Date of Hearing: January 12, 2026

ASSEMBLY COMMITTEE ON REVENUE AND TAXATION
Mike Gipson, Chair

AB 796 (Lowenthal) – As Amended January 5, 2026

$^{2}/_{3}$ vote. Fiscal committee.

SUBJECT: Social media platforms: advertising: tax.

SUMMARY: Imposes a new tax on a "social media platform provider" at an unspecified percentage of the annual gross receipts derived from the purchase of "programmatic advertising" for distribution on the provider's "social media platform", as specified, and deposits the revenues in the newly created Social Media Safety Trust Fund. Specifically, **this bill**:

1) Makes various findings and declarations regarding the financial and social impacts of social media use on the State of California and its residents, the unique nature of advertising on social media compared to traditional advertising, and the sovereign authority of states to impose taxes and regulate commerce within their borders.

2) Imposes a tax on each "social media platform provider" equal to an unspecified percentage of the annual gross receipts derived from the purchase of "programmatic advertising" for distribution on the provider's social media platform, as specified.

   a) Provides that the gross receipts used to calculate the amount of tax due includes only purchases of "programmatic advertising" that either originate in California or are displayed to persons residing in California.

   b) Excludes from the gross receipts used to calculate the tax all of the following:

      i) Refunds provided by the platform to purchasers of "programmatic advertising" in either cash or credit;

      ii) Purchases of "programmatic advertising" by any nonprofit organization that qualifies for tax exempt status under Internal Revenue Code (IRC) Section 501(c)(3); and,

      iii) Purchases of "programmatic advertising" by any entity whose aggregate gross payments to the social media platform provider for advertisements within the calendar year has not exceeded $100,000.

3) Defines all of the following terms:

   a) "Social media platform provider" is a person who, for commercial purposes in or affecting commerce, provides, manages, operates, or controls a social media platform.

   b) "Social media platform" is a public or semipublic internet-based service or application that has users in California and that meets both of the following criteria:

i) A substantial function of the service or application is to connect users in order to allow users to interact socially with each other within the service or application, except email or direct messaging services and applications; and,

ii) The service or application allows users to do all of the following:

1) Construct a public or semipublic profile for purposes of signing into and using the service or application;

2) Populate a list of other users with whom an individual shares a social connection within the system; and,

3) Create or post content viewable by other users, including, but not limited to, on message boards, in chat rooms, or through a landing page or main feed that presents the user with content generated by other users.

c) "Programmatic advertising" is a method of purchasing media or advertisements that meet all of the following criteria:

i) The method uses technology to automate and optimize, in real time, the purchasing process;

ii) The method serves targeted and relevant experiences to a consumer across channels; and,

iii) The method uses algorithms to filter advertising impressions derived from consumer behavioral data to allow advertisers to define budgets, goals, attribution and to optimize for reduced risk while increasing return on investment.

d) "Fund" is the Social Media Safety Trust Fund created by this bill.

e) "Department" is the California Department of Tax and Fee Administration (CDTFA).

4) Provides that the CDTFA must administer and collect the tax pursuant to the Fee Collection Procedures Law (FCPL).

5) Creates the Social Media Safety Trust Fund and deposits all revenues from the tax imposed by this bill into the fund, which must be used only for purposes consistent with this bill.

6) Provides that, notwithstanding Government Code Section 13340, all moneys in the fund are continuously appropriated without regard to fiscal year and shall be allocated to the following separate accounts within the fund:

a) An unspecified percentage shall be deposited into the Education Account for expenditures to ensure the public is educated on how to mitigate the risks of adolescent social media platform use, including, but not limited to, the delivery of evidence-based social media platform safety curriculum to children, caregivers, and educators;

b) An unspecified percentage shall be deposited into the Mental Health Care Account for expenditures to ensure that children and their caregivers receive appropriate mental health care services and support for mental health risks associated with adolescent social media platform use, including, but not limited to, anxiety, depression, eating disorders, and self-harm; and,

c) An unspecified percentage shall be deposited into the Research and Development Account for expenditures that ensure research of best practices for all programs and services relating to adolescent social media safety and to advance the public's understanding of social media platform safety and expenditures to ensure development of technology to protect children from the dangers associated with social media platform use.

d) An unspecified percentage shall be deposited into a Social Services Account for expenditures to ensure that children harmed through using social media platforms, including, but not limited to, cyberbullying, sexual predation, and human trafficking, receive appropriate social services and at-risk youth, including, but not limited to, foster youth receive appropriate social services to prevent, mitigate, and respond to harms relating to adolescent social media platform use. These funds shall also be allocated to support community-based organizations that provide youth behavioral health primary prevention services and after school programs aimed at reducing the risks associated with social media platform use.

7) Provides that, upon appropriation by the Legislature, moneys in the fund can be used as follows:

a) The Superintendent of Public Instruction may provide grants from the Education Account to school districts or elementary or secondary schools to support the purpose described above and that grant funds may be used to contract with entities specializing in delivery of social media platform safety educational services;

b) The State Public Health Officer may provide grants from the Mental Health Care Account to any entity employing a duly licensed mental health care provider to support the purposes described above and may provide grants from the Research and Development Account to any entity conducting research or development consistent with the purposes described above; and,

c) The Director of Social Services may provide grants from the Social Services Account to any entity providing the services described above.

8) Provides that moneys in the fund must be used to provide new services or to supplement existing levels of service. No moneys may be used to supplant state General Fund money for any purpose.

EXISTING FEDERAL LAW:

1) Establishes the Internet Tax Freedom Act (ITFA), which prohibits states and their political subdivisions from imposing "multiple or discriminatory taxes on electronic commerce." (47 U.S. Code Section 151, Sec. 1101(a)(2)).

a) Clarifies that, except as provided by ITFA, states and their political subdivisions retain the ability to impose any tax that is permissible under the Constitution and Federal law that was in effect as of the date of enactment [October 21, 1998].

b) Defines the following terms:

   i) "Discriminatory tax" is any tax imposed by a state or their political subdivision on electronic commerce that:

      1) Is not generally imposed and legally collectible by such state or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means;

      2) Is not generally imposed and legally collectible at the same rate by such state or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means, unless the rate is lower as part of a phase-out of the tax over not more than a 5-year period;

      3) Imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means; or,

      4) Establishes a classification of Internet access service providers or online service providers for purposes of establishing a higher tax rate to be imposed on such providers than the tax rate generally applied to providers of similar information services delivered through other means (47 U.S. Code Section 151, Note, Sec. 1105 (2)(A)); and,

   ii) "Multiple tax" is any tax that is imposed by one state or political subdivision thereof on the same or essentially the same electronic commerce that is also subject to another tax imposed by another State or political subdivision thereof (whether or not at the same rate or on the same basis), without a credit (for example, a resale exemption certificate) for taxes paid in other jurisdictions.

EXISTING STATE LAW:

1) Establishes the Corporation Tax Law, which imposes a tax of 8.84% on the annual net taxable income from business activity in California on corporations and limited liability companies (LLCs) that elect to be treated as corporations. (Revenue and Taxation Code (R&TC) Section 23151)

   a) Defines "doing business" in California as engaging in any transaction for the purpose of financial or pecuniary gain or profit. For taxable years beginning on or after January 1, 2022, a taxpayer is doing business in California if they are organized or commercially domiciled in the state, or if any of the following conditions are satisfied:

      i) The taxpayer has more than $500,000 in California sales, or 25% of the taxpayer's total sales, whichever is lesser;

      ii) The taxpayer's real property and tangible personal property (TPP) in California have a value of more than $50,000, or 25% of the taxpayer's total real property and TPP, whichever is lesser; or,

iii) The taxpayer pays more than $50,000 in employee compensation, or 25% of the total compensation paid by the taxpayer, whichever is lesser.

2) Imposes a sales tax on retailers for the privilege of selling TPP, absent a specific exemption. The tax is based upon the retailer's gross receipts from TPP sales in this state. (R&TC Section 6001 *et seq.*)

3) Imposes a complimentary use tax on the storage, use, or other consumption of TPP generally purchased out-of-state and brought into California. The use tax is imposed on the purchaser; and unless the purchaser pays the use tax to an entity registered to collect California's use tax, the purchaser remains liable for the tax. The use tax is set at the same rate as the state's sales tax and must generally be remitted to CDTFA. (R&TC Section 6001 *et seq.*)

FISCAL EFFECT: Unknown, but potentially significant revenue increases from the imposition of a new tax. Committee staff estimates that this bill would generate revenues well in excess of this Committee's $150,000 suspense threshold.

COMMENTS:

1) The author has provided the following statement in support of this bill:

> AB 796 establishes the California Social Media Accountability Act, which imposes a tax on in-state "programmatic advertising" over social media. The generated revenue will be distributed into a new California Social Media Safety Trust Fund, which will fund current and new programs to protect California's adolescent residents from the harms caused by this new type of service, as operated over social media.
>
> The California Social Media Accountability Act addresses the significant and pervasive harms caused by social media platforms impacting California's residents under the age of 18, including suicidality, eating disorders, severe cyberbullying, sexual predation, and drug trafficking. In holding the social media industry's use of programmatic advertising directly accountable for the damages it is causing, including the billions spent by California's taxpayers to address these harms, the Social Media Accountability Act creates an ongoing funding mechanism to support and distribute evidence-based interventions that will protect California's children.

2) The Organization for Social Media Safety, the sponsor of this bill and part of a coalition of organizations representing child welfare, youth mental health, education, victim advocacy, law enforcement, and community safety stakeholders, notes, in part:

> California's children are experiencing alarming levels of social media–related harm: cyberbullying, self-harm exposure, eating disorder content, violence, drug sales, human trafficking, sextortion, and other threats that spill into schools and communities. These harms impose billions of dollars in aggregate costs on public systems, including school staffing and security, behavioral health response, law enforcement investigations, and victim services.
>
> AB 796 is targeted to a specific, new, unique business service: programmatic advertising transactions delivered through social media platforms. "Programmatic advertising" is

fundamentally different from traditional print or broadcast advertising because it is automated, data-driven, and optimized in real time. Programmatic advertising systems: automate ad buying and placement at massive scale, use continuous behavioral and engagement signals to optimize delivery, and incentivize design choices that maximize time-on-platform and impressions, often by amplifying emotionally triggering, sensational, or harmful content that keeps young users engaged. This new, feedback-loop type of service model is causing harm and incurring substantial public costs that AB 796 is designed to address.

3) As part of a large coalition of business and taxpayer groups writing in opposition to this bill, the Association of National Advertisers, the California Chamber of Commerce, the Council on State Taxation (COST), and the California Taxpayers Association note, in part:

> A tax on digital advertising will increase costs for California advertisers and consumers, will be met with legal challenges, and will negatively impact California's business climate….
>
> Leaving important sourcing rules to the regulatory process ignores the important policy implications of a broad-based digital advertising tax. For instance, how will California determine who is in the state? Will California use a network-based tracking system? Will the state utilize Wi-Fi positioning of mobile devices? How will the state handle the growing utilization of encryption to obscure users' locations? Is it even realistically possible to reliably obtain the information necessary for sourcing? As the answers to these and other questions would have major impacts on the tax, they should be decided by elected lawmakers rather than being left open to interpretation by appointed officials at the state tax agencies….
>
> Revenue derived from online advertising is captured under the state's corporate income tax. Imposing a new tax on digital advertising would create an onerous burden on California businesses that would result in increasing small businesses' operating costs.

4) Committee Staff Comments:

   a) *Double-referred*: This bill was double-referred to the Assembly Committee on Privacy and Consumer Protection, which passed this bill on April 22, 2025, 8-4 and three members not voting. For a more detailed discussion of the issues under that Committee's jurisdiction, including research and surveys outlining the effects of social media on youth, please refer to that Committee's bill analysis.

   b) *What does this bill do?* This bill seeks to raise new revenue by imposing a tax on social media platform providers equal to an unspecified percentage of the gross receipts derived from the sale of programmatic advertising on the social media platform that either originates in California or is displayed to persons residing in California. The CDTFA would be responsible for administering and collecting this tax in accordance with the FCPL.

      Sales of programmatic advertising to nonprofit organizations that are tax exempt under IRC Section 501(c)(3) would be excluded from the gross receipts subject to this tax. Additionally, the tax would not apply to gross receipts from sales of programmatic advertising to entities that purchase less than $100,000 in the calendar year. Thus, this bill seeks to tax only the gross receipts from the sale of programmatic advertising on social media platforms that are attributable to businesses and other entities that purchase $100,000 or more in programmatic ads during the calendar year.

The revenues collected would be deposited into the newly created Social Media Safety Trust Fund, and would then be allocated to the Education, Mental Health Care, Research and Development, and Social Services Accounts. The Superintendent of Public Instruction, State Public Health Officer, and Director of Social Services, upon appropriation by the Legislature, could use the funds in these accounts to provide grants to schools, caregivers, and community-based organizations for social media safety, mental health resources, and social services for victims of cyberbullying, sexual predation, and human trafficking.

c) *Changes in advertising*: As internet-connected devices have grown more popular and prevalent in our daily lives, advertisers have incorporated rapidly advancing technology to remain relevant. Advertising in traditional mass media – in print, radio stations, and on television – has always required that advertisers understand whatever audience is on the receiving end of their content to effectively sell whatever product, service, candidate, or position they are promoting. In general, however, advertising in mass media prior to the digital age had to appeal to a mass audience. Whether it is an advertisement in a newspaper or on a broadcast network news program, the entire audience viewing it at that time sees and hears the same thing. Advertisers may know to target certain products in certain ways – such as a bank advertising in the business section or toy companies buying ad time during weekend cartoons – but it is cost prohibitive and infeasible to target a particular audience beyond a certain point.

d) *Programmatic advertising*: The rise of social media, search engines, and data brokers, however, has completely revolutionized the advertising industry. Now, ads are present on most webpages, in between posts on social media feeds, interspersed throughout search engine result pages, required as viewing before watching a video, listening to a podcast, or accessing a feature on an app, and so on. Unlike mass media, these digital ads can be much more specifically tailored to the individual user that is on the receiving end. It is no longer cost prohibitive for companies to create many different versions of an ad and place many different variations of it across multiple platforms to reach multiple audiences. Generative artificial intelligence tools are only accelerating this trend by making it cheap and quick to create large amounts of bespoke content tailored to specific types of consumers.

Online advertising platforms typically operate by using cookies, keywords, and other user-specific information – such as "likes" and "follows" on a social media app – that allow businesses to target their advertisements to varying degrees to different users. Instagram, for example, uses these and other characteristics to place advertisements within a user's feed that they think will be most relevant to that user's interests. Ads can be tailored based on certain geographic criteria, including down to individual city blocks, locally, nationally, and internationally. Some platforms even keep track of how long a user spends viewing a certain post, video, or advertisement and then use that data to further refine the advertisements that the user will see in the future. Unlike traditional mass media ads, this two-way exchange of information involved in programmatic advertising allows the purchaser of the ad to track, in real-time, its effectiveness, including the ability to disaggregate that data and hone the content for specific audiences.

e) *Who buys digital ads*? Digital advertising is used by businesses of all sizes, as well as political campaigns for candidates and ballot measures, nonprofits trying to fundraise, and even public agencies conducting community outreach efforts. Proponents of digital advertising services point out that this technology allows businesses to more efficiently reach the specific audiences that are relevant to them and, hence, is more cost-effective than traditional advertising. Additionally, digital advertisements enable companies to provide access to information and services that many people use every day without paying directly, including social media, navigation services, business reviews, and more. Due to the targeted nature of digital advertising, it can enable small businesses to reach more customers for a fraction of the price of a mass media campaign.[1] According to the Connected Commerce Council, a study conducted in October 2022 found that 78% of small businesses reported that digital ads generate more revenue than traditional offline ads. The survey found that roughly 4-in-5 small business advertisers believe that digital ads help them compete with larger businesses and 69% said that significant changes to digital advertising, including changes forced by legislation or regulations, would hurt their business.[2]

f) *What kind of tax is this*? Proponents contend that the use of social media platforms has had significant detrimental effects on youth mental health that result in large, uncompensated costs to the people and communities of California. In particular, proponents – and even former employees of social media companies – have argued that the platforms are intentionally designed to include addictive features that are meant to maximize the amount of time users spend on the platform, often by amplifying emotionally triggering, sensational, or harmful content.[3, 4] Programmatic advertising enables social media platforms to show users ads that are specifically tailored to that user's interests and tastes, which is more likely to keep the user engaged and active on the platform. Proponents argue that California has previously addressed large, industry-driven public costs with targeted revenue mechanisms dedicated to prevention and remediation by imposing excise taxes on harmful products like cigarettes and tobacco products.

Other proponents of digital advertising taxes have argued that this new economy involves

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[1] Herzog and Egan, *Maximum Impact: How Digital Ads Level the Playing Field for U.S. Small Businesses*, Connected Commerce Council. https://connectedcouncil.org/wp-content/uploads/2023/03/Maximum-Impact-How-Digital-Ads-Level-the-Playing-Field-for-U.S.-Small-Businesses-2023.pdf.
[2] *Small Businesses Find Big Value in Digital Ads*, Connected Commerce Council (March 2023). https://connectedcouncil.org/wp-content/uploads/2023/01/Small-Businesses-Find-Big-Value-in-Digital-Ads.pdf.
[3] *Deadly By Design: TikTok pushes harmful content promoting eating disorders and self-harm into users' feeds*. Center for Countering Digital Hate (December 2022). https://counterhate.com/wp-content/uploads/2022/12/CCDH-Deadly-by-Design_120922.pdf.
[4] Katzenberger, *'We're basically pushers': Court filing alleges staff at social media giants compared their platforms to drugs*, POLITICO (November 11, 2025). https://www.politico.com/news/2025/11/22/were-basically-pushers-court-filings-allege-staff-at-social-media-giants-compared-their-platforms-to-drugs-00666181.

an endless series of transactions whereby a user "barters" away their personal data or time in exchange for gaining access to a "free" service.[5] To these proponents, this series of barter transactions represents untaxed consumption that distorts economic behavior. Proponents also contend that it is appropriate to tax the gross revenues derived from the use of data because it is a suitable proxy for the value provided by these barter transactions. Thus, the proposed tax could be considered a type of consumption tax that shares key features with severance taxes because user data is analogous in some ways to other material resources, such as oil or other precious materials.

Additionally, proponents of digital service taxes in the international context have argued that the digital advertising market is heavily concentrated, new entrants face steep barriers to entry, and modern data analytics provide businesses unprecedented insights into consumer behavior, which helps maximize profits to a degree that is disproportionate to the value received by consumers.[6,7] Further, other countries have enacted digital service taxes to target firms that have a limited nexus to their jurisdiction or can shift their profits to low-tax jurisdictions.[8] Thus, under this theoretical framework, a tax on advertising on social media is one mechanism for the government to curb excess profits and return some of these revenues to the public's coffers.

g) *Maryland's Digital Advertising Services Tax*: The provisions of this bill are somewhat similar to Maryland's Digital Advertising Services Tax, which became law in February 2021 after the Maryland Legislature overrode a veto by the state's Governor. While originally intended to be effective in the 2021 tax year, subsequent legislation was enacted in April 2021 to delay the tax's effective date to the 2022 tax year due to various difficulties in implementing the tax.[9]

The Maryland Digital Advertising Services Tax is imposed on entities that have global gross revenues above $100 million and derive at least $1 million in revenue from digital advertising services in Maryland. The applicable tax rate is tiered based on the amount of a company's global gross revenues and ranges from 2.5% to 10%. Annual gross revenues derived from digital advertising services in Maryland are determined using an apportionment ratio of Maryland to U.S. gross revenue derived from digital advertising services. Finally, Maryland's statute also prohibited digital advertisers from passing on

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[5] Kim and Shanske, *State Digital Services Taxes: A Good and Permissible Idea (Despite What You Might Have Heard)*, 98 Notre Dame Law Review 741 (2022), Cardozo Legal Studies Research Paper No. 715. https://ssrn.com/abstract=4205398.
[6] Cho, *How Consumer Data Affects Competition Through Digital Advertising*, Congressional Research Service (January 26, 2023). https://crsreports.congress.gov/product/pdf/IF/IF11448.
[7] Cho, *Competition in Digital Markets: Vertical Integrations and Acquisitions*, Congressional Research Service (July 21, 2020). https://crsreports.congress.gov/product/pdf/IN/IN11462.
[8] Goulde, *Let's Get Salty: The World is Watching Maryland v. Comcast*, Tax Notes International, Volume 110 (May 22, 2023). https://www.taxnotes.com/tax-notes-international/litigation-and-appeals/lets-get-salty-world-watching-maryland-v-comcast/2023/05/22/7gpjr.
[9] Brown, *The Maryland Digital Advertising Services Tax and the Expanding Map for Digital Taxes*, American Bar Association Tax Times, Vol. 40 No. 3 (Spring 2021). https://www.americanbar.org/groups/taxation/publications/abataxtimes_home/21spr/21spr-pop-brown-md-digital-tax/.

the cost of the tax to customers purchasing digital advertising services via a separate fee, surcharge, or line item.

h) *Litigating the Maryland tax*: Following enactment of the tax, lawsuits were immediately filed in both federal and state court, challenging the legality of the tax under the ITFA, the Commerce and Due Process Clauses of the U.S. Constitution, and the First Amendment to the U.S. Constitution. In the federal lawsuit, four business groups sought a declaration and injunction from a Maryland federal district court against enforcement of the tax. The federal court dismissed much of the lawsuit in March 2022, ruling that the federal Tax Injunction Act (TIA) bars a challenge to the tax because Maryland state courts provide a plain, speedy, and efficient remedy to challenge the tax. However, the Fourth Circuit ruled on August 15, 2025, that the provision prohibiting companies from passing the cost of the tax onto customers via a separate fee, surcharge, or line item violated the First Amendment and impermissibly limited businesses' free speech rights.[10]

   At the state level, Comcast and Verizon filed a complaint in the Circuit Court for Anne Arundel County, seeking a declaration that the tax is illegal under the ITFA, while also alleging Commerce Clause, Due Process, and First Amendment violations. The judge granted the plaintiffs' motion for summary judgment in October 2022, agreeing with the plaintiffs that the tax is impermissibly discriminatory under ITFA, as well as in violation of the Commerce Clause and First Amendment. This decision was later overturned, however, by the Maryland Supreme Court, which held that Comcast and Verizon first had to exhaust all administrative remedies for their tax claims before filing suit.[11]

   Comcast and at least a dozen other companies are currently challenging the tax on the same grounds in Maryland Tax Court before Chief Judge Anthony C. Wisniewski. Hearings and oral arguments occurred throughout 2024 and 2025.[12] There are 18 cases pending in the Maryland Tax Court challenging the tax, although all but five of them are stayed.[13] A final decision has not yet been issued in these cases.

i) *Other approaches*: Instead of pursuing a stand-alone excise tax on digital advertising, other states have taken a more incremental approach by expanding the base of their existing taxes to include digital advertising services. For example, the State of Washington enacted legislation in 2025 to expand the definition of a sale at retail to include advertising services, which will subject those services to retail sales tax and the retailing business and occupation tax classification. The Washington State law is also being challenged in court by taxpayers with arguments that echo those advanced in the litigation over Maryland's statute.[14]

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[10] *U.S. Chamber of Commerce v. Lierman*, No. 24-1727, 2025 WL 2371034 (4th Cir. Aug. 15, 2025).
[11] *Comptroller of Md. v. Comcast of Cal.*, 484 Md. 222, 297 A.3d 1211 (2023).
[12] Muse, *Maryland Court Questions True Object Test's Role in Ad Tax Dispute*, Tax Notes State, Volume 113 (July 8, 2024). https://www.taxnotes.com/tax-notes-today-state/digital-economy/maryland-court-questions-true-object-tests-role-ad-tax-dispute/2024/06/28/7kdwj.
[13] *Peacock TV LLC v. Comptroller of Md.*, Case #23-DA-OO-0654.
[14] Cukier, Wood, Volfson, and Spencer, *Digital Advertising Services Taxes: States Catch Up and Look Ahead*, Tax Notes State, Volume 118 (November 10, 2025). https://www.taxnotes.com/tax-notes-today-

j) *Federal preemption and ITFA*: First enacted by Congress in 1998 and subsequently made permanent in 2016, ITFA established a moratorium on the imposition of state and local taxes that would interfere with the free flow of interstate commerce over the internet. ITFA preempts state and local governments from levying new taxes on internet access, as well as multiple and discriminatory taxes on electronic commerce. Existing sales and use taxes imposed by states and local governments on transactions involving TPP conducted over the internet, however, are not preempted by ITFA.[15]

   i) *Multiple tax*: A multiple tax exists when one state, or a political subdivision thereof, imposes a tax "on the same or essentially the same" electronic commerce as another state, or political subdivision thereof, without a credit for the tax paid in the other jurisdiction. A multiple tax is present even where the state or political subdivision's tax uses a different tax rate or basis than the other state or political subdivision's tax. A state's sales and use tax on electronic commerce is not a multiple tax when a political subdivision within that state also imposes a sales and use tax on the same electronic commerce.

   While ITFA's prohibition on multiple taxes has received relatively little attention in the context of the Maryland litigation, it may become an increasingly important consideration as more states consider enacting such taxes.

   ii) *Discriminatory tax*: In general, ITFA's prohibition on discriminatory taxes means that the same tax obligations and tax rates must apply to electronic commerce transactions and nonelectronic commerce transactions (e.g., mail-order and brick-and-mortar store sales) involving the same, or similar, property, goods, services, or information. Under the ITFA, a tax discriminates against electronic commerce when: (a) there is no analogous tax levied on nonelectronic commerce transactions involving similar property, goods, services, or information; (b) an analogous tax levied on nonelectronic commerce transactions involving similar property, goods, services, or information is imposed at a different rate (subject to a limited exception for phaseouts); (c) an analogous tax levied on nonelectronic commerce transactions involving similar property, goods, services, or information imposes a tax collection or payment obligation on a different person or entity; or, (d) the tax establishes a classification of internet or online service providers to subject them to a higher tax rate than the rate that generally applies to "providers offering similar information services delivered through other means."[15]

   Opponents of digital advertising taxes argue that they constitute a clear violation of ITFA's prohibition against discriminatory taxes because, in states that have considered such proposals, a similar tax is not imposed on traditional forms of advertising. Proponents of digital advertising taxes respond by arguing that programmatic advertising is fundamentally different from traditional advertising, and not just in the degree to which it is able to target specific audiences. Rather, proponents argue that programmatic advertising based on voluminous amounts of

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state/electronic-commerce-taxation/digital-advertising-services-taxes-states-catch-and-look-ahead/2025/11/07/7t7bf.

[15] Ball, *The Internet Tax Freedom Act and Federal Preemption*, Congressional Research Service (October 18, 2021). https://crsreports.congress.gov/product/pdf/IF/IF11947.

user data represents a new kind of advertising entirely with no comparable analogue because of the real-time feedback available to advertisers.[16]

Unlike Maryland's statute, however, the tax imposed by this bill does not apply to all digital or programmatic advertising equally. Instead, only programmatic advertisements on social media platforms would be subject to this new tax. Opponents may argue that this distinction is important because social media is an internet-based technology and ITFA was intended to protect internet-based economic activity from being singled out for taxation by states and local governments.[17]

k) *Policy and implementation considerations*:

i) *Lacking key details*: As currently drafted, this bill does not specify critical information that would be necessary to fully analyze the proposed tax, including the operative date of the tax, the tax rate, and how the collected revenues would be allocated to the four newly created accounts in the Social Media Safety Fund.

ii) *Incidence of the tax*: As described above, businesses of all sizes are increasingly reliant on digital advertising services to stay competitive in a rapidly changing economy. Because there is high demand for such ads, social media platforms could potentially pass on the costs of the tax to the businesses and organizations purchasing programmatic ads. On the other hand, this bill provides that the sales attributable to purchases of programmatic ads by tax-exempt nonprofits and entities that spend less than $100,000 in the calendar year on programmatic ads are excluded from the gross receipts used to calculate the tax.

iii) *Apportionment and sourcing*: As currently drafted, this bill provides that the gross receipts subject to the tax must be from programmatic advertising that either originates in California or is displayed to persons residing in California. The CDTFA would likely need to draft, propose, and adopt sourcing regulations, which could be a time-consuming process. Developing sourcing rules that are implementable and apply neutrally across rapidly changing technologies could prove difficult. For example, some proponents of digital advertising taxes have suggested using a person's internet protocol (IP) address to determine whether a particular instance of digital advertising results in gross revenues that are subject to the tax. IP addresses can be an unreliable method of determining a user's location for a variety of reasons, including the growing popularity of virtual private networks (VPNs) that allow users to obscure or change the nature of their digital interactions.

iv) *Potential appeals and refunds*: Even if California is able to collect the tax, it is likely to be challenged administratively, as well as in state and Federal court. These

[16] Shanske and Wilbur, *Better Arguments Still Favor Maryland's Digital Ad Tax*, Tax Notes State, Volume 118 (October 27, 2025.) https://www.taxnotes.com/tax-notes-state/digital-economy/better-arguments-still-favor-marylands-digital-ad-tax/2025/10/27/7t3cd.
[17] Pomp, *A Second Bite at the Apple, a Hail Mary, And a Rush to Judgment*, Tax Notes State, Volume 118 (December 15, 2025). https://www.taxnotes.com/tax-notes-state/digital-economy/second-bite-apple-hail-mary-and-rush-judgment/2025/12/15/7tc6w.

disputes could take years to resolve; and, if a taxpayers' challenges are successful, California may have to refund the tax collected plus interest.

REGISTERED SUPPORT / OPPOSITION:

Support

#halfthestory
Becca Schmill Foundation
Buckets Over Bullying
California Alliance of Boys & Girls Clubs
Children Now
Children's Advocacy Institute
Common Sense Media
Organization for Social Media Safety (sponsor)
Parent Collective

Opposition

Association of National Advertisers
California Association of Collectors
California Association of Realtors
California Attractions and Parks Association
California Chamber of Commerce
California Retailers Association
California Taxpayers Association
Computer and Communications Industry Association
Contra Costa Taxpayers Association
Family Business Association of California
National Federation of Independent Business
Orange County Taxpayers Association
Silicon Valley Leadership Group
Solano County Taxpayers Association
Southern California Rental Housing Association
TechNet

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