

September 12, 2023

Senator Susan Moran
Chair - Joint Committee on Revenue
24 Beacon St.
Room 312-D
Boston, MA, 02133

Representative Mark Cusack
Chair – Joint Committee on Revenue
24 Beacon St.
Room 34
Boston, MA, 02133

Senator Michael Brady
Vice Chair – Joint Committee on Revenue
24 Beacon St.
Room 416-A
Boston, MA, 02133

Representative David Paul Linksy
Vice Chair – Joint Committee on Revenue
24 Beacon St.
Room 167
Boston, MA, 02133

RE: Initiatives to Impose Sales Tax on Digital Advertising

Dear Chair Moran, Chair Cusack, Vice Chair Brady, and Vice Chair Linksy and members of the Joint Committee on Revenue:

On behalf of our members, the undersigned organizations write to express our strong opposition to various proposals to impose digital advertising taxes on the gross revenues of businesses in Massachusetts. Though details vary from one proposal to the next, each of them (H.2787 (Rep. Fernandes); H. 2821 (Rep. Haggarty); H. 2828 (Rep. Holmes); H. 2930 (Rep. Rogers); H. 2966 (Rep. Uytterhoeven); and S. 1846 (Sen. Jehlen)) will harm businesses and ultimately lead to increased costs for consumers. Nationally, advertising supported \$7.1 trillion in sales activity in 2020 – 19.4% of total U.S. economic output. Each dollar spent on advertising generates about \$21 of sales. In the Commonwealth, advertising accounts for more than 750,000 jobs, and the advertising sector impacts almost one-quarter of all jobs. Ad spend also results in many millions of dollars of added economic value in Massachusetts. These results are based on economic research released in November 2021 by IHS Markit,¹ and foundationally based on an economic model developed by the 1980 Nobel Laureate for Economic Science, Dr. Lawrence R. Klein. Ad taxes such as those under consideration will stifle the robust economic underpinnings that advertising provides.

Further, these taxes are legally defective because they impose (or consider imposing) a targeted, punitive tax on the gross revenue derived from digital advertising services. Because the bills involve taxing digital advertising but not non-digital advertising, they constitute a “discriminatory tax” prohibited by the federal Permanent Internet Tax Freedom Act (PITFA). Moreover, the adoption of an arbitrary threshold of annual gross revenues would tend to tax larger, out-of-state advertising service providers at a higher tax rate than their Massachusetts counterparts. This would be constitutionally suspect under the Commerce Clause of the U.S. Constitution. The proposals also raise serious First Amendment concerns because they would single out digital commercial speech for a punitive tax.

It is worth noting that Maryland enacted a similar tax in 2021, which was immediately challenged with state and federal litigation. In 2022, a Maryland Circuit Court invalidated the Maryland tax for violating the PITFA and found it was unconstitutional on multiple grounds. While the Maryland Supreme Court several months ago vacated that decision on procedural grounds (finding that the lower court did not have jurisdiction over the matter and that those challenging the law had not

¹ <https://www.ana.net/content/show/id/adtax>

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exhausted their administrative remedies), the Court did not render a decision on the merits of the case; constitutional and other legal questions still have not been resolved.

The true impacts of these proposals would be felt by Massachusetts residents and businesses who are consumers of advertising services within a digital interface. Advertising service providers can be expected to pass the tax onto their customers, including brick and mortar businesses that seek to reach new customers online. A study by Deloitte Tax of the digital advertising tax adopted in France confirms this projected outcome, finding that 55 percent of that tax burden would be passed on to consumers who would pay higher prices for every good and service they use, online or offline.

Finally, such taxation disproportionately hinders new and emerging businesses that are attempting to establish an industry foothold and connect with consumers. When advertisers are constrained in sending marketing messages, consumers are deprived of helpful and desired information as they make purchasing decisions.

We strongly urge you to reject these measures.

Respectfully submitted,

American Advertising Federation (AAF)
American Association of Advertising Agencies (4As)
Americans for Digital Opportunity (ADO)
Association of National Advertisers (ANA)
Computer & Communications Industry Association (CCIA)
Consumer Brands Association
Connecticut Broadcasters Association
Exhibitions & Conferences Alliance
Interactive Advertising Bureau (IAB)
Massachusetts Broadcasters Association
Minnesota Broadcasters Association
Motion Picture Association (MPA)
National Taxpayers Union
New England Connectivity and Telecommunications Association (NECTA)
Retailers Association of Massachusetts
TechNet
Travel Tech Association