

**PUBLIC ROUNDTABLE ON**  
**BILL 15-312, “CHARITY AUCTION SALES TAX**  
**EXEMPTION ACT OF 2003”**

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

**The Honorable Jack Evans, Chairman**

**July 7, 2003, 12:00 p.m.**  
**Room 412**  
**John A. Wilson Building**



**Testimony of**  
**Phil Brand**  
**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 Phil Brand, deputy chief financial officer for the Office of Tax and Revenue (OTR). I am pleased to comment today on Bill 15-312 the "Charity Auction Sales Tax Exemption Act of 2003."

Bill 15-312 would exempt from sales tax "casual and isolated sales at a charity auction or other fundraising activity not held more than once a year" by "an individual segment, division, or other separate and distinct group of" a nonprofit organization incorporated in the District, "provided that such auctions or activities conducted by the nonprofit organization as a whole shall total no more than three in any one year." The bill would further require that the proceeds of such auctions or activities are solely for charitable fundraising purposes.

Under current law, DC Code section 47-2005(7) exempts from sales tax, "Casual and isolated sales by a vendor who is not regularly engaged in the business of making sales at retail." Bill 15-312 would make this provision paragraph (A) of Section 47-2005(7)\* and create a new subparagraph (B) to create the exemption outlined above. Presumably, this new exemption would cover nonprofit organizations that regularly engage in the business of making sales at retail and, thus, would not qualify for the exemption in current law. As such, the bill could provide a significant opportunity to avoid payment of sales tax.

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\* Section 2 of the bill states that section 47-2005(a)(7) is amended. Actually, there is no section 47-2005(a). OTR assumes that the legislation is intended to amend section 47-2005(7) of the DC Official Code.

OTR recognizes the intent of this measure, which is to provide relief to nonprofit organizations in the performance of their charitable endeavors. However, if this bill is intended to be more limited in scope, OTR would be pleased to work with the committee to refine the language.

OTR also has a number of technical questions concerning the audit of sales made under this bill. OTR recommends clarification of the term “an individual segment, division, or other separate and distinct group of” a nonprofit organization. In particular, it would be important to state whether the “segment,” “division,” or “distinct group” of the nonprofit must itself also be a nonprofit, or whether this provision could apply to a for-profit part of the nonprofit entity. Additionally, since the "parent" nonprofit organization generally files the IRS Form 990s and worksheets, it is not clear how OTR would identify the various subdivisions within the organization, or how we would track the number of fundraising activities held by the divisions to determine compliance with this legislation.

In this same vein, OTR also suggests clarification of the phrase “...fundraising activity not held more than once a year” in the context of the qualifying phrase “provided that such auctions or activities conducted by the nonprofit organization as a whole shall total no more than three in any one year.” OTR assumes this is intended to mean that the parent nonprofit organization is limited to three qualifying events per year. Additionally, OTR would suggest that the legislation define and clarify the terms “other fundraising activity” and “charitable fundraising purposes” to avoid potential misuse of the tax benefit.

If the legislation is intended to benefit certain types of nonprofits, such as universities with section 501(c)(3) status under the Internal Revenue Code, the

committee may want to add that limitation in order to achieve the legislative intent, narrow the scope and limit the fiscal impact of the legislation. If the intent is to minimize the administrative burden of collecting and remitting sales tax at the auctions, perhaps there is a way to accomplish that without adding an additional exemption to the tax code. OTR is willing to work with the chairman and the committee staff to explore alternatives.

Chairman Evans, that concludes my statement on this bill. I am available for any questions you may have.

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**PUBLIC ROUNDTABLE ON**  
**BILL 15-311, “NATIONAL GUARD ASSOCIATION OF**  
**THE UNITED STATES REAL PROPERTY TAX**  
**EXEMPTION RECONFIRMATION AND**  
**MODIFICATION ACT OF 2003”**

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

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Good afternoon, Chairman Evans, and members of the Committee on Finance and Revenue. I am Phil Brand, deputy chief financial officer for the Office of Tax and Revenue (OTR). With me today is Henry Riley, director of the Real Property Tax Administration for OTR. We are pleased to comment today on Bill 15-311, the "National Guard Association of the United States Real Property Tax Exemption Reconfirmation and Modification Act of 2003."

The proposed legislation would provide exemption from real property, transfer and recordation taxes for the One Massachusetts Avenue Building, NW, in square 0625, lot 0060, (assessed value \$40.8 million) so long as the property is owned, occupied and used for non-commercial purposes solely by the National Guard Association of the United States.

This property has been owned by the National Guard Association and taxable since July 1, 1989. In 1995, the organization changed its name to One Massachusetts Avenue Building Corporation, but this new name was never properly recorded with our Recorder of Deeds (ROD) office. Thus, the name on the tax roll is "National Guard Association, LLC. "

Should the Council wish to exempt this taxable property through Bill 15-311, OTR reminds the owner that, for the purposes of this legislation, the property must be transferred to the National Guard Association of the United States and recorded under that name at the ROD, and not in the name of a limited partnership or limited liability corporation. The issue is whether a special exception should be made for this particular lot. The OCFO consistently advises that it is best not to provide

special exceptions, in order to preserve administrative efficiencies and taxpayers' sense of fairness.

That concludes my statement on this bill, Mr. Chairman. We are available for your questions.

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**PUBLIC ROUNDTABLE ON**  
**BILL 15-308, “EMMAUS REHABILITATION PROJECT**  
**REAL PROPERTY EXEMPTION ACT OF 2003”**

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

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Good afternoon, Chairman Evans, and members of the Committee on Finance and Revenue. I am Phil Brand, deputy chief financial officer for the Office of Tax and Revenue (OTR). With me today is Henry Riley, director of the Real Property Tax Administration for OTR. We are pleased to comment today on Bill 15-308, the "Emmaus Rehabilitation Project Real Property Exemption Act of 2003."

Bill 15-308 would exempt property in the 1400 block of 9<sup>th</sup> Street, NW, known as square 0366, lot 0074, from real property taxes and deed and recordation taxes, as long as the property is leased by, occupied by and used for the purposes of the Emmaus Services for the Aging Inc., or any other 501(c)(3) qualifying organization.

For general real property tax exemptions (educational, charitable, or religious properties) the property must be owned by and used for the purposes of the qualifying organization. Thus, a property that is owned by one non-qualifying company and leased to another company cannot be granted a real property tax exemption by OTR. In addition, OTR would not be authorized to exempt a property owned by a limited liability company because LLC's do not qualify for property tax exemption under the provisions of DC Official Code, section 47-1002, et seq.

In this case, square 0366, lot 0074 did receive a property tax exemption when Emmaus Services for the Aging, Inc. acquired the property. However, title to the property was later transferred from Emmaus Services for the Aging, Inc., to Emmaus Rehabilitation, LLC, by deed dated April 8, 2003. As a result of the

transfer, the property no longer qualified for the exemption because it was not owned and used for exempt purposes by the same entity. It returned to taxable status, effective May 1, 2003. In addition, while Emmaus Services for Aging was taking steps to improve the property, the property was vacant. The property tax was at the Class 3 vacant property rate for FY 2003.

Should the Council feel that granting this exemption would be of benefit to the citizens of the District, OTR suggests the bill be amended to make the tax exemption effective as of May 1, 2003, to avoid a gap in the period of relief. The issue is whether a special exception should be made for this particular lot. The OCFO consistently advises that it is best not to provide special exceptions, in order to preserve administrative efficiencies and taxpayers' sense of fairness. In addition, we suggest the phrase "or any other 501 (c)(3) organization" be deleted, to ensure that the tax exemption is confined to the charitable/benevolent use provided by Emmaus Services for the Aging, Inc., as intended by the Council.

Thank you, Mr. Chairman, for the opportunity to comment. We are available for any questions you may have.

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**PUBLIC ROUNDTABLE ON**  
**BILL 15-307, “AMERICAN COLLEGE OF**  
**CARDIOLOGY REAL PROPERTY TAX EXEMPTION**  
**ACT OF 2003”**

**Before the**  
**Committee on Finance and Revenue**  
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Good afternoon, Chairman Evans, and members of the Committee on Finance and Revenue. I am Phil Brand, deputy chief financial officer for the Office of Tax and Revenue (OTR). With me today is Henry Riley, director of the Real Property Tax Administration for OTR. We are here to provide comments on Bill 15-307, the "American College of Cardiology Real Property Tax Exemption Act of 2003."

Bill 15-307 would grant exemption from District of Columbia real property taxes to property owned, occupied and used by the American College of Cardiology, so long as the property continues to be so owned and occupied, and not used for commercial purposes. The college is currently located at 9111 Old Georgetown Road in Bethesda. In Maryland, the property is exempt and the property consists of a building of 63,075 enclosed square feet (property value \$12.0 million).

As we understand the purpose of this bill, the American College of Cardiology intends to purchase property in the District on which to build a new facility, and seeks exemption from future property taxes in advance of acquiring the land. OTR has no authority to grant such a "future" exemption administratively.

We are currently authorized only to apply a tax exemption to a specific lot and square when it meets certain ownership and use qualifications as provided under the DC Official Code. For instance, current law requires that there be actual classroom instruction to qualify for an educational exemption in the District. OTR would have to review the application to determine if the American College of Cardiology would qualify for a property tax exemption in the District.

Should the Council believe that it is in the public interest to grant this exemption, OTR will work with the Committee to clarify the language proposed in this bill. The issue is whether a special exception should be made for this particular lot. The OCFO consistently advises that it is best not to provide special exceptions, in order to preserve administrative efficiencies and taxpayers' sense of fairness.

Mr. Chairman, that concludes my statement on this bill. We are available for any questions you may have.

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