

Tax on internet ads gets traction in Maryland

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A measure to make Maryland the first state in the nation to tax companies like Facebook and Google for money they make from digital ads on the internet is making steps forward in the state's legislature.

Opponents, however, say the state would have a hard time enforcing it and that the measure violates [federal law](#), as well as the First Amendment.

The state Senate is poised to take up the bill this weekend, as lawmakers work on an expedited basis on priority legislation, in case they decide to adjourn early due to coronavirus.

The measure would impose a tax based on global annual gross revenues for companies that make more than \$100 million globally. It would require companies to file a [tax return](#) with the state. Supporters are describing it as a necessary step to overhaul the state's tax methods in response to significant changes in how businesses advertise.

"Fundamentally, the idea is the ads that are served up in the state of Maryland on platforms, the revenue that is generated from the service of those ads in the state of Maryland would be subject to an excise tax," Senate President Bill Ferguson, a Baltimore Democrat who is a bill sponsor, said.

The revenues companies make on digital ads would be subject to a tax of between 2.5% to 10%, based on estimates made by the companies on how much of their advertising is seen in the state.

State analysts have estimated the measure could raise as much as \$250 million a year to help pay for a far-reaching and expensive education measure, which is estimated to cost billions of dollars over the next decade.

Opponents say the measure violates the federal Internet Tax Freedom Act, which prohibits discrimination against electronic commerce, as well as other federal laws. They also note that Maryland does not currently tax advertising at all.

"I think the day it would come into law, there will be an injunction and it'll be a significant court case, so I think it will be delayed a long time," said Sen. Andrew Serafini, a Republican who opposes the measure.

Sen. James Rosapepe, a Democrat who supports the bill, said it took 25 years and a series of court decisions to enable states to collect sales tax from Amazon on e-commerce.

"Folks don't like to pay taxes, so I'm sure these big boys will try to fight every way they can, but in the end they're going to lose, because it's the right thing to do," Rosapepe said in a recent interview.

Only Nebraska has similar legislation pending, according to the National Conference on State Legislatures, but it would impose a sales tax on digital advertising, rather than a gross receipts tax. The measure isn't getting traction so far in Nebraska.

Facebook and Google declined to comment, referring instead to positions against the bill taken by a trade association that represents leading global internet companies.

"Internet companies have real concerns about discriminatory and punitive measures, like Maryland's proposed digital advertising tax, that

specifically or disproportionately target online goods and services in ways that don't impact their offline equivalents," said Robert Callahan, the association's senior vice president of government affairs.

Christopher Oswald, senior vice president for government relations with the Association of National Advertising, testified at a bill hearing in Maryland that taxes on advertising have failed in other states. Arizona, Iowa and Florida have passed broad advertising taxes before, only to repeal them, because they hurt local economies and proved impossible to administer, he said.

"Since 1987, the year Florida adopted and later repealed a state tax on advertising just eight months later, broad [advertising](#) taxes have been considered in more than 40 states and rejected by all of them," Oswald said at a January bill hearing.

A 16-page letter of legal advice from the Maryland attorney general's office concluded that "although there is some risk" a court would find the measure invalid on constitutional grounds, the legislation is not "clearly unconstitutional."

"The law does not always fit neatly with emerging technologies and that makes it difficult to predict how a court would rule on legal challenges to regulation of those technologies," said the Feb. 7 letter from the attorney general's office to Serafini.

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