STATE OF NEW YORK

1124

2021-2022 Regular Sessions

IN SENATE

January 7, 2021

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:

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

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

ARTICLE 15

TAX ON DIGITAL ADS

Section 330. Definitions.
331. Imposition of tax.
332. Returns.
333. Tax payment.

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

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

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

3. The term "digital advertising services" 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, that use personal information about the people the ads are being served to.

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

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

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

(b) The term "person", unless expressly provided otherwise, does not include a governmental entity or a unit or instrumentality of a governmental entity.

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

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

2. The tax imposed shall be apportioned to the state by the apportionment factor determined pursuant to this section. The apportionment factor is a fraction, determined by including only those receipts, net income, net gains, and other items described in this section that are included in the computation of the taxpayer's business income for the taxable year. The numerator of the apportionment fraction shall be equal to the sum of all the amounts required to be included in the numerator pursuant to the provisions of this section and the denominator of the apportionment fraction shall be equal to the sum of all the amounts required to be included in the denominator pursuant to the provisions of this section.

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

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

4. The digital advertising gross revenues tax rate is:

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

(b) five percent of the assessable base for a person with global annual gross revenues of one billion one dollars through five billion dollars;

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

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

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

2. (a) Each person that reasonably expects the person's annual gross revenues derived from digital advertising services in the state to exceed one million dollars shall complete, under oath, and file with the commissioner a declaration of estimated tax, on or before April fifteenth of that year.

(b) Any person required to file a declaration of estimated tax for a taxable year pursuant to paragraph (a) of this subdivision, shall complete and file with the commissioner a quarterly estimated tax return

on or before June fifteenth, September fifteenth, and December fifteenth of such year.

3. Any person required to file a return pursuant to this section shall file with the return an attachment that states any information that the commissioner requires to determine annual gross revenues derived from digital advertising services in the state.

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

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

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

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

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

ii. With each quarterly return for that year; and

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

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

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

§ 4. This act shall take effect immediately and shall apply to taxable years beginning on and after January 1, 2022.