

Washington, DC City Council Votes Down New Tax On Advertising And Personal Information

In early July the Washington, DC City Council proposed a new 3% tax on advertising and personal information. Like many states and cities, Washington, DC is facing an enormous budget deficit due to the severe economic downturn.

While the new tax on advertising and personal information was ultimately voted down after intense opposition by industry, including the 4A's and individual agencies in DC, the threat of new taxation looms large in FY 2021.

The Center on Budget and Policy Priorities has predicted that in FY 2021 states will collectively be facing a 290 billion dollar deficit. Many states end their fiscal year on June 30th, so starting July 1st, states have to figure-out how to start balancing their budgets for FY 2021. Unlike the federal government, all states (with the exception of Vermont) must balance their budgets.

States are very limited in their options as to how they can balance their budgets - generally, they can either raise taxes or cut spending. With many states receiving nearly 40% of their entire operating budgets from a combination of sales taxes and income taxes, states have obviously been hit very hard by residents not getting out and spending, as well as the incredible job losses that have occurred since March.

While placing new taxes on advertising is an easy target in a good year, FY 2021 will not be a good year for state and city budgets. And the new crop of advertising taxes in the works are very different than in the past - they've expanded beyond just traditional taxes on advertising, and now include taxes on potentially any personal information used in advertising, taxes that make distinctions between digital advertising and other advertising channels, as well as new "taxes" that would create digital dividend funds for redistribution to residents.

It is expected that many states and cities will introduce new taxes on advertising and personal information in FY 2021.

CCPA Already Facing Changes

Although enforcement just began in early July, the California Consumer Privacy Act (CCPA) is already facing changes via a new ballot initiative in California. The California Privacy Rights Act of 2020 (CPRA) will appear on the November ballot in California, and will seek to make several changes to the existing CCPA including:

- Adding the category of "contractor" to the CCPA to cover contractual arrangements that restrict selling/reuse of personal information, but are not

- “service provider” relationships;
- Expanding the CCPA to include a new category of “sensitive personal information” to include SSNs, financial account information plus log-in credentials; or precise geolocation, among other data elements;
- Creates a new right to correction;
- Would allow, but not require, a business to honor an “opt-out preference signal sent by platform, technology, or mechanism”;
- Establishes a new state agency - the California Privacy Protection Agency- to implement and enforce the CCPA;
- Would *not include* a guaranteed 30-day cure period for CCPA enforcement actions, except for private lawsuits.

If passed by California voters, the CPRA will go into effect on January 1, 2023, with enforcement beginning July 1, 2023.

Congress And COVID-19 Relief

With new COVID-19 infection rates continuing to spike around the country and economic recovery stalled, Congress is currently in the process of debating a one trillion dollar relief package. Earlier this week Senate Republicans and the White House released their wish list for the next relief package, which includes: new liability protections for businesses, processes for creating and/or restoring supply chains, entitlement reforms, extension of unemployment insurance, new school funding and changes to the Paycheck Protection Program (PPP).

There is still much work to do to hammer-out an agreement with the House - the proposals released by the Senate and the White House do not contain new funding for state and local governments, which will be a non-starter for the House. But for agencies who have taken advantage of the SBA's PPP loans, there is much in the Senate and White House proposal to take note of, including:

- Expands forgivable expenses to include supplier costs, covered worker protection expenditures, and covered operations expenditures;
- Allows borrowers to select a preferred 8-week period through 2020 to use the forgivable loan proceeds;
- Simplifies the forgiveness application process for smaller loans;
- Expands PPP eligibility to include certain 501c6 organizations.

While all of these provisions might not make it into whatever is ultimately passed by both the Senate and House, it is likely that some of these changes will make it into the final version.

It's worth noting that this is likely to be the last COVID-19 relief bill passed before the November election. Both the White House and Congress are acutely aware that their positions going into this negotiation process will likely be heavily scrutinized at home when voters go to the ballot box (or mail-in their ballot) in November, and might be less likely to adhere to party lines over constituent needs.

Court Of Justice Of The European Union (CJEU) Strikes Down Privacy Shield

In news from the EU, the CJEU in a recent decision invalidated the EU-U.S Privacy Shield. Privacy Shield was the mechanism used by thousands of American companies which allowed them to transfer data from the EU to the US. Privacy Shield had been in place since 2016, and had replaced an earlier program known as Safe Harbor. For any agencies using Privacy Shield, they will now need to explore other options.

The CJEU ruled that Privacy Shield leaves EU residents' data too exposed to US government surveillance. For companies that were relying on Privacy Shield, they will now need to explore other options including standard contractual clauses (SCC), binding corporate rules (BCR), or even data server localization in EU countries. The U.S. Department of Commerce recently noted that cross-border data flows between the US and EU facilitate the nearly \$7.1 trillion in trade between the US and EU.

The 4A's, via its involvement in Privacy For America, recently submitted comments to the U.S. Department of Commerce encouraging the Department to engage with their European counterparts to develop a reliable mechanism to facilitate the transfer of data between the U.S. and EU that respects the need for privacy protections for all citizens involved.

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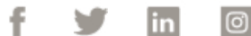
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