

STATE OF NEW YORK

8056

IN SENATE

March 13, 2020

Introduced by Sen. GIANARIS -- read twice and ordered printed, and when printed to be committed to the Committee on Budget and Revenue

AN ACT to amend the tax law, in relation to establishing a tax on digital ads

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "digital ad
2 tax act (DATA)".

3 § 2. The tax law is amended by adding a new article 15 to read as
4 follows:

ARTICLE 15

TAX ON DIGITAL ADS

Section 330. Definitions.

8 331. Imposition of tax.

9 332. Returns.

10 333. Tax payment.

11 § 330. Definitions. As used in this article, the following terms shall
12 have the following meanings:

13 1. The term "annual gross revenues" means income or revenue from all
14 sources in New York state, before any expenses or taxes, computed
15 according to generally accepted accounting principles.

16 2. The term "assessable base" means the annual gross revenues derived
17 from digital advertising services in the state.

18 3. The term "digital advertising services" includes advertisement
19 services on a digital interface, including advertisements in the form of
20 banner advertising, search engine advertising, interstitial advertising,
21 and other comparable advertising services, that use personal information
22 about the people the ads are being served to.

23 4. The term "digital interface" means any type of software, including
24 a website, part of a website, or application, that a user is able to
25 access.

26 5. (a) The term "person" means an individual, receiver, trustee, guar-
27 dian, personal representative, fiduciary, or representative of any kind
28 and any partnership, firm, association, corporation, or other entity.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 (b) The term "person", unless expressly provided otherwise, does not
2 include a governmental entity or a unit or instrumentality of a govern-
3 mental entity.

4 6. The term "user" means an individual or any other person who
5 accesses a digital interface with a device.

6 § 331. Imposition of tax. 1. There is hereby imposed and shall be paid
7 a tax on the annual gross revenues any person derives from digital
8 advertising services in the state.

9 2. The tax imposed shall be apportioned to the state by the apportion-
10 ment factor determined pursuant to this section. The apportionment
11 factor is a fraction, determined by including only those receipts, net
12 income, net gains, and other items described in this section that are
13 included in the computation of the taxpayer's business income for the
14 taxable year. The numerator of the apportionment fraction shall be equal
15 to the sum of all the amounts required to be included in the numerator
16 pursuant to the provisions of this section and the denominator of the
17 apportionment fraction shall be equal to the sum of all the amounts
18 required to be included in the denominator pursuant to the provisions of
19 this section.

20 3. (a) The annual gross revenues of a person derived from digital
21 advertising in the state shall be included in the numerator of the
22 apportionment fraction. The annual gross revenues of a person derived
23 from digital advertising in the United States shall be included in the
24 denominator of the apportionment fraction.

25 (b) The comptroller shall adopt regulations to determine the amount of
26 revenue derived from each state in which digital advertising services
27 are provided.

28 4. The digital advertising gross revenues tax rate is:

29 (a) two and one-half percent of the assessable base for a person with
30 global annual gross revenues of one hundred million dollars through one
31 billion dollars;

32 (b) five percent of the assessable base for a person with global annu-
33 al gross revenues of one billion one dollars through five billion
34 dollars;

35 (c) seven and one-half percent of the assessable base for a person
36 with global annual gross revenues of five billion one dollars through
37 fifteen billion dollars; and

38 (d) ten percent of the assessable base for a person with global annual
39 gross revenues exceeding fifteen billion dollars.

40 § 332. Returns. 1. Each person that, in a calendar year, has annual
41 gross revenues derived from digital advertising services in the state of
42 at least one million dollars shall complete, under oath, and file with
43 the comptroller a return, on or before April fifteenth the year follow-
44 ing the effective date of this article.

45 2. (a) Each person that reasonably expects the person's annual gross
46 revenues derived from digital advertising services in the state to
47 exceed \$1,000,000 shall complete, under oath, and file with the comp-
48 troller a declaration of estimated tax, on or before April 15 of that
49 year.

50 (b) Any person required to file a declaration of estimated tax for a
51 taxable year pursuant to paragraph (a) of this subdivision, shall
52 complete and file with the comptroller a quarterly estimated tax return
53 on or before June fifteenth, September fifteenth, and December fifteenth
54 of such year.

55 3. Any person required to file a return pursuant to this section shall
56 file with the return an attachment that states any information that the

1 comptroller requires to determine annual gross revenues derived from
2 digital advertising services in the state.

3 4. Any person required to file a return under subdivision two of this
4 section shall maintain records of digital advertising services provided
5 in the state and the basis for the calculation of the digital advertis-
6 ing gross revenues tax owed.

7 § 333. Tax payment. 1. Except as provided in subdivision two of this
8 section, each person required to file a return under section three
9 hundred thirty-two of this article shall pay the digital advertising
10 gross revenues tax with the return that covers the period for which the
11 tax is due.

12 2. Any person required to file estimated digital advertising gross
13 revenues tax returns under paragraph (b) of subdivision two of section
14 three hundred thirty-two of this article shall pay:

15 (a) at least twenty-five percent of the estimated digital advertising
16 gross revenues tax shown on the declaration or amended declaration for a
17 taxable year:

18 i. With the declaration or amended declaration that covers the year;
19 and

20 ii. With each quarterly return for that year; and

21 (b) any unpaid digital advertising gross revenues tax for the year
22 shown on the person's return that covers that year with the return.

23 § 3. The tax law is amended by adding a new section 1816 to read as
24 follows:

25 § 1816. Digital ad tax. Any willful act or omission by any person
26 which constitutes a violation of any provision of article fifteen of
27 this chapter shall constitute a misdemeanor.

28 § 4. This act shall take effect immediately and shall apply to taxable
29 years beginning on and after January 1, 2021.