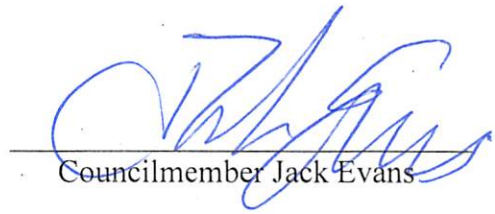



Chairman Phil Mendelson


Councilmember Jack Evans

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A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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To amend, on an emergency basis, Title 47 of the District of Columbia Official Code to provide for triggers to lower the commercial property tax rate for real property with an assessed value of greater than \$10 million, to provide that for a certain period specified revenue shall be directed to the Commission on the Arts and Humanities, to clarify that a person or a retailer without a physical presence in the District are vendors required to collect and pay sales tax on retail sales, to expand the definition of retailer to include marketplace facilitators and marketplace sellers, to clarify that the sale of electronically delivered products is a retail sale subject to sales tax, to make conforming changes to the use tax regarding electronically delivered products, to clarify that electronically delivered products subject to sales or use tax are not subject to the gross receipts tax, and to repeal Chapter 39A.

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BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Internet Sales Tax Emergency Amendment Act of 2018".

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Sec. 2. Title 47 of the District of Columbia Official Code is amended as follows:

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(a) Section 47-812(b-9)(2) is amended as follows:

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(1) Subparagraph (C)(iii) is amended by striking the figure "\$1.89" and inserting the phrase "Except as provided in subparagraph (D) of this paragraph, \$1.89" in its place.

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(2) A new subparagraph (D) is added to read as follows:

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"(D)(i) Notwithstanding subparagraph (C)(iii) of this paragraph, and except as provided in sub-subparagraph (ii) of this subparagraph, for the tax year beginning October 1, 2019, and each tax year thereafter, the recurring annual revenue collected pursuant to the Internet Sales Tax Amendment Emergency Act of 2018, passed on emergency basis on

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35 December 18, 2018 (Enrolled version of Bill 22-___) (“IST revenue”), as certified by the Chief
36 Financial Officer in the quarterly revenue estimate issued in February 2019, and each February
37 thereafter, shall, to the extent the IST revenue is in excess of that required for the financial plan
38 for the current fiscal year (“excess IST revenue”), reduce the property tax rate under
39 subparagraph (C)(iii) of this paragraph, as determined at the time of the February quarterly
40 revenue estimate, to the lowest tax rate rounded up to the nearest penny per \$100 of assessed
41 value; provided, that the rate is no less than \$1.85 per \$100 of assessed value; provided further,
42 that if the tax rate remains greater than \$1.85 per \$100 of assessed value, for the tax year
43 beginning October 1, 2020, and each tax year thereafter, the excess IST revenue shall reduce the
44 property tax rate to the lowest tax rate rounded up to the nearest penny per \$100 of assessed
45 value that is at least \$1.85 per \$100 of assessed value.

46 “(ii) For the period beginning on January 1, 2019, through
47 September 30, 2019, IST revenue shall be directed to the Commission on the Arts and
48 Humanities, established by section 4 of the Commission on the Arts and Humanities Act,
49 effective October 21, 1975 (D.C. Law 1-22; D.C. Official Code § 39-203), to support the
50 functions, purposes, and costs of the Commission.”

51 (b) Chapter 20 is amended as follows:

52 (1) The table of contents is amended by adding a new section designation to read as
53 follows:

54 “47-2002.01a. Marketplace facilitators; sales tax requirements.”

55 (2) Section 47-2001 is amended as follows:

56 (A) A new subsection (d-1) is added to read as follows:

57 “(d-1)(1) “Digital goods” means digital audiovisual works, digital audio works, digital
58 books, digital codes, digital applications and games, and any other otherwise taxable tangible
59 personal property electronically or digitally delivered, whether electronically or digitally
60 delivered, streamed, or accessed and whether purchased singly, by subscription, or in any other
61 manner, including maintenance, updates, and support. The term “digital goods” does not include
62 cable television service, satellite relay television service, or any other distribution of television,
63 video, or radio service subject to tax under § 47-2501.01, unless expressly included in the
64 definition of digital goods under paragraph (1) of this subsection.

65 “(2) For the purposes of this subsection, the term:

66 “(A) “Digital audiovisual works” means a series of related images
67 that, when shown in succession, impart an impression of motion, together with accompanying
68 sounds. “Digital audiovisual works” includes motion pictures, musical, videos, news and
69 entertainment programs, and live events.

70 “(B) “Digital audio works” means works that result from the
71 fixation of a series of musical, spoken, or other sounds that are transferred electronically,
72 including prerecorded or live songs, music, readings of books or other written materials,
73 speeches, ringtones, or other sound recording.

74 “(C) “Digital books” means works that are generally recognized in
75 the ordinary and usual sense as books that are transferred electronically, including works of
76 fiction, nonfiction, and short stories.

77 “(D) “Digital code” means a code that provides the person that holds
78 the code a right to obtain an additional digital good, a digital audiovisual work, digital audio
79 work, or digital book that may be obtained by any means, including tangible forms and

80 electronic mail, regardless of whether the code is designated as song code, video code, or book
81 code. The term “digital code” includes codes used to access or obtain any specified digital goods,
82 or any additional digital goods that have been previously purchased, and promotion cards or
83 codes that are purchased by a retailer or other business entity for use by the retailer’s or entity’s
84 customers.

85 “(E) “Digital applications and games” mean any application or game,
86 including add-ons or additional content that can be used by a computer, mobile device, or tablet
87 notwithstanding the function performed.”.

88 (B) Subsection (h) is redesignated as subsection (g-3).

89 (C) New subsections (g-4), (g-5), and (h) are added to read as follows:

90 “(g-4) “Marketplace” means a physical or electronic place, including a store, a booth, an
91 Internet web site, a catalogue, or a dedicated sales software application, where a retail sale, as
92 defined in subsection (n) of this section, occurs.

93 “(g-5) “Marketplace facilitator” means a person that provides a marketplace that lists,
94 advertises, stores, or processes orders for retail sales subject to tax under this chapter for sale by
95 such marketplace sellers, and directly or indirectly collects payment from a purchaser and remits
96 payment to a marketplace seller regardless of whether the marketplace facilitator receives
97 compensation or other consideration in exchange for its services.

98 “(h) “Marketplace seller” means a person that makes retail sales through a marketplace
99 operated by a marketplace facilitator.”.

100 (D) Subsection (h-2) is repealed.

101 (E) Subsection (l) is amended as follows:

102 (i) Paragraph (2) is amended by striking the phrase “; and” and
103 inserting a semicolon in its place.

104 (ii) Paragraph (3) is amended by striking the phrase “consumption.”
105 and inserting the phrase “consumption; and” in its place.

106 (iii) New paragraphs (4) and (5) are added to read as follows:

107 “(4) Every marketplace facilitator; and

108 “(5) Every marketplace seller.”.

109 (F) Subsection (n) is amended as follows:

110 (i) Paragraph (1) is amended as follows:

111 (I) The lead-in text is amended by striking the phrase “by a
112 nexus-vendor”.

113 (II) Subparagraph (Z) is amended by striking the word “or”
114 at the end.

115 (III) Subparagraph (AA)(ii)(II) is amended by striking the
116 period and inserting the phrase “; or” in its place.

117 (IV) A new subparagraph (BB) is added to read as follows:

118 “(BB) The sale of or charges for digital goods.”.

119 (ii) Paragraph (2) is amended as follows:

120 (I) Subparagraph (C) is amended by striking the phrase “and
121 is not sold by a nexus-vendor”.

122 (II) Subparagraph (F) is amended by adding a sub-
123 subparagraph (iv) to read as follows:

124 “(iv) “Internet access service” shall not include digital goods, as
125 defined in § 47-2001(d-1).”.

126 (G) Subsection (w) is amended as follows:

127 (i) Strike the phrase “, including a nexus vendor,”.

128 (ii) Strike the phrase “this chapter.” and insert the phrase “this
129 chapter, including a person or retailer that does not have a physical presence in the District that in
130 the previous calendar year or the current calendar year had gross receipts from all retail sales
131 delivered into the District that exceeds \$100,000 or 200 or more separate retail sales delivered into
132 the District.” in its place.

133 (3) A new section 47-2002.01a is added to read as follows:

134 “§ 47-2002.01a. Marketplace facilitators; sales tax requirements.

135 “Marketplace facilitators shall collect and remit sales tax on all sales the marketplace
136 facilitator makes on its own behalf and all sales the marketplace facilitator facilitates on behalf of
137 marketplace sellers to customers in the District of Columbia regardless of whether the marketplace
138 seller for whom sales are facilitated would have been required to collect sales tax had the sale not
139 been facilitated by the marketplace facilitator.”.

140 (c) Section 47-2201(a)(1) is amended as follows:

141 (1) Subparagraph (P) is amended by striking the phrase “service; or” and inserting
142 the phrase “service;” in its place.

143 (2) Subparagraph (Q) is amended by striking the period and inserting the phrase “;
144 or” in its place.

145 (3) A new subparagraph (R) is added to read as follows:

146 “(R) The sale of or charges for digital goods, as defined in § 47-2001(d-
147 1).”.

148 (d) Section 47-2501.01(a) is amended by striking the phrase “radio service with or
149 without” and inserting the phrase “radio service, other than sales of digital goods as defined in §
150 47-2001(d-1) and subject to tax pursuant to § 47-2001(n)(1)(C) or § 47-2201(a)(1)(R)), or both,
151 with or without” in its place.

152 (e) Chapter 39A is repealed.

153 Sec. 3. Applicability.

154 Section 2(b), (c), (d), and (e) shall apply as of January 1, 2019; except, that section
155 2(b)(2)(E) shall apply as of April 1, 2019.

156 Sec. 4. Fiscal impact statement.

157 The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact
158 statement required by section 4a of the General Legislative Procedures Act of 1975, approved
159 October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

160 Sec. 5. Effective date.

161 This act shall take effect following approval by the Mayor (or in the event of veto by the
162 Mayor, action by the Council to override the veto), and shall remain in effect for no longer than
163 90 days, as provided for emergency acts of the Council of the District of Columbia in section
164 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788;
165 D.C. Official Code § 1-204.12(a)).



OFFICE OF THE GENERAL COUNSEL

Council of the District of Columbia
1350 Pennsylvania Avenue NW, Suite 4
Washington, DC 20004
(202) 724-8026

MEMORANDUM

TO: Councilmember Jack Evans

FROM: Nicole L. Streeter, General Counsel *NLS*

DATE: December 14, 2018

RE: Legal sufficiency determination for the Internet Sales Tax Emergency Amendment Act of 2018

The measure is legally and technically sufficient for Council consideration.

The measure amends Title 47 of the District of Columbia Official Code to provide that from January 1, 2019, through September 30, 2019, the additional recurring annual revenue collected as a result of increased internet sales tax revenue shall be directed to the Commission on the Arts and Humanities and, beginning October 1, 2019, and each fiscal year thereafter, used to reduce the commercial real property tax rate. Further, the measure clarifies that a person or retailer without a physical presence is a vendor¹ and makes other clarifying amendments relating to internet sales, including the repeal of obsolete provisions.²

I am available if you have any questions.

¹§ 47-2001(w) "Vendor" includes a person or retailer selling property or rendering services upon the receipts from which a tax is imposed under this chapter, including a person or retailer that does not have a physical presence in the District that in the previous calendar year or the current calendar year had gross receipts from all retail sales delivered into the District that exceeds \$100,000 or 200 or more separate retail sales delivered into the District. [as amended by Bill 22-914]

² Chapter 39A (§§ 47-3931 through 47-3934) authorized the District to impose taxation on remote [internet] sales upon the applicability of the Marketplace Fairness Act of 2013, passed by the Senate on May 6, 2013 (S. 743).

Government of the District of Columbia
Office of the Chief Financial Officer



Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeffrey S. DeWitt
Chief Financial Officer

DATE: November 7, 2018

SUBJECT: Fiscal Impact Statement – Internet Sales Tax Amendment Act of 2018

REFERENCE: Bill 22-914, Committee Print provided to the Office of Revenue
Analysis on November 5, 2018

Conclusion

Funds are sufficient in the fiscal year 2019 through fiscal year 2022 budget and financial plan to implement the bill. The bill will increase sales tax revenue beginning in fiscal year 2019, generating a total of \$96.9 million during the financial plan period. Beginning in FY 2020, the bill will result in an estimated three-cent reduction in the Class 2 commercial property tax rate of properties with an assessed value over \$10 million, leaving a net increase in General Fund revenue of \$14.3 million in fiscal year 2019 and approximately \$21 million over the four-year financial plan. Finally, the bill dedicates the fiscal year 2019 revenue to the Commission on Arts and Humanities, providing net local source revenue of \$0 in fiscal year 2019 and \$6.7 million over the four-year financial plan. The revenue dedicated to the Commission on Arts and Humanities must be included in an approved budget and financial plan before it can be spent by the agency.

Background

In June 2018, the United States Supreme Court upheld¹ a South Dakota law that imposed tax collection and reporting requirements on large out-of-state retailers.² The ruling allows all jurisdictions to require sales tax to be collected on transactions delivered into their jurisdiction regardless of a seller's physical presence in that jurisdiction. Prior to the ruling, a seller could only be required to collect and remit sales tax to a jurisdiction if the seller had a physical presence in that jurisdiction.

¹ *South Dakota v. Wayfair, Inc.* 138 S. Ct. 2080, 201 L. Ed. 2d 403 (2018), https://www.supremecourt.gov/opinions/17pdf/17-494_i4e1.pdf (last accessed November 5, 2018).

² The South Dakota law included a small seller exemption. See *Wayfair* at 2099.

The Honorable Phil Mendelson

FIS: "Internet Sales Tax Amendment Act of 2018," Bill 22-914, Committee Print provided to the Office of Revenue Analysis on October 31, 2018.

The bill expands the District's sales tax collection requirements to vendors who do not have a physical presence in the District. The definition of vendor is also expanded to make clear that marketplace facilitators, or third-party sales sites, are also required to collect and remit District sales tax, regardless of whether the marketplace facilitator receives compensation for its services. The bill exempts from the sales tax collection requirement for out of state vendors that do not exceed \$100,000 in annual gross receipts from all retail sales into the District and do not exceed 199 total annual retail sale transactions delivered into the District.³ This exemption is modeled after the South Dakota law.

The bill also clarifies the application of the sales tax to products delivered electronically to include digital goods. It defines the following categories of digital goods as subject to the sales tax: digital audiovisual works (including videos, news and entertainment programs), digital audio works (including books, ringtones or other recordings), digital books, digital code (such as a promotional code that is used to obtain any other digital good), digital applications and games, whether it is downloaded, streamed, purchased singly or by subscription. Streaming video currently taxed under gross receipts tax will be taxed as retail sales, reducing the tax rate on those transactions.

Beginning in fiscal year 2020, the bill dedicates most of the new sales tax revenue identified by the OCFO as additional revenue generated by the bill to reducing the Class 2 commercial property tax rate on properties with an assessed value greater than \$10 million, until such time as revenue is sufficient to reduce the rate from \$1.89 per \$100 of assessed property value to \$1.85 per \$100 of assessed property value. Provided the revenue generated by the bill is not necessary to maintain an overall balanced financial plan, the fiscal year 2020 property tax rate will be reduced to the nearest penny by the amount of internet sales tax certified in the February 2019 quarterly revenue estimate. If there are insufficient revenues to lower the rate to \$1.85 in fiscal year 2020, then the same calculation will be made in all future February quarterly revenue estimates, until such time as the rate reaches \$1.85. (Currently we estimate revenues will be sufficient to lower the rate to \$1.86 in fiscal year 2020.) Revenue generated in fiscal year 2019 will be dedicated to the Commission on the Arts and Humanities, and any revenue not used to lower the rate to the nearest penny in future fiscal years will go to the local source revenue component of the General Fund.

The bill will be effective as of January 1, 2019 for most vendors, but April 1, 2019 for marketplace facilitators.

Financial Plan Impact

Funds are sufficient in the fiscal year 2019 through fiscal year 2022 budget and financial plan to implement the bill. We estimate the bill will generate sufficient new sales tax revenue to fund a three-cent decrease in the Class 2 commercial property tax rate for properties with an assessed value greater than \$10 million, lowering it to \$1.86 per \$100 assessment beginning fiscal year 2020. However, the rate change will be based on the February 2019 quarterly revenue estimate, so the final rate change could differ from this estimate. We estimate the bill will also generate \$14.3 million in revenue in FY 2019. The FY 2019 revenue has been dedicated to the Commission on the Arts and Humanities, leaving a net increase in local source revenue of \$6.7 million in fiscal years 2020 through 2022.

³ Transactions through a marketplace facilitator will be taxable regardless of the retailer size if the marketplace facilitator is not a small seller.

The Honorable Phil Mendelson

FIS: "Internet Sales Tax Amendment Act of 2018," Bill 22-914, Committee Print provided to the Office of Revenue Analysis on October 31, 2018.

Fiscal Impact of Bill 22-914 Internet Sales Tax Amendment Act of 2018					
Fiscal Year 2019 - Fiscal Year 2022					
(\$ thousands)					
	FY 2019	FY 2020	FY 2021	FY 2022	Total
Increased sales tax revenue ^(a)	\$14,336	\$25,299	\$27,475	\$29,837	\$96,947
Decreased Class 2 property tax revenue by lowering rate to \$1.86 for assessments over \$10 million	\$0	(\$24,668)	(\$25,291)	(\$25,923)	(\$75,883)
Revenue dedicated to the Commission on the Arts and Humanities	(\$14,336)	\$0	\$0	\$0	(\$14,336)
Net increase to Local Source Revenue in the General Fund	\$0	\$631	\$2,183	\$3,914	\$6,728

^(a) This revenue is net of reduction in gross receipts tax for streaming video.