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DIGITAL OPPORTUNITY **As**

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aaf central region **aaf** district 8 **ctia**TM

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MOTION PICTURE ASSOCIATION

 **ncta** **NetChoice**  **NEWS MEDIA ALLIANCE**  **NTU** NATIONAL TAXPAYERS UNION

SALEM  **TAXPAYERS PROTECTION ALLIANCE**

February 21, 2025

The Honorable Chris Karr
President Pro Tempore of the South Dakota Senate
500 East Capitol Avenue
Pierre, SD 57501

The Honorable Jon Hansen
Speaker of the South Dakota House of Representatives
500 East Capitol Avenue
Pierre, SD 57501

Dear President Karr and Speaker Hansen:

On behalf of our members and the undersigned organizations, we write to express strong opposition to HB 1138 and HB 1191.

These pieces of legislation propose significant changes to the taxation of advertising in South Dakota and threaten to hinder economic growth, burden businesses and taxpayers with unnecessary costs, and set a harmful precedent for the future of South Dakota's business climate.

Advertising is a major driver of economic activity in South Dakota. According to an independent study commissioned by IHS Markit, advertising expenditures generate \$14.3 billion in economic activity, while supporting over 84,000 jobs in the state. This accounts for 18.6 percent of all jobs in South Dakota. Simply put, advertising is a critical industry for the Mount Rushmore State and elected officials should be doing everything possible to protect it—not considering legislation that would endanger it.

HB 1138 seeks to remove the existing sales tax exemption for advertising, a move that would raise costs for countless businesses across South Dakota and undermine their ability to be more competitive and reach a broader consumer base.

HB 1191 would impose a new 10 percent tax on the gross receipts of all sales of advertising services for prescription drugs, creating a targeted and unfair financial burden on advertisers, businesses, and the healthcare sector.

Taxing advertising is an extremely misguided idea that would have far-reaching negative consequences for businesses, consumers, and the state's economy as a whole.

Over the last decade, America's economy has been transformed by advances in technology and nowhere has this transformation been more evident than with advertising. The advances in digital advertising have enabled businesses of all sizes to access online platforms and reach countless potential customers has leveled the playing field, allowing start-ups, local newspapers, and South Dakota's 90,000 small businesses to grow and find success.

Proponents of these taxes argue that they would only affect a handful of multi-billion-dollar companies, but the truth is, consumers and small businesses will bear the greatest impact of taxes imposed on advertising revenues through a direct or indirect passthrough effect.

South Dakota businesses and consumers would be disproportionately burdened by taxes on advertising. Research has found that advertising taxes harm local businesses and consumers more than the corporation they seek to impact. A study commissioned by Deloitte found that France's digital advertising tax impacted consumers the most with 55 percent of the total tax burden passed on. For small businesses, these taxes lead to more challenging choices – either significantly raising consumer prices, reducing services, laying off staff, or worse.

South Dakotans, like most Americans, are already navigating significant economic pressures including the lingering effects of inflation. Additional taxes would only compound these challenges, driving people and investments out of the state. South Dakota business owners and entrepreneurs already face extreme headwinds – the last thing they need is a tax on their efforts to tell consumers about the important goods and services they offer.

Ultimately and very predictably, taxes on advertising will invite immediate legal challenges, as seen in Maryland. Adoption of such a tax requires speculation on many unsettled legal issues including violations of the Commerce Clause, the Equal Protection Clause, the First Amendment, and the Internet Tax Freedom Act. Maryland's defense of its digital advertising tax has already cost taxpayers a significant amount of money with no certain path to victory. If the law is deemed unconstitutional for any one of the reasons mentioned above then the state would be forced to pay back every single cent, plus interest.

This legislative session provides yourself and your colleagues with an opportunity to deliver results for the people of South Dakota. Legislative discussions should center around ways to harness the state's positive attributes to build a more competitive business environment which would encourage innovation and grow the overall tax base.

For these reasons we urge you to oppose HB 1138 and HB 1191.

Respectfully,

Association of National Advertisers
Americans for Digital Opportunity
American Association of Advertising Agencies
American Advertising Federation
American Advertising Federation – South Dakota
American Advertising Federation – Central Region
American Advertising Federation – District 8
CTIA
Council On State Taxation
Exhibitions and Conference Alliance
Interactive Advertising Bureau
Internet Coalition
NCTA - The Internet & Television Association
NetChoice
News Media Alliance
Salem Media Group
Taxpayers Protection Alliance

Cc: The Honorable Larry Rhoden, Governor of South Dakota
The Honorable Tony Venhuizen, Lt. Governor of South Dakota
The Honorable Scott Odenbach, Chair, House State Affairs Committee