

**BILL 17-374, “PROPERTY TAX EXEMPTION  
CLARIFICATION ACT OF 2007”**

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

**The Honorable Jack Evans, Chairman**

**October 30, 2007, 11:00 a.m.  
Room 120  
John A. Wilson Building**



**Testimony of  
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Good morning, Chairman Evans and members of the Committee on Finance and Revenue. I am Tracy Perry, Assistant General Counsel for the Office of Tax and Revenue (“OTR”) of the District of Columbia (“District”). I am pleased to present testimony today on Bill 17-374, the “Property Tax Exemption Clarification Act of 2007.”

This bill will introduce a problematic real property tax exemption scheme into the District. Bill 17-374 aims to provide a real property tax exemption to property used for transitional or long-term housing principally for low-income and special needs populations of the District. Bill 17-374 also requires that the property owners of such qualified properties provide continuous supportive services to the residents that reside in these properties. Finally, Bill 17-374 requires that such properties be owned or alternatively managed by a nonprofit.

Except for a few narrowly-targeted exceptions, the District has longstanding law and policy that grants real property tax exemptions only to buildings that are owned by nonprofit entities. Bill 17-374 ventures far beyond this law and policy and allows a building managed, but not owned by, a nonprofit entity to qualify for a real property tax exemption. In addition, the bill is so broad and vague that it could easily be abused and manipulated. Moreover, as currently written, the law cannot be administered by OTR.

For 65 years District law has generally granted real property tax exemptions only to buildings that are both owned and operated by nonprofit entities, although ownership and operation does not have to be concurrent in the same nonprofit entity. One reason for limiting real property tax exemptions only to nonprofit real property owners is to insure that the tax exemption aids in furthering the

organization's tax-exempt purpose, rather than inuring to the benefit of a private owner for nonexempt purposes.

Such exemptions create significant inconsistencies among similarly-situated real property owners. Equal treatment within a class of taxpayers is fundamental to an equitable administration of tax laws. Thus, we strongly caution against enacting broad special tax exemption categories that are contrary to the public policies inherent in D.C. Official Code § 47-1002, like the one contemplated here. The D.C. Code has carefully circumscribed standards for providing real property tax exemptions to those organizations and properties that provide services for the public good of the District without private gain.

For example, D.C. Official Code § 47-1002(20)(A) already allows real property tax exemptions for buildings used in some federal low-income housing programs. Sometimes buildings used to provide housing to low-income or disabled people meet the charitable purpose requirement of D.C. Official Code § 47-1002(8). Programs that meet the qualifications of federal housing programs provide a layer of oversight that OTR would not otherwise be able to provide, such as limits on rents charged to low-income tenants, restricting occupancy to qualified tenants, and other various requirements that ensure that such programs are being used by those in need.

The bill, as written, contains numerous technical and conceptual deficiencies that would make it infeasible to administer. First, the bill exempts property used by low-income (30% of area median) or special needs persons. "Special needs" is not a defined term in the proposed legislation, but examples listed in the legislation which are problematic are "formerly homeless," "elderly," "HIV/AIDS" or

“drug/alcohol recovery.” These groups could be very affluent regardless of their condition. The bill contains no income restriction on the special needs persons. Moreover, it is unclear what other categories of persons would qualify as persons with special needs, or who would determine whether the building was occupied primarily by qualified persons, or what defines a person who is “formerly homeless or in recovery from drug or alcohol addiction” (and therefore qualified as an eligible occupant of the building).

Second, the bill grants an exemption to a for-profit owner as long as there is a nonprofit managing member or managing general partner. Under this scenario, a nonprofit could be a 1% managing general partner, while a for-profit is a 99% partner and receives a tax exemption. Under this bill the for-profit owner could ultimately sell the building at a large profit and never have paid any real property tax. This contrasts with D.C. Official Code § 47-1002(20)(A), which exempts buildings used for low-income housing with for-profit owners but requires those owners to make an annual payment-in-lieu of taxes equal to 5% of gross income derived from the operation of the building. Bill 17-374 is therefore unfair to similarly-situated for-profit owners who are paying real property taxes. Furthermore, the bill places no limitation on the number of applicable properties in which a for-profit entity in the District should be able to invest.

Third, the bill also exempts retroactively any building for which an application for an exemption was filed on or after June 1, 2005. In order to comply with this provision, OTR would have to hire a full-time FTE to re-examine all applications filed after June 1, 2005 for real property tax exemptions. This would impose a big administrative burden on OTR.

Finally the bill has numerous other deficiencies, such as:

- What threshold constitutes predominate use of the property?
- What constitutes a significant level of continuous support services?
- Are there any rent limitations?
- Are partial exemptions allowed regardless of the portion that is owned by a for-profit entity?

For all of the above reasons, we strongly recommend that Bill 17-347 not be enacted.

### **Fiscal Impact of Bill 17-347**

OTR would need at least one FTE to manage the workload of this bill at a staffing cost of \$74,000 for FY 2008.

The overall revenue impact cannot be estimated at this time as the legislation is too ill-defined.

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