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

[redacted]

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

Dear [redacted]

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

Facts:

[redacted]

[redacted]

[redacted]

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

[redacted]

Issue:

[redacted]

Conclusion:

[redacted]

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. [redacted]

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. [redacted]

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.

[redacted]

Summary:

[redacted] Receipts from the sale of this product are not subject to sales tax under D.C. Code §47-2005(15) (A) and (B) because it is a device that is permanently placed in the human body, remains in the body, is for individual use to relieve pain and suffering, and is given to an individual only by written prescription by a duly licensed physician or other health care provider.

Please contact this office if you have further questions.

Sincerely,

[redacted]

Acting Deputy General Counsel
Office of Tax & Revenue

OFFICE OF THE GENERAL COUNSEL

Feburary 11, 2016

[redacted]

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

Dear [redacted]

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 [redacted] meet the District's QHTC requirement of having an office in the District in the following four scenarios that you provided:

A. Scenario One

[redacted] reserves a small conference room located in the District from Regus (a company that rents offices, cubes, and conference rooms to companies for specific short term periods (*e.g.* one week, one month, a year, *etc.*)) for one or two days a week. Regus provides those companies a receptionist, back office support, and conferencing equipment.

In this scenario, [redacted] will rent between two and four office cubes and two and four offices on a daily basis and will rent the conference room on an as needed basis when meetings are held at the Regus facility. While utilizing the Regus space, [redacted] employees will generally engage in "back office" activities, but some employees may occasionally engage in QHTC qualified activities from this location as well. Although [redacted] will not generally engage in QHTC qualified activities at its Regus location, substantially more than 51% of [redacted] overall revenue derived from District sources will be from QHTC qualified activities and substantially all of [redacted] total revenue is derived from QHTC qualified activities.

B. Scenario Two

[redacted] rents office space in a building located in Washington, D.C. which [redacted] employees can only access from 9 a.m. to 5 p.m. Monday through Friday, major holidays excepted (i.e., "business hours"). Employees can work or meet with clients in the office space during business hours, but may not be present in the office or meet with clients outside of business hours. [redacted] employees will engage in both QHTC qualified activities as well as back office activities at the office. Due to the nature of [redacted] business, more than 51% of [redacted] overall revenue derived from District sources will be from QHTC qualified activities. However, less than 51% of [redacted] activities at the office space are QHTC qualified activities.

C. Scenario Three

[redacted] rents a fractional share of a building floor located in Washington, D.C. from an "incubator" company. The incubator has the entire floor of the building. An "incubator" company provides office space and training to tenant companies, and provides a shared space so that tenant companies can work with each other during the startup phase of their companies. The "incubator" company allows these companies to utilize conference rooms and open spaces on an as needed basis. [redacted] employees can work or meet with clients in their office or in a conference room at any time. While utilizing the incubator space, [redacted] employees will engage in both QHTC qualified activities as well as back office activities. Due to the nature of [redacted] business, more than 51% of [redacted] overall revenue derived from District sources will be from QHTC qualified activities. However, less than 51% of [redacted] activities at the incubator space are QHTC qualified activities.

D. Scenario Four

[redacted] rents office space in the District where [redacted] employees have unfettered access (minus major holidays). While utilizing this office space [redacted] employees will complete QHTC permitted activities as well as back office activities, and more than 51% of the revenue derived from [redacted] activities at this location will be from QHTC qualified activities. Further, more than 51% of [redacted] overall revenue derived from District sources is from QHTC qualified activities.

II. FACTS

[redacted]

[redacted]

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 [redacted]

[redacted] The recent legislative change eliminating the "base of operations in the District" language and replacing it with the requirement that a QHTC lease or own an office in the District signals an intent to require a more enduring connection to the District than previously needed.

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.

[redacted] first scenario contemplates renting office space from Regus daily. In our view, this type of arrangement reflects a lease term that is too tenuous to satisfy as the type of connection to the District sufficient to qualify for QHTC status. Similarly, scenarios two and three also fail to demonstrate a "relocation" to the District or a location in the District as contemplated by the legislation.

Under the fourth scenario, [redacted] would qualify as leasing an office in the District for QHTC purposes, as this arrangement represents the type of connection the District contemplated by the legislation.

C. Combined Returns

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

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,

[redacted]

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

November 3, 2016

[redacted]

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

Dear [redacted]

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

Is the taxpayer subject to taxation in the District, including but not limited to the corporation franchise tax?

II. CONCLUSION

The taxpayer is subject to District corporation franchise tax on its net income.

III. FACTS

The taxpayer is a qualified settlement fund ("QSF"), as defined in Internal Revenue Code ("IRC") § 468B(g) and the Treasury regulations promulgated thereunder, 26 C.F.R. ("Regulation") §§ 1.468B-1 *et seq.* [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

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. The Taxpayer is a Corporation

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). Thus, as an initial matter, the taxpayer here is a corporation potentially subject to the District's corporate franchise tax. *See* D.C. Code §§ 47-1810.01(a).

B. The Taxpayer Has Income from Sources within the District

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 the statutes and the holding in *Capital Holding Corporation*, the taxpayer has income derived from sources within the District, subjecting the taxpayer to District corporate franchise tax.

The interest income of the taxpayer is other income "derived from sources within the District" under the meaning of D.C. Code § 47-1810.01(a) and *Capital Holding Corporation*. 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).

[redacted]

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 [redacted], Assistant General Counsel, at [redacted]

Sincerely,

[redacted]

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

[redacted]

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

Dear [redacted]

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 [redacted] installation fees to District of Columbia customers subject to sales and use tax?

II. FACTS

[redacted]

[redacted]

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 applying 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)

The installation services performed by [redacted] are not listed as an example. However, it is important to note that the list is not exhaustive and only provides for a limited number of the examples and not all the examples. [redacted] products are similar in nature to the products in the above examples. Therefore, the charges can be considered to be made in connection with the sale of a new and complete item.

[redacted] 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

[redacted]

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 [redacted] who requested it.

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

Sincerely,

[redacted]

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

[redacted]

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

Dear [redacted]

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

[redacted]

II. FACTS

[redacted]

[redacted]

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

Based on the above facts, the products meet the definition of "food or drink" as defined in D.C. Code § 47-2001(g) and D.C. Mun. Regs. Tit. 9 § 449.5. The product labels indicate that the products are sold in multiple servings and are therefore not for immediate consumption. Additionally, the products do not meet the definition of a soft drink as defined in D.C. Code § 47-2001(r-1). Therefore, the sales of these products are not a "retail sale" or "sale at retail" and are not subject District sales and use taxes. However, the taxability may change if the products are sold in different quantities.

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 [redacted], Assistant General Counsel, at [redacted].

Sincerely,

[redacted]

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

[redacted]

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

Dear Mr. Lard:

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

[redacted]

[redacted]

[redacted]

II. FACTS

[redacted]

[redacted]

III. LAW

The District of Columbia ("District") imposes a gross receipts tax on:

> 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, whether for basic service, ancillary service, or other special service, and any other charges related to providing the services within the District of Columbia, including, but not limited to, rental of signal receiving equipment [...]. D.C. Code Ann. § 47-2501.01(a).

This tax applies only to sales or charges for "cable television service, satellite relay television service, and any and all other distribution of television, video, or radio service". Services that fall outside of this definition are not subject to the gross receipts tax (however, other taxes, including the sales tax, may apply).

[redacted]

IV. CONCLUSION

Based on the facts provided by the Taxpayer and the applicable law:

(1) D.C. Code Ann. § 47-2501.01(a) applies only to receipts billed by a video service provider for video services and video signaling equipment to a subscriber or other paying customer for viewing of the distributed video service;

(2) D.C. Code Ann. § 47-2501.01(a) does not apply to non-subscriber revenues, such as home shopping commissions; and

(3) D.C. Code Ann. § 47-2501.01(a) does not apply to wholesale receipts of a programmer (e.g., a television broadcaster or cable network or regional sports cable network) received from a video distributor (e.g., a cable television company or satellite relay television company), for the right to distribute video content to the video distributor's own end user subscribers or paying customers.

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 [redacted], Assistant General Counsel, at [redacted]

[redacted]

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

[redacted]

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

Dear [redacted]

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

[redacted]

[redacted]

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

[redacted]

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 [redacted], Assistant General Counsel, at [redacted]

Sincerely,

[redacted]

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

[redacted]

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

Dear [redacted]

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

Will the purchase of software as a service ("SaaS") by [redacted] qualify for the sales and use tax exemption granted to QHTCs?

II. FACTS

[redacted]

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).

[redacted]

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). Based on the facts in your request, CoStar currently qualifies as a QHTC and, therefore, the sales tax exemption is applicable.

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.

Consequently, the exemption would not apply to any payments by the taxpayer to a vendor for maintenance, warranty services, and/or service calls. If the charges for software and maintenance are not separately stated, however, the exemption will not apply, and the total transaction will be subject to sales and use tax. Accordingly, charges for "license [nontaxable] and support fees [taxable]"[3] will not be exempt, unless the invoice separately states charges for the SaaS license from charges for support.

IV. CONCLUSION

[redacted]

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.

[3] *See* [redacted] Exhibit A – Software and License/Support Fee Schedule.

If you have any questions, please contact [redacted], Assistant General Counsel, at [redacted].

Sincerely,

[redacted]

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

[redacted]

RE: Request for District of Columbia Tax Ruling

Dear [redacted]

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

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

II. ISSUE

Under D.C. Official Code § 47-2002, does District sales tax apply to the full charge of the subscription packages when at least one of the products included in the package is taxable and there is no separate itemization or price breakout on the invoice?

III. CONCLUSION

The subscription packages will be subject to District sales tax where the packages include a taxable product or service and there is no itemization of taxable and non-taxable products and services on the invoice.

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

[redacted]

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 [redacted], Assistant General Counsel, at [redacted]

Sincerely,

[redacted]

Chief Counsel
Office of Tax and Revenue