

**PUBLIC ROUNDTABLE ON  
BILL 16-608, “ESTIMATED TAX PENALTIES WAIVER  
AND REFUND ACT OF 2006”**

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

**The Honorable Jack Evans, Chairman**

**April 10, 2006, 11:15 a.m.  
Room 120, 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, 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 (“OTR”). I am pleased to present testimony today on Bill 16-608, the “Estimated Tax Penalties Waiver and Refund Act of 2006.”

As we understand it, the intent of Bill 16-608 is to waive all unpaid estimated tax penalties and interest assessed by OTR against individuals for underpayments of estimated tax due on April 14, June 14, and September 14, 2005. Bill 16-608 would also require that OTR refund all payments of estimated tax penalties waived pursuant to this bill.

Bill 16-608 is the successor to the Self-Assessing Taxpayer Fairness in Notice of Emergency Act of 2005 (“Emergency Act”). The Emergency Act, which expired on March 22, 2006, required OTR to waive all unpaid, estimated tax penalties and interest assessed against corporations and unincorporated businesses as well as individuals for periods before January 1, 2006. Bill 16-608, like the Emergency Act, was proposed because of a perception that OTR did not take reasonable steps to inform District taxpayers they would be subject to penalties for underpayment of estimated taxes. In fact, OTR has repeatedly reminded taxpayers of their obligation to pay correct estimated taxes and the probability that OTR would assess penalties for estimated tax underpayments. OTR sent these notices to taxpayers for several years, dating back to well before OTR began to actively enforce these penalties and interest provisions for the 2004 tax year.

The Council imposed penalties and interest for estimated tax underpayments under the Tax Clarity Act of 2000, by establishing Code section 47-4214, and made these provisions effective as of June 9, 2001. Although OTR did not computerize the assessment and enforcement of estimated tax penalties until the end of 2003, OTR made repeated efforts to inform District taxpayers of their obligations to pay the correct amounts of estimated tax quarterly, and of the consequences for not paying such amounts from 2001 forward. For example, in December, 2001, OTR sent a mass mailing of our 2002 Form D-40, Individual Income Tax Forms and Instructions, to District individual taxpayers, which included instructions to taxpayers to file correct estimated tax payments in order to avoid being assessed penalties and interest for underpayment. We especially wish to point out that we mailed the 2003 D-40 to over 275,000 individual taxpayers in December, 2003 and January, 2004, well before the first estimated tax quarterly payment for the 2004 taxable year was due on April 15, 2004. Page 6 of the instructions stated specifically,

**“You will be charged a 10% per year (compounded daily) penalty for a late payment or an underpayment of taxes.** An underpayment occurs if your withheld taxes, credits and estimated tax payments do not equal at least 90% of the amount of tax you owe on your return . . . or 100% of the tax amount owed on your [prior year] return. This penalty will be automatically assessed by OTR’s integrated tax system.”

OTR then reminded taxpayers in the ensuing tax years of these same provisions. A complete chronology of OTR’s mass mailings and other public notices to taxpayers regarding penalties and interest for estimated tax underpayments is attached as an appendix to my testimony.

Thus, since District taxpayers were repeatedly made aware of their responsibility to make correct estimated tax payments, and the sanctions for not doing so, we believe that the remedy provided by this proposal – that is, waiver of penalties for estimated tax underpayments -- is unwarranted and will only result in rewarding delinquent and non-filing taxpayers for their failure to pay correct estimated taxes, unlike the majority of District taxpayers who make timely, correct estimated tax payments.

We are also greatly concerned about the magnitude of the impact of Bill 16-608. For the 2004 tax year, approximately 43,000 taxpayers were assessed penalties for estimated tax underpayments. Most of these taxpayers were individuals, including a significant number of individuals who made no estimated payments but paid the entire tax amount due with their 2004 Form D-40. We estimate that the District will lose almost Six and a Half Million Dollars (\$6,500,000) in revenue due to waiver of penalties for estimated tax underpayments for the 2004 tax year, plus refunds (for any resulting overpayments), as a result of the Emergency Act. For the 2005 tax year, we estimate that the District will lose a similar amount or more due to Bill 16-608. We must point out that the District's ability to find an additional \$13 million to restore these amounts to District coffers is uncertain.

We are also greatly concerned over the difficulties in administering the provisions of Bill 16-608. First, the impact of this legislation together with the Emergency Act would have OTR abate penalties for previous tax years dating back to 2001 and the enactment of Code sections 47-4214-15. While OTR did not computerize the enforcement of the penalty provisions of Code sections 47-4214-15 until the end of 2003, there were instances in which OTR assessed penalties and interest for

estimated tax underpayments for previous tax years, in particular when a delinquent taxpayer was audited by OTR's Compliance Administration. Therefore, we would have to make re-adjustments to taxpayer records in our computer systems, recalculate tax obligations and generate refunds for taxpayers affected by this legislation, even though taxpayers have been reminded repeatedly of their obligation to pay correct estimated taxes and the probability that they would also have to pay penalties and interest for underpayments.

In addition, the intent of this bill requires OTR to abate penalties and interest for estimated tax underpayments for the first three quarters of the 2005 tax year. However, Bill 16-608 was written in such a way that it appears to apply to the first three quarterly estimated tax payments for each of the prior years covered by the Emergency Act.

As a practical matter, our computer system is currently programmed to allocate the penalties and interest evenly among all four quarters of a tax year, including the fourth quarter 2005 tax year payment that would be due on or before January 15, 2006. This bill would require OTR to write three separate computer programs to abate penalties and interest for estimated tax underpayments for the first three quarters only of 2005; identify those taxpayers eligible for penalty and interest abatement under the legislation; and recalculate each affected taxpayer's account to show an overpayment. OTR would also have to generate refund checks to these taxpayers and initiate separate mailings to notify them of the overpayments and transmit the refund checks. This would prove much too costly and cumbersome to administer. As a result, we would have to waive penalties and interest for the fourth quarter payment due on or before January 15, 2006.

As a result of the concerns I have outlined, we recommend that the Committee vote against sending this bill to the full Council. The imposition of penalties for estimated tax underpayments was duly authorized when the Council established Code section 47-4214(c)(1) and 47-4215(c)(1). Its provisions have been widely publicized by OTR since 2001. This law mirrors similar federal tax law provisions, as well as those of virtually every other state, regarding the imposition of penalties for estimated tax underpayments. The majority of District taxpayers who make estimated tax payments do so on time and by remitting the correct amounts. Fundamental fairness requires that we recognize the efforts of these law-abiding citizens, and that we refrain from rewarding non-tax compliant behavior because a small number of delinquent or non-filing taxpayers desire to have the rules re-written. We should not reward and encourage bad behavior.

OTR also has a long-standing penalty abatement program in which we abate penalties and interest in cases where taxpayers can document extenuating circumstances that justify abatement of such amounts. This process is open to all District residents and has resulted in many favorable decisions to abate penalties and interest. Finally, given OTR's increased enforcement efforts, including several initiatives we have included in our FY 07 budget request, we are deeply concerned that this bill, if enacted, would send the message to taxpayers that tax compliance in the District should not be taken seriously. We are aware of instances where taxpayers have delayed or not remitted payments to the District because our enforcement was not adequate. We are making considerable strides to change that and feel that this bill will undermine our efforts.

We estimate our operational costs for the first year of implementation of Bill 16-608 to be \$118,000 for personnel, \$125,000 for programming and \$25,000 for other services, totaling \$268,000.

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.

## Appendix

1. December 2002 – **Mass Mailing** of 2002 Form D-20, Corporate Franchise Tax Forms and Instructions, including reminder (on page 4 of instructions) to file correct estimated tax payments in order to avoid penalties for underpayment
2. November 19, 2003 – **News Release** announcing an “early warning” of OTR’s intent to enforce estimated tax penalty beginning January 1, 2005
3. December 2003 – **Mass Mailing** of 2003 Form D-40, Individual Income Tax Forms and Instructions, including reminder (on page 6 of Instructions) to file correct estimated tax payments in order to avoid penalties for underpayment
4. December 2003 – **Mass Mailing** of 2003 Form D-20, Corporate Franchise Tax Forms and Instructions, including reminder (on cover page and page 5 of Instructions) to file correct estimated tax payments in order to avoid penalties for underpayment
5. December 2003 – **Mass Mailing** of Form D-30, Unincorporated Business Franchise Tax Forms and Instructions, including reminder (on cover page and page 4 of Instructions) to file correct estimated tax payments in order to avoid penalties for underpayment
6. December 2004 – **Mass Mailing** of 2004 Form D-40, Individual Income Tax Forms and Instructions, including reminder (on cover page and page



- 6 of Instructions) to file correct estimated tax payments in order to avoid penalties for underpayment
7. December 2004 – **Mass Mailing** of 2004 Form D-20, Corporate Franchise Tax Forms and Instructions, including reminder (on cover page and page 6 of Instructions) to file correct estimated tax payments in order to avoid penalties for underpayment
  8. December 2004 – **Mass Mailing** of 2004 Form D-30, Unincorporated Business Franchise Tax Forms and Instructions, including reminder (on cover page and page 6 of Instructions) to file correct estimated tax payments in order to avoid penalties for underpayment
  9. January 2005 – **District-Wide Distribution** of 2006 Tax Season Guide,, including an article reminding taxpayers of the penalty for underpaying estimated taxes
  10. July 22, 2005 – **News Release** announcing mailing of notices to taxpayers who have been automatically charged a penalty for underpayment of estimated taxes
  11. December 2005 – **Mass Mailing** of 2005 Form D-40, Individual Income Tax Forms and Instructions, including reminder (on cover page and page 6 of Instructions) to file correct estimated tax payments in order to avoid penalties for underpayment

12. December 2005 – **Mass Mailing** of 2005 Form D-20, Corporate Franchise Tax Forms and Instructions, including reminder (on cover page and page 5 of Instructions) to file correct estimated tax payments in order to avoid penalties for underpayment
  
13. December 2005 – **Mass Mailing** of 2005 Form D-30, Unincorporated Business Tax Forms and Instructions, including reminder (on cover page and page 5 of Instructions) to file correct estimated tax payments in order to avoid penalties for underpayment
  
14. January 2006 – **District-Wide Distribution** of 2006 Tax Season Guide with reminder to taxpayers to file correct estimated tax payments in order to avoid penalties for underpayment