Nov. 8, 2021

Daniel Rohn, Manager of Internal Audits
Comptroller of Maryland
80 Calvert Street, Room 409A
Annapolis, MD 21401

Via email to drohn@marylandtaxes.gov

RE: Proposed Action on Regulations on H.B. 732 and S.B. 787

Dear Mr. Rohn,

MPA – The Association of Magazine Media, the trade association for the magazine industry, appreciates the opportunity to comment on the Proposed Action on Regulations for H.B. 732, the Maryland Digital Advertising Gross Revenues Tax, and its amending bill S.B. 787. Along with providing high-quality, curated content for millions of individuals, many of our members call Maryland home. In 2019, the periodical publishing industry in Maryland employed 9,075 individuals and paid $214 million in annual wages.[1]

While we agree with many of the questions and concerns that have been raised in legal challenges to the Maryland digital advertising tax, we appreciate the Legislature's passage of S.B. 787, which recognized the need to protect the crucial role that news and magazine media play in public discourse.

News and Magazine Media Exemption
Amidst a steep decline in revenue during the pandemic and the continuing challenges faced by media outlets across the state, we are pleased by the inclusion of an exemption from the tax for advertising services on digital interfaces owned or operated by, or operated on behalf of, a news media and broadcast entities in S.B. 787. Maryland's inclusion of the exemption is sound public policy that supports a healthy news and magazine media industry.

Ambiguity on Requirements for Exempt Entities
We do not believe the Comptroller's office intended to create requirements for exempted entities, but the proposed Regulations are ambiguous in several instances. First, the language in the Proposed Action on Regulations does not make clear that exempted entities are not required to file a declaration and/or calculate and report estimated tax. Section .05 of the proposed Regulations notes **"**Each person required...to file a digital advertising gross revenues tax return or estimated digital advertising gross revenues tax declaration or return shall file a return or declaration with the Comptroller, *whether or not*: (1) The person owes digital advertising gross revenues tax..." [emphasis added]. In addition, Section .06 states "*Any* taxpayer that reasonably expects estimated digital advertising gross revenues tax for a

[1] Bureau of Labor Statistics, IMPLAN

calendar year to exceed $1,000,000 shall file a declaration of estimated digital advertising gross revenues tax in the form and manner prescribed by the Comptroller." [emphasis added] To clarify this, the Regulations should explicitly state that exempt entities do not need to file a return or declaration with the Comptroller.

Second, Section .05 also indicates that the Comptroller may send "...the person a form or otherwise request that the return or declaration be filed." Again, we interpret this provision to be directed to non-exempt entities but the Regulations should make clear that exempt entities *would not* be subject to such a request from the Comptroller. If our members were concerned that the Comptroller could make such a request, they would need to devote significant resources toward compiling the data to respond to such a request.

Again, we believe the Comptroller did not intend for exempted news and magazine media to file a return or declaration nor be subject to a request from the Comptroller. The Regulations should clearly state this.

Concerns Related to Calculating Taxable Revenue

Though our members are exempt from the law, we echo widely held concerns about the device-based apportionment methodology. The proposed Regulations state that revenue should be calculated by dividing the number of devices accessing digital advertising services within the state by the number of devices that have accessed the digital advertising services worldwide, a fraction that is then applied to digital advertising gross revenue. There are serious practical challenges and privacy concerns to utilizing such a device-based apportionment fraction.

First, to ascertain the number of devices accessing advertising services from Maryland, the regulation states "Each taxpayer shall use the information within their possession or control which most reliably identifies a device's location. (2) Technical information which may be used to determine a device's location includes but is not limited to: (a) Internet protocol; (b) Geolocation data; (c) Device registration; (d) Cookies; or (e) Any other comparable information." Using these data points, or comparable information, to calculate devices accessing ads in Maryland is operationally problematic. Use of an IP address to derive a device's location has become far more difficult to do as more consumers adopt cloaking and anti-tracking mechanisms such as Virtual Private Networks (VPNs) and proxy servers. Similarly, more users are turning off location sharing on their devices, as these settings become available, accessible and well-known.

Second, this approach is arguably in tension with consumer privacy. For example, to calculate tax owed using this method covered organizations must collect and combine data that is considered personal information under state, federal and international laws. The Children's Online Privacy Protection Act (COPPA) explicitly defines IP address as personal information and requires parental consent for each instance of collection and use while the California Privacy Protection Act (CPPA) defines IP address as personal information only when it's combined with other data, such as cookies, MAC address, or geolocation, that can potentially identify a person. Because H.B. 732 necessitates counting separate devices and knowing their location, and the law sanctions a broad list of data that might be used to accomplish this, it is effectively incentivizing the collection and use of personal information without additional protection or requirements. Companies covered by privacy laws will be required to obtain user permission for each instance of collection and use of their personal information, a process that is

both complicated and expensive. At a minimum, we recommend the state require covered entities to aggregate the data they collect and use for calculation purposes and/or apply pseudonymization methods to protect the identifiability of the information and prohibit further sharing or combining of the data.

Thank you again for the opportunity to offer our members' perspectives on these issues. Please call on us if we can be helpful as you finalize the proposed Regulations.

Respectfully submitted,

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Rita Cohen
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