



TAXPAYERS'
FEDERATION
— OF ILLINOIS —

A PRIMER ON DIGITAL ADVERTISING TAXES – COMING TO ILLINOIS IN 2027 (OR NOT)

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Agenda

- I. Background
- II. Maryland Digital Advertising Tax
- III. Utah Targeted Digital Advertising Tax
- IV. Illinois Targeted Advertising Services Tax



Taxation of Digital Goods & Services

Jurisdictions looking to expand their tax bases are seeking to tax digital products and services.

Proposed legislation often proposes to tax one of the following:

1. **Digital advertising services.** Tax on apportioned gross revenue from digital advertising services.
2. **Social media platforms.** Tax on social media companies' gross revenue, advertising services, or users.
3. **Data mining services.** Tax on companies selling personal information or data, akin to severance tax.



Taxation of Digital Goods and Services

- Common Justifications for these new proposed taxes include:
 - Modernizing the tax code
 - Preventing tax base erosion
 - Tax fairness and neutrality
 - Remedying inequity or tax avoidance
- In fact, it's about raising revenue
 - Tech is the new target



Digital Advertising

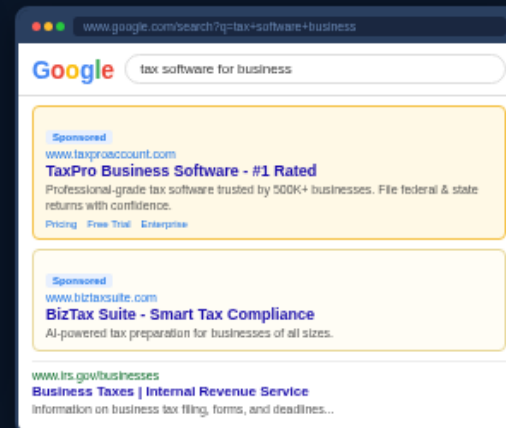
Banner Advertising

Display ads embedded in web pages



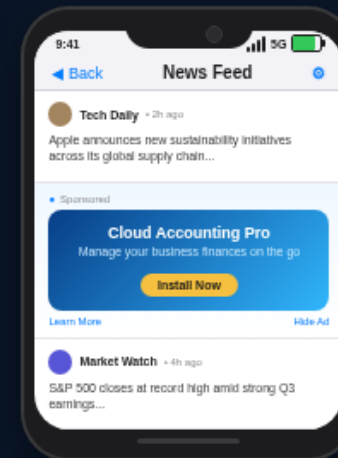
Search Engine Advertising

Paid results atop search listings



Mobile Advertising

In-app ads on iPhone



Taxation of Digital Advertising

Tax structure can be:

- Tax on apportioned services

- Expansion of indirect tax base

In 2025 both type of proposals were enacted:

- Washington S.B. 5814** – extended the existing retail sales tax and retailing B&O tax to sales of digital advertising

- Chicago Social Media Amusement Tax** – imposed based on number of Chicago “users.”



Maryland Digital Advertising Tax

First state to enact a digital advertising tax. Key components:

Tax rate: Between 2.5% and 10% on the gross revenue from digital ads earned by companies with worldwide annual gross revenues in excess of \$100 M and Maryland revenues above \$1 M.

Limits: Exclusively imposed on digital advertising; news organizations are excluded.

Pass Through Limitation: Prohibited pass through to customers as a separate fee, surcharge or line item on invoices.



Maryland Digital Advertising Tax

Recognizing plain language difficulties with tax imposed strictly on digital advertising, Maryland enacted regulations maintaining tax applied to “programmatic” and “visual” advertising.

Utah and Illinois bills mimic this language



Maryland Digital Advertising Tax

- Maryland tax has traveled a bumpy road since it was enacted in 2021:
 - Enacted by legislative override of gubernatorial veto.
 - A trial court's order striking tax down as unconstitutional was overturned by the Maryland Supreme Court, which ruled in 2023 that companies challenging the tax must exhaust administrative remedies first. That led to a spate of challenges to taxes paid in 2022, the first year the tax was collected.



Maryland Digital Advertising Tax

Chamber of Commerce et al. v. Lierman, Case No. 24-1727 (4th Cir. Aug. 15, 2025)

Panel unanimously held that the Pass-Through Limitation violated the First Amendment because it restricted how companies could talk to their customers about price increases tied to the tax.



Maryland Digital Advertising Tax

Tax struck down (again) by Maryland Tax Court on 8/14/26:

In three separate rulings, the Maryland Tax Court struck down the tax and ordered that refunds be paid to taxpayers for 5 ½ years of collections. The ruling held:

- (1) Maryland Tax violates the Internet Tax Freedom Act
- (2) Maryland Tax violates the Commerce Clause
- (3) Maryland Tax violates Due Process



Maryland Digital Advertising Tax

- The Maryland Tax Court rejected State's argument that limitation of tax to "programmatically" and "visually" advertising meant that tax was not limited to digital providers.

"The Court rejects the notion that including these two words helps bring the Tax within the proscription of the ITFA."



Maryland Digital Advertising Tax

- The Maryland Tax Court cited Illinois authority in support of its ruling in favor of the taxpayer:
 - *Performance Marketing Ass’n, Inc. v. Hamer*, 998 N.E.2d 54 (Ill. 2013) (rejecting, under ITFA, statute imposing sales tax nexus based on online advertising in Illinois that contained codes allowing the tracing of sales); and
 - *Labell v. Chicago*, 147 N.E.2d 732 (Ill. App. Ct. 2019) (stating that although the court found no ITFA violation related to imposition of Chicago amusement tax on streaming services, the ruling “supports a finding that digital advertising services are similar to non-digital advertising services.”)



Maryland Digital Advertising Tax

- There's potentially a long road ahead before the tax's fate is finalized.
 - State AG has appealed the rulings to the Circuit Court of Arundel County.
 - High likelihood of further appeals to the state appellate and supreme court.
 - Given the federal issues, SCOTUS review is possible.



Maryland aftermath – other states took notice

2026 – legislative proposals across nearly 20 states and jurisdictions sought to establish new regimes imposing taxes on “Big Tech” that would impact companies that utilize their services.

Digital advertising taxes proposed in California, Illinois, Indiana, Massachusetts, Mississippi, New York, Pennsylvania, Rhode Island, and Tennessee.

Laws were enacted in **Utah** and **Illinois**.



Utah Targeted Digital Advertising Tax

S.B. 287, enacted Mar. 25, 2026 | Effective Jan. 1, 2027

Key features:

- **Rate:** 4.7% tax on gross receipts from “targeted” advertising.
- **Tax Threshold:** \$100 M global annual sales and \$1 M annual Utah revenues. In addition, gross receipts from targeted advertising must constitute 50% or more of the business entities’ total gross receipts.
- **Targeted advertising:** Requires a bidding process, the development of an individualized data profile, and the ability to interface electronically with the advertisement.



Utah Targeted Digital Advertising Tax

On July 28, 2026, litigation was filed challenging the Utah tax.

Utah Taxpayer's Ass'n v. Utah State Tax Comm'n, No. 260905873
(Salt Lake County 3rd District Court).



Utah Targeted Digital Advertising Tax

The Complaint seeks declaratory and injunctive relief barring enforcement of the tax, alleging that the tax:

- (1) Discriminates against electronic commerce in violation of ITFA because it applies only to advertising delivered over the internet;
- (2) Constitutes a prohibited tax on Internet access because video advertisements are “video clips” included within ITFA’s definition of Internet access;
- (3) Discriminates against interstate commerce because the worldwide revenue thresholds exempt Utah-based businesses while subjecting out-of-state businesses to the tax; and
- (4) Violates due process because liability depends in part on transactions and business activities occurring outside Utah that have no connection to the state.



New Illinois Taxes

- Illinois' FY 2027 Budget Bill (S.B. 3019) enacted three substantial new taxes:
 - Illinois Targeted Advertising Services Tax
 - Illinois Social Media Platform Fee
 - Illinois Digital Assets Tax
- All take effect January 1, 2027



Illinois Targeted Digital Advertising Tax

- 10% gross receipts tax on “providers” of “targeted advertising services” in Illinois.
 - *Concern*: Rate is extremely high. More than double the Utah rate. The Maryland graduated rate only reaches 10% for taxpayers with global annual revenues in excess of \$15B.



Illinois Targeted Digital Advertising Tax

- Tax is triggered when gross receipts from targeted advertising services provided in Illinois exceed \$1M during the previous 12-month period.
 - *Concerns:* Unlike Maryland and Utah, the Illinois tax includes no global minimum threshold. Unlike Utah, there is no requirement that more than 50% of the taxpayer's gross receipts come from the sale of targeted advertising services.

As a result, many more taxpayers will be subject to the Illinois tax.



Illinois Targeted Digital Advertising Tax

- Key definitions:
- “Targeted advertising service” is “any ‘programmatic’ written, oral, or graphic statement or representation conveyed through a digital interface or any other method of delivery, including, but not limited to, banner advertising, search engine advertising, interstitial advertising, and other comparable advertising services that use personal information about the people to whom the ads are being served.”
Concern: Despite reference to “any other method of delivery,” no real application to non-digital advertisers.



Illinois Targeted Digital Advertising Tax

- Key definitions:
 - Targeted ads must be “programmatic” meaning “may be sold in real time by employing technology that uses computer-driven or software-driven workflow or machine learning algorithms to deliver advertisements to user-consumers based on user-advertiser-defined parameters, including precise user-consumer targeting data such as user-consumer: (1) Geographic Locations; (2) Types of devices; (3) Recent online search behaviors; (4) Browsing history; (5) Shopping history; (6) Purchase history; and (7) Biographical and other information compiled in databases.
 - *Concerns:* Limits scope of tax to digital ad sales; broadly defined “parameters;” unclear whether ad placement must be “user-advertiser-defined?”



Illinois Targeted Digital Advertising Tax

- Tax does not apply to intercompany transactions
 - Business entities that are part of a controlled group under IRC § 1563(a) are treated as a single entity for purpose of meeting the provider definition.
 - *Concern:* Taxable receipts from commonly owned entities may be aggregated to meet the Tax threshold.



Illinois Targeted Digital Advertising Tax

- Sourcing:
 - Targeted advertising services are provided in Illinois “when the location of the user-consumer of the targeted advertisement is in this State” using a “totality of the user-consumer contact information” in the provider’s possession.
 - *Concerns:* There is a rebuttable presumption that a user-consumer is located in Illinois if any “contact information” suggests Illinois. In addition, the burden of proving that a user-consumer is not in Illinois is on the taxpayer.



Illinois Targeted Digital Advertising Tax

- **Registration Requirement:**

- Providers of targeted advertising services must register with the Department and obtain a certificate of registration before 1/1/27; absent registration they are prohibited from operation in Illinois.

- *Concerns:*

- *Lack of guidance* – taxpayers who seek to comply with the law must amend their systems now in order to prepare for 1/1/27 effective date yet no guidance issued and no input sought from taxpayer community on compliance issues.
 - *Significant penalties* imposed for noncompliance with registration requirement, including loss of licensure and criminal penalties.



Illinois Targeted Digital Advertising Tax

- Tax Justification Flawed
 - Introductory clause suggests purpose of tax is to curb tax avoidance from sales and use tax “in the digital era.”

Concerns:

- Illinois does not impose its sales and use tax on any sale of advertising services.
- There is no other tax avoidance. Illinois imposes income tax on service income, including income received from Illinois-sourced digital sales. The same digital advertising service income currently subject to Illinois income tax is also subject to the digital advertising tax.
- Creates an Illinois Uniformity Clause issue.



Illinois Targeted Digital Advertising Tax

On September 11, 2026, litigation was filed in the Chancery Division of the Circuit Court of Cook County seeking declaratory and injunctive relief barring enforcement of the Tax.

— *NetChoice v. State of Illinois*, 2026 CH 08791 (Cook Cty. Cir. Court)



Illinois Targeted Digital Advertising Tax

- NetChoice's Complaint asserts:
 - The Tax violates ITFA because its operative definitions in practice reach only Internet-based advertising;
 - The Tax violates the Commerce Clause because it is not fairly apportioned and discriminates against interstate commerce;
 - The Tax violates the Due Process Clause by taxing extraterritorial value; and
 - The Tax violates the First Amendment by selectively taxing certain advertising and speakers, including through the statute's news-media exclusion.



Questions?



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