COST
COUNCIL ON STATE TAXATION

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Senator Nicholas P. Scutari, Senate President
Chair Joseph F Vitale, Senate Health, Human Services and Senior Citizens
Chair Paul A. Sarlo, Senate Budget and Appropriations
Chair Lisa Swain, Assembly Appropriations

Via Email

Re: COST Opposes S. 4908—Consumer Data Tax

Dear President Scutari, Chair Vitale, Chair Sarlo, and Chair Swain:

On behalf of the Council On State Taxation (COST), I am writing in opposition to S. 4908, which would create a new monthly excise tax imposed on the collection of consumer data by commercial data collectors ("Consumer Data Tax"). The Consumer Data Tax would broadly apply to all businesses that collect, maintain, use, process, sell, or share consumer data – it is not limited to social media entities. Insurance companies, retailers with loyalty programs, and any business collecting data from consumers, whether deliberately or inadvertently, would also be subject to this tax. The proposed Consumer Data Tax would put New Jersey at a competitive disadvantage with respect to encouraging businesses to maintain or expand their operations in the State because the tax is ultimately a tax on business inputs.[1] Additionly, these activities are already taxed under the State's corporation business tax regime. Thus, the proposed Consumer Data Tax would result in double taxation.

About COST

COST is a non-profit trade association based in Washington, DC. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce and today has an independent membership of approximately 500 major corporations engaged in interstate and international business. COST's objective is to preserve and promote the equitable and non-discriminatory state and local taxation of multijurisdictional business entities. Many COST members are engaged in business in New Jersey and would be negatively impacted by this legislation.

Taxes on Business Inputs Are Not Sound Tax Policy

The COST Board of Directors has adopted formal policy positions opposing both gross receipts taxes and other taxes on business inputs. While the policy position on business inputs primarily concerns sales taxes, its logic also applies to the proposed Consumer Data Tax, which is an excise tax on business inputs. COST's policy positions specify:

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[1] Business inputs constitute intermediate transactions of goods and services that businesses either resell or use the materials, products, machinery, and services to produce other goods or services that are subsequently sold for final consumption by consumers.

> *Gross receipts taxes are widely acknowledged to violate the tax policy principles of transparency, fairness, economic neutrality and competitiveness; generally, such taxes should not be imposed on business.*[2]
>
> *Imposing sales taxes on business inputs violates several tax policy principles and causes significant economic distortions. Taxing business inputs raises production costs and places businesses within a State at a competitive disadvantage to businesses not burdened by such taxes. Taxes on business inputs, including taxes on services purchased by businesses, must be avoided.*[3]

The proposed Consumer Data Tax is a tax on business inputs that violates important tax policy principles, including transparency, fairness, economic neutrality, and competitiveness. Imposing this type of tax on business inputs creates a lack of transparency resulting from the pyramiding of tax. Pyramiding occurs when a tax is imposed on multiple intermediate levels, such that the effective (hidden) tax rate on final consumption exceeds the statutory sales tax rate. As a result, companies must either pass these cost increases on to consumers or reduce their economic activity in the State to remain competitive with other producers not subject to the same compliance and economic burdens. For example, the tax on data collection will increase the cost of products sold in the State, many of which are already subject to the State's sales tax. Besides higher prices, some of the cost will inevitably be shifted to labor through lower wages and employment. This proposed legislation could also inadvertently seriously impact businesses such as the insurance industry and others that collect information needed for their business operations.

Impacted Businesses Are Already Subject to the Corporation Business Tax

Corporations that would be subject to the Consumer Data Tax are also subject to New Jersey's corporation business tax on their income. The corporation business tax requires mandatory unitary combined reporting and is imposed on the privilege of doing business in New Jersey. New Jersey follows an "economic nexus" approach for its corporation business tax effectively giving the State expansive jurisdiction to impose the tax on all corporations that have sales of goods and services to New Jersey customers. As a result, the same businesses that would be subject to the Consumer Data Tax are also subject to the State's corporation business tax. New Jersey allocates each corporation's income to the State based on a single sales factor that utilizes market-based sourcing for receipts from goods and services. Market-based sourcing allocates income from goods and services to New Jersey based on the percentage of customers located in New Jersey rather than the location of the corporate taxpayer making those sales. To the extent that the Consumer Data Tax is imposed on the collection of data related to a corporation's customers in the State, the corporation business tax already taxes the income that is generated from the same activities (*i.e.,* taxing the data that the corporation uses to generate income from New Jersey customers) that would be subject to the Consumer Data Tax. This would result in double taxation.

Conclusion

For the foregoing reasons, COST strongly urges the New Jersey Legislature to reject S. 4908 and any other proposal that seeks to create a similar Consumer Data Tax.

Respectfully,

Leonore F. Heavey

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cc: COST Board of Directors
Patrick J. Reynolds, COST President & Executive Director

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[2] https://www.cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-policy-positions/grossreceiptstaxes.pdf
[3] https://www.cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-policy-positions/sales-taxation-of-business-inputs.pdf