

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

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

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

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

10 3. The term "digital advertising services" includes advertisement  
11 services on a digital interface, including advertisements in the form of  
12 banner advertising, search engine advertising, interstitial advertising,  
13 and other comparable advertising services, that use personal information  
14 about the people the ads are being served to.

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

18 5. (a) The term "person" means any natural individual, receiver, trus-  
19 tee, guardian, personal representative, fiduciary, or representative of  
20 any kind and any partnership, firm, association, corporation, or other  
21 entity.

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

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

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

30 2. The tax imposed shall be apportioned to the state by the apportion-  
31 ment factor determined pursuant to this section. The apportionment  
32 factor is a fraction, determined by including only those receipts, net  
33 income, net gains, and other items described in this section that are  
34 included in the computation of the taxpayer's business income for the  
35 taxable year. The numerator of the apportionment fraction shall be equal  
36 to the sum of all the amounts required to be included in the numerator  
37 pursuant to the provisions of this section and the denominator of the  
38 apportionment fraction shall be equal to the sum of all the amounts  
39 required to be included in the denominator pursuant to the provisions of  
40 this section.

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

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

49 4. The digital advertising gross revenues tax rate is seven percent of  
50 the assessable base for a person with annual gross revenues derived from  
51 digital advertising in the state exceeding one hundred million dollars.

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

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

6     (b) Any person required to file a declaration of estimated tax for a  
7 taxable year pursuant to paragraph (a) of this subdivision, shall  
8 complete and file with the commissioner a quarterly estimated tax return  
9 on or before June fifteenth, September fifteenth, and December fifteenth  
10 of such year.

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

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

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

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

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

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

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

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

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

37     § 1816. Digital ad tax. Any willful act or omission by any person  
38 which constitutes a violation of any provision of article fifteen of  
39 this chapter shall constitute a misdemeanor.

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