SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

TAX ANALYSTS and AARON DAVIS,	)	
Plaintiffs,	)	
	)	
v.	)	No. 2020 CA 1999 B
	)	Judge Matini
DISTRICT OF COLUMBIA,	)	Next event: 26 July 2024, 10 A.M.
Defendant.	)	(Further status conference)

OTR'S INITIAL PRODUCTION OF 107 PAGES OF PRIVATE LETTER RULINGS WITH PAGINATION INSERTED

(Submitted by plaintiffs as an appendix to their
July 2024 response to OTR's revised Vaughn index)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER
OFFICE OF TAX AND REVENUE

Office of the General Counsel

January 28, 2016

Re: for District of Columbia Tax Ruling
District of Columbia Sales and Use Tax

Dear

This correspondence responds to your private letter ruling for regarding District of Columbia sales and use tax. This ruling is based on the facts provided and current law. You cannot rely on this ruling if the facts, law or regulations subsequently change.

I. ISSUE

Are services subject to sales tax and use tax?

II. CONCLUSION

III. FACTS

2

IV. LAW

A tax is imposed under DC Code Ann. §47-2001 on all vendors for the privilege of selling certain tangible property and certain selected services. Certain services are specifically excluded by statute or regulation.

3

A sales tax is imposed under D.C. Code § 47-2002(a) upon all vendors for the privilege of making a "retail sale" or "sale at retail" of certain selected services. A corresponding use tax is imposed on every vendor engaging in business in the District and by every purchaser a tax on the use, storage, or consumption of any tangible personal property and service sold or purchased at retail sale. D.C. Code Ann. § 47-2202. The sales and use tax is imposed at a rate of 5.75% of the gross receipts from sales of or charges for most tangible personal property and services. D.C. Code § 47-2002(a); D.C. Code Ann. § 47-2202(a).

"Retail sale" and "sale at retail" are defined in D.C. Code § 47-2001(n)(1) to include an enumerated list of tangible personal property and services. Included in the definition of taxable retail sales are sales of "data processing and information services." D.C. Code § 2001(n)(1)(N).

D.C. Code §47-2001(n)(1)(N)(ii) provides an exclusion for the sale of "information services" when the "information is of a proprietary nature to that client and may not be sold to others by the person who compiled the information, except for a subsequent sale of the information by the client for whom the information was gathered or compiled."

Under D.C. Code § 2001(n)(1)(N)(i), "data processing service" is defined as:

> the processing of information for the compilation and production of records of transactions; the maintenance, input, and retrieval of information; the provision of direct access to computer equipment to process, examine, or acquire information stored in or accessible to the computer equipment; the specification of computer hardware configurations, the evaluation of technical processing characteristics, computer programming or software, provided in conjunction with and to support the sale, lease, operation, or application of computer equipment or systems; word processing, payroll and business accounting, and computerized data and information storage and manipulation; the input of inventory control data for a company; the maintenance of records of employee work time; filing payroll tax returns; the preparation of W-2 forms; the computation and preparation of payroll checks; and any system or application programming or software.

Further guidance is provided in 9 D.C. Mun. Regs. § 474.1, which defines "data processing services" as:

> the processing of information for the purpose of compiling and producing records of transactions, maintaining information, and entering and retrieving information. It also includes word processing, payroll and business accounting, and computerized data and information storage and manipulation.

The following activities are specifically included as examples of "data processing services" under 9 D.C. Mun. Regs. § 474.2:

- Entry of inventory control data for a company;
- Maintenance of records of employee work time;

- Filing payroll tax returns;
- Preparing W-2 forms; or
- Computing and preparing payroll checks.

Under D.C. Code § 2001(n)(1)(N)(ii), "information service" is defined as:

> the furnishing of general or specialized news or current information, including financial information, by printed, mimeographed, electronic, or electrical transmission, or by wire, cable, radio waves, microwaves, satellite, fiber optics, or any other method in existence or which may be devised; electronic data retrieval or research, including newsletters, real estate listings, or financial, investment, circulation, credit, stock market, or bond rating reports; mailing lists; abstracts of title; news clipping services; wire services; scouting reports; surveys; bad check lists; and broadcast rating services.

Under D.C. Code § 2001(n)(1)(N)(ii), "information service" does not include:

> information gathered or compiled on behalf of a particular client, if the information is of a proprietary nature to that client and may not be sold to others by the person who compiled the information, except for a subsequent sale of the information by the client for whom the information was gathered or compiled.

Surveys are also specifically included as examples of "information services" under 9 D.C. Mun. Regs. § 475.4(h).

V. ANALYSIS

Information services are subject to District sales and use tax. D.C. Code § 2001(n)(1)(N); Surveys are specifically included as examples of "information services" under 9 D.C. Mun. Regs. § 475.4(h). However, there is an exemption from tax for information gathered or compiled on behalf of a particular client, if the information is of a proprietary nature to that client and may not be sold to others by the person who compiled the information. D.C. Code § 2001(n)(1)(N)(ii).

Data processing services are subject to District sales and use tax. D.C. Code § 2001(n)(1)(N). Data processing services include the processing of information for the compilation and production of records of transactions; the maintenance, input, and retrieval of information; the provision of direct access to computer equipment to process, examine, or acquire information stored in or accessible to the computer equipment. D.C. Code § 2001(n)(1)(N)(i)

This letter is limited to the facts that were provided in your request. The tax treatment may be affected if additional or different material facts are presented. No opinion is expressed or implied concerning the tax treatment of items discussed in this letter except as expressly stated herein. The analysis set forth herein is based on the law and regulations currently in effect and may be affected by future changes in those authorities. This letter does not have the force and effect of law and can be relied on only by the taxpayer who requested it.

Please contact this office if you have further questions.

Sincerely,

Assistant General Counsel
Office of Tax and Revenue

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER
OFFICE OF TAX AND REVENUE

OFFICE OF THE GENERAL COUNSEL

February 3, 2016

Re: Request for District of Columbia Tax Ruling
District of Columbia Sales and Use Tax Exemption

Dear

You have requested the advice of the Office of Tax and Revenue as to whether is exempt from sales tax liability under D.C. Code § 47-2005(15).

Facts:

1101 4th Street, SW, Suite 750W, Washington, DC 20024 • Phone (202) 442-6500 • Fax (202) 442-6479
www.taxpayerservicecenter.com

Issue:

Conclusion:

Legal Analysis:

D.C. Code § 47-2002(a) imposes a sales tax upon all vendors selling tangible personal property.

D.C. Code § 47-2005 provides for numerous exemptions of gross receipts for certain sales from sales and use tax imposed under §47-2002(a).

D.C. Code § 47-2005(15)(A) provides that sales of articles permanently placed in the human body in order to help the functioning of any natural organ, limb, vein, or artery, and that remain or dissolve in the body are exempt from sales tax.

D.C. Code § 47-2005(15) (B) provides that the sales of any other device, apparatus, or equipment used to substitute or replace a part of the human body, or used to help the ill or people with disabilities in saving or prolonging life, or to relieve pain and suffering are exempt from sales tax, so long as such device is sold to an individual for personal use of such individual, and pursuant to a written prescription by a licensed physician or other health care provider.

There are no cases from the D.C.-Maryland-Virginia area on point addressing prosthetic devices; however courts in other states have addressed this issue.

In *Dent-Craft Laboratories of Connecticut, Inc. v. Sullivan*, 148 Conn. 94 (1961), the Supreme Court of Errors of Connecticut ruled in favor of the taxpayer, finding that its dentures were a prosthetic device under the relevant statute. The statute exempted from sales tax devices that were "other equipment worn as a correction or substitute for any functioning portion of the body." *Dent-Craft Laboratories*, 148 Conn. at 95. The Tax Commissioner contended that the corresponding regulation included dentures in taxable sales. However, the court ruled that the regulation including dentures in such taxable sales was inconsistent with the statutory language, and thus, allowed the exemption for the taxpayer.

Similarly, in *Cordis Corp. v. Taylor*, 762 S.W.2d 138 (Tenn. 1988), the Supreme Court of Tennessee found the taxpayer's receipts from sales of implantable cardiac pacemakers and hydrocephalus valve systems exempt from Tennessee sales tax. These two devices met Tennessee's statutory definition of a prosthetic device, which required only that it be "medically corrective or support appliances and devices." *Cordis Corp.*, 762 S.W.2d at 139.

Summary:

Please contact this office if you have further questions.

Sincerely,

Acting Deputy General Counsel
Office of Tax & Revenue

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER
OFFICE OF TAX AND REVENUE

OFFICE OF THE GENERAL COUNSEL

Feburary 11, 2016

Re: Request for District of Columbia Tax Ruling
District of Columbia QHTC Tax

Dear

This correspondence responds to your private letter ruling request regarding one of the requirements of being a District of Columbia's Qualified High Technology Company ("QHTC"). This ruling is based on the facts provided and current law. You cannot rely on this ruling if the facts, law or regulations subsequently change.

I. ISSUE

Whether meet the District's QHTC requirement of having an office in the District

II. FACTS

III. LAW & ANALYSIS

A. Law and Legislative History

To qualify as a QHTC in the District under D.C. Code Ann. §47-1817.01(5)(A), a taxpayer must be (i) an individual or entity organized for profit and leasing or owning an office in the District of Columbia; (ii) have two or more qualified employees in the District; and (iii) derive at least 51% of its gross revenues earned in the District from QHTC activities. Previously, D.C. Code §47-1817.01(5)(i) allowed for QHTC status where an individual or entity simply maintained an office, headquarters or base of operations in the District.

A lease is defined in the dictionary as "a contract by which one conveys land, tenements, or hereditaments for life, for a term of years or at will or for any less interest than that of the lessor, usually for a specified rent or compensation." Webster's Third International Dictionary. *See Columbia Plaza Tenants Association v. Columbia Plaza Limited Partnership*, S. Ct. D.C., No. 02ca10226, 2003 WL 25279036 (April 28, 2003).

A review of the legislative history of the QHTC statute provides that there was a dual focus on job creation and inducing businesses to locate in the District. Some of the legislative materials focus on job creation for District of Columbia residents. It was noted in the Council report on the bill, B13-752, that the "attraction and creation of new high technology-based businesses represents an important source for new jobs and public revenue for the District of Columbia." The legislative history also focuses on the importance of inducing businesses to locate within the District of Columbia. For example, the legislation is generally described as consisting of "a series of tax incentives to encourage high technology companies to locate to the District of Columbia." Section 201 of the legislation, which provides a tax credit for companies who relocate job opportunities to the District of Columbia, is explained as "provid[ing] a tangible incentive which will spur relocation" and encourage more high-technology companies to "locate in the District." Additionally, there are other tax incentives in the legislation (e.g., D.C. Code § 47-811.03 (2001)) directly targeted at inducing companies to buy or lease real property to conduct their operations.

Based on the change in the statute and the legislative history of the initial QHTC law, the purpose of the statute was to provide tax incentives to those businesses which have some intention to have an ongoing business operation in the District.

B. Application to

The definition of "lease" for District purposes contemplates a conveyance of land or tenements for a period of time. Webster's Third International Dictionary. *See Columbia Plaza Tenants Association v. Columbia Plaza Limited Partnership*, S. Ct. D.C., No. 02ca10226, 2003 WL 25279036 (April 28, 2003). This definition indicates that "lease" signifies much more than a right to use office space on a limited or constrained basis. This is also echoed in the legislative history of the QHTC statute, which contemplates the meaning of "lease" as the operation of an ongoing business in the District.

C. Combined Returns

However, under D.C. Code Ann. §47-1805.02a a QHTC cannot be a member of a combined filing group.

IV. CONCLUSION

Based on the descriptions provided in the scenarios, we believe that scenario 4 is the only one that conforms to the language and intent of the statute.

This letter is limited to the facts that were provided in your request. The tax treatment may be affected if additional or different material facts are presented. No opinion is expressed or implied concerning the tax treatment of any item discussed in this letter except as expressly stated herein. The analysis set forth herein is based on the law and regulations currently in effect and may be affected by future changes in those authorities. This letter does not have the force and effect of law and can be relied on only by the taxpayer who requested it.

Please contact this office if you have further questions.

Sincerely,

Assistant General Counsel
Office of Tax and Revenue

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER
OFFICE OF TAX AND REVENUE

Office of the General Counsel

February 19, 2016

Re: for District of Columbia Tax Ruling
District of Columbia Franchise Tax

Dear

This correspondence responds to your private letter ruling for regarding District of Columbia franchise tax. This ruling is based on the facts provided and current law. You cannot rely on this ruling if the facts, law or regulations subsequently change.

I. ISSUE

II. FACTS

I. LAW & ANALYSIS

Prior to the amendments included in the Technology Sector Enhancement Act of 2012, a QHTC had to be in the High Technology Zone to be assessed at a zero percent tax rate and they were eligible for the zero percent tax rate for five years. The Technology Sector Act of 2012, enacted into law in 2013, amended the tax rate statute with a new statutory paragraph related to the zero percent tax rate. Under D.C. Code Ann. § 47-1817.06(a)(2)(A), a Qualified High Technology Company certified pursuant to § 47-1805.05:

> (a)(2)(A)(i) Before January 1, 2012, shall not be subject to the tax imposed by this chapter for 5 years after the date that the Qualified High Technology Company commences business in the District; and
>
> (a)(2)(A)(ii) On or after January 1, 2012, shall not be subject to the tax imposed by this chapter for 5 years after the date that the Qualified High Technology Company has taxable income.
>
> (a)(2)(B) The total amount that each Qualified High Technology Company may receive in exemptions under this paragraph shall not exceed $15 million.

The above amended language provided a new five-year period to claim the zero percent tax rate for certifications made on or after January 1, 2012, unless they had already received credits for income tax that exceeded $15 million.

This letter is limited to the facts that were provided in your request. The tax treatment may be affected if additional or different material facts are presented. No opinion is expressed or implied concerning the tax treatment of items discussed in this letter except as expressly stated herein. The analysis set forth herein is based on the law and regulations currently in effect and may be affected by future changes in those authorities. This letter does not have the force and effect of law and can be relied on only by the taxpayer who requested it.

Please contact this office if you have further questions.

Sincerely,

Assistant General Counsel
Office of Tax and Revenue

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER
OFFICE OF TAX AND REVENUE

Office of the General Counsel

February 25, 2016

Via Email:

Re:

Dear Taxpayer,

This is in response to regarding the sales tax exemption from utility use in the District

Facts

Ruling Requested

Law and Analysis

I. Manufacturing Exemption

Under District Law, "[s]ales of natural or artificial gas, oil, electricity, solid fuel, or steam, directly used in manufacturing, assembling, processing or refining" are exempt from sales tax.[1]

Although District law does not specifically define "manufacturing", District regulations do however provide examples. These include the production of ice, fabrication of furniture, assembling radios and pasteurizing milk.[2] Furthermore, OTR administrative guidance provides that "[g]enerally, definitions of "manufacturing" and "processing" imply essentially a transformation or conversation of material or things into a different state or form from that in which they originally existed – the actual operation incident to changing them into marketable products."[3]

a. Predominant Use Standard

Pursuant to District regulations, "[i]f electricity or gas is sold through a single meter for two (2) or more uses..., some of which would be subject to the tax and some of which would not (such as a manufacturing plant and a retail store supplied through one meter or heated by one

[1] D.C. Official Code § 47-2005(11); *see also*, 9 DCMR § 444.
[2] 9 DCMR § 444.4.
[3] D.C. OTR General Counsel Memorandum, March 25, 2002, http://otr.cfo.dc.gov/sites/default/files/dc/sites/otr/publication/attachments/banks_utility.pdf

unit), the larger portion of the use of the service supplied through that meter or consumed in that unit shall, determine the taxability of the service. The larger portion of use shall be measured by the relative load for each use or the relative time of operation of each."[4] Furthermore, the predominant use test is applied to each utility separately. In other words, a manufacturer has to meet the test for electricity and gas separately.

The predominant use test is generally met if more than fifty percent of the utility passing through the utility meter based on annual consumption is expended on processing. If the predominant use is for an exempt purpose, the entire utility service shall be exempt including that which is not used for processing, *i.e.*, office space.

Generally, a taxpayer demonstrates that its predominant use of the utility is exempt by performing a utility study. The study must list all uses of the utility, both exempt and non-exempt.[5]

II. Restaurant Exemption

Under District Law, "[s]ales of natural or artificial gas, oil, electricity, solid fuel, or steam, directly used in a restaurant are exempt from sales tax."[6] Furthermore, a restaurant is defined as, "...a retail establishment that is licensed by the District of Columbia, a separately metered or sub-metered facility, and in the *principal business of preparing and serving food to the public*. The term "restaurant" shall include a pizzeria, delicatessen, ice cream parlor, cafeteria, take-out counter, and caterer, and banquet and food-processing areas in hotels. The term "restaurant" does not include beverage counters, including coffee shops and juice bars."[7]

District law requires a restaurant that qualifies for the sales tax exemption to be in the "...principal business of preparing and serving food to the public."

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[4] 9 DCMR 444.9.
[5] *See* OTR Form 308.
[6] D.C. Official Code § 47-2005(11A)(A).
[7] D.C. Official Code § 47-2005(11A)(B).

Conclusion:

This letter is limited to the facts that were provided in your request. The tax treatment of the services may be affected if additional or different material facts are presented. No opinion is expressed or implied concerning the tax treatment of any item discussed in this letter except as expressly stated herein. The analysis set forth herein is based on the law and regulations currently in effect and may be affected by future changes in those authorities. This letter does not have the force and effect of law and can be relied on only by the taxpayer who requested it.

Please contact this office if you have further questions.

Sincerely,

Corporate Tax Counsel
Office of Tax and Revenue

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER
OFFICE OF TAX AND REVENUE

OFFICE OF THE GENERAL COUNSEL

November 3, 2016

Re: Request for District of Columbia Tax Ruling
District of Columbia Corporate Franchise Tax

Dear

This correspondence responds to your private letter ruling request regarding District of Columbia (the "District") corporate franchise tax. This ruling is based on the facts provided and current law. You cannot rely on this ruling if the facts, law, or regulations subsequently change.

I. ISSUE

II. CONCLUSION

III. FACTS

IV. LAW

A. Federal Law

Internal Revenue Code § 468B(g)(1) provides, in pertinent part, that "nothing in any provision of law shall be construed as providing that an escrow account, settlement fund, or similar fund is not subject to current income tax. The Secretary shall prescribe regulations providing for the taxation of any such account or fund whether as a grantor trust or otherwise."

A QSF is established pursuant to an order of, or is approved by, the United States, any state (including the District of Columbia), territory, possession, or political subdivision thereof, or any agency or instrumentality (including a court of law) of any of the foregoing and is subject to the continuing jurisdiction of that governmental authority. Treas. Reg. § 1.468B-1(c)(1).

Treas. Reg. § 1.468B-2(k) provides that for purposes of subtitle F of the IRC, a QSF is treated as a corporation and any tax imposed under Regulation § 1.468B-2(a) is treated as a tax imposed by section 11 (tax imposed on the taxable income of a corporation).

Treas. Reg. § 1.468B-2(k)(1) provides that a QSF must file an income tax return with respect to the tax imposed under Regulation § 1.468B-2(a) for each taxable year that the fund is in existence, whether or not the fund has gross income for that taxable year.

B. District Law

D.C. Code § 47-1810.01(a) provides that the purpose of Subchapter X of Chapter 18 of Title 47 is to impose a "franchise tax upon every corporation, financial institution, and unincorporated business for the privilege of carrying on or engaging in any trade or business within the District and of receiving such other income as is derived from sources within the District."

The predecessor to D.C. Code §§ 47-1810.01(a) has been interpreted to impose the corporate franchise tax even on corporations not doing business in the District, if such corporation was receiving income from a District source. *Capital Holding Corporation v. District of Columbia*, 374 A2d 573, D.C. Ct. of App (April 18, 1977).

The entire net income of any corporation derived from any trade or business carried on or engaged in wholly within the District is considered to be from District sources, and is allocated to the District along with other income from District sources. When the net income of a corporation is derived from sources within and without the District, the taxpayer must apportion business income and allocate nonbusiness income. D.C. Code Ann. §47-1810.02(a).

D.C. Code §§ 47-1801.01(10), (10)(A) and (10)(C) provide, in pertinent part, that "corporation" means "[a]ny entity or organization of any kind treated as a corporation for tax purposes under the laws of the District, wherever located, which, were it doing business in the District, would be subject to the tax imposed by this chapter" or "a joint-stock company, trust, any association or other organization that is taxable as a corporation under federal income tax law."

D.C. Code § 47-1801.01(8) defines "commercial domicile" as "the principal place from which the trade or business of the taxpayer is directed or managed."

D.C. Rule 9-124.8 provides that interest and dividends from District sources are nonbusiness income allocable to the District.

V. ANALYSIS

A.

Under the IRC, a QSF is treated as a corporation and any tax imposed under Regulation § 1.468B-2(a) is treated as a tax imposed by section 11 (tax imposed on the taxable income of a corporation). As QSFs are taxable as corporations under federal income tax law, QSFs meet the definition of "corporation" defined in D.C. Code §§ 47-1801.01(10), (10)(A) and (10)(C).

B.

Under District law, corporations are subject to the corporate franchise tax for the privilege of carrying on or engaging in any trade or business within the District and of receiving such other income as is derived from sources within the District. D.C. Code § 47-1810.01(a). Tax will be imposed on a corporation receiving income from a District source, even if the corporation is not doing business in the District. *Capital Holding Corporation v. District of Columbia*, 374 A2d 573, D.C. Ct. of App.

Under Treas. Reg. § 1.468B-1(c)(1), a QSF is established by order or approval of a government agency or other authority and is subject to the continuing jurisdiction of that governmental authority.

The commercial domicile of a QSF (including a designated settlement fund) will be presumed to be at the court or the governmental authority which ordered or approved the establishment of the QSF and which exercises continuing jurisdiction over the QSF. *See* California FTB Legal Ruling 93-4 (November 15, 1993); Illinois Private Letter Ruling, No. IT 08-0002-PLR (July 10, 2008); Missouri Private Letter Ruling, No. LR 3770 (May 3, 2007).

This letter is limited to the facts that were provided in your request. The tax treatment of the services may be affected if additional or different material facts are presented. No opinion is expressed or implied concerning the tax treatment of any item discussed in this letter except as expressly stated herein.

The analysis set forth herein is based on the law and regulations currently in effect and may be affected by future changes in those authorities. This letter does not have the force and effect of law and can be relied on only by the taxpayer who requested it.

If you have any questions, please contact , Assistant General Counsel, at (202)

Sincerely,

Chief Counsel
Office of Tax and Revenue

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Chief Financial Officer
Office of Tax and Revenue

Office of the General Counsel

January 26, 2017

Re: Request for District of Columbia Tax Ruling
Application of Sales or Gross Receipts Taxes to Select Services

Dear

This correspondence responds to your request for a private letter ruling regarding with regard to payment of Sales Tax or Gross Sales Tax under D.C. Official Code Title 47, Chapter 20, for the services provided by enumerated below.

I. ISSUES

II. TAXPAYER'S BUSINESS ACTIVITIES

III. DISTRICT OF COLUMBIA CODE AND REGULATORY GUIDANCE

A. D.C. CODE TITLE 47 TAXATION

A sales tax is imposed under D.C. Code § 47-2002(a) upon all vendors for the privilege of making a "retail sale" or "sale at retail" of tangible personal property and certain selected services. For sales tax purposes, "tangible personal property" means corporeal personal property of any nature. D.C. Code Ann. §47-2001(s).

A variety of services are also subject to District sales tax law, including delivery services, certain data processing services, and information services.

Under D.C. Code §47-2001(n)(1)(N)(i) the term "data processing services" is defined as:

> the processing of information for the compilation and production of records of transactions; the maintenance, input, and retrieval of information; the provision of direct access to computer equipment to process, examine, or acquire information stored in or accessible to the computer equipment; the specification of computer hardware configurations, the evaluation of technical processing characteristics, computer programming or software, provided in conjunction with and to support the sale, lease, operation, or application of computer equipment or systems; word processing, payroll and business accounting, and computerized data and information storage and manipulation; the input of inventory control data for a company; the maintenance of records of employee work time; filing payroll tax returns; the preparation of W-2 forms; the computation and preparation of payroll checks; and any system or application programming or software.

Further guidance is provided in D.C. Mun. Regs. tit. 9 §474.4, which states: "gross receipts from the sale, lease or rental, or maintenance of any computer software shall be subject to the tax regardless of whether the software is canned, prepackaged or customized."

Examples of taxable computer software and software services include system software, application software, computer programming, software modification, and software updating. *Id.*

Under D.C. Code §47-2001(n)(1)(N)(ii) "Information services" is defined as:

> "the furnishing of general or specialized news or current information, including financial information, by printed, mimeographed, electronic, or electrical transmission, or by wire, cable, radio waves, microwaves, satellite, fiber optics, or

any other method in existence or which may be devised; electronic data retrieval or research, including newsletters, real estate listings, or financial, investment, circulation, credit, stock market, or bond rating reports; mailing lists; abstracts of title; news clipping services; wire services; scouting reports; surveys; bad check lists; and broadcast rating services; but does not include: information sold to a newspaper or a radio or television station licensed by the Federal Communication Commission, if the information is gathered or purchased for direct use in newspapers or radio or television broadcasts; charges to a person by a financial institution for account balance information; or information gathered or compiled on behalf of a particular client, if the information is of a proprietary nature to that client and may not be sold to others by the person who compiled the information, except for a subsequent sale of the information by the client for whom the information was gathered or compiled.

Sales and use tax is imposed at the time of a retail sale of tangible personal property or of taxable services.

Under D.C. Code § 47-2501.01(a), each company that sells or charges for "cable television service, satellite relay television service, and any and all other distribution of television, video, or radio service with or without the use of wires provided to subscribers or paying customers" is subject to gross receipt tax. For this purpose, "service" is broadly defined to include "basic service, ancillary service, or other special service, and any other charges related to providing the services within the District of Columbia." D.C. Code § 47-2501.01(a).

The gross receipts tax is collected on a quarterly basis, and requires that companies subject to the tax report their gross receipts from video services on a monthly basis. D.C. Code § 47-2501.01(a)(1). The tax is imposed at a rate of 10% of gross receipts. D.C. Code § 47-2501.01(a)(3).

IV. LEGAL ANALYSIS

1. ISSUE 1: WHICH DISTRICT OF COLUMBIA TAXES AND RATES APPLY TO PAY-PER-VIEW/PAY-PER-USE SERVICES?

Under the pay-per-view/pay-per-use model, the hotel guest makes a purchase using a remote control in the room. The service is delivered to the guest room television by way of coaxial cables. The pay-per-view/pay-per-use services constitute the distribution of "video service" for purposes of the gross receipt tax under D.C. Code § 47-2501.01. Under D.C. Code § 47-2501.01(a), "all distribution of video [...] with or without use of wires provided to subscribers or paying customers" is subject to the gross receipt tax.

2. ISSUE 2: WHICH PARTY IS RESPONSIBLE FOR REMITTING TAXES FOR PAY-PER-VIEW/PAY-PER-USE SERVICES?

Pursuant to D.C. Code § 47-2501.01(a), the hotel is responsible for remitting the gross receipts tax to the Office of Tax and Revenue. The charges for the pay-per-view/pay-per-use services in the hospitality industry are collected by the hotel from the guests at the lodging facility.

Under D.C. §47-2501.01(a)(1) "...each company that sells or charges for cable television service, satellite relay television service, and any and all other distribution of television, video, or radio service..." is responsible to "file and affidavit (i.e. return) with the Mayor (i.e., OTR) indicating the amount of its gross receipts for the proceeding calendar month for the sale of or charges for the services within the District."

3. **ISSUE 3.**

This letter is limited to the facts that were provided in your request. The tax treatment of the services may be affected if additional or different material facts are presented. No opinion is expressed or implied concerning the tax treatment of any item discussed in this letter except as expressly stated herein. The analysis set forth herein is based on the law and regulations currently in effect and may be affected by future changes in those authorities. This letter does not have the force and effect of law and can be relied on only by the taxpayer who requested it.

If you have any questions, please contact

Sincerely,

Chief Counsel
Office of Tax and Revenue

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER
OFFICE OF TAX AND REVENUE

OFFICE OF THE GENERAL COUNSEL

February 23, 2017

Re: Request for District of Columbia Tax Ruling
District of Columbia Sales and Use Tax

Dear

This correspondence responds to your private letter ruling request regarding District of Columbia (the "District") sales tax. This ruling is based on the facts provided and current law. You cannot rely on this ruling if the facts, law, or regulations subsequently change.

I. ISSUE

1. Are installation fees to District of Columbia customers subject to sales and use tax?

II. FACTS

III. LAW & ANALYSIS

A sales tax is imposed under D.C. Code § 47-2002(a) upon all vendors for the privilege of making a "retail sale" or "sale at retail" of tangible personal property and certain selected services. For sales tax purposes, "tangible personal property" means corporeal personal property of any nature. D.C. Code § 47-2001(s).

Among the enumerated taxable services is: "The sale of or charges for the service of repairing, altering, mending, or fitting tangible personal property, or installing tangible personal property as a repair or replacement part of other tangible personal property, whether or not such service is performed by other means of coin-operated equipment or by any other means, and whether or not any tangible personal property is transferred in conjunction with such service." . D.C. Code § 47-2001(n)(1)(I) and D.C. Mun. Regs. tit 9 § 465.1.

However, "the amount charged for labor or services rendered in installing or applying the property sold shall not be subject to the tax if both of the following conditions are met: (a) [t]he charges for installation must be shown separately from the sales price of the property; and (b) [t]he property must not have been applied or installed as a repair or replacement part of other tangible personal property." D.C. Mun. Regs. tit 9 § 407.2. However, "[i]f labor and service charges and sales price are not shown separately, the tax applies to the total amount received from the sale of property and installation charges." D.C. Mun. Regs. tit 9 § 407.3.

Additionally, since the District Code and Municipal Regulations make a distinction where an installation charge is rendered in connection with the sale of a new and complete item of tangible personal property, the installation charge is not subject to District sales tax, provided it is separately stated. D.C. Code § 47-2001(p)(2)(C) and D.C. Mun. Regs. tit 9 § 465.2. The District of Columbia Court of Appeals recognized that the legislature could "[c]ondition an exclusion [from the tax base] on an amount being separately stated." *Expedia, Inc. v. District of Columbia*, 120 A.3d 623, 642 (2015).

D.C. Mun. Regs. tit 9 § 465.2 lists examples of items that are considered the sale of a new and complete item:

(a) Draperies;

(b) Venetian blinds;

(c) Storm windows and doors;

(d) Wall-to-wall carpeting; and

(e) Gas and electric stoves.

D.C. Mun. Regs. tit 9 §§ 465.2 (a)-(e)

Under D.C. Municipal Regulation § 465.2, if the installation fee is separately stated, then the installation fee is not subject to District sales tax.

IV. CONCLUSION

This letter is limited to the facts that were provided in your request. The tax treatment of the services may be affected if additional or different material facts are presented. No opinion is expressed or implied concerning the tax treatment of any item discussed in this letter except as expressly stated herein. The analysis set forth herein is based on the law and regulations currently in effect and may be affected by future changes in those authorities. This letter does not have the force and effect of law and can be relied on only by the who requested it.

If you have any questions, please contact Assistant General Counsel, at

Sincerely,

Chief Counsel
Office of Tax and Revenue

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER
OFFICE OF TAX AND REVENUE

OFFICE OF THE GENERAL COUNSEL

May 9, 2017

Re: Request for District of Columbia Tax Ruling
District of Columbia Sales and Use Tax

Dear

This correspondence responds to your private letter ruling request regarding District of Columbia (the "District") sales and use tax. This ruling is based on the facts provided and current law. You cannot rely on this ruling if the facts, law, or regulations subsequently change.

I. ISSUE

II. FACTS

III. LAW & ANALYSIS

A sales tax is imposed under D.C. Code § 47-2002(a) upon all vendors for the privilege of making a "retail sale" or "sale at retail" of tangible personal property. For sales tax purposes, the sales of food and drinks are not a "retail sale" or "sale at retail," therefore the transaction is not subject to District sales and use tax. D.C. Code § 47-2001(n)(2)(E). However, this exclusion does not apply to food for immediate consumption or soft drinks. D.C. Code §§ 47-2001(g-1) and (r-1).

Examples of food for immediate consumption include, but are not limited to, heated foods, prepared salads and sandwiches, cold drinks, frozen yogurt, ice cream, or ice milk sold in quantities of less than one pint. D.C. Code § 47-2001(g-1).

A "soft drink" is a non-alcoholic beverage with natural or artificial sweeteners. The term "soft drink" does not include a non-carbonated beverage that contains milk, milk substitutes, fruit, or vegetable juice. D.C. Code § 47-2001(r-1).

Examples of food not for immediate consumption include, but are not limited to vegetable products, vegetable juices, vitamins, and powdered drinks, including health and diet drinks. D.C. Code § 47-2001(g). Furthermore, weight reductions products sold in liquid, solid, or powdered form are food or drink with the meaning of D.C. Code § 47-2001(g). D.C. Mun. Regs. Tit. 9 § 449.5.

IV. CONCLUSION

This letter is limited to the facts that were provided in your request. The tax treatment of the products may be affected if additional or different material facts are presented. No opinion is expressed or implied concerning the tax treatment of any item discussed in this letter except as expressly stated herein. The analysis set forth herein is based on the law and regulations currently in effect and may be affected by future changes in those authorities. This letter does not have the force and effect of law and can be relied on only by the who requested it.

If you have any questions, please contact , Assistant General Counsel, at

Sincerely,

Chief Counsel
Office of Tax and Revenue

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER
OFFICE OF TAX AND REVENUE

OFFICE OF THE GENERAL COUNSEL

July 5, 2017

Re: Request for District of Columbia Tax Ruling
District of Columbia QHTC Tax

Dear

This responds to your request for a private letter ruling regarding whether is eligible to claim benefits as a Qualified High Technology Company ("QHTC") in the District of Columbia. This ruling is based on the facts provided and current law. You cannot rely on this ruling if the facts, law or regulations subsequently change.

I. ISSUE

Whether is eligible to claim benefits as a QHTC under D.C. Code Ann. §47-1817.01(5)(A)?

II. FACTS

III. LAW

In order for an entity to qualify as a QHTC in the District of Columbia (the "District"), the entity must meet the following requirements as provided in D.C. Code Ann. §47-1817.01(5)(A):

> (i) Be an individual or entity organized for profit and maintaining an office, headquarters, or base of operations in the District of Columbia;
>
> (ii) Have 2 or more employees; and
>
> (iii) Derive at least 51% of its gross revenues earned in the District from:
>
>> (I) Internet-related services and sales, including website design, maintenance, hosting, or operation; Internet-related training, consulting, advertising, or promotion services; the development, rental, lease, or sale of Internet-related applications, connectivity, or digital content; or products and services that may be considered e-commerce;
>>
>> (II) Information and communication technologies, equipment and systems that involve advanced computer

software and hardware, data processing, visualization technologies, or human interface technologies, whether deployed on the Internet or other electronic or digital media. Such technologies shall include operating and applications software; Internet-related services, including design, strategic planning, deployment, and management services and artificial intelligence; computer modeling and simulation; high-level software languages; neural networks; processor architecture; animation and full-motion video; graphics hardware and software; speech and optical character recognition; high-volume information storage and retrieval; data compression; and multiplexing, digital signal processing, and spectrum technologies;

(III) Advanced materials and processing technologies that involve the development, modification, or improvement of one or more materials or methods to produce devices and structures with improved performance characteristics or special functional attributes, or to activate, speed up, or otherwise alter chemical, biochemical, or medical processes. Such materials and technologies shall include metal alloys; metal matrix and ceramic composites; advanced polymers; thin films; membranes; superconductors; electronic and photonic materials; bioactive materials; bioprocessing; genetic engineering; catalysts; waste emissions reduction; pharmaceuticals; and waste processing technologies;

(IV) Engineering, production, biotechnology and defense technologies that involve knowledge-based control systems and architectures; advanced fabrication and design processes, equipment, and tools; or propulsion, navigation, guidance, nautical, aeronautical and astronautical ground and airborne systems, instruments, and equipment. Such technologies shall include: computer-aided design and engineering; computer-integrated manufacturing; robotics and automated equipment; integrated circuit fabrication and test equipment; sensors; biosensors; signal and image processing; medical and scientific instruments; precision machining and forming; biological and genetic research equipment; environmental analysis, remediation, control, and prevention equipment; defense command and control equipment; avionics and controls; guided missile and space vehicle propulsion units; military aircraft; space vehicles; and surveillance, tracking, and defense warning systems; or

> (V) Electronic and photonic devices and components for use in producing electronic, optoelectronic, mechanical equipment and products of electronic distribution with interactive media content. Such technologies shall include microprocessors; logic chips; memory chips; lasers; printed circuit board technology; electroluminescent, liquid crystal, plasma, and vacuum fluorescent displays; optical fibers; magnetic and optical information storage; optical instruments, lenses, and filters; simplex and duplex data bases; and solar cells.

According to the opinion in *NBC Subsidiary WRC-TV, LLC v. District of Columbia Office of Tax and Revenue*, OAH Case No. 2013-0TR-00017 (D.C. O.A.H. Jan. 17, 2014), appeal docketed, No. 14-AA-174 (D.C. Feb. 21, 2014), for purposes of the D.C. Code Ann. §47-1817.01(5)(A)(iii) requirement that a company derive 51% of its revenue from an enumerated activity, "derive" is properly defined to mean "to take, receive, or obtain especially from a specified source."

Additionally, under D.C. Code Ann. § 47-1817.01(5)(B) a QHTC cannot be:

> (i) An individual or entity that derives 51% or more of its gross revenues from the operation in the District of:
>
> > (I) An on-line or brick and mortar retail store; or
> >
> > (II) An electronic equipment facility that is primarily occupied, or intended to be occupied, by electronic and computer equipment that provides electronic data switching, transmission, or telecommunication functions between computers, both inside and outside the facility;
>
> (ii) A professional athletic team, as defined in § 47-2002.05(a)(3); or
>
> (iii) A business entity located in the DC Ballpark TIF Area, as defined in [§ 2-1217.12a(a)].

IV. ANALYSIS

A. <u>District QHTC Qualifications: Office and Employees</u>

B. District QHTC Qualifications: Gross Revenue

To qualify as a QHTC, a company must derive at least 51% of its gross revenue from any of the enumerated activities listed under D.C. Code Ann. §47-1817.01(5)(A)(iii).

Under D.C. Code Ann. §47-1817.01(5)(A)(iii)(I), qualified QHTC activities are defined to include:

> Internet-related services and sales, including website design, maintenance, hosting, or operation; Internet-related training, consulting, advertising, or promotion services; the development, rental, lease, or sale of Internet-related applications, connectivity, or digital content; or products and services that may be considered e-commerce.

This matter is distinguished from *NBC Subsidiary WRC-TV, LLC v. District of Columbia Office of Tax and Revenue*, OAH Case No. 2013-0TR-00017 (D.C. O.A.H. Jan. 17, 2014), appeal docketed, No. No. 14-AA-174 (D.C. Feb. 21, 2014). In *NBC Subsidiary WRC-TV, LLC* , the taxpayer was a television station that used in its business a variety of high technology equipment that it either leased or purchased. The taxpayer's revenue was primarily derived from broadcast advertising. The taxpayer claimed that it qualified as a QHTC under D.C. Code Ann. §47-1817.01(5)(A)(iii)(II) because it generated its receipts from "information and communication technologies." The Court disagreed and upheld OTR's determination that the taxpayer did not qualify for QHTC status because it was merely using technology in its broadcasting business paid for in the traditional way of on-air advertising.

C. District QHTC Qualification Exclusions

D.C. Code Ann. § 47-1817.01(5)(B) states that 51% of the income of a QHTC must not be derived from the operation of an "on-line or brick and mortar retail store." While there is no definition of "retail store" in the D.C. Code, there are several definitions in D.C. Code Ann. §47-2000 that are instructive. "Retailer" is defined under D.C. Code § 47-2001(l) to mean "every person engaged in the business of making sales at retail." D.C. Code Ann. § 47-2000(m) defines "retail establishment" as "any premises in which the business of selling tangible personal property is conducted or in or from which any retail sales are made." Further, D.C. Code Ann. § 47-2000(n)(1) defines "retail sale" as "the sale in any quantity or quantities of any tangible personal property or service, including any such sales effected via the internet by a nexus-vendor, taxable under the terms of this chapter."

In *District of Columbia v. Expedia, Inc.*, Case No. 2011 CA 002117 B (D.C. Super. Ct., Sep. 24, 2012), *aff'd* 120 A.3d 623 (2015) (D.C. 2015), the Superior Court of the District of Columbia considered whether an online travel company operating a travel website was making retail sales and concluded that it was.

V. CONCLUSION

The tax treatment may be affected if additional or different material facts are presented. No opinion is expressed or implied concerning the tax treatment of any item discussed in this letter except as expressly stated herein. The analysis set forth herein is based on the law and regulations currently in effect and may be affected by future changes in those authorities. This letter does not have the force and effect of law and can be relied on only by the taxpayer who requested it.

If you have any questions, please contact Assistant General Counsel, at

Sincerely,

Chief Counsel
Office of Tax and Revenue

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER
OFFICE OF TAX AND REVENUE

OFFICE OF THE GENERAL COUNSEL

July 7, 2017

Re: Request for District of Columbia Tax Ruling
District of Columbia Sales and Use Tax and Gross Receipts Tax

Dear

This correspondence responds to your private letter ruling request regarding District of Columbia (the "District") sales and use tax. This ruling is based on the facts provided and current law. You cannot rely on this ruling if the facts, law, or regulations subsequently change.

I. ISSUES

II. FACTS

III. LAW & ANALYSIS

A. Application of Sales and Use Tax to

A sales tax is imposed under D.C. Code § 47-2002(a) upon all vendors for the privilege of making a "retail sale" or "sale at retail" of tangible personal property and certain selected services. For sales tax purposes, "tangible personal property" means corporeal personal property of any nature. D.C. Code Ann. §47-2001(s).

A variety of services are also subject to District sales tax law, including delivery services.

The definition of retail sale includes the "sale of or charge for any delivery in the District for which a separate charge is made." D.C. Code Ann. § 47-2001(n)(1)(Q). "Shipping and handling charges shall be included as part of the sales price of the eligible item, whether or not separately stated. If multiple items are shipped on a single invoice, the shipping and handling charges shall be proportionately allocated to each item ordered and separately identified on the invoice." D.C. Code Ann. §47-2001(p)(1).

Sales and use tax is imposed at the time of a retail sale of tangible personal property or of taxable services.

B. **Application of Sales and Use Tax to**

A sales tax is imposed under D.C. Code § 47-2002(a) upon all vendors for the privilege of making a "retail sale" or "sale at retail" of tangible personal property and certain selected services.

The definition of "sale" and "selling" means "any transaction whereby title or possession, or both, of tangible personal property is or is to be transferred, including rental, lease, license, or right to reproduce or use, for consideration." D.C. Code § 47-2001(q).

Transactions in which no consideration is exchanged do not constitute sales for District sales and use tax purposes.

This letter is limited to the facts that were provided in your request. The tax treatment of the services may be affected if additional or different material facts are presented. No opinion is expressed or implied concerning the tax treatment of any item discussed in this letter except as expressly stated herein. The analysis set forth herein is based on the law and regulations currently in effect and may be affected by future changes in those authorities. This letter does not have the force and effect of law and can be relied on only by the taxpayer who requested it.

If you have any questions, please contact , Assistant General Counsel, at (202)

Sincerely,

Chief Counsel
Office of Tax and Revenue

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER
OFFICE OF TAX AND REVENUE

OFFICE OF THE GENERAL COUNSEL

September 1, 2017

Re: Request for District of Columbia Tax Ruling
District of Columbia Sales and Use Tax

Dear

This correspondence responds to your private letter ruling request regarding District of Columbia (the "District") sales and use tax. This ruling is based on the facts provided and current law. You cannot rely on this ruling if the facts, law, or regulations subsequently change.

I. ISSUE

II. FACTS

III. LAW & ARGUMENT

A sales tax is imposed under D.C. Code § 47-2002(a) upon all vendors for the privilege of making a "retail sale" or "sale at retail" of, *inter alia*, certain selected services.

"Retail sale" and "sale at retail" are defined in D.C. Code § 47-2001(n)(1) to include an enumerated list of taxable services. Among the enumerated taxable services are "health-club services." D.C. Code §47-2001(n)(1)(Y)(i).

For this purpose, "health-club services" include the use of, access to, or membership to, an athletic club, fitness center, gym, recreational sports facilities featuring exercise and other active physical fitness conditioning or recreational sports activities including swimming, skating, or racquet sports, or other facility for the purpose of physical exercise. The term "health club services," does not include the use of facilities for non-fitness-related purposes, including room rentals, or for other services or charges covered by a separate contract with the user, such as a lease or occupancy agreement. D.C. Code §47-2001(n)(1)(Y)(ii)(I).

IV. CONCLUSION

This letter is limited to the facts that were provided in your request. The tax treatment of the services may be affected if additional or different material facts are presented. No opinion is expressed or implied concerning the tax treatment of any item discussed in this letter except as expressly stated herein. The analysis set forth herein is based on the law and regulations currently in effect and may be affected by future changes in those authorities. This letter does not have the force and effect of law and can be relied on only by the taxpayer who requested it.

If you have any questions, please contact __________, Assistant General Counsel, at (202)

Sincerely,

Chief Counsel
Office of Tax and Revenue

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER
OFFICE OF TAX AND REVENUE

OFFICE OF THE GENERAL COUNSEL

March 20, 2018

Re: Request for District of Columbia Tax Ruling
District of Columbia Sales and Use Tax and Gross Receipts Tax

Dear

This responds to a request for a private letter ruling by , regarding the applicability of District of Columbia ("District") sales and use and gross receipts taxes to the

. You cannot rely on this ruling if the facts, law, or regulations subsequently change.

I. ISSUES

II. FACTS

III. LAW & ANALYSIS

A. Sales and Use Tax

A sales tax is imposed under D.C. Code § 47-2002(a) on all vendors for the privilege of making a "retail sale" or "sale at retail" of tangible personal property and certain selected services. The rate of such tax shall be 5.75% of the gross receipts from sales of or charges for such tangible personal property and services. For sales tax purposes, "tangible personal property" means corporeal personal property of any nature. D.C. Code Ann. §47-2001(s).

While the sales of digital goods are not considered sales of tangible personal property for District sales tax purposes, they may be considered a taxable service as either "data processing services" or "information services." (*See* OTR Notice 2017-06) Under D.C. Code §47-2001(n)(1)(N)(i) the term "data processing services" is defined as:

> the processing of information for the compilation and production of records of transactions; the maintenance, input, and retrieval of information; the provision of direct access to computer equipment to process, examine, or acquire information stored in or accessible to the computer equipment; the specification of computer hardware configurations, the evaluation of technical processing characteristics, computer programming or software, provided in conjunction with and to support the sale, lease, operation, or application of computer equipment or systems; word processing, payroll and business accounting, and computerized data and information storage and manipulation; the input of inventory control data for a company; the maintenance of records of employee work time; filing payroll tax returns; the preparation of W-2 forms; the computation and preparation of payroll checks; and any system or application programming or software.

Under D.C. Code §47-2001(n)(1)(N)(ii) "Information services" is defined as:

> "the furnishing of general or specialized news or current information, including financial information, by printed, mimeographed, electronic, or electrical transmission, or by wire, cable, radio waves, microwaves, satellite, fiber optics, or any other method in existence or which may be devised; electronic data retrieval or research, including newsletters, real estate listings, or financial, investment, circulation, credit, stock market, or bond rating reports; mailing lists; abstracts of title; news clipping services; wire services; scouting reports; surveys; bad check lists; and broadcast rating services; but does not include: information sold to a newspaper or a radio or television station licensed by the Federal Communication Commission, if the information is gathered or purchased for direct use in newspapers or radio or television broadcasts; charges to a person by a financial institution for account balance information; or information gathered or compiled on behalf of a particular client, if the information is of a proprietary nature to that client and may not be sold to others by the person who compiled the information, except for a subsequent sale of the information by the client for whom the information was gathered or compiled.

B. Gross Receipts Tax

Under D.C. Code § 47-2501.01(a), each company that sells or charges for "cable television service, satellite relay television service, and any and all other distribution of television, video, or radio service with or without the use of wires provided to subscribers or paying customers" is subject to gross receipt tax. For this purpose, "service" is broadly defined to include "basic service, ancillary service, or other special service, and any other charges related to providing the services within the District of Columbia." D.C. Code § 47-2501.01(a).

This letter is limited to the facts that were provided in your request. The tax treatment of the services may be affected if additional or different material facts are presented. No opinion is expressed or implied concerning the tax treatment of any item discussed in this letter except as expressly stated herein. The analysis set forth herein is based on the law and regulations currently in effect and may be affected by future changes in those authorities. This letter does not have the force and effect of law and can be relied on only by the taxpayer who requested it.

If you have any questions, please contact , Assistant General Counsel, at

Sincerely,

Chief Counsel
Office of Tax and Revenue

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER
OFFICE OF TAX AND REVENUE

OFFICE OF THE GENERAL COUNSEL

May 10, 2018

Re: Request for District of Columbia Tax Ruling
District of Columbia Sales and Use Tax

Dear

This correspondence responds to your private letter ruling request regarding District of Columbia (the "District") sales and use tax. This ruling is based on the facts provided and current law. You cannot rely on this ruling if the facts, law, or regulations subsequently change.

I. ISSUES

II. FACTS

IV. CONCLUSION

This letter is limited to the facts that were provided in your request. The tax treatment of the services may be affected if additional or different material facts are presented. No opinion is expressed or implied concerning the tax treatment of any item discussed in this letter except as expressly stated herein. The analysis set forth herein is based on the law and regulations currently in effect and may be affected by future changes in those authorities. This letter does not have the force and effect of law and can be relied on only by the taxpayer who requested it.

If you have any questions, please contact , Assistant General Counsel, at (202)

Sincerely,

Chief Counsel
Office of Tax and Revenue

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER
OFFICE OF TAX AND REVENUE

OFFICE OF THE GENERAL COUNSEL

June 28, 2018

Re: Request for District of Columbia Tax Ruling
District of Columbia QHTC Tax

Dear l

This responds to your request for a private letter ruling regarding whether is eligible to claim benefits as a Qualified High Technology Company ("QHTC") in the District of Columbia (the "District"). This ruling is based on the facts provided and current law. You cannot rely on this ruling if the facts, law or regulations subsequently change.

I. ISSUE

Whether is eligible to claim benefits as a QHTC under D.C. Code Ann. §47-1817.01(5)(A)?

II. FACTS

III. LAW

In order for an entity to qualify as a QHTC in the District, the entity must meet the following requirements as provided in D.C. Code Ann. §47-1817.01(5)(A):

(i) An individual or entity organized for profit and leasing or owning an office in the District of Columbia;

(ii) Having 2 or more qualified employees in the District; and

(iii) Deriving at least 51% of its gross revenues earned in the District from:

(I) Internet-related services and sales, including website design, maintenance, hosting, or operation; Internet-related training, consulting, advertising, or promotion services; the development, rental, lease, or sale of Internet-related applications, connectivity, or digital content; or products and services that may be considered e-commerce;

(II) Information and communication technologies, equipment and systems that involve advanced computer software and hardware, data processing, visualization technologies, or human interface technologies, whether deployed on the Internet or other electronic or digital media, including operating and applications software; Internet-related services, including design, strategic planning, deployment, and management services and artificial intelligence; computer modeling and simulation; high-level software languages; neural networks; processor architecture; animation and full-motion video; graphics hardware and software; speech and optical character recognition; high-volume information storage and retrieval; data compression; and multiplexing, digital signal processing, and spectrum technologies;

(III) Advanced materials and processing technologies that involve the development, modification, or improvement of one or more materials or methods to produce devices and structures with improved performance characteristics or special functional attributes, or to activate, speed up, or otherwise alter chemical, biochemical, or medical processes, including metal alloys; metal matrix and ceramic composites; advanced polymers; thin films; membranes; superconductors; electronic and photonic materials; bioactive materials; bioprocessing; genetic engineering; catalysts; waste emissions reduction; pharmaceuticals; and waste processing technologies;

(IV) Engineering, production, biotechnology, and defense technologies that involve knowledge-based control systems and architectures; advanced fabrication and design processes, equipment, and tools; propulsion, navigation, guidance, nautical, aeronautical and astronautical ground and airborne systems, instruments, and equipment, including computer-aided design and engineering; computer-integrated manufacturing; robotics and automated equipment; integrated circuit fabrication and test equipment; sensors; biosensors; signal and image processing; medical and scientific instruments; precision machining and forming; biological and genetic research equipment; environmental analysis, remediation, control, and prevention equipment; defense command and control equipment; avionics and controls; guided missile and space vehicle propulsion units; military aircraft; space vehicles; and surveillance, tracking, and defense warning systems; or

(V) Electronic and photonic devices and components for use in producing electronic, optoelectronic, mechanical equipment and products of electronic distribution with interactive media content, including microprocessors; logic chips; memory chips; lasers; printed circuit board technology; electroluminescent, liquid crystal, plasma, and vacuum fluorescent displays; optical fibers; magnetic and optical information storage; optical instruments, lenses, and filters; simplex and duplex data bases; and solar cells.

IV. ANALYSIS

A. District QHTC Qualifications: Office and Employees

B. District QHTC Qualifications: Gross Revenue

To qualify as a QHTC, a company must derive at least 51% of its gross revenue from any of the enumerated activities listed under D.C. Code Ann. §47-1817.01(5)(A)(iii). According to the opinion in *NBC Subsidiary WRC-TV, LLC v. District of Columbia Office of Tax and Revenue*, No. 14-AA-174 (D.C. Feb. 21, 2014), for purposes of the D.C. Code Ann. §47-1817.01(5)(A)(iii) requirement that a company derive 51% of its revenue from an enumerated activity, "derive" is properly defined to mean "to take, receive, or obtain especially from a specified source."

(I) D.C. Code Ann. §47-1817.01(5)(A)(iii)(I)

Under D.C. Code Ann. §47-1817.01(5)(A)(iii)(I), qualified QHTC activities are defined to include:

> Internet-related services and sales, including website design, maintenance, hosting, or operation; Internet-related training, consulting, advertising, or promotion services; the development, rental, lease, or sale of Internet-related applications, connectivity, or digital content; or products and services that may be considered e-commerce.

(2) D.C. Code Ann. §47-1817.01(5)(A)(iii)(II)

Under D.C. Code Ann. §47-1817.01(5)(A)(iii)(II), qualified QHTC activities are defined to include:

> Information and communication technologies, equipment and systems that involve advanced computer software and hardware, data processing, visualization technologies, or human interface technologies, whether deployed on the Internet or other electronic or digital media, including operating and applications software; Internet-related services, including design, strategic planning, deployment, and management services and artificial intelligence; computer modeling and simulation; high-level software languages; neural networks; processor architecture; animation and full-motion video; graphics hardware and software; speech and optical character recognition; high-volume information storage and retrieval; data compression; and multiplexing, digital signal processing, and spectrum technologies.

C. **<u>District QHTC Qualification Exclusions</u>**

D.C. Code Ann. § 47-1817.01(5)(B) states that 51% of the income of a QHTC must not be derived from the operation of an "on-line or brick and mortar retail store." While there is no definition of "retail store" in the D.C. Code, there are several definitions in D.C. Code Ann. §47-2000 that are instructive. "Retailer" is defined under D.C. Code § 47-2001(l) to mean "every person engaged in the business of making sales at retail." D.C. Code Ann. § 47-2000(m) defines "retail establishment" as "any premises in which the business of selling tangible personal property is conducted or in or from which any retail sales are made."

V. CONCLUSION

The tax treatment may be affected if additional or different material facts are presented. No opinion is expressed or implied concerning the tax treatment of any item discussed in this letter except as expressly stated herein. The analysis set forth herein is based on the law and regulations currently in effect and may be affected by future changes in those authorities. This letter does not have the force and effect of law and can be relied on only by the taxpayer who requested it. This ruling sunsets 10 years from the date of the ruling. The taxpayer may request that the ruling be extended after being reviewed by OTR.

If you have any questions, please contact Assistant General Counsel, at

Sincerely,

Chief Counsel
Office of Tax and Revenue

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER
OFFICE OF TAX AND REVENUE

OFFICE OF THE GENERAL COUNSEL

August 2, 2018

Re: Request for District of Columbia Tax Ruling
District of Columbia Sales and Use Tax

Dear

This correspondence responds to your private letter ruling request regarding District of Columbia (the "District") sales and use tax. This ruling is based on the facts provided and current law. You cannot rely on this ruling if the facts, law, or regulations subsequently change.

I. ISSUE

Is the excludable from the sales price for purposes of the District's sales and use tax?

II. CONCLUSION

III. FACTS

IV. LAW & ARGUMENT

A sales tax is imposed under D.C. Code § 47-2002(a) upon all vendors for the privilege of making a "retail sale" or "sale at retail" of all tangible personal property and certain selected services. A corresponding use tax is imposed on every vendor engaging in business in the District and by every purchaser on the use, storage, or consumption of any tangible personal property and service sold or purchased at retail sale. D.C. Code Ann. § 47-2202.

A "retail sale" or "sale at retail" includes the sale of electricity. D.C. Code Ann § 47-2001(n)(1)(D). The sales of electricity to non-residential customers are subject to the District's sales and use tax. However, gross receipts from sales of residential electricity by an electric supplier are exempt from the sales tax. D.C. Code Ann § 47-2005(24)(A).

The sales tax is imposed at a rate of 5.75% percent of the gross receipts from sales of or charges for such tangible personal property and services. D.C. Code § 47-2002(a). Gross receipts are "the total amount of the sales prices of the retail sales of vendors, valued in money, whether received in money or otherwise." D.C. Code Ann § 47-2001(h). Sales price is defined as "[t]he total amount paid by a purchaser to a vendor as consideration for a retail sale, valued in money, whether paid in money or otherwise." D.C. Code Ann § 47-2001(p)(1).

In its Notice to District Retailers offering Sales Tax Holiday Guidelines, the OTR stated that "[w]hen retailers accept coupon[s] as a part of the selling price of a taxable item, the value of the coupon is excludable from the tax as a cash discount, unless a third party reimburses the retailer for the amount of the coupon." D.C. Revenue Notice No. 11/16/2001.

This letter is limited to the facts that were provided in your request. No opinion is expressed or implied concerning the tax treatment of any item discussed in this letter except as expressly stated herein. The analysis set forth herein is based on the law and regulations currently in effect and may be affected by future changes in those authorities. This letter does not have the force and effect of law and can be relied on only by the taxpayer who requested it.

If you have any questions, please contact Assistant General Counsel, at (202)

Sincerely,

Chief Counsel
Office of Tax and Revenue

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER
OFFICE OF TAX AND REVENUE

OFFICE OF THE GENERAL COUNSEL

October 12, 2018

Re: Request for District of Columbia Tax Ruling
District of Columbia Individual Income Tax

Dear

This correspondence responds to your private letter ruling request regarding District of Columbia (the "District") individual income tax. This ruling is based on the facts provided and current law. You cannot rely on this ruling if the facts, law, or regulations subsequently change.

I. ISSUE

1. Is the District required to grant "injured spouse" protection to a spouse who files a joint return with his or her spouse for non-tax debts?

II. FACTS

III. LAW & ANALYSIS

An income tax is imposed under D.C. Code §47-1806.03 upon all resident individuals. Married District taxpayers may file a joint return or separately on the same return. D.C. Code §47-1805.01(e). However, the filing status must be the same on both the federal and District return. *Id.* If a joint income tax return is filed, OTR shall separate the amount due to the spouse who owes delinquent taxes from the spouse who does not owe delinquent taxes based upon the proportion of gross income of each spouse. D.C. Code §47-4432.

OTR may offset all or part of a taxpayer's District refund to satisfy debts resulting from a default under a federal student loan program. D.C. Code §47-4431(c)(2).

The District may grant "injured spouse" status to the non-liable taxpayer "for prior D.C. taxes, D.C. unemployment compensation debt, or child support." Form D-40 Instructions, Page 9. Debts resulting from a default under a federal student loan program are not listed as an eligible debt.

The IRS may offset a taxpayer's refund to satisfy a legally enforceable debt to any federal creditor agency once it has received notice of the debt. Internal Revenue Code ("IRC") §6402(d)(1). However, the term "injured spouse" or the authority to separate a refund does not appear in the IRC. This authority derives from Title 31 of the Code of Federal Regulations. *See* IRM §25.18.5.1 referencing 31 CFR 285.2(f). The IRS must notify the federal creditor agency that a payment has been made and the federal creditor agency shall pay an amount equal to the refund. 31 CFR 285.2(g).

The District conforms to the current version of the IRC where applicable. D.C. Code §47-1801.04(28). In addition, the District conforms to several specific definitions found in the IRC. *See* D.C. Code §47-1803.02(a) (definition of "gross income") and D.C. Code §47-1803.03(a)(1) (definition of "business expenses"). However, the District does not conform to other titles of the United States Code or the Code of Federal Regulations. Therefore, the IRS has been granted the authority to recover the amount paid to an "injured spouse" from the federal creditor agency. In contrast to the IRS, OTR does not have the ability to recover funds from a federal creditor agency.

The granting of "injured spouse" protection for non-tax debts is by administrative grace and is not required by any provision in the D.C. Code. Therefore, OTR as a matter of administrative policy, requires the request for "injured spouse" protection be made with the originally filed District tax return, so the refund can be separated before funds are transferred to the federal creditor agency.

IV. CONCLUSION

Additionally, the District does not conform to the federal "injured spouse" procedures since they are contained in Title 31 of the Code of Federal Regulations, which is not applicable to the District. Moreover, the District, unlike the IRS, has no authority to recover funds once the portion of the refund has been sent to a creditor agency.

This letter is limited to the facts that were provided in your request. The tax treatment of the products may be affected if additional or different material facts are presented. No opinion is expressed or implied concerning the tax treatment of any item discussed in this letter except as expressly stated herein. The analysis set forth herein is based on the law and regulations currently in effect and may be affected by future changes in those authorities. This letter does not have the force and effect of law and can be relied on only by the Company who requested it.

If you have any questions, please contact , Assistant General Counsel, at

Sincerely,

Chief Counsel
Office of Tax and Revenue

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER
OFFICE OF TAX AND REVENUE

OFFICE OF THE GENERAL COUNSEL

December 7, 2018

Re: Request for District of Columbia Tax Ruling
District of Columbia Estate Tax

Dear

This correspondence responds to your private letter ruling request regarding the District of Columbia (the "District") estate tax. This ruling is based on the facts provided and current law. You cannot rely on this ruling if the facts, law, or regulations subsequently change.

I. ISSUE

1. Did the decedent's estate have tangible personal property with a taxable situs in the District at the time of his death?

II. FACTS

III. LAW & ANALYSIS

An estate tax is imposed under D.C. Code §47-3703, on the transfer of every nonresident's taxable estate having its taxable situs in the District. A nonresident is "a decedent who was domiciled outside of the District at his death." D.C. Code §47-3701(8).

The taxable situs of tangible personal property is the place where the property is customarily located at the time of the decedent's death. D.C. Code §47-3701(12A)(B). The regulations expand on this definition and state, "[t]he taxable situs of tangible personal property which, by its nature, is readily movable shall be determined by the Director from the facts of each case." D.C. Mun. Regs. 9 §3703.7.

The Supreme Court of the United States has addressed the question of situs of artwork on loan to a museum in *City Bank Farmers' Trust Co. v. Schnader*, 293 U.S. 112 (1934). In this case, the Pennsylvania inheritance law imposed a tax upon the transfer by will or intestate laws of personal property within the commonwealth when the decedent is a nonresident at the time of his death. *Id.* at 116. Thomas B. Clarke, a resident of New York, loaned paintings to a museum in Pennsylvania and died testate while they were on exhibition there. *Id.* at 116. His will was admitted to probate in New York, and letters testamentary issued to appellant to which, as trustee, the residuary clause transferred the pictures. *Id.* at 116.

The Court examined if the paintings had a taxable situs in Pennsylvania at the time of Mr. Clarke's death or whether situs remained in New York because the paintings resided only temporarily in Pennsylvania. The Court concluded, "[by] sending them into Pennsylvania and by his omission to have them returned to New York and his lack of definite intention ever so to do, Clarke failed to maintain an actual situs in New York and created one for them in Pennsylvania." *Id.* at 121.

The Court in *Schnader* cited to various cases supporting the principle that more than one state cannot tax the same transfer of property. *See Frick v. Pennsylvania, 268 U.S. 473,488-492 (1925); Safe Deposit & T. Co. v. Virginia,* 280 U.S. 83, 93; and *Farmers' Loan & Trust Co. v. Minnesota,* 280 U.S. 204, 210. The question in *Frick* was whether a state of domicile could claim situs on tangible personal property located outside of its borders. *Frick v. Pennsylvania, 268 U.S.* 488.

The Court found that:

> No general principles of law are better settled, or more fundamental, than that the legislative power of every state extends to all property within its borders, and that only so far as the comity of that state allows can such property be affected by the law of any other state. The old rule expressed in the maxim *mobilia sequentur personam*, by which personal property was regarded as subject to the law of the owner's domicile, grew up in the Middle Ages, when movable property consisted chiefly of gold and jewels, which could be easily carried by the owner from place to place, or secreted in spots known only to himself. In modern times, since the great increase in amount and variety of personal property, not immediately connected with the person of the owner, that rule has yielded more and more to the *lex situs*, the law of the place where the property is kept and used.
> *Id* at 493.

The Court ultimately concluded that Pennsylvania's "[...] attempts to tax the transfer of tangible personality having an actual situs in other states, contravenes the due process of law clause of the Fourteenth Amendment and is invalid." *Id.* at 497.

The Supreme Court has held:

> But we do not find it necessary to discuss the issue thus raised, for it has been repeatedly held by this Court that the power of testamentary disposition and the privilege of inheritance are subject to state taxation and state regulation and that regulatory taxing provisions, even though they produce inequalities in taxation, do not effect an unconstitutional taking of property, unless as was said in *Dane v. Jackson*, 256 U. S. 589, 599 (1921) the taxing statute 'results in such flagrant and palpable inequality between the burden imposed and the benefit received, as to amount to the arbitrary taking of property without compensation[...]'
> *Stebbins v. Riley*, 268 U.S. 137, 140-141 (1925).

IV. CONCLUSION

This letter is limited to the facts that were provided in your request. The tax treatment of the products may be affected if additional or different material facts are presented. No opinion is expressed or implied concerning the tax treatment of any item discussed in this letter except as expressly stated herein. The analysis set forth herein is based on the law and regulations currently in effect and may be affected by future changes in those authorities. This letter does not have the force and effect of law and can be relied on only by the estate which requested it.

If you have any questions, please contact , Assistant General Counsel, at

Sincerely,

Chief Counsel
Office of Tax and Revenue

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER
OFFICE OF TAX AND REVENUE

OFFICE OF THE GENERAL COUNSEL

Febuary 14, 2019

Re: Request for District of Columbia Tax Ruling
District of Columbia Qualified High Technology Company Tax Exemption

Dear :

This correspondence responds to your private letter ruling request regarding the District of Columbia's (the "District") sales and use tax exemption for Qualified High Technology Companies ("QHTC"). This ruling is based on the facts provided and current law. You cannot rely on this ruling if the facts, law, or regulations subsequently change.

I. ISSUE

II. FACTS

III. LAW & ANALYSIS

To qualify as a QHTC a taxpayer must: (i) be an individual or entity organized for profit and leasing or owning an office in the District of Columbia; (ii) have two or more qualified employees in the District; and (iii) derive at least 51% of its gross revenues earned in the District from QHTC activities. D.C. Code Ann. § 47-1817.01(5)(A).

There are various tax benefits granted to QHTCs. One of these benefits is a sales tax exemption for the purchase of computer software or hardware, and visualization and human interface technology equipment, including operating and applications software, computers, terminals, display devices, printers, cable, fiber, storage media, networking hardware, peripherals, and modems purchased in connection with the operation of a QHTC. D.C. Code § 47-2005(31) and D.C. Mun. Regs. 9 § 1111.3.

But for this special QHTC exemption, the gross receipts from the sale, lease, or rental of any computer software are taxable regardless of whether the software is "canned," prepackaged, or customized. D.C. Mun. Regs. 9 § 474.4. The Office of Tax and Revenue ("OTR") issued guidance, which concluded that both SaaS and traditional software applications are both taxable services. OTR Notice 2017-06.

We think the same logic applies to this sales tax exemption, and, consequently, OTR will not distinguish between SaaS and traditional software when applying the exemption in D.C. Code § 47-2005(31).

However, charges for maintenance, warranty services, and/or service calls are considered a repair of personal property and are subject to sales and use tax. D.C. Mun. Regs. 9 §§ 464.1 and 464.3. Since, the sales tax exemption for QHTCs only applies for software, and, because maintenance contracts are not software, the exemption would not apply to any maintenance charges.

IV. CONCLUSION

This letter is limited to the facts that were provided in your request. The tax treatment of the products may be affected if additional or different material facts are presented. No opinion is expressed or implied concerning the tax treatment of any item discussed in this letter except as expressly stated herein. The analysis set forth herein is based on the law and regulations currently in effect and may be affected by future changes in those authorities. This letter does not have the force and effect of law and can be relied on only by the estate which requested it.

If you have any questions, please contact Assistant General Counsel, at

Sincerely,

Chief Counsel
Office of Tax and Revenue

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER
OFFICE OF TAX AND REVENUE

OFFICE OF THE GENERAL COUNSEL

February 21, 2019

Re: Request for District of Columbia Tax Ruling
District of Columbia Sales and Use Tax and Gross Receipts Tax

Dear Mr. Waits:

This correspondence responds to your private letter ruling request regarding District of Columbia (the "District") sales and use tax. This ruling is based on the facts provided and current law. You cannot rely on this ruling if the facts, law, or regulations subsequently change.

I. ISSUES

II. CONCLUSION

III. FACTS

V. LAW & ANALYSIS

A. Application of Sales and Use Tax to

A sales tax is imposed under D.C. Code § 47-2002(a) upon all vendors for the privilege of making a "retail sale" or "sale at retail" of tangible personal property and certain selected services. For sales tax purposes, "tangible personal property" means corporeal personal property of any nature. D.C. Code Ann. §47-2001(s).

A variety of services are also subject to District sales tax law, including delivery services, certain data processing services, and information services.

Under D.C. Code §47-2001(n)(1)(N)(i) the term "data processing services" is defined as:

> the processing of information for the compilation and production of records of transactions; the maintenance, input, and retrieval of information; the provision of direct access to computer equipment to process, examine, or acquire information stored in or accessible to the computer equipment; the specification of computer hardware configurations, the evaluation of technical processing characteristics, computer programming or software, provided in conjunction with and to support the sale, lease, operation, or application of computer equipment or systems; word processing, payroll and business accounting, and computerized data and information storage and manipulation; the input of inventory control data for a company; the maintenance of records of employee work time; filing payroll tax returns; the preparation of W-2 forms; the computation and preparation of payroll checks; and any system or application programming or software.

Further guidance is provided in D.C. Mun. Regs. tit. 9 §474.4, which states: "gross receipts from the sale, lease or rental, or maintenance of any computer software shall be subject to the tax regardless of whether the software is canned, prepackaged or customized."

Examples of taxable computer software and software services include system software, application software, computer programming, software modification, and software updating. *Id.*

Under D.C. Code §47-2001(n)(1)(N)(ii) "Information services" is defined as:

> "the furnishing of general or specialized news or current information, including financial information, by printed, mimeographed, electronic, or electrical transmission, or by wire, cable, radio waves, microwaves, satellite, fiber optics, or any other method in existence or which may be devised; electronic data retrieval or research, including newsletters, real estate listings, or financial, investment, circulation, credit, stock market, or bond rating reports; mailing lists; abstracts of title; news clipping services; wire services; scouting reports; surveys; bad check lists; and broadcast rating services; but does not include: information sold to a newspaper or a radio or television station licensed by the Federal Communication Commission, if the information is gathered or purchased for direct use in newspapers or radio or television broadcasts; charges to a person by a financial

institution for account balance information; or information gathered or compiled on behalf of a particular client, if the information is of a proprietary nature to that client and may not be sold to others by the person who compiled the information, except for a subsequent sale of the information by the client for whom the information was gathered or compiled.

The definition of retail sale includes the "sale of or charge for any delivery in the District for which a separate charge is made." D.C. Code Ann. § 47-2001(n)(1)(Q). "Shipping and handling charges shall be included as part of the sales price of the eligible item, whether or not separately stated. If multiple items are shipped on a single invoice, the shipping and handling charges shall be proportionately allocated to each item ordered and separately identified on the invoice." D.C. Code Ann. §47-2001(p)(1).

As of January 1, 2019, the District of Columbia amended the definition of retail sale to include the "sale of or charges for digital goods." D.C. Code Ann. §47-2001(n)(1)(BB).

Digital goods are defined to include "digital audiovisual works, digital audio works, digital books, digital codes, digital applications and games, and any other otherwise taxable tangible personal property electronically or digitally delivered, whether electronically or digitally delivered, streamed, or accessed and whether purchased singly, by subscription, or in any other manner." D.C. Code Ann. §47-2001(d-1). Digital goods do not include cable television service, satellite relay television or radio subject to tax under 47-2501.01 unless expressly included in the definition of digital good. *Id.*

In general, D.C. imposes sales tax on the entire purchase price when a retailer bundles taxable and exempt items, such as food and taxable personal property, and sells the bundle for one price. *OTR's Guidance for Sales Concerning Food*, Office of the General Counsel, 11/1/2002. If, however, the sales price of the taxable items is less than 10% of the value of the bundle, then the entire purchase price is exempt from tax. *Id.*

B. Application of Sales and Use Tax to

A sales tax is imposed under D.C. Code § 47-2002(a) upon all vendors for the privilege of making a "retail sale" or "sale at retail" of tangible personal property and certain selected services.

The definition of "sale" and "selling" means "any transaction whereby title or possession, or both, of tangible personal property is or is to be transferred, including rental, lease, license, or right to reproduce or use, for consideration." D.C. Code § 47-2001(q).

Transactions in which no consideration is exchanged do not constitute sales for District sales and use tax purposes.

C. District Gross Receipts Tax

Under D.C. Code § 47-2501.01(a), each company that sells or charges for "cable television service, satellite relay television service, and any and all other distribution of television, video, or radio service with or without the use of wires provided to subscribers or paying customers" is subject to gross receipt tax. However, as of January 1, 2019, sales of digital goods are specifically excluded from the gross receipts tax on providers of television, video, or radio service provided the sales are subject to the sales and use tax. D.C. Code Ann. §47-2501.01(a). As a result, as of January 1, 2019, sales of streaming video services will be subject to the sales tax, and no longer subject to the gross receipts tax. Dist. of Columbia Revenue Notice No. 2019-01, 01/02/2019.

This letter is limited to the facts that were provided in your request. The tax treatment of the services may be affected if additional or different material facts are presented. No opinion is expressed or implied concerning the tax treatment of any item discussed in this letter except as expressly stated herein. The analysis set forth herein is based on the law and regulations currently in effect and may be affected by future changes in those authorities. This letter does not have the force and effect of law and can be relied on only by the taxpayer who requested it.

If you have any questions, please contact Assistant General Counsel, at (202)

Sincerely,

Chief Counsel
Office of Tax and Revenue

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER
OFFICE OF TAX AND REVENUE

OFFICE OF THE GENERAL COUNSEL

February 28, 2019

Re: Request for District of Columbia Tax Ruling
District of Columbia Franchise Tax

Dear

This correspondence responds to your private letter ruling request regarding District of Columbia (the "District") unincorporated business franchise tax. This ruling is based on the facts provided and current law. You cannot rely on this ruling if the facts, law, or regulations subsequently change.

I. ISSUE

II. FACTS

III. LAW & ARGUMENT

Under D.C. Mun. Regs. 117.13, gain (other than ordinary gain resulting from the recapture of depreciation) or loss from the sale or other disposition of property that results in the termination of an unincorporated business subject to the unincorporated business franchise tax shall be recognized and reported by the owners of the business rather than by the business entity.

Further, under D.C. Mun. Regs. 117.15 provides that depreciation required to be recaptured in accordance with the District's code and corresponding federal provisions shall be recognized and reported by and unincorporated business entity in the same manner and to the same extent as a corporation is required to recapture depreciation under the District's code and the federal provisions.

This letter is limited to the facts that were provided in your request. The tax treatment of the gain may be affected if additional or different material facts are presented. No opinion is expressed or implied concerning the tax treatment of any item discussed in this letter except as expressly stated herein. The analysis set forth herein is based on the law and regulations currently in effect and may be affected by future changes in those authorities. This letter does not have the force and effect of law and can be relied on only by the taxpayer who requested it.

Please contact if you have further questions.

Sincerely,

Chief Counsel
Office of Tax and Revenue

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER
OFFICE OF TAX AND REVENUE

OFFICE OF GENERAL COUNSEL

April 12, 2019

Re: Request for District of Columbia Tax Ruling
District of Columbia Sales and Use Tax

Dear

This correspondence responds to your private letter ruling request regarding the applicability of District of Columbia (the District) sales and use tax for

This ruling is based on the facts provided and current law. You cannot rely on this ruling if the facts, law or regulations subsequently change.

ISSUE

CONCLUSION

FACTS

ANALYSIS

The District exempts from sales tax gross receipts from sales to the United States or an instrumentality thereof.[13] For the exemption to apply, the charge must be directly incurred and

[13] D.C. Code Ann. § 47-2005 (2017); D.C. Mun. Regs. tit. 9, § 445 (1954).

discharged by the United States, and paid for by a government check or purchase order made directly to the vendor.[14]

To determine whether an organization is an instrumentality, the Internal Revenue Service (IRS) has frequently applied a six-factor test.[15] The IRS considers the following six factors:[16]

1. Whether the organization is used for a governmental purpose and performs a governmental function.
2. Whether performance of its functions is on behalf of one or more states or political subdivisions.
3. Whether there are any private interests involved, or whether the states involved have the powers and interests of an owner.
4. Whether control and supervision of the organization is vested in public authority.
5. Whether express or implied statutory or other authority is necessary for creation and/or use of such an instrumentality, and whether such authority exists.
6. The degree of financial autonomy and the source of its operating expenses.

Courts have generally relied on parts of the IRS' six-factor test as well, but occasionally add, modify, or do not use some of the factors and will weigh factors variably at their own discretion.[17] None of the factors necessarily control and determinations of individual cases are based on a totality of the factors.[18]

Furthermore, determinations may not necessarily be limited to these six factors.[19] This analysis relies on parts of the IRS' six-factor test, but takes into account other factors previously relied on by the courts as well.[20] The factors applied in this analysis include:

1. Whether the government created the organization.
2. Whether the organization performs a governmental function and acts on behalf of the government.
3. Whether an enabling statute guides or otherwise circumscribes the entity's actions.
4. Whether the government appoints the entity's leadership.
5. Whether control and supervision of the organization is vested in public authority.
6. The degree of financial autonomy and the source of its operating expenses.

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[14] OFFICE OF TAX AND REVENUE, DISTRICT OF COLUMBIA SALES TAX EXEMPTION PAYMENT POLICY (2003), (November 15, 2018), https://otr.cfo.dc.gov/sites/default/files/dc/sites/otr/publication/attachments/sales_tax_payment_package.pdf.

[15] Rev. Rul. 57-128, 1957-1 C.B. 311; *Rose v. Long Island R.R. Pension Plan*, 828 F.2d 910, 917-18 (2nd Cir. 1987) (citing to Rev. Rul. 57-128's six-factor instrumentality test); *Robinette v. Hunsecker*, 212 Md. App. 76, 110 (Md. Ct. Spec. App. 2013) (citing to Rev. Rul. 57-128's six-factor instrumentality test).

[16] Rev. Rul. 57-128, 1957-1 C.B. 311.

[17] *Cf. Kentucky Emps. Ret. Sys. v. Seven Ctys. Servs., Inc.*, 901 F.3d 718, 726-30 (6th Cir. 2018) (cites to the six-factor test in Rev. Rul. 57-128, but also applies modifications to the six-factor test to determine instrumentality and cites to other court cases where modifications were made to the six-factor test); *Int't Bank for Reconstruction and Dev. v. District of Columbia*, 171 F.3d 687, 690-91 (D.C. Cir. 1999).

[18] *Kentucky Emps. Ret. Sys. v. Seven Ctys. Servs., Inc.*, 901 F.3d 718, 726-30 (6th Cir. 2018).

[19] *Id.* at 727.

[20] Rev. Rul. 57-128, 1957-1 C.B. 311; *Kentucky Emps. Ret. Sys. v. Seven Ctys. Servs., Inc.*, 901 F.3d 718, 726-30 (6th Cir. 2018).

1. Whether the Government Created the Organization

2. Whether the Organization Performs a Governmental Function and Acts on Behalf of the Government

3. Whether an Enabling Statute Guides or Otherwise Circumscribes the Entity's Actions

4. Whether the Government Appoints the Entity's Leadership

5. Whether Control and Supervision of the Organization is Vested in Public Authority

6. The degree of financial autonomy and the source of its operating expenses.

The District exempts from sales tax sales of tangible personal property in which the purchaser intends at the time of purchase to resell the property as is or intends at the time of purchase to incorporate the property into another product for sale.[66] There are three circumstances in which a purchase of tangible personal property or taxable services is for resale: (1) the purpose is to resell or rent the property in the same form; (2) the purpose is to incorporate or attach the property into another property for sale; and (3) the purchase is to use or incorporate taxable services into another service for sale.[67] The District defines "sale" as a transfer of title or possession for consideration.[68]

[66] D.C. Code Ann. § 47-2001 (2015).
[67] D.C. Mun. Regs. tit. 9, § 414.5 (2017).
[68] D.C. Code Ann. § 47-2001 (2015).
[69] *ACS State and Local Solutions, Inc. v. District of Columbia*, No. 1832-02 (D.C. Super. Tax. 2005).
[70] "These two cases make it clear that it is not critical who holds title to the purchased items as between the United States and its contractor. Nor is the degree of control over the contractor that the United States exercises with respect to the purchases critical. The key factor is whose credit, between the United States and the contractor, is bound by the purchasing agreement with the seller." *United States v. D.C.*, 669 F.2d 738, 743 (D.C. Cir. 1981) (citing to *United States v. Forst*, 442 F.Supp. 920, 924 (W.D.VA. 1977)).
[71] *Id.*

10

V. Conclusion

This letter is limited to the facts that were provided in your request. The tax treatment of the products may be affected if additional or different material facts are presented. No opinion is expressed or implied concerning the tax treatment of any item discussed in this letter except as expressly stated herein. The analysis set forth herein is based on the law and regulations currently in effect and may be affected by future changes in those authorities. This letter does not have the force and effect of law and can be relied on only by the taxpayer who requested it.

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[82] For example, in *Aerospace*, the California Court of Appeal specified that the contractor is exempt from sales and use tax because title of the purchased property passed to the government pursuant to an FAR title passage clause. Similarly in *Strayhorn v. Raytheon E-Systems*, the Texas Court of Appeals discussed whether the FAR title passage clause in the contract was sufficient to meet with the FAR standards in order to qualify the contractor for sales and use tax exemption. Finally, in *McDonnell Douglas* the Missouri Supreme Court determined that title passed to the government with FAR title passage clauses in the contract. *See Aerospace* at 1113-14; *Strayhorn v. Raytheon E-Systems, Inc*, 101 S.W.3d 558, 565-66 (Tex. App. 2003); *McDonnell Douglas Corp. v. Director of Revenue*, 945 S.W.2d 437, 441 (Mo. 1997).

[83] *Day & Zimmerman, Inc. v. Comptroller*, 519 S.W.2d 106, 110 (Tex. 1975).

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER
OFFICE OF TAX AND REVENUE

OFFICE OF THE GENERAL COUNSEL

July 11, 2019

RE: Request for District of Columbia Tax Ruling

Dear

This correspondence responds to your private letter ruling request regarding District of Columbia (the "District") sales tax. This ruling is based on the facts provided and current law. You cannot rely on this ruling if the facts, law, or regulations subsequently change.

I. FACTS

II. ISSUES

III. DISTRICT LAW

A sales tax is imposed upon all vendors for the privilege of making a "retail sale" or "sale at retail" of, inter alia, certain selected services. D.C. Code § 47-2002(a) (West 2001).

"Retail sale" and "sale at retail" include an enumerated list of taxable services, among which are "rooms, lodgings, or accommodations furnished to transients by any hotel." D.C. Code § 47-2001(n)(1)(C).

A "transient" is a person who occupies or has the right to occupy any room or rooms, lodgings or accommodations for a period of 90 days or less during any one continuous stay. *See* D.C. Code § 47-2001(v-1); D.C. Mun. Regs. tit. 9 § 446.1.

Charges for rooms contracted for 91 or more continuous days are not subject to the District sales tax from the first day of the contract. Rooms not covered by the contract are subject to District sales tax. *See* OTR's Position for Sales Tax Concerning Hotels, 11/01/2002.

In the District, a person does not have to exercise their right to occupy in order to qualify for exemption. *See Square 345 Ltd. P'ship v. District of Columbia*, 927 A.2d 1020, 1024 (D.C. 2007). In *Square 345*, defendant hotel was required to pay sales taxes on attrition fees, even though its clients who contracted for a room block did not actually occupy the rooms that were held for them to reserve. *Id.* That the clients did not actually exercise their right to occupy is immaterial for sales tax purposes, because they had the exclusive right to occupy upon reservation. *Id.*

Under D.C. Code Ann. § 47-2020, any sales tax that has been erroneously collected will be refunded if a refund application is made within three years of payment. A refund application may be made by the person upon whom such tax was imposed and who has actually paid the tax.

When a refund application is made by a vendor who has collected reimbursement of sales tax, no actual refund of moneys shall be made to such vendor, until he shall first establish that the vendor has repaid to the purchaser the amount for which the application for refund is made.

IV. APPLICATION AND CONCLUSIONS

Under District law, hotel rooms rented for a period of longer than 90 days are exempt from taxation. See D.C. Code § 47-2001(n)(1)(C); D.C. Code § 47-2001(v-1); D.C. Mun. Regs. tit. 9 § 446.1.

This letter is limited to the facts that were provided in your request. The tax treatment of the services may be affected if additional or different material facts are presented. No opinion is expressed or implied concerning the tax treatment of any item discussed in this letter except as expressly stated herein. The analysis set forth herein is based on the law and regulations currently in effect and may be affected by future changes in those authorities. This letter does not have the force and effect of law and can be relied on only by the taxpayer who requested it.

Sincerely,

Chief Counsel
Office of Tax and Revenue

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER
OFFICE OF TAX AND REVENUE

OFFICE OF THE GENERAL COUNSEL

July 15, 2019

RE: Request for District of Columbia Tax Ruling

Dear

This correspondence responds to your private letter ruling request regarding District of Columbia (the "District") sales tax. This ruling is based on the facts provided and current law. You cannot rely on this ruling if the facts, law, or regulations subsequently change.

I. FACTS

A sales tax is imposed under D.C. Official Code § 47-2002(a) upon all vendors for the privilege of making a "retail sale" or "sale at retail" of tangible personal property and certain selected

II. ISSUE

III. CONCLUSION

IV. DISTRICT LAW

A sales tax is imposed under D.C. Official Code § 47-2002(a) upon all vendors for the privilege of making a "retail sale" or "sale at retail" of tangible personal property and certain selected services. For sales tax purposes, "tangible personal property" means corporeal personal property of any nature. D.C. Official Code § 47-2001(s).

The District of Columbia includes in the definition of retail sale the "sale of or charges for digital goods." D.C. Official Code § 47-2001(n)(1)(BB).

Digital goods are defined to include "digital audiovisual works, digital audio works, digital books, digital codes, digital applications and games, and any other otherwise taxable tangible personal property electronically or digitally delivered, whether electronically or digitally delivered, streamed, or accessed and whether purchased singly, by subscription, or in any other manner." D.C. Official Code § 47-2001(d-1). Digital goods do not include cable television service, satellite relay television or radio subject to tax under § 47-2501.01 unless expressly included in the definition of digital good. *Id.*

A variety of services are also subject to District sales tax law, including data processing services and information services.

Under D.C. Official Code § 47-2001(n)(1)(N)(i) the term "data processing services" is defined as:

> the processing of information for the compilation and production of records of transactions; the maintenance, input, and retrieval of information; the provision of direct access to computer equipment to process, examine, or acquire information stored in or accessible to the computer equipment; the specification of computer hardware configurations, the evaluation of technical processing characteristics, computer programming or software, provided in conjunction with and to support the sale, lease, operation, or application of computer equipment or systems; word processing, payroll and business accounting, and computerized data and information storage and manipulation; the input of inventory control data for a company; the maintenance of records of employee work time; filing payroll tax returns; the preparation of W-2 forms; the computation and preparation of payroll checks; and any system or application programming or software.

Further guidance is provided in D.C. Mun. Regs. tit. 9 §474.4, which states: "gross receipts from the sale, lease or rental, or maintenance of any computer software shall be subject to the tax regardless of whether the software is canned, prepackaged or customized."

Examples of taxable computer software and software services include system software, application software, computer programming, software modification, and software updating. *Id.*

Under D.C. Official Code § 47-2001(n)(1)(N)(ii) "Information services" is defined as:

> "the furnishing of general or specialized news or current information, including financial information, by printed, mimeographed, electronic, or electrical transmission, or by wire, cable, radio waves, microwaves, satellite, fiber optics, or any other method in existence or which may be devised; electronic data retrieval

> or research, including newsletters, real estate listings, or financial, investment, circulation, credit, stock market, or bond rating reports; mailing lists; abstracts of title; news clipping services; wire services; scouting reports; surveys; bad check lists; and broadcast rating services; but does not include: information sold to a newspaper or a radio or television station licensed by the Federal Communication Commission, if the information is gathered or purchased for direct use in newspapers or radio or television broadcasts; charges to a person by a financial institution for account balance information; or information gathered or compiled on behalf of a particular client, if the information is of a proprietary nature to that client and may not be sold to others by the person who compiled the information, except for a subsequent sale of the information by the client for whom the information was gathered or compiled.

In general, D.C. imposes sales tax on the entire purchase price when a retailer bundles taxable and exempt items, such as food and taxable personal property, and sells the bundle for one price. *OTR's Guidance for Sales Concerning Food*, Office of the General Counsel, 11/1/2002. If, however, the sales price of the taxable items is less than 10% of the value of the bundle, then the entire purchase price is exempt from tax. *Id.*

V. APPLICATION

This letter is limited to the facts that were provided in your request. The tax treatment of the services may be affected if additional or different material facts are presented. No opinion is expressed or implied concerning the tax treatment of any item discussed in this letter except as expressly stated herein. The analysis set forth herein is based on the law and regulations currently in effect and may be affected by future changes in those authorities. This letter does not have the force and effect of law and can be relied on only by the taxpayer who requested it. If you have any questions, please contact , Assistant General Counsel, at (202)

Sincerely,

Chief Counsel
Office of Tax and Revenue