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In this installment of Inside Deloitte, the authors examine the fast-moving and innovative approaches states are taking to tax digital advertising services.

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Introduction

This article examines a few states' approaches to digital advertising taxation. This overview is not intended to provide an exhaustive analysis of the taxes discussed. Rather, it aims to present a current snapshot of digital advertising taxation and highlight the fast-moving nature of proposed legislation in numerous states.

The digital advertising sector continued its robust growth in 2024 and 2025, with total revenues surpassing a quarter of a trillion dollars worldwide. Consequently, digital advertisement taxes have increasingly garnered attention across various states, as digital advertising service taxes have grown across Europe¹ and Canada² and state

governments seek to explore new revenue streams. Maryland adopted the nation's first tax on digital advertising in 2021; legislative analysts have estimated such a tax would generate as much as \$250 million per year for the state.³ Over the last several years, many states, including California, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New York, Rhode Island, South Dakota, Tennessee, and Washington, have proposed legislation to impose a digital advertising tax of their own.⁴

Recently, multiple approaches to a digital advertising tax have emerged in the United States, including taxes on gross revenues from digital advertising services, extending existing sales or gross receipts taxes to include advertising revenues, and data severance taxes. Maryland's approach, in which tax is imposed on gross revenues derived from digital advertising services in the state, has become a model for other states.⁵ Maryland's approach mirrors the digital services taxes that multiple countries, such as France, Italy, Peru, and the United Kingdom have already adopted; DSTs are typically levied on gross

¹ Cristina Enache, "Digital Services Taxes in Europe, 2025," Tax Foundation (May 6, 2025).

² See Michael DeHoff, "House Republican Taxwriters Renew Call for Retaliatory Trade Response to Canadian DST," Deloitte Tax News and Views (June 21, 2024). *But see* Department of Finance Canada release, "Canada Rescinds Digital Services Tax to Advance Broader Trade Negotiations With the United States" (June 29, 2025) (announcing Canada's intention to rescind its DST).

³ Joe Bishop-Henchman and Lindsey Carpenter, "Maryland's Digital Advertising Tax Faces Seemingly Endless Litigation," National Taxpayers Union Foundation blog, Mar. 6, 2025; Erin Cox, "Taxing Digital Ads Could Bring Maryland \$250 Million — and a Hefty Legal Challenge," *The Washington Post*, Jan. 29, 2020.

⁴ A.B. 796, 2025-2026 Leg., Reg. Sess. (Cal. 2025); H.3089, 194th Leg., Reg. Sess. (Mass. 2025); H.B. 4142, 103rd Leg., Reg. Sess. (Mich. 2025); S.F. 2374, 94th Leg., Reg. Sess. (Minn. 2025); S.B. 192, 69th Leg., Reg. Sess. (Mont. 2025); L.B. 169, 109th Leg., Reg. Sess. (Neb. 2025); A.7805, 246th Leg., Reg. Sess. (N.Y. 2025); H.5076, 2025 Leg., Reg. Sess. (R.I. 2025); H.B. 1138, 100th Leg., Reg. Sess. (S.D. 2025); S.B. 270, 114th Leg., Reg. Sess. (Tenn. 2025); H.B. 1887, 69th Leg., Reg. Sess. (Wash. 2025).

⁵ Andrew Leahey, "States Need a Uniform Solution to Accelerate Digital Ad Taxes," *Bloomberg Law*, Jan. 28, 2025.

revenues from large companies providing goods or services online, similar to Maryland's approach.⁶

Some states have proposed legislation that would expand the sales tax base to include digital advertising services. States that broadly impose sales tax on services, such as New Mexico, have simply issued guidance clarifying that its gross receipts tax applies to digital advertising services. Other states have proposed a data broker tax on the extraction of consumer data; tax scholars have commented that such legislation would treat citizens' personal information as a natural resource, the harvest of which would be subject to a state severance tax.⁷

Maryland's Digital Advertising Gross Revenues Tax

Effective for all tax years beginning after December 31, 2021, Maryland's digital advertising gross revenues tax is imposed on gross revenues from sales of digital advertising services. These services include advertisement services on a digital interface, such as banner advertising, search engine advertising, interstitial advertising, and comparable advertising services.⁸ Digital advertising services do not include advertisement services on digital interfaces owned, operated by, or operated on behalf of a broadcast entity or news media entity.⁹

The tax is imposed on companies with gross global annual revenues of \$100 million and more than \$1 million of Maryland-source digital advertising revenue.¹⁰ Revenue is determined on an entity-by-entity basis.¹¹ The tax rate is imposed at graduated rates ranging from 2.5 percent to 10 percent.¹² Companies with annual Maryland digital advertising revenue over \$1 million must

file a declaration of estimated tax by April 15, paying at least 25 percent of the estimated amount.¹³ Subsequent quarterly returns follow.¹⁴

Notably, a person who derives gross revenues from digital advertising services in Maryland may not directly pass through the cost of the tax to a customer who purchases the digital advertising services by means of a separate fee, surcharge, or line item.¹⁵

Almost immediately after its enactment, Maryland's digital advertising tax was challenged by multiple taxpayers. The Fourth Circuit recently ruled that the passthrough provision prohibiting a taxpayer from passing on the cost of the digital advertising tax to a purchaser of digital advertising services restricts free speech in violation of the First Amendment of the U.S. Constitution.¹⁶ Separately, state courts have also considered whether Maryland's digital advertising tax violates the federal commerce clause and the Internet Tax Freedom Act, though final rulings have not yet been issued.¹⁷

Meanwhile, the Maryland General Assembly made amendments to Maryland's tax laws to further accommodate the digital advertising tax. Maryland H.B. 546, which was approved by the Legislature and signed by the governor on May 20, allows the comptroller to issue notices of assessment for the digital advertising tax based on estimates.¹⁸ It also provides an appeal process for taxpayers that are subject to the digital advertising tax.¹⁹ In July the comptroller of Maryland issued further guidance regarding Maryland's digital advertising gross revenues tax.²⁰

Several states have proposed legislation that would impose a digital advertising tax similar to

⁶Riley Stotzky and Arianna Fano, "Taxation in the Digital Economy: Digital Services Taxes, Pillar One, and the Path Forward," Bipartisan Policy Center (Oct. 26, 2023).

⁷H.B. 1887, 69th Leg., Reg. Sess. (Wash. 2025); Leahey, "Washington's Data Broker Tax Is a Promising but Inadequate Move," Bloomberg Law, Feb. 25, 2025; Paul Jones, "Washington Bill Proposes Data Broker Tax," *Tax Notes Today State*, Feb. 24, 2025.

⁸Md. Code Ann., Tax-Gen. section 7.5-101(e)(1).

⁹Md. Code Ann., Tax-Gen. section 7.5-101(e)(2).

¹⁰See Md. Code Ann., Tax-Gen. sections 7.5-103(1), 7.5-201(a).

¹¹See Md. Code Ann., Tax-Gen. section 7.5-201(a).

¹²Md. Code Ann., Tax-Gen. sections 7.5-103(1)-(4).

¹³See Md. Code Ann., Tax-Gen. sections 7.5-201(a), (b)(1); 7.5-301(b)(1).

¹⁴Md. Code Ann., Tax-Gen. section 7.5-201(b)(2).

¹⁵Md. Code Ann., Tax-Gen. section 7.5-102(c).

¹⁶See *U.S. Chamber of Commerce v. Lierman*, No. 24-1727, 2025 WL 2371034, at *8 (4th Cir. Aug. 15, 2025).

¹⁷See Bishop-Henchman and Carpenter, *supra* note 3; Cox, *supra* note 3.

¹⁸H.B. 546, 2025 Leg., Reg. Sess. (Md. 2025).

¹⁹*Id.*

²⁰See Comptroller of Maryland, Technical Bulletin No. 59, "Digital Advertising Gross Revenues Tax" (July 11, 2025).

Maryland's, but to date, such proposals have not been enacted into law.²¹

Expanding the Sales or Gross Receipts Tax Base

Rather than imposing a separate stand-alone tax on digital advertising services, as Maryland did, states may expand their existing indirect tax bases (that is, sales and use, gross receipts, or severance taxes) to include digital advertising services.

Sales Taxes

More than 40 U.S. states generally impose a sales tax on the sale of tangible personal property and specifically enumerated services.²² While some states have explored stand-alone excise taxes on digital advertising, others have pursued a more incremental approach by incorporating advertising services into their existing sales tax bases. These efforts generally rely on legislative amendments to the definition of sale at retail or taxable services, allowing states to apply traditional transaction-based taxes to a broader range of digital commercial activity.

Washington S.B. 5814 was introduced April 16, passed by the House and Senate in late April, and was signed into law May 20. The bill took partial effect July 27, but the provisions governing advertising services — sections 101 and 201 — became effective October 1.²³ The bill amends Wash. Rev. Code section 82.04.050 to expand the definition of sale at retail to include advertising services, thereby subjecting those services to retail sales tax and the retailing business and occupation tax classification.²⁴

Advertising services are defined to include digital and nondigital activities related to the creation, production, and dissemination of advertisements.²⁵ Covered services include layout, graphic design, production supervision,

campaign planning, online referrals, search engine marketing, lead generation optimization, and website traffic analysis.²⁶ Despite the breadth of this definition, the statute provides several exclusions.²⁷ Specifically, advertising services do not include services rendered in connection with newspapers (as defined in Wash. Rev. Code section 82.04.214); printing or publishing activities taxed under section 82.04.280; radio and television broadcasting; or out-of-home advertising such as billboards, street furniture, transit signage, event signage, and point-of-sale displays.²⁸

After the enactment of S.B. 5814, the Washington Department of Revenue issued interim guidance regarding the taxability and sourcing of advertising services.²⁹ The guidance says that advertising services are generally sourced to the location where the services are received.³⁰ The guidance further defines how to determine where the services are received depending on the type of advertising services provided.³¹ Additional interim guidance from the department says that the changes to the taxability of advertising services do not apply until April 1, 2026, provided that the contract was entered into before October 1 and is not materially altered.³² The guidance says that material or substantive changes to the contract may include, but are not limited to: the addition, removal, or exchange of the parties subject to the contract; changes to the underlying contract activities; updates to contractual terms that affect any of the parties' rights, responsibilities, or obligations under the contract; or updates or changes to the contractual term, contract amount, or period the contract is in effect.³³ The department's interim guidance still

²⁶ *Id.*

²⁷ *Id.* section 101 (amending Wash. Rev. Code section 82.04.050(3)(k)(ii)).

²⁸ *Id.*

²⁹ Washington DOR, "Interim Guidance Statement Regarding Changes Made by ESSB 5814 for Advertising Services" (Sept. 17, 2025).

³⁰ *Id.*

³¹ *Id.*

³² Washington DOR, "Interim Guidance Statement Regarding Contracts Existing Prior to October 1, 2025, and Changes Made by ESSB 5814" (Aug. 29, 2025).

³³ *Id.*

²¹ See, e.g., S.B. 1106, 2021 Gen. Assemb., Reg. Sess. (Conn. 2021); H. 3081, 192nd Leg., Reg. Sess. (Mass. 2021); S. 1124, 2021-2022 Leg., Reg. Sess. (N.Y. 2021); H.B. 4467, 87th Leg., Reg. Sess. (Tex. 2021).

²² Jackson Brainerd, "What Happens When States Ditch Income Tax for Sales Tax?" National Conference of State Legislatures (Feb. 14, 2023).

²³ S.B. 5814, 69th Leg., Reg. Sess. sections 101, 201, 403 (Wash. 2025).

²⁴ *Id.* at section 101 (amending Wash. Rev. Code section 82.04.050(3)(k)).

²⁵ *Id.* at section 101 (amending Wash. Rev. Code section 82.04.050(3)(k)(i)).

leaves many questions about the taxability and sourcing of advertising services.

With these carveouts, the scope of taxable services is limited to internet-based advertising and related digital promotional activity. Some taxpayers and advocates have raised concerns that the structure of the law facially discriminates against e-commerce and may run afoul of the ITFA.³⁴ Recently, one taxpayer challenged Washington's sales tax expansion, arguing that the state's new tax on advertising services violates the ITFA because it discriminates against online advertising.³⁵

In addition to modifying the definition of retail sale, S.B. 5814 amends Wash. Rev. Code section 82.04.192 by repealing the prior exemption that excluded advertising services from the definition of digital automated services (DASs),³⁶ which are "any service transferred electronically that uses one or more software applications."³⁷ And when provided to consumers, DASs are generally taxable as retail sales. The removal of the advertising exclusion from DASs brings many automated digital advertising services — such as search engine optimization, online ad placement, and campaign analytics — within the scope of Washington's retail sales tax.

Gross Receipts Taxes

Unlike most states that impose sales tax on specifically enumerated services, several states (such as Hawaii, New Mexico, South Dakota, and West Virginia) take a different approach and impose sales tax on all sales, including sales of services, unless a specific exemption applies. Hawaii and New Mexico impose sales tax on traditional print advertising services,³⁸ whereas South Dakota and West Virginia provide sales tax

exemptions for certain types of traditional print advertising services.³⁹ Hawaii, South Dakota, and West Virginia have not issued guidance on the taxability of digital advertising services. The New Mexico Taxation and Revenue Department adopted final rules establishing that New Mexico's gross receipts tax applies to digital platform providers' gross revenue from selling digital advertising services when the digital platform may be accessed or viewed within New Mexico.⁴⁰

Excise Tax on Data Extraction

A few other states have proposed an alternative approach for taxing data and advertising services: Citizens' personal information and data is treated as a natural resource of the state, and its extraction for sale is then subject to tax. Ironically enough, this seemingly novel approach uses a rather archaic form of taxation to solve this new-age problem: severance taxes.

Severance taxes have traditionally been imposed on the severance of natural resources such as oil and natural gas. Introduced in the early 20th century, severance taxes helped state legislatures generate tax revenue through a targeted tax on specific industries.⁴¹ Severance taxes were imposed to compensate states for the loss of nonrenewable resources in an age of rapid industrialization.

Over the last few years, a few states have introduced legislation applying the severance tax concept to user data. Such proposals view user data as an extractable resource and attempt to apply a tax upon its severance. Although these bills were not enacted, they provide examples of an alternative approach to taxing data and digital advertising.

³⁴ See Jared Walczak, "Washington's Digital Ad Sales Tax Legislation Is a Legal and Economic Minefield," Tax Foundation (May 14, 2025).

³⁵ See Complaint for Declaratory Relief at 1-2, *Comcast Cable Communications Management LLC v. Washington*, No. 25-2-03584-34 (Thurston County Wash. Super. Ct. Sept. 9, 2025).

³⁶ S.B. 5814, 69th Leg., Reg. Sess. section 201 (Wash. 2025).

³⁷ Wash. Rev. Code section 82.04.192(3)(a).

³⁸ See Haw. Rev. Stat. section 237-13(6); see also N.M. Stat. Ann. section 7-9-3.5(A)(1), N.M. Code R. section 3.2.1.18(A).

³⁹ See S.D. Codified Laws section 10-45-12.1, S.D. Admin. R. 64:06:02:03; see also W. Va. Code Ann. section 11-15-9(a)(12), W. Va. Code R. section 110-15-9.2.14.

⁴⁰ See N.M. Code R. section 3.2.213.13.

⁴¹ Sarah Robinson and Alisa Tazhitdinova, "One Hundred Years of U.S. State Taxation," 241 *J. Pub. Econ.* 105273, 6-7 (2025).

For example, Washington introduced H.B. 1887 in the 2025, which proposed to implement a data broker registry system with the state's Department of Licensing.⁴² The bill would have imposed a graduated monthly severance tax on data brokers in which the tax base would have been computed based on the number of "residents" located in the state.⁴³

New York lawmakers have proposed several versions of this type of bill over the past few years.⁴⁴ The proposed New York tax calculation is similar in form to Washington's proposal, providing for a graduated tax rate based upon New York consumers whose data is collected by a commercial data collector.⁴⁵ Unlike Washington's bill, the definition of a New York consumer is limited to a consumer whose primary residence is in New York state.⁴⁶ The applicable consumer data triggering taxability is far more expansive than Washington's proposal; it includes "any information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked with a consumer, whether directly submitted to the commercial data collector by the consumer or derived from other sources."⁴⁷ Thus far, no state has enacted a severance tax on advertising services.⁴⁸

Conclusion

Since the enactment of Maryland's digital advertising tax, states have demonstrated a growing interest in taxing the digital economy and keeping pace with international taxing regimes. Within the last few years, several states have introduced legislation to impose some type of tax on digital advertising services. Although states recognize the revenue opportunities in digital advertising, its taxation remains complex and unsettled. As a result, only a few states have implemented a tax on digital advertising services, and some of those taxes face various legal challenges. However, as business models continue to evolve and digitize, states will likely continue to explore the taxation of digital advertising services. The digital advertising space is likely to remain dynamic and continue to be an area of focus for states. ■

⁴² H.B. 1887 69th Leg., 1st Sess. (Wash. 2025).

⁴³ *Id.*

⁴⁴ A.6199 204th Leg., 1st Sess. (N.Y. 2021); S.4959 204th Leg., 1st Sess. (N.Y. 2021).

⁴⁵ A.6199; S.4959.

⁴⁶ A.6199; S.4959.

⁴⁷ A.6199; S.4959.

⁴⁸ This article contains general information only and Deloitte is not, by means of this article, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This article is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional adviser. Deloitte shall not be responsible for any loss sustained by any person who relies on this article.

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