



# This Week in State Tax (TWIST)

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## Multistate: Digital Advertising Tax/Fee Updates

While Maryland is currently the only state that imposes a tax on digital advertising services, other states are currently considering the enactment of similar taxes or fees. Last month, the California Senate passed legislation ([Senate Bill 1327](#)) that, if enacted, would adopt the “Data Extraction Mitigation Fee Law.” Under the law, a new 7.25 percent tax would be imposed on gross receipts derived from data extraction transactions in California. A “data extraction transaction” is generally a transaction in which a taxpayer sells user information or access to users to advertisers and engages in a barter transaction of providing services to a user in exchange for the ability to display advertisements to the user or collect data about the user. Gross receipts would be deemed to be derived from data extraction transactions if they were derived from sales of advertising services on a digital interface. The tax would not apply to persons deriving less than \$2.5 billion annually from such transactions in California. Gross receipts derived from data extraction transactions would be deemed to be in California if the user is in California. A “user” means an individual or other person who accesses the services of a taxpayer directly or indirectly with a digital interface. The bill would become effective on January 1 of an unspecified year and has not yet advanced in the Assembly.

In the District of Columbia, the Tax Revision Commission recently issued a revised list of recommended tax changes that includes adopting a new data excise tax imposed on businesses extracting data from over 150,000 DC residents. The tax would be imposed at a rate of \$2 per participant per year; the revised [list](#) includes few additional details on the recommended tax. In Nebraska, digital advertising tax bills that were in play during the regular legislative session failed to advance. However, Governor Jim Pillen recently called a special session to address property tax reform. Recall, a digital ad tax was previously suggested as a means of raising revenue to fund property tax relief.

Finally, although the litigation over the constitutionality of Maryland’s digital advertising tax is still pending in state court, there has been an update on the lawsuit that remained in federal court. The issue in federal court was whether the “pass-through” prohibition in Maryland’s law, which prevents taxed companies from passing on the costs of the tax to their advertising customers “by means of a separate fee, surcharge, or line-item,” violates the First Amendment as a content-based regulation of speech. Just recently, a federal district court judge dismissed the suit on the basis that the plaintiffs had not shown that the “pass-through prohibition” lacks a “plainly legitimate sweep” or that a substantial number of the statute’s applications are unconstitutional. Please stay tuned to TWIST for more digital advertising tax updates.

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