If amended to cover all advertising regardless of platform, Senate Bill 2 would likely **improve racial and economic equity** in Maryland.

Paul Romer Testimony SB2
Uploaded by: Romer, Paul
Position: FAV

January 29, 2020

Testimony from Paul Romer to Budget and Taxation Committee

No one is paying me or my father to be here today.

In the work we do, it is part of the job to give away what we have learned.

Here is the most important lesson we learned along our different separate paths: it was the investments in education by previous generations that gave us the high standard of living that we take for granted today. In the 19th century, the states of this nation committed to free primary education for all children -- with the tragic exception of children who were slaves. Then, no one fretted about whether they could afford that investment. In the early years of the 20th century, the states committed to free secondary education for all young people. Then too, no one fretted about whether states could afford to make that additional investment. Back then, people did what they had to do, without whining.

Today, Maryland has proposed such modest investments as offering free preschool access to only half of all 3 and 4 year olds.

There are voices who will not tell you who is paying them to say what they say. These voices will fret about whether the citizens of Maryland can afford to make this additional investment. But output per person today is roughly 10 times what it was at the beginning of the 20th century. So how can it be that with 10 times the income and resources, we can not afford a much more modest new investment?

Maryland can show that despite what the voices that fret are saying, every state can afford to make new investments in our children. And it can show that a large part of the cost of these investments can be covered by a tax that would be beneficial even if states didn't spend more and just put the money in the bank.

The voices that fret will say that taxes distort the market, discourage innovation, and slow growth. The truth is that the market for digital services is broken and that a tax on digital advertising can help restore the conditions needed for the market to work.

For markets to work, two things must be true:

--Buyers know what they give up to get something from sellers.
--Buyers can take their business elsewhere if the sellers do not live up to their promises.

Neither is present is true when there are dominant digital platforms that profit from tracking and targeting. Buyers have no idea what they give up when they use a digital service. They have no realistic option to take their business elsewhere.

But we can have a market for digital services that works the way markets are supposed to work. I started a business that let students do homework online. The students paid a subscription fee of $35. My business never, ever revealed any information about these students to anyone other than the professor who assigned the homework.

Today, I am a consumer of a cloud service that charges me $11 per year to save any link I find as I search the web. This firm works for me, not some hidden third party. It never reveals any information to anyone about what I'm reading.

A tax on digital advertising will encourage more digital service providers to rely on subscriptions and to be transparent about whose interests they promote. This model will undermine monopolies that rely on information about us and help restore competition.

The voices that fret will say that markets cannot work if people pay to get something. They will suggest that in the last 15 years, inequality has gone down because the poor do not pay for the services of such platforms as Facebook and Google. These voices will say that 15 years ago, no small businesses existed. How could they? Back then, small business did not have access to the targeted digital ads that these these platforms provide. These voices will say that no one could run for elective office. How could there even be an election? Candidates did not have access to targeted digital advertising. These voices will also say that this tax will hurt small digital service providers when in fact small firms will pay any tax at all. It is the platforms with monopoly control over information about our every move who will pay the vast majority of the tax.

I lived through the last 15 years. I've examined this tax. I can assure you that these claims are false; and that the pervasive dishonesty of the people who have made hundreds of billions from targeting and tracking is the final proof that something is terribly wrong with the market for digital services. When the market works, the firms that succeed are honest.

If every state followed Maryland's lead, our children will be better prepared and we will will have made a good start on the crucial task of getting back to a world where successful firms are open and honest; where we keep providing educational opportunity for all children; where no platform can be used to manipulate our electoral system.

Roy Romer Testimony SB2

Uploaded by: Romer, Roy

Position: FAV

January 29, 2020

Testimony from Roy Roomer to Budget and Taxation Committee

Good afternoon Mr. Chairman and members of the Budget and Taxation Committee.

I bring three types of experience to the discussion about this tax and the educational goals it supports. I served as an elected official, in the legislature, as state Treasurer, and as Governor of Colorado. I also served as the executive responsible for managing the Los Angeles Unified School District, America's second largest. Finally, I have run, bought, sold, and operated many types of business. One of these, a network of John Deere dealerships, now has over a billion dollars in sales each year.

From the perspectives of all three parts of my career -- as an elected official, as the superintendent of a school district, and as the owner of small and large businesses -- I know firsthand that we are making investments in education and infrastructure that are totally inadequate at every level of government in this country. That's why I applaud the State of Maryland for prioritizing education by committing to the recommendations of the Kirwan Commission, and backing that commitment with the funding that it requires.

As an elected official, but particularly as a business person, I know that education is the single most important investment a government can make. The key to success in the businesses I ran was always to recruit employees who were willing and able to keep learning as our world changed.

As a former superintendent of a school system, I know how hard it is to improve the quality of an education system. Over the years I've had to fix a lot of problems and manage a lot of people. Years ago, I learned that money alone rarely fixes a problem, and that fixing problems is not the same as making steady progress. I agree that voters and their representatives must insist that public employees keep striving for efficiencies, for new and better ways to do their jobs. But as a business person, I know that only in the world of magical thinking can any organization or system live up to new responsibilities like making high quality preschool available to many more 3 and 4 year olds without any new funding. The Kirwan Commission plan is ambitious yet realistic, but the state of Maryland will be able to implement it only if it uses measures like the tax bill you are considering today to provide additional revenue to its educational system.

Finally, let me say that in the technology sector, just as in my own businesses, the supply of well educated workers is the key to success. If the firms that lead this sector are genuinely committed to sustained innovation, they will admit that a supply of better prepared and better educated workers will be worth far more to them than the small taxes they will pay to get it. I know that everyone wants someone else to be the one who pays for the benefits that a better educational system will yield. Now is the time for everyone to step up and make their contribution to the future, not just of our economy, but of our nation.

Thank you.

SB2Testimony

Uploaded by: Senator Miller, Senator Miller
Position: FAV

THOMAS V. MIKE MILLER, JR.
PRESIDENT EMERITUS
27th Legislative District

The Senate of Maryland
ANNAPOLIS, MARYLAND 21401-1991

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TESTIMONY - SENATE BILL 2
DIGITAL ADVERTISING GROSS REVENUES – TAXATION
SENATE BUDGET AND TAXATION COMMITTEE
JANUARY 29, 2020

Chairman Guzzone and Fellow Committee Members:

Senate Bill 2 is a straightforward piece of legislation that creates a tax on digital ad revenues for companies that bring in at least $100 million a year in global digital ad revenue. The bill creates four corresponding tax brackets as follows: a 2.5% assessable rate on companies which bring in $100 million and $1 billion in global ad revenue, a 5% assessable rate on companies which bring in between $1 billion and $5 billion in annual global ad revenue, a 7.5% assemble rate on companies which bring in between $5 billion and $15 billion in annual global ad revenue, and a 10% assessable rate on companies which bring in over $15 billion in annual global ad revenue.

In seeking funding through this mechanism, we also create a much-needed avenue to regulate massive technology corporations who monetize consumer data through targeted advertising. For years, large multinational companies have attained unbridled profits from the use of consumer data. This legislation simply puts a check on that practice and a loose bridle on those profits.

This legislation is an innovative way to provide needed funding for the Kirwan Education Blueprint. As a state, we face a multi-billion dollar commitment to modernize our education system for the benefit of generations to come. The funding attained through the creation of this digital advertising tax will increase state revenues to fund the Kirwan Education Blueprint and do so without raising taxes on Maryland's citizens.

For the reasons listed above, I ask for a favorable report of Senate Bill 2.

Google testimony on SB 2 Senate Budget & Taxation
Uploaded by: Barnes, Ron
Position: UNF

25 Massachusetts Ave., NW
Washington, DC 20001
Phone: 202-346-1100

January 28, 2020

Senator Guy Guzzone
Chairman, Budget and Taxation Committee
3 West
Miller Senate Office Building
Annapolis, MD 21401

Dear Mr. Chairman and Members of the Committee:

I am writing today to explain Google's opposition to SB 2 due to the bill's inequities, potential legality, and technical challenges.

First though, let me provide some context for Google's existing contributions to Maryland's businesses and its economy. In 2018, our most current figures, Google helped provide $3.92 billion of economic activity for Maryland businesses, website publishers, and nonprofits; we provided $8.74 million of free advertising to Maryland nonprofits through our Google Ad Grants program; and 32,000 Maryland businesses, website publishers and nonprofits benefited from using Google's advertising tools. We are proud to help Maryland thrive.

Specific to the bill, tax policies should apply core principles of legal certainty, equity, and comity. This is a particular need for businesses operating across multiple jurisdictions, including the 50 states. Google is concerned that SB 2 diverges from these core principles and protections underpinning U.S. federal and state tax policies. This legislation, if enacted, would impair interstate commerce within the U.S. and would result in a discriminatory tax on electronic commerce prohibited by the *Permanent Internet Tax Freedom Act*. In addition, it would violate the U.S. Constitution's Commerce Clause by targeting *global* annual gross revenues of affected businesses, among other Constitutional concerns.

Google is concerned that this bill will damage the foundation for an Internet that is mostly free-of-charge for consumers: digital advertising. Society has seen great benefits from an Internet that is largely free to users and assessing a tax on the advertising that undergirds these benefits is a step in the wrong direction. Further, the legislation would create an imbalance between similar businesses that obtain revenue through online advertising and those that employ other revenue models, including subscription fees, to support their sites. This becomes more regressive for people unable to afford making that choice.

The bill also presents significant technical challenges for achieving compliance. A company serving a digital ad will not be able to tell for certain that an ad was displayed to a user in Maryland with enough confidence to avoid question under this bill. Respectfully, that premise exposes a misunderstanding of how Internet advertising works. Devices may not always use a local IP address. Take for instance a user of a corporate network with servers outside the state, someone using a virtual private network, or a user who lives near Washington D.C. or one of the four states that border Maryland and even vice versa, residents of those jurisdictions who may show up on a MD IP address. Ads served to any one of these examples could conceivably be seen in-state, but served on an IP address in another. Also stretching the ability to comply is the instance of a user transiting through the state. It seems highly questionable whether Maryland could tax an ad potentially delivered by an out-of-state company on an out of state website and seen by a non-resident who is only passing through the state.

Everyone has access to the same Google Search. Tax policies that steer online services toward subscription fees would make them less accessible, limiting a wide range of powerful tools for knowledge, communication, and entertainment to a smaller group of people. Maryland should not risk these harms.

Sincerely,

Ron Barnes
Head of State Legislative Affairs

Cc: Members of the Senate Budget and Taxation Committee

January 29, 2020

The Honorable Thomas "Mike" Miller
Maryland State Senate
Room 1 East Miller Senate Office Building
11 Bladen Street Annapolis, MD 21401-1991

RE: SB 2 – Taxation of digital advertising gross revenues
OPPOSE

Dear Senator Miller,

Internet Association ("IA") must respectfully **OPPOSE** your **SB 2**. The internet industry opposes this measure because it would enact a discriminatory tax against a single segment of the advertising market, appears to violate both federal law and the U.S. Constitution, hurts Maryland businesses and consumers, and sends a concerning signal to the technology industry about the State's willingness to foster continued growth in the sector. Given that SB 2 is intended to be a revenue source for new state education spending, we encourage the Legislature to find other, more legally viable approaches to generating this revenue than the fraught approach proposed by this bill.

IA is the only trade association that exclusively represents leading global internet companies on matters of public policy. Our mission is to foster innovation, promote economic growth, and empower people through the free and open internet. We believe the internet creates unprecedented benefits for society, and as the voice of the world's leading internet companies, IA works to ensure legislators, consumers, and other stakeholders understand these benefits.

If enacted, SB 2 would make Maryland the only state or locality in the country to impose a discriminatory and punitive tax on gross revenues from digital advertising services. The bill only taxes advertisements delivered online (e.g. via a website or app) but does not tax offline equivalent ad services (e.g. print, radio, television). It also punitively imposes a higher tax rate on larger companies that provide digital advertising services (based on global annual gross revenues) than on smaller companies.

The flawed approach in SB 2 likely violates the federal Permanent Internet Tax Freedom Act (PITFA) as well as the U.S Constitution. PITFA prohibits states from imposing "discriminatory taxes on electronic commerce." The digital advertising tax proposed by SB 2 would result in a prohibited discriminatory tax on electronic commerce in violation of PITFA because Maryland does not also tax service providers of non-digital advertising. Even if it did tax advertising more broadly, other elements of SB 2 might still be considered discriminatory and in violation of federal law, such as the differences in rate or incidence of the tax.

Second, SB 2's discriminatory elements also likely violate the U.S. Constitution. The law likely violates the Constitution's Equal Protection Clause due to a lack of a rational basis for discriminating against advertising services provided on a digital interface versus offline. Moreover, the law is constitutionally suspect on both First Amendment grounds (impacts on commercial speech) and Commerce Clause concerns (taxing out-of-state companies more than in-state businesses).

There are also important economic concerns related to broad advertising taxes. Arizona, Iowa, and Florida each passed broad advertising taxes years ago, and each state later repealed the tax because it hurt their local economy and was impossible to administer. Since 1987, when the Florida services tax was repealed, broad advertising taxes have been considered in more than 40 states and rejected every time.

SB 2's punitive and discriminatory provisions also send a concerning signal to the technology sector about the State's continued willingness to support innovation within its borders. Other states have not followed this approach and for good reason: a robust internet sector means a stronger economy, greater digital exports, and higher employment[12].

Maryland

The internet means jobs, opportunity, and growth for every community in every state. Individuals, businesses, and community organizations rely on it for their continued success. Below is a snapshot of why the internet matters to people in Maryland and across the United States.

GDP

Alabama:

$41.4B

United States:

$2.1T or 10.1%

Trade

$980M

digital export volume

1.58%

of all U.S. digital exports

Employment

6,700

state internet companies

116K

state internet sector jobs

6M

total U.S. internet sector jobs

Access

4%

total population without high-speed internet access

3%

urban population without high-speed internet access

13%

rural population without high-speed internet access

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[1] For the most recent stats on Maryland's internet economy, see IA's "Internet Economy State by State" feature, available at: https://internetassociation.org/internet-economy-state-by-state/#/m/MD

[2] See also IA's "Measuring the U.S. Internet Sector" report, available at: https://internetassociation.org/publications/measuring-us-internet-sector-2019/

The discriminatory policy targeting digital services in SB 2 not only jeopardizes future growth in these areas, but also hurts main street businesses in Maryland that rely on digital advertising to promote their products and services to consumers in a cost-effective way.

Benefits of Digital Advertising Services

The digital advertising ecosystem benefits entities of every type across the entire spectrum of Maryland's economy. For example, ad publishers like newspapers, small blogs, and small business sites, as well as advertisers such as local small businesses, charitable organizations, and common consumer brands all derive immense benefits from modern online advertising.

The ad-supported business model empowers online creators and allows them to support themselves through their content. Small publishers that make a living by writing their own blogs on everything from cooking to covering community news are supported by modern online advertising. Large publishers and content providers also rely on ad revenue to support their businesses.

By delivering ads to consumers who are most likely to be interested in them, modern online advertising is critical to organizations that want to reach the right audiences in a cost-effective manner:

- Nonprofits can reach new donors and supporters who are likely to be interested in supporting their cause.
- Ads for movies about superheroes can be shown to consumers who actually like superheroes.
- Public service announcements about water conservation targets can be shown to water users living in the applicable communities.
- Calls to action in defense of environmental causes can be shown to people interested in protecting the environment.
- Startup small businesses can advertise their services to audiences who are most likely to be interested and try them over the "big guys".

By allowing these high-value ads to be shown on their sites, publishers of all kinds are able to stay in business and continue creating content, including local newspapers and special interest blogs. But all these entities would suffer from the increased higher cost of digital ads that SB 2 would mandate, and of course that would ultimately be passed on to the Maryland consumer.

Finally, we understand you have referenced concerns over data privacy as a reason for SB 2. IA members are committed to providing consumers with strong privacy protections and control over personal information, as well as to compliance with applicable laws, and advocate for a modern privacy framework in the IA Privacy Principles[3]. We would be more than happy to discuss these issues with you at any time if it would be helpful.

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[3] A Privacy Principles for a Modern National Regulatory Framework, available at: https://internetassociation.org/files/ia_privacy-principles-for-a-modern-national-regulatory-framework_full-doc/

Thank you for your consideration of our concerns regarding SB 2. Should you have any questions, please feel free to contact me at callahan@internetassociation.org or (916) 836-8983.

Sincerely,
Robert Callahan

Senior Vice President, State Government Affairs

cc: The Honorable Bill Ferguson, Senate President
Members of the Senate Budget and Taxation Committee

SB 2 – Digital Advertising – Taxation_OPPOSE
Uploaded by: Costello, Chris
Position: UNF

HOWARD COUNTY CHAMBER

GOVCONNECTS YPN

6240 Old Dobbin Lane ▪ Suite 110 ▪ Columbia, MD 21045

January 28, 2020

The Honorable Guy Guzzone
Chair, Budget & Taxation Committee
3 West
Miller Senate Office Building
Annapolis, MD 21401

RE: SB 2 – Digital Advertising Gross Revenues – Taxation **OPPOSE**

Dear Senator Guzzone:

The Howard County Chamber is a 720-member organization that works to foster a healthy economic climate for businesses and enhanced quality of life for residents. We do this by advocating for policies that spur private investment and employment opportunities. One of the primary factors in job creation is creating an environment where people are able to obtain a top-notch education thereby allowing them to matriculate to quality schools of higher learning. Maryland has historically been a state known for high performing school systems and the Blueprint for Maryland's Future Fund (Blueprint) aims to further fund education in hopes of creating a brighter future for our residents. The goals for the Blueprint are ambitious and it is hard to question the outcomes sought. Questions do arise in how to pay for this initiative.

One such mechanism for funding the Blueprint is SB 2, which if enacted would allow Maryland to impose a targeted punitive tax on the gross revenue of digital advertising services. In creating this new law, Maryland would become the first state or locality in the United States to taxe advertising revenue in the manner. The proposed tax contains a tiered tax rate structure (arbitrarily determined based on the advertising service provider's global annual gross revenues) that would allow for up to a monstrous tax of 10% of the annual gross revenue in the State derived from digital advertising services.

A highly educated workforce is paramount to our state's future success. Equally is important is fostering an environment where business and commerce thrive. One can appreciate the goals of SB2. Unfortunately, this legislation is fraught with issues. Concerns can be categorized in two distinct areas, constitutional and implementation.

On the constitutional side, there are concerns that this legislation would violate federal law as states are prohibited from imposing "discriminatory taxes on electronic commerce." There are also concerns that this legislation discriminates against interstate and foreign commerce. SB 2 would impose the punitive digital advertising gross revenues tax only on large companies based on an arbitrary threshold of global annual gross revenues.

Constitutionality aside, there are concerns that the economic burden of this broad new tax will fall on Maryland residents and businesses that are consumers of advertising services within a digital interface—including websites and applications. This is because advertising service providers may (and most likely would) pass the tax through to their customers (including local Maryland brick and mortar businesses seeking to reach new customers online), who will be forced to pay higher prices, receive lower revenues, or find cheaper alternatives. It was noted that Maryland would be the first state to pass this form of legislation. The states of Arizona, Iowa, and Florida each passed broad advertising taxes years ago only to repeal the tax because it hurt their local economy and was impossible to administer. Since 1987, when the Florida services tax was repealed, broad advertising taxes have been considered in more than 40 states and rejected in every instance.

An advertising tax such as the tax proposed by SB 2 would create a huge new administrative burden on state government. Digital advertising is a very complex area, involving millions of ads placed across a litany of digital platforms. The Comptroller would likely need to hire new staff and engage an army of accountants and lawyers to administer and enforce the proposed new tax.

No one can question the importance of funding the Blueprint. For many Maryland students, their future depends upon more resources making their way to the classroom. Simultaneously we must fund the Blueprint in ways that do not hurt business and residents nor that places the state in a precarious situation. Legal challenges to this legislation could result in lengthy delays thereby limiting the revenue it was to create. There is widespread concern that the enactment of this law would not create a stable revenue stream to bolster Maryland education funding due to implementation challenges. For the reasons stated above, we request an "Unfavorable Vote" on SB 2.

Respectfully,

Leonardo McClarty

Leonardo McClarty, CCE
President/CEO, Howard County Chamber

CC: Howard County Chamber Board of Directors
Howard Chamber Legislative Affairs Committee

SB 2 – Digital Advertising – Taxation_OPPOSE
Uploaded by: Costello, Chris
Position: UNF

HOWARD COUNTY CHAMBER

GovConnects YPN

6240 Old Dobbin Lane ▪ Suite 110 ▪ Columbia, MD 21045

January 28, 2020

The Honorable Guy Guzzone
Chair, Budget & Taxation Committee
3 West
Miller Senate Office Building
Annapolis, MD 21401

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Respectfully,

Leonardo McClarty

Leonardo McClarty, CCE
President/CEO, Howard County Chamber

CC: Howard County Chamber Board of Directors
Howard Chamber Legislative Affairs Committee

COST Testimony in Opposition to SB2
Uploaded by: Duckman, Ashley
Position: UNF

COST
COUNCIL ON STATE TAXATION

Patrick J. Reynolds
Senior Tax Counsel
(202) 484-5218
preynolds@cost.org

January 29, 2020

Senate Budget and Taxation Committee
Maryland General Assembly

Re: In Opposition to Senate Bill 2, Digital Advertising Tax

Dear Chair Guzzone, Vice Chair Rosapepe, and Members of the Committee,

Thank you for the opportunity to submit testimony on behalf of the Council On State Taxation (COST) in opposition to Senate Bill 2, which would impose a gross receipts tax on revenues derived from digital advertising services in the State. This new, controversial, and untested tax would put Maryland at a competitive disadvantage with respect to encouraging businesses to maintain or expand their operations in the State. A similar tax at the international level has already garnered negative reaction and the threat of retaliation from the U.S. Treasury. The digital advertising tax represents unsound tax policy and violates several core tax policy principles—transparency, fairness, and economic neutrality. The tax could also violate the Permanent Internet Tax Freedom Act and several provisions of the U.S. Constitution.

About COST

COST is a nonprofit trade association based in Washington, DC. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce and today has an independent membership of approximately 550 major corporations engaged in interstate and international business. COST's objective is to preserve and promote the equitable and nondiscriminatory state and local taxation of multijurisdictional business entities.

COST's Position on Gross Receipts Taxes and Taxation of Business Inputs

The COST Board of Directors has adopted a formal policy statement opposing both Gross Receipts Taxes and the Sales Taxation of Business Inputs. While the position on business inputs primarily concerns the states' sales taxes, its logic would also apply to this digital advertising tax, which is essentially a gross receipts tax on business inputs. COST's policy positions are:

Gross receipts taxes are widely acknowledged to violate the tax policy principles of transparency, fairness, economic neutrality and competitiveness; generally, such taxes should not be imposed on business.[1]

[1] https://www.cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-policy-positions/grossreceiptstaxes.pdf

Imposing sales taxes on business inputs violates several tax policy principles and causes significant economic distortions. Taxing business inputs raises production costs and places businesses within a State at a competitive disadvantage to businesses not burdened by such taxes. Taxes on business inputs, including taxes on services purchased by businesses, must be avoided.[2]

Senate Bill 2 represents bad tax policy and violates several tax policy principles—transparency, fairness, and economic neutrality.

- *Transparency.* A transparent tax, like the sales tax on consumer purchases, is obvious to the taxpayer, and its economic effects are easily understood. A gross receipts tax on digital advertising, on the other hand, is a stealth tax that will affect Maryland residents in several unseen ways. The tax will impact residents as purchasers, by imposing hidden taxes and thus making the products they purchase more expensive, and as workers, by depressing investment and thus reducing wages and employment opportunities. Taxing business inputs unfairly hides the true cost of government services by embedding a portion of the sales tax in the final price of goods and services.
- *Fairness.* A fair tax treats similarly situated taxpayers similarly. A gross receipts tax on digital advertising is unfair in that it would impose a significant tax burden on only a small segment of businesses with no relationship to the ability to pay. Businesses are already subject to myriad taxes that are not based on ability to pay—property tax, sales tax, unemployment insurance tax, etc.—another tax should not be added to that list.
- *Economic Neutrality.* An economically neutral tax does not influence business choices (of location, of operational entity, of suppliers, etc.). The gross receipts tax on digital advertising will force companies to either pass their increased costs on to consumers or reduce their economic activity in the State in order to remain competitive with other companies who do not bear the burden of such taxes.

Adopting a Widely Criticized French Approach to Taxing Digital Companies

The Maryland digital advertising tax is a modified version of the French Digital Services Tax which has been widely condemned by both the U.S. government and businesses operating in global markets. Similar to the French tax, the Maryland tax singles out a small number of digital companies for punitive taxation. In the case of Maryland, many of these companies are already subject to the state corporate income tax and there is no rational basis for imposing an additional discriminatory tax solely on digital businesses. If Maryland were to enact the digital advertising tax, it would be the only state in the nation to have such a tax, drawing significant unfavorable attention to the state's business climate.

Potential Violation of Federal Law and Constitution

Finally, a gross receipts tax on digital advertising services, if enacted, would be immediately embroiled in protracted litigation. Since the new tax would apply to digital advertising but not to non-digital advertising, the law would likely violate the federal Permanent Internet Tax Freedom Act. The bill also raises several constitutional questions, including whether the tax

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[2] https://www.cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-policy-positions/sales-taxation-of-business-inputs.pdf

would violate the First Amendment, Equal Protection, and Commerce Clauses.

Conclusion

For the foregoing reasons, COST strongly urges members of the committee to please vote "no" on Senate Bill 2.

Respectfully,

Patrick J. Reynolds

cc: COST Board of Directors
Douglas L. Lindholm, COST President & Executive Director

IAB Written Testimony on MD SB 2
Uploaded by: Duckman, Ashley
Position: UNF

Alex Propes
Sr. Director, Public Policy & International
Interactive Advertising Bureau
(202) 800-0770
alex@iab.com

January 29, 2020

Senate Budget and Taxation Committee
Maryland General Assembly

Re: In Opposition to Senate Bill 2, Digital Advertising Tax

Dear Chair Guzzone and Members of the Committee,

The Interactive Advertising Bureau (IAB) represents over 650 leading media and technology companies that are responsible for selling, delivering, and optimizing digital advertising or marketing campaigns. Together, our members account for the vast majority of online advertising in the United States. Working with our member companies, the IAB develops technical standards and best practices, conducts critical research on interactive advertising, and educates brands, agencies, and the wider business community on the importance of online marketing to digital trade.[1]

Advertising is the stimulus for economic activity in every sector. Research by IHS Global Insight Inc., based on economic models by the late Nobel Laureate Dr. Lawrence Klein, shows that advertising generates around 16 percent of all U.S. sales, or approximately $5.6 trillion. In other words, every $1 spent on advertising supports $19 of U.S. economic output.[2] Digital advertising in particular has helped reinvigorate growth in a myriad of industries by helping small businesses better understand their customers and compete with larger incumbents -- despite their limited advertising budgets.

Research by Harvard Business School professor John Deighton shows the ad-supported internet contributes $21 billion to Maryland's annual GDP and supports 62,000 full-time jobs across the state.[3]

[1] www.iab.com
[2] IHS Global Insight Inc. *The Economic Impact of Advertising Expenditures in the United States,* http://images.politico.com/global/2014/01/13/economicimpact.pdf
[3] Deighton, John. *The Economic Value of the Advertising-Supported Internet Ecosystem* https://www.iab.com/insights/economic-value-advertising-supported-internet-ecosystem/

Digital advertising is not only the product of an innovative industry and the driver of economic growth; it is also chiefly responsible for the diverse, and free, internet content and services available to consumers today. News, business information, maps, weather, email, social networking, online safety software, and shopping comparison tools are just several examples of the services available to consumers at no cost.

Considering the importance of the digital advertising industry in Maryland, we are concerned about the negative economic consequences of this law, which would hinder Maryland companies from competing and would create new costs for Maryland citizens. To make digital advertising more expensive through a gross receipts tax would only cause a decline in the ad spending that affords consumers a free and diverse Internet experience – all at the cost of job creation.

We believe that the law would have significant negative impacts on all businesses, not only those that meet the minimum thresholds. In 2019, a study by Deloitte Taj on a controversial French digital advertising tax proposal found that the costs of the proposal would mostly be borne by consumers and advertisers, not technology companies. The research found that 55 percent of the tax burden would be passed on to end consumers, who would pay higher prices for every good and service they use -- online or offline.[4]

With these concerns in mind, the Interactive Advertising Bureau recommends an unfavorable report on Senate Bill 2.

[4] Pellefigue, Julien. *The French Digital Service Tax: An Economic Impact Assessment* https://www.linformaticien.com/Portals/0/2019/03_mars/taj_190320.pdf

MDChamber_Duckman_Unfav_SB2
Uploaded by: Duckman, Ashley
Position: UNF

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.

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

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Uploaded by: Duckman, Ashley
Position: UNF

Proposed New Tax on Digital Advertising Services: Constitutional and Legal Concerns

Joseph Bishop-Henchman
Counsel, McDermott Will & Emery

Hearing of the Maryland Senate Budget & Taxation Committee on
Senate Bill 2

January 29, 2020

Dear Chair Guzzone and Members of the Committee:

My name is Joseph Bishop-Henchman, and I an attorney with the state and local tax practice at McDermott Will & Emery. I have worked for 14 years in state tax policy and state tax law, with special emphasis on proposals to impose new or expanded transactions taxes at the state level.

I am grateful for the opportunity to testify today at the invitation of the Maryland Chamber of Commerce on S.B. 2, the proposed new tax on digital advertising services. My testimony will focus on constitutional and federal law concerns with this uncharted new tax.

<u>About S.B. 2</u>

S.B. 2, if enacted, would make Maryland the first state or locality in the United States to impose a targeted tax on the gross revenue of digital advertising services. While no state taxes advertising revenue in the manner and extent proposed by S.B. 2 (primarily due to the constitutional and policy concerns outlined below), only two states tax advertising services under their generally applicable broad-based transaction tax (not a gross receipts tax such as the tax proposed by S.B. 2). Contradicting the clear legislative trend in the advertising space to exempt the facilitation of advertising services (but tax the consumer transactions that may result therefrom), S.B. 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. The proposed tax contains a tiered tax rate structure (based on the advertising service provider's global annual gross revenues) that would allow for up to a tax of 10% of the annual gross revenue in the State derived from digital advertising services. A filing obligation would apply for in-state advertising gross revenue of $1 million or more in a year. As introduced, S.B. 2 would take effect July 1, 2020 and apply to all taxable years beginning after December 31, 2020.

S.B. 2 Violates the Permanent Internet Tax Freedom Act (PITFA)

The Permanent Internet Tax Freedom Act ("PITFA") enacted by Congress prohibits states from imposing "discriminatory taxes on electronic commerce." *See* 47 U.S.C. § 151, note. The federal law defines "discriminatory tax" as "any tax imposed by a State . . . on electronic commerce that (i) is not generally imposed and legally collectible by such State . . . on transactions involving similar property, goods, services, or information accomplished through other means; (ii) is not generally imposed and legally collectible at the same rate by such State . . . on transactions involving similar property, goods, services, or information accomplished through other means . . . [or] (iii) imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means." Id. at § 1105(2)(A).

The digital advertising tax proposed by S.B. 2 would result in a prohibited discriminatory tax on electronic commerce in violation of PITFA. For example, the new digital advertising services tax created by S.B. 2 would discriminate against digital advertising service providers because Maryland does not also tax service providers of non-digital advertising. Even if similar advertising services are alleged to be subject to the Maryland sales tax, differences in rate or incidence of the tax would independently still result in a "discriminatory tax" in violation of federal law.

PITFA has been invoked to strike down state tax laws that discriminate against digital goods and services:

- In *Alltel v. Montana Department of Revenue*, 2012 WL 1031502 (Mont. Dist. Feb. 22, 2012), a federal court struck down Montana's scheme imposing retail telecommunications excise tax on the sale of Internet access and digital products: "A tax imposed by the State on digital products sold over the Internet, but not imposed on other retailers selling similar products, violates the terms and intent of the ITFA."
- In *Performance Marketing Association, Inc. v. Hamer*, 998 N.E. 2d 54 (Ill. 2013), the Illinois Supreme Court invalidated a state law requiring tax collection by businesses entering contracts for online performance marketing, with no equivalent obligation on businesses entering contracts for offline performance marketing: "However, national, or international, performance marketing by an out-of-state retailer which appears in print or on over-the-air broadcasting in Illinois, and which reaches the same dollar threshold, will *not* trigger an Illinois use tax collection obligation. The relevant provisions of the Act therefore impose a discriminatory tax on electronic commerce within the meaning of the ITFA."

PITFA produces little case law because the statute is direct and clear, and few states seek to enact tax laws directly contrary to it, as the one Maryland is considering. A court analyzing the Maryland statute would ask if the law imposes a tax on electronic commerce transactions that is not generally imposed on similar transactions not involving electronic commerce. A law that does so violates the Act.

Because PITFA is a federal law, it must be respected by Maryland under the Supremacy Clause of the U.S. Constitution and if Maryland were to move forward with S.B. 2 it would likely be struck down by the courts—after costly and unnecessary litigation.

S.B. 2 Unconstitutionally Discriminates Against Interstate and Foreign Commerce

S.B. 2 would impose a punitive digital advertising gross revenues tax only on large companies based on an arbitrary threshold of global annual gross revenues. The larger and more global the company, the higher the tax rate.

While this may be politically popular, taxing out-of-state and foreign companies more heavily than in-state businesses is constitutionally suspect under the dormant Commerce Clause. A long history of federal cases have struck down efforts by states and local governments to use extraterritorial receipts to discriminate against interstate businesses and in favor of hometown businesses. See *Boston Stock Exchange v. State Tax Comm'n*, 429 U.S. 318 (1977) (invalidating a New York tax imposed solely on activity out-of-state while leaving identical activity in-state untaxed); *Westinghouse Elec. Co. v. Tully*, 466 U.S. 388 (1984) (invalidating a New York scheme exempting activity in-state while simultaneously imposed a tax on identical activity out-of-state); *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263 (1984) (invalidating a Hawaii tax imposed on a category of products but exempting activity in-state); *Am. Trucking Ass'n v. Scheiner*, 483 U.S. 266 (1987) (invalidating a Pennsylvania scheme imposing fees on all trucks while reducing other taxes for trucks in-state only); *New Energy Co. v. Limbach*, 486 U.S. 269 (1988) (invalidating an Ohio tax credit to all ethanol producers but disallowed for non-Ohio producers); *West Lynn Creamery, Inc. v. Healy*, 512 U.S. 186 (1994) (invalidating a Massachusetts general tax on dairy producers where the revenue was then distributed to domestic dairy producers); *Camps/Newfound/Owatanna, Inc. v. Town of Harrison*, 520 U.S. 564 (1997) (invalidating Maine's denial of the general charitable deduction to organizations that primarily serve non-Maine residents); *Comptroller of the Treasury of Maryland v. Wynne*, 575 U.S. 342 (2015) (invalidating Maryland's denial of a full income tax credit for out-of-state investment, where a full credit was provided for in-state investment).

This is exactly what the digital advertising gross revenues tax proposed would do – by taxing larger global advertising service providers at a higher tax rate than their domestic counterparts with the exact same gross revenue attributable to Maryland. The Commerce Clause of the U.S. Constitution protects companies from taxes such as the SB 2 digital advertising gross revenues tax and is yet another example of the ripeness of litigation should the tax proposal advance.

S.B. 2 May Violate the Equal Protection Clause and the First Amendment

The digital advertising gross revenues tax may violate the Equal Protection Clause of the U.S. Constitution due to a lack of a rational basis for discriminating against advertising services provided on a digital interface—since the law does not impose the same punitive treatment on advertising services that are not on a digital interface.

The proposed digital advertising service gross revenue tax also raises significant First Amendment concerns due to the fact that the tax would in effect regulate commercial speech by forcing just digital advertising service providers in Maryland to either cease allowing Maryland customers to view ads or substantially increase fees they charge companies advertising on their platform against their will (to account for the loss they would otherwise obtain from the punitive digital advertising services tax). 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. See *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.

Conclusion

Because of the constitutional and policy deficiencies of S.B. 2, the enactment of this law would not create a stable revenue stream to bolster Maryland education funding and would potentially result in a net loss to the state coffers, as happened after the *Wynne* case obligated the state to refund collected revenues after the tax was declared unconstitutional by the U.S. Supreme Court.

Again, thank you for the opportunity to testify before you today. Should you have any questions, I may be reached at 202-756-8536 or jhenchman@mwe.com.

TechNet MD SB 2 Digital Advertising Testimony
Uploaded by: Griffin, Andrew
Position: UNF

TECHNET
THE VOICE OF THE
INNOVATION ECONOMY

January 29, 2020

Sen. Guy Guzzone, Chair
Senate Budget and Taxation Committee
Maryland General Assembly
Miller Senate Office Building, 3 West
Annapolis, Maryland 21401

Re: SB 2- Digital Gross Advertising Revenue

Dear Chair Guzzone and members of the Committee-

TechNet is the national, bipartisan network of over 80 technology companies that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and 50 state level. TechNet's diverse membership includes dynamic American businesses ranging from startups to the most iconic companies on the planet and represents more than three million employees in the fields of information technology, e-commerce, clean energy, telecommunications, gig economy, sharing economy, venture capital, and finance.

TechNet respectfully submits comments in opposition to SB 2 (Miller), which creates a new tax on digital advertising services. This is an discriminatory, arbitrary and expensive tax that will only hurt Maryland businesses and residents who are consumers of digital advertising and who are not protected from having the tax passed onto them. Additionally, SB 2 will send the wrong message to the technology and business companies and will discourage them from investing and locating in Maryland.

Maryland would become an outlier if it advances this legislation as no other state imposes a targeted punitive tax on the gross revenue of digital advertising services. Maryland should consider lessons learned from other states who have considered similar measures. Arizona, Iowa, and Florida each passed broad advertising taxes years ago. Each state later repealed the tax because it hurt their local economy and was impossible to administer. Since 1987, when the Florida services tax was repealed, broad advertising taxes have been considered in more than 40 states and rejected in every instance.

In addition to hurting Maryland businesses and consumers, this tax is likely to face constitutional challenges under the Permanent Internet Tax Freedom Act ("PITFA") since this is a discriminatory tax on electronic commerce and also under the Commerce clause since taxing out-of-state and foreign companies more heavily than in-state businesses is constitutionally problematic. Lastly, SB 2 poses several administrative and compliance challenges that make this law logistically problematic and unenforceable. If this were to overcome the significant administrative and legal/constitutional challenges and take effect, it would increase the cost of online advertising for all businesses, large and small, in Maryland.

For the above reasons we are strongly opposed to SB 2. Thank you in advance for your consideration on these matters, and please do not hesitate to reach out with any questions.

Sincerely,

Christina Fisher
Executive Director, Northeast
TechNet
cfisher@technet.org
508-397-4358

MACPA-SB2-Oppose
Uploaded by: Hood, Tom
Position: UNF

macpa
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January 29, 2020

The Honorable Guy Guzzone
Budget and Taxation Committee
3 West, Miller Senate Office Building
Annapolis, MD 21401

RE: SB002 Digital Advertising Gross Revenues - Taxation

Position: Oppose

Dear Chairman Guzzone and members of the Committee:
As currently written, SB002 is administratively impractical and overly complex. For the state of Maryland, and for businesses that work in the multi-layered advertising services industry — including the technology platforms that provide digital advertising services — complying with such a law would include:

- Tracking the location of each phone and computer that accesses digital ads.
- Knowing which ads were viewed on which phone and computer.
- Knowing each user's physical location at the time they accessed the ads.
- Requiring the state of Maryland to compile proper instructions and audit the taxpayers.

All of this would add onerous, overly burdensome layers of complexity to an already complex tax system — a direct contradiction to the American Institute of CPAs' Guiding Principles of Good Tax Policy, which define 12 key characteristics of sound tax policy:

1. *Equity and fairness*: Similarly situated taxpayers should be taxed similarly.
2. *Certainty*: The tax rules should clearly specify how the amount of payment is determined, when payment of the tax should occur, and how payment is made.
3. *Convenience of payment*: Facilitating a required tax payment at a time or in a manner that is most likely convenient for the taxpayer is important.
4. *Effective tax administration*: Costs to collect a tax should be kept to a minimum for both the government and taxpayers.
5. *Information security*: Tax administration must protect taxpayer information from all forms of unintended and improper disclosure.
6. *Simplicity*: Simple tax laws are necessary so that taxpayers understand the rules and can comply with them correctly and in a cost-efficient manner.
7. *Neutrality*: Minimizing the effect of the tax law on a taxpayer's decisions as to how to carry out a particular transaction or whether to engage in a transaction is important.

8. *Economic growth and efficiency*: The tax system should not unduly impede or reduce the productive capacity of the economy.
9. *Transparency and visibility*: Taxpayers should know that a tax exists and how and when it is imposed upon them and others.
10. *Minimum tax gap*: Structuring tax laws to minimize non-compliance is essential.
11. *Accountability to taxpayers*: Accessibility and visibility of information on tax laws and their development, modification and purpose, are necessary for taxpayers.
12. *Appropriate government revenues*: Tax systems should have appropriate levels of predictability, stability and reliability to enable the government to determine the timing and amount of tax collections.

We believe SB002 fails to comply with many of these guiding principles. For these reasons, we respectfully request an unfavorable report for SB002. Thank you for your consideration of our position.

Sincerely yours,

J. Thomas Hood, III, CPA
CEO & Executive Director

cc: Nick Manis, Manis Canning & Associates

The American Institute of Certified Public Accountants and the MACPA State Tax Committee do not take a position on the "best possible solution" for state tax issues. Rather, they encourage an in-depth debate of the issues, undertaken through an organized and logical process, with the goal of enacting "good tax policies." As the Maryland General Assembly considers new legislation, the unifying goals should be established now to make the effort one that is rational, thoughtful and lasting.

For more information or to find out how you can get involved in MACPA's legislative efforts, please contact Mary Beth Halpern at 443.632.2330 or e-mail Marybeth@macpa.org.

MARYLAND ASSOCIATION OF CPAs

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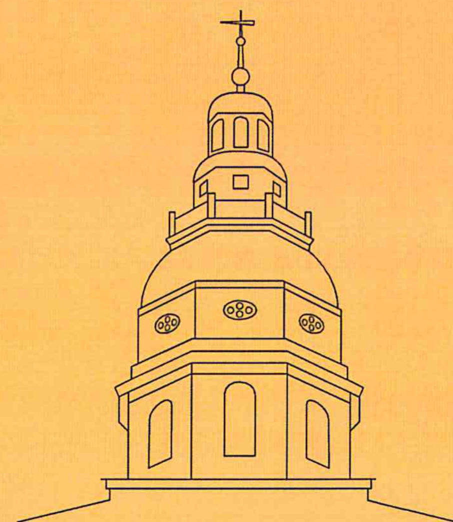

Guiding Principals of Good Tax Policy

12 Guiding Principals of Good Tax Policy

1. **EQUITY AND FAIRNESS.** Similarly situated taxpayers should be taxed similarly.

2. **CERTAINTY.** The tax rules should clearly specify how the amount of payment is determined, when payment of the tax should occur, and how payment is made.

3. **CONVENIENCE OF PAYMENT.** Facilitating a required tax payment at a time or in a manner that is most likely convenient for the taxpayer is important.

4. **EFFECTIVE TAX ADMINISTRATION.** Costs to collect a tax should be kept to a minimum for both the government and taxpayers.

5. **INFORMATION SECURITY.** Tax administration must protect taxpayer information from all forms of unintended and improper disclosure.

6. **SIMPLICITY.** Simple tax laws are necessary so that taxpayers understand the rules and can comply with them correctly and in a cost-efficient manner.

7. **NEUTRALITY.** Minimizing the effect of the tax law on a taxpayer's decisions as to how to carry out a particular transaction or whether to engage in a transaction is important.

8. **ECONOMIC GROWTH AND EFFICIENCY.** The tax system should not unduly impede or reduce the productive capacity of the economy.

9. **TRANSPARENCY AND VISIBILITY.** Taxpayers should know that a tax exists and how and when it is imposed upon them and others.

10. **MINIMUM TAX GAP.** Structuring tax laws to minimize noncompliance is essential.

11. **ACCOUNTABILITY TO TAXPAYERS.** Accessibility and visibility of information on tax laws and their development, modification and purpose, are necessary for taxpayers.

12. **APPROPRIATE GOVERNMENT REVENUES.** Tax systems should have appropriate levels of predictability, stability and reliability to enable the government to determine the timing and amount of tax collections.

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Uploaded by: mcdermott, matt
Position: UNF

American Advertising Federation of Baltimore
2800 Eisenhower Avenue, Suite 210
(571) 351-6862

WRITTEN TESTIMONY – JANUARY 29, 2020

Matthew McDermott of Baltimore, Maryland
President, American Advertising Federation of Baltimore
Associate Vice President, idfive, a Baltimore integrated marketing firm
president@baltimoreadvertising.com
410.262.3354

To:
Senate President Bill Ferguson, SB 2 Co-Sponsor
Senator Thomas V. Mike Miller, Jr., SB 2 Co-Sponsor
Senator Guy Guzzone, Chair, Budget and Taxation Committee
Senator Jim Rosapepe, Vice Chair, Budget and Taxation Committee
Members of the Budget and Taxation Committee

Re: Senate Bill 2 — Tax on Digital Advertising

Dear Senate President Ferguson, Senator Miller, and Members of the Budget and Taxation Committee:

On Wednesday January 8, 2020, former Senate President Thomas V. Mike Miller Jr. and current Senate President William "Bill" Ferguson sponsored Senate Bill 2 ("SB 2"), titled "Digital Advertising Gross Revenues – Taxation." SB 2 intends to impose:

> a tax on annual gross revenues derived from digital advertising services including advertisement services on a digital interface in the State; establishing a presumption that digital advertising services are provided in the State if the digital advertising services appear on a certain device of a certain user; requiring the Comptroller to distribute digital advertising gross revenues tax revenue to

administer certain tax laws and the remainder to be distributed to The Blueprint for Maryland's Future Fund; etc.

In my 1/15/2020 letter (APPENDIX I), I outlined the legal and policy concerns of the American Advertising Federation of Baltimore, AAF National, the Digital Goods and Services Coalition, and many other associations in the region and beyond.

In this testimony, I intend to share the possible **impact the passage of this bill could have on agency clients** in Maryland as well as **provide some clarity on what digital advertising entails** to help the committee better understand the far-reaching consequences of moving forward with a bill that fails to clearly articulate that definition.

To understand the impact of the bill, we need a clearer definition of what "revenue derived from digital advertising" is. And we can't do that unless we have a clearer understanding of what "digital advertising" is. The National Law Review outlines the problematic nature of a broad definition (APPENDIX II)

I can help with the second part. Digital advertising is more than a web banner or search ad. It's a radio spot on Spotify. It's video that runs on a local TV station's website. It's a website. It's a podcast. It's a sales call over VOIP. It's an email coupon. It's an Amazon listing. It's an influencer's Instagram feed. It's a job posting on LinkedIn. It's an internet-connected billboard. It's the tweet from a political candidate's campaign.

Outside of revenue thresholds, the bill fails to tell us who actually picks up the tab at tax time:

Is it the platform that serves ads, such as Google or Facebook
Or the publisher that sells ad space, such as the Baltimore Sun
Or company that buys ads, such as Under Armour
or even the agency that creates and manages ads, like idfive. My agency.

idfive primarily serves not-for-profit organizations. Much of the work we do for them falls under digital advertising. Our clients are donor and taxpayer-funded organizations. And digital advertising is often the most affordable, measurable way for them to reach their audiences. For example, Google search ads help the Maryland Food Bank raise funds to feed 100,000 people a day. Sponsored Facebook posts help the Maryland SPCA and BARCS find homes for thousands of homeless animals every year. And YouTube, Google and Facebook help the Baltimore Police Department stretch its finite recruitment dollars to attract new officers at a time when the city needs them most.

While these organizations may not pay the tax directly, make no mistake: They will pay. Any tax levied against a Google or a Facebook, will ultimately be passed down to the organizations who buy media from them.

Maryland's ad industry helps generate more than $100B in economic activity (APPENDIX III). Additional interpretations of the bill could lead to seismic side effects including:

Competitive Disadvantage:
As written, Senate Bill 2 could create a competitive disadvantage for many local companies from publishers to retailers to advertising agencies. Many organizations in our region that my agency, idfive, serves fall within the $100 million gross global revenue threshold. This bill could require them to **pay the digital advertising tax on top of the state income they earn on that tax** — a double-tax their out-of-state competitors may not have to pay. Similar efforts in other states have all been struck down because of their net-negative economic impact or because federal courts found them to be unconstitutional. Additional analysis (APPENDIX IV) from the Tax Foundation provides further detail into how a digital tax impacts competitiveness.

Administrative Burden:
Our small agency has five people who manage advertising attribution for a couple of dozen clients. Multiply that by the hundred or so large, midsize, and small full-service agencies in Central Maryland and the DC suburbs and we're looking at an administrative nightmare for the Comptroller's office.

Funding Inconsistency:
Also, expect revenues to shrink significantly over the next couple of years. There's already been a tremendous drop in mobile location accuracy, not to mention the world's most popular browser, Chrome, intends to phase out 3rd party cookies — a key tracking vehicle for attribution. It may be good news for privacy hawks. But it will further complicate auditors' attempts to reconcile revenue from digital advertising in Maryland.

This bill intends to snipe global media behemoths for quick cash. Instead, it waves a bazooka in their general direction, leaving any organization that advertises in the region at risk of becoming collateral damage. On behalf of the members of the American Advertising Federation of Baltimore, and on behalf of my agency, I urge the Maryland Senate to dismiss S.B. 2.

APPENDIX I – 1/25/2020 Letter to Budget & Taxation Committee Opposing SB 2

January 15, 2020

Senate President Bill Ferguson, SB 2 Co-Sponsor

Senator Thomas V. Mike Miller, Jr., SB 2 Co-Sponsor

Senator Guy Guzzone, Chair, Budget and Taxation Committee

Senator Jim Rosapepe, Vice Chair, Budget and Taxation Committee

Members of the Budget and Taxation Committee

Re: Opposition to SB 2 — Tax on Digital Advertising

Dear Senate President Ferguson, Senator Miller, and Members of the Budget and Taxation Committee:

On Wednesday January 8, 2020, former Senate President Thomas V. Mike Miller Jr. and current Senate President William "Bill" Ferguson sponsored Senate Bill 2 ("SB 2"), titled "Digital Advertising Gross Revenues – Taxation." SB 2 intends to impose:

a tax on annual gross revenues derived from digital advertising services including advertisement services on a digital interface in the State; establishing a presumption that digital advertising services are provided in the State if the digital advertising services appear on a certain device of a certain user; requiring the Comptroller to distribute digital advertising gross revenues tax revenue to administer certain tax laws and the remainder to be distributed to The Blueprint for Maryland's Future Fund; etc.

The American Advertising Federation of Baltimore, in partnership with AAF National, have strong concerns regarding the imposition of taxes on digital advertising services as proposed in SB 2. Briefly, the proposed tax is a gross receipts tax. The Digital Goods and Services Coalition has provided the following analysis and predictions of issues that this proposed tax:

Introduction/Background

Introduction/Background

- **Uncharted New Tax on Digital Advertising Services**: If enacted by SB 2, Maryland would become the first state or locality in the United States to impose a targeted punitive tax on the gross revenue of digital advertising services. While no state taxes advertising revenue in the manner and extent proposed by SB 2 (primarily due to the constitutional and policy concerns outlined below), only two states tax advertising services under their generally applicable broad-based transaction tax (<u>not</u> a gross receipts tax such as the tax proposed by SB 2). Contradicting the clear legislative trend in the advertising space to exempt the facilitation of advertising services (but tax the consumer transactions that may result therefrom), 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. The proposed tax contains a tiered tax rate structure (arbitrarily determined based on the advertising service provider's *global* annual gross revenues) that would allow for up to a whopping tax of 10% of the annual gross revenue in the State derived from digital advertising services. As introduced, SB 2 would take effect July 1, 2020 and apply to all taxable years beginning after December 31, 2020.

Constitutional Concerns

- **Violates Federal Law:** The Permanent Internet Tax Freedom Act ("PITFA") enacted by Congress prohibits states from imposing "discriminatory taxes on electronic commerce." *See* 47 U.S.C. § 151, *note*. The federal law defines "discriminatory tax" as "any tax imposed by a State . . . on electronic commerce that (i) is not generally imposed and legally collectible by such State . . . on transactions involving similar property, goods, services, or information accomplished through other means; (ii) is not generally imposed and legally collectible at the same rate by such State . . . on transactions involving similar property, goods, services, or information accomplished through other means . . . [or] (iii) imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means." *Id*. at § 1105(2)(A). The digital advertising tax proposed by SB 2 would result in a prohibited discriminatory tax on electronic commerce in violation of PITFA. For example, the new digital advertising services tax created by SB 2 would discriminate against digital advertising service providers because Maryland does not also tax service providers of non-digital advertising. Even if similar advertising services are alleged to be subject to the Maryland sales tax, differences in rate or incidence of the tax would independently still result in a "discriminatory tax" in violation of federal law. Because the digital advertising service tax proposal is predominantly imposed on remote advertisers that are implicated due to the ability of an end user to access the advertising material located on the company's out-of-State server, this provides a separate independent basis to show that the digital advertising service tax is a "discriminatory tax" prohibited by federal law. These are just a few discrete examples of the potential PITFA violations created by SB 2. Because PITFA is a federal law, it must be respected by Maryland under the Supremacy Clause of the U.S. Constitution and if Maryland were to move forward with SB 2 it would likely be struck down by the federal courts—after costly and unnecessary litigation. In the long term, the enactment of this law would not create a stable revenue stream to bolster Maryland education funding and would potentially result in a net loss to the state coffers.

- **Discriminates Against Interstate and Foreign Commerce:** SB 2 would impose the punitive digital advertising gross revenues tax only on large companies based on an arbitrary threshold of *global* annual gross revenues. The larger and more global the company, the higher the tax rate. While this may be politically popular—taxing out-of-state and foreign companies more heavily than in-state businesses is constitutionally suspect under the dormant Commerce Clause. A long history of federal cases have struck down efforts by states and local governments to use extraterritorial receipts to discriminate against interstate businesses and in favor of hometown businesses. This is exactly what the digital advertising gross revenues tax proposed to do – by taxing larger global advertising service providers at a higher tax rate than their domestic counterparts with the exact same gross revenue attributable to Maryland. The Commerce Clause of the U.S. Constitution protects companies from taxes such as the SB 2 digital advertising gross revenues tax and is yet another example of the ripeness of litigation should the tax proposal advance without a substantial overhaul. These constitutional limitations do not appear to have been considered and collection of the proposed tax could once again put Maryland in the position of having to refund an illegal tax—a process it went through recently when one of its taxes was declared unconstitutional by the U.S. Supreme Court.

- **Additional Constitutional Concerns:** The punitive digital advertising gross revenues tax doesn't stop there in terms of potential constitutional oversteps. For example, the digital advertising gross revenues tax may violate the Equal Protection Clause of the U.S. Constitution due to a lack of a rational basis for discriminating against advertising services provided on a digital interface—since the law does not impose the same punitive treatment on advertising services that are not on a digital interface. The proposed digital advertising service gross revenue tax also raises significant First Amendment concerns due to the fact that the tax would in effect regulate commercial speech by forcing just *digital* advertising service providers in Maryland to either cease allowing Maryland customers to view ads or substantially increase fees they charge companies advertising on their platform against their will (to account for the loss they would otherwise obtain from the punitive digital advertising services tax). 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. *See 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.

Policy Concerns

- **New Tax Will Hurt Maryland Companies and Residents:** The economic burden of this broad new tax will fall on Maryland residents and Maryland businesses that are consumers of advertising services within a digital interface—including websites and applications. This is because advertising service providers may (and most likely would) pass the tax through to their customers (including local Maryland brick and mortar businesses seeking to reach new customers online), who will be forced to pay higher prices, receive lower revenues, or find cheaper alternatives. While on the surface the 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.

- **Similar Proposals Have Failed Historically**: Arizona, Iowa, and Florida each passed broad advertising taxes years ago. Each state later repealed the tax because it hurt their local economy and was impossible to administer. Since 1987, when the Florida services tax was repealed, broad advertising taxes have been considered in more than 40 states and rejected in every instance.

- **Pyramiding and Multiple Taxation Would Result:** Pyramiding occurs when a tax is imposed on business services at the intermediate level, rather than being imposed only on final purchase of the product by consumers (as a sales and use tax is). Advertising is not an end product. Rather, advertising is a communications process that helps produce the final sale of a product, which is most likely already subject to the state sales tax. Since a portion of any tax on the intermediate advertising process is likely to be passed along to consumers, there would be at least double taxation for most products or services purchased in the state if SB 2 is enacted.

- **Costly to Administer**: An advertising tax such as the tax proposed by SB 2 would create a huge new administrative burden on state government. Digital advertising is a very complex area, involving millions of ads placed across a litany of digital platforms. The Comptroller would likely need to hire new staff and engage an army of accountants and lawyers to administer and enforce the proposed new tax.

Based on the concerns we've outlined, the undersigned strongly oppose SB 2 and ask the Budget and Taxation committee to remove the bill from further consideration. We appreciate your attention to this matter and look forward to exploring ways in which our industry can support Maryland without crippling our competitive and economic prospects.

Best regards,

Matthew McDermott, President, AAF Baltimore;
The Board of Directors, AAF Baltimore;
The Members of the American Advertising Federation of Baltimore; and
Clark Rector, Executive Vice President-Government Affairs, American Advertising Federation

APPENDIX II – Analysis from the National Law Review

BREAKING NEWS: Maryland Proposes (French) Tax on Advertising – Digital Platforms and Advertisers Beware!
by Stephen P. Kranz
Friday, January 10, 2020

https://www.natlawreview.com/article/breaking-news-maryland-proposes-french-tax-advertising-digital-platforms-and, Accessed 1.16.2020

On January 8, SB 2 was introduced to establish a new digital advertising gross revenue tax of up to 10% on "annual gross revenues of a person derived from digital advertising services in the state." This uncharted new tax would make Maryland the first state or locality in the United States to impose a targeted tax on the gross revenue of digital advertising services.

The bill defines "in the state" as appearing on the user's device located in the state (determined based on either the user's IP address or reasonable knowledge). "Digital advertising services" is defined as "advertisement services on a digital interface, including advertisements in the form of banner advertising, search engine advertising, interstitial advertising, and other comparable advertising services." The definition uses the word "includes" rather than "means," enabling the definition to be read even more broadly. "Digital interface" is defined as "any type of software, including a website, part of a website, or application, that a user is able to access."

The tax applies at a sliding scale:

2.5% for person with global annual gross revenues of $100 million or more

5% for person with global annual gross revenues of $1 billion or more

7.5% for person with global annual gross revenues of $5 billion or more

10% for person with global annual gross revenues of $15 billion or more

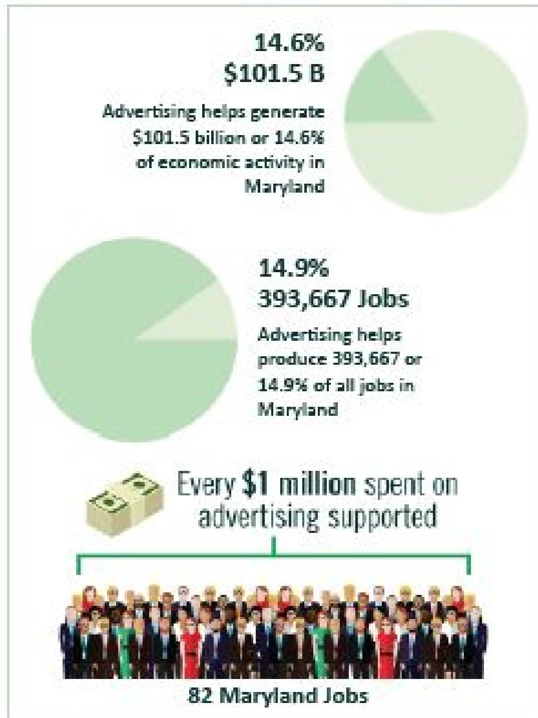
The bill would require quarterly estimated tax payments and an annual return and provides that willful failure to file a digital advertising gross revenues tax return is a misdemeanor subject to a $5,000 fine and 5 years' imprisonment.

The bill is co-sponsored by Senator Thomas Miller (D), the outgoing Senate President, and Senator William Ferguson (D), the incoming Senate President. Maryland legislative leaders have been hinting at new taxes on the digital economy, digital downloads, and streaming subscriptions as they decide how to fund a proposed $825 million per year education spending increase. Governor Hogan (R) opposes the education spending increase as too expensive, amounting to a $6,000 per family tax increase, and in response Democrats last week ruled out raising income, sales, or property tax rates. We therefore may see additional digital taxation bills aside from this one.

Because Maryland would tax digital advertising but not tax non-digital advertising, the tax is a "discriminatory tax" prohibited by the Permanent Internet Tax Freedom Act (PITFA). The use of an arbitrary threshold of global annual gross revenues, while perhaps politically popular, serves to tax larger global advertising service providers at a higher tax rate than their domestic counterparts, in violation of the Commerce Clause of the US Constitution. The proposal also raises serious First Amendment (singling out digital commercial speech for a punitive tax) and Equal Protection (lack of rational basis for punitive tax on digital advertising) issues.

APPENDIX III – 2019 Impact of Advertising in Maryland from *IHS Economics and Country Risk Research*

ADVERTISING Generates Sales & Jobs in Maryland



Advertising is a powerful engine that helps drive the economy of Maryland. Advertising expenditures account for $101.5 billion of economic output or sales in Maryland – that is 14.6% of the $693.1 billion in total economic output in the State. Sales of products and services that are driven by advertising help support 393,667 jobs, representing 14.9% of the 2.6 million jobs in Maryland.

Every million dollars spent on advertising in Maryland supports 82 jobs across industries throughout the state. Every direct advertising job also supported 33 other jobs across all industries. Each form of advertising, from print media and radio and television to the Internet, helps businesses efficiently communicate the benefits of their products and services to target audiences.

This profile illustrates the importance of advertising to the economy of Maryland. It is drawn from the latest research in a landmark series of studies prepared for The Advertising Coalition by IHS Economics and Country Risk. IHS uses methodologies developed by Dr. Lawrence R. Klein, recipient of the 1980 Nobel Prize for Economics, as the foundation for this research.

The IHS research measures the impact of advertising spending by quantifying how much the spending stimulates sales, employment, value-added (contribution to GDP), taxes, and labor income. For example, while the agriculture and mining industries may have few direct advertising jobs, their combined economic sectors support many industries that do advertise heavily.

Maryland's economy and the U.S. economy are heavily affected by the health of the consumer sector. The consumer sector represents 68% of the U.S. economy and it continues to expand. For example, while the agriculture industry does little advertising, the food, manufacturing, and retail industries advertise heavily across the country. This creates consumer demand for a chain of products and services from sales of farm machinery to the shipment of agricultural products.

U.S. advertisers in 2014 spent $297 billion on advertising to stimulate consumer demand, and that spending launched a "multiplier effect" throughout the economy. Total advertising expenditures drove $5.8 trillion in total sales. This represents 16% of the $36.7 trillion in total U.S. sales attributable to advertising and means that every dollar of ad spending stimulates almost $19 in sales activity. Just as significant, the total impact of advertising on the U.S. economy represents 19% of U.S. GDP. Every million dollars that is spent on advertising supports 67 American jobs across a range of industries, and every advertising job supports 34 jobs across other industries. Labor income supported by advertising represents 17% of all personal and proprietor income in the U.S.

APPENDIX IV – Analysis from the Tax Foundation
Maryland Legislators Want to Tax Online Advertising
January 15, 2020
by Ulrik Boesen

https://taxfoundation.org/maryland-digital-tax/, Accessed on 1.16.2020

Whenever anyone surfs the internet, they inevitably encounter online ads. They are everywhere, and they are big business. According to Forbes, the market was worth over $100 billion in the U.S. in 2018. With so much of our daily communication moving online, it has always been just a question of time before implications for the tax code would emerge.

Over the last few years, several countries, the EU, and the OECD have looked at ways to tax the profit streams from this market. Unfortunately, many of the proposals pursued by these countries fail every test of sound tax policy. Fortunately, only a few countries have implemented a tax so far.

The nonneutral and discriminatory nature of the tax has led the U.S. federal government to oppose these taxes. However, Maryland legislators do not share this skepticism, and have introduced a bill to impose a tax on revenues derived from digital advertising.

The sponsors of the bill, Bill Ferguson (D) and Thomas V. "Mike" Miller Jr. (D), expect the tax to raise more than $100 million per year, which will be appropriated to Maryland's education program. In 2019, the state's Kirwan Commission published a set of recommendations that would increase education spending by $4 billion per year. State lawmakers are looking for new revenue, as both Governor Larry Hogan (R) and leading Democrats have promised not to hike income, property, or sales taxes in 2020.

A tax on digital advertising must rely on the assumption that value is created in a state regardless of a digital advertising provider's presence in that state other than large user bases. In other words, the taxable event or tax base is an assumed value creation in the meeting between the Maryland user and the online advertisement without regard for the costs of developing and maintaining the software, which allows these online interactions. The tax would apply to revenues derived from digital advertising in the state based on a user's IP address or reasonable suspicion of location. It will be up to the companies to report their revenue. However, determining location and revenue generation of a user could be very tricky. Think about the problems arising from the use of VPNs (where a user connects to the internet via an out-of-state server), online bots, or the use of ad-blockers.

The rate ranges from 2.5 to 10 percent of gross revenues based on the company's global annual gross revenues. Companies with revenues below $100 million are exempt from the tax. Given these high revenue thresholds, the tax seems designed to tax the tech giants. This might be good politics, but it is not sound tax policy. While there can be good reasons to exempt smaller businesses from undue burdens related to the tax, exempting all businesses with revenues below $100 million narrows the base and drives up the rate.

Not only is the tax nonneutral due to arbitrary revenue thresholds, it also discriminates between online and offline businesses and singles out global advertising services for a higher tax rate than other businesses in the state. The current corporate income tax rate in Maryland is 8.25 percent, which is significantly lower than the gross revenue tax of 10 percent. Corporate income taxes are levied on the income of a company, whereas a tax on gross revenues is levied on revenues before deducting costs. This results in a rate that could exceed 100 percent of profits.

Below is a sample calculation of the difference.

Source: Tax Foundation calculations.

	Traditional Marketing Company	Online Marketing Company
Revenue	$100	$100
Costs	$90	$90
Profit before taxes	$10	$10
Tax Rate	8.25%	10%
Tax Bill	$0.825	$10
Profit after taxes	$9.175	$0

Tax policy designed to target a single sector or activity is likely to be unfair and have complex consequences as there is a difference between legal tax incidence and effective tax incidence. While the large tech companies are legally obliged to pay the tax, the effective incidence might very well result in local companies in Maryland experiencing increasing marketing cost. The digital economy is not something that can easily be separated out from the rest of the global economy.

Furthermore, traditional advertising is not taxed in Maryland, which means the tax could effectively encourage companies to move marketing dollars away from online platforms. This particular discriminatory element of the tax is likely in violation of the federal Internet Tax Freedom Act, which protects online businesses from punitive or discriminatory taxation.

Maryland lawmakers have called for a modernization of the tax code, and while the proposal for a digital advertising tax fails the tests of sound tax policy, there is reason for updating the tax code to reflect modern consumption patterns. For instance, streaming services like Netflix, Apple Music, and Hulu should be included in the sales tax base. As a rule of thumb, taxation of digital transactions using existing consumption taxes are superior to special taxes on digital services.

MSBATaxSection_UNF_SB2
Uploaded by: Morrow, DeAndre
Position: UNF

MSBA
MARYLAND STATE
BAR ASSOCIATION

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msba.org

To: Members of the Senate Budget and Taxation Committee

From: DeAndre Morrow, Legislative Committee, Tax Council

Date: January 29, 2020

Subject: **Senate Bill 2 – "Digital Advertising Gross Revenues – Taxation"**

Position: **Oppose**

The Maryland State Bar Association ("MSBA") opposes **Senate Bill #2 – Digital Advertising Gross Revenues – Taxation** (the "Bill").

By way of background, the Bill imposes a new tax on businesses providing "digital advertising services" in Maryland. The Bill defines "digital advertising services" to include "advertisement services on a digital interface, including advertisements in the form of banner advertising, search engine advertising, interstitial advertising and other comparable advertising services." A business provides digital advertising services if either of the following conditions are met: the digital advertising services appear on the device of a user:

(1) with an Internet Protocol Address that indicates that the user's device is located in Maryland; or

(2) who is known or reasonably suspected to be using the device in Maryland.

If either of these conditions are met, the Bill imposes the tax on a business's "annual gross revenues," defined as "income or revenue from all sources, before any expenses or taxes, computed according to generally accepted accounting principles," delivered from digital advertising services in Maryland.

The Bill, as drafted, likely violates the Internet Tax Freedom Act (the "ITFA"). In 1998, Congress enacted the ITFA to prohibit state and local governments from imposing "multiple or discriminatory taxes on electronic commerce."[1] The ITFA specifically defines what constitutes a "discriminatory tax." "Discriminatory tax" is defined to include "any tax imposed by a State . . . on electronic commerce that . . . is not generally imposed and legally collectible by such State . . . on transactions involving similar property, goods, services, or information accomplished

[1] Pub. L. No. 105-277, Title XI, 112 Stat. 2681 (1998) (enacted as a statutory note to 47 U.S.C. § 151); ITFA § 1101(a). Certain provisions of ITFA were subsequently amended by legislation enacted in 2004 and 2007. See Pub. L. No. 108-435, 118 Stat. 2615 (2004); Pub. L. No. 110-108, 121 Stat. 1024 (2007). All references to the ITFA in this testimony refer to the ITFA in its current form, unless specifically stated otherwise.

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through other means. . . ."[2] "Electronic commerce" is defined as "any transaction conducted over the Internet or through Internet access, comprising the sale, lease, license, offer, or delivery of property, goods, services, or information. . . ."[3] If a transaction is generally not taxed when it is conducted through traditional commerce, the ITFA bars a state from taxing a similar transaction when conducted through e-commerce.

If enacted as currently drafted, the Bill would impose a tax on digital advertising services, while not imposing the tax on similar non-digital advertising services. For example, tax could be imposed on the annual gross revenues derived from the advertising of an item on a website, but tax would not be imposed on annual gross revenues derived from the advertising of that same item in magazines or on billboards. This discriminatory treatment is precisely what the plain language of ITFA prohibits. The scenario created by the Bill is eerily similar to the facts in an Illinois State Supreme Court case regarding the legality of a nexus provision that applied to remote sellers who advertised via website but not remote sellers who advertised through traditional commerce (e.g., mail order catalogs, telephone sales, etc.). In *Performance Marketing Association v. Hamer*, Illinois amended a law to require out-of-state internet retailers to collect tax if they had a contract with a person in Illinois who displayed a link on a website that connected an Internet user to that remote seller's website.[4] The taxpayer argued that if it used any advertising method other than the Internet, it would not have an obligation to collect and remit tax on its sales.[5] But for the taxpayer's use of the Internet, there was no collection obligation on its sale. The Illinois Supreme Court found that this law violated ITFA because a tax collection obligation existed only on the party engaged in electronic commerce.[6] The remedy in this case was to declare the amendment "void and unenforceable."[7] If enacted as currently drafted, the Bill may share the same fate.

For the reason(s) stated above, the MSBA **opposes the Bill and urges an unfavorable Committee report**.

If you have questions, please contact DeAndre Morrow at Dmorrow@ReedSmith.com or MSBA's Legislative Office at (410)-269-6464 / (410)-685-7878 ext: 3066 or at Richard@MSBA.org and Parker@MSBA.org**.**

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[2] ITFA § 1105(2)(A)(I).
[3] ITFA § 1105(3).
[4] 998 N.E.2d 54 (Ill. 2013).
[5] *Id*. at 58.
[6] *Id*. at 59.
[7] *Id* at 60.

2020.01.29 TAC written testimony MD SB 2

Uploaded by: Oswald, Christopher

Position: UNF

The ADvertising Coalition

January 29, 2020

The Honorable Guy Guzzone
Chair
Committee on Taxation & Budget
Maryland State Senate
Miller Senate Office Building, 3 West Wing
Annapolis, Maryland 21401

The Honorable James C. Rosapepe
Vice-Chair
Committee on Taxation & Budget
Maryland State Senate
Miller Senate Office Building, 3 West Wing
Annapolis, Maryland 21401

Dear Senator Guzzone and Senator Rosapepe:

We write you—as leaders of the Committee on Budget & Taxation of the Maryland Senate—to urge you and your fellow Committee members to oppose and reject Senate Bill 2, *Digital Advertising Gross Revenues—Taxation*, which would impose a gross revenues tax on digital advertising revenues in the State – revenues that represent a large and growing segment of all advertising. This proposal could lead to the creation of an anti-business environment in the State of Maryland that is reminiscent of the 1987 effort by Florida to tax advertising in its state.

Advertising, including the rapidly growing segment of digital advertising, is a powerful engine that helps to drive the economy of Maryland. In order to assess the impact of advertising on Maryland's economic growth and job creation, The ADvertising Coalition of stakeholders in the media and advertising industries worked with a global economic consulting firm to produce the following economic profile using a model of the U.S. economy developed by1980 Nobel Economist Dr. Lawrence R. Klein.

- Advertising expenditures account for **$101.5 billion** of economic output or sales in Maryland – that is **14.6 percent** of the $693.1 billion in total economic output in the state.
- Sales of products and services that are driven by advertising help support **393,667 jobs**, representing **14.9 percent** of the 2.6 million jobs in Maryland.
- Advertising drives the creation of jobs through the State of Maryland. Every one million dollars spent on advertising in Maryland supports **82 jobs** across industries throughout the State. Every direct advertising job also supports **33 other jobs** across all industries.
- For virtually every medium, from print media and radio and television to the Internet, advertising is essential to helping businesses effectively communicate the benefits of their products and services to target audiences.

Senate Bill 2 embraces several examples of bad tax policy and would create a regulatory nightmare for digital advertising businesses that would discourage spending digital advertising dollars in the state. To identify the range of affected businesses, the bill employs an ambiguous definition of its scope that has virtually no limits and would capture anyone "who is known or reasonably suspected to be using [a] . . . [digital device with an IP address] in the State. This leaves to conjecture the critical question of how broad the user impact of this advertising would be in Maryland, as well as how many Maryland dollars would be drained by this tax and diverted from the promotion of sales of products and services.

Maryland is a vibrant state in which all advertising, including digital advertising, helps create jobs and stimulate economic growth. Maryland businesses that advertise need your support to expand their growth and their creation of new jobs. The proposed gross receipts tax on digital advertising would represent a step backward with a serious potential to slow or reverse the growth of economic activity in the State.

We urge you to reject Senate Bill 2.

Respectfully,

American Advertising Federation

American Association of Advertising Agencies

Association of National Advertisers

MPA –The Association of Magazine Media

National Association of Broadcasters

NCTA –The Internet & Television Association

News Media Alliance

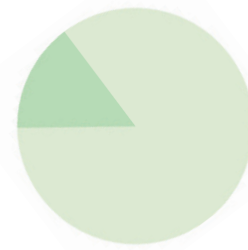
The ADvertising Coalition

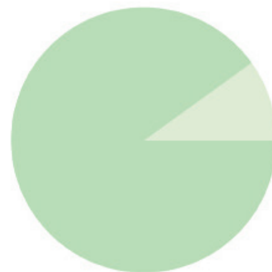
ADVERTISING

Generates Sales & Jobs in Maryland

14.6%
$101.5 B

Advertising helps generate $101.5 billion or 14.6% of economic activity in Maryland





14.9%
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Advertising helps produce 393,667 or 14.9% of all jobs in Maryland

82 Maryland Jobs

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The IHS research measures the impact of advertising spending by quantifying how much the spending stimulates sales, employment, value-added (contribution to GDP), taxes, and labor income. For example, while the agriculture and mining industries may have few direct advertising jobs, their combined economic sectors support many industries that do advertise heavily.

Maryland's economy and the U.S. economy are heavily affected by the health of the consumer sector. The consumer sector represents 68% of the U.S. economy and it continues to expand. For example, while the agriculture industry does little advertising, the food, manufacturing, and retail industries advertise heavily across the country. This creates consumer demand for a chain of products and services from sales of farm machinery to the shipment of agricultural products.

U.S. advertisers in 2014 spent $297 billion on advertising to stimulate consumer demand, and that spending launched a "multiplier effect" throughout the economy. Total advertising expenditures drove $5.8 trillion in total sales. This represents 16% of the $36.7 trillion in total U.S. sales attributable to advertising and means that every dollar of ad spending stimulates almost $19 in sales activity. Just as significant, the total impact of advertising on the U.S. economy represents 19% of U.S. GDP. Every million dollars that is spent on advertising supports 67 American jobs across a range of industries, and every advertising job supports 34 jobs across other industries. Labor income supported by advertising represents 17% of all personal and proprietor income in the U.S.

Ad-Study-2015-Maryland
Uploaded by: Rector, Clark
Position: UNF

AD VER TIS ING

Generates Sales & Jobs in Maryland

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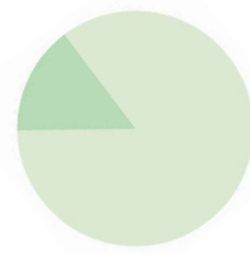

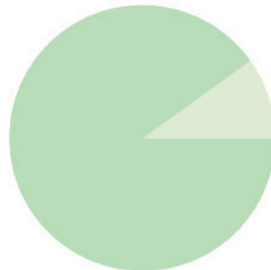

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MDDC Oppose SB 2
Uploaded by: snyder, rebecca
Position: UNF

MARYLAND | DELAWARE | DISTRICT OF COLUMBIA
MDDC PRESS ASSOCIATION
MDDCPRESS.COM

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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.

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.

MPA-SB2-Oppose
Uploaded by: Stevenson, Vans
Position: UNF

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 market-place.

● **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.

Vans Stevenson • Senior Vice President, State Government Affairs • 1600 Eye Street NW, Washington, DC 20006 • 202-378-9140

MD Tech Council_Richard Tabuteau_UNF_SB0002
Uploaded by: Tabuteau, Richard
Position: UNF

TO: The Honorable Guy Guzzone, Chair
Members, Senate Budget and Taxation Committee
The Honorable Thomas V. Mike Miller, Jr.

FROM: Richard A. Tabuteau
Pamela Metz Kasemeyer
J. Steven Wise
Danna L. Kauffman

DATE: January 20, 2020

RE: **OPPOSE** – Senate Bill 2 – *Digital Advertising Gross Revenues – Taxation*

The Maryland Tech Council is a collaborative community, actively engaged in building stronger life science and technology companies by supporting the efforts of our individual members who are saving and improving lives through innovation. We support our member companies who are driving innovation through advocacy, education, workforce development, cost savings programs, and connecting entrepreneurial minds. The valuable resources we provide to our members help them reach their full potential making Maryland a global leader in the life sciences and technology industries. On behalf of MTC, we submit this letter of **opposition** for Senate Bill 2.

Senate Bill 2 imposes a tax on annual gross revenues derived from digital advertising services including advertisement services on a digital interface in the State. It also establishes a presumption that digital advertising services are provided in the State if the digital advertising services appear on a device of a user whose internet protocol address is in Maryland and who is known or reasonably suspected to be using the device in the State. The digital advertising gross revenues tax rate ranges from 2.5% of the assessable base for a person with global annual gross revenues of $100 million through $1 billion to upwards of 10% of the assessable base for a person with global annual gross revenues exceeding $15 billion.

The Maryland Tech Council opposes Senate Bill 2 because it would hurt many of our over 450 life science and technology member companies developing innovative solutions that save, protect, and improve lives. Digital advertising is among the leading, if not, primary form of advertising for our members. It's important to remember, as with any sales/transaction tax, the economic burden of a tax will simply be passed on to Maryland businesses purchasing digital advertising thereby reducing their revenues and/or income. Currently, it is estimated that internet advertising providers would simply increase digital advertising prices by up to 10%. This economic burden may well flow down to the end-consumer who may experience higher prices for goods and services they purchase from the companies advertising on a digital interface. Lastly, history from Arizona, Iowa, and Florida suggests that this tax will likely hurt the Maryland economy and would be impossible to administer, which is likely the primary reason why no other state or locality in the United States has imposed such a tax.

For the foregoing reasons, the Maryland Tech Council urges the Senate Budget and Taxation Committee to give Senate Bill 2 an unfavorable report.

For more information call:
Richard A. Tabuteau
Pamela Metz Kasemeyer
J. Steven Wise
Danna L. Kauffman
410-244-7000

MD Tech Council_Richard Tabuteau_UNF_SB0002
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Position: INFO

NATIONAL TAXPAYERS UNION FOUNDATION

Testimony Before the Maryland Senate Budget and Taxation Committee
State Digital Advertising Taxes: A New Trend that Should End Quickly
January 29, 2020

Mr. Chair, Mr. Vice Chair, and members of the committee, thank you for the ability to submit written and oral testimony regarding Maryland Senate Bill 2. The National Taxpayers Union Foundation was founded in 1978 to provide nonpartisan research and education to illustrate the impact of taxes on Americans and the U.S. economy.

Senate Bill 2 would create a new gross receipts tax on digital advertising. While proponents claim that it will raise significant revenue to help finance the Kirwan Commission's recommendations, collecting any revenue is unlikely due to the bill's multitude of legal issues. The bill violates the federal Permanent Internet Tax Freedom Act and is constitutionally suspect, with likely violations of the Commerce Clause and First Amendment. Even if the bill was legally sound, its structure is flawed. If adopted, the tax would create significant economic and legal ramifications for the state.

The Bill's Structure

The bill would create a digital advertising gross receipts tax, imposed on a company's annual gross revenue in the state. Similarly structured as France's new digital services tax, the bill's broad definition of digital advertising includes banner ads, search engine ads, and others posted on a website, an application, or within a piece of software.

The tax rate would increase with a company's global revenues. A company with revenue between $100 million and $1 billion would pay 2.5 percent of taxable receipts, rising as high as 10 percent for companies with $15 billion or more in sales.

Table 1. Tax Rates Under Maryland SB2

Total Global Revenues	Tax Rate
$100 million to $1 billion	2.5%
$1 billion to $5 billion	5%
$5 billion to $15 billion	7.5%
$15 billion or more	10%

This structure raises several economic concerns. By taxing digital advertising but not other types of advertising, the bill creates a tax code that is not neutral between similar businesses. Only one narrow industry is taxed, while other competitors are left untaxed. Advertisers would be encouraged to shift their advertising placements from one medium to another not based on sound business reasons, but as a result of tax policy.

The tax violates a second core principle of tax policy: business inputs should be exempt from sales taxes. Taxing a business input leads to what is called tax pyramiding, where the same transaction is taxed multiple times. Companies that host digital advertising would be encouraged to raise their prices to offset the impact of the tax on their profit margin. By taxing gross receipts instead of profits (which allows a company to deduct its costs), effective tax rates skyrocket. A $15 billion company would need to exceed a 10 percent profit margin to surpass the break-even point on such a tax. Firms would look to offset their revenue hit with higher prices for consumers.

Imagine a small Maryland-based retailer decides to place online ads to encourage shoppers to choose their store over a large retailer. That digital ad would be subject to a tax, raising the cost of the ad. The small retailer would be forced with a difficult choice. Should the retailer then pass that cost along to their consumers, meaning they raise the price of their goods? If they don't think they can raise prices because they'll lose the customer to the large retailer, they might instead have to consider passing the tax to their employees in the form of fewer job opportunities, or by limiting hours, benefits, or wages.

The tax in many ways would function similar to a tariff on digital advertising, limiting the sale within the state. While this seems positive at first blush, it is the businesses placing the ads, not the companies hosting the ads, that are hurt as the price of digital advertising space rises. The bill's impact would be felt by many. Local restaurants, gyms, bakeries, or any Maryland business that uses advertising to complete could be affected.

The Bill's Legal Future is Uncertain

If adopted, any revenue forecasted for the tax would be unlikely to be collected due to the numerous legal hurdles ahead. As written, the legislation is a clear violation of the federal Permanent Internet Tax Freedom Act (PITFA). Signed into law in 2016 by President Barack Obama, the law prohibits states and localities from assessing taxes on internet access. Second, it prohibits "discriminatory taxes on electronic commerce." Maryland's proposal appears to be an obvious violation of this component of PITFA.

Similar to most states, Maryland does not currently include advertising in its sales tax base, and for very good reasons. State sales tax bases should only include final personal consumption. Taxing business inputs, such as advertising, leads to higher prices for consumers. While both digital and traditional physical advertising activities would be subject to the state's 8.25 percent corporate income tax, only digital advertising would be additionally subjected to a gross receipts tax as high as 10 percent.

Even if the tax survived a PITFA challenge, it suffers from additional constitutional flaws as well. Because the tax is assessed on annual global revenues, larger global advertising providers would face a higher tax burden than Maryland-only providers, raising questions about whether the law could survive a challenge alleging that it violates the U.S. Constitution's Commerce Clause, which functionally prohibits state laws that discriminate against interstate commerce.

The bill also likely violates the First Amendment. In *Grosjean v. American Press Co*. and *Minneapolis Star Tribune Co. v. Commissioner*, the U.S. Supreme Court considered the impact of taxes on the news media, ruling that industry-specific taxes violate the First Amendment's speech protections. In a similar case, the Maryland Court of Appeals ruled that advertising taxes were unconstitutional violations of the First Amendment. Taxing digital advertising, a key revenue stream for media companies, would raise similar challenges.

Conclusion

Legislators in Maryland are searching for new revenue to pay for the Kirwan Commission's educational recommendations, but the digital advertising tax does not pass the smell test. Even though it was proposed by a Nobel Prize winning economist and strikes some as a good idea, the tax violates federal law and is also likely unconstitutional. Instead of collecting $100 million from the tax, the state is more likely to find itself spending a pretty penny on legal fees to defend an indefensible proposal.

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Uploaded by: Kinnally, Kevin
Position: INFO

Senate Bill 2

Digital Advertising Gross Revenues - Taxation

MACo POLICY STATEMENT
(Letter of Information)

To: Budget and Taxation Committee

Date: January 29, 2020

From: Kevin Kinnally

Equity with New Revenue Sources

The State's commitment to substantial new education investments has inspired legislation to authorize new activities that carry substantial new revenue potential. The costs of these ambitious school initiatives, as proposed, will also carry a major cost to county governments, many of whom are already straining their current revenue structures.

Only with sufficient funding will county governments be able to work in partnership with the State to advance our schools' competitiveness and outcomes. **As such, any new funding source identified and approved by the State to support new education initiatives should have a commensurate authority or equitable distribution to support county governments statewide as true partners in education investments.**

MACo advocates for adequate, fair, and reasonable funding for all of Maryland's students, and urges State policymakers to sustain a robust level of public education funding without unduly burdening county budgets or slighting other essential local services.

MACo and county governments stand ready to work with State policymakers toward a productive funding partnership to ensure a world-class education system for all Maryland students.

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