



February 26, 2025

House Committee on the Judiciary
Attn: Judiciary Committee Staff
State Capitol, Terry Miller Building
120 4th St. Suite 111
Juneau, AK 99801-1182

Re: HB 97 - “Online Marketplace Tax” (Opposition)

Dear Chair Gray and Members of the Judiciary Committee:

On behalf of the Computer & Communications Industry Association (CCIA), I write to respectfully oppose HB 97 in advance of the House Judiciary Committee meeting on February 26, 2025. CCIA is an international, not-for-profit trade association representing a broad cross-section of communications and technology firms.¹ Therefore, proposed regulations on the interstate provision of digital services can have a significant impact on CCIA members.

Policies that focus on taxing digital services misunderstand the value of their functions and tools for internet users. Economies, especially at the state level, are being transformed by digital advertising and governments must consider these benefits as they aim to support the innovation economy and businesses that are just starting. Many of these taxes also financially strain small businesses that rely on free services and affordable advertising to reach audiences the most. CCIA research has found that 85% of startups utilize marketing and digital advertising software and access to these tools is invaluable as businesses seek to reach new audiences and communicate with potential customers.²

Under HB 97, an “online marketplace” would implement a 2% statewide sales tax on online marketplace facilitators with over \$250,000 in annual sales or 200 transactions in Alaska. This approach has been relied on in 14 cities or boroughs throughout Alaska, however, the Alaska Remote Seller Sales Tax Commission recently repealed the transaction threshold in January 2025.³ Implementing this sales tax statewide on online sales with an emphasis on both the number of transactions and annual sales raises a variety of legal and policy concerns that could lead to market fragmentation and discourage further investment in innovation and infrastructure, as detailed below.

HB 97 conflicts with current law and is likely to lead to costly litigation.

The proposed gross receipts tax under HB 97 conflicts with the federal Internet Tax Freedom Act (ITFA), which prohibits states from imposing “discriminatory taxes on electronic

¹ For more than 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA members employ more than 1.6 million workers, invest more than \$100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. A list of CCIA members is available at <https://www.ccianet.org/members>.

² *Tools To Compete: Lower Costs, More Resources, and the Symbiosis of the Tech Ecosystem*, CCIA Research Center (Jan. 25, 2023), <https://ccianet.org/research/reports/tools-to-compete/>.

³ Alaska Repeals Sales Tax Transaction Threshold (October 9, 2024) <https://www.salestaxinstitute.com/resources/alaska-repeals-sales-tax-transaction-threshold>

commerce”.⁴ Given that the proposed bill only targets a tax to companies in one specific industry with certain revenues, it is clear these provisions are likely to only target online business activities in a way that cannot be applied to offline activities, and therefore fall under the scope of a “discriminatory tax”.

Previous efforts in various states have seen multiple challenges at both the state and federal levels. For example, Maryland’s 2021 enactment of the “Digital Advertising Gross Revenues Tax” (DAGRT) was ruled “unconstitutional and illegal” by a state court.⁵ Many of these arguments also appear similarly applicable to the proposed tax in HB 97. In times of increasing concern with budget shortfalls, it would be imprudent to advance legislation that is likely to face a similar fate of costly litigation.

HB 97 will harm overall innovation and business growth.

HB 97 violates many economic principles that should guide tax policy design. The guiding star of tax policy is that revenue should be raised efficiently. Imposing taxes tends to create incentives that distort behavior and produce deadweight losses for the economy, so taxes should be designed to minimize the size of those deadweight losses and harmful distortions. To this end, well-designed taxes are usually neutral and broad-based, generally avoid marginal tax rate “cliffs,” and usually focus on income or profits rather than intermediate flows like revenue. This bill fails on these counts.

These kinds of bills are a targeted effort that aims to collect taxes from a relatively small number of taxpayers in a specific industry. HB 97 is designed with a non-neutral, narrow tax base that creates inefficiencies and incentivizes costly efforts to avoid the tax. This is a significant general failure of the tax proposal in the bill.

The bill also violates the common-sense tax design prescription against “cliffs” in marginal tax rates. “Cliffs” that result in sudden surges in the effective marginal tax rate for tiny increases in revenue are a policy design disaster. They incentivize different kinds of inefficient behavior to avoid sudden surges in tax burdens, and may even drive businesses out of the jurisdiction imposing the “cliff”. Specifically, the structure of these kinds of proposed taxes, while seemingly targeted to larger and higher-profit businesses, would result in penalizing other smaller and growing businesses for exceeding arbitrary revenue or transactional thresholds. Additionally, the previous removal of the 200-transaction threshold recognized the burden of this kind of tax in the name of protecting “firms with lower per unit selling prices and moderate sales volumes from incurring compliance responsibilities in Alaska.”⁶

Additionally, these kinds of arbitrary requirements can create enormous tax burdens for crossing these growth thresholds — likely being ruinous and significantly threatening innovation for startups with limited capital “runway.” Such “cliffs” in effective marginal tax rates create enormous incentives for companies to avoid crossing relevant thresholds, which

⁴ 47 U.S.C. § 151.

⁵ *Comcast of Calif., LLC v. Comptroller of the Treasury of Maryland*, No. C-02-CV-21-000509, 2022 WL 20359237 (Md. Cir. Ct. Nov. 17, 2022).

⁶ Tax Foundation: State Tax Changes Taking Effect January 1, 2025 (December 19, 2024)
<https://taxfoundation.org/research/all/state/2025-state-tax-changes/>



may lead to behavior that is extremely inefficient for companies operating in Alaska and may even drive startups and other innovative efforts out of the state.

For example, under the bill, once a marketplace facilitator's annual in-state sales exceed the threshold (either \$250,000 in the prior calendar year or 200 separate in-state sales), all of its subsequent in-state sales become subject to the 2 percent tax. In economic terms, this creates a "cliff." If a seller is hovering near \$249,999 in annual in-state revenue (or 199 transactions), then making one more sale worth just \$1, bringing total sales to \$250,000, would trigger a 2% levy on all sales, triggering an obligation costing \$5,000 for the marginal sale of \$1.

Taxes on revenues hit firms with thin profit margins much harder than highly profitable firms with wide margins. In particular, taxes on revenues tend to be particularly harmful for startups that are still growing, as many such startups are not yet profitable (and may even be pre-monetization) and are operating on a fixed capital runway. By focusing on revenues or transactions rather than profits, HB 97 stands to drain the resources of these businesses, which often means the difference between successful scaling or premature shutdowns.

In combination, the design failures of HB 97 would generate enormous inefficiencies for Alaska consumers and businesses and would make the state much less appealing for startups and other businesses in the innovation space.

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We appreciate your consideration of our comments and stand ready to provide additional information as the Legislature considers proposals related to technology policy.

Sincerely,

Aodhan Downey
State Policy Manager, West
Computer & Communications Industry Association