

Sales/Use/Indirect:

Maryland: Digital Advertising Tax Enacted with Potential Criminal Penalties for Failing to Comply

H.B. 732, governor's veto overridden by legislature 2/12/21. Following Governor Larry Hogan's veto last year of a controversial bill creating a novel tax, the Maryland legislature recently overrode the veto to enact a new digital advertising revenues tax in Maryland, which imposes a tax on gross revenue from digital advertising services in Maryland. Under the new law, "digital advertising services" is defined to incorporate 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 "digital interface" under the new law generally means any type of software, including a website, or application, that a user is able to access. The new tax is based on a tiered rate schedule (ranging from 2.5% to 10%) applied to annual gross revenues derived from digital advertising services in Maryland, which is determined using an apportionment fraction. The tax rate under the new law is driven by the recipient's global annual gross revenue from all sources according to generally accepted accounting principles (GAAP) as follows:

URL: <http://mgaleg.maryland.gov/mgawebsite/Legislation/Details/hb0732/?ys=2020rs>

- 2.5% of the assessable base if global annual gross revenue ranges from \$100 million through \$1 billion;
- 5.0% of the assessable base if global annual gross revenue is greater than \$1 billion through \$5 billion;
- 7.5% of the assessable base if global annual gross revenue is greater than \$5 billion through \$15 billion;
- and
- 10.0% of the assessable base if global annual gross revenue is greater than \$15 billion.

The new tax generally is applicable to all taxable years beginning after December 31, 2020, and the legislation includes potential imposition of criminal penalties for willful failure to file a return. See forthcoming Multistate Tax Alert for more details on this new tax, as well as some related taxpayer considerations.

H.B. 932, governor's veto overridden by legislature 2/12/21. The Maryland legislature also overrode Governor Hogan's veto last year on another tax bill that subjects certain defined "digital products" to Maryland sales and use tax, including streaming and downloads. The new law generally provides that the retail sale of a certain digital code or digital product is presumed to be made in the state in which a certain "customer tax address" is located. Please contact us with any questions.

URL: <http://mgaleg.maryland.gov/mgawebsite/Legislation/Details/HB0932?ys=2020RS>

— Joe Carr (McLean)
Managing Director
Deloitte Tax LLP
josecarr@deloitte.com

Ryan Trent (Charlotte)
Senior Manager
Deloitte Tax LLP
rtrent@deloitte.com

Michael Spencer (Washington, DC)
Manager
Deloitte Tax LLP
mispencer@deloitte.com

This document contains general information only and Deloitte is not, by means of this document, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This document is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. Deloitte shall not be responsible for any loss sustained by any person who relies on this document.

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee (“DTTL”), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as “Deloitte Global”) does not provide services to clients. In the United States, Deloitte refers to one or more of the US member firms of DTTL, their related entities that operate using the “Deloitte” name in the United States and their respective affiliates. Certain services may not be available to attest clients under the rules and regulations of public accounting. Please see www.deloitte.com/about to learn more about our global network of member firms.