

SENATE BILL 1899

By Oliver

AN ACT to amend Tennessee Code Annotated, Title 49 and Title 67, relative to the "Tennessee Data Transaction Tax Act."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 4, is amended by adding the following as a new part:

**67-4-1301. Short title.**

This part is known and may be cited as the "Tennessee Data Transaction Tax Act."

**67-4-1302. Findings and intent.**

The general assembly finds and declares the following:

(1) The largest internet corporations use their monopolistic control of essential online platforms to extract economic rents from their users in the form of personal data. This personal data is highly valuable and acquired at a steep discount, as demonstrated by the massive profit these corporations make selling this information to digital advertisers. For the purposes of stability and equity in the tax base, such economic rents are a favorable target for taxation;

(2) Tennessee sales and use tax statutes provide that specified digital products are taxed at the state rate of seven percent (7%) and a standard local tax rate of two and one-half percent (2.5%), instead of the local tax rate in effect in a county or municipality. However, many digital transactions are hard to bring into the digital sales tax base because instead of paying a monetary fee, customers sometimes barter their personal information for access to digital

platforms. This personal information is in turn sold for use in targeted advertisements on digital platforms. To tax this consumption, leading tax economists have suggested using the receipts earned from digital data transactions as a proxy for the value of the barter;

(3) As has been noted by many, including the Organisation for Economic Co-operation and Development (OECD), the value of the consumption provided by digital platforms is typically greater as the size of its network is greater. As such, the general assembly finds that the consumption value provided by networks of a small size is negligible, especially when compared to the compliance burden that would be imposed on smaller digital platforms; and

(4) Digital advertising is not substantially similar to traditional print or broadcast advertising, as traditional advertising neither relies on the extraction of valuable personal information from users, nor does it serve as a proxy for currently untaxed consumption.

**67-4-1303. Part definitions.**

As used in this part, unless the context otherwise requires:

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

(2) "Assessable base" means the annual gross revenues derived from data transactions from digital advertising services in this state;

(3) "Commissioner" means the commissioner of revenue;

(4) "Department" means the department of revenue;

(5) "Digital advertising services":

(A) Means data transactions from advertising services on a digital interface; and

(B) Includes advertisements in the form of banner advertising, search engine advertising, interstitial advertising, and other comparable advertising services that use personal information about the people to whom the ads are being served;

(6) "Digital interface" means any type of software, including a website, part of a website, or application that a user is able to access;

(7) "Person":

(A) Means an individual, firm, partnership, association, corporation, limited liability company, trust, or other legal or business entity;

(B) Includes a receiver, executor, trustee, guardian, or other representative appointed by order of any court; and

(C) Does not include a governmental entity or a unit or instrumentality of a government entity; and

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

**67-4-1304. Tax imposed.**

(a) A data transaction privilege tax is imposed on a person's annual gross revenues that are derived from data transactions from digital advertising services in this state.

(b)

(1) The portion of a person's annual gross revenues derived from data transactions from digital advertising services in this state must be determined using an apportionment factor.

(2) The apportionment factor is a fraction, the numerator of which is the person's annual gross revenues derived from data transactions from digital advertising services in this state and the denominator of which is the person's annual gross revenues derived from data transactions from digital advertising services in the United States.

(3) The department shall promulgate rules that specify how to determine the state from which revenues from data transactions from digital advertising services are derived.

**67-4-1305. Tax rate.**

The data transaction privilege tax imposed pursuant to § 67-4-1304 is levied at the rate of nine and one-half percent (9.5%) of the assessable base and applies only to persons with an assessable base of fifty million dollars (\$50,000,000) or more.

**67-4-1306. Returns.**

(a) Each person that, in a calendar year, has an assessable base of at least fifty million dollars (\$50,000,000) shall complete and file with the department a return on or before April 15 of the following year.

(b)

(1) A person that reasonably expects that the person's assessable base will be fifty million dollars (\$50,000,000) or more shall complete and file with the department a declaration of estimated tax, on or before April 15 of that year.

(2) A person required under subdivision (b)(1) to file a declaration of estimated tax for a taxable year shall complete and file with the department a

quarterly estimated tax return on or before June 15, September 15, and December 15 of that year.

(c) A person required to file a return under this section shall file with the return an attachment that provides any information that the department requires to determine annual gross revenues derived from data transactions from digital advertising services in this state.

(d) A person required to file a return under this section shall maintain records of data transactions from digital advertising services provided in this state and the basis for the calculation of the data transaction privilege tax owed for a minimum of five (5) years.

(e) The chief executive officer, proprietor, owner, or highest-ranking manager shall sign annual and quarterly returns to certify the accuracy of the information contained therein under penalty of perjury.

**67-4-1307. Tax payment.**

(a) Except as provided in subsection (b), a person who is required to file a return under this part shall pay the data transaction privilege tax with the return that covers the period for which the tax is due.

(b) A person required to file estimated data transaction privilege tax returns under § 67-4-1306(b) shall pay:

(1) At least twenty-five percent (25%) of the estimated data transaction privilege tax shown on the declaration or amended declaration for the taxable year:

(A) With the declaration or amended declaration that covers the year; and

(B) With each quarterly return for that year; and

(2) Any unpaid digital transaction privilege tax for the year shown on the person's return that covers that year with the return.

**67-4-1308. Distribution of taxes.**

The privilege tax collected under this part, including penalties and interest, must be paid into the state treasury and earmarked and allocated as follows:

(1) Ninety-eight percent (98%) to the department of education to expand and support universal pre-kindergarten programs in each public and public charter elementary school in this state; and

(2) Two percent (2%) to the department of revenue for the administration and enforcement of this part.

**67-4-1309. Violations and penalties.**

(a) If the total amount of the digital transaction privilege tax due for the year is less than three hundred dollars (\$300), then it is a Class E felony for:

(1) A person subject to this part to knowingly:

(A) Fail to file a return;

(B) Violate § 67-4-1306 or § 67-4-1307;

(C) Fail to keep books and records as required by this part;

(D) File a fraudulent return; or

(E) Violate a rule promulgated by the department for the administration and enforcement of this part;

(2) An officer or agent of a corporation or manager, member, or agent of a limited liability company subject to this part to knowingly sign a fraudulent return filed on behalf of such corporation or limited liability company; or

(3) An accountant or other agent to knowingly enter false information on the return of any taxpayer.

(b) If the total amount of the digital transaction privilege tax due for the year is three hundred dollars (\$300) or more, then it is a Class D felony for:

(1) A person subject to this part to knowingly:

(A) Fail to file a return;

(B) Violate § 67-4-1306 or § 67-4-1307;

(C) Fail to keep books and records as required by this part;

(D) File a fraudulent return; or

(E) Violate a rule promulgated by the department for the administration and enforcement of this part;

(2) An officer or agent of a corporation or manager, member, or agent of a limited liability company subject to this part to knowingly sign a fraudulent return filed on behalf of such corporation or limited liability company; or

(3) An accountant or other agent to knowingly enter false information on the return of any taxpayer.

(c) A prosecution for an act in violation of this section must commence within three (3) years of the commission of the act.

**67-4-1310. Rulemaking.**

The commissioner shall promulgate rules and forms necessary to implement this part. Rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 2. For purposes of rulemaking, this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes, this act takes effect January 1, 2025, the public welfare requiring it.