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KPMG report: Update on digital advertising tax (Maryland, Texas, West Virginia)

Legislation in Maryland, Texas, and West Virginia concerns the taxation of digital advertising.

- **Maryland:** Senate Bill 787 was passed the Maryland Senate and been set for a hearing in the Maryland House Ways and Means Committee for March 25, 2021.

  The bill would extend the effective date of the state's digital advertising tax to tax years beginning after December 31, 2021. The tax originally became effective for tax years beginning after December 31, 2020.

  Senate Bill 787 also would redefine "digital advertising services" to exclude services of broadcast entities and news media entities. The bill defines "broadcast entity" to include "any entity primarily engaged in the business of operating a broadcast television or radio station." The term "news media entity" is defined to include "any entity primarily engaged in the business of newsgathering, reporting, or publishing articles or commentary about news, current events, culture, or other matters of public interest." The definition specifically excludes entities that primarily republish third-party content. The bill would prohibit taxpayers subject to the digital advertising tax from directly passing the cost of the tax on to their customers by means of a separate fee, surcharge or line-item.

- **Texas:** House Bill 4467 would impose new tax on the annual gross revenues derived from digital advertising services. The bill is substantially similar to the Maryland digital advertising tax legislation, and would define digital advertising services to mean advertisement services on a digital interface—including advertisements in the form of banner advertising, search engine advertising, interstitial advertising, as well as comparable advertising services. The Texas bill would direct the Comptroller to adopt rules regarding reporting and estimated tax payment requirements. As with the Maryland law, companies with (1) global annual gross revenues of $100 million or more and (2) digital advertising revenues sourced to the state of $1 million or more, would be subject to the tax. The tax would apply a four-tiered rate regime based on global revenue, with the tax rate to range from 2.5% up to 10% for taxpayers with greater than $15 billion in global annual revenue.

- **West Virginia:** Senate Bill 605 would impose new tax on the annual gross revenues derived from digital advertising services. The bill is substantially similar to the Maryland digital advertising tax legislation. The legislation would define digital advertising services to mean advertisement services on a digital interface, including advertisements in the form of banner advertising, search engine advertising, interstitial advertising, as well as comparable advertising services. The West Virginia legislation would specify annual reporting and quarterly estimated tax requirements. Companies with global annual gross revenues of $100 million or more and digital advertising revenues sourced to the state of $1 million or more, would be subject to the tax. The tax would apply a four-tiered rate regime based on global revenue, with the tax rate ranging from 2.5% to 10% for taxpayers with greater than $15 billion in global annual revenue.