

April 28, 2025

The Honorable Bob Ferguson
Office of the Governor
PO Box 40002
Olympia, WA 98504-0002

Re: SB 5814 – “Modifying the application and administration of certain excise taxes.” (Veto Request)

Dear Governor Ferguson:

On behalf of the Computer & Communications Industry Association (CCIA), I write to respectfully request a veto of SB 5814. CCIA is an international, not-for-profit trade association representing a broad cross-section of communications and technology firms.¹ Proposed regulations on the interstate provision of digital services can have a significant impact on CCIA members.

Policies that focus on taxing digital services misunderstand the value of their functions and tools for internet users. Economies, especially at the state level, are being transformed by digital advertising, and governments must consider these benefits as they aim to support the innovation economy and businesses that are just starting. Many of these taxes also create a financial strain on the small businesses that rely on free services and affordable advertising to reach their audiences the most. Past CCIA research has found that 85% of startups utilize marketing and digital advertising software and access to these tools is invaluable as businesses seek to reach new audiences and communicate with potential customers.²

Under SB 5814, “large businesses” with over \$1 million in sales tax yearly would be required to make a partial prepayment of their estimated future tax liability. Additionally, digital services, including software development, information technology services, and cloud computing, would be subject to a retail sales tax that disproportionately impacts technology companies. Although framed as a modification of the state’s sales tax framework, SB 5814’s provisions operate functionally as a gross receipts tax on digital businesses, taxing revenue that creates significant compliance burdens and financial restraints. This raises a variety of legal and policy concerns that could lead to market fragmentation and discourage further investment in innovation and infrastructure, as further detailed below.

SB 5814 conflicts with current law and is likely to lead to costly litigation.

Similarly to other gross receipts taxes that have been enacted or considered, SB 5814 conflicts with the federal Internet Tax Freedom Act (ITFA), which prohibits states from imposing “discriminatory taxes on electronic commerce”. Given that the proposed bill only targets a tax

¹ For more than 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA members employ more than 1.6 million workers, invest more than \$100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. A list of CCIA members is available at <https://www.ccianet.org/members>.

² *Tools To Compete: Lower Costs, More Resources, and the Symbiosis of the Tech Ecosystem*, CCIA Research Center (Jan. 25, 2023), <https://ccianet.org/research/reports/tools-to-compete/>

on specific companies in a handful of specific industries with certain revenues, it is clear these provisions are likely to only target online business activities in a way that cannot be applied to offline activities, and therefore fall under the scope of a “discriminatory tax”.

Previous efforts in various states have seen multiple challenges at both the state and federal levels. For example, Maryland’s 2021 enactment of the “Digital Advertising Gross Revenues Tax” (DAGRT) was ruled “unconstitutional and illegal” by a state court.³ Many of these arguments also appear similarly applicable to the proposed tax under SB 5814, given the revenue threshold as well as identical definitions in both bills. In times of facing a budget shortfall⁴, it would be imprudent to advance legislation that is likely to face a similar fate of costly litigation.

SB 5814 will harm overall innovation and business growth.

SB 5814 violates many economic principles that should guide tax policy design. The guiding star of tax policy is that revenue should be raised efficiently. Imposing taxes tends to create incentives that distort behavior and produce deadweight losses for the economy, so taxes should be designed to minimize the size of those deadweight losses and harmful distortions.

These kinds of bills are a targeted effort that aims to collect taxes from a relatively small number of taxpayers in a specific industry. SB 5814 is designed with a non-neutral, narrow tax base that creates inefficiencies and incentivizes costly efforts to avoid the tax. This is a significant general failure of the tax proposal in the bill. Some businesses will also likely find it challenging to determine if they are subject to the tax or exempt. This confusion could result in disputes and increased compliance costs. Reflecting a major departure from the importance of administrative ease in tax design, this type of differentiation is a clear case of poor tax design through the classification of certain services only being taxable when both the buyer and provider are business entities.

Taxes on revenues hit firms with thin profit margins much harder than highly profitable firms with wide margins. In particular, taxes on revenues tend to be particularly harmful for startups that are still growing, as many such startups are not yet profitable (and may even be pre-monetization) and are operating on a fixed capital runway. By focusing on revenues rather than profits, SB 5814 stands to drain the resources of these businesses, which often means the difference between successful scaling or premature shutdowns.

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In combination, the gross receipts tax design failures of SB 5814 would generate enormous inefficiencies for Washington’s consumers and businesses and would make the state much less appealing for startups and other businesses in the innovation space. Because of this, CCIA respectfully requests a veto of SB 5814.

³ *Comcast of Calif., LLC v. Comptroller of the Treasury of Maryland*, No. C-02-CV-21-000509, 2022 WL 20359237 (Md. Cir. Ct. Nov. 17, 2022).

⁴ *Washington State Office of Financial Management (OFM): Budget Reductions* (Apr. 17, 2025)
<https://ofm.wa.gov/budget/budget-reductions>.



Sincerely,

Aodhan Downey
State Policy Manager, West
Computer & Communications Industry Association