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Rep. Becky Beard, Chair
Taxation Committee
Montana House
Helena, MT

February 16, 2021

RE: Opposition to LB 233 – New Tax on Montana Businesses.

We ask that you **not advance** HB 363 and not follow Maryland’s mistakes by enacting HB 363:

- Creates a new tax that will fall primarily on Montana businesses already struggling to survive; and
- Creates a new unconstitutional tax that is already facing legal challenges in Maryland.

When the Democrat-controlled Maryland State Legislature passed this same tax, mostly along party lines, Republican Governor Hogan vetoed the bill, recognizing its costs to Maryland businesses and legal infirmities. But voting again along party lines, the Democrats in Maryland recently overrode the Governor’s veto and now the law is already being challenged.

Although HB 363 is sold as a tax on “large tech platforms,” it is really only a tax felt by Montana struggling businesses. Today, as businesses slowly reopen during the ongoing COVID pandemic, they are turning to online advertisements to reach customers. But HB 363 will add additional costs to these advertisements—and at a time when businesses are already struggling. That’s because, much like any tax imposed on a business, the costs are often pushed down to its customers: in this case, Montana small businesses.

In addition to adding a new tax on Montana businesses, HB 363 represents a waste of government resources as the state will be forced to fight a losing battle in the courts. Attached to this testimony we share a legal analysis prepared by NetChoice counsel of the same tax, Maryland House Bill 732. This analysis identifies severe legal flaws in HB 732, which will cause the same expensive and wasteful legal proceedings against HB 363, if enacted.

As detailed in the attached, these new taxes include a facial violation of the federal Internet Tax Freedom Act (“ITFA”), 47 U.S.C. § 151. ITFA explicitly prohibits discriminatory taxes on internet services and transactions. These new taxes facially discriminatory since it imposes this new tax only on digital advertising, and not on other forms of advertising such as billboards, magazines, newspapers, radio, and television.

We ask that you not follow the Maryland Democrats into a new tax on Montana businesses and not advance HB 363.

Thank you for considering our views and please let us know if we can provide further information.

Sincerely,

Carl Szabo
Vice President & General Counsel
NetChoice¹

¹ The views of NetChoice do not necessarily represent the views of each of its members.