

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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.

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”.

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

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

(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.

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

“(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 December 18, 2018 (Enrolled version of Bill 22-1070) (“IST revenue”), as certified by the Chief Financial Officer in the quarterly revenue estimate issued in February 2019, and each February thereafter, shall, to the extent the IST revenue is in excess of that required for the financial plan for the current fiscal year (“excess IST revenue”), reduce the property tax rate under subparagraph (C)(iii) of this paragraph, as determined at the time of the February quarterly revenue estimate, to the lowest tax rate rounded up to the nearest penny per \$100 of assessed value; provided, that the rate is no less than \$1.85 per \$100 of assessed value; provided further, that if the tax rate remains greater than \$1.85 per \$100 of assessed value, for the tax year

beginning October 1, 2020, and each tax year thereafter, the excess IST revenue shall reduce the property tax rate to the lowest tax rate rounded up to the nearest penny per \$100 of assessed value that is at least \$1.85 per \$100 of assessed value.

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

(b) Chapter 20 is amended as follows:

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

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

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

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

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

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

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

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

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

“(D) “Digital code” means a code that provides the person that holds the code a right to obtain an additional digital good, a digital audiovisual work, digital audio work, or digital book that may be obtained by any means, including tangible forms and electronic mail, regardless of whether the code is designated as song code, video code, or book code. The term “digital code” includes codes used to access or obtain any specified digital goods, or any additional digital goods that have been previously purchased, and promotion cards or

codes that are purchased by a retailer or other business entity for use by the retailer's or entity's customers.

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

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

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

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

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

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

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

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

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

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

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

“(4) Every marketplace facilitator; and

“(5) Every marketplace seller.”.

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Strike the phrase “this chapter.” and insert the phrase “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.” in its place.

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

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

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

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

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

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

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

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

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

(e) Chapter 39A is repealed.

Sec. 3. Applicability.

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

Sec. 4. Fiscal impact statement.

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

ENROLLED ORIGINAL

Sec. 5. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia