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**Bill:** House Bill 468 – Health and Taxation – Digital Social Media Services and the Mental Health Care Fund for Children and Youth

**Committee:** House Ways and Means

**Position:** Informational

**Date:** March 10, 2026

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The Maryland Bar Association's Taxation Law Section Council submits this comment for informational purposes.

House Bill 468 ("HB 468"), if passed into law, would impose a tax on the gross revenues derived from certain social media services and platforms to fund health care services for children. While funding such an important cause is admirable, the imposition of this tax carries with it a host of legal issues including possible double taxation, constitutional issues, and the potential violation of the Internet Tax Freedom Act, as follows.

- **Possible Double Taxation** – The proposed tax would be on businesses' gross revenues apportioned to Maryland. These same businesses are already paying income tax on income derived from Maryland. A further tax on their apportioned nationwide income under HB 468 will likely impose additional tax on the same income Maryland is already taxing.

In addition, Maryland imposes a tax on digital advertising. The proposed tax on digital social media services would likely tax some of the identical income of social media companies, because the income of these companies comes, at least partially, if not largely, from advertising.

- **Constitutional Issues** – The Maryland digital advertising tax continues to face constitutional challenges, some of which may also be applicable to the proposed tax on social media services. Specifically, there is still pending litigation in the Maryland Tax

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Court in which businesses argue that the tax violates both the due process clause and the commerce clause by targeting large out of state companies while protecting smaller local companies.

Another potential constitutional infirmity arises from the so called “one voice” doctrine espoused by the Supreme Court. That doctrine asserts that an individual state law cannot conflict with, or undermine, an established federal position. The United States is engaged in an ongoing dispute with France and the European Union, maintaining that neither may tax their share of U.S. companies’ worldwide income. By attempting to tax Maryland’s share of the companies’ U.S. income, HB 468 may be vulnerable to the claim that it violates the one voice doctrine. The strength of this argument is unclear. However, it is a legal issue which will have to be addressed.

- **Internet Tax Freedom Act (ITFA)** – This law prohibits states and localities from taxing internet access and “prohibits multiple and discriminatory taxes on electronic commerce”. Again, this is one of the issues before the Maryland Tax Court in the digital sales tax case. Clearly this issue would be raised in litigation if HB 468 were passed. In fact, the argument that the new tax is “multiple” would be even stronger. That said, there are arguments that ITFA would not apply. Clearly, the matter would be litigated.

If passed, there is little doubt that the enforceability of HB 468 would be the subject of litigation brought by large social media providers. This litigation would piggyback on top of the ongoing litigation relating to the digital advertising tax.

The prospect of litigation raises a concern about the implementation, administration, and enforcement (collectively “IAE”) of the tax. The Fiscal and Policy Note estimates revenue from this tax of \$30,000,000 for 2029 (in half a year), increasing to more than \$75,000,000 by year four. Despite the anticipated high revenue, the Fiscal and Policy Note allocates less than \$2,000,000 to fund additional employees and computer programming modifications. This seems low in proportion to the revenue estimated, and the litigation the law will likely generate with large companies.

Sincerely,

Taxation Law Section Council, by the Legislation Committee:

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