



This Week in State Tax (TWIST)

July 17, 2023



MARYLAND



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Maryland: State Supreme Court Opinion Dismissing Digital Advertising Tax Suit Released

On July 12, 2023, the Maryland Supreme Court issued an opinion setting forth its reasons for ordering a lower court to dismiss a lawsuit brought by two companies challenging the constitutionality of Maryland's digital advertising tax. The companies did not pay the digital advertising tax and then request a refund; neither were they assessed for failing to pay the tax. Rather, the companies filed a declaratory judgment action in circuit court seeking to invalidate the tax on various constitutional grounds and because it violated the Internet Tax Freedom Act. Recall, back in May, the Maryland Supreme Court ruled that the Circuit Court for Anne Arundel County lacked jurisdiction over the lawsuit because the companies failed to exhaust their administrative remedies. At that time, the court stated that the reasons for this conclusion would be addressed in a forthcoming opinion. That opinion was just released.

At the outset, the court noted that its resolution of the matter was not premised on any views of the merits of the challenges raised in the lawsuit. However, the court, after reviewing the Maryland statutes setting forth the remedies for resolving a tax dispute, concluded that those remedies were the primary, if not the exclusive, mechanisms for resolving tax disputes. Two statutes solidified the court's opinion - a statute generally prohibiting judicial remedies that would prevent the assessment or collection of taxes and a specific statutory prohibition against the use of a declaratory judgment action as an end-run around special statutory administrative remedies. In the court's view, these two provisions made clear the General Assembly's intent that the special statutory administrative remedies for resolution of tax disputes are exclusive. The court next addressed whether the constitutional exception to the administrative exhaustion requirement applied in the instant case. That exception generally "permits a judicial determination without administrative exhaustion when there is a direct attack upon the power or authority . . . of the legislative body to adopt the legislation from which relief is sought." Noting that the exception is "extremely narrow" and subject to many limitations, the court held that it was not applicable where, as here, the applicable special statutory administrative remedies are exclusive with respect to the companies' challenge to the digital advertising gross revenues tax. Please stay tuned to TWIST for updates on the Maryland digital advertising tax and the litigation that will likely be refiled in the future.



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