

**PUBLIC HEARING ON
B16-935, "FILM DC ECONOMIC INCENTIVE TAX
CREDIT AND REIMBURSEMENT ACT OF 2006"**

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

The Honorable Jack Evans, Chairman

**November 2, 2006, 11:00 A.M.
Chamber, John A. Wilson Building**



**Testimony of
Sherryl Hobbs Newman
Deputy Chief Financial Officer
Office of Tax and Revenue**

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

Good morning, Chairperson Evans, and members of the Committee on Finance and Revenue. I am Sherryl Hobbs Newman, Deputy Chief Financial Officer for the Office of Tax and Revenue. I am pleased to present testimony today on Bill 16-934, the “Film DC Economic Incentive Tax Credit and Reimbursement Temporary Act of 2006.”

Section 2 of the bill amends D.C. Code § 47-2005 to add a new subsection 35. It exempts from sales tax and hotel occupancy tax “all qualified media projects...” for the duration that the project is incurring expenses in the District. The exemption applies to all sales, rentals, and services incurred in the District of Columbia (“District”) by these qualified media projects (“QMP”) including:

All vehicle rentals, hotel rooms, camera equipment, lighting, stage equipment, recording equipment, costumes, wardrobe and construction materials, props and scenery materials, film and tape, design materials, special effect materials, fabrication, printing or production of scripts, storyboards, costumes, and related supplies and equipment.

A QMP is defined as “a film, television or multimedia production that films on location in the District of Columbia for five or more days.”

Section 3 of the bill establishes a Film DC Economic Incentive Reimbursement Fund apparently to provide cost reimbursements for nationally distributed film and television projects that expend more than \$500,000 each in a period of 30 days or less for production activities located in the District.

Section 4 of the bill authorizes the Mayor to promulgate rules necessary to implement the act.

The Office of Tax and Revenue (“OTR”) has several concerns regarding this bill. First, current District law contains no exemption from sales tax when personnel, who film movies or television or multimedia productions in the District, incur expenses in the District, such as hotel charges, charges to rent, or purchase equipment and supplies used in making such films, or meals in the District.

In addition, current District law does not offer any non-tax economic incentives, as proposed in section 3 of the bill, such as reimbursements for costs incurred to make movies in the District. Since this program does not involve a tax incentive or is not funded by revenue from a specific tax source, it is not within OTR's jurisdiction.

Moreover, the "hotel occupancy tax" was repealed several years ago so that the provision in the bill, exempting the hotel occupancy tax, is ineffective. There is, however, a sales tax for any room, lodgings, or accommodations furnished to transients by any hotel, inn. Additionally, the sales tax is imposed on a hotel room at the combined rate of 14.50%.

D.C. Code § 47-2002.03(a) provides that the sales tax for lodging or accommodations, food or drink for immediate consumption, spirits sold for consumption on the premises, and rental vehicles, shall be collected and transferred to the Washington Convention Center Authority Fund (hereinafter "WCCA Fund") to pay the bondholders that financed the Washington Convention Center. The amount transferred to this WCCA Fund in the last fiscal year was approximately \$80,000,000. The proposed

exemption provided by this bill would directly reduce that amount and be contrary to the contractual pledges made by the District to the bondholders.

Second, the proposed sales tax exemption would apply for the entire period that the project is incurring expenses in the District. As such, this exemption would be very difficult for OTR to administer. The proposed bill fails to specify what filming on location in the District “for five or more days” means: filming in the district on at least five days, preparing for four days and filming a fifth day, or filming for one hour per day or some other standard?

Additionally, since the sales tax exemption is for the “duration” that the project is incurring expenses in the District, OTR would be unable to determine when that period begins and ends. Likewise, we also foresee difficulty with the ability of a merchant to determine when this “project” begins and ends in order to know when to collect the sales tax and when not to collect the sales tax. One way to cure this is to provide that the sales tax exemption not exceed a reasonable time.

Third, OTR objects to the term “qualified media project” as unclear, nonspecific, and susceptible of misinterpretation. The definition of QMP does not clarify what is meant by “television or multimedia productions.” In particular, the phraseology is so broad that it would result in exempting activities of businesses in the District for which there is no legitimate basis for granting an exemption.

For example, news organizations, such as CNN and Fox, have major news-gathering operations in the District. These organizations are constantly filming newsworthy stories over weeks and months as well as making news documentaries. The expenses they incur in the District (whether for equipment, supplies, or hotel charges to perform these filming activities) currently and historically are subject to sales tax, and the use tax.

Because the newsworthy stories take place in the District, these news organizations have to conduct their filming activities in the District, regardless of whether they receive sales or use tax exemptions. However, the proposed definition of an AMP, as presently written, would permit news organizations to obtain sales tax exemptions for news gathering activities that extend over five days as well as the making of news specials, such as

special features on news figures, like Osama Bin Laden, that involve filming in the District. There is absolutely no reason for the District to provide sales tax exemptions for these activities.

If the goal here is to target major motion picture companies, then the current version of the bill needs to provide a standard such as requiring a rating from the Motion Picture Association of America (“MPAA”) for a project that would receive benefits under the bill.

Fourth, the bill fails to require that any person that seeks the benefit of this exemption apply to OTR for that exemption, at least 30 days prior to the date the exemption would first be utilized. This would be a reasonable amount of time for OTR to issue a sales tax exemption.

Fifth, section 4 of the bill authorizes the Mayor to issue rules to “implement this act” including section 2 of the act, which relates to the sales tax exemption. However, Congress has granted the CFO, not the Mayor, the authority to administer the District’s tax laws and, thus, the exclusive authority to issue rules and regulations regarding the administration of sales

tax. Therefore, line 21 of section 4 should have been corrected by inserting the words “Section 3 of” after the word “implement.”

Sixth, section 3 of the bill fails to specify whether the reimbursements to be provided under the bill are intended to be exempt from District franchise or income tax. In general, any such incentive of \$12,000 or more paid to a person would currently be subject to District franchise tax and, in some circumstances, income tax.

Seventh, the meaning of the phrase “nationally distributed film and television projects” in section 3 has defects similar to the ones described in the definition of a QMP. The term is undefined and susceptible of overbroad interpretation. Again, providing a standard from the MPAA would be helpful.

Eighth, the wisdom of enacting this proposed bill should be reexamined. Filmmakers come to the District to film parts of movies, such as “Clear and Present Danger,” because they want the monuments, the White House, the Capitol, etc., in Washington, D.C., as a backdrop to certain scenes in making their movie realistic. Proponents of this type of legislation have argued that

filming “on location” is less necessary because technology now allows for the digital recreation of city skylines, thus negating the necessity of actually filming in the city. Location filming, however, continues to be an important element of the movie industry, as evidenced by the numerous films made on location each year around the globe.

Because film makers necessarily have to film the movie, in part, in the District in order to capture realistically our nation’s capital and its environs, they now pay sales tax. It seems unlikely that providing this sales tax exemption by itself for film projects here of five days or more is going to induce any filmmaker to do additional movie projects in the District. If there is to be such a sales tax exemption, it should only be for projects of much longer duration and be coupled with a requirement that a substantial sum be spent in the District.

For the above reasons, OTR believes that the Council should not approve Bill 16-934. However, if the Council proceeds, then we would like to work with the Council to create a more equitable proposal.

Fiscal Impact of Bill 16-935

Implementation of the bill would cost \$15,000 mostly in programming changes for FY 2007.

Thank you, Chairman Evans, for the opportunity to comment on this bill. I would be happy to answer any questions you or other Council members might have at this time.