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**Stephanie T. Do**  
*Senior Tax Counsel*  
(202) 484-5228  
[sdo@cost.org](mailto:sdo@cost.org)

February 17, 2021

Maryland General Assembly  
Senate Budget and Taxation Committee

**Re: In Opposition to Senate Bill 787, Digital Advertising Tax – Exemption and Restriction**

Dear Chair Guzzone, Vice Chair Rosapepe, and Members of the Committee,

Thank you for the opportunity to provide testimony today on behalf of the Council On State Taxation (COST) in opposition to Senate Bill 787 (S.B. 787), Digital Advertising Gross Revenues Tax – Exemption and Restriction, which would amend the definition of “digital advertising services” under the new gross revenues tax enacted by House Bill 732 (2020) (the Digital Advertising Tax) to exclude digital interfaces owned, or operated by, or operated on behalf of, a broadcast entity or news media entity. S.B. 787 would also prohibit a person from passing the cost of the Digital Advertising Tax to a customer by means of a separate fee, surcharge, or line item.

**About COST**

COST is a nonprofit trade association based in Washington, DC. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce and today has an independent membership of over 500 major corporations engaged in interstate and international business. COST’s objective is to preserve and promote the equitable and nondiscriminatory state and local taxation of multijurisdictional business entities. Many COST members have operations in Maryland that would be negatively impacted by this legislation.

**S.B. 787 Does Not Mitigate the Deficits of the Digital Advertising Tax**

While COST appreciates the attempt to limit the scope of the Digital Advertising Tax, the bill does not alleviate the Digital Advertising Tax’s underlying violations of several core tenets of sound tax policy—transparency, fairness, economic neutrality, and effective tax administration.<sup>1</sup>

The bill also raises additional constitutional violations, further questioning the legality of the Digital Advertising Tax. The enacted Digital Advertising Tax is already expected to be embroiled in lengthy litigation, including the tax’s potential violations of: (1) the

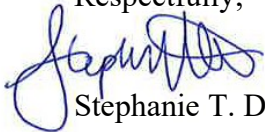
<sup>1</sup> See Letter Patrick J. Reynolds, Senior Tax Counsel, COST, to Senate Budget and Taxation Committee, Maryland General Assembly (Jan. 29, 2020), <https://cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-comments-and-testimony/012920-cost-testimony-in-opposition-to-s-2-digital-advertising-tax-final.pdf> (regarding COST’s opposition to Senate Bill 2 (2020)).

federal Permanent Internet Tax Freedom Act, which prohibits states from imposing discriminatory taxes against electronic commerce; and (2) the Commerce, First Amendment, and Equal Protection Clauses of the U.S. Constitution. Prohibiting the pass through of the cost of the Digital Advertising Tax to a customer as a separate fee, surcharge, or line item raises additional constitutional infractions against the First Amendment and the Dormant Commerce Clause.<sup>2</sup>

### Conclusion

For these reasons, COST urges members of the committee to please vote “no” on S.B. 787.

Respectfully,



Stephanie T. Do

cc: COST Board of Directors  
Douglas L. Lindholm, COST President & Executive Director

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<sup>2</sup> E.g., *BellSouth Telecomm., Inc. v. Farris*, 542 F.3d 499 (6th Cir. 2008); *Healthcare Distrib. All. v. Zucker*, 353 F.Supp.3d 235 (S.D.N.Y. 2018).