



MULTISTATE INDIRECT TAX

Maryland enacts emergency bill addressing taxation of digital advertising and digital products

Tax Alert

Overview

Maryland emergency bill [Senate Bill 787](#) (S.B. 787) amends the tax on digital advertising services and sales tax on digital products. This Tax Alert summarizes some of the changes in this bill.

Maryland emergency bill provides amendments to the Digital Advertising Services Gross Revenues Tax and the sales tax on digital products

The Maryland General Assembly passed emergency bill S.B. 787, giving the Governor 30 days from presentment to sign or veto the bill. The Governor did not sign or veto the bill during the designated period; therefore, it automatically became law. The bill contains amendments to Maryland's new tax on digital advertising services as well as amendments addressing the expansion of sales tax to digital products.

Digital Advertising Services Gross Revenues Tax

The Maryland Digital Advertising Services Gross Revenues Tax was enacted from a legislative veto override of [House Bill 732](#) (H.B. 732) on February 12, 2021. The legislation imposes a new tax on taxpayers' gross revenue from digital advertising services in Maryland. For more information on H.B. 732, including the potential challenges, please see our [previous Tax Alert](#).

As drafted, H.B. 732 was scheduled to become effective on July 1, 2020, and apply to tax years beginning after December 31, 2020. S.B. 787 amends H.B. 732 to delay the start date of the Digital Advertising Services Gross Revenues Tax to taxable years beginning after December 31, 2021.

Furthermore, S.B. 787 prohibits taxpayers from directly passing on the digital advertising service tax to customers who purchase digital advertising services in the form of a surcharge, separate fee, or line item. The legislation also

amends the definition of “digital advertising services” to exclude advertising services on digital interfaces owned by or operated by or on behalf of news media or broadcast entities.

Similar to H.B. 732, S.B. 787 does not address sourcing for the Digital Advertising Services Gross Revenues Tax.

Sales tax on digital products and digital codes

On February 12, 2021, the Maryland General Assembly passed [House Bill 932](#) (H.B. 932) in a legislative override of the Governor’s veto. H.B. 932 expands Maryland’s sales and use tax to apply to certain digital products. Under H.B. 932, Maryland imposes a sales and use tax on digital products, digital codes, and streaming services.

On March 9, 2021, the Comptroller of Maryland issued [Business Tax Tip #29](#) providing a definition of a “digital product.” Under this guidance, a “digital product” includes software, Software as a Service (SaaS), and information services.

S.B. 787 amends Md. Code Ann., Tax-Gen. § 11-219 to exclude from sales and use tax certain customized software. The legislation excludes software that requires “significant creative input to customize, configure, or modify the procedures and programs that are necessary to perform the functions required for the software to operate as intended.”

In addition, S.B. 787 carves out certain types of digital products from sales and use tax, including (1) prerecorded or live instruction by public and private learning institutions; (2) instruction in a profession or skill in a buyer’s prospective or current occupation, business, or trade if such instruction is not prerecorded and features an interactive component between the instructor and buyer; (3) a discussion, seminar, or similar event hosted by a nonprofit organization or business association if such event is not prerecorded and features an interactive component between the host and buyer; and (4) professional services obtained electronically or delivered through the use of electrical, digital, magnetic, wireless, optical, electromagnetic, or similar technology.

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