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KPMG report: States proposing taxation of online ads, personal data, social media companies (CT, IN, NY, OR, WA)

In 2020, there were proposals in certain jurisdictions—District of Columbia, Maryland, Nebraska, and New York—to impose a new tax on revenues from digital advertising or expand the state sales tax to sales of digital advertising.

In 2021, similar legislation and new proposals that are aimed at sales of personal data or social media companies have been introduced in other jurisdictions.

- **Connecticut:** House Bill 5645 would impose tax on a social media provider's apportioned annual gross revenue derived from social media advertising services in Connecticut. Revenue from the tax would be dedicated, in part, to fund online bullying-prevention efforts and training for social isolation and suicide prevention. At this point, there is no proposed language that sets forth the tax rate, apportionment, or other details on the new tax. Another bill (House Bill 6187) proposes to increase a number of taxes generally and impose a new 10% tax on the annual gross revenues derived from digital advertising services in the state for any business with annual world-wide gross revenues exceeding $10 billion.

- **Indiana:** House Bill 1312, if enacted, would adopt a new social media surcharge tax that would be imposed on social media providers with more than one million active Indiana account holders (defined as those with an internet provider (IP) address in Indiana or information showing residence in the state), that have annual gross revenue from social media advertising services in Indiana of at least $1 million, and that derive economic benefit from data individuals in Indiana share with the company. The surcharge would be equal to: (1) the annual gross revenue derived from social media advertising services in Indiana in a calendar year multiplied by 7%; plus (2) the total number of the social media provider's active Indiana account holders in a calendar year multiplied by $1 (one dollar). To determine the amount of annual gross revenue derived from social media advertising in Indiana, taxpayers would apportion their revenue using a formula that considers the amounts of Indiana social media advertising revenues over annual gross revenues from social

media advertising services in the United States (no further delineation is provided in the bill). Another bill (House Bill 1572) would require social media providers with more than one million active Indiana users to pay an annual fee of $5 per Indiana account holder per year. Proceeds from the two Indiana bills would be allocated to preventive services for bullying, social isolation and suicide, and to the expansion of rural broadband.

- **New York State:** Assembly Bill 734 and Senate Bill 302 would extend the state's sales and use tax to sales of digital advertising (except those for resale). Revenue from the sales tax would be used to provide zero-interest refinancing of eligible student loans. New York Assembly Bill 946 would impose a 5% tax on the gross income of every corporation that derives income from the data individuals in New York share with such corporations. Details as to how the tax would be computed are sparse, but the bill sets forth details on how revenues from the tax would be shared with New York residents. A fourth proposed New York bill (Senate Bill 1124) would impose a tax on the annual gross revenues derived from providing digital advertising services in New York. The rate of this tax would be based on the taxpayer's overall global annual revenues.

- **Oregon:** House Bill 2392, if enacted, would impose a 5% gross receipts tax on the privilege of engaging in the business of selling taxable personal information at retail in Oregon. The tax base, which would include consideration from other than cash and cash equivalents, is based on receipts generated from selling personal information of individuals with an Oregon IP address. "Personal information" would be defined to include information that "identifies, relates to, describes or is capable of being associated with an individual" but not including photographs. If enacted, the tax would be imposed on receipts from sales made on or after January 1, 2022, and returns would be due quarterly.

- **Washington State:** House Bill 1303, if enacted, would extend the business and occupation (B&O) tax to "every person engaging within this state in the business of making sales of personal data or exchanging personal data for consideration." The term "engaging in business" in Washington would be measured by the state's regular B&O economic nexus standard. The tax would be equal to the gross income of the business multiplied by the rate of 1.8%. Gross income from the sale of personal information attributable to Washington State would be calculated using a ratio, "expressed as a percentage, that the number of Washington addresses in the personal information bears to all addresses in the personal information," provided that only personal information used to generate income of the business is considered in the calculation. If the taxpayer is unable to attribute the gross income of the business using this method, a population method or some other reasonable method allowed by the Department of Revenue would have to be used to attribute receipts to Washington. If enacted, the proposal would be effective on January 1, 2022. The legislation also would impose an annual information reporting obligation on entities selling personal information, effective September 1, 2022.

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