

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 605

FISCAL
NOTE

BY SENATOR PHILLIPS

[Introduced March 9, 2021; referred
to the Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §11-29-1, §11-29-2, §11-29-3, §11-29-4, and §11-29-5, all relating to the
 3 promulgation of a tax on digital advertisement in the State of West Virginia; defining terms;
 4 providing for a tax on gross revenue of digital advertising in the state; establishing gross
 5 revenue tax rates digital advertising; establishing digital advertising tax return procedure;
 6 and establishing procedure for the payment of the gross revenue digital advertising tax.

Be it enacted by the Legislature of West Virginia:

ARTICLE 29. DIGITAL ADVERTISING TAX.

§11-29-1. Definitions.

1 As used in this article:

2 “Digital advertising” the use of websites, including, but not limited to social media sites, for
 3 the purpose of advertising to site users.

4 “Annual gross revenues” means income or revenue from all sources, before any expenses
 5 or taxes, computed according to generally accepted accounting principles.

6 “Assessable base” means the annual gross revenues derived from digital advertising
 7 services in the state.

8 “Digital advertising services” includes advertisement services on a digital interface,
 9 including advertisements in the form of banner advertising, search engine advertising, interstitial
 10 advertising, and other comparable advertising services.

11 “Digital interface” means any type of software, including a website, part of a website, or
 12 application, that a user is able to access.

13 “User” means an individual or any other party who accesses a digital interface with a
 14 device.

§11-29-2. Tax on Digital Advertising – General Provisions.

1 (a) Tax levied- A tax is imposed on annual gross revenues of a party derived from digital
 2 advertising services in the state.

3 (b) (1) For purposes of this title, the part of the annual gross revenues of a party derived
4 from digital advertising services in the state shall be determined using an apportionment fraction:

5 (A) The numerator of which is the annual gross revenues of a party derived from digital
6 advertising services in the state; and

7 (B) The denominator of which is the annual gross revenues of a party derived from digital
8 advertising services in the United States.

9 (2) The West Virginia Tax Commissioner shall adopt regulations that determine the state
10 from which revenues from digital advertising services are derived.

§11-29-3. Digital advertising gross revenues tax rate.

1 (a) The digital advertising gross revenues tax rate is:

2 (1) 2.5% of the assessable base for a party with global annual gross revenues of
3 \$100,000,000 through \$1,000,000,000;

4 (2) 5% of the assessable base for a party with global annual gross revenues of
5 \$1,000,000,001 through \$5,000,000,000;

6 (3) 7.5% of the assessable base for a party with global annual gross revenues of
7 \$5,000,000,001 through \$15,000,000,000; and

8 (4) 10% of the assessable base for a party with global annual gross revenues exceeding
9 \$15,000,000,000.

§11-29-4. Digital advertising returns.

1 (a) Each party that, in a calendar year, has annual gross revenues derived from digital
2 advertising services in the state of West Virginia of at least \$1,000,000 shall complete, under oath,
3 and file a return, on or before April 15 the next year.

4 (b) (1) Each party that reasonably expects the party's annual gross revenues derived from
5 digital advertising services in the State of West Virginia to exceed \$1,000,000 shall complete,
6 under oath, and file a declaration of estimated tax, on or before April 15 of that year.

7 (2) A party required under paragraph (1) of this subsection to file a declaration of estimated

8 tax for a taxable year shall complete and file with the comptroller a quarterly estimated tax return
9 on or before June 15, September 15, and December 15 of that year.

10 (c) A party required to file a return under this section shall file with the return an attachment
11 that states any information that the West Virginia Tax Commissioner requires to determine annual
12 gross revenues derived from digital advertising services in the state.

13 (d) A party required to file a return under this section shall maintain records of digital
14 advertising services provided in this state and the basis for the calculation of the digital advertising
15 gross revenues tax owed.

§11-29-5. Payment of digital advertising tax.

1 (a) Except as provided in subsection (b) of this section, each party required to file a return
2 under §11-29-1 et seq. of this code shall pay the digital advertising gross revenues tax with the
3 return that covers the period for which the tax is due.

4 (b) A part required to file estimated digital advertising gross revenues tax returns under
5 §11-29-4(b) of this code shall pay:

6 (1) At least 25% of the estimated digital advertising gross revenues tax shown on the
7 declaration or amended declaration for a taxable year:

8 (A) With the declaration or amended declaration that covers the year; and

9 (B) With each quarterly return for that year; and

10 (2) Any unpaid digital advertising gross revenues tax for the year shown on the party's
11 return that covers that year with the return.

NOTE: The purpose of this bill is to promulgate a tax on digital advertising in the State of West Virginia.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.