Maryland General Assembly
Department of Legislative Services

Proposed Regulations
Comptroller of the Treasury

(DLS Control No. 21-111)

Overview and Legal and Fiscal Impact

These regulations provide, for purposes of determining annual gross revenues of a person on which the tax is imposed, guidance on determining the state from which revenues from digital advertising services are derived and general guidance on the digital advertising gross revenues tax.

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulations of COMAR Affected

Comptroller of the Treasury:

Digital Advertising Tax: General Regulations: COMAR 03.12.01.01 through .06

Legal Analysis

Background

Chapter 37 of 2021 imposes a tax on the annual gross revenues of a business derived from specified digital advertising services in the State. The Act requires a business with at least $100 million in global annual gross revenues to pay the tax at a rate determined by the business's global annual gross revenues. Revenues from the tax are distributed to the Blueprint for Maryland's Future Fund, after the Comptroller's costs to administer the tax are deducted.

Following the enactment of Chapter 37, Chapter 669 of 2021 exempts a broadcast entity and news media entity from the digital advertising gross revenues tax and prohibits a person from directly passing on the cost of the tax to a customer through a separate fee, surcharge, or line-item.

Summary of Regulations

Regulation .01 defines the terms "access", "device", "digital advertising services", "digital interface", "location", and "user"; the definitions for "digital advertising services", "digital interface", and "user" reflect the definitions for those terms under § 7.5-101 of the Tax – General Article.

Regulations .02 and .03 provide, for purposes of determining annual gross revenues of a person on which the tax is imposed, guidance on determining the state from which revenues from digital advertising services are derived. Regulation .02A specifies that revenues from digital advertising services are derived in the State when any potion of those services are accessed through a device located within the State; Regulation .03A specifies that revenues from digital advertising services are derived in the United States when any portion of those services are accessed by devices within the United States. Regulation .02B provides that the amount of digital advertising gross revenue attributable to the State shall be computed by multiplying an apportionment factor, the numerator of which is the number of devices that have accessed the digital advertising services from a location in the State and the denominator of which is the number of devices that have accessed the digital advertising services from any location, by the total digital advertising gross revenue received by the taxpayer. The regulations specify that the location of a device must be determined by a taxpayer using the totality of the tata within the taxpayer's possession or control that most reliably identifies a device's location. Devices whose location are indeterminate are excluded from the apportionment factor.

Regulation .04 specifies that, unless an act that changes the digital advertising gross revenues tax rate provides otherwise, if the rate changes on a date other than January 1st, a person must compute the digital advertising gross revenues tax using the tax rate that applies to each part of the year.

Regulation .05 specify requirements and procedures for filing digital advertising gross revenues tax returns and estimated digital advertising gross revenues tax declarations or returns.

Consistent with § 7.5-201 of the Tax – General Article, Regulation .06 requires each person that reasonably expects estimated digital advertising gross revenues for a calendar year to exceed $1,000,000 to file a declaration of estimated digital advertising gross revenues tax in the form and manner prescribed by the Comptroller.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The Comptroller cites §§ 2-102, 2-103, and 7.5-102 of the Tax – General Article as statutory authority for the regulations. Section 2-102(a)(4) requires the Comptroller to administer the laws that relate to the digital advertising gross revenues tax. Section 2-103(1) requires the Comptroller to adopt reasonable regulations to administer the provisions of tax laws listed in § 2-102(a), which includes the digital advertising gross revenues tax. Section 7.5-102 requires the Comptroller, for purposes of determining annual gross revenues of a person on which the tax is imposed, to adopt regulations that determine the state from which revenues from digital advertising services are derived.

This authority is correct and complete. The regulations comply with the legislative intent of the law.

Technical Corrections and Special Notes

In response to suggestions from the Department of Legislative Services, staff for the Comptroller agreed to conform the definition of "digital advertising services" to the definition of that term as amended by Chapter 669 of 2021 and make several technical corrections to Regulations .01 and .04.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The Comptroller's Office advises that the regulations have no impact on State or local governments. The Department of Legislative Services concurs as the regulations implement provisions of law enacted by Chapter 37 of 2021 (House Bill 732). The fiscal and policy note for House Bill 732 estimated that annual revenues for the Blueprint for Maryland's Future Fund from the digital advertising gross revenues tax may increase by as much as $250 million under one set of assumptions. However, the exemption provided by Chapter 669 of 2021 (Senate Bill 787) may reduce the overall revenue impact of the digital advertising tax provisions of Chapter 37.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The Comptroller's Office advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

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