



# TaxNewsFlash

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## Fourth Circuit: Certain challenges to Maryland digital advertising tax barred, but constitutional challenge may proceed

The U.S. Court of Appeals for the Fourth Circuit today affirmed the conclusion of a federal district court that the Tax Injunction Act (TIA) bars several trade associations' challenge to Maryland's tax on digital advertising on the grounds that the tax violates the Internet Tax Freedom Act and the federal commerce and due process clauses. However, it found that those counts of the complaint must be dismissed without prejudice.

The court also found that the plaintiffs' challenge to the "pass-through provision" of the tax as violating the First Amendment was not rendered moot by a state trial court decision, which was later reversed by the Maryland Supreme Court, finding the tax unconstitutional. The court thus remanded the case back to the federal district court to decide whether the passthrough provision is constitutional.

The case is: *Chamber of Commerce of the United States of America v. Lierman*, No. 22-2275 (4<sup>th</sup> Cir. January 10, 2024). Read the Fourth Circuit's [decision](#) [PDF 160 KB]

### Background

The United States Chamber of Commerce and three other trade associations sued in federal court to stop the enforcement of a new state tax in Maryland under which large technology companies pay a tax based on gross revenue they earn from digital advertising in the state.

The complaint alleged that the tax violates the Internet Tax Freedom Act (count I), the Commerce Clause (count II), the Due Process Clause (count III), and the First Amendment (count IV). In particular, the complaint alleged that the pass-through provision of the law, which prohibits taxed companies from passing on the costs of the tax to their advertising customers "by means of a separate fee, surcharge, or line-item," violates the First Amendment as a content-based regulation of speech.

The district court dismissed counts I, II, and III of the complaint with prejudice as barred by the TIA, which prevents federal courts from enjoining the collection of state taxes when state law provides an adequate remedy.

The district court also dismissed count IV without prejudice on mootness grounds after the Anne Arundel County Circuit Court in October 2022 found the tax unconstitutional (read [TaxNewsFlash](#)). While this appeal was pending, the Maryland Supreme Court vacated that declaratory judgment (read [TaxNewsFlash](#) and [TaxNewsFlash](#)).

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