
SENATE COMMITTEE ON REVENUE AND TAXATION

Senator Steven Glazer, Chair
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INCOME TAXATION: CREDITS: LOCAL NEWS MEDIA: DATA EXTRACTION TRANSACTIONS.

Imposes a Data Extraction Mitigation Fee, enacts credits against the Personal Income and Corporation taxes for news media entities that pay wages for current or newly employed journalists, and directs fee revenue to reimburse foregone General Fund revenue resulting from the credits.

Background

The Commerce Clause. The Commerce Clause of the United States Constitution requires that state taxes, among other things, be fairly apportioned and not “discriminate against interstate commerce.” *Complete Auto Transit v. Brady*, 430 U.S. 274, 279 (1977).

The Internet Tax Freedom Act (ITFA). In 1998, Congress passed the ITFA to prohibit state and local governments from imposing “multiple or discriminatory taxes on electronic commerce.” Under ITFA, a discriminatory tax is one that is “imposed on electronic commerce that is not generally imposed on transactions involving similar services accomplished through other means.” In general, ITFA's prohibition on discriminatory taxes means the same tax obligations and tax rates must apply to electronic commerce transactions and non-electronic commerce transactions for the same, or similar, property, goods, services, or information.

Corporate income tax. While some states apply taxes on a business's gross receipts, California taxes *net* apportioned business income and allocated net nonbusiness income of corporations doing business in California at a rate of 8.84%, or imposes the \$800 minimum tax, whichever is greater. California applies the combined report method for corporate taxation. This method requires a corporation computing its California tax liability to include the tax returns of each of its unitary subsidiaries and affiliates into one report. The combined report method generally allows for the cancellation of any intercompany transactions, such as dividends paid from a subsidiary to its corporate parent. However, taxpaying corporations can elect to exclude the income and expenses of its foreign subsidiaries from its combined report, called the “water's edge” election, with some exceptions.

Sales and use taxes. State law imposes the sales tax on every retailer “engaged in business in this state” that sells tangible personal property, and requires them to register with the California Department of Fee & Tax Administration (CDTFA), and remit taxes collected from purchasers to CDTFA. Sales tax applies whenever a retail sale occurs, which is generally any sale other than one for resale in the regular course of business, but the sales and use tax does not apply to intangible products, such as downloaded software, nor does it apply to services. The current

sales and use tax rate is 7.25%. Additionally, cities, counties, and specified special districts may increase the sales and use tax, also known as district or transactions and use taxes, with voter approval.

Decline of local journalism. Daily newspaper circulation in the United States hovered between 60 million and 64 million for the 1970s and 1980s, but then began to fall sharply in the 1990s.¹ Since 2005, the country has lost more than 25% of its newspapers, or over 2,500 publications.² By 2017, daily newspaper circulation decreased to 31 million and 34 million for weekdays and Sundays.³

Coinciding with the decrease in print newspaper circulation, advertising has also declined.⁴ Publicly traded U.S. print media firms experienced an average decrease of 9% per year in print advertising revenue between 2010 and 2017.⁵ Although digital advertising revenue makes up an increasingly large portion of total advertising revenue, the amount is still relatively small compared to that of print advertising for publicly traded U.S. print media firms.⁶ Digital advertising revenue accounted for only 29% of the total advertising revenue of publicly traded U.S. print media firms in 2017.⁷ Furthermore, the growth in digital advertising revenue has not offset the decline in traditional advertising revenue, as the U.S. newspaper industry's total advertising revenue fell from \$26 billion in 2010 to \$18 billion in 2017.⁸

Digital Services and Digital Advertising Taxes. The loss in advertising revenues for newspapers has been to the gain of large internet companies such as Amazon, Meta, and Google. In the 4th quarter of 2024, Meta's (formerly Facebook) ad sales increased 24% year over year to \$38.7 billion, while Amazon's rose 27% to \$14.7 billion. Alphabet, still the market leader, saw its Google ad business rise 11% to \$65.5 billion, boosted by 16% growth at YouTube.

In response to a lack of effective taxation of global internet companies, the United Kingdom, France, and other European countries have imposed Digital Services Taxes (DST) on digital services. These taxes ensure countries can adequately tax internet companies generating large amounts of advertising revenue based on collecting data from and targeting advertisements to their citizens.⁹ The taxes vary but are generally imposed on a company's gross receipts. Gross receipts taxes differ fundamentally from income taxes, which allow firms to deduct their expenses from its gross receipts before applying the tax rate to net income.¹⁰ Some countries imposing a DST only count a firm's revenues from digital advertising, while others include

¹ Pew Research Center., Newspaper Fact Sheet (June 29 201): <https://www.pewresearch.org/journalism/fact-sheet/newspapers/>

² Abernathy, The State of Local News 2022, Northwestern Medill Local News Initiative (Jun. 29, 2022), <https://localnewsinitiative.northwestern.edu/research/state-of-local-news/report/>.

³ Pew, *Supra*.

⁴ Chung, Kim, & Song, The Comprehensive Effects of a Digital Paywall Sales Strategy, Harvard Business School Working Paper 19-118 (2019): https://www.csulb.edu/sites/default/files/document/19-118_c8363c6a-6de4-45b7-8736-8da819b644ec.pdf

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

⁹ William Morris and Pat Brown, Digital Services Taxes: Are they here to stay? PWC: <https://www.pwc.com/us/en/services/tax/library/digital-service-taxes.html>

¹⁰ Elke Asen and Daniel Bunn, What European OECD Countries Are Doing About Digital Services Taxes, Tax Foundation Europe, November 22, 2021

revenues from the provision of a digital interface, targeted advertising, and the transmission of data collected about users for advertising purposes.¹¹ According to the Congressional Research Service:

‘DSTs are structured as a selective tax on revenue (akin to an excise tax) and not as a tax on corporate profits. A tax on corporate profits taxes the return to investment in the corporate sector. Corporate profit is equal to total revenue minus total cost. In contrast, DSTs are “turnover taxes” that apply to the revenue generated from taxable activities regardless of costs incurred by a firm.’

Digital services and advertising taxes have similarities and differences with current state taxes. Most states, including California, impose sales and use taxes to the sale of tangible personal property, and impose personal income and corporation taxes on the net income of a business. Some states include some digital services and products within their sales tax base. New Mexico imposes a gross receipts tax, which it recently updated to include digital advertising.

Maryland’s tax and subsequent litigation. In the United States, the State of Maryland became the first, and currently only, state to impose a digital advertising tax in 2021, when its Legislature overrode Governor Larry Hogan’s veto of House Bill 732. Maryland’s tax is imposed a four-tiered tax ranging from 2.5% to 10% on a business’s global gross receipts from digital advertising. Maryland enacted subsequent legislation to exempt digital advertising receipts by news media from the tax and prohibit businesses from passing on the tax to consumers via a separate fee or line item. When enacted, Maryland expected the tax would generate \$250 million in revenue annually.

Soon after Maryland enacted its tax, litigation ensued. First, in the U.S. District Court for the District of Maryland, taxpayers argued the tax was unconstitutional under the First Amendment, the Commerce Clause, the Due Process Clause, and the Supremacy Clause, as they alleged it violated the Internet Tax Freedom Act (ITFA). Second, taxpayers challenged the tax in Maryland state court with similar Constitutional allegations, and further alleged the digital services tax violated the Maryland Constitution.

In March 2022, the U.S. District Court dismissed the federal case in part, holding the Tax Injunction Act barred most claims of the case, and the better remedy was available in state court. However, the Court allowed the federal case to proceed on claims pertaining to the tax’s prohibition on passing through the tax to consumers which raised First Amendment violation concerns. In October 2022, a Maryland circuit court judge struck down Maryland’s tax, stating it violated ITFA, the Commerce Clause, and the First Amendment. The U.S. District Court then dismissed the remaining issues in the federal case as moot. Litigants appealed to the Fourth Circuit, which is still pending. Then, in May 2023, the Maryland Supreme Court vacated the Maryland circuit court judgment, stating the court lacked jurisdiction because taxpayers had not yet exhausted their administrative remedies.

Soon after, the Apple Corporation paid the Maryland tax, and filed a claim for refund, triggering the administrative process to challenge it. The Maryland Comptroller denied the claim for refund, but the Maryland Tax Court ruled in December 2023 Apple’s case could proceed to appeal in state court, finding Apple satisfied the administrative requirements for a valid refund claim. Since then, many technology companies have filed similar litigation in the Maryland Tax

¹¹ *Ibid.*

Court in November protesting similar refund denials of estimated digital advertising tax payments.

Tax expenditures. California law allows various income tax credits, deductions, exemptions, and exclusions. The Legislature enacts such tax incentives either to compensate taxpayers for incurring certain expenses, such as child adoption, or to influence certain behavior, such as charitable giving. The Legislature uses tax incentives to encourage taxpayers to do something they would not otherwise do. The Department of Finance is required annually to publish a list of state tax expenditures, currently totaling around \$87 billion per year.

Seeking to finance efforts to revive local journalism in California, the author wants to enact a Data Extraction Mitigation Fee on advertising to finance tax credits for eligible news entities to employ and hire local news journalists in California.

Proposed Law

Senate Bill 1327 contains three parts:

- Imposes a Data Extraction Mitigation Fee on persons engaged in data extraction transactions, as defined, measured by gross receipts derived from digital advertising in California,
- Enacts Personal Income and Corporation tax credits for news media entities that pay wages for currently hired or newly employed qualified journalists, as well as for costs incurred to acquire freelance content for subsequent publication, and
- Directs revenue generated by the fee, and makes conforming changes.

Data Extraction Mitigation Fee Law. SB 1327 enacts the Data Mitigation Fee Law, which imposes a data extraction mitigation fee on persons engaged in data extraction transactions, commencing in an unspecified taxable year. The measure defines “data extraction transaction” as one that does not include web hosting services, but instead meets both of the following requirements:

- Where a taxpayer sells user information or access to users to advertisers, and
- The taxpayer engages in barter by providing services to a user in full or partial exchange for the ability to display advertisements to the user, or collect data about the user.

If the person engages in data extraction transactions as defined above, the bill requires them to pay a tax equal to 7.25% of the gross receipts derived from the transactions in this state each year. However, the tax neither applies to a person with less than \$2.5 billion annually in such gross receipts, nor a news media organization, as defined.

The bill deems gross receipts to be derived from data extraction transactions if they are derived from the sales of advertising services on a digital interface, as defined. The bill deems gross receipts to be in California if the user, as defined, is in the state. The bill also allows the Franchise Tax Board (FTB) to adopt necessary and appropriate regulations to apply presumptions, default rules, and formulas to ensure apportionment results fairly reflect data extraction transactions in this state. The measure includes legislative intent language stating the apportionment of data extraction transactions should approximate the proportion of California’s economy compared to the total economy of the United States as much as practicable.

The bill states that a user is in this state based on data associated with the user, including billing, delivery, or shipping addresses; phone number area code; global satellite positioning data; or internet protocol address data. Taxpayers must apportion gross receipts derived from advertisements not generated by a display to or interaction with a specific user in California using the same fraction the person uses to apportion gross receipts from advertisements generated by a specific instance of a displayed targeted advertisement, or one generated by a specific interaction where the user is located in the state.

Under the measure, taxpayers apportion revenues to California using a fraction, where the numerator is gross receipts derived from data extraction transaction in the state and the denominator is the gross receipts derived from data extraction transactions in the United States. Annual gross receipts include gross receipts of all members of the unitary group, or any partnership or limited liability company doing business in the state and required to file a return, in which the person owns more than a 10% capital or profit interest. All unitary group members are jointly and severally liable for the fee.

SB 1327 directs the FTB to administer the Data Extraction Mitigation Fee using the same laws that guide collection of the Personal Income and Corporation Tax, and allows FTB to issue regulations necessary and appropriate to implement the bill, including emergency regulations. The measure further provides FTB rules, guidelines, and procedures are not subject to the Administrative Procedures Act.

Tax credits. SB 1327 enacts credits against the Personal Income and Corporation Taxes for wages paid by eligible news organizations or qualified broadcast stations for currently employed or newly hired journalists, as defined. The credit percentages vary based on whether the news media entity has more or less than 10 full-time employees on the first day of the taxable year when they claim the credit, and whether they provide the employee both group health insurance and retirement or pension benefits. Those percentages are as follows:

News Organization	Existing employee Without benefits	Existing employee with benefits	New employee without benefits	New employee with benefits
With more than 10 employees	25% of wages paid	30% of wages paid	35% of wages paid	40% of wages paid
With fewer than 10 employees	35% of wages paid	40% of wages paid	45% of wages paid	50% of wages paid

Taxpayers claiming the credit for new employees must have a net increase in statewide employment, according to a formula set by the bill. Additionally, a taxpayer with more than 10 employees that claims the credit cannot subsequently qualify for the credit for taxpayers with fewer than 10 employees.

A person with primary circulation or distribution in the state can claim the credit, if they:

- Publish four or more qualifying publications distributed in the state during the taxable year, where the primary purpose is to serve a local community by providing local news, is published in both the current and previous taxable year, and are covered by media liability insurance, or
- Own or operate a broadcast station as defined in the federal Communications Act, and
- Are not, or will not receive more than 50% of its gross receipts from, a “disqualified organization,” defined as one that is exempt from Corporation Tax, a political organization, or an entity directly owner or controlled by either a non-charity tax-exempt entity or political organization.

For employers to qualify for the credit, employees must be employed for an average of at least 35 hours per week and provide qualified services, as defined, in the local community, which is defined as the geographically contiguous area where the broadcaster has an FCC license, or where the publication is primarily distributed or consumed..

The measure also allows a similar credit equal to 20% of the costs incurred to acquire freelance content subsequently published or broadcast by the taxpayer. The bill’s tax credits commence in the 2024 taxable year, end after the 2028 taxable year, and its provisions are repealed as of December 1, 2029, except when a taxpayer continues to pay wages to a journalist hired before January 1, 2029; in which case, the taxpayer can generate credit through the 2033 taxable year.

SB 1327 provides its credit is refundable, meaning to the extent the value of the credit exceeds the taxpayer’s tax liability for the year, the state pays the taxpayer a refund equal to the difference from the Tax Relief and Refund Account. The bill caps the aggregate amount of tax credit at an unspecified amount each year and requires taxpayers to request a credit reservation from the FTB, in a form and manner prescribed by FTB. FTB may require any information it deems necessary to approve a tentative credit reservation. If credit reservations exceed the annual aggregate cap, FTB must reduce the amount of credit on a proportional basis, and notify taxpayers of the reduction.

The bill incorporates standard provisions found in other tax credits, such as rules for related parties, combined groups of corporations, and denying a business expense deduction or any other credit when the same costs generate a credit under the bill.

Revenue allocation and other provisions. SB 1327 creates the Data Extraction Mitigation Fee Fund in the State Treasury, and deposits the revenues, interest, and penalties from the fee into the fund, less refunds and reimbursement to FTB for the costs of administration and collection. The measure then allocates revenue in the following order:

- Satisfy Proposition 98 requirements for K-14 education, and the Proposition 2 Budget Reserve,
- To the General Fund in an amount estimated by FTB to reimburse any deductions against the Personal Income and Corporation Tax authorized by the bill,
- To the General Fund in an amount estimated by FTB to reimburse foregone revenues due to the measure’s tax credits,
- Upon appropriation by the Legislature, to FTB to administer a grant program for non-profit eligible news organizations, of at least \$25 million annually, or at most 5% of total annual revenues derived from the fee, with half of the amount reserved for organizations with fewer than ten employees,

- Any remaining funds may be appropriated by the Legislature to fund and support activities and programs to assist local journalism in California.

FTB must make grants to nonprofits in an amount equal to the amount derived under the bill's tax credit provisions. Organizations must request a grant reservation from FTB in a form and manner prescribed by FTB. FTB may require any information it deems necessary to approve a tentative grant reservation. If grant reservations exceed the amount set aside by the bill for grants, FTB must reduce the amount of credit on a proportional basis, and notify taxpayers of the reduction.

Additionally, SB 1327 provides a deduction against the Personal Income and Corporation Tax equal to the amount of the Data Extraction Tax paid by a taxpayer. The measure makes legislative findings and declarations supporting its purposes, as well as others to comply with Section 41 of the Revenue and Taxation Code. SB 1327 also contains an urgency clause.

State Revenue Impact

Pending.

Comments

1. Purpose of the bill. According to the author, "SB 1327 creates a modern financial framework to ensure that newsrooms keep our citizens informed and democracy accountable to the people. The data extraction mitigation fee closes a loophole that allows online platforms to avoid taxation on the value of the barter in which they engage with customers who, in effect, trade access to their personal data for the opportunity to use a website. While this kind of economic relationship has helped fuel innovation and access to information, it has also created what economists call "negative externalities" – or harm to third parties who are not directly a part of that exchange. Unfortunately, the crucial role of local news in upholding democracy is in danger. Since 2005, the number of California journalists has decreased by 68%, and in the last 10 years, advertising revenue has plummeted by 66%. The closure of many local newspapers and the decline of most others has left wide swaths of "news deserts" where virtually no local coverage remains. As local newsrooms face challenges, digital advertising thrives. In 2022, Meta, Google, and Amazon collectively earned \$163 billion from digital advertising in the US. California already imposes mitigation fees on companies that put chemicals into the environment to make their products or develop projects that end up burdening our roads and schools. In the same way, the fee in my bill assigns the cost of reviving local journalism to those firms whose data extraction and economic activity is causing the news industry's decline. The fee mitigation revenue proposed in SB 1327 would largely be used to finance an employee hiring and retention tax credit available to all qualifying news organizations, free from any government involvement in their news content. A vibrant local press that informs the public and acts as a government watchdog is vital to the survival of American democracy."

2. Precedents. SB 1327 would enact two significant precedents. First, the measure takes one item of income that is included for the purpose of determining net income for California's Corporation Tax – gross receipts derived from advertising on a digital interface to users in California – and instead subjects it to a gross receipts tax where taxpayers can neither deduct expenses nor apply credits. SB 1327 would be the first time California treated one item of business income differently than all others. Second, proceeds of the state's general taxes – Personal Income, Corporation, and Sales and Use – flow to the General Fund, from which the

Legislature appropriates them in the Budget Act. SB 1327 would instead allocate its revenues outside the Budget Act to the Data Extraction Mitigation Fee Fund, which after satisfying Proposition 98 and Proposition 2's requirements, backfills foregone General Fund revenue losses due resulting from affected taxpayers deducting the Fee from income for Corporation Tax purposes, and the measure's tax credits. While the decline of local journalism is well established, shouldn't the bill's tax credits be included when the Legislature sets its priorities in the Budget Act?

3. Why us? Opponents of SB 1327 argue the bill's fee saddles them alone with the cost of paying for the revival of local journalism in California when its decline has many causes and has been occurring for quite some time. Print journalism began its decline in the 1990s, well before modern internet platforms achieved their current scale and won the race for advertising dollars. Opponents add the rise of Craigslist made newspaper classifieds, once a principal revenue source for newspapers, largely obsolete years before advertising revenues declined. Additionally, opponents argue SB 1327 will increase costs for firms that want to use platforms to better communicate with potential customers. However, SB 1327 comes amid proposals in many states to tax large internet platforms and social media companies differently. Proposals include imposing taxes on digital advertising (Connecticut, Kansas, Massachusetts, Montana, Nebraska, New York, Tennessee, and West Virginia), data extraction (New York), or on social media specifically (Arkansas, Indiana, Massachusetts, and Texas), among others. AB 2829 (Papan) would impose a digital advertising tax in California to fund youth mental health services but was held under submission in the Assembly Revenue and Taxation Committee. While Maryland is the only state to enact something similar (see below), if California were to do so, it would carry additional importance given the state's role as home to the global technology industry.

4. Modernization. For the most part, California's major taxes were enacted during or before the Great Depression, when the state's economy was largely based on agriculture and manufacturing goods. One of the chief arguments in support of SB 1327 is its gross receipts tax better captures economic activity from business models and technologies that have evolved since these taxes were developed in the 1930s. For example, sales and use taxes only tax the transfer of tangible personal property, so do not apply to advertising regardless of whether it is an internet advertisement or a highway billboard. Additionally, sales and use taxes are measured based on the purchase price of an item, so the tax can't apply to barter transactions such as the ones that take place between internet service users and platforms because there's no purchase price upon which to measure the tax. While advertising revenues are income for general net income purposes, taxpayers can offset these revenues by deducting business expenses, applying tax credits, or shifting income-producing intellectual property to subsidiaries and affiliates in foreign countries with minimal tax rates, and exclude them from California taxation by applying the water's edge election.

5. The lonely road. US 50, also known as "the loneliest road in America" begins in Sacramento and ends in Ocean City, Maryland. Should California enact a tax similar to Maryland's, it would add another, though less tangible, connection between the two states. As noted above, Maryland was the first and currently only state to impose a digital advertising tax, which is currently in effect, but under litigation in both federal and state courts on a number of grounds, most notably that it violates the Commerce Clause and ITFA. At the Committee's March 13, 2024, informational hearing: "Sustaining Journalism in California: Tax and Tax Credit Options" the Committee considered testimony from tax experts regarding whether any proposed California tax would find itself under similar challenge. Nikki Dobay, shareholder at Greenberg Traurig, cautioned the Committee against legislation imposing such a tax, arguing the Maryland tax

clearly violated ITFA as discriminatory by taxing only digital advertising and not all advertising. She added any such a tax would not be a reliable revenue source because litigation will certainly ensue. Other experts disagree, instead arguing these taxes are a reasonable solution to the rise of the digital economy and corresponding tax challenges.”¹² Legal scholars Young Ran Kim and Darien Shanske argue the transactions unique to the digital world generate tremendous profits for very few companies that have no comparison in the non-digital world, where traditional advertisers have little to no data about potential customers. Shanske added during testimony at the informational hearing such a tax is not a tax on ads, but instead a tax on currently untaxed consumption, using advertising revenue as a proxy. Since digital ads are part of complex barter of data and information between users and companies, they’re not comparable to traditional advertising, he added. While little guidance from state or federal courts yet exists to guide states considering similar taxes, it’s currently unclear whether ITFA preempts SB 1327’s Mitigation Fee. With that said, SB 1327 differs from Maryland’s approach in several significant ways:

- Maryland’s tax applied to any digital advertiser with more than \$1 million in advertising revenues in Maryland and \$100 million in global revenues, while SB 1327 does not directly tax digital advertisements. Instead, SB 1327 applies its fee only to companies that engage in data extraction transactions. Additionally, only companies that generate more than \$2.5 billion annually from advertising to California residents through a digital interface are subject to the fee.
- Maryland uses global advertising revenues to determine which one of four rates a company pays. SB 1327 applies one rate that is the same as the state’s statewide sales and use tax rate.
- Maryland’s tax applies to many digital advertisers, only some of which had a significant business presence there. SB 1327 likely applies to three companies – two of which are headquartered in California (Google and Meta), while the other has several warehouses and distribution centers (Amazon).
- SB 1327 apportions gross receipts based on the location of the user who accesses the taxpayer’s services; Maryland delegated sourcing to regulations promulgated by their Comptroller.
- Maryland prohibits businesses from passing on the tax to consumers via a separate fee or line item; SB 1327 does not have a similar provision.

6. Pyramids. Tax experts almost universally recommend that only final consumption should be taxed, and argue against taxing business inputs and business-to-business transactions, asserting these taxes become embedded when passed through to each link in the manufacturing, distribution, and sales chain – or “pyramided.” Opponents argue by measuring its tax by gross receipts from digital advertising – a cost of doing business – SB 1327’s mitigation fee will ultimately raise costs that will be borne by consumers, or passed onto advertisers in the form of higher prices. Opponents add gross receipts taxes unfairly penalize companies because they do not account for whether the taxpayer is profitable, and disallow business expense deductions like paying wages as well as research and development credits that provide incentives to perform these tasks in California

7. Windfall. Tax expenditures produce two different outcomes. First, they reward behavior that would have occurred without the tax benefit, referred to as windfall benefit. Second, they generate certain activities that would not have occurred but for the tax benefit. SB 1327 provides

¹² Young Ran Kim and Darien Shanske, “State Digital Services Taxes: A Good and Permissible Idea (despite what you may have heard),” Notre Dame Law Review, November 2022

tax credits for news media entities that currently employ journalists, hire new ones, or purchase content from freelancers. The measure's varying credit percentages provide greater benefits for smaller publications as well as those who provide group health insurance and retirement benefits. Some of these taxpayers would have retained journalists or hired new ones as part of their normal business operations, so will receive a windfall benefit. On the other hand, some taxpayers may forestall layoffs and hire new journalists, or offer health and retirement benefits when they otherwise would not have, which will likely improve the quantity and quality of news consumed by Californians.

8. Timing is everything. SB 1327 attempts a delicate balancing act: raising revenue from a new source, allocating it to meet requirements under the California Constitution for public education and the state's budget reserve, and then backfilling the General Fund for the costs of its other provisions. However, the measure's tax credits become effective in the 2024 taxable year, meaning the state will be paying refunds in 2025, before the measure's tax can likely be implemented. As a result, the General Fund will need to account for this foregone revenue that can't be reimbursed until FTB can implement the fee and taxpayers start paying it. Additionally, if courts subsequently invalidate the fee, the state will be liable for paying refunds with interest.

9. Refundable. Tax credits reduce the amount of tax owed by a taxpayer on a dollar-for-dollar basis. Credit amounts that exceed the taxpayer's current tax year liability can either be refunded to the taxpayer or carried forward to reduce tax in future years. However, except for the Earned Income Tax Credit, the Young Child Tax Credit, the Foster Youth Tax Credit, and the Motion Picture and Television Production Credit, all credits against California Personal Income and Corporation Tax are nonrefundable. SB 1327's credit is refundable, likely necessary given few news media entities in California generate sufficient profit against which to apply the credit.

10. Section 41. Section 41 of the Revenue and Taxation Code requires any bill authorizing a new tax expenditure to contain, among other things, specific goals, purposes, and objectives that the tax expenditure will achieve, a detailed performance indicators, along with data collection and reporting requirements (SB 1335, Leno, 2014). SB 1327 has two provisions where Section 41 applies:

- For its tax credits, SB 1327 states that its goal, purpose, and objective is to increase employment of local journalists in local news organizations, and sets as its performance indicator the number of taxpayers who utilized the credits and the total dollar amount of credits claimed. The measure then directs FTB to analyze its performance indicators and report its findings to the Legislature on or before May 1, 2032.
- For the measure's deductions, the bill sets as its goal, purpose, and objective to avoid double taxation of income related to data extraction, and the number of taxpayers claiming the deduction as its performance indicator. The measure then directs FTB to report to the Legislature regarding the number of taxpayers allowed a deduction by an unspecified date.

11. Administration. The author amended SB 1327 on May 2nd to include its current provisions, which would require significant efforts for the FTB to implement. Given the timing of amendments, FTB has not had time to identify implementation or technical issues.

12. 2/3. As an urgency statute, SB 1327 must be approved by a two-thirds vote of each house of the Legislature. Regular legislation takes effect on January 1 following its passage, but urgency bills take effect as soon as they are passed, signed, and chaptered. Additionally, because SB

1327's mitigation fee does not fall into one of the exceptions in Section Three of Article XIII A of the California Constitution, Legislative Counsel has keyed the measure a 2/3 vote for that reason as well.

Support and Opposition (5/6/24)

Support: California Federation of Teachers Afl-cio
News Guild local Media Guild of The West
News Guild local Pacific Media Workers Guild
Presidents, Publishers, Editors, Executive Directors, CEOs of 25 California Newspapers
Rebuild Local News Coalition
The News Guild-CWA

Opposition: 3 Fold Communications
Aemrican Advertising Federation (AAF)
American Association of Advertising Agencies
Americans for Digital Opportunity (ADO)
Antelope Valley Chambers of Commerce
Association of National Advertisers
California Association of Realtors
California Attractions and Parks Association
California Broadband & Video Association
California Business Roundtable
California Chamber of Commerce
California Retailers Associaiton
California Taxpayers Association
Carlsbad Chamber of Commerce
Computer & Communications Industry Association
Connecticut Broadcasters Association
Consumer Choice Center
Corona Chamber of Commerce
Council on State Taxation
CTIA
Cupertino Chamber of Commerce
Dana Point Chamber of Commerce
Family Business Association of California
Garden Grove Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Greater Irvine Chamber of Commerce
Greater San Fernando Valley Chamber of Commerce
Huntington Beach Chamber of Commerce
Imperial Valley Regional Chamber of Commerce
Internet Coalition
LA Canada Flintridge Chamber of Commerce
Laguna Niguel Chamber of Commerce
Morgan Hill Chamber of Commerce
Motion Picture Association
Murrieta Wildomar Chamber of Commerce
National Taxpayers Union

Newport Beach Chamber of Commerce
Oceanside Chamber of Commerce
Orange County Taxpayers Association
Redondo Beach Chamber of Commerce
San Juan Capistrano Chamber of Commerce
Santa Clarita Valley Chamber of Commerce
Santa Maria Valley Chamber of Commerce
Silicon Valley Leadership Group
Simi Valley Chamber of Commerce
Solano County Taxpayers Association
South Bay Association of Chambers of Commerce
Southwest California Legislative Council
Technet
Tri County Chamber Alliance
Tulare Chamber of Commerce
West Ventura County Business Alliance

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