

Council of the District of Columbia
1350 Pennsylvania Avenue, NW
Washington, D.C. 20004

July 17, 2020

Dear Chairman Mendelson, Chair Pro Tempore McDuffie and Members of the Council of the District of Columbia:

The Software & Information Industry Association (SIIA) strongly urges the D.C. Council to vote no on two proposed taxes contained in the Fiscal Year 2021 Budget Support Act of 2020: the tax on advertising services and the tax on personal information. These taxes will negatively affect media and advertising businesses, as well as many data analytics and other companies. In 2019, WalletHub¹ named DC the third most innovation friendly city in the United States, which found its concentration of STEM professionals, research and development spending, share of technologies, venture capital, internet speed, and tax friendliness among the highest in the nation. These taxes will likely reduce the District's attractiveness as a city to invest in.

Advertising Tax

The advertising tax is problematic in many ways. To begin with, it is not clear from the proposed budget legislation how the new taxes on advertising services, including digital advertising, and PI sales will intersect with the current taxation of digital goods² and services, which the D.C. Council addressed in the "Internet Sales Tax Emergency Amendment Act of 2018."³ Moreover, there is no clarity on how sourcing will work.

The definition of "advertising services" and "digital advertising services" is so broad that it does not just apply to the levying of taxes on sales of such services, but even extends to planning and creating. The District arguably proposes to tax the creation of speech, even if it is not ultimately placed or displayed in a traditional advertising sense. This interpretation is backed up by the language saying that taxation is imposed upon charges relating to advertising services. In effect, the statute could be read to tax the creation of commercial speech.

The advertising tax could apply to professionals such as, for instance, graphic designers. The tax is designed to lead to overreach in that the language – "capable of being associated" – will create problems of who is covered and who is not. Potentially, the tax could apply to every newspaper (including local publications important to the community) and nonfiction book and directory. See, for instance, this Washington Blade article opposing the tax.⁴ This tax comes at a time when advertising is increasingly important, as businesses need to simply tell their customers that they are open. Additionally, the current

¹ WalletHub, "Most and Least Innovative States," Adam McCann, March 18, 2019

<https://wallethub.com/edu/most-innovative-states/31890/>

² Office of Tax and Revenue Website, "Taxation of Digital Goods and Services in the District of Columbia," January 3, 2019

<https://otr.cfo.dc.gov/release/taxation-digital-goods-district-columbia>

³ Internet Sales Tax Emergency Amendment Act of 2018

<https://lms.dccouncil.us/downloads/LIMS/41492/Meeting1/Enrollment/B22-1070-Enrollment.pdf>

⁴ Washington Blade, "Media outlets assail D.C.'s proposed ad tax, Lou Chibbao Jr., July 15, 2020

<https://www.washingtonblade.com/2020/07/15/media-outlets-assail-d-c-s-proposed-ad-tax/>

pandemic has led to increasing uncertainty in the demand for advertising services, and a tax on these services will only contribute to that uncertainty. Jobs and local publications could be jeopardized.

Due to the complexity, scope and diversity of advertising and data activities within the District and the substantial levels of advertising generated outside the city limits but received in DC, regulatory enforcement will also be difficult, complicated, time-consuming and expensive. This helps to explain that while more than 100 tax proposals have been put forward in more than 40 states and localities in the past five decades, each one has been uniformly rejected or abandoned as economically unsound and counterproductive.

Tax on the Sale of Personal Identified Information (PII)

This proposal reflects a fundamentally flawed understanding of the way the Internet economy works, as well as an exaggerated belief in the value of PII data. Presumably the District considers that many products and services are developed using District resident PII data, which the District cannot tax. The reality, however, is different.

SIIA member companies typically provide information solutions that include personal information rather than simply “sell” personal information. Moreover, there are societally important reasons to make data assembled by government authorities publicly available. Why inhibit the use of that data by imposing a tax? Also, in some cases (not all) PII data is obtained from public authorities in exchange for a fee. Fees can be acceptable from a public policy standpoint as long they are proportionate with the costs associated with collecting and curating the data. However, imposing a PII tax on top of a fee runs the risk of what would, in effect, be double taxation, which is not acceptable.

Recall also that in some cases D.C. government agencies partner with the private sector to use data analytics and information services, including public record information with PII, to enforce child support, pay unemployment insurance claims and deter fraud (among many other purposes). Taxation of PII sales would be added to government agency costs and ultimately paid by D.C. residents.

One example of a data analysis activity benefiting society, business and consumers is when accident data is combined with other data and then used in an algorithm to produce a service, for instance accident reports. These reports are used to generate solutions that help insurers pay driver claims more quickly and efficiently. In this quite common situation, tax authorities would have to impute a value to the PII data used to produce this service. This is a difficult, if not impossible, challenge. Moreover, while this is a nuanced discussion, PII data is often overvalued. For example, Trustwave⁵ calculates that criminals will pay 20 times less for stolen PII data than what some IT professionals calculate it is worth.

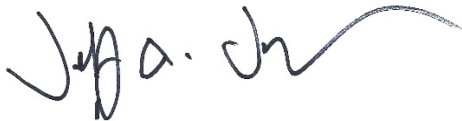
The definition of PII data is overly broad in that the tax could also apply to data which may not be associated with specific individuals. In this case what the District is really attempting to do is tax PII and non-PII data, potentially even data associated with individuals who reside outside the District. Broadening the tax in this way disincentivizes companies from anonymizing PII data, which privacy policymakers typically do not favor.

⁵ TrustWave, “The Value of Data: A Cheap Commodity or a Priceless Asset,” 2017
https://www.infopoint-security.de/media/TrustwaveValue_of_Data_Report_Final_PDF.pdf

The PII tax is also erroneously cast as an expansion of the sales tax. In effect, it is really a tax on gross receipts. This especially harmful to B2B companies. The Tax Foundation notes that: "Gross receipts taxes impact firms with low profit margins and high production volumes, as the tax does not account for businesses' costs of production."⁶

The proposed district tax nominally targets transactions with a documented monetary value. However, in reality tax authorities will, as explained above, in many cases have to impute a value to the PII or non-PII data under consideration. This comes dangerously close to imposing arbitrarily calculated taxes that do not have a relationship to transactions, profits and/or revenues. Given this reality, and the uncertainty that would be caused by this tax at this very economically difficult time, the DC City Council should reject the advertising and PII taxes. Instead, the Council should work within the parameters of the Mayor's balanced budget, which did not include tax increases that could diminish economic activity in the District at this critical time.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Joseph" with a stylized flourish at the end.

Jeff Joseph
President and CEO
SIIA

⁶ The Tax Foundation, "Resisting the Allure of Gross Receipts Taxes: An Assessment of Their Costs and Consequences," Garrett Watson, February 6, 2019
<https://taxfoundation.org/gross-receipts-tax/>