

Council of the District of Columbia

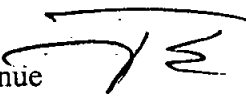
Committee on Finance and Revenue 2010 DEC -6 AM 9:51

Committee Report

1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004

OFFICE OF THE
SECRETARY

To: All Councilmembers

From: Jack Evans, Chairman
Committee on Finance and Revenue 

Date: December 2, 2010

Subject: Report on Bill 18-655, the "Payment of Full Hotel Taxes by Online Vendors Clarification Act of 2010".

The Committee on Finance and Revenue reports **favorably** on Bill 18-655, the "Payment of Full Hotel Taxes by Online Vendors Clarification Act of 2010", and recommends its approval by the Council of the District of Columbia.

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I. BACKGROUND, PURPOSE AND EFFECT

Bill 18-655, the "Payment of Full Hotel Taxes by Online Vendors Clarification Act of 2010", was introduced by Councilmembers Michael Brown, Kwame Brown, Jack Evans and Chairman Gray. It was cosponsored by Councilmembers Alexander, Barry, Catania, Cheh, Mendelson and Wells. The legislation would clarify and mandate that online travel companies pay the full amount of tax on the amount paid by the occupant in relation to the tax in the sale or charge for any room or rooms, lodgings, or accommodations regularly furnished to transients.

The legislation would require that when a hotel room or other similar accommodations was booked or otherwise arranged by a room remarketer, the transient accommodations tax rate, which is currently 14.5%, would be applied to the total amount charged to the consumer by the room remarketer, instead of to the amount charged to the room remarketer by the hotel, as is current practices. Room remarketers such as Hotels.com, Travelocity, Orbitz, etc., generally operate by paying a hotel a lower than market rate for a certain quantity of rooms and then charging a marked up price to the consumer who uses their services to book the room. Currently the accommodations tax is only collected on the lower room price the remarketer paid to the hotel and not the higher marked-up price paid by the consumer. The legislation would mandate the collection of the tax on the final sales price of the room to the consumer.

II. LEGISLATIVE HISTORY

- February 2, 2010 Bill 18-655, the "Payment of Full Hotel Taxes by Online Vendors Clarification Act of 2010", was introduced by Councilmembers Michael Brown, Kwame Brown, Jack Evans and Chairman Gray. It was cosponsored by Councilmembers Alexander, Barry, Catania, Cheh, Mendelson and Wells.
- February 3, 2010 Bill 18-655, the "Payment of Full Hotel Taxes by Online Vendors Clarification Act of 2010", was referred to the Committee on Finance and Revenue.
- February 19, 2010 Notice of Intent to Act on New Legislation for Bill 18-655 is published in the D.C. Register.
- April 2, 2010 Notice of public hearing on Bill 18-655, the "Payment of Full Hotel Taxes by Online Vendors Clarification Act of 2010", and other matters, published in the D.C. Register.
- April 14, 2010 Public hearing held on Bill 18-655, the "Payment of Full Hotel Taxes by Online Vendors Clarification Act of 2010", and other matters, published in the D.C. Register.
- December 2, 2010 Consideration and vote on Bill 18-655, and other matters, by the Committee on Finance and Revenue.

III. SUMMARY OF TESTIMONY

The Committee on Finance and Revenue held a public hearing on the matter of Bill 18-655, and other matters, on April 14, 2010, starting at 2:10 p.m. Chairman Evans made brief

opening remarks.

Emily Durso, President, Hotel Association of Washington testified in support of the legislation. Ms. Durso was joined by David Wilmot, Fred Booke, and Henry Moseley of the Washington Convention and Sports Authority. Ms. Durso indicated to the Committee that their industry brings \$5.5 billion per year in spending to the District, which of course generates tremendous tax revenue to the city. She recounted the purpose of the legislation – to mandate that third party intermediaries, such as online booking agencies, remit the hotel room sales tax “on the full value of any room sold.” Ms. Durso stated that if the District had this ability “conservative estimates peg the potential revenue that could have been generated in 2009 (2011 estimates will be higher) through the collection of the full amount of the tax at approximately \$6.2 million”.

Ms. Durso stated “online travel companies typically choose to calculate state and local hotel room taxes based on the wholesale cost they pay to a hotel for a room rather than the retail price they receive from the consumer for the room. This practice results in lower hotel room taxes being collected by the District for rooms booked through the online company, rather than directly with a hotel, because the tax calculation is based on the lower wholesale amount.” She stated the legislation “seeks to address this tax loophole by positioning the District to collect the hotel room sales tax on the full retail value of the room”.

Ms. Durso emphasized this legislation will not create a new tax, will not dampen tourism and not reduce jobs for District residents. She stated “in fact our research indicates that in 2009 over \$6 million in tax revenue could have been generated”, which would be good revenue to have in tight budgetary times. Ms. Durso stated similar actions were being taken in jurisdictions around the country.

Arthur Sackler, Executive Director, Interactive Travel Services Association testified in opposition to the legislation. Mr. Sackler stated if adopted “the District would take a substantial step backwards....which could be characterized as inhospitable to business and tourism”. Mr. Sackler asserted the legislation “constitutes a new tax on tourism” and it will “dampen tourism, reducing the number of visitors who stay in the city, and diminishing tax revenue”. He stated the remarketer tax would “cause bookings to be diverted to hotels in Maryland and Virginia – projected beneficiaries easily could include National Harbor and the Key Bridge Marriott, raise DC hotel prices, lower tax revenue from visitors who stay outside the city, create major paperwork for local small businesses, worse the impact of the current hotel slump, and cause the loss of a significant number of hotel and other service industry jobs”. He stated that not only would the law apply to large online organizations, but also to mom and pop travel agencies located right in the District who book rooms for their clients. Mr. Sackler stated “similar taxes elsewhere have yielded counterproductive results. In New York City, where the tax is under legal challenge, 80% of tour operators surveyed planned to reduce their NYC bookings due to the new ordinance”. He stated “after Columbus GA and South San Francisco applied such a tax, much business was redirected outside those cities”. Mr. Sackler stated the tax

would also have a negative impact on package tours sold and that “travel agents would be left with little choice but to reduce or eliminate bundled tour packages (hotel plus air, transfers, meals, and/or entertainment) or face potential audits over the breakdown of fees associated with those packages”. Mr. Sackler stated that the “fees charged by OTCs are not for hotel rooms. Rather, they are for the services of facilitating the booking of hotel rooms. As found by numerous courts, including the Fourth and Sixth Circuit Federal Courts of Appeals, OTCs are not owners or operators of hotels, and are therefore not subject to hotel occupancy taxes”.

Heather Dolstra, CTC testified in opposition to the legislation. Ms. Dolstra stated she is a resident of the District and the owner of Democracy Travel located on Wisconsin Avenue. She stated they have been in business for 30 years and employ three full time agents. Ms. Dolstra talked about the decline in commissions paid to agents and how the current internet based business model was a source of reliable income for a travel business. She stated “the internet changed everything. One of the most important changes brought...means to do sales on variable net rate concepts became possible. This new approach removes much of the uncertainty about collection of commissions because the retailer-as-merchant is collecting the payment for its services directly from the consumer and forwarding the net proceeds (including applicable taxes) to the hotel. The selling capacity and market reach of the online travel retailers is such that the difference between the negotiated rate and the net remittance was more profitable in general, as well as more efficient, than the traditional commission model”. She noted that in the past, under the commission model, the agents commission was, of course, subject to income taxes, but was never subject to the occupancy tax as it was a service and not the selling of a room itself. She stated that under the new business model, this remained the same. The remarketer is not only selling a room, the price of which has been negotiated with the hotel itself, but also is selling their services to the consumer, which should not be subject to the occupancy tax. She said all of this would serve as a deterrent to agencies and companies wanting to market and sell rooms in the District due to the cost and paperwork burden.

Michael Mazerov, Senior Fellow, Center on Budget and Policy Priorities testified regarding the legislation. Mr. Mazerov recounted the purpose of the legislation. Mr. Mazerov provided the Committee with data on the potential revenue loss to the District as a result of the current loophole which assesses the occupancy tax on the wholesale cost of the room rather than the final retail cost of the room. Mr. Mazerov stated that “conventional travel agents were booking hotel rooms for consumers long before there were online travel companies. The applicable tax for such a booking was always calculated on the retail room rate the consumer paid, with no deduction for the travel agent’s commission paid by the hotel to the agent. The fact that the OTCs operate online and are compensated by being permitted to retain a mark-up rather than being paid an explicit commission does not change the essence of the transaction.” Mr. Mazerov further stated that “in defining the taxable “sales price” applicable to all goods and services, including hotel rooms, the District’s sales tax law already disallows deductions for “any services that are part of the sale”. Such language arguably already encompasses the OTC’s booking services.”

He also stated that of course, all independent retailers are "intermediaries" between the manufacturer of goods and the consumer, and yet "the tax is always calculated on the retail price, not the wholesale price. There is no more justification for calculating the applicable sales tax on a hotel room rental on the basis of its wholesale cost to an intermediary than there would be to calculate the sales tax due on a car purchase on the wholesale price the dealer pays the manufacturer for the car".

Stephen Cordi, Deputy Chief Financial Officer, Office of Tax and Revenue testified regarding the legislation. Mr. Cordi recounted the purpose of the legislation and made suggestions on drafting as well. Mr. Cordi also stated he thought current law was adequate and that "the Chief Financial Officer's office believes strongly that existing District law provides that the sales tax is to be paid on the entire amount charged by a room remarketer for transient accommodations, since those charges in their entirety fall well within the definition of "sales prices", the measure of what is to be taxed." He stated that "we would not be concerned about legislation which simply restates existing law. In this particular case, however, we do have the concern that the enactment of this legislation might be misread to suggest that this Council believes that existing law does not now apply to the entire consideration for sales of transient accommodations made by room remarketers or alternatively, that the Council thinks existing law is ambiguous and needs clarification. That raise the possibility that this legislation could become an impediment to any effort to recover past due taxes".

The public hearing concluded at 5:20 p.m.

IV. FISCAL IMPACT

The Chief Financial Officer's fiscal impact statement of April 8, 2010 indicates that "funds are sufficient in the FY 2010 and the proposed FY 2011 through FY 2014 budget and financial plan to implement the provisions of the proposed legislation".

It continues to further state "while this legislation expands the base for the transient accommodations tax, the immediate revenue implications are unknown due to potential litigation", and "thus, while this proposed legislation could result in additional tax revenues, it is not possible to guarantee that the District would see any of these tax revenues in the four year budget and financial plan, or if it did, when this would occur, since no clear verdict has been reached on the issue through the courts."

V. SECTION-BY-SECTION ANALYSIS

As contained in the proposed committee print of the legislation:

Section 1 states the short title of the legislation.

Section 2 amends various sections of Chapter 20 of Title 47 of the District of Columbia Official Code to clarify that online travel companies and others are to remit sales tax on hotel rooms at the full retail price charged to the consumer. Specifically it amends sections 47-2001(n)(1)(c), 47-2002(2), 47-2002.02(1), 47-2202(2), and 47-2202.01(1)(A).

Section 3 contains the required fiscal impact statement.

Section 4 contains the effective date clause.

VI. IMPACT ON EXISTING LAW

The legislation amends various sections of Chapter 20 of Title 47 of the District of Columbia Official Code to clarify that online travel companies and others are to remit sales tax on hotel rooms at the full retail price charged to the consumer. Specifically it amends sections 47-2001(n)(1)(c), 47-2002(2), 47-2002.02(1), 47-2202(2), and 47-2202.01(1)(A).

VII. COMMITTEE ACTION

The Committee on Finance and Revenue convened at 1:50 p.m. on December 2, 2010, to consider and vote on Bill 18-655, and other matters. Chairman Evans recognized the presence of a quorum, consisting of himself and Councilmembers David Catania, Michael Brown, Harry Thomas, and Kwame Brown.

Chairman Evans made an opening statement then moved the bill for discussion.

Councilmember Michael Brown gave a presentation on the bill. Councilmember Catania engaged in some discussion regarding the legal viability of this measure and that we cannot count on ever receiving additional revenue due to potential litigation. He suggested we look more closely at what New York has done. Councilmember Catania also expressed concern about potential costs to the District of fighting such litigation.

Discussion having ended, Chairman Evans then moved the proposed committee print and report for Bill 18-655, with leave for the Committee staff to make technical and conforming amendments.

The members voted as follows:

| | <u>Report on Bill 18-655</u> | <u>Committee Print on Bill 18-655</u> |
|----------------|-------------------------------------|--|
| Chairman Evans | Yes | Yes |

| | | |
|------------------------|-----|-----|
| Councilmember K. Brown | Yes | Yes |
| Councilmember M. Brown | Yes | Yes |
| Councilmember Catania | Yes | Yes |
| Councilmember Thomas | Yes | Yes |

Thus, the committee print and accompanying report were passed, with a majority of Members present voting in the affirmative, with 5 votes in support, 0 votes against, and 0 Member absent.

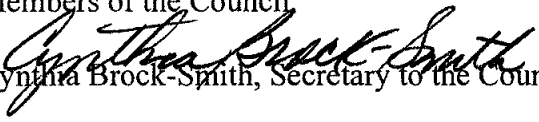
The committee meeting adjourned at 2:30 p.m.

VIII. ATTACHMENTS

- A. Bill 18-655 as introduced.
- B. Committee Print of Bill 18-655.
- C. April 8, 2010 fiscal impact statement of the Chief Financial Officer.
- D. Public hearing notice for Bill 18-655, and other matters.
- E. Witness list and copies of testimony from the April 10, 2010 public hearing on Bill 18-655, and other matters.

COUNCIL OF THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Memorandum

To: Members of the Council
From: 
Cynthia Brock-Smith, Secretary to the Council
Date: February 3, 2010
Subject: Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Legislative Meeting on Tuesday, February 02, 2010. Copies are available in Room 10, the Legislative Services Division.

TITLE: "Payment of Full Hotel Taxes by Online Vendors Clarification Act of 2010", B18-0655

INTRODUCED BY: Councilmembers M. Brown, Evans, K. Brown and
Chairman Gray

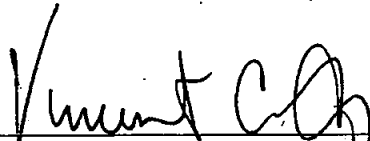
CO-SPONSORED BY: Councilmembers Catania, Barry, Alexander,
Wells, Mendelson and Cheh

The Chairman is referring this legislation to the Committee on Finance and Revenue.

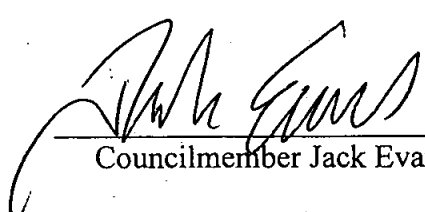
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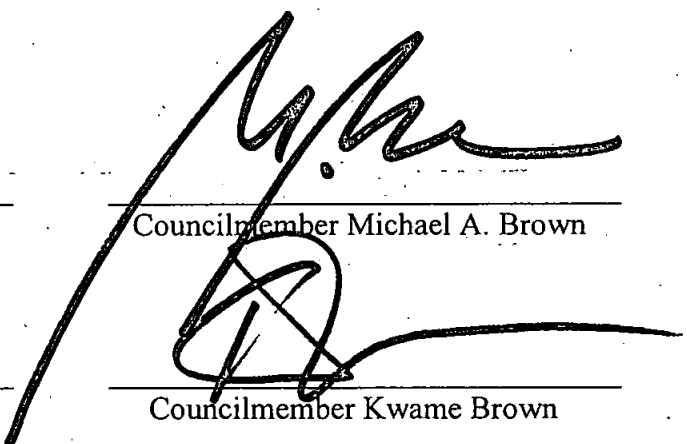
cc: General Counsel
Budget Director
Legislative Services

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Chairman Vincent C. Gray


Councilmember Michael A. Brown


Councilmember Jack Evans


Councilmember Kwame Brown

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Councilmembers Michael A. Brown, Jack Evans, Kwame Brown and Chairman Vincent C. Gray introduced the following bill which was referred to the Committee on _____

To amend the Title 47 of the District of Columbia Official Code to clarify and mandate that online travel companies pay the full amount of tax on the amount paid by the occupant in relation to the tax in the sale or charge for any room or rooms, lodgings, or accommodations regularly furnished to transients.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,

That this act may be cited as the "Payment of Full Hotel Taxes by Online Vendors Clarification Act of 2010".

Sec. 2. Title 47 of the District of Columbia Official Code is amended as follows:

(a) Section 47-2001(n)(1)(C) is amended to read as follows:

"(C)(i) The sale or charge, to include net charges and additional charges, for any room or rooms, lodgings, or accommodations furnished to transients by any hotel, room remarketer, inn, tourist camp, tourist cabin, or any other place in which rooms lodgings, or accommodations are regularly furnished to transients for consideration. For the

1 purposes of this subparagraph, the term “transient” means any person who occupies or
2 has the right to occupy any room, or rooms, lodgings, or accommodations for a period of
3 90 days or less during any one continuous stay;

4 (ii) “Room remarketer” means any person, other than the retailer, having any right,
5 access, ability or authority, through an internet transaction or any other means
6 whatsoever, to offer, reserve, book, arrange for, remarket, distribute, broker, resell, or
7 facilitate the transfer of rooms the occupancy of which is subject to tax under this
8 chapter;

9 (iii) “Net sale” or “net charges” means the gross receipts from the sale of or charges for
10 any room or accommodations received by a retailer from a room remarketer; and

11 (iv) “Additional charges” means the excess of the sale or charges received from the
12 transient by a room remarketer over the net sale or net charges”.

13 (b) Section 47-2002 (2) is amended to read as follows:

14 (1) The existing text is designated as subparagraph (A);

15 (2) A new subparagraph (B) is added to read as follows:

16 “(B) Where the occupancy of a room or rooms, lodgings, or accommodations is
17 reserved, booked or otherwise arranged for by a room remarketer, the tax imposed
18 in subsection (2A), above, shall be determined based on the net sale or net charges
19 received from the transient by the room remarketer.”;

20 (c) Section 47-2002.02 (1) is amended to read as follows:

21 (1) The existing text is designated as subparagraph (A);

22 (2) A new subparagraph (B) is added to read as follows:

1 “(B) Where the occupancy of a room or rooms, lodgings, or accommodations is
2 reserved, booked or otherwise arranged for by a room remarketer, the tax imposed
3 in subsection (1A), above, shall be determined based on the net sale or net charges
4 received from the transient by the room remarketer.”;

5 (d) Section 47-2202 (2) is amended to read as follows:

6 (1) The existing text is designated as subparagraph (A);

7 (2) A new subparagraph (B) is added to read as follows:

8 “(B) Where the occupancy of a room or rooms, lodgings, or accommodations is
9 reserved, booked or otherwise arranged for by a room remarketer, the tax imposed
10 in subsection (2A), above, shall be determined based on the net sale or net charges
11 received from the transient by the room remarketer.”; and

12 (e) Section 47-2202.01 (1)(A) is amended to read as follows:

13 (1) The existing text is designated as subparagraph (A);

14 (2) A new subparagraph (B) is added to read as follows:

15 “(B) Where the occupancy of a room or rooms, lodgings, or accommodations is
16 reserved, booked or otherwise arranged for by a room remarketer, the tax imposed
17 in subsection (1A), above, shall be determined based on the net sale or net charges
18 received from the transient by the room remarketer.”

19 Sec. 3. Fiscal impact statement

20 The Council adopts the fiscal impact statement in the committee report as the fiscal
21 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,
22 approved December 24, 1973 (84 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

1 Sec. 4. Effective Date. This act shall take effect following approval by the Mayor (or in
2 the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of
3 Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule
4 Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and
5 publication in the District of Columbia Register.

1 **BILL 18-655**
2 **COMMITTEE PRINT**
3 **COMMITTEE ON FINANCE AND REVENUE**
4 **DECEMBER 2, 2010**
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7

8 A BILL
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10 _____
11
12 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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14 _____
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19 To amend Title 47 of the District of Columbia Official Code to clarify and mandate that online
20 travel companies pay the full amount of tax on the amount paid by the occupant in
21 relation to the tax in the sale or charge for any room or rooms, lodgings, or
22 accommodations regularly furnished to transients.
23

24 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
25 act may be cited as the "Payment of Full Hotel Taxes by Online Vendors Clarification Act of
26 2010".

27 Sec. 2. Title 47 of the District of Columbia Official Code is amended as follows:

28 (a) Section 47-2001(n)(1)(C) is amended to read as follows:

29 "(C)(i) The sale or charge, to include net charges and additional charges, for any room or
30 rooms, lodgings, or accommodations furnished to transients by any hotel, room remarketer, inn,
31 tourist camp, tourist cabin, or any other place in which rooms lodgings, or accommodations are
32 regularly furnished to transients for consideration. For the purposes of this subparagraph, the
33 term "transient" means any person who occupies or has the right to occupy any room, or rooms,
34 lodgings, or accommodations for a period of 90 days or less during any one continuous stay;

35 "(ii) "Room remarketer" means any person, other than the retailer, having any

1 access, ability or authority, through an internet transaction or any other means whatsoever, to
2 offer, reserve, book, arrange for, remarket, distribute, broker, resell, or facilitate the transfer of
3 rooms the occupancy of which is subject to tax under this chapter;

4 (iii) "Net sale" or "net charges" means the gross receipts from the sale of or charges
5 for any room or accommodations received by a retailer from a room remarketer; and

6 (iv) "Additional charges" means the excess of the sale or charges received from the
7 transient by a room remarketer over the net sale or net charges."

8 (b) Section 47-2002(2) is amended as follows:

9 (1) The existing text is designated as subparagraph (A);

10 (2) A new subparagraph (B) is added to read as follows:

11 (B) Where the occupancy of a room or rooms, or accommodations is reserved,
12 booked or otherwise arranged for by a room remarketer, the tax imposed by subsection (2A)
13 above, shall be determined based on the net sale or net charges received from the transient by the
14 room remarketer?"

15 (c) Section 47-2002.02(1) is amended as follows:

16 (1) The existing text is designated as subparagraph (A);

17 (2) A new subparagraph (B) is added to read as follows:

18 (B) Where the occupancy of a room or rooms, lodgings, or accommodations is
19 reserved, booked or otherwise arranged for by a room remarketer, the tax imposed in subsection
20 (1A) above, shall be determined based on the net sale or net charges received from the transient
21 room remarketer?"

22 (d) Section 47-2202(2) is amended as follows:

23 (1) The existing text is designated as subparagraph (A);

1 (2) A new subparagraph (B) is added to read as follows:

2 (B) Where the occupancy of a room or rooms, lodgings, or accommodations is
3 reserved, booked, or otherwise arranged for by a room remarketer, the tax imposed in subsection
4 (2A) above, shall be determined based on the net sale or net charges received from the transient
5 by the room remarketer.”

6 (e) Section 47-2202.01(1)(A) is amended as follows:

7 (1) The existing text is designated as paragraph (A);

8 (2) A new subparagraph (B) is added to read as follows:

9 (B) Where the occupancy of a room or rooms, lodgings, or accommodations is
10 reserved, booked or otherwise arranged for by a room remarketer, the tax imposed in subsection
11 (1A) above, shall be determined based on the net sale or net charges received from the transient
12 by the room remarketer.”

13 Sec. 3. Fiscal impact statement.

14 The Council adopts the fiscal impact statement in the committee report as the fiscal
15 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,
16 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

17 Sec. 4. Effective date.

18 This act shall take effect following approval by the Mayor (or in the event of veto by the
19 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as
20 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
21 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
22 Columbia Register.

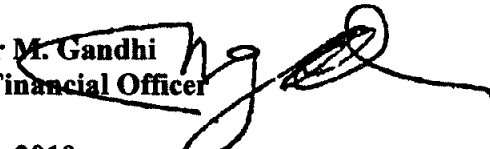
Government of the District of Columbia
Office of the Chief Financial Officer



Natwar M. Gandhi
Chief Financial Officer

MEMORANDUM

TO: The Honorable Vincent C. Gray
Chairman, Council of the District of Columbia

FROM: Natwar M. Gandhi
Chief Financial Officer 

DATE: April 8, 2010

SUBJECT: Fiscal Impact Statement – “Payment of Full Hotel Taxes by Online Vendors Clarification Act of 2010”

REFERENCE: Bill Number 18-655, As Introduced

Conclusion

Funds are sufficient in FY 2010 and the proposed FY 2011 through FY 2014 budget and financial plan to implement the provisions of the proposed legislation.

While this legislation expands the base for the transient accommodations tax, the immediate revenue implications are unknown due to potential litigation.

Background

The intent of the proposed legislation is to amend Title 47 of the D.C Official Code to require that when a hotel room or other similar accommodations was booked or otherwise arranged by a room remarketer,¹ the transient accommodations tax rate, which is currently 14.5 percent, would be applied to the total amount charged to the transient by the room remarketer, instead of to the amount charged to the room remarketer by the hotel, as is the current practice.

Room remarketers, such as Hotels.com, Orbitz, Travelocity and Expedia.com, generally operate by paying a hotel a lower-than-market rate for a certain quantity of rooms and then charging a marked-up price to the consumer who use their services to book the room. Currently the transient

¹ As defined in the proposed legislation, a room remarketer means any person, other than the retailer, having any right, access, ability or authority, through an internet transaction or any other means whatsoever, to offer, reserve, book, arrange for, remarket, distribute, broker, resell, or facilitate the transfer of rooms the occupancy of which is subject to tax.

accommodations tax is only collected on the lower room price the remarketer paid to the hotel and not the higher marked-up price paid by the consumer. For instance, if Orbitz pays Hotel X \$1,000 for 20 rooms, Hotel X will charge Orbitz the sales tax on the \$1,000, and will remit to the Office of Tax and Revenue (OTR) a total of \$145 in transient accommodation taxes for these rooms. Orbitz, though, could mark-up the rooms by 10 percent and end up collecting \$1,100 from its customers; however, it would not pay the sales tax on this extra \$100. This legislation would ensure that the transient accommodations tax be paid on the total collected by Orbitz (\$1,100) and not the original amount Orbitz gave Hotel X (\$1,000).

Taxing of the incremental revenue generated by the internet based remarketer is a very controversial issue and one that has been the subject of a great deal of litigation. The reasons behind the litigation vary from locality to locality and depend on how the locality's law is written, as well as whether the courts see room remarketers or online travel companies (OTCs) as hotel operators or simply facilitators.² The majority of the litigation has been because localities have filed suit against OTCs for back taxes and the OTCs have then filed suit against the localities. More than 200 such cases have been filed by places such as Los Angeles, San Diego, Chicago, Atlanta, Orlando, Louisville, San Antonio (with 172 other cities), Nassau County in New York, Pitt County in North Carolina, and Florida. So far the results of these cases has been mixed: in Anaheim, it was first determined that the OTCs owed the city \$21.3 million, but recently that ruling was overturned; a class-action civil lawsuit brought on behalf of 173 of Texas' cities and towns resulted in a \$20.6 million verdict, but the OTCs are fighting the ruling, and cases have been dismissed in Louisville and Houston, among other localities. To our knowledge, to date no money has been collected from OTCs in any of these rulings.

More apropos is litigation that has resulted from a change in legislation. In September 2009, New York City enacted legislation that requires the hotel tax be applied to the full room occupancy charge that a guest pays regardless of how the room is booked. However, in December 2009, a group of major OTCs filed suit against New York City to stop the extension of the hotel tax. While the NYC Department of Finance has begun collecting this tax, at this time, is unclear whether they will be able to keep the collections.

Financial Plan Impact

Funds are sufficient in FY 2010 and the proposed FY 2011 through FY 2014 budget and financial plan to implement the provisions of the proposed legislation. . Given the experience of other localities, it is highly likely that passage of the proposed legislation would result in a lawsuit. Thus, while this proposed legislation could result in additional tax revenues³, it is not possible to guarantee that the District would see any of these tax revenues in the four year budget and financial plan, or if it did, when this would occur, since no clear verdict has been reached on this issue through the courts.

² In terms of the latter, OTCs make the case that they are providing a service and that the mark-up in price is the cost of that service. As such it should not be subject to the accommodations tax.

³ An independent entity, not affiliated with the OCFO, estimated the additional revenue to be between \$4 and \$7.5 million per year.

**Council of the District of Columbia
Committee on Finance and Revenue
Notice of Public Hearing**

John A. Wilson Building, 1350 Pennsylvania Avenue, N.W. Washington, D.C. 20004

REVISED/ABBREVIATED

**COUNCILMEMBER JACK EVANS, CHAIR
COMMITTEE ON FINANCE AND REVENUE**

ANNOUNCES A PUBLIC HEARING ON

**PR 18-777, the "Board of Real Property Assessments and Appeals for the District of Columbia Patrick Blake Confirmation Resolution of 2010";
Bill 18-400, the "Exemptions and Abatements Information Requirements Act of 2009";
Bill 18-655, the "Payment of Full Hotel Taxes by Online Vendors Clarification Act of 2010";
Bill 18-707, the "Processing Sales Tax Clarification Act of 2010";
Bill 18-602, the "Land Acquisition for Housing Development Opportunities Program Amendment Act of 2009"; and
Bill 18-723, the "Withholding Tax Compliance Reform Act of 2010".**

Wednesday, April 14, 2010 – 2:00 p.m.

**Room 123 - John A. Wilson Building
1350 Pennsylvania Avenue, N.W.; Washington, D.C. 20004**

Councilmember Jack Evans, Chairman of the Committee on Finance and Revenue, announces a public hearing to be held on Wednesday, April 14, 2010, at 2:00 p.m., in Room 123 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

PR 18-777, the "Board of Real Property Assessments and Appeals for the District of Columbia Patrick Blake Confirmation Resolution of 2010", was introduced by Chairman Gray at the request of the Mayor. It would confirm Mr. Blake, a Ward 2 resident, for a term on the Board to end July 31, 2012.

Bill 18-400, the "Exemptions and Abatements Information Requirements Act of 2009", was introduced by Councilmember Michael Brown and cosponsored by nine Members, and would provide for a financial analysis by the Chief Financial Officer regarding exemption or abatement of taxes and annual certification of such exemptions or abatements.

Bill 18-655, the "Payment of Full Hotel Taxes by Online Vendors Clarification Act of 2010", was introduced by Councilmember Michael Brown, Kwame Brown, Jack Evans and Chairman Vincent Gray, and cosponsored by six Members, and would clarify and mandate that online travel companies pay the full amount of hotel tax on the amount paid by the occupant in relation to the tax in the sale or charge for any room or rooms, lodgings, or accommodations

regularly furnished to transients.

Bill 18-707, the "Processing Sales Tax Clarification Act of 2010", was introduced by Councilmember Jack Evans, and would clarify the application of the sales tax exemption for utilities used for refrigeration in a restaurant or hotel restaurant.

Bill 18-602, the "Land Acquisition for Housing Development Opportunities Program Amendment Act of 2009", was introduced by Councilmember Marion Barry, and would amend Chapter 10 of Title 47 of the District of Columbia Official Code to clarify that all existing and future leases entered into under the provisions of the Land Acquisition for Housing Development Opportunities program shall be exempt from all taxes, assessments and public charges related to the leased land, including exemption from any Possessory Interest Assessment.

Bill 18-723, the "Withholding Tax Compliance Reform Act of 2010", was introduced by Councilmember Jack Evans, and would provide the Office of Tax and Revenue with the authority to override a taxpayer exemption certificate in order to collect taxes in situations where there is a history of nonpayment of taxes through excessive withholding tax exemptions.

The Committee invites the public to testify at the public hearing. Those who wish to testify should contact Sarina Loy, Committee Assistant at (202) 724-8058 or sloy@dccouncil.us, and provide your name, organizational affiliation (if any), and title with the organization by the close of business on Tuesday, April 13, 2010. Witnesses should bring 15 copies of their written testimony to the hearing. The Committee allows individuals 3 minutes to provide oral testimony in order to permit each witness an opportunity to be heard. Additional written statements are encouraged and will be made part of the official record. Written statements may be submitted by e-mail to sloy@dccouncil.us or mailed to: Council of the District of Columbia; 1350 Pennsylvania Ave., N.W.; Suite 114; Washington D.C. 20004.

This hearing notice has been revised to provide abbreviated notice for Bill 18-723, the "Withholding Tax Compliance Reform Act of 2010", in order to permit Council consideration of the matter in April.

**Council of the District of Columbia
Committee on Finance and Revenue
AGENDA/Witness List**

John A. Wilson Building, 1350 Pennsylvania Avenue, N.W. Washington, D.C. 20004

FINAL

**COUNCILMEMBER JACK EVANS, CHAIR
COMMITTEE ON FINANCE AND REVENUE**

ANNOUNCES A PUBLIC HEARING ON

- PR 18-777, the "Board of Real Property Assessments and Appeals for the District of Columbia Patrick Blake Confirmation Resolution of 2010";**
Bill 18-400, the "Exemptions and Abatements Information Requirements Act of 2009";
Bill 18-655, the "Payment of Full Hotel Taxes by Online Vendors Clarification Act of 2010";
Bill 18-707, the "Processing Sales Tax Clarification Act of 2010";
Bill 18-602, the "Land Acquisition for Housing Development Opportunities Program Amendment Act of 2009".

**Wednesday, April 14, 2010 – 2:00 p.m.
Room 123 - John A. Wilson Building
1350 Pennsylvania Avenue, N.W.; Washington, D.C. 20004**

- I. Opening Remarks
- II. Witness List

- **PR 18-777, the "Board of Real Property Assessments and Appeals for the District of Columbia Patrick Blake Confirmation Resolution of 2010"**

- 1. Patrick Blake
- 2. Robert Vinson Brannum
- 3. Michael Sindram, Disabled Veteran

- **Bill 18-400, the "Exemptions and Abatements Information Requirements Act of 2009"**

- 1. Marina Streznewski, Coordinator, DC Jobs Council
- 2. Trisha Clauson, Think Local First DC
- 3. Medea Benjamin, Global Exchange Fair Trade Stores
- 4. Sarah Looney Oldmixon, Director, Workforce Initiatives, The Community

- Foundation for the National Capital Region
5. Ann Loikow
 6. Amy Garland, Director of Advocacy, Coalition for Nonprofit Housing and Economic Development
 7. Ed Lazere, Executive Director, DC Fiscal Policy Institute
 8. Robert Vinson Brannum
 9. Jennifer Wagner, Washington Legal Clinic for the Homeless
 10. Nancy MacWood, Vice Chairperson, Committee of 100
 11. Tommy Cafcas, Research Analyst

 12. Betsy Keeler, Deputy Director, Economic Development Finance, Office of the Chief Financial Officer

- **Bill 18-655, the "Payment of Full Hotel Taxes by Online Vendors Clarification Act of 2010"**

1. Panel
Emily Durso, President, Hotel Association of Washington DC
David Wilmot
Fred Cooke
Henry Mosley, Chief Financial Officer, Washington Convention and Sports Authority

2. Panel
Arthur B. Sackler, Executive Director, ITSA
Heather Dolstra, CTC, VP Democracy Travel

3. Ed Lazere, Executive Director, DC Fiscal Policy Institute
4. Robert Vinson Brannum
5. Michael Mazerov, Senior Fellow, State Fiscal Project, Center on Budget and Policy Priorities

6. Steve Cordi, Deputy CFO, Office of Tax and Revenue

- **Bill 18-707, the "Processing Sales Tax Clarification Act of 2010"**

1. Michael Allen, Principal, Ryan, Inc.
2. Robert Vinson Brannum

3. Steve Cordi, Deputy CFO, Office of Tax and Revenue

- **Bill 18-602, the "Land Acquisition for Housing Development Opportunities Program Amendment Act of 2009"**

1. Tom Borger, Borger Management

2. Nicola Whiteman, AOBA
 3. Robert Leland, Consultant
 4. Robert Vinson Brannum
 5. Charles Webb
-
7. Steve Cordi, Deputy CFO, Office of Tax and Revenue

III. Announcements

IV. Adjournment



TESTIMONY

BEFORE THE COMMITTEE ON FINANCE AND

REVENUE

Councilmember Jack Evans, Chair

Regarding

BILL 18-655, the "Payment of Full Hotel Taxes by Online

Vendors Clarification Act of 2010"

Wednesday, April 14, 2010

Good afternoon Councilmember Evans and members of the Committee on Finance and Revenue. My Name is Emily Durso. I am President of the Hotel Association of Washington, and all 90 of our members are located in the District of Columbia. As you know well Mr. Chairman, our industry brings \$5.5 billion per year in spending into the District of Columbia. This spending creates substantial tax revenues for the City, and that is why we are here today. You have before you legislation that would require third party intermediaries (online booking agencies) to remit the hotel room sales tax on the full value of any room sold. Bill 18-655 "Payment of Full Hotel Taxes by Online Vendors Clarification Act of 2010" would position the District government to collect the hotel room sales taxes from third party intermediaries for the hotel rooms that they sell Conservative estimates peg the potential revenue that could have been generated in 2009 (2011 estimates

will be higher) through the collection of the full amount of the tax at approximately \$6.2 million dollars.

Online travel companies typically choose to calculate state and local hotel room taxes based on the wholesale cost that they pay to a hotel for a room rather than the retail price they receive from the customer for the room. This practice results in lower hotel room taxes being collected by the District for rooms booked through the online company, rather than directly with a hotel, because the tax calculation is based on the lower wholesale amount. Bill 18-655 seeks to address this tax loophole by positioning the District to collect the hotel room sales tax on the full retail value of the room.

It is very important to note that this legislation will not create a new tax in the District; will not dampen tourism resulting in loss of tax revenue, and will not result in decreased jobs to District residents. In fact, our research indicates that in 2009 over \$6 million dollars in tax revenue could have been generated for the

City; providing much needed revenue during a projected budget shortfall. This legislation is following in the steps of other cities such as Anaheim, California and New York City in making sure that the District government receives the full tax due on the total hotel room price sold online.

HAWDC has been working very closely with the American Tour Bus Operators Association, The Mid-Atlantic Receptive Operators Association, Washington Convention and Sports Authority, Destination DC, and other relevant parties to ensure that this legislation does not have a negative impact on the hospitality industry and the District of Columbia. HAWDC strongly supports Bill 18-655 "Payment of Full Hotel Taxes by Online Vendors Clarification Act of 2010" and recognizes the positive impact that this legislation would have on marketing the hospitality industry and supporting the General Fund of the District of Columbia.

I am joined here today by our legal counsels David Wilmot and Fred Cooke as well as by the CFO of the WCSA, Henry Mosely.

Thank you Mr. Chairman and we are happy to answer any questions you may have.

TESTIMONY
Of Heather Dolstra, CTC

Bill 18-655, the "Payment of Full Hotel Taxes by Online Vendors Clarification Act of 2010"

Committee on Finance and Revenue
COUNCIL OF THE DISTRICT OF COLUMBIA
Wednesday, April 14, 2010

THANK YOU, MR. CHAIRMAN. MY NAME IS HEATHER
DOLSTRA. I AM A PROUD RESIDENT OF, AND BUSINESS OWNER IN,
THE DISTRICT OF COLUMBIA—I LIVE IN THE PALISADES
NEIGHBORHOOD, AND I OWN AND MANAGE DEMOCRACY TRAVEL
ON WISCONSIN AVENUE. WE HAVE BEEN IN BUSINESS AS A
TRAVEL AGENCY FOR 30 YEARS AND EMPLOY 3 FULL-TIME TRAVEL
AGENTS. OUR BUSINESS IS TYPICAL OF WHAT MOST PEOPLE THINK
OF AS A TRAVEL AGENCY: A SMALL LOCAL BUSINESS WITH LONG-
STANDING ROOTS IN THE COMMUNITY.

I AM SPEAKING TODAY IN OPPOSITION TO BILL 18-655. YOU
MAY WONDER WHY I AM DOING THIS SINCE THE PROPOSED
EXTENSION OF THE HOTEL TAX WILL NOT DIRECTLY AFFECT THE
COMMISSIONS I EARN FROM SELLING HOTEL ROOMS TO
CONSUMERS. I ASSURE YOU AS A LOYAL AND PROUD CITIZEN OF
THE DISTRICT OF COLUMBIA THAT I HAVE GOOD REASON FOR
BEING HERE.

BEFORE WE DO WHAT EVERY STATE IN THE COUNTRY HAS DECLINED TO DO BY ENACTING LEGISLATION OF THIS NATURE, IT IS VITAL THAT YOU UNDERSTAND THE MASSIVE EVOLUTION -- BORDERING ON REVOLUTION -- THAT IS UNDERWAY IN TRAVEL RETAILING. THE CHANGES ARE FORCING TRAVEL AGENCIES EVERYWHERE, LARGE AND SMALL, TO CONSIDER NEW BUSINESS MODELS. ALTHOUGH I PERSONALLY DON'T RELY UPON A "MERCHANT MODEL" TYPE OF SALE TODAY, TRAVEL AGENCIES THROUGHOUT THE COUNTRY ARE EITHER LOOKING CLOSELY AT THIS BUSINESS MODEL OR ARE ALREADY USING IT. ANY STEP WE TAKE IN THE DISTRICT OF COLUMBIA TO MAKE BRINGING TRAVELERS HERE MORE COSTLY CAN SEVERELY AFFECT THE COMMUNITY'S PLACE IN TOURISM COMPETITION FOR CONSUMER SPENDING. THIS IS ONE REASON THAT NO STATE-LEVEL LEGISLATIVE BODY IN THE UNITED STATES THAT HAS BEEN FACED WITH THE SAME CHOICE AS YOU HAVE HAS DECIDED TO ADD AN OCCUPANCY TAX TO THE BURDEN ALREADY BORNE BY TRAVEL RETAILERS.

ONE OF THE ATTRACTIVE ASPECTS OF THE MERCHANT MODEL IS THAT IT REDUCES THE INHERENT RISK TO THE AGENT FROM THE SO-CALLED TRADITIONAL HOTEL SALE WITH COMMISSION. TRADITIONAL SALES OFTEN GO UNCOMPENSATED, AND THERE IS LITTLE AN AGENCY CAN PRACTICALLY DO TO PREVENT THAT. IN MANY CASES HOTELS JUST CLAIM THAT THE GUEST HAD "NO-SHOWED" OR MADE SOME OTHER CHANGE AT CHECK-IN THAT NULLIFIED THE OBLIGATION TO PAY THE AGENT. BECAUSE THE AMOUNTS OF COMMISSION ARE USUALLY SMALL, TRACKING AND ENFORCING COLLECTION IS BURDENSOME OR IMPOSSIBLE.

THE INTERNET CHANGED EVERYTHING. ONE OF THE MOST IMPORTANT CHANGE BROUGHT ABOUT BY THE INTERNET HAS BEEN THAT THE MEANS TO DO SALES ON VARIABLE NET RATE CONCEPTS BECAME POSSIBLE. THIS NEW APPROACH REMOVES MUCH OF THE UNCERTAINTY ABOUT COLLECTION OF COMMISSIONS BECAUSE THE RETAILER-AS-MERCHANT IS COLLECTING THE PAYMENT FOR ITS SERVICES DIRECTLY FROM THE CONSUMER AND FORWARDING THE NET PROCEEDS (INCLUDING APPLICABLE TAXES) TO THE HOTEL. THE SELLING

CAPACITY AND MARKET REACH OF THE ONLINE TRAVEL RETAILERS IS SUCH THAT THE DIFFERENCE BETWEEN THE NEGOTIATED RATE AND THE NET REMITTANCE WAS MORE PROFITABLE IN GENERAL, AS WELL AS MORE EFFICIENT, THAN THE TRADITIONAL COMMISSION MODEL.

IT IS IMPORTANT TO UNDERSTAND ALSO THAT UNDER THE TRADITIONAL COMMISSION MODEL, THE RETAILER'S COMPENSATION WAS TAXABLE INCOME FOR FEDERAL AND STATE TAX PURPOSES. OCCUPANCY TAXES WERE NEVER APPLIED DIRECTLY TO THE RETAILER'S COMMISSION, AND IN NO CASE WAS THE COMMISSION COMPENSATION IN THE HANDS OF THE RETAILER TAXED SEPARATELY UNDER AN OCCUPANCY TAX.

THE SAME SHOULD BE TRUE UNDER THE MERCHANT MODEL WHERE THE COMPENSATION COMPONENT IS STILL SUBJECT TO FEDERAL AND STATE INCOME TAXATION. THE DECISION TO IMPOSE THE DC HOTEL OCCUPANCY TAX ON THE RETAILER'S COMPENSATION IS AN UNPRECEDENTED CHANGE IN THE APPLICATION OF OCCUPANCY TAX AND UNDERMINES THE VIABILITY OF THE MERCHANT MODEL.

MORE IMPORTANTLY, EVERY TRAVEL AGENT THROUGHOUT THE COUNTRY WILL BE REEVALUATING WHETHER THEY WANT TO NOT ONLY ACCEPT A REDUCTION IN MARGINS, BUT ALSO SUBJECT THEMSELVES TO REGISTRATION, REPORTING AND REMITTING AND POSSIBLY OTHER ADMINISTRATIVE BURDENS IN THE TAXING STATE. IN MY OPINION TRAVEL AGENTS AROUND THE COUNTRY WILL VIEW THE DISTRICT OF COLUMBIA NEGATIVELY AS A PLACE TO PROMOTE TO TRAVELERS BECAUSE THE DIFFICULTY OF DOING BUSINESS HERE WILL OVERCOME EVERY OTHER ADVANTAGE THE STATE HAS WORKED SO HARD TO ACHIEVE. AND TO LOCAL AGENCIES, THE EXTENSION OF THIS TAX TO ANY MARKUPS WE CAN EARN WILL DETER US FROM SELLING WASHINGTON, DC TO PEOPLE IN OTHER STATES, WHICH WE NOW HAVE THE ABILITY TO DO THROUGH THE INTERNET.

LIKE OTHER SMALL BUSINESS OWNERS, PARTICULARLY THOSE IN THE TRAVEL AND TOURISM INDUSTRY, MY EMPLOYEES AND I ARE WORKING NONSTOP TO SUSTAIN AND GROW OUR BUSINESS EVEN IN THE MIDST OF THE RECESSION. I CAN TELL YOU THAT I HAVE NEVER SEEN IN MY 32 YEARS AS A TRAVEL AGENT A MORE DIFFICULT CLIMATE IN WHICH TO SELL TRAVEL.

FAMILIES ARE WATCHING THEIR EXPENSES MORE CAREFULLY THAN EVER, AND BUSINESSES ARE CURTAILING WHAT WOULD HAVE BEEN AS ROUTINE TRIPS EVEN A FEW YEARS AGO.

MR. CHAIRMAN, I WOULD SUGGEST TO YOU THAT THIS IS EXACTLY THE WRONG TIME TO IMPOSE ADDITIONAL TAXES ON THE TRAVEL AND TOURISM INDUSTRY. SMALL BUSINESS OWNERS LIKE ME SHOULD NOT HAVE OUR CHOICE OF BUSINESS MODELS FURTHER CONSTRAINED BY THE FEAR THAT WE WILL BE PUNISHED THROUGH THE TAX SYSTEM FOR INTEGRATING ONLINE BOOKING TECHNOLOGY INTO OUR BUSINESS PROCESSES. FURTHERMORE, LIKE ANY BUSINESS, WE WILL HAVE NO CHOICE BUT TO PASS ON AT LEAST A PORTION OF THESE NEW TAXES TO OUR CUSTOMERS IF AND WHEN THEY ARE IMPOSED ON US—A FURTHER DISINCENTIVE TO TRAVEL IN AN ALREADY-CHALLENGING CLIMATE.

I CONCLUDE BY EMPHASIZING THAT COMMUNITIES ARE IN DIRECT AND INTENSE COMPETITION WITH EACH OTHER FOR TOURIST DOLLARS. ADVERSE CHANGES IN LOCAL TAX POLICY CAN HAVE A PROFOUND EFFECT ON THE STANDING OF A COMMUNITY IN THE RACE FOR TOURIST PATRONAGE.

THIS IS PARTICULARLY TRUE WHEN, AS IN OUR AREA, TOURISTS CAN JUST AS EASILY DECIDE TO STAY OVERNIGHT IN MARYLAND OR VIRGINIA AND TRAVEL TO THE DISTRICT DURING THE DAY FOR DINING, SIGHTSEEING, AND VISITING ATTRACTIONS.

DECISIONS BY TRAVEL RETAILERS OF WHICH MARKETS TO SELL AFFECT THE EXPOSURE OF A COMMUNITY AS A TRAVEL DESTINATION. OTHER TRAVEL INTERMEDIARIES WHO COULD FILL THE VOID IN PROMOTING TRAVEL TO THE LOCALITY WILL LIKELY BE RELUCTANT TO DO SO FOR FEAR THAT THEY WILL BE TARGETED NEXT BY THE LOCALITY'S REVENUE COLLECTING AUTHORITY. PLEASE EITHER REJECT THIS LEGISLATION OR POSTPONE ACTION UNTIL THE CONSEQUENCES HAVE BEEN STUDIED MORE CAREFULLY AND FULLY UNDERSTOOD.

THANK YOU VERY MUCH FOR THE OPPORTUNITY TO TESTIFY.



Our members are your gateway to the world . . .

Statement of

Arthur B. Sackler
Executive Director

Interactive Travel Services Association

Concerning

Bill 18-655

Finance and Revenue Committee
City Council
District of Columbia

April 14, 2010

The Interactive Travel Services Association¹ (ITSA) wishes to express its serious concern about, and opposition to, District Council Bill 18-655, the "Payment of Full Hotel Taxes by Online Vendors Clarification Act of 2010," which would impose a new tax on hotel "remarketers." Washington, DC, with the cooperation of its public and private sectors, over the last ten years has done much to ensure that the nation's capital has been a destination point for tourists. The District would take a substantial step backwards through this bill which could be characterized as inhospitable to business and tourism.

For this remarketers bill constitutes a new tax on tourism, on services and on the Internet that will be counterproductive to the city. It will dampen tourism, reducing the number of visitors who stay in the city, and diminishing tax revenue. It will also cost jobs in the travel and related community, notably among hotel employees, who are among the most economically vulnerable workers and will be disproportionately impacted by the tax.

At a time when tourism is already falling well short of its revenue expectations in the District, as reported in an article from the April 12, 2010, edition of the Washington Post, a copy of which is attached, imposing a new tax on travel intermediaries, such as online travel companies and travel agents, who are keys to driving more tourism into the District is simply and seriously counterproductive. We urge you to withdraw it from further consideration.

This remarketer tax would cause bookings to be diverted to hotels in Maryland and Virginia -- projected beneficiaries easily could include National Harbor and the Key Bridge Marriott, raise DC hotel prices, lower tax revenue from visitors who stay outside the city, create major paperwork for local small businesses, worsen the impact of the current hotel slump, and cause the loss of a significant number of hotel and other service industry jobs.

"Remarketer" applies broadly: not only to online travel companies (OTCs) but to travel agents, tour operators, convention planners, business

¹ Founded in 1998, ITSA is the trade association for online travel companies (OTCs), as well as global distribution systems, and is their voice on public policy. Through innovative technology and superior customer service, ITSA member companies provide consumers and suppliers with unprecedented travel and tourism options.

travel agencies, and package vacation brokers who bring visitors to the city. It would increase costs and paperwork for small DC travel agencies, and local "mom-and-pop" travel businesses which depend on hotel bookings, as you are hearing today from Heather Dolstra of Democracy Travel, located here in the District.

Similar taxes elsewhere have yielded counterproductive results. In New York City, where the tax is under legal challenge, 80% of tour operators surveyed planned to reduce their NYC bookings due to the new ordinance, which also was ranked the second-worst Internet law in the country by NetChoice. After Columbus, GA and South San Francisco applied such a tax, much business was redirected outside those cities.

In Columbus, a study found the city is losing \$1.9 million in tax each year because OTCs determined the cost of doing business there was too high for the returns, and therefore referred business to neighboring cities without a "remarketer" tax. By comparison, Columbus has acknowledged in court filings that the total amount of back taxes under dispute in litigation is less than \$25,000 - barely 1% of the lost tax. When South San Francisco would have applied the city occupancy tax to OTCs, the companies made the same business determination, which had a similarly negative impact. After local hoteliers and businesses explained the impact on their businesses, the City Council there immediately rescinded the tax.

The shift of bookings to hotels outside the city - and the increased cost of staying in the city - will lead to the loss of potentially hundreds of hotel jobs and other service industry positions. With the District's unemployment rate approaching 12%, the city cannot afford to send jobs over the border to Maryland and Virginia.

This new tax could also dramatically affect package tours to the city. Because the law requires taxes to be collected on the final price of the hotel portion of all bookings, tour operators and travel agents would be left with little choice but to reduce or eliminate bundled tour packages (hotel plus air, transfers, meals, and/or entertainment) or face potential audits over the breakdown of fees associated with those packages.

No municipality in the country has successfully passed a "remarketer" tax that realized the intended results. Instead, the handful of attempts made

in this area have led to confusion and protests from the tourism industry, notable drops in visitors, and legal challenges.

So, this is not about "closing a loophole." Bill 18-655 would create an entirely new tax on nearly every participant in the travel value chain. This new tax would effectively reverse the welcoming approach Washington has had to the travel and tourism industry -- damaging that critical industry, raising hotel prices, reducing the number of visitors, creating major paperwork with particular effect on small travel businesses, costing jobs, largely among the most economically vulnerable, and worsening the impact of the current slump in the process.

To expand on the forgoing, if 18-655 were enacted, it would cause several adverse policy and economic effects:

- (1) it would impose new taxes on services, which would make the District one of the most aggressive states in the taxation of services;
- (2) it would establish new taxes that focus exclusively on companies that utilize the Internet;
- (3) it would appear intended to impose new taxes on travel and tourism;
- (4) if it were effective, it would reduce tourism and result in a net loss of revenue, and jobs, to the District;
- (5) it would have an adverse impact on many District businesses, largely small ones; and
- (6) it could increase costs to potential tourists interested in visiting Washington, thereby decreasing demand for the District's tourism services.

To underscore the above, studies have shown that increasing the cost of travel and tourism by raising taxes leads to diminished room sales and associated visitor spending. For example the American Hotel and Lodging Association used econometric analysis to determine that for a 2.0% increase in hotel occupancy tax, there is a corresponding 2.4% decrease in consumer expenditures. So, not only would it be self-defeating for the collection of

additional tax revenue, it would be counterproductive to the interests of consumers.

The successful “merchant model” of handling hotel rooms enables consumers to book their own rooms online, and allows hotels to fill rooms that often would otherwise go empty and would not be producing any tax revenue for the District. At the click of a mouse, consumers see multiple hotels in Washington that they can compare on price, location, amenities and more. On the other side of the coin, DC hoteliers – especially small to mid-sized ones with limited name recognition outside the District and nearby Maryland and Virginia, obtain instant access to literally millions of consumers who otherwise might not know they even exist.

In this model, the hotel sets a rate for its rooms through a negotiation with an OTC. That rate then can be seen, with taxes and service fees included in a total price, by the millions who patronize ITSA members’ sites. When a consumer shops various hotel accommodations offerings and reserves a room, he or she is using the service for which the online site charges. This huge audience comes to these sites only because of the many millions of dollars invested by the OTCs in versatility and ease of use, technology, advertising and other services, and to ensure that their content is literally up-to-the-minute. That investment is ongoing to maintain these sites at a level that is state-of-the-art.

The hotel bills the OTC for the negotiated room rate and all applicable taxes on that room rate, which the OTC sends back to the hotel – and the hotel is responsible for remitting the taxes to the appropriate taxing jurisdictions.

Fees charged by OTCs are not for hotel rooms. Rather, they are for the services of facilitating the booking of hotel rooms. As found by numerous courts, including the Fourth and Sixth Circuit Federal Courts of Appeals,² OTCs are not owners or operators of hotels, and are therefore not subject to hotel occupancy taxes. That would include the District’s proposed remarketers tax.

² *Pitt County v. Hotels.com, L.P.*, 553 F.3d 308 (4th Cir. 2009)

Louisville / Jefferson County Metro Gov't v. Hotels.com, L.P., 590 F.3d 381 (6th Cir. 2009)

The bottom line of successfully imposing these new taxes would be higher hotel prices, fewer rooms sold as a result in the jurisdictions adding the tax, and negative impacts on the hotels, jobs, OTCs or other intermediaries, taxing authorities and, especially, consumers. Importantly, it would cause OTCs to dispassionately evaluate the cost of doing business in the District, including the burden of administering the tax, and whether promoting competing destinations in some instances would be necessary. Clearly, with Maryland and Virginia so closely adjacent to the District, many hotel properties there could be beneficiaries of that necessity.

In addition, the “multiplier effects” that benefit Washington’s economy – for restaurants, movie theaters, museums and other tourist favorites, clothing stores, etc. -- from the incremental travelers and tourists brought by the OTCs would be seriously jeopardized.

What’s more, these taxes would be imposed on companies that exist solely because of the Internet. At a time when the federal government has placed a moratorium on multiple and discriminatory Internet taxes through 2014, such an approach would fly in the face of the policy embodied in the Internet Tax Freedom Act -- encouraging the Internet to be an engine of economic growth -- and perhaps even the bans themselves.

And, the impact would be felt not only by large, national companies, but by many small travel agencies and others in the District, as you are hearing today from Ms. Dolstra. These agencies also offer online booking of travel and serve as intermediaries. The effect on their relatively low revenues and comparatively thin margins could be substantial.

Moreover, there would be a noticeable impact on jobs. Fewer rented rooms will mean reduced revenues for hotels, and reduced need and affordability for workers. The heavy majority of hotel workers are blue collar, and they are likely to be the first to suffer job losses.

ITSA urges you to reconsider proceeding with Bill 18-655, and the potential problems it would precipitate for OTCs and other travel intermediaries, the District’s coffers, jobs and, most importantly, consumers. ITSA members look forward to working with you to continue our strong record of stimulating travel and tourism to Washington, DC.

The Washington Post

Blossom peepers abound, but they're not spending big

By V. Dion Haynes
Washington Post Staff Writer
Monday, April 12, 2010; A12

The region's tourism industry reported a strong turnout of visitors for Easter, spring break and the National Cherry Blossom events, but the hordes on the Mall and at the Tidal Basin and the monuments appear to be spending less than in the recent past.

Many are day-trippers who go home after taking in the sights or stay with relatives, instead of booking hotel rooms. And those who are using hotels are generating less money because the room rates have been reduced to draw more guests.

"Unfortunately, day-trippers are not physically staying in Washington," said Elliott L. Ferguson, president of Destination DC, an organization that promotes tourism in the city. "The effect on the economy is not the same as a convention group spending more and staying longer."

The results could spell disappointment for area officials who are counting on an uptick in tourism -- especially during the all-important summer season -- to help local governments offset declines in flagging property taxes and other revenue that have left holes in budgets.

The recent pleasant weather, after a brutal winter, brought out visitors to sites throughout the region.

Officials at the National Cherry Blossom Festival, which ended Sunday, say the event drew what they think were record crowds to downtown Washington and to a new event in Silver Spring.

"The fireworks doubled attendance at the Southwest waterfront," said Diana Mayhew, president of the festival, adding that Metro had its second-highest ridership, behind the Obama inauguration, during the event and that phone inquiries and hotel bookings were up substantially.

"It was such a nice contrast to winter," Mayhew added. "People are so anxious

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http://www.washingtonpost.com/wp-dyn/content/article/2010/04/11/AR2010041102619_pf.html

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The Washington Post

Blossom peepers abound, but they're not spending big

and welcoming of this weather."

Alexandria officials said they had a surge in visitors over the past few weeks, unlike last year, when tourism was flat. Over the past two years, the hotels spent \$388 million in renovations and new rooms, officials said, and the investment is paying off.

"The number of overnight visitors is clearly up," said Stephanie Pace Brown, president and chief executive of the Alexandria Convention and Visitors Association. "That's good for shops and restaurants."

According to Destination DC, hotel occupancy was down 2 percent in February and flat last month, and rates were reduced. During Easter weekend, hotels were 93 percent full, but the rates were 12 percent less than they were the previous Easter. On top of that, fewer conventions were booked this year than last year.

The city collected \$84 million in hotel tax receipts in the first three months of this year, down about 10 percent from the same period a year ago and less than what the city projected.


Experts are forecasting that the city's hotel occupancy rate will stay below 63 percent for three years, well below the 74 percent rate in the boom years before the

cession from 2004 to 2008. "D.C. was one of the markets that saw a lot of new hotels come on line and a falloff of guests," said Robert Mandelbaum, director of research and information services for PKF Hospitality Research.

Some businesses are benefiting from the increase in day-trippers. Stephen Marks, managing member of Bike and Roll Washington, which provides bicycle tours and rentals to tourists, said he has had a 75-to-100-percent increase in customers since the season began March 13. More people, he said, are from Virginia and Baltimore.

Customers have indicated they are more hopeful about the economy, Marks added. For instance, unlike last year, fewer are seeking discounts. "More people are willing to pay the full price," he said.

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Testimony of

Michael Mazerov, Senior Fellow

Center on Budget and Policy Priorities, Washington, DC

Committee on Finance and Revenue, Council of the District of Columbia

Regarding

Bill 18-655, "Payment of Full Hotel Taxes by Online Vendors Clarification Act of 2010"

April 14, 2010

Mr. Chairman and members of the Committee, I appreciate the opportunity to present testimony this afternoon regarding Bill 18-655, the "Payment of Full Hotel Taxes by Online Vendors Clarification Act of 2010." I am Michael Mazerov, a Senior Fellow with the Center on Budget and Policy Priorities, which is based here in the District. The Center is a non-partisan, non-profit, policy research organization working at the federal and state levels on fiscal policy and public programs that affect low- and moderate-income families and individuals.

The legislation before you today is aimed at clarifying the application of the District's sales tax to hotel rooms booked through online travel companies ("OTCs") such as Expedia, Travelocity, and Orbitz. It has come to light in the past several years that these companies apparently are not, anywhere in the United States, collecting and remitting applicable hotel taxes based on the full retail room rates they charge their customers. Instead, they pay hotel taxes to the hotels based on what might be called the "wholesale" room rate they pay the hotels for the right to rent those rooms to consumers at a higher, marked-up, "retail" rate. In addition to marking-up the room charge, they receive compensation in the form of a "taxes and services" fee they charge to the renter. That fee generally is set high enough to recover the taxes that would have been due had they paid them on the basis of the retail room rate rather than the lower wholesale rate.

As a result of the OTCs' practices, the District is losing the tax revenue on the wholesale-to-retail mark-up, and this lost revenue is going straight to the OTCs' bottom line in additional profit via the higher fee. A table I've attached to this testimony provides an illustration based on an actual and typical room booking. It shows that a room at the Marriott hotel two blocks from here booked one week from tonight would generate an additional \$9.40 per night profit for Expedia from non-payment of the tax on the mark-up — even on the extremely conservative assumption that Expedia marks up the wholesale room charge by only 20 percent. Given the large number of rooms booked through OTCs — an estimated 11 percent nationally — the revenue loss for the District mounts up quickly. I estimate that the District conservatively is losing \$5 million to \$7 million annually from the failure of the OTCs to charge tax on their mark-ups. The collection of this revenue could mitigate some of the cuts in critical services that are being contemplated. Bill 18-655 simply amends the District's sales tax law to put the OTCs on notice that tax is due on the full retail rate charged to the consumer — both the room rate and the portion of any additional fee that is in excess of the tax due. As I'll explain in a moment, the District has every right to tax this mark-up as a matter of both law and principles of sound tax policy.

Hundreds of cities throughout the United States and at least one state are seeking to clarify that their existing sales and hotel occupancy taxes already apply to the OTCs' mark-ups by suing the companies for the unpaid tax. With this legislation, the District is taking a different path to the same objective. It is emulating the action of New York City and several other jurisdictions in amending its law to make clear that the tax applies to the full amount charged to the renter going forward.

The OTCs claim that this is not appropriate tax policy. They assert that they are neither hotels nor businesses that resell hotel rooms to consumers but rather "intermediaries" providing a booking service. They argue that their service, for which they are compensated through their mark-ups and fees, should not be taxed at the District's higher sales tax rate applicable to hotel rooms. Such arguments are irrelevant and without policy merit for several reasons.

First, the sales tax is a general tax on consumption. As a leading tax expert, law professor John Swain, has written:

From a normative perspective, hotel taxes are consumption taxes, which should be measured by the value of the consumption to the consumer. Therefore, tax should be imposed on the retail amount — the gross amount the consumer pays the travel company for the accommodation. Thus, at least on a prospective basis, it is appropriate for lawmakers to include the total consideration paid by consumers for hotel lodging in the measure of the tax and to impose the tax collection obligation on the [online] travel companies and/or the hotels, whichever is most administratively convenient. [John A. Swain, "Internet Travel Companies — Taxing the Middleman," *State Tax Notes*, February 14, 2005, p. 480.]

Second, this is the way it has always been done. Conventional travel agents were booking hotel rooms for consumers long before there were online travel companies. The applicable tax for such a booking was always calculated on the retail room rate the consumer paid, with no deduction for the travel agent's commission paid by the hotel to the agent. The fact that the OTCs operate online and are compensated by being permitted to retain a mark-up rather than being paid an explicit commission does not change the essence of the transaction.

Third, in defining the taxable "sales price" applicable to all goods and services, including hotel rooms, the District's sales tax law already disallows deductions for "any services that are part of the sale." Such language arguably already encompasses the OTCs' booking services.

Fourth, all independent retailers of goods are effectively "intermediaries" between the manufacturers of those goods and the consumer, and yet the tax is always calculated on the retail price, not the wholesale price. There is no more justification for calculating the applicable sales tax on a hotel room rental on the basis of its wholesale cost to an intermediary than there would be to calculate the sales tax due on a car purchase on the wholesale price the dealer pays the manufacturer for the car.

Fifth, and finally, the argument that OTCs do not control or own the hotel rooms they are selling is also irrelevant. The same lack of formal ownership of the item being sold exists with respect to other types of intermediaries — consignment shops and auctioneers, for example. In both cases,

the applicable sales tax is calculated on what the consumer pays, with no deduction for the compensation retained by the intermediary for its services.

In sum, Bill 18-665 merely clarifies that hotel room rentals booked through OTCs are taxed the same way that all other hotel room bookings and indeed all other retail sales are taxed — on the price actually charged to the consumer. It will close a loophole that the OTCs have exploited to increase their profits at the expense of the District's treasury. And contrary to the OTCs' claims, its enactment would be highly unlikely to increase the price of hotel rooms. As the example attached to this testimony demonstrates, the OTCs are not now sharing their tax savings with consumers. Rather, they are essentially charging the same price as hotels and simply pocketing the additional fee as extra profit. If they lose that tax savings, it is likely to simply reduce their rate of profit; they will not be able to increase their prices above those the hotels are already charging without losing business.

Bill 18-665 is based on legislation that New York City recently enacted to close the same loophole. The language differs in a few areas, however, and I believe some technical corrections in the bill are advisable to clarify its application. For example, the bill states that when an OTC ("room remarketer," in the bill's terminology) books a room, the sales tax is to be based on the "net charges" received by the OTC from the renter. Earlier, however, "net charges" have been defined as the amount received by the hotel ("retailer") from the OTC. This warrants correction. I would also recommend that the bill be amended to match the New York law's attempt to retain the transactional relationships currently prevailing in the industry. Under current practices, the OTCs pay the tax due on the wholesale room rate directly to the hotels, which in turn remit them to the District. Under the New York law, the OTCs pay only the additional tax due on their mark-ups directly to the taxing jurisdictions and I believe it would be advisable to copy this policy for a number of reasons. I would be happy to meet with the sponsors or their staff to discuss these suggested technical changes in more detail.

Finally, I would like to address the issue of whether and under what circumstances the OTCs are likely to comply with this legislation should it be enacted. Given their behavior throughout the country, I would not be surprised if the OTCs did not comply with the law until they were compelled by a court to do so. However, I believe that with the enactment of this legislation the District would be in an excellent position to prevail in any litigation and to prevail quickly. Most of the litigation around the country has occurred because the applicable statutes contained some ambiguity as to whether tax applied to the mark-up. Both the language of this bill and its very enactment would make clear that it is the District's policy that the tax does indeed apply to the full retail cost to the renter. Likewise, the OTCs' challenge to the New York City law upon which Bill 18-655 is modeled is based primarily on the assertion that the law exceeds the statutory authority granted by New York State to local governments to levy hotel taxes. That issue clearly does not arise with respect to the District. The potential for legal challenges always exists with respect to any change in tax law. No government should be thwarted from amending its laws to implement fair, legal, and appropriate tax policy simply because the taxpayer has an economic self-interest in challenging the law. If the Council believes that this is appropriate tax policy, then it is well-advised to implement it as soon as possible. Assuming it prevails, any taxes due will be calculated from the effective date of the legislation. The longer it delays, the less revenue it will receive.

Thank you for the opportunity to testify this afternoon on this important legislation. I would be happy to answer any questions you may have.

How Expedia Retains Additional Revenue by Paying Hotel Taxes Only on "Wholesale" Room Rates

Room: Washington Marriott at Metro Center, 775 12th Street NW
Check-in April 21, 2010, one night, advance purchase.

Actual comparison of Marriott and Expedia websites

Book on hotel website:

| | |
|--------------|--------------------------------|
| \$389.00 | Retail room charge to consumer |
| <u>56.40</u> | DC Sales tax (at 14.5%) |
| \$445.40 | Total cost to consumer |

Book on Expedia website:

| | |
|--------------|--|
| \$324.17 | Expedia's "wholesale" room cost (assuming Expedia marks up by 20%) |
| <u>64.83</u> | Expedia's 20% mark-up |
| \$389.00 | Expedia's room charge shown to consumer |
| <u>57.67</u> | Expedia's "Taxes and Service Fees" shown to consumer |
| \$446.67 | Total cost to consumer at Expedia |

Additional revenue to Expedia:

| | |
|--------------|--|
| \$56.40 | Taxes paid on "retail room rate" if booked at Marriott |
| <u>47.00</u> | Taxes paid by Expedia (14.5% of \$324.17 "wholesale" room cost) |
| <u>9.40</u> | Additional revenue retained by Marriott from paying tax on "wholesale" room cost |

PUBLIC HEARING
ON
BILL 18-655 "PAYMENT OF FULL HOTEL TAXES
BY ONLINE VENDORS CLARIFICATION ACT OF
2010"

Before the
Committee on Finance and Revenue
Council of the District of Columbia

The Honorable Jack Evans, Chairman

April 14, 2010, 2:00 p.m.
John A. Wilson Building, Room 123



Testimony of Stephen M. Cordi
Deputy Chief Financial Officer
Office of Tax and Revenue
Office of the Chief Financial Officer

Natwar M. Gandhi
Chief Financial Officer
Government of the District of Columbia

Mr. Chairman and members of the Committee, my name is Stephen Cordi, and I am Deputy Chief Financial Officer for the Office of Tax and Revenue. I am pleased to present testimony today on Bill 18-655 "Payment of Full Hotel Taxes by Online Vendors Clarification Act of 2010."

We believe that the legislation is intended to provide that the sales tax applicable to charges for sales of transient accommodations is to be computed on the entire consideration for such sales when made by room remarketers. We are concerned that as currently drafted, the bill provides that the tax shall be based upon the amount received by a hotel from a room remarketer.

That said, the Chief Financial Officer's office believes strongly that existing District law provides that the sales tax is to be paid on the entire amount charged by a room remarketer for transient accommodations, since those charges in their entirety fall well within the definition of "sales price," the measure of what is to be taxed.

We would normally not be concerned about legislation which simply restates existing law. In this particular case, however, we do have the concern that the enactment of this legislation might be misread to suggest that this Council believes that existing law does not now apply to the entire consideration for sales of transient accommodations made by room remarketers or alternatively, that the Council thinks existing law is ambiguous and needs clarification. That raises the possibility that this legislation could become an impediment to any effort to recover past due taxes.

We very much appreciate the opportunity which we have been provided to participate in the formulation of this legislation and stand ready to provide any further assistance that may be required.