Tax Insights
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Services

Maryland Tax Court finds digital advertising tax invalid in three refund cases

August 24, 2026

In brief

What happened?

The Maryland Tax Court on August 14, 2026 issued three memoranda and orders granting these petitioners summary judgment, finding that:

- The digital advertising gross revenues (DAGR) tax violates the Internet Tax Freedom Act (ITFA), the dormant Commerce Clause, and Due Process.
- In one of the decisions, the broadcast news media exemption results in a First Amendment violation. In that same decision, the court separately rejected a foreign Commerce Clause challenge.

The court reversed the Comptroller's denial of tax year 2022 (TY2022) refund claims, ordering refunds along with interest for all three petitioners.

Apple Inc. v. Comptroller, Md. Tax Ct. No. 23-DA-OO-0456 (8/14/26); *Google LLC v. Comptroller*, Md. Tax Ct. No. 23-DA-OO-0649 (8/14/26); *Peacock TV, LLC v. Comptroller*, Md. Tax Ct. No. 23-DA-OO-0654 (8/14/26).

Why is it relevant?

These are the first Maryland Tax Court decisions addressing the core validity of the DAGR tax on its merits. The Supreme Court of Maryland held in 2023 that the plaintiffs in the earlier circuit court action had failed to exhaust their administrative remedies and ordered dismissal of that action. The plaintiffs subsequently filed refund claims, which were denied and appealed to the Tax Court. The Comptroller may petition for judicial review in circuit court within 30 days. Any judicial review would extend uncertainty.

Actions to consider

Digital advertising service providers should:

- Assess the opportunity for any potential refund claims against the three-year limitation period, which generally runs from the date each tax payment was made;
- Inventory/track any existing refund claims that may have been initiated;
- Evaluate appropriate reserve and financial-statement treatment while judicial review remains possible;
- Carefully evaluate the impact of these decisions before ceasing payment, since the decisions are only binding for the three petitioners and there is a strong possibility that the Comptroller will appeal;
- Monitor the 30-day window for circuit court judicial review.

In detail

Background

An Anne Arundel County circuit court initially addressed the DAGR tax by granting summary judgment on ITFA, Commerce Clause, and First Amendment grounds in October 2022. The Supreme Court of Maryland in May 2023 subsequently held that the plaintiffs had failed to exhaust administrative remedies prior to bringing suit as required by Maryland law and ordered dismissal of the circuit court action. The petitioners pursued refund claims, which were denied and appealed to the Tax Court.

The three appeals raised multiple arguments, challenging that DAGR violates ITFA, the dormant Commerce Clause, and the Due Process Clause, all of which were examined by the court in detail.

The tax violates ITFA because digital advertising services are similar to untaxed non-digital advertising

The court's central ITFA analysis focused on whether digital advertising services are "similar" to property, goods, services, or information "accomplished through other means" that Maryland does not tax statewide (e.g., print, broadcast TV/radio, billboards, and direct mail). In its evaluation, the court opined that the purpose of the service was the most important factor. The court held that advertising services aim to induce consumer action, and the medium of delivery does not overcome this similarity. Simply put, digital and non-digital advertising are comparable transactions, and differences in business models or technical operations do not make the transactions dissimilar for ITFA purposes.

Because DAGR taxes digital advertising services while generally not taxing similar advertising services accomplished through non-digital means, the court held that the tax is discriminatory under, and therefore violates, ITFA.

The court noted that the Comptroller's "programmatic and visual" requirements outlined in Technical Bulletin 59 (also incorporated into regulations in COMAR 03.12.01 effective March 2, 2026) postdate the refund claims, receive little deference, and do not make taxed digital advertising dissimilar from untaxed analog advertising.

Observation: The court noted that imposing a similar tax with a threshold on non-digital advertising, or a uniform sales tax on all advertising regardless of medium or a company's global revenues, might have produced a different ITFA and Commerce Clause outcome. The court rejected the Comptroller's reliance on TB 59 to establish dissimilarity for purposes of the ITFA analysis but did not hold it invalid for all purposes.

Global revenue rate tiers are not fairly apportioned

The court held that the tax fails the fair apportionment prong of *Complete Auto* because the graduated tax rates are based on global annual gross revenues rather than only Maryland activity. Under the external consistency test described in *Goldberg v. Sweet* and *Jefferson Lines*, a state tax must reasonably reflect the in-state component of the activity being taxed. The court concluded that Maryland's rate structure does not satisfy the external consistency requirement because increases in a taxpayer's global revenues increase the tax rate even when its Maryland digital advertising activity remains unchanged.

The tax discriminates against interstate commerce

The court separately held that the tax violates the discrimination prong of *Complete Auto*. Although the tax is facially neutral, the court concluded that its practical effect favors in-state businesses because few, if any, Maryland companies meet the $100 million global-revenue threshold. The court also reasoned that unfair apportionment could constitute discrimination against interstate commerce. Because both the tax threshold and rate depend on global revenues, the court concluded that the tax places a greater burden on businesses with more extensive interstate activity and therefore discriminates against interstate commerce.

The tax is not fairly related to Maryland services

The court held that the tax fails the fourth *Complete Auto* prong, which requires a tax to be fairly related to services provided by the state. The court reasoned that taxpayers with greater global revenues pay additional Maryland tax without receiving any corresponding additional benefit from Maryland. Because global revenues have no relationship to services provided by the state, the court concluded that the additional tax attributable to those revenues does not satisfy the fair-relation requirement.

The tax violates Due Process

The court separately analyzed the Due Process Clause, which requires both a minimal connection between the interstate activities and the taxing state and a rational relationship between the income attributed to the state and the intrastate values of the enterprise. The court concluded that the second requirement was not satisfied for substantially the same reasons underlying its discrimination analysis. Because the tax burden increases based on global revenues that are unrelated to Maryland activity, the court held that the tax violates Due Process.

Foreign Commerce Clause challenge was rejected

One petitioner argued that the tax violated the foreign Commerce Clause. Applying the two-part test in *Japan Line,* whether the tax creates a substantial risk of international multiple taxation and whether it prevents the federal government from speaking with one voice in regulating foreign commerce, the court rejected the claim. The court was not persuaded that Maryland's tax would interfere with federal efforts concerning foreign digital advertising services taxes and concluded that the tax did not violate the foreign Commerce Clause.

DAGR's broadcast and news media exemption violates the First Amendment, discusses severability

In one of the appeals, the plaintiff challenged the tax on First Amendment grounds. The court held that the tax violates the First Amendment because its broadcast and news media exemption requires distinctions based on the nature and content of the media entity. The court found the statutory terms "primarily" and "news" undefined and vague and granted the petitioner summary judgment on the First Amendment claim.

In its legal analysis preamble, the court noted the Fourth Circuit's 2025 decision in *Chamber of Commerce of the U.S. v. Lierman.* The Fourth Circuit court reviewed a First Amendment dispute about how the digital advertising tax cost may be communicated, invalidating Maryland's restriction on passing the tax through to customers by means of a separate fee, surcharge, or line item. The Maryland Tax Court concluded that the *Lierman* ruling did not affect the current refund appeals. For more information, see PwC's Fourth Circuit finds Maryland's pass-through prohibition in digital advertising tax unconstitutional.

Having found that DAGR violates the First Amendment, the court discussed severability in the case footnotes. The court stated that the severability question--whether the unconstitutional exemption could be excised while leaving the remainder of the tax intact--was beyond the scope of its authority; however, the court indicated that severability generally should be favored and noted that the tax originally was enacted without the exemption. Because that petitioner also prevailed in its refund appeal under ITFA, dormant Commerce Clause, and Due Process Clause, its outcome did not depend on resolution of the severability issue.

Refunds for the petitioners; Comptroller has 30 days to seek judicial review

The court ordered a refund of TY2022 tax paid with interest under Maryland law for all three petitioners. The Comptroller may petition for judicial review to circuit court within 30 days (Md. Rule 7-202).

Observation: These orders directly resolve the three petitioners' refund appeals; they do not automatically provide refunds or suspend payment obligations to other taxpayers. Maryland's general refund limitations period is three years from the date the tax was paid. By August 14, 2026, absent another applicable statutory rule, the general three-year period has elapsed for payments made on or before August 14, 2023.

Many questions remain

- Will the Comptroller petition for judicial review in circuit court within 30 days?
- If the First Amendment defect were considered separately from ITFA and Commerce Clause holdings, could the broadcast and news media exemption be severed, leaving the remainder of the tax intact and causing the tax to operate without that exemption?
- What persuasive or practical effect will these decisions have in other taxpayer disputes or Tax Court matters regarding the DAGR tax?
- Will the legislature respond by proposing a similar tax on non-digital advertising services or a uniform sales tax on all Maryland advertising irrespective of medium or global revenues, consistent with the court's footnote suggestions?

Let’s talk

To discuss the potential impact of these decisions on your business as a seller or purchaser of digital advertising services, please contact:

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