

March 12, 2020

The Honorable John Fonfara, Co-Chair
Finance, Revenue and Bonding Committee
Legislative Office Building, Room 3700
Hartford, CT 06106

The Honorable Sean Scanlon, Co-Chair
Finance, Revenue and Bonding Committee
Legislative Office Building, Room 3700
Hartford, CT 06106

The Honorable Henri Martin, Ranking
Member
Finance, Revenue and Bonding Committee
Legislative Office Building, Room 3700
Hartford, CT 06106

The Honorable Holly Cheeseman, Ranking
Member
Finance, Revenue and Bonding Committee
Legislative Office Building, Room 3700
Hartford, CT 06106

RE: SB 821 – Taxation of Digital Advertising Revenue - OPPOSE

Dear Members of the Joint Committee on Finance, Revenue, and Bonding

We write to you to express our strong opposition to the proposed digital advertising tax on the gross revenues of businesses operating in Connecticut under the provisions of SB 821. Advertising, including the rapidly growing segment of digital advertising, is a powerful engine that helps drive the economy of the State of Connecticut.

Advertising expenditures account for \$89.1 billion of sales in Connecticut. That represents 17.5% percent of the \$10.1 billion in total economic output for the State. These results are based on economic research for the media and advertising industries that applied an economic model developed by the 1980 Nobel Laureate for Economic Science, Dr. Lawrence R. Klein. The research further shows that sales of products and services driven by advertising help support 288,333 jobs – nearly 17.2% percent of the 1.7 million jobs in the State.

The proposed tax on digital advertising would represent a very serious threat to commercial advertising in the United States. If Connecticut were to enact this tax on advertising, it would become the second state or locality in the United States to impose a targeted, punitive tax on the gross revenue derived from digital advertising services. However, these proposals are almost certainly violative of federal law and unconstitutional.

Because Connecticut would tax digital advertising but not tax non-digital advertising, the proposed levy would constitute a “discriminatory tax” prohibited by the Permanent Internet Tax Freedom Act (PITFA). While we understand the importance of securing more funding for the State, the adoption of an arbitrary threshold of global annual gross revenues would tend to tax larger global advertising service providers at a higher tax rate than their domestic counterparts. This would be constitutionally suspect under the Dormant Commerce Clause of the U.S. Constitution. The proposal also would raise serious First Amendment concerns because it singles out digital commercial speech for a punitive tax.

Indeed, the State of Maryland, the first legislature to enact a tax on digital advertising through a veto override, is presently being sued in federal court on these grounds.

Although the anticipated revenues from the tax may seem popular and attractive initially, the real burden of the new tax would fall almost inevitably on Connecticut residents and Connecticut businesses who are consumers of advertising services within a digital interface. This type of burden will be particularly onerous at a time when businesses are struggling to recover from the economic impact of the pandemic.

Also, advertising service providers can be expected to pass the tax onto their customers, including Connecticut brick and mortar businesses that seek to reach new customers online. A study by Deloitte Tax of the digital advertising tax adopted in France confirms this projected outcome. It found that 55 percent of that tax burden would be passed on to consumers who would pay higher prices for every good and service they use, online or offline. Even more fundamentally, none of these potential tax revenues will be available in any near term, due to the high likelihood of long-term litigation that would flow from passage of this proposal.

For the reasons detailed above, we believe your proposed digital advertising tax will impose a massive long-term burden on the present and future taxpayers of the State. We strongly urge you to reject SB 821.

Respectfully submitted,

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Oswald". The signature is fluid and cursive, with a large initial "C" and "O".

Chris Oswald
SVP, Government Relations
Association of National Advertisers