

A Digital Advertising Tax Is Illegal, Costly, and Bad for Pennsylvania

HB 1678 / SB 1199 Will Face Legal Challenges and Revenue is Not Guaranteed

- Passing a digital ad tax will not solve budget issues and has a high probability of making them worse because this legislation will be challenged in court.
 - HB 1678 / SB 1199 likely violates the federal Internet Tax Freedom Act (ITFA) by imposing a discriminatory tax on internet-based commerce.
 - HB 1678 / SB 1199 could also be challenged under the First Amendment.
 - HB 1678 / SB 1199 could also face challenges under the dormant Commerce Clause for discriminating against digital commerce relative to traditional advertising formats like broadcast TV, radio, print, and billboards.
- Maryland and Washington State are both involved in litigation over digital ad tax legislation on the grounds they violate ITFA. These cases are far from over.
 - Maryland has been fighting the digital ad tax in court since 2021. Drawn out litigation costs fall on taxpayers.
 - A Maryland circuit court found the tax unconstitutional on four separate grounds: the Supremacy Clause, ITFA, the dormant Commerce Clause, and the First Amendment. A decision is expected Q2 2026, and appeals are certain to follow.
 - In anticipation of the digital ad tax being overturned, Maryland passed a new law earlier this year (SB 284, Section 18) that reduced the interest rate the state would owe on tax refunds specifically for the digital ad tax.
 - Every jurisdiction that has enacted one of these taxes is either in court or expects to be.
 - Washington State's digital ad tax is already in active litigation, with trial set for Q1 2027.
 - Utah passed a digital ad tax earlier this year, and litigation is expected soon, before the law even takes effect in 2027.
 - Chicago is currently facing a lawsuit over the Social Media Amusement Tax on the grounds it violates ITFA. The suit was filed within weeks of the law taking effect.
- If overturned, the state could be forced to refund all collections plus interest, shifting costs to taxpayers.
- Should this tax be overturned by the courts, the budget holes would become even wider.

Digital Ad Taxes Hurts Consumers and Businesses

- This tax creates a new business-to-business expense, and Pennsylvania consumers and small businesses will be disproportionately burdened.
- A tax on digital advertising is a tax on every hardworking business owner, large or small, who relies on digital platforms to reach customers, compete, and grow.
- This legislation will raise the price of reaching customers and increase prices for existing customers.
- Higher costs will slow growth, reduce investment, and risk pushing businesses and jobs out of Pennsylvania.
- The idea that large, faceless corporations will be the ones hurt by this tax is false – these costs will be passed on to end users in Pennsylvania.