



MULTISTATE INDIRECT TAX

## Maryland Supreme Court vacates lower court rulings on digital advertising services tax

Tax Alert

### Overview

On May 9, 2023, the Supreme Court of Maryland (“Maryland Supreme Court”) issued a [per curiam order](#) related to the Maryland Digital Advertising Gross Revenues Tax (“DAGRT”) overruling the Anne Arundel County Circuit Court and vacating three previous actions including a bench ruling throwing out the tax [see our previous [Tax Alert](#)], an order denying in part the Comptroller of Maryland’s (“Comptroller”) motion to dismiss the case, and a final declaratory judgment.

This Tax Alert summarizes the Maryland Supreme Court’s order.

### Maryland Supreme Court vacates decision invalidating tax on digital advertising services

In October of 2022, the Anne Arundel County Circuit Court granted a motion for summary judgment finding the DAGRT violates the Supremacy Clause, dormant Commerce Clause, and the First Amendment of the United States Constitution, as well as the Internet Tax Freedom Act (“ITFA”).

Following the lower court’s ruling, the Comptroller appealed and sought review by the Maryland Supreme Court. The Maryland Supreme Court held oral arguments on May 5, 2023. On May 9, 2023, the Maryland Supreme Court issued a per curiam order providing that, for reasons to be stated later in an opinion to be filed, the Anne Arundel County Circuit Court lacked jurisdiction over the action because those challenging the tax failed to exhaust their administrative remedies.

Accordingly, the Maryland Supreme Court vacated the lower court’s previous rulings and remanded the case with directions to dismiss the action.

## Maryland Comptroller issues an updated Tax Alert in response to Maryland Supreme Court decision

In response to the Maryland Supreme Court's decision, on May 10, 2023, the Comptroller issued a [Tax Alert](#) reminding taxpayers that the annual return for the DAGRT for tax year 2022 was due on April 17, 2023 and explaining that any taxpayer who delayed filing a 2022 DAGRT return pending the outcome of the case "should file their return and remit their tax payment as required by the statute." The Comptroller further explained that the DAGRT is a separate tax from the income tax and that there is no provision in Maryland law for a six-month extension as exists for income taxes.

We will continue to monitor the case for future actions from the courts and the Comptroller.

### Get in touch

[Joseph Carr](#)

[Rick Heller](#)

[Inna Volfson](#)

[Lindsay McAfee](#)

[Ryan Trent](#)

[Michael Spencer](#)



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30 Rockefeller Plaza  
New York, NY 10112-0015  
United States

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