Digital Advertising Gross Revenues Tax

I. Overview

Maryland law imposes a tax on annual gross revenues derived from digital advertising in the State of Maryland. Any person[1] who has annual gross revenues from digital advertising services in Maryland of at least $1,000,000 must file a digital advertising gross revenues ("DAGR") tax return, as well as quarterly estimated returns. There are four applicable tax rates, depending on the amount of a person's global annual gross revenue.[2]

The Maryland DAGR tax provisions are codified at Title 7.5 of the Tax-General Article, Annotated Code of Maryland. The regulations at Title 03, Subtitle 12 of the Code of Maryland Regulations ("COMAR") provide additional details concerning the application of the DAGR tax.

Taxpayers began remitting DAGR tax in tax year 2022. After additional study of digital advertising industry practices, the Comptroller publishes this Technical Bulletin to provide further guidance on the types and sources of revenue that are subject to the DAGR tax. As explained below, to be subject to the DAGR tax, digital advertising services must be both programmatic and conveyed visually. These attributes are discussed in Section IV of this Technical Bulletin.

II. Definitions

In this Technical Bulletin, the following terms have the meanings indicated.

A. Advertising

"Advertising" means the action of calling something to the attention of the public especially by paid announcements.[3] Similarly, "advertise" means "to present (something or oneself) to the public in a way that is intended to attract customers."[4] The terms are commonly used within the marketing industry to describe a publisher's conveyance of an advertiser's promotional message to a potential recipient or audience.[5]

B. Advertising services

"Advertising services" are services provided by a person (i.e., a publisher) to convey an advertiser's promotional message. Advertising services enable or co-occur with advertisements, and processes that generate advertisements. "Advertising services" includes services that match advertisers with publishers' advertising opportunities, target audiences and recipients, and generate and customize promotional messages to specific advertising

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[1] The term "person" in this Technical Bulletin means "an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind and any partnership, firm, association, corporation, or other entity." Md. Code Ann., Tax-Gen. § 1-101(p).
[2] See Md. Code Ann., Tax-Gen. § 7.5-103 for applicable tax rates.
[3] Merriam-Webster, "Advertising," available at https://www.merriam-webster.com/dictionary/advertising.
[4] Merriam-Webster, "Advertise," available at https://www.merriam-webster.com/dictionary/advertise.
[5] Advertising transactions typically involve at least three parties: (1) The advertiser is the entity that pays for promotional message conveyance. (2) The publisher is the entity that generates the advertising opportunity and, therefore, can sell it to an advertiser. A publisher provides an advertising service to an advertiser. (3) The user (also called the recipient, audience, target, or consumer) is the entity that potentially receives the promotional message.

opportunities, among other related functions.

C. Annual gross revenues

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

D. Assessable base

"Assessable base" means the annual gross revenues derived from digital advertising services in Maryland.

E. Banner advertising

"Banner advertising" is a form of graphical advertising embedded into a webpage, typically including a combination of static and animated images, text, and/or video designed to convey a marketing message and/or cause the user to take an action.

F. Broadcast entity

"Broadcast entity" means an entity that is primarily engaged in the business of operating a broadcast television or radio station.

G. Digital

"Digital" means of, relating to, or utilizing devices constructed or working by the methods or principles of electronics. "Digital" also means composed of data in the form of especially binary digits.[6]

H. Digital advertising services

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

"Digital advertising services" does not include advertisement services on digital interfaces owned or operated by or operated on behalf of a broadcast entity or news media entity.

I. Digital interface

"Digital interface" means any type of software, including a website, part of a website, application, that a user is able to access.

J. Interstitial advertising

"Interstitial advertising" is advertising that occurs before, in between, or after a primary content experience.

K. News media entity

"News media entity" means an entity engaged primarily in the business of newsgathering, reporting, or publishing articles or commentary about news, current events, culture, or other matters of public interest.

"News media entity" does not include an entity that is primarily an aggregator or republisher of third-party content.

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[6] Merriam-Webster, "Digital," available at https://www.merriam-webster.com/dictionary/digital.

L. Search engine advertising

"Search engine advertising" is a form of advertising that seeks to promote websites by increasing their visibility on a search engine results page.

M. User

"User" means an individual or any other person who accesses a digital interface with a device.

III. General Information

A. Person subject to the DAGR tax

The DAGR tax is imposed on a person that has annual gross revenues derived from digital advertising services[7] in Maryland.

B. Returns and payments required

Each person that, in a calendar year, has annual gross revenues derived from digital advertising services in Maryland of at least $1,000,000 must file a DAGR tax return, Form 600, with the Comptroller on or before April 15 of the next year. The person must submit payment of the DAGR tax with the return, unless all tax due has previously been paid with the person's quarterly estimated tax returns.

During the calendar year, each person that reasonably expects annual gross revenues derived from digital advertising services in Maryland of at least $1,000,000 must file a quarterly estimated tax return, Form 600D, for each quarter of the calendar year. Quarterly estimated tax returns must be filed on or before April 15, June 15, September 15, and December 15 for each calendar year. A person must pay at least 25% of the estimated DAGR tax with each quarterly return.

A person's DAGR tax liability must be determined using the calendar year, regardless of whether the person uses a different period as their tax year for income tax purposes.

All quarterly and annual returns should be filed electronically to ensure timely receipt and processing. For periods beginning after December 31, 2026, all returns must be filed electronically.

C. Calculating the tax

Calculating the DAGR tax requires determining a person's global annual gross revenues and the person's assessable base.

The assessable base is determined using an apportionment fraction. The numerator of the fraction consists of the number of devices that have accessed[8] the digital advertising services from a location in Maryland. The denominator consists of the number of devices that have accessed the digital advertising services from any location.

The location of a device is determined using the totality of the data within the person's

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[7] "Digital advertising services" encompass several types of services, which are discussed in greater detail in Part IV of this Technical Bulletin. Not every type of advertising service that occurs through digital means is taxable.

[8] "Access" means the transmittal, display, embedding, or other availability to a user for viewing or interaction. COMAR 03.12.01.01B(1).

possession or control, including both technical[9] and nontechnical information included in the contract for digital advertising services. If the location of a device cannot be determined, the device is excluded from both the numerator and the denominator of the apportionment fraction, without any adjustment to the amount of revenue to be apportioned.

The DAGR tax rate varies based on a person's global annual gross revenues. The tax rates are as follows:

1. 2.5% of the assessable base for a person with global annual gross revenues of $100,000,000 through $1,000,000,000;
2. 5% of the assessable base for a person with global annual gross revenues of $1,000,000,001 through $5,000,000,000;
3. 7.5% of the assessable base for a person with global annual gross revenues of $5,000,000,001 through $15,000,000,000; and
4. 10% of the assessable base for a person with global annual gross revenues exceeding $15,000,000,000.

Unlike the Maryland sales tax, which is imposed on the purchaser of tangible personal property, a taxable service, a digital code, or a digital product, the DAGR tax is imposed on the provider of digital advertising services. A person may not directly pass on the cost of the tax imposed to a customer who purchases digital advertising services from the person by means of a separate fee, surcharge, or line-item. In other words, the entire purchase price, including any increases to the purchase price to account for or recover the DAGR tax, constitutes gross revenues subject to the tax.

D. Refunds

To request a refund of an overpayment of DAGR tax paid in the immediately preceding year, you must file a DAGR tax return, Form 600, as described in Section III.B. of this Technical Bulletin. To request a refund of an overpayment of DAGR tax for a year for which a return has already been filed, you must file an amended DAGR tax return, Form 600, with the "Amended Return" box checked. An amended return requires an explanation of the reason for filing the amended return. Include documentation that demonstrates or otherwise explains any change to revenues previously reported or changes to the Maryland apportionment factor, as well as any sales records and/or technical information that forms the basis for the refund request. A claim for refund of the DAGR tax may not be filed after 3 years from the date the tax was paid.[10]

E. Recordkeeping

A person required to file a DAGR tax return must maintain records of digital advertising services provided in Maryland and the basis for calculation of the DAGR tax owed.

F. Exclusions

The DAGR tax is imposed on gross revenues derived from digital advertising services. "Digital advertising services" does not include advertisement services on digital interfaces owned or operated by, or on behalf of, a broadcast entity or news media entity.

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[9] Technical information that may be used to determine a device's location includes, but is not limited to: Internet protocol, geolocation data, device registration, cookies, industry standard metrics, or any other comparable information. COMAR 03.12.01.02C(3).

[10] Md. Code Ann., Tax-Gen. § 13-1104(a).

IV. Digital Advertising Services Explained

The DAGR tax is imposed on annual gross revenues derived from digital advertising services in Maryland. To be subject to the DAGR tax, digital advertising services must be both programmatic and conveyed visually.

“Digital advertising services” refers to advertisement services on a digital interface. In defining “digital advertising services,” the General Assembly specifically enumerated three types of advertising: banner advertising, search engine advertising, and interstitial advertising.[11] “Digital advertising services” also includes “other comparable advertising services.” These three enumerated types of digital advertising possess in common certain attributes, namely that the services are programmatic and visually conveyed. Other advertising services are comparable to banner advertising, search engine advertising, and interstitial advertising when the advertising services are both programmatic and visually conveyed. Whether gross revenues derived from digital advertising services are subject to the DAGR tax depends on whether the services are both programmatic and visual.

A. Programmatic

The programmatic attribute of digital advertising refers to the capacity to automate advertising services. Digital advertising is automated, in that it is performed by employing technology that uses computer- or software-driven workflow or machine learning algorithms to deliver advertisements to audiences based on advertiser-defined parameters. These parameters may include precise targeting data, such as potential audience’s geographic locations; the types of devices the audience members use; and audience members’ recent online search behaviors and browsing history, shopping and purchase history, and/or biographical and other information compiled in databases. The programmatic attribute enables digital advertising opportunities to be sold in real time - often within milliseconds of when an advertising opportunity becomes available or likely.

The programmatic aspect of digital advertising allows advertisers and publishers of digital advertising to optimize spending, in part by allowing them to more accurately measure individual recipient conversions, such as consumer clicks, product purchases, or other evidence that an advertisement reached its intended audience or achieved its intended purpose (e.g., that it resulted in a sale). Digital advertising enables automated experiments and historical analysis to identify conversion-maximizing combinations of advertisement messages, contexts, and recipients. These automated processes can be directed to act on statistical learning within pre-specified constraints with human oversight but with infrequent human intervention.

To be subject to the DAGR tax, digital advertising must be both programmatic and visual. Advertising services that are not automated are considered non-programmatic. Revenue derived from non-programmatic advertising services is not subject to the DAGR tax.

B. Visual

Banner advertising, search engine advertising, and interstitial advertising share a second common attribute: they convey messages visually. Although such advertisements can often have an audio element, an audio element is not a necessary component. To be subject to the DAGR tax, digital advertising must be both programmatic and visual. Revenue derived from advertisements that are conveyed in a purely audio format is not subject to the DAGR tax.

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[11] Md. Code Ann., Tax-Gen. § 7.5-101(e)(1).

C. Examples

Examples of digital advertising that is programmatic and visual include programmatic banner advertising, programmatic search engine advertising, programmatic interstitial advertising, other programmatic display advertising, Internet programmatic video advertising, multichannel video programming distributor ("MVPD") programmatic advertising over cable television or satellite television,[12] programmatic advertising on social media, programmatic native advertising,[13] and programmatic incentivized/rewarded advertising.[14] Gross revenues derived from these advertising services are subject to the DAGR tax.

Digital advertising that is subject to the DAGR tax can be conveyed both on and off the Internet. Examples of taxable digital advertising conveyed via the Internet include programmatic advertising on search engines, websites, and web applications. Examples of taxable digital advertising that are not conveyed via the Internet include MVPD programmatic advertising on television conveyed via satellite, cable, or digital fiber-optic distribution systems.

Gross revenues derived from advertising services that are not programmatic and conveyed visually are not subject to the DAGR tax. Examples include digital non-programmatic broadcast television advertising, digital non-programmatic out-of-home advertising, digital and satellite radio advertising, MVPD non-programmatic video advertising, and Internet non-programmatic video or audio advertising.

V. Statutory History

A. 2021 enactment

Legislation establishing the DAGR tax was first introduced during the 2020 legislative session. The Maryland General Assembly passed House Bill 732, under which the DAGR tax would have been applicable to all tax years beginning after December 31, 2020. Governor Lawrence J. Hogan, Jr. vetoed the bill on May 7, 2020.

The General Assembly voted to override the Governor's veto during the 2021 regular legislative session. The bill became law on February 12, 2021. The bill was enrolled as Chapter 37, Acts of 2021.

B. 2021 amendments

Later during the 2021 regular legislative session, the General Assembly enacted Senate Bill 787 (enrolled as Chapter 669, Acts of 2021), which amended Chapter 37 (2021). Chapter 669 excluded from the definition of "digital advertising services" any advertisement services on digital interfaces owned or operated by or on behalf of a broadcast entity or news media entity. Chapter 669 also added a prohibition against "directly pass[ing] on the cost of the [DAGR tax] to a customer who purchases the digital advertising services by means of a separate fee, surcharge, or line-item."

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[12] MVPDs include television distribution services offering traditional "cable bundles" of television networks on private networks.

[13] Native advertisements are designed to "blend in" (to varying degrees) with regular editorial content, often appearing within publishers' content layouts, rather than in designated advertisement slots.

[14] Incentivized/rewarded advertising encompasses advertising that compensates audience members in exchange for measurable advertising interactions. For example, a video streaming service might reward an audience member by presenting an entire video without advertisements as long as the audience member allows an entire advertisement presented before the video to run in its entirety without skipping. Other audience behavior that these advertisements reward or incentivize can include clicking on an advertisement, downloading an advertised digital product, or completing a survey.

Finally, Chapter 669 delayed the initial implementation of the DAGR tax to all taxable years beginning after December 31, 2021.

C. 2023 amendments

Senate Bill 667 (enrolled as Chapter 49, Acts of 2023) made a technical correction to Tax-General § 7.5-201(a), correcting a grammatical error in the text.

D. 2024 amendments

House Bill 455 (enrolled as Chapter 729, Acts of 2024) and Senate Bill 677 (enrolled as Chapter 730, Acts of 2024) amended Tax-General § 7.5-201 to add subsection (d), which requires DAGR tax returns to be filed electronically for periods beginning after December 31, 2026.

E. 2025 amendments

House Bill 546 (enrolled as Chapter 677, Acts of 2025) and Senate Bill 605 (enrolled as Chapter 678, Acts of 2025) amended Tax-General § 13-508 by adding the DAGR tax to the list of taxes for which taxpayers must initially submit to the Comptroller an application for revision of an assessment or claim for refund, prior to filing an appeal in the Maryland Tax Court, effective January 1, 2026. This applies to assessments of the DAGR tax made after December 31, 2025. The bills also amended Tax-General § 13-509 to allow the Comptroller to correct an erroneous assessment, notwithstanding a person's failure to timely submit an application for revision or claim for refund of an assessment of the DAGR tax to the Comptroller under § 13-508.

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