

Sales/Use:

Maryland: New Law Delays Start Date of New Digital Advertising Tax and Addresses Digital Products

S.B. 787, enacted without Governor's signature 5/30/21. Effective immediately, new law 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) revises 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]. Under this new law, the start date of Maryland's digital advertising gross revenues tax is delayed until January 1, 2022. Additionally, the legislation:

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

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

- Carves 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;
- Provides 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;
- Carves 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;
- Expands the definition of a marketplace facilitator to include those facilitating sales of digital codes and products (in addition to tangible personal property);
- Includes sourcing provisions for sales of digital codes and products; and

- Clarifies 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.

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

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.