

**PUBLIC HEARING ON
BILL 16-957, "CIGARETTE TAX AMENDMENT 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.
Council Chamber (Room 500)
John A. Wilson Building**



**Testimony of
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Deputy Chief Financial Officer
Office of Tax and Revenue**

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

Good afternoon, Chairman 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 16-957, the "Cigarette Tax Amendment Act of 2006."

In general, the Office of Tax and Revenue ("OTR") supports the goals of this bill, but we have serious concerns about the bill as drafted. The bill makes comprehensive changes to the cigarette tax provisions in the Code to prevent the sale of contraband cigarettes in the District and to prevent the sale of cigarettes to minors. The proposed changes are so comprehensive and lengthy that OTR has not been able to fully assess the true impact of this bill on its operations and the costs of administering the proposed changes. Therefore, we cannot give you a fiscal impact statement at this time. In addition, there is confusion as to which agency is responsible for implementing and enforcing the various proposed new requirements.

The first part of Bill 16-957 provides several new definitions for D.C. Official Code § 47-2401. Those definitions define such terms as a "contraband cigarette", a "wholesaler" and "retailer" of cigarettes within the District, and clarify the term "licensed" as it relates to those entities who can legally sell cigarettes in the

District. These new definitions will assist in making clear who is subject to the cigarette tax provisions of the Code.

The bill amends D.C. Code § 47-2402 to require that (1) cigarette stamps clearly reflect whether District taxes were paid on a pack of cigarettes sold in the District, (2) serial numbers be placed on stamps to clearly identify the wholesaler to whom the stamps were sold, and (3) unique meter impression numbers be given to wholesalers and a list of these numbers be maintained by the Mayor. Under the bill only licensed wholesalers may possess, purchase or obtain cigarette stamps.

Other key changes include amending the law to give the Mayor authority to impose a fee for issuance of a cigarette license, clarifying the requirements for the issuance, renewal and revocation of licenses, and adding two new categories of cigarette licenses: a cigarette manufacturer's license and an importer's license.

There are several minor technical changes we would suggest making that would make the legislation clearer and easier to administer, chief among those is new D.C. Code Section 47-2429, Penalties for false statements and possession of contraband cigarettes. Some of the fines and penalties, as currently drafted, would, we believe, have minimal impact in prohibiting the distribution and sale of

contraband cigarettes. Also, the bill creates its own "Clean Hands" threshold which creates confusion with the existing Clean Hands law. We would welcome the opportunity to work with you and your staff to improve this section to strengthen the goals of this legislation.

As indicated earlier there are many items in this bill (including the ones discussed below) that will require funding. Moreover, the bill does not specify whether OTR or DCRA is responsible for performing or enforcing them. They include:

- New restrictions on who can sell cigarettes to whom and how many cigarette cartons can be sold by a retailer in a single transaction;
- A requirement that the Mayor create and maintain a website updated monthly identifying all persons issued cigarette licenses, the business location of the license itemized by type of license possessed;
- A requirement that the Mayor create a website identifying all persons whose licenses have been suspended or revoked within the past three years, again itemized by type of license.
- A requirement that within 120 days after the enactment, the Mayor shall establish, publicize and maintain a toll-free telephone number to receive information on violations of the Cigarette Tax provisions of Chapter 24;

- The Mayor may pay a reward of up to \$5,000 to any person furnishing information leading to the collection of cigarette excise (stamp tax) imposed on delivery sales which otherwise would not be collected but for the information provided by the informant;
- New section 47-2428 requires that a new line be added to the D-40 individual income tax return requiring persons to report cigarette taxes owed but not paid to the District (costs to revise D-40 booklets). The provision would also require OTR to put a second attestation line on the D-40 return, stating under penalty of perjury the person who purchased cigarettes has paid (or is paying through the filed D-40 return) all District taxes due on the cigarettes purchased from out-of-town vendors. It is too late to make any further changes in the D-40 for this year. This provision should only be effective for 2007 calendar year.
- A requirement that anyone who is located in the District and makes a “delivery sale” (a sale made as a result of receiving an order over the internet, electronically, or by fax) must collect and remit the cigarette excise tax.

Additionally, a number of the provisions in this legislation will require enhanced monitoring by OTR of retailers, wholesalers and importers to prohibit the sale of

contraband cigarettes in the District, such that FTE's will be needed to meet the requirements of these new provisions.

Given the limited time to assess the implications of the bill, the need to identify appropriate funds to implement the items discussed, need to clearly delineate OTR and DCRA's responsibilities, and the other areas that need clarification within the bill, ambiguities created by the bill, we strongly recommend that its consideration be deferred until OTR, DCRA, and your staff have sufficient time to resolve these problems. Moreover, unless the funding problem can be resolved, we do not have the manpower or resources to implement the provisions.

Finally, because of the considerable time that OTR will need to implement this bill, we recommend that once the problems above are resolved, the bill does not become effective for 6 months.

Thank you for this opportunity to testify before you today. I am happy to answer any questions you might have.