

Blog Post

# Is Social Media Tax Worth a Follow?

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The City of Chicago's widely reported first-of-its-kind Social Media Amusement Tax (the Chicago SMAT) went into effect on January 1, 2026, promising to deliver tens of millions of dollars of additional revenue to the City. Whether the Chicago SMAT will actually deliver on that revenue promise is questionable, however, as its implementation and legality remain uncertain.

## Chicago SMAT's Attempt at Defining the Population Is Administratively and Legally Problematic

The Chicago SMAT relies on a broadly defined tax base of Chicago consumers that appears positioned to over-capture users in Chicago<sup>[1]</sup> and may trigger the same due process problem that defeated the City a decade ago in Personal Property Lease Transaction Tax litigation over vehicle rentals.<sup>[2]</sup> The Chicago SMAT may also raise Dormant Commerce Clause concerns on account of the difficulty in fairly apportioning the tax.

The definition of Chicago residents utilized in the Chicago SMAT is ambiguous, particularly when it comes to commuters and temporary visitors. Further, in order for a social media business to determine which of its users are covered under the Chicago SMAT, the social media business would likely have to alter its data collection practices, despite the ordinance specifically asserting that the

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business is not expected to do so. From a practical perspective, if such changes are not made, a social media business may not be in a position to accurately report to the City.

These administrative challenges make implementation of the Chicago SMAT difficult, raise constitutional questions, and may impact the effectiveness of the tax as a revenue source.

### Chicago SMAT May Violate the Internet Tax Freedom Act

Further, the SMAT may be subject to challenge under the Internet Tax Freedom Act, which prohibits discriminatory taxes on electronic commerce.<sup>[3]</sup> While the City successfully defended a previous extension of its Amusement Tax to streaming services such as Netflix and Spotify, it did so on the basis that the same content is subject to sales taxes when delivered in a physical format.<sup>[4]</sup> A court may not necessarily reach the same conclusion for the SMAT, as social media is solely a creature of the Internet for which no physical analog exists.

### Illinois Proposes to Follow Chicago's Lead

Against that backdrop, and despite the almost certainty of ensuing legal challenges to the Chicago SMAT, Illinois Governor J.B. Pritzker's fiscal year 2027 budget proposal includes a similar Social Media Digital Platform Fee (SMP Fee) projected to raise \$200 million of new revenue. Under Governor Pritzker's proposal, technology companies that operate social media platforms would pay a monthly charge based on the number of monthly active Illinois users or accounts from whom they collect data.

The SMP Fee would operate with a tiered rate structure ranging from \$0.10 per user per month for social medial platforms with more than 100,000 monthly active Illinois users to a top marginal rate of \$0.50 per user per month for monthly active Illinois users above 1 million. Like the Chicago SMAT,

Governor Pritzker's proposal would prohibit social media platforms from directly or indirectly passing the SMP Fee along to their Illinois users.

The SMP Fee shares the SMAT's promises of generating substantial recurring annual revenues, as well as its core practical and legal issues. From a practical perspective, it is difficult to define an active Illinois user; prove user location with sufficient precision; and police no-pass-through rules. Legally, the Commerce Clause, Due Process Clause, and Internet Tax Freedom Act each pose formidable hurdles.

Illinois appears to be doubling down on a policy experiment before the Chicago SMAT has even been tested. There are still more questions than answers regarding the Chicago SMAT, including the two principal questions: can a per-user social media levy be administered reliably, and will courts permit it to stand?

The Chicago SMAT, much like Maryland's Digital Advertising Tax when it was first enacted, will likely serve as a test case, and other state and local legislatures will be watching carefully to see how it fares under scrutiny. But until the Chicago SMAT survives both administration and litigation hurdles, Illinois would be wise to be conservative in its budgetary projections from its SMP Fee.

[1] Municipal Code of Chicago § 4-156-1010.

[2] *Hertz Corp. v. City of Chicago*, 77 N.E. 3d 606 (Ill. 2017).

[3] 47 U.S.C. § 151 note.

[4] *Labell v. City of Chicago*, 147 N.E. 3d 732 (Ill. App. 2019).

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