

**Downloading Lost Revenues Amendment Act of 2019,  
Subtitle VII.S of the Fiscal Year 2020 Budget Support Act of  
2019, Bill 23-209**

**Before the**

**Councilmember Jack Evans, Chair  
Committee on Finance and Revenue**

**May 21, 2019, 11:00 a.m.**

**Room 120 - John A. Wilson Building  
1350 Pennsylvania Avenue, NW, Washington, D.C. 20004**



**Comments by Keith J. Richardson  
Deputy Chief Financial Officer  
Office of Tax and Revenue  
Office of the Chief Financial Officer**

**Comments by Fitzroy Lee  
Deputy Chief Financial Officer  
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Office of the Chief Financial Officer**

**Jeffrey S. DeWitt  
Chief Financial Officer  
Government of the District of Columbia**

Thank you for the opportunity to comment on the “Downloading Lost Revenues Amendment Act of 2019” (Act), introduced on May 14, 2019 as an amendment to the Fiscal Year 2020 Budget Support Act of 2019, Bill 23-209.

Pursuant to Chapter 18 of Title 47 of the D.C. Code, the District provides various tax incentives to Qualified High Technology Companies (QHTCs), some of which include a 0% corporate franchise tax rate for the first 5 years that the business has taxable income in the District of Columbia (the District) or until the QHTC has received more than a \$15 million cumulative benefit from the 0% rate, and a reduced tax -rate of 6% (currently from 8.25%) thereafter for an indefinite period; a new hire wage tax credit of 10% of wages up to \$5,000 annually (for 24 months) for each qualified employee that can be carried forward 10 years; and sales tax exemption on purchase of hardware, software and equipment, and on qualifying sales by the QHTC.

The Act seeks to reduce the new hire wage tax credit for qualified new employees to 5%, with no carryforward, and not to exceed \$3,000 per qualified employee; limit the duration of reduced corporate franchise tax rate of 6% for a 5-year period, limit the benefit received to no more than \$250,000 per tax year; and repeal sales tax exemptions for both sales to a QHTC and by the QHTC.

OTR recommends certain technical changes to the Act in order to accomplish the Council’s policy goals. Specifically, OTR recommends several technical changes

concerning the corporate franchise tax incentive codified in Section 47-1817.06. These recommendations are informed, in part, by OTR's experience over the past several years in handling litigation with taxpayers regarding the interpretation of this specific code section that governing QHTCs.

Specifically, as the bill is currently written, it will be difficult for QHTCs and OTR to apply the \$250,000 limitation to a benefit that is characterized as an exemption based on a reduced tax rate that is not zero. OTR suggests clarifying that this benefit will be expressly structured as a franchise tax *credit* rather than as an *exemption* as a result of the new \$250,000 annual limitation. For example, in order to apply a cap expressed in dollars, a QHTC must first calculate what its tax would be at the full franchise tax rate and then calculate what its tax would be at the 6% rate. If the difference in tax is less than \$250,000, the QHTC would receive a credit in the amount to be applied against the full amount of franchise tax due. If the difference is \$250,000 or greater, the QHTC will receive a credit of \$250,000.

OTR further recommends that the bill be clarified to expressly state when the current 6% rate structure expires (presumably, tax years ending on or before December 31, 2019) and when the new limited 6% rate structure begins (presumably, tax years beginning after December 31, 2019). OTR also recommends changes to clarify that existing QHTCs that have been paying the 6% rate will be able to continue to pay the 6% tax rate (in the form of a credit and subject to the \$250,000 annual limitation) through tax

year 2024. New QHTCs and QHTCs that are still receiving a full exemption based on a 0% rate will receive a credit subject to the \$250,000 annual limitation for a period of 5 years from the date they are no longer eligible for the 0% rate.

The Office of Revenue Analysis (ORA) also has concerns about how the revenue generated from the limitations on QHTC incentives and repeal of sales tax exemptions in the proposed bill will be tracked for purposes of allocating revenues in accordance with the enumerated funds. There is no reliable way to track the revenue generated from the sales tax exemptions. Once the transactions become taxable, ORA loses the ability to obtain any information about the exemption.

There are concerns about how to evaluate the worth of the exemption as indicated in ORA's Economic Development Tax Expenditure Review Report.<sup>1</sup> ORA has estimated both the amount of the exemption and the amount that revenue would increase by repealing the exemption using statistical methods rather than actual taxpayer data. In order to reflect these concerns, OCFO recommends either allocating in the Local Budget Act spending in the amount of revenue estimated in the FIS or dedication of a fixed amount of revenue (for example, ABRA, Healthy Schools, property tax reduction).

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<sup>1</sup> <https://cfo.dc.gov/node/1368546>

We have attached to these comments a mark-up of the Act with OTR's proposed clarifying changes regarding the corporate franchise tax amendment. We are pleased to discuss further or respond to any additional questions you may have.