

Sales/Use:

Maryland Legislature Passes Bill that Pushes Start Date of New Digital Advertising Tax to 2022

S.B. 787, passed House and Senate as of 4/12/21; *Digital Advertising Gross Revenues Tax Bulletin No. 21-2*, Md. Comptroller, Rev. Admin. Div. (4/13/21). Pending legislation that has passed both the Maryland House and Senate (S.B. 787) i) modifies and seeks to clarify Maryland's recent enactment of legislation that imposes a novel digital advertising gross revenues tax in Maryland [see H.B. 732 (2021) and previously issued Multistate Tax Alert for more details on this new tax], and ii) modifies the definition of a "digital product" subject to Maryland sales and use tax [see H.B. 932 (2021), *State Tax Matters*, Issue 2021-11, *State Tax Matters*, Issue 2021-10, and *State Tax Matters*, Issue 2021-7 for more details on related state law from earlier this year]. Specifically, if enacted, S.B. 787 would:

URL: <http://mgaleg.maryland.gov/mgawebsite/Legislation/Details/sb0787?ys=2021RS>

URL: https://www.marylandtaxes.gov/forms/Tax_Publications/Tax_Bulletins/Digital_Advertising_Tax_Bulletins/DIGITAL%20ADVERTISING_041221_E.pdf

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

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-maryland-enacts-tax-on-digital-advertising-services.pdf>

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

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/210319_8.html

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/210312_7.html

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/210219_11.html

- Delay the start date of Maryland's digital advertising gross revenues tax until January 1, 2022;
- Carve out from taxable "digital advertising services" generally any advertisement services on digital interfaces owned or operated by, or operated on behalf of, a broadcast entity or news media entity;
- Provide that the cost of Maryland's digital advertising gross revenues tax may not be directly passed on to a customer that purchases digital advertising services in the form of a separate fee, surcharge or line item;
- Carve out from a taxable "digital product" the following:
 - Prerecorded or live instruction by learning institutions/schools,
 - Instruction in a skill or profession in a buyer's current or prospective business, occupation, or trade if instruction is not prerecorded and features an interactive element between buyer and instructor/other buyers contemporaneous with instruction,
 - Seminar, discussion or similar event hosted by a nonprofit,
 - Professional services obtained electronically or delivered through use of technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities, and
 - Certain custom computer software and associated services (regardless of how transferred or accessed) that contains standard or proprietary routines requiring significant creative input to customize, configure, or modify the procedures and programs that are necessary to perform the functions required for the software to operate as intended;

- Expand the definition of a marketplace facilitator to include those facilitating sales of digital codes and products (in addition to tangible personal property);
- Include sourcing provisions for sales of digital codes and products; and
- Clarify that Maryland’s sales tax exemption for tangible personal property used or consumed in qualifying research and development (R&D) also includes digital codes or products used or consumed in R&D.

If Maryland Governor Larry Hogan does not sign or veto S.B. 787, this legislation automatically will become law 30 days from presentment.

Following S.B. 787’s passage by the Maryland House and Senate, the Maryland Comptroller, Revenue Administration Division, issued a bulletin on Maryland’s new digital advertising gross revenues tax explaining that, pursuant to S.B. 787, the first quarterly estimated tax payment for the digital advertising gross revenues tax would be “due April 15, 2022 on first quarter 2022 revenues.”

See forthcoming Multistate Tax Alert for more details on this legislation, as well as related taxpayer considerations, and please contact us with any questions in the meantime.

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

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

Inna Volfson (Boston)
Senior Manager
Deloitte Tax LLP
ivolfson@deloitte.com

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

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