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Maryland Supreme Court dismisses challenge to digital advertising tax

The Maryland Supreme Court on May 9, 2023, issued an order holding that the Circuit Court for Anne Arundel County lacked jurisdiction over a lawsuit alleging the state's digital advertising gross revenues tax was unconstitutional and/or violated the Internet Tax Freedom Act.

The order states that the appellees failed to exhaust their administrative remedies and notes that the reasons for this conclusion will be addressed in a forthcoming opinion. The action was remanded to the Circuit Court with directions to dismiss the action.

Background

An Anne Arundel County Circuit Court judge on October 17, 2022, struck down Maryland's digital advertising tax after a hearing on certain motions associated with the case. Read [TaxNewsFlash](#)

An order issued on October 21, 2022 confirmed that the judge determined the digital ad tax violated the Internet Tax Freedom Act and also discriminated against interstate commerce in violation of the Commerce Clause. The order also concluded that the tax violated the First and Fourteenth Amendments of the Constitution because it singled out specific taxpayers and was not content neutral. The matter was subsequently appealed to the state's highest court.

Next steps

While the litigation is likely not entirely over, there may be considerable time before a decision on the merits is issued. In the interim, taxpayers will need to carefully consider next steps. The first Maryland digital advertising tax return was due on April 15, 2023.

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