STATE OF NEW YORK

5842

2023-2024 Regular Sessions

IN ASSEMBLY

March 23, 2023

Introduced by M. of A. WALKER -- read once and referred to the Committee on Ways and Means

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

ARTICLE 15

TAX ON DIGITAL ADS

Section 330. Findings and intent.
331. Definitions.
332. Imposition of tax.
333. Returns.
334. Tax payment.

§ 330. Findings and intent. The legislature finds and declares the following:

1. Many goods and services that have been traditionally subject to state and local sales use taxes have avoided taxation in the digital era. However, many digital transactions are harder to bring into the sales tax base because instead of paying a monetary fee, customers sometimes barter their personal information for access to digital platforms. This personal information is in turn sold for use in targeted advertisements on digital platforms. To tax this consumption, leading tax economists have suggested using the receipts earned from digital advertisements as a proxy for the value of the barter.

2. As has been noted by many, including the Organization for Economic Co-operation and Development, the value of the consumption provided by digital platforms is typically greater as the size of its network is greater. The legislature finds that the consumption value provided by

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

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networks of a small size is negligible, especially when compared to the compliance burden that would be imposed on smaller digital platforms.

§ 331. 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.

5. (a) The term "person" means any natural 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.

§ 332. 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 seven percent of the assessable base for a person with annual gross revenues derived from digital advertising in the state exceeding one hundred million dollars.

§ 333. 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.

§ 334. Tax payment. 1. Except as provided in subdivision two of this section, each person required to file a return under section three hundred thirty-three 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-three 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.

§ 2. 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.

§ 3. This act shall take effect immediately and shall apply to taxable years beginning on and after January 1, 2024.