



Date: May 3, 2024

To: Members, Senate Revenue and Taxation Committee

From: Peter Blocker, Vice President of Policy

Subject: **OPPOSITION to SB 1327 (Glazer), as amended on May 2, 2024**

The California Taxpayers Association and the organizations listed below respectfully oppose SB 1327, a discriminatory 7.25 percent tax on the revenue generated from the sale of digital advertising of taxpayers with gross annual revenue exceeding \$2.5 billion. A tax on digital advertising will increase costs for California advertisers and consumers, will be met with legal challenges, and will negatively impact California's business climate.

CalTax and the organizations listed below oppose SB 1327 for the following reasons:

Increases Costs for Small California Advertisers and Raises Prices for Consumers. While framed as a "mitigation fee" on large advertising providers, the economic burden of the digital advertising tax will fall squarely on California purchasers because it is limited to revenue from advertising services in California. Advertising service providers subject to the tax would immediately raise prices for California advertisers or add the tax to their invoices, like a sales tax. The tax would make otherwise affordable and effective digital advertising channels prohibitively expensive, pricing small California businesses, nonprofits, places of worship, civic organizations, and others that advertise on digital platforms out of the market in an already inflationary economy. In addition, the tax would raise costs for small businesses buying digital advertising services, causing them to raise prices for consumers, where the ultimate burden of any tax always falls.

Unconstitutional Under ITFA. SB 1327 is similar to Maryland's first-in-the-nation digital advertising tax, enacted in 2020, which has been the subject of litigation since its passage. Maryland's elected comptroller at that time, the defendant in several of the suits concerning the digital advertising tax, has publicly stated he believes the state should no longer expend resources "to defend a law that was constitutionally questionable at the time of enactment." SB 1327 would be met with legal challenges similar to those being litigated in Maryland.

The Internet Tax Freedom Act, implemented by the Clinton administration in 1998 and made permanent by the Obama administration in 2016, prohibits discriminatory taxes on electronic commerce, defined as "any transaction conducted over the Internet or through Internet access, comprising the sale, lease, license, offer or delivery of property, goods, services, or information, whether or not for consideration." The federal law expressly prohibits states or political subdivisions from imposing "discriminatory taxes on electronic commerce."¹ SB 1327 would impose a tax on only digital advertising, in clear violation of the Internet Tax Freedom Act.

Specifically, the bill singles out online platforms with gross receipts of \$2.5 billion or more in California derived from digital advertising services. Only those platforms would be subject to the tax, while traditional forms of advertising – namely, billboards or advertisements placed in newspapers – would not be taxed.

Harms California's Business Climate. SB 1327 would create a disincentive for businesses to locate and grow in California, and would exacerbate California's reputation as a challenging state in which to do business.

Leaves Important Administration Questions for Regulations. SB 1327 omits any language regarding the sourcing or apportionment of receipts for the tax. Rather, the Franchise Tax Board would be responsible for prescribing "rules, guidelines, procedures, or other guidance" to carry out the provisions of the bill. Leaving important sourcing rules to the regulatory process ignores the important policy implications of a broad-based digital advertising tax. For instance, SB 1327

¹ 47 U.S. Code § 151, n. § 1101(a)(2).

would apply only to the gross revenue derived from digital advertising in the state. How will California determine who is in the state? Will California use a network-based tracking system? Will the state utilize Wi-Fi positioning of mobile devices? How will the state handle the growing utilization of encryption to obscure users' locations? Is it even realistically possible to reliably obtain the information necessary for sourcing?

Advertising Revenue Is Already Taxed by California. Revenue derived from online advertising is already captured under the state's corporate income tax. Imposing a new tax on digital advertising would result in double taxation, creating an onerous burden on California businesses that would undoubtedly result in increasing small businesses' operating costs.

For these reasons, CalTax and the organizations listed below respectfully oppose SB 1327.

On behalf of...

California Taxpayers Association	La Canada Flintridge Chamber of Commerce
Antelope Valley Chambers of Commerce	Laguna Niguel Chamber of Commerce
Association of National Advertisers	Morgan Hill Chamber of Commerce
California Association of Realtors	Motion Picture Association
California Attractions and Parks Association	Murrieta/Wildomar Chamber of Commerce
California Broadband and Video Association	Newport Beach Chamber of Commerce
California Business Roundtable	Oceanside Chamber of Commerce
California Chamber of Commerce	Orange County Taxpayers Association
California Retailers Association	Redondo Beach Chamber of Commerce
Carlsbad Chamber of Commerce	San Juan Capistrano Chamber of Commerce
Corona Chamber of Commerce	Santa Clarita Valley Chamber of Commerce
Council On State Taxation	Santa Maria Valley Chamber of Commerce
CTIA – The Wireless Association	Silicon Valley Leadership Group
Cupertino Chamber of Commerce	Simi Valley Chamber of Commerce
Dana Point Chamber of Commerce	Solano County Taxpayers Association
Family Business Association of California	South Bay Association of Chambers of Commerce
Garden Grove Chamber of Commerce	Southwest California Legislative Council
Greater Coachella Valley Chamber of Commerce	Technet
Greater High Desert Chamber of Commerce	Tri-County Chamber Alliance
Greater Irvine Chamber of Commerce	Tulare Chamber of Commerce
Greater San Fernando Valley Chamber of Commerce	West Ventura County Business Alliance
Huntington Beach Chamber of Commerce	
Imperial Valley Regional Chamber of Commerce	

cc: The Honorable Steven Glazer, California State Senate

The California Taxpayers Association is a nonpartisan, nonprofit association formed to support good tax policy, oppose unnecessary taxes and promote government efficiency. Established in 1926, CalTax is the oldest and largest group representing California taxpayers.