

PUBLIC HEARING

ON

Bill 20-482, “Fiscal Year 2014 Budget Support Technical Clarification Act of 2013”

**Before the
Committee of the Whole
Council of the District of Columbia**

Chairman Phil Mendelson

**November 7, 2013, 9:30 AM
John A. Wilson Building, Council Chamber**



**Testimony of
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Good morning, Chairman Mendelson and members of the Committee of the Whole. I am Bazil Facchina, Assistant General Counsel for the Office of Tax Revenue. I am pleased to testify today on Bill 20-482, the Fiscal Year 2014 Budget Support Technical Clarification Act of 2013

My testimony this morning will cover two subjects. The first will address the proposed amendment of the provisions governing Tax Abatement Financial Analyses (TAFAs) prepared by the Office of the Chief Financial Officer (OCFO) for the use of the Council in evaluating bills providing exemptions from and abatements of District taxes. As a general matter, a TAFAs is required before a bill providing targeted tax relief can receive a hearing before the Council. The second will address forgiveness of possessory interest taxes assessed with respect to properties participating in the Land Acquisition for Housing Development Opportunities (LAHDO) program.

With respect to the TAFAs provision, the Fiscal Year 2014 Budget Support Act of 2013, section 7162(a), eliminated the requirement of a TAFAs for bills creating exemptions or abatements of general applicability, while retaining this requirement for bills providing tax relief targeted to a particular taxpayer, project or property. The

Budget Support Act, however, also provides that, when an exemption or abatement relates to a category or group of property owners or taxpayers, the OCFO is to review the public policy goal to be advanced by the tax relief and to opine whether the tax relief was appropriately targeted and likely to achieve the intended goal.

These two provisions created uncertainty for the OCFO in determining when a TAFAs would be called for and when one would not, and so OCFO requested that the law be clarified in order to better delineate the circumstances in which a TAFAs would be needed. Accordingly, the Bill under consideration by this Committee includes provisions eliminating the language dealing with exemptions or abatements relating to a category or group of taxpayers, and replaces that language with a provision calling for an analysis when a bill relates to “a person or small group of persons that can be readily identified.” While this amended language provides some clarification as to when a TAFAs will be in order, the OCFO expects that the determination of whether a TAFAs is needed for any particular bill will generally be made by the Council or its staff as part of the process of determining whether that bill is to receive a hearing.

Additionally, the Fiscal Year 2014 Budget Support Act made changes to provisions governing the summary of community benefits to be included in TAFAs prepared by

the OCFO. The OCFO recommended a technical change to clarify that the community benefits reporting requirements apply to all TAFAs, and this change has been included in the Bill.

Turning to the second topic that I will address, the technical clarifications Bill before the Committee will include a provision forgiving possessory interest taxes assessed with respect to LAHDO properties for periods through the end of fiscal year 2013. This provision is necessary because of an issue created by prior legislation enacted to provide relief to these properties.

Under the LAHDO program, the District acquires the land underlying a housing property, thus taking it off the tax rolls, while the building on the property remains privately owned. However, when the possessory interest tax was enacted, these LAHDO properties became liable for the possessory tax because they were leasing government-owned land. In order to protect these properties from liability from the possessory interest tax, the Land Acquisition for Housing Development Opportunities Program Act of 2010 (DC Law 18-260) was enacted.

While this legislation contained provisions to provide retroactive tax relief for these properties, eligibility for the relief was conditioned on the taxpayer's obtaining a certification from the Department of Housing and Community Development (DHCD) that the property was in compliance with the requirements of the LAHDO program. This letter had to be obtained before the beginning of the tax year for which an exemption was to apply. These letters had not previously been issued by DHCD, and so this condition was impossible to meet for years prior to the enactment of the law. Accordingly, the law as drafted does not provide retroactive tax relief for the properties.

Accordingly, the Bill before the Committee will incorporate a provision to simply forgive these taxes for fiscal year 2013 and prior years.

Thank you, Chairman Mendelson, for the opportunity to comment on this Bill. I would be glad to answer any questions on these matters.