

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_j4el.pdf (last accessed November 5, 2018).

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

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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.

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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.