

The ADvertising Coalition

March 16, 2020

The Honorable Andrea Stewart-Cousins
Temporary President and Majority Leader
New York State Senate
188 State Street
Legislative Office Building, Room 907
Albany, NY 12247

The Honorable Carl E. Heastie
Speaker
New York State Assembly
Legislative Office Building, Room 932
Albany, NY 12248

The Honorable John J. Flanagan
Minority Leader
New York State Senate
Capitol Building, Room 909
Albany, NY 12247

The Honorable William A. Barclay
Minority Leader
New York State Assembly
Legislative Office Building, Room 933
Albany, NY 12248

The Honorable Michael Gianaris
Deputy Majority Leader
New York State Senate
Capitol Building, Room 427
Albany, NY 12247

We write as national media and advertising trade associations and as members of The Advertising Coalition to express our strong opposition to the enactment of a state tax on digital advertising. It is of substantial concern that the tax would be imposed on annual gross revenues derived from digital advertising services in New York State, before deduction of any expenses or taxes. We urge you to reject this proposal to tax dynamic, job-creating advertising that helps make New York the leading state in the nation in economic activity.

Advertising, including the rapidly growing segment of digital advertising, is a powerful engine that helps drive the economy of the State of New York. Advertising expenditures generate \$515.6 billion of sales in New York – that represents 18.5 percent of the \$2.8 trillion in total annual economic output for the State. These numbers are the product of economic research for the advertising industry that used an economic model developed by Nobel Laureate for Economics, Dr. Lawrence R. Klein. The research demonstrates that sales of products and services driven by advertising help support the jobs of 1.7 million New Yorkers. That is nearly 18.7 percent of the 9.1 million jobs in the State.

The proposed tax on digital advertising would represent one of the most serious threats to commercial advertising in the United States in several decades. If New York were to enact this tax on advertising, it would become the first state or locality in the United States to impose a targeted, punitive tax on the gross revenue derived from advertising services – during one of the most challenging national emergencies in our history. It is counterproductive for us to impose a burden on the ability of businesses to sell their goods and services at any time. It is even more challenging for states with high taxes like New York. The harm is magnified when we propose to handicap the ability

of our businesses to sell during one of the most serious national economic challenges of the past century. I would note that many news and media outlets have been dropping paywalls to allow consumers access to information on coronavirus – this wouldn't be possible without digital advertising and the revenue that flows from it.

Because the legislation proposes to apply the tax to digital advertising, the proposed levy would constitute a “discriminatory tax” prohibited by the Permanent Internet Tax Freedom Act (PITFA). The proposal also raises serious First Amendment concerns because it singles out digital commercial speech for a punitive tax.

Regardless of how the proposed tax is characterized, the real burden of the new tax will fall on New York residents and New York businesses who are consumers of advertising services within a digital interface. Advertising service providers can be expected to pass the tax directly onto their customers, including New York brick and mortar businesses that seek to reach new customers online. A study by Deloitte Taj 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 end consumers who would pay higher prices for every good and service they use, online or offline. It is important to note that France has suspended its digital tax through the end of this year. To place a burden on the effort to sell is clearly counterproductive particularly for states with high sales taxes like New York. In addition, this would be a pyramid tax because it taxes the effort to sell and the sales themselves.

We believe your proposed digital advertising tax will impose a massive long-term financial burden on present and future taxpayers in the State. We strongly urge you to reject S. 8056.

Sincerely,

American Advertising Federation

American Association of Advertising Agencies

Association of National Advertisers

MPA –The Association of Magazine Media

National Association of Broadcasters

NCTA – The Internet & Television Association

News Media Alliance

New York State Broadcasters Association

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