



# TaxNewsFlash

## United States



No. 2022-112  
April 8, 2022

## Maryland: Digital advertising services tax, estimated tax payment form is released (Maryland)

Effective January 1, 2022, every person that reasonably expects to have Maryland gross revenues attributable to digital advertising services exceeding \$1 million for the calendar year must make quarterly estimated digital advertising gross revenues tax payments.

The Comptroller's office recently released [Form 600D](#) [PDF 528 KB] to be used in calculating the estimated digital advertising tax for the 2022 tax year and each quarter. If the amount of estimated tax due for a quarter exceeds \$10,000, payment by automated clearinghouse (ACH) is required.

### KPMG observation

Per the statute and the form, the first quarterly digital advertising tax estimated payment is due on Friday, April 15, 2022. This year, April 15 happens to be Good Friday, which is a legal holiday in Maryland. There is a law in Maryland stating that payments due on a legal holiday are pushed to the next weekday. As such, the payment due date is extended to April 18, 2022.

### Overview of the digital advertising tax

The Maryland gross revenues digital advertising tax became effective for tax years beginning after December 31, 2021. The tax is imposed on entities with global annual gross revenues of at least \$100 million that have annual gross revenues derived from digital advertising services in Maryland of at least \$1 million in a calendar year.<sup>1</sup>

<sup>1</sup> Md. Code Regs. 03.12.01.05(A)(1) provides that the declaration must be filed even if the person owes no digital advertising tax. However, only a person who reasonably expects their gross revenues attributable to digital advertising services in Maryland to exceed \$1 million for the calendar year must make quarterly estimated payments and file the declaration. As such, the regulation appears to require a declaration from persons that have \$1 million of gross revenues from digital advertising services attributable to Maryland, but that do not meet the overall \$100 million annual gross revenues threshold to be subject to the tax.

The tax is imposed on a separate entity basis. The assessable tax base is a person's annual gross revenues derived from digital advertising services in Maryland. No deductions of any kind are allowed.

The definition of a “digital advertising service” includes “advertisement services on a digital interface, including advertisements in the form of banner advertising, search engine advertising, interstitial advertising, and other comparable advertising services.” The term does not include advertisement services on digital interfaces owned or operated by or on behalf of a broadcast entity or news media entity, as defined. A “digital interface” is “any type of software, including a website, part of a website, or application, that a user is able to access.”

The tax rate is tiered:

- 2.5% of the assessable base for a person with global annual gross revenues of \$100,000,000 through \$1,000,000,000
- 5% of the assessable base for a person with global annual gross revenues of \$1,000,000,001 through \$5,000,000,000
- 7.5% of the assessable base for a person with global annual gross revenues of \$5,000,000,001 through \$15,000,000,000
- 10% of the assessable base for a person with global annual gross revenues exceeding \$15,000,000,000

The tax is based on a calendar year and the annual return is due April 15 of the following year. If a person “reasonably expects” annual gross revenues derived from digital advertising services in Maryland to exceed \$1 million, that person must file a declaration of estimated tax along with a quarterly payment by April 15 of the current year (April 18 for 2022), and then make a quarterly payment by June 15, September 15, and December 15 of the current year.

The underpayment penalties for corporate income tax also apply to this tax. That is, a 25% penalty is imposed when the estimated tax payments are: (1) less than 90% of the current year tax; and (2) less than 110% of the prior year tax. The instructions for Form 600D also provide that at least 25% of the estimated tax due is to be paid with each installment.

### **Determining the tax attributable to Maryland**

Under Md. Code Ann. Tax-Gen. § 7.5-102, the tax is imposed on annual gross revenues derived from digital advertising services in Maryland. The statute directed the Comptroller to adopt a regulation that determined the state from which revenues from digital advertising services are derived.

Md. Code Regs. 03.12.01.02 adopts an apportionment formula that is based on the number of devices accessing a person’s digital advertising services.

- The numerator of the apportionment factor is the number of devices that have accessed the digital advertising services from a location in Maryland.
- The denominator is the number of devices that have accessed the digital advertising services from any location.

Examples make clear this includes locations outside the United States. The developed apportionment factor is applied to the overall digital advertising gross revenue received by the taxpayer to compute the digital advertising gross revenue attributable to Maryland.

What if the location of a user’s device is not known to the taxpayer? Devices with indeterminate locations are excluded from both the numerator and denominator of the apportionment factor, without any adjustment to the amount of revenue to be apportioned. The location of a device is to be determined by the taxpayer using the totality of the data within its possession or control, including both technical information and nontechnical information included in the contract for digital advertising services.

### **Legal challenges to the Maryland digital advertising tax**

Lawsuits challenging Maryland's digital advertising tax on Due Process and Commerce Clause grounds and on the basis that the tax violates the Internet Tax Freedom Act were filed in state and federal court. In early March 2022, a federal district court held that under the Tax Injunction Act, it lacked jurisdiction over the suit challenging the tax. The federal district court did find, however, that it could address one aspect of the lawsuit challenging a provision in the Maryland law that prohibits companies from directly passing the digital advertising tax on to customers.

In the interim, a lawsuit filed in state circuit court is moving forward. The plaintiffs allege that the tax is unconstitutional under the Commerce Clause and Due Process Clause; that the tax violates the Internet Tax Freedom Act; and that the legislature improperly delegated its authority to the Comptroller regarding the calculation of the tax. On a motion to dismiss filed by the state, the circuit court judge held that the lawsuit may proceed on the constitutional and Internet Tax Freedom Act arguments, but dismissed the plaintiffs' argument of improper delegation of authority.

### **KPMG observation**

The due date for the first estimated payment is quickly approaching and there are still many uncertainties around the scope of the tax, as well as whether the tax is permissible under federal law.

For more information, contact a KPMG State and Local Tax professional:

Jeremy Jester | [jjester@kpmg.com](mailto:jjester@kpmg.com)

Sarah McGahan | [smcgahan@kpmg.com](mailto:smcgahan@kpmg.com)

Jeff Cook | [jmcook@kpmg.com](mailto:jmcook@kpmg.com)

**[kpmg.com/socialmedia](https://kpmg.com/socialmedia)**



The information contained in TaxNewsFlash is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 1037(a)(2) of Treasury Department Circular 230, as the content of this document is issued for general informational purposes only, is intended to enhance the reader's knowledge on the matters addressed therein, and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.

KPMG International Limited is a private English company limited by guarantee and does not provide services to clients. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm.

Direct comments, including requests for subscriptions, to [Washington National Tax](https://www.washingtonnationaltax.com). For more information, contact KPMG's Federal Tax Legislative and Regulatory Services Group at +1 202.533.4366, 1801 K Street NW, Washington, DC 20006-1301.

To unsubscribe from TaxNewsFlash-United States, reply to [Washington National Tax](https://www.washingtonnationaltax.com).

[Privacy](#) | [Legal](#)