



**January 30, 2025**

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

**Re: HB 414, “Health and Taxation - Digital Social Media Services and the Mental Health Care Fund for Children and Youth”**

Dear Chair Atterbeary and Members of the House Committee on Ways and Means:

On behalf of the Computer & Communications Industry Association (CCIA), I write to respectfully oppose HB 414 in advance of the House Committee on Ways and Means hearing on January 30, 2025. CCIA is an international, not-for-profit trade association representing a broad cross-section of communications and technology firms.<sup>1</sup> Therefore, proposed regulations on the interstate provision of digital services can have a significant impact on CCIA members.

Under HB 414, a “digital social media service” would be subject to a tax on annual gross revenues, ranging from 5% of the assessable base for the lowest threshold (annual gross revenues of \$500 million to \$1 billion) up to 10% under the highest defined bracket (gross revenues above \$10 billion). This raises a variety of legal and policy concerns, as further detailed below.

**HB 414 conflicts with Federal law and is likely to lead to costly litigation.**

The proposed tax under HB 414 conflicts with the federal Internet Tax Freedom Act (ITFA), which prohibits states from imposing “discriminatory taxes on electronic commerce”. Given that the proposed bill only targets a tax to a “digital social media service”, it is clear these provisions are likely to only target online business activities in a way that cannot be applied to offline activities, and therefore fall under the scope of a “discriminatory tax”.

In 2021, Maryland enacted the “Digital Advertising Gross Revenues Tax” (DAGRT), first-in-the-nation legislation to impose a tax on digital advertisements. Since its enactment, the law has been challenged at both the state and federal levels. A Maryland state court struck down the law citing several instances in which it is unconstitutional,<sup>2</sup> which also appear similarly applicable to the proposed tax under HB 414. First, the court ruled that the law violates the ITFA by imposing a discriminatory tax on online advertising services, but not traditional offline advertisements. Second, the ruling stated that the law also violates the Commerce Clause as the digital advertising tax imposes greater tax liability to businesses that participate in interstate commerce and maintain an out-of-state presence.

<sup>1</sup> For more than 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA members employ more than 1.6 million workers, invest more than \$100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. A list of CCIA members is available at <https://www.ccianet.org/members>.

<sup>2</sup> *Comcast of Calif., LLC v. Comptroller of the Treasury of Maryland*, No. C-02-CV-21-000509, 2022 WL 20359237 (Md. Cir. Ct. Nov. 17, 2022).

The DAGRT continues to be tied up in both state and federal litigation since its enactment.<sup>3</sup> At a time when Maryland is facing a significant budget shortfall and “one of the toughest fiscal challenges in two decades”, it would be imprudent to advance legislation that is likely to face a similar costly fate.<sup>4</sup>

## **HB 414 will harm overall innovation and business growth.**

HB 414 violates many economic principles that should guide tax policy design. The guiding star of tax policy is that revenue should be raised in an efficient manner. Imposing taxes tends to create incentives that distort behavior and produce deadweight losses for the economy, so taxes should be designed to minimize the size of those deadweight losses and harmful distortions. To this end, well-designed taxes are usually neutral and broad-based, generally avoid marginal tax rate “cliffs,” and usually focus on income or profits rather than intermediate flows like revenue. This bill fails on all three counts.

Additionally, the bill is a targeted effort that aims to collect taxes from a relatively small number of taxpayers in a specific industry. It is designed with a non-neutral, narrow tax base that creates inefficiencies and incentivizes costly efforts to avoid the tax. This is a significant general failure of the tax proposal in the bill.

HB 414 also violates the common-sense tax design prescription against “cliffs” in marginal tax rates. “Cliffs” that result in sudden surges in the effective marginal tax rate for tiny increases in revenue are a policy design disaster. They incentivize different kinds of inefficient behavior to avoid sudden surges in tax burdens, and may even drive businesses out of the jurisdiction imposing the “cliff.”

Specifically, the structure of the proposed tax under this bill, while seemingly targeted to larger and higher-profit businesses, would result in penalizing other smaller and growing businesses for exceeding arbitrary revenue thresholds. For example, if a Maryland-based startup’s revenue increases from \$499,999,999 to \$500,000,000, the startup would face a whopping \$25 million in tax liability associated with just one extra dollar of additional gross global revenue—the first “cliff” in the bill. That is a 2.5 billion percent marginal tax rate on the last dollar earned, and a major disincentive to both establish and continue to grow businesses in Maryland.

This bill is designed with two additional “cliffs” at the \$1 billion revenue threshold and the \$10 billion revenue threshold. For startups with limited capital “runway,” creating enormous tax burdens for crossing these growth thresholds can be ruinous and significantly threaten innovation. Such “cliffs” in effective marginal tax rates create enormous incentives for companies to avoid crossing relevant thresholds, which may lead to behavior that is extremely inefficient from companies operating in Maryland and may even drive startups out of the state.

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<sup>3</sup> CCIA, *US Chamber File Brief at Fourth Circuit on Unconstitutional Maryland Internet Tax* (Nov. 1, 2024) <https://ccianet.org/news/2024/11/ccia-us-chamber-file-brief-at-fourth-circuit-on-unconstitutional-maryland-internet-tax/>.

<sup>4</sup> Bryan P. Sears, ‘Everything on the table’ as Moore, lawmakers seek budget solutions, *Maryland Matters* (Jan. 3, 2025), <https://marylandmatters.org/2025/01/03/everything-on-the-table-as-moore-lawmakers-seek-budget-solutions/>.



Unlike most taxes in the United States, the tax base for HB 414 is on revenues rather than profits or income. Taxes on revenues hit firms with thin profit margins much harder than highly profitable firms with wide margins. In particular, taxes on revenues tend to be particularly harmful for startups that are still growing, as many such startups are not yet profitable (and may even be pre-monetization) and are operating on a fixed capital runway. By focusing on revenues rather than profits, HB 414 stands to drain the resources of these businesses, which often means the difference between successful scaling or premature shutdowns.

In combination, the tax design failures of HB 414 would generate enormous inefficiencies for Maryland consumers and businesses and would make the state much less appealing for startups and other businesses in the innovation space.

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We appreciate your consideration of our comments and stand ready to provide additional information as the General Assembly considers proposals related to technology policy.

Sincerely,

Megan Stokes  
State Policy Director  
Computer & Communications Industry Association