

1
2 Chairman Phil Mendelson

Councilmember Jack Evans

3
4
5 A BILL

6
7
8
9 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

10
11
12
13
14 To amend, on an emergency basis, Title 47 of the District of Columbia Official Code to provide for
15 triggers to lower the commercial property tax rate for real property with an assessed value of
16 greater than \$10 million, to provide that for a certain period specified revenue shall be directed to
17 the Commission on the Arts and Humanities, to clarify that a person or a retailer without a physical
18 presence in the District are vendors required to collect and pay sales tax on retail sales, to expand
19 the definition of retailer to include marketplace facilitators and marketplace sellers, to clarify that
20 the sale of electronically delivered products is a retail sale subject to sales tax, to make conforming
21 changes to the use tax regarding electronically delivered products, to clarify that electronically
22 delivered products subject to sales or use tax are not subject to the gross receipts tax; and to repeal
23 Chapter 39A.

24
25 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
26 act may be cited as the “Internet Sales Tax Emergency Amendment Act of 2018”.

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

28 (a) Section 47-812(b-9)(2) is amended by adding a new subparagraph (D) to read as follows:

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

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

32 “(D)(i) Notwithstanding subparagraph (C)(iii) of this paragraph, and except as
33 provided in sub-subparagraph (ii) of this subparagraph, for the tax year beginning October 1, 2019, and
34 each tax year thereafter, the recurring annual revenue collected pursuant to the Internet Sales Tax
35 Amendment Act of 2018, as introduced on July 9, 2018 (Bill 22-914) (“IST revenue”), as certified by the
36 Chief 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 for the
38 current fiscal year (“excess IST revenue”), reduce the property tax rate under subparagraph (C)(iii) of this
39 paragraph, as determined at the time of the February quarterly revenue estimate, to the lowest tax rate
40 rounded up to the nearest penny per \$100 of assessed value; provided, that the rate is no less than \$1.85 per
41 \$100 of assessed value; provided further, if the tax rate remains greater than \$1.85 per \$100 of assessed
42 value, for the tax year beginning October 1, 2020, and each tax year thereafter, the excess IST revenue shall
43 reduce the property tax rate to the lowest tax rate rounded up to the nearest penny per \$100 of assessed
44 value that is at least \$1.85 per \$100 of assessed value.

45 “(ii) For the period beginning on January 1, 2019, through September 30,
46 2019, IST revenue shall be directed to the Commission on the Arts and Humanities, established by the
47 Commission on the Arts and Humanities Act, effective January 29, 1998 (D.C. Law 12-42; D.C. Official
48 Code § 39-201, *et seq.*, to support the functions, purposes, and costs of the Commission.”.

49 (b) Chapter 20 is amended as follows:

50 (1) Section 47-2001 is amended as follows:

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

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

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

60 “(A) “Digital audiovisual works” means a series of related images

61 that, when shown in succession, impart an impression of motion, together with accompanying sounds.

62 “Digital audiovisual works” includes motion pictures, musical, videos, news and entertainment programs,
63 and live events.

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

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

71 “(D) “Digital code” means a code that provides the person who holds
72 the code a right to obtain an additional digital good, a digital audiovisual work, digital audio work, or digital
73 book that may be obtained by any means, including tangible forms and electronic mail, regardless of
74 whether the code is designated as song code, video code, or book code. Term “digital code” includes codes
75 used to access or obtain any specified digital goods, or any additional digital goods that have been
76 previously purchased, and promotion cards or codes that are purchased by a retailer or other business entity
77 for use by the retailer’s or entity’s customers.

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

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

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

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

86 “(g-5) “Marketplace facilitator” means a person who provides a marketplace that lists, advertises,

87 stores, or processes orders for retail sales subject to tax under this chapter for sale by such marketplace
88 sellers, and directly or indirectly collects payment from a purchaser and remits payment to a marketplace
89 seller regardless of whether the marketplace facilitator receives compensation or other consideration in
90 exchange for its services.

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

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

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

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

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

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

100 “(4) Every marketplace facilitator; and

101 “(5) Every marketplace seller.

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

103 (A) Paragraph (1) is amended as follows:

104 (i) Strike the phrase “by a nexus-vendor”.

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

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

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

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

110 (B) Subparagraph (2) is amended as follows:

111 (i) Subparagraph (C) is amended by striking the phrase “and is not sold by

112 a nexus-vendor”.

113 (ii) Subparagraph (F) is amended by adding a sub-subparagraph (iv) to read
114 as follows:

115 “(iv) “Internet access service” shall not include digital goods as defined in §
116 47-2001(d-1).”.

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

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

119 (B) Strike the phrase “this chapter.” and insert the phrase “this chapter, including a
120 person or retailer that does not have a physical presence in the District that in the previous calendar year or
121 the current calendar year had gross receipts from all retail sales delivered into the District that exceeds
122 \$100,000 or 200 or more separate retail sales delivered into the District.” in its place.

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

124 “§ 47-2002.01a. Marketplace facilitators; sales tax requirements.

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

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

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

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

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

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

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

140 (e) Chapter 39A is repealed.

141 Sec. 3. Applicability.

142 Section 2(b), (c), (d), and (e) of this act shall apply as of January 1, 2019; except, that section
143 2(b)(1)(E) shall apply as of April 1, 2019.

144 Sec. 4. Fiscal impact statement.

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

148 Sec. 5. Effective date.

149 This act shall take effect following approval by the Mayor (or in the event of veto by the
150 Mayor, action by the Council to override the veto), and shall remain in effect for no longer than
151 90 days, as provided for emergency acts of the Council of the District of Columbia in section
152 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788;
153 D.C. Official Code § 1-204.12(a)).