



NATIONAL TAXPAYERS UNION FOUNDATION

122 C Street N.W., Suite 700, Washington, DC 20001

March 5, 2024

House Committee on Ways and Means
Room 131
House Office Building
Annapolis, Maryland 21401

Re: Comments on HB 1372, an Act concerning Health and Taxation - Digital Social Media Services and the Mental Health Care Fund for Children and Youth

Dear Chairwoman Atterbeary and Members of the Committee,

On behalf of National Taxpayers Union Foundation (NTUF), I write to you with comments on H.B. 1372, proposed legislation to introduce a new gross receipts tax on social media companies.

For nearly five decades, NTUF has striven to give policymakers the tools to make informed, pro-taxpayer policy choices. NTUF's Interstate Commerce Initiative seeks to reverse the growing trend of taxpayers facing overlapping and prohibitive tax and regulatory burdens from multiple states when they attempt to earn a livelihood in an increasingly digital economy.

HB 1372 would create a new gross receipts tax on social media companies with more than one million monthly "active users" or \$500 million in annual gross revenue, regardless of where that revenue is sourced to. These revenues would be subject to tax rates from 5 percent to 10 percent, depending on the business's total revenues from digital social media services — not those specifically sourced to Maryland.

This problematic structure, which ensures that the vast majority of revenue will be sourced from out-of-state businesses, is not new. It is the virtually the same structure, albeit with lower thresholds, as that used in the recently-implemented digital advertising tax that has already caused the state so many issues.

The numerous legal shortcomings of this digital advertising tax, including likely violations of the Internet Tax Freedom Act, the Commerce Clause, and even the First Amendment, have been discussed extensively before this Committee. While the Maryland Supreme Court recently vacated a lower court ruling finding the digital advertising tax to be unconstitutional, this was based on the idea that plaintiffs had failed to exhaust all administrative remedies first, not the constitutionality of the tax. It is quite likely a future ruling on the merits will again find the tax unconstitutional.

The same policy issues with this tax structure exist with the proposed tax on social media companies as with the digital advertising tax. Pushing tax burdens onto out-of-state businesses may seem like a consequence-free way to raise revenue, but even absent judicial intervention, it is likely to provoke retaliatory actions from other states. Maryland would rightly be outraged if other states attempted to target their local businesses for special tax burdens.

Rather than doubling down on a tax structure that attempts to outsource tax burdens to out-of-state businesses, Maryland should seek to fund in-state priorities from in-state taxpayers. The idea that consequence-free revenue can be sourced from taxpayers who lack representation in Maryland is not only inaccurate, it risks saddling Maryland taxpayers with additional burdens to make up the difference when these unconstitutional tax schemes are eventually struck down in court.

Thank you for your consideration. Please feel free to contact me if you have any further questions.

Respectfully submitted,

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