Nebraska Legislature Considers Sales Tax on Digital Advertising

On February 13, 2020, the Nebraska Legislature’s Revenue Committee heard testimony on Legislative Bill 989, which would expand Nebraska’s sales tax base to include sales of digital advertisements.

After an introduction by the bill’s sponsor, Senator Justin Wayne, the Revenue Committee heard testimony from four witnesses, each opposing the bill. The Committee also received numerous letters in opposition, including from the Council On State Taxation, the Internet Association, and the Nebraska Press Association, along with 57 additional letters.

Summary of Legislative Bill 989

On January 14, 2020, the Nebraska Legislature introduced L.B. 989, which proposes to expand Nebraska’s existing sales and use tax law to retail sales of “digital advertisements.” The bill defines “digital advertisement” as “an advertising message delivered over the Internet that markets or promotes a particular good, service, or political candidate or message.” The bill does not contain any mechanism for sourcing digital advertisements to Nebraska. If enacted, sales of digital advertisements would be subject to sales tax, beginning October 1, 2020.

The fiscal note estimates that the bill would raise $27.1 million in revenue for FY 2020-21, $43.7 million for FY 2021-22, $47.1 million for FY 2022-23, and $50.6 million for FY 2023-24.

Revenue Committee Hearing

Senator Wayne, in support of his bill, testified that there should be parity between the purchase of physical advertisements and online advertisements. He questioned why he paid sales tax on the purchase of yard signs for his political campaign and his construction company, but did not pay sales tax when he placed similar advertisements online. Senator Wayne acknowledged that there are some issues with the bill, but he believes that it does not violate federal or constitutional laws. Senator Wayne passed out amendments to the bill to the Committee members, but he did not discuss or read the amendments into the record. After being asked by the Committee how L.B. 989 would impact newspapers, he stated that he would support exempting newspaper advertisements and commercials from sales tax; he stressed his desire to impose sales tax on the digital equivalent of yard signs.

Representatives from the Nebraska Broadcasters Association, the Lincoln Independent Business Association, and the Nebraska Grocery Industry

---

Related People/Contributors

- Samantha K. Trencs
- Hanish S. Patel
- Alla Raykin
- Chelsea E. Marmor
- Suzanne M. Palms
- Chris Lee
- Alexandra M. Louderback
- Michael J. Kerman
- Dennis Jansen
- Elizabeth S. Cha
- Charles C. Capouet
- Justin T. Brown
- Michael J. Hilkin
- Ted W. Friedman
- Jeffrey A. Friedman
- Todd G. Betor
- Eric J. Coffill
- Douglas Mo
- Scott Wright
- Eric S. Tresh
- Maria M. Todorova
- Daniel H. Schlueter
- Todd A. Lard
- Charles C. Kearns
- Timothy A. Gustafson
- Jonathan A. Feldman
- Michele Borens
- Open Weaver Banks
Association, along with a lobbyist representing 29 businesses and associations (including Motion Picture Association, Lincoln Chamber of Commerce, Nebraska Licensed Beverage Association, Nebraska Press Association, Nebraska Broadband Coalition, and Nebraska Retail Federation) testified in opposition to the bill. They raised various concerns, including:

- The bill would drive business out of the state;
- Media outlets would receive less advertising revenue because companies would not raise their advertising budgets to account for the new tax;
- The tax would be passed on to Nebraska businesses and customers;
- The tax may violate the Internet Tax Freedom Act because it does not apply to non-digital advertising; and
- The tax may violate the First Amendment of the United States Constitution because it specifically taxes advertising for a political candidate or message.

One of Many

Nebraska is not alone in its efforts. Several other states (Maryland, New York, and South Dakota) have proposed legislation to expand their sales taxes to advertising services or proposed entirely new taxes on digital advertising services or data.

Next Steps

Nebraska has a unicameral legislature. Thus, the bill will only need to pass one house before being sent to the governor for signature. However, the legislature will need to move quickly as Nebraska has a relatively short legislative session. The legislature is scheduled to adjourn on April 23rd.

The Eversheds Sutherland SALT team will continue to follow Nebraska Legislative Bill 989 during the legislative session, along with the other advertising service and data tax bills.

If you have any questions about this legal alert, please feel free to contact any of the attorneys listed under ‘Related People/Contributors’ or the Eversheds Sutherland attorney with whom you regularly work.