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The case against taxing digital advertising in Pa.

By Colin McNickle

A Pennsylvania legislative proposal to tax digital advertising to fund additional school property tax relief for seniors is not only fraught with legal peril but would harm businesses and stands to raise prices for consumers, concludes an analysis by the Allegheny Institute for Public Policy.

"Ideally, the Legislature should be focused on reducing spending and looking to improve the state's business and regulatory climate as part of state budget considerations," says Alex Sodini, a research associate at the Pittsburgh think tank (in *Policy Brief Vol. 26, No. 23*).

With the state budget deadline looming on June 30, the state House recently passed a bill that would extend the 5 percent gross receipts tax (GRT) to entities deriving income from "digital advertising services displayed to a user on a digital interface wholly within this Commonwealth, including banner advertising, search engine advertising, interstitial advertising and comparable advertising services that utilize the personal information of the users to whom the advertisements are served."

The tax, ostensibly, is intended for large tech companies which rely on digital advertisements for revenue. Broadcast and news media entities would be exempt.

"Interestingly," Sodini notes, "the proceeds of the tax supporting property tax relief was an amendment added after the bill had made it out of the House Finance Committee." He says some committee members raised two primary concerns regarding implementation of a digital advertising tax that were later echoed on the House floor.

"The first major concern was over the legality of expanding the GRT to cover digital advertising," the think tank researcher reminds. "Testimony provided at the April 29 committee meeting noted that Maryland passed a similar tax in 2021 but that it has been mired in litigation. A provision in the law preventing a surcharge or line-item specifically denoting an entity raising prices due to the tax (passing on to customers) was struck down for violating the First Amendment."

The rest of the tax remains in place but is facing legal scrutiny on other fronts.

"Opponents allege the Maryland measure also violates, among other things, the federal Internet Tax Freedom Act, which established 'a moratorium on the imposition of state and local taxes that would interfere with the free flow of interstate commerce over the internet.'

"Other states have similarly faced legal challenges in implementing a tax on digital advertising – meaning a protracted legal battle would be inevitable should the measure pass in Pennsylvania," Sodini says.

And then there's the concern about the impact of taxing digital advertising, with some members pushing back on the notion that the effects of the tax would be confined to wealthy tech corporations.

"The GRT is not levied against the consumer directly but can be passed on to the consumer; lawmakers mentioned that some utilities and phone carriers already subject to the GRT explicitly do so," Sodini says.

As such, Sodini says businesses which advertise on the affected platforms may be forced to bear the burden of the tax through higher prices, which could then be passed on to the consumer.

"This would be more detrimental to smaller businesses and those with lower profit margins that cannot as easily absorb the cost increase. Note, too, that some advertisements for services directed at seniors would likely be affected, including medical, healthcare and financial services**.**

"That could lead to a situation where prices rise in tandem with property tax and rent rebates," the think tank scholar predicts. "Furthermore, continuing to tax and regulate businesses, large or small, is only going to dampen business activity and investment in the commonwealth."

And here's the kicker: While Sodini says the Legislature has rightly recognized the need to put more money back into the pockets of taxpayers and for more school property tax relief, he says it can be done without expanding the gross receipts tax.

One option would be to reevaluate the purposes of gaming tax revenues and using them as corporate wealthfare for questionable "economic development" projects, including subsidies for Pittsburgh International Airport and heavily subsidized sports stadiums.

Another would be to use expected new taxes from "skill games."

"Additionally, reining in expenditures in the state's general fund would free up more revenue elsewhere to be put toward property tax relief," Sodini says, adding that examining the state's targeted subsidies and incentives would also be more prudent than introducing a new tax.

"For example, the governor's 2026-27 budget proposal projects that a data center equipment sales-tax exemption could cost more than $1.7 billion over the next five years. As the Allegheny Institute has repeatedly reiterated, relying on taxpayer-funded corporate handouts to attract investment is poor public policy and indicative of an unwelcoming business environment."

And last but certainly not least, Sodini says "it's also worth mentioning the excessive spending by school districts, which undoubtedly contributes to significant property tax burdens in the first place. … [S]tate taxpayers are already funding thousands of dollars more per pupil beyond the state average in just a few districts in Allegheny County, despite little, if any, discernable academic improvements."

Reminding that Pennsylvania's woeful economic performance and desperate need for population and job growth is well-documented, Sodini says implementing pro-growth strategies to bolster the tax base would be a more sensible and sustainable solution to fund school property tax relief in the commonwealth.

"As a result, the state – and local governments – would be less reliant on gaming revenues -- or new tax sources -- to shore up finances," Sodini concludes.

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