

April 8, 2021

The Honorable Roger Hanshaw
Speaker of the House of Delegates
Room 228M, Building 1
State Capitol Complex
Charleston, WV 25305

The Honorable Gary G. Howell
Speaker Pro Tempore
Room 242M Building 1
State Capitol Complex
Charleston, WV 25305

The Honorable Amy Summers
Majority Leader
Room 228M, Building 1
State Capitol Complex
Charleston, WV 25305

The Honorable Doug Skaff Jr.
Minority Leader
Room 260M, Building 1
State Capitol Complex
Charleston, WV 25305

Delivered via email

Re: Opposition to the Inclusion of Digital Advertising Tax Provision in HB 3300

Dear Speaker Hanshaw, Delegate Howell, Delegate Summers and Delegate Skaff:

MPA – the Association of Magazine Media respectfully urges you to oppose the inclusion of a proposed tax on digital advertising in HB 3300. The tax measure, initially introduced in SB 605, would cause economic harm to media and journalism entities, increase costs for West Virginia businesses and non-profits as they recover from the pandemic, and present constitutional concerns.

MPA's membership includes more than 500 magazine media brands that span a vast range of genres across print, digital, mobile and video media. Our members provide trusted, edited and curated content that informs, inspires and entertains more than 90 percent of all U.S. adults. West Virginia residents receive more than 1.2 million magazine subscriptions, representing an average of 1.6 subscriptions per household. Our readers depend on our publications for timely and reliable news and information – needed by society now more than ever.

The Tax Would Harm News Media and Journalism. While the proposed tax on digital advertising gross revenues is meant to apply to businesses with worldwide gross revenues exceeding \$100 million dollars, the impact of the tax would not be limited to large companies, but rather cause economic harm across the advertising ecosystem. In this time of great public health concern, trusted media sources play an essential role in providing valuable information to the communities they serve. Digital advertising, including services sourced through large technology platforms, is an important revenue source that allows magazine publishers to provide trusted, vital information to their readers. Digital advertising revenue is particularly important at a time when many news and media outlets – including magazine publishers – have temporarily suspended paywalls to allow people access to information on breaking news events, including the current public health emergency.

The Tax Would Create an Obstacle for West Virginia’s Economic Recovery. Proponents of the tax have focused their discussions on the financial impact to large advertising platforms. In reality, the financial impact of the tax would be felt by all entities in the advertising ecosystem, including an expected increase in costs to West Virginia’s businesses and non-profits.

Particularly in a time of extreme economic uncertainty, digital advertising is an affordable awareness and audience generation tool for brick and mortar businesses and non-profit organizations. Imposing additional costs to local businesses, even if passed through from larger advertising entities, could jeopardize the viability of the media and journalism entities that serve West Virginia residents and harm local businesses, prolonging economic recovery for the state.

In fact, earlier this year, lawmakers in Montana rejected a similar bill based on concerns that a digital advertising tax would ultimately harm local businesses.

The Tax Raises Constitutional Concerns. The tax raises a number of legal issues and is likely to be challenged. Singling out one form of speech – digital commercial speech – for taxation raises First Amendment concerns. The tax also likely violates the U.S. Constitution’s commerce clause and the federal Permanent Internet Tax Freedom Act. In the event of a legal challenge on these matters, such as the suit already raised in Maryland, West Virginia taxpayers would incur the cost of the state defending the troubling tax, with a low likelihood of the state receiving the revenue it intends to collect.

If enacted, the proposed tax measure will harm the magazine media industry and other news sources serving West Virginia, West Virginia businesses and non-profits that rely on digital advertising across all sectors, and West Virginia taxpayers.

On behalf of the magazine media industry, MPA respectfully urges you to ensure that the proposed tax on digital advertising is not included in HB 3300.

If you have any questions or comments, please contact Emily Emery, Director of Digital Policy at eemery@magazine.org or (646) 530-4568 or Rita Cohen, Senior Vice President at rcohen@magazine.org or (202) 369-1237.

Respectfully submitted,

Rita Cohen
Senior Vice President

Emily Emery
Director, Digital Policy