

**PUBLIC HEARING**  
**BILL 15-410, “BUNDLED TELECOMMUNICATIONS**  
**SERVICES TAX ACT OF 2003”**

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

**The Honorable Jack Evans, Chairman**

**December 10, 2003, 10:00 a.m.**  
**Council Chamber**



**Testimony of**  
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Good morning, Chairman Evans and members of the Committee on Finance and Revenue. I am Michael Covington, director of the Compliance Administration in the Office of Tax and Revenue (OTR). With me this morning is Robert McKeon, attorney advisor for OTR. We are pleased to come before you on behalf of the Office of the Chief Financial Officer (OCFO) to present testimony on Bill 15-410, the “Bundled Telecommunications Services Tax Act of 2003.”

Bill 15-410 would amend the District of Columbia Official Code, section 2001 of Title 47, to add the term “bundled transaction” to the list of goods and services that are subject to sales tax in the District. The bill would require that one tax be applied to separate services that are grouped together, or “bundled,” and sold for one non-itemized price, regardless of whether the items were previously taxable or non-taxable. The exception would be where a merchant identifies and keeps a record of non-taxable services sold in the service bundle.

The Office of Tax and Revenue recognizes the intent of Bill 15-410, which is to create a more uniform approach to accounting for and collecting sales tax in the case of a bundled transaction. However, we believe there are several statutory and operational issues that should be addressed to make this measure effective.

### **OTR Comments**

The first issue relates to legislative intent. Is it the Council’s intent that this bill apply to residential telecommunications customers as well as business customers? Currently, only business customers pay District sales tax for local telephone and cellular services. Residential customers are exempt from sales tax for services

provided by a public utility (telephone company) or cell phone company under DC Official Code § 47-2005(24). Ancillary services such as voicemail are exempt for both residential and business customers under DC Official Code § 47-2001(n)(1)(P)(v). If residential customers are to be included in this bill, OTR believes the exemptions for residential customers would have to be repealed or amended to allow taxation of bundled, residential telephone services. In such case, Chapters 25 and 39 of Title 47 could be amended to provide for an offset in the gross receipts taxes.

Next, there is the question of Internet access. DC Official Code, section 47-2001(n)(2)(F) currently exempts Internet access from sales tax. If Bill 15-410 were approved, the prohibition against taxing Internet service would effectively bar a vendor from including Internet service access in a bundled service package. The exception would be for a vendor who is able to itemize the taxable and nontaxable items in a bundled telecommunications sale and keep record of all such transactions. Large companies should have no difficulty complying with the itemization and record-keeping requirement and, therefore, would be able to sell bundled telecommunications packages with Internet access included. But the requirement could pose a considerable hardship for smaller merchants who do not have the resources to itemize.

Third, Bill 15-410 also should clarify how the exemptions of § 47-2001(n)(1)(P)(v) and § 47-2005(24) would continue. These sections exempt from sales tax voicemail services, teleconferencing services, and those residential telephone services that are covered by the utilities and toll telecommunications gross receipts taxes. As written, the bill could be interpreted as denying such exemptions where

non-taxable services are not itemized from taxable services, or where a cell phone (personal property) is included in a wireless package.

Fourth, Bill 15-410 states that where properties and/or services are bundled and the tax treatment differs, the entire amount will be subject to sales tax. However, the bill does not specify which tax rate should be used. For instance, a prepaid, wireless bundled deal for a residential customer might include wireless service access (sales tax-exempt), the cell phone itself (5.75 percent sales tax), and prepaid minutes (10 percent sales tax). Which tax rate would apply? OTR suggests Bill 15-410 be amended to require that where there are different tax rates, the higher rate should be applied to the entire bundle.

Our fifth and last substantive comment concerns the bill's inconsistency with provisions related to bundled transactions in the Streamlined Sales Tax Project (SSTP) proposed legislation. SSTP would provide conformity among participating states and a harmonized set of laws to assist business. SSTP would exempt from a sales tax those parts of a bundled service package that are exempt from federal taxation. Bill 15-410 does not contemplate such exemption. As the Council already has indicated its support for the SSTP, OTR respectfully suggests you modify Bill 15-410 to conform to provisions of the SSTP legislation, if it is approved.

### **Suggested Technical Amendments**

We have several suggestions for technical amendments to Bill 15-410. First, we believe the word “communications” and/or “telecommunications” should be inserted into the definition of “bundled transaction” to ensure that the scope of the bill is limited to communications and telecommunications services. We also

suggest that the word “personal” be inserted before the word “property” or “properties,” wherever they appear, to distinguish this term from real property. Section 2 should be amended to clarify that the bill will amend § 47-2001(n)(1) of the DC Official Code. In sub-subparagraph (iii), the phrase “(I) and (II)” should be replaced by the phrase “(I) or (II)”. And very importantly, sufficient lead-time is needed so OTR may update its forms and perform public outreach. Thus, we ask that Bill 15-410 be enacted on or by June 2004, and that an applicability date be added so that the bill will only apply to periods beginning after December 31, 2004.

The Office of Tax and Revenue would be happy to work with the committee to arrive at mutually agreeable and effective language that satisfies the intent of this proposed legislation and serves the interest of taxpayers and the District.

Thank you, Mr. Chairman, for the opportunity to testify. We will be happy to answer any questions you might have at this time.

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