

## Other/Miscellaneous:

### Maryland Comptroller Adopts Rules for New Digital Advertising Tax

*Correction to Notice of Final Action: New COMAR 03.12.01.01 through 03.12.01.06*, Md. Comptroller of the Treas. (12/17/21). Issuing a correction to its original notice of final action from December 3 [see *State Tax Matters*, Issue 2021-49, for more details on the initial notice], the Maryland Comptroller of the Treasury (Comptroller) adopted new rules implementing legislation enacted in 2021 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. As before, the 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 rules define various relevant terms, including "device" and "location," and provide 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 rules continue to adopt a "throwout rule" for devices that have an indeterminate location and include some illustrative computational examples. Taxpayers generally must identify device location by using Internet protocol, geolocation data, device registration, cookies, industry standard metrics, 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. Please contact us with any questions.

**URL:** [http://www.dsd.state.md.us/MDR/4826/Assembled.htm#\\_Toc90373960](http://www.dsd.state.md.us/MDR/4826/Assembled.htm#_Toc90373960)

**URL:** [https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/211210\\_7.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/211210_7.html)

**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>

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