



March 27, 2020

Honorable Carl E. Heastie
Speaker of the Assembly
Legislative Office Building 932
Albany, NY 12248

Honorable Andrea Stewart-Cousins
Senate Majority Leader
Room 907 Legislative Office Building
Albany, NY 12247

Dear Speaker Heastie and Leader Stewart-Cousins:

On behalf of CTIA®, the trade association for the wireless communications industry, I write to express strong opposition to Senate Bill 8056. S8056 would impose a new, excessive, and legally questionable tax on “digital advertising services.” If enacted, it would create significant legal and administrative uncertainty for CTIA member companies doing business in New York and would likely result in protracted litigation.

While the intent of this bill may be to target global digital advertising companies, the bill would have a much broader impact including on telecommunications providers who are investing billions in New York to improve and expand broadband service throughout the state. At a time when millions of New Yorkers are relying on broadband networks to stay employed, a new discriminatory tax that would raise costs for broadband network operators does not seem prudent.

Many experts believe there are significant legal flaws with S8056 that will likely result in New York never seeing any revenue from the proposed new tax:

- The bill is pre-empted by the federal Permanent Internet Tax Freedom Act, which prohibits discriminatory taxes on electronic commerce. The bill would impose the tax on digital advertising but not impose the tax on traditional, non-digital advertising.
- The structure of the tax – with higher rates on companies with higher global revenues – appears to target out-of-state companies in violation of the U.S. Commerce Clause, which prohibits taxes intended to discriminate against out of state and foreign companies.

In the unlikely event the legislation survived certain legal challenges, S8056 is quite simply bad tax policy:

- The bill would impose double taxation on companies providing certain types of advertising services. These companies would pay a gross receipts tax of up to 10 percent of their New York revenues, plus the existing applicable Article 9 or 9A gross receipts taxes on the same revenues.



- New York businesses purchasing digital advertising services would face higher costs than their counterparts in New Jersey, Pennsylvania, Connecticut, Massachusetts, and Vermont. Given the intense interstate competition between small businesses in the region, a tax that would result in higher costs for New York businesses would be counterproductive.
- The bill delegates legislative authority to make tax policy to the Department of Taxation and Finance. It would require the Commissioner to issue regulations specifying how sales of digital advertising services are to be sourced to New York for tax purposes. These are critical tax policy decisions that need to be specified in statute.
- The definition of digital advertising is vague, leaving open to interpretation whether sponsored content, email marketing, or rebroadcasting of content that did not originate online could incur tax liability.
- There are serious concerns about the cost of complying with this proposed legislation, assuming that it is even possible to comply with the law. For example, if wireless providers were required to track each wireless customer's location to determine whether digital advertising services were "received" in New York, it would raise serious privacy concerns and require wireless providers to maintain massive amounts of data for audits.

Finally, given the uncertain economic climate facing the states, the nation, and the world, now does not seem like an appropriate time to enact a brand new tax that has the potential to consume legal and administrative resources of private sector companies and the State of New York in a protracted legal dispute.

For these reasons, I respectfully request that you oppose S8056.

Sincerely,

Gerard Keegan
Vice President
State Legislative Affairs