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BILL S.4959 (Krueger) / A.6199 (Braunstein)
SUBJECT Excise Tax on Consumer Data Collection
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OPPOSE

The Business Council of New York State, the state’s leading statewide business and industry association, opposes this legislation that would amend the tax law to create a new excise tax on the collection of consumer data by commercial data collectors.

This bill would create a new §186-h in the tax law to establish a “monthly excise tax on the collection of the consumer data of individual New York consumers by commercial data collectors.” The tax shall apply regardless of the format (electronic or otherwise) in which it is collected by commercial data collectors. For purposes of the law commercial data collectors means a for-profit entity that collects data, other than consumer contact information and credit card information, from more than one million New York consumers in any given month. A New York consumer is an individual who purchases goods or services from a commercial data collector, or uses the services provided by a commercial data collector, whether the consumer is charged for services or not. The tax is calculated by a graduated rate schedule that begins at 5 cents per individual per month for commercial data collectors collecting data on over one million New Yorkers in a month. The rate gradually increases, with the highest rate being \$2.25 million plus 50 cents for each individual above 10 million on whom data is collected in a month.

As drafted, this legislation would impose a tax on such data collectors, regardless of what the collected data is used for, including cases where the data is only used in providing the data collector’s services to its customers. This is a broader application of a data collection tax than proposed in other bills pending in New York.

While the bill seems designed to avoid legal issues raised with regard to other data tax proposals (such as consistency with the federal Permanent Internet Tax Freedom Act, which prohibits discriminatory taxation on internet based services), it does not seem to advance any other public policy objective

related to consumer data – it does not advance consumer protections, it will not help fight cyber crime, it will not promote data security.

Instead, this purpose is simply, to quote the sponsor's memo, "To raise revenue to fund state services by, imposing a tax on the collection of New Yorkers' consumer data by businesses for commercial purposes". Basically, the tax is being levied on large companies utilizing consumer data in the course of business for the purpose of funding state spending.

We believe this bill could impact a wide range of businesses. Companies will have to assess every e-mail, credit card, mailing address, transaction, and every single interaction with every customer to determine its status under this new tax measure. It would require commercial data collectors to maintain records as required by the Commissioner of Tax & Finance. Collectors must file monthly returns; taxes are paid monthly; and collectors must file monthly "until it reports no tax liability for twelve consecutive months." The amount of time needed to assess the impact would be significant and necessitate constant updating, individuals dedicated to this task, and sophisticated accounting. This is new territory in the state tax law and will require massive amounts of state modeling and regulations.

The law is also effective immediately and shall apply to all tax years commencing on or after the first day of the first month that begins more than six months after the law take effect – meaning it could be in effect as early as 2021 with little if any road map to its implementation and operation.

Moreover, the sponsor offers no estimate of projected revenues, nor is this bill related to any specific state funding need.

We believe any new or expanded tax measure should be based on both a clear determination of the need for additional state tax revenues, and a clear assessment of the economic impact and compliance costs of revenue proposals. At this time, there is no clear need for this tax revenue, nor now clear understanding of the cost and practicality of its implementation – by taxpayers or by the Department of Taxation and Finance.

For the above reasons, The Business Council opposes this legislation.