



January 23, 2026

By Email (ksermon@marylandtaxes.gov)

Krista Sermon
Deputy Director, Legal Division
Comptroller of the Treasury
PO Box 2983
Annapolis, MD 21404
Email: ksermon@marylandtaxes.gov

Dear Ms. Sermon:

On behalf of our stakeholders and the undersigned organizations, we appreciate the opportunity to comment on the proposed amendments to COMAR 03.12.01.01. We respectfully submit these remarks in the spirit of problem solving and to protect Maryland's job creators that rely on affordable digital advertising to reach customers, stay afloat, and grow Maryland's economy.

We believe the proposed amendments are not a neutral clarification of existing law. Instead, these amendments appear to be inconsistent with the statute. The proposed amendments seek to buttress the Comptroller of Maryland's litigation position in response to the claim that the tax violates the federal Internet Tax Freedom Act (ITFA). Very simply, these amendments do not fix the law's core problem.

The amendments divide the ad marketplace into narrow categories of “visual” versus “audio” and “programmatic” versus “direct,” and stretch “digital interface” to include activity allegedly “conveyed” off the Internet. They attempt to create exceptions where none actually exist.

Additionally, the three examples of digital advertising services contained in the statute – banner, search, and interstitial ads – share a simple trait: they are delivered over the Internet. Any “comparable” service should share that key feature. Creating new qualifiers, while arguing a small slice of “digital advertising” is not actually online, is unlikely to cure the ITFA problem. The digital ad tax applies to only online ads and therefore discriminates against electronic commerce.

There is also a fiscal reality that deserves honesty. The longer this court battle continues, the longer Maryland taxpayers are on the hook. And if courts again strike down the tax, as a trial court already has, Maryland will be required to refund every dollar collected, plus interest. This could result in years of legal costs and uncertainty, followed by refunds, and a scramble to plug budget holes.

Digital advertising has democratized access to customers and markets. ADO, along with the undersigned organizations, believes these amendments would do the opposite while deepening Maryland’s legal and fiscal exposure. For these reasons, we respectfully ask you to withdraw the proposed amendments.

Thank you for your consideration and we welcome the opportunity to discuss these comments further.

Sincerely,

Association of National Advertisers
American Association of Advertising Agencies
American Advertising Federation
American Advertising Federation Baltimore
American Advertising Federation Nebraska
Americans for Digital Opportunity
A&K Marketing
Consumer Brands Association
Coalition for Healthcare Communication
Council On State Taxation
CTIA
Exhibitions & Conferences Alliance
IAB
Internet Coalition
Motion Picture Association
National Taxpayers Union
NCTA
TechNet

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Krista Sermon
Deputy Director, Legal Division
Comptroller of the Treasury
PO Box 2983
Annapolis, MD 21404
Telephone: (410) 260-7319
E-mail: ksermon@marylandtaxes.gov

Re: Comments on Proposed Action on Regulations Regarding Maryland Digital Advertising Gross Revenues Tax to COMAR 03.12.01.01 (the "Proposed Amendments")

Dear Ms. Sermon:

Pursuant to Md. Code Ann., State Gov't § 10-111(a)(3), Americans for Digital Opportunity ("ADO") appreciates the opportunity to submit the following comments on the Maryland Digital Advertising Gross Revenues Tax ("DAT") Proposed Amendments to COMAR 03.12.01.01. These comments are limited to the Comptroller's interpretation of the DAT base and do not address the DAT's other legal infirmities. ADO is concerned that the Proposed Amendments to the DAT regulation do not reflect the intent of the Maryland General Assembly and would render the DAT unadministrable by creating artificial distinctions among advertisement types. For the following reasons, we request that the Comptroller withdraw the Proposed Amendments to modify the DAT's base because they conflict with the underlying DAT statutes.

Americans for Digital Opportunity is a national organization dedicated to ensuring that digital advertising, and the entrepreneurial opportunities it creates, remain accessible and affordable to businesses of all sizes.

The DAT is imposed on "digital advertising services." Tax-Gen. § 7.5-102(a). The statutory definition of "digital advertising" applies only to advertising transmitted over the Internet. The General Assembly expressly identified three types of advertising for taxation: banner advertising, search engine advertising, and interstitial advertising. Tax-Gen. § 7.5-101(e)(1). These three types of advertisements have one primary characteristic in common: all are transmitted via the Internet. Thus, any "comparable" advertising service subject to the DAT must also be transmitted via the Internet.

The Proposed Amendments contort the statutorily-defined terms "digital advertising services" and "digital interface" to: (1) limit the DAT tax base to only advertisements that are "visually conveyed" and "programmatically"; and (2) expand the DAT tax base to advertisements that are transmitted off of the Internet.

- First, the statutory definition of digital advertising services does not contain a visual requirement. Further evidencing this intent, the General Assembly chose to exclude a type of audio advertising provided by entities operating radio stations.¹ If the

¹ Tax-Gen. § 7.5-101(d), -(e)(2).

General Assembly meant to exclude all audio advertisements, the exclusion for radio stations' online advertisements would not have been necessary.

- Second, taxable digital advertising services are not limited to only those that are "programmatic." Programmatic advertising is advertising purchased over the Internet. Banner ads, interstitial ads, search engine ads, and other forms of Internet-delivered advertisements may not be solely purchased programmatically.

The Proposed Amendments also conflict with the DAT statutes by redefining the term "digital interface" to include software that "can be accessed or conveyed either on or off the Internet." The term "conveyed" is inconsistent with the DAT statute, as the statute addresses only software that can be "access[ed]." It is not clear whether the Comptroller intends the conveyance of software to vary from its access. Regardless, the General Assembly used the term "access," which the Comptroller subsequently defined by regulation in late 2021. Further, digital advertising services are limited to those advertisements that are transmitted via the Internet. Expanding the tax base to advertisements that are transmitted off of the Internet conflicts with the definition of digital advertising, the General Assembly's intent behind the DAT, and the plain meaning of the term.

After the Comptroller reviews these comments and those submitted by other stakeholders, we respectfully request that the Comptroller hold a public hearing on the validity of the Proposed Amendments. We respectfully request that the Comptroller subsequently rescind the Proposed Amendments. We appreciate the Comptroller's consideration of our concerns. If you have any questions or wish to discuss any aspect of our comments, please contact us at doug@americansfordigitalopportunity.com

Sincerely,

Americans for Digital Opportunity