

**Massachusetts H. 3224, S. 2004, and S. 2017 –
Digital Advertisement Taxes**

Letter of Opposition

October 28, 2025

**Massachusetts Legislature
Joint Committee on Revenue**

Dear Chairs Madaro, Eldridge, and members of the committee,

On behalf of NetChoice, a trade association working to make the Internet safe for free enterprise and free expression, we write to share our opposition to H. 3224, S. 2004, and S. 2017 which would levy taxes on internet advertisement in direct opposition to federal law. These proposals are tied up in litigation in other states and would cause significant harm to Massachusetts consumers and small businesses.

These Bills are Federally Preempted and Unconstitutional

First, these digital ad tax proposals are facially discriminatory under the Internet Tax Freedom Act (ITFA) definition. A state tax is discriminatory when it “is not generally imposed and legally collectible by such State...on transactions involving similar property, goods, services, or information accomplished through other means.” Id. § 1105(2)(A)(i).

The proposed taxes apply exclusively to “advertisement services on a digital interface,” defined to include “banner advertising, search engine advertising, interstitial advertising, and other comparable advertising services.” Yet it completely exempts non-digital advertising through traditional media channels like print, television, radio, and billboards. This disparity in treatment between digital and non-digital advertising is precisely what ITFA aims to prevent.

Courts have struck down similar discriminatory state taxes. In *Performance Marketing Association v. Hamer*, the Illinois Supreme Court invalidated a tax on online performance marketing because it did not apply to print performance marketing. 998 N.E.2d 54, 59-60 (Ill. 2013). The court found this differential

treatment was “expressly preempted by the ITFA” since it discriminated against electronic commerce. Massachusetts’ ad tax bills suffer from the same fatal defect by targeting only online advertising while leaving traditional advertising untaxed.

Second, these taxes violate ITFA’s prohibition on “multiple” taxation of electronic commerce. ITFA defines a multiple tax as one imposed by a state “on the same or essentially the same electronic commerce” that is also “subject to a tax imposed by another State...” without a credit for taxes paid. 47 U.S.C. § 151 note § 1105(6)(A).

The legislation’s vague sourcing provisions create a significant risk of multiple taxation. With Maryland having enacted a similar digital ad tax and other states considering comparable legislation, many digital advertising transactions could be subject to taxation by multiple states without any credit provisions. This is exactly the type of duplicative taxation that ITFA prohibits.

Third, these bills clearly fall within ITFA’s broad definition of taxes on “electronic commerce.” ITFA defines electronic commerce to include “any transaction conducted over the Internet or through Internet access, comprising the sale, lease, license, offer, or delivery of property, goods, services, or information, whether or not for consideration.” *Id.* § 1105(3).

The legislation explicitly targets advertising services delivered through “digital interfaces” including websites and applications accessed over the internet. These digital advertising services constitute “transactions conducted over the Internet” involving the “sale” and “delivery” of advertising services. The tax therefore squarely qualifies as a tax on electronic commerce subject to ITFA’s restrictions.

Given these multiple violations of ITFA’s core provisions, the Massachusetts proposals would likely be preempted and struck down by courts if enacted. The U.S. Supreme Court has repeatedly emphasized that ITFA establishes a clear federal prohibition on discriminatory state taxation of electronic commerce that states cannot circumvent. The legislation’s targeted taxation of digital advertising, while exempting traditional advertising, represents exactly the type of discriminatory treatment that Congress aimed to prevent through ITFA.

Digital Ad Taxes Harm Massachusetts Small Businesses and Consumers

Beyond the constitutional questions raised by the digital ad tax provision is the more fundamental one: who has to pay this tax? While it is often marketed as a tax on the largest online advertisers, the reality is that the cost of a digital ad tax is borne by consumers and small businesses.

Costs will roll downhill to the little guys. Small businesses that utilize advertising services to compete on a national and global scale will pay this tax. Consumers who want to support their friends, neighbors, and community institutions will pay this tax. No citizen of Massachusetts benefits when prices increase, workers are laid off, and businesses shutter. The internet is a major source of opportunity for thousands of Bay Staters. Don't undercut that opportunity with an unconstitutional and ill considered tax.

The negative effects to businesses and consumers has been well recognized in other states where these bills have been introduced. Some have included additional provisions forcing businesses not to disclose increased prices associated with these measures. States like Maryland were well aware that if their tax provisions passed, prices would jump and politicians would be blamed. NetChoice sued, claiming that such a gag provision violated the First Amendment rights of our member companies. Just this month those rights were vindicated by the U.S. District Court for the District of Maryland.¹

Conclusion

As ever, NetChoice encourages lawmakers to avoid passing legislation that conflicts with federal law and discriminates against digital commerce and expression. We appreciate the opportunity to clarify our opposition to H. 3224, S. 2004, and S. 2017 and we offer ourselves as a resource to discuss this issue with you in further detail.

Sincerely,

Zachary Lilly
Deputy Director of State and Federal Affairs
NetChoice

NetChoice is a trade association that works to make the internet safe for free enterprise and free expression.

¹ [NetChoice Wins Permanent Block of Maryland Censorship Provision in Digital Ad Tax Case - NetChoice \(2025\)](#)