



Date: April 15, 2025

To: Members, Assembly Privacy and Consumer Protection Committee

From: Peter Blocker, Vice President of Policy

Subject: **OPPOSITION to AB 796 (Lowenthal), as amended on March 28, 2025**

The California Taxpayers Association and the organizations listed below respectfully oppose AB 796, legislation that would impose a discriminatory tax on digital advertising conducted on social media platforms. 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 AB 796 for the following reasons:

Increases Costs for Small California Advertisers and Raises Prices for Consumers. The economic burden of a digital advertising tax will fall squarely on California purchasers, as the tax imposed by AB 796 is limited to revenue from advertising services generated within California. Social media companies subject to the tax would pass the cost on to their California advertisers, either indirectly through price increases or more directly by adding the tax to their invoices, like a sales tax. The tax would make otherwise affordable and effective digital advertising channels prohibitively expensive in an already inflationary economy. In addition, the tax would raise costs for small- and medium-sized businesses that buy digital advertising services – a crucial part of the modern business plans of many small businesses – causing them to raise prices for consumers, where the ultimate burden of any tax always falls.

Unconstitutional Under ITFA. AB 796 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.” AB 796 would be met with legal challenges similar to those filed 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 Only online platforms would be subject to the tax, while traditional forms of advertising would not be taxed. AB 796 would impose a discriminatory tax on digital advertising, in clear violation of the Internet Tax Freedom Act.

Harms California's Business Climate. AB 796 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. AB 796 would put California at odds with the 49 other states, creating a new discriminatory tax on businesses operating in the state.

Legislature Would Relinquish Control to Regulators Over Critical Policy Questions. AB 796 lacks detailed language on the sourcing of receipts for the digital advertising tax. AB 796 simply states that the tax would apply to “only purchases that originate in California or purchases for advertisements distributed to persons residing in California.”

Leaving important sourcing rules to the regulatory process ignores the important policy implications of a broad-based digital advertising tax. For instance, 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? As the answers to these and other questions would have major impacts on the tax, they should be decided by elected lawmakers rather than being left open to interpretation by appointed officials at the state tax agencies.

Advertising Revenue Already Is Subject to the Corporate Income Tax. Revenue derived from online advertising is captured under the state's corporate income tax. Imposing a new tax on digital advertising would create an onerous burden on California businesses that would result in increasing small businesses' operating costs.

For these reasons, CalTax and the organizations listed below oppose AB 796.

On behalf of...

California Taxpayers Association
Association of National Advertisers
California Association of Realtors
California Attractions and Parks Association
California Chamber of Commerce
California Retailers Association
Computer and Communications Industry Association
Contra Costa County Taxpayers Association

Family Business Association of California
National Federation of Independent Businesses
Orange County Taxpayers Association
Silicon Valley Leadership Group
Solano County Taxpayers Association
Southern California Rental Housing Association
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¹ 47 U.S. Code § 151, n. § 1101(a)(2).