

Sales/Use/Indirect:

Maryland Comptroller Proposes Rules for New Digital Advertising Tax with Comments Due November 8

Proposed New COMAR 03.12.01.01 through 03.12.01.06, Md. Comptroller of the Treas. (10/8/21). The Maryland Comptroller of the Treasury (Comptroller) has proposed new rules implementing legislation enacted earlier this year that imposes a novel digital advertising gross revenues tax in Maryland on some businesses beginning January 1, 2022 [see H.B. 732 (2021) and previously issued Multistate Tax Alert for more details on this new tax, as well as S.B. 787 (2021) and previously issued Multistate Tax Alert, for details on subsequently enacted legislation that pushed the start date of the new digital advertising tax to 2022], which is a new tax separate from Maryland's income and sales and use taxes. The proposed rules employ a device-based sourcing methodology for the new tax that calculates the numerator of the apportionment fraction by looking to whether the device showing the advertising is in Maryland. The proposal defines various relevant terms, including "device" and "location," and provides that the numerator of the statutory apportionment fraction generally is equal to the number of devices that have accessed the digital advertising services from a location in Maryland, while the denominator generally is equal to the number of devices that have accessed the digital advertising services from any location. This apportionment factor is applied to an impacted taxpayer's digital advertising gross revenue to determine the amount of digital advertising gross revenue attributable to Maryland. The proposal adopts a "throwout rule" for devices that have an indeterminate location and includes some illustrative computational examples. Taxpayers generally must identify device location by using Internet protocol, geolocation data, device registration, cookies, or "any other comparable information" using a "totality of the circumstances" type analysis of their data. Furthermore, taxpayers that "reasonably expect" to owe Maryland's digital advertising gross revenues tax of more than \$1 million in a calendar year must file a declaration of estimated tax with the Comptroller. Comments on the proposed rules are due by November 8, 2022. Please contact us with any questions.

URL: <http://www.dsd.state.md.us/MDR/4821.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/sb0787?ys=2021RS>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-mta-maryland-enacts-emergency-bill-addressing-taxation-of-digital-advertising-and-digital-products.pdf>

— 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

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

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