

Other/Miscellaneous:

Maryland: Federal Judge Partially Dismisses Lawsuit Challenging New Digital Advertising Tax

Case 1:21-cv-00410-LKG, US D. Ct. Dist. of Md. (3/4/22). Following Maryland’s enactment in 2021 of a new and novel digital advertising revenues tax – which imposes a tax on annual gross revenue from digital advertising services in Maryland based on a tiered tax rate schedule [see H.B. 732 (2020) 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] – the US District Court for the District of Maryland (Court) partially granted the Comptroller of the Treasury of Maryland’s motion to dismiss a lawsuit brought forth by various trade and industry groups challenging the tax’s validity and seeking a declaration and injunction against its enforcement. Specifically, the Court held that the federal Tax Injunction Act (TIA) bars the plaintiffs’ federal challenge to the charge imposed by the new law because “this charge is a tax and Maryland law provides a plain, speedy and efficient remedy for plaintiffs to challenge this tax in state court.” However, the Court held that the TIA does *not* preclude plaintiffs’ challenge to the new law’s “pass-through prohibition provision,” because this provision does not involve the “assessment, levy or collection” of a tax.

URL: <https://www2.mdd.uscourts.gov/Opinions/Opinions/Chamber.FINAL.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>

Among the plaintiffs’ assertions in this federal lawsuit are claims that the Maryland digital advertising revenues tax:

- Is preempted by the federal Internet Tax Freedom Act (ITFA), which prohibits states from imposing “multiple and discriminatory taxes on electronic commerce;” and
- Violates the Due Process and Commerce Clauses of the US Constitution by burdening and penalizing purely out-of-state conduct and interfering with foreign affairs.

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