

1 HOUSE BILL NO. 363

2 INTRODUCED BY \*\*\*\*

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A TAX ON DIGITAL ADVERTISING SERVICES;  
5 PROVIDING THAT THE TAX IS LEVIED ON DIGITAL ADVERTISING SERVICES WITH WORLDWIDE  
6 REVENUE OF \$25 MILLION OR MORE; PROVIDING THAT THE TAX IS ASSESSED ON GROSS REVENUE  
7 DERIVED FROM DIGITAL ADVERTISING SERVICES IN THE STATE; PROVIDING FOR DISTRIBUTION OF  
8 THE TAX REVENUE; PROVIDING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; AND  
9 PROVIDING A DELAYED EFFECTIVE DATE."

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11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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13 NEW SECTION. **Section 1. Definitions.** As used in this chapter, the following definitions apply:

14 (1) "Annual gross revenue" means income or revenue from all sources, before any expenses or taxes,  
15 computed according to generally accepted accounting principles.

16 (2) "Assessable base" means the annual gross revenue derived from digital advertising services in  
17 the state.

18 (3) "Digital advertising service" means an advertisement service on a digital interface, including  
19 advertisements in the form of banner advertising, search engine advertising, interstitial advertising, and other  
20 comparable advertising services.

21 (4) "Digital interface" means any type of software, including a website, part of a website, or  
22 application, that a user is able to access.

23 (5) (a) "Person" means an individual, estate, trust, fiduciary, corporation, partnership, limited liability  
24 company, limited liability partnership, or any other legal entity.

25 (b) Unless expressly provided otherwise, the term does not include a governmental entity or a unit or  
26 instrumentality of a governmental entity.

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

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1           **NEW SECTION. Section 2. Digital advertising tax -- rulemaking.** (1) There is a digital advertising  
2 gross revenue tax imposed on each person with worldwide annual gross revenue from digital advertising  
3 services of \$25 million or more and with annual gross revenue derived from digital advertising services in the  
4 state. A tax rate of 10% is imposed on the assessable base.

5           (2) (a) The assessable base must be determined using an apportionment fraction:

6           (i) the numerator of which is the annual gross revenue of a person derived from digital advertising  
7 services in the state; and

8           (ii) the denominator of which is the annual gross revenue of a person derived from digital advertising  
9 services in the United States.

10           (b) The department shall adopt administrative rules to implement the provisions of [sections 1 through  
11 7], including determination of the state from which revenues from digital advertising services are derived.

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13           **NEW SECTION. Section 3. Tax return.** (1) Each person with worldwide annual gross revenue from  
14 digital advertising services of \$25 million or more and with annual gross revenue derived from digital advertising  
15 services in the state shall complete and file with the department a return on or before April 15 of the following  
16 year.

17           (2) (a) Each person subject to the digital advertising gross revenue tax that reasonably expects the  
18 person's annual gross revenue derived from digital advertising services in the state to exceed \$1 million in the  
19 tax year shall complete and file with the department a declaration of estimated tax on or before April 15 of the  
20 tax year.

21           (b) A person required to file a declaration of estimated tax for a tax year shall file a quarterly  
22 estimated tax return on or before June 15, September 15, and December 15 of the tax year.

23           (3) A return filed under this section must include information required by the department.

24           (4) A person required to file a return under this section shall maintain records of digital advertising  
25 services provided in the state and the basis for the calculation of the digital advertising gross revenue tax owed.

26           (5) A return or declaration filed under this section is subject to the false swearing penalties provided  
27 for in 45-7-202.

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1           **NEW SECTION. Section 4. Tax payment.** (1) Except as provided in subsection (2), each person  
2 required to file a return pursuant to [section 3] shall pay the tax due with the return that covers the period for  
3 which the tax is due.

4           (2) A person required to file an estimated digital advertising gross revenue tax return under [section  
5 3(2)] shall pay:

6           (a) at least 25% of the estimated digital advertising gross revenue tax shown on the declaration or  
7 amended declaration for a tax year with the declaration or amended declaration that covers the year and with  
8 each quarterly return for the tax year; and

9           (b) any unpaid digital advertising gross revenue tax for the year shown on the person's return that  
10 covers the year of the return.

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12           **NEW SECTION. Section 5. Audits -- records.** (1) The department may audit the books and records  
13 of any digital advertising service to ensure that the proper amount of tax imposed by [section 2] has been  
14 collected. An audit may be done on the premises of the digital advertising service or at any other convenient  
15 location.

16           (2) The department may request the digital advertising service to provide the department with books,  
17 ledgers, registers, or other documents necessary to verify the correct amount of tax.

18           (3) The digital advertising service shall maintain and have available for inspection by the department  
19 books, ledgers, registers, or other documents showing the collection of digital advertising tax for the preceding  
20 5 years.

21           (4) Except in the case of a person who, with intent to evade the tax, purposely or knowingly files a  
22 false or fraudulent return violating the provisions of this part, the amount of tax due under any return must be  
23 determined by the department within 5 years after the return is made, and the department is subsequently  
24 barred from revising the return or recomputing the tax due on it, and no proceeding in court for the collection of  
25 the tax may be instituted unless notice of any additional tax is provided within the period.

26           (5) An application for revision may be filed with the department by a digital service provider within 5  
27 years from the original due date of the return.

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