

Protecting Local Area Commercial Enterprises Amendment Act of 2019, Bill 23-432

Before the Committee on Business and Economic Development

The Honorable Kenyan R. McDuffie, Chairman

**November 6, 2019, 10:00 AM
Room 120, John A. Wilson Building**



**Testimony of
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Good morning Chairman McDuffie and members of the Committee on Business and Economic Development. My name is Bazil Facchina, and I am an Assistant General Counsel for the Office of Tax and Revenue. I am pleased to present testimony on Bill 23-432, the “Protecting Local Area Commercial Enterprises Amendment Act of 2019.”

In general, beginning with Fiscal Year 2021, the tax provisions of the Bill would provide real property tax abatements and rebates to landlords leasing to qualified legacy businesses if the landlord is responsible under the lease for payment of these taxes. The Bill would also provide for abatements and rebates of real property taxes to tenants that are legacy businesses if they are responsible under their leases for paying these taxes. The abatements would be certified to the Office of Tax and Revenue (OTR) by the Mayor, who is also required to inform OTR if a property later becomes ineligible for the abatement.

In general, this rebate program appears to be modeled on existing rebate programs provided for tenants in buildings that do not qualify for a real property tax exemption or abatement. As a general matter, commercial leases provide that the tenant is responsible for paying the real property taxes allocable to the portion of the property leased by the tenant. This amount is treated as additional rent paid by the tenant. Normally, real property tax rebates are paid to the tenant, since this is the person that the law is designed to assist. Accordingly, we recommend that the

rebate be payable to the tenant if the lease provides that it is responsible for payment of taxes. If a rebate is to be made to a landlord, the Bill should provide that the rebate be passed back to the tenant as a rent reduction, since the landlord's tax expense is generally built into the rent payment. Also, it does not appear that there is any limit on the amount of tax that may be rebated under the Bill.

In addition, there are certain provisions in the Bill as drafted that should be modified in order to facilitate administration. A suggested revision of these provisions reflecting our recommendations is attached to my testimony.

Thank you, Chairman McDuffie, for the opportunity to comment on this Bill. I would be happy to answer any questions at this time.

ATTACHMENT

“(c)(1) For taxable years beginning October 1, 2020, a qualified legacy business that leases real property that is taxed under Chapters 8 or 10 of Title 47 and that is certified as eligible by the Mayor shall receive a rebate of that portion of the tax, if any, that represents the qualified legacy business' pro rata share of the lessor's tax on the property if:

“(A) The qualified legacy business is liable under the lease for the pro rata share of the tax;

“(B) The qualified legacy business applies to the Mayor for the rebate of the tax on or before December 31 of the succeeding tax year; and

“(C) The real property tax for the tax year was paid.

(2) For taxable years beginning October 1, 2020, an owner of real property that is taxed under Chapters 8 or 10 of Title 47 that leases such property to a qualified legacy business and that is certified as eligible by the Mayor shall receive a rebate of that portion of the tax, if any, that represents the pro rata share of the owner's tax on the portion of the property leased by the qualified legacy business if:

“(A) The qualified legacy business is not liable under the lease for the pro rata share of the tax;

“(B) The owner applies to the Mayor for the rebate of the tax on or before December 31 of the succeeding tax year;

“(C) The real property tax for the tax year was paid; and

“(D) the rebate is passed through to the tenant in the form of reduced rent.

(3) The application filed with the Mayor shall include:

(A) A copy of the lease with the lessor;

(B) Documentation that the real property tax has been paid; and

(C) Such further information as the Mayor may require to process the application.

(4) The rebate provided pursuant to this section shall be in addition to, and not in lieu of, any other tax, financial, or development incentive, tax credit, or any other type of incentive provided to a qualified business under any District or federal program.

“(d) The Department shall submit to the Mayor a review of each certified and approved qualified legacy business every year to confirm the legacy business’s continued eligibility for the program.

“Sec. 2378. Certification to the Office of Tax and Revenue.

(a)(1) The Mayor shall certify to the Office of Tax and Revenue (“OTR”) each owner, qualified legacy business and property eligible for a rebate. The certification shall identify:

(A) The property to which the certification applies by square and lot;

(B) The full legal name of the qualified legacy business or owner, including taxpayer identification number, that is eligible;

(C) The tax or taxes to which the certification applies;

(D) The portion of the property that is eligible;

(E) The tax year for which the rebate is to be paid; and

(F) Any other information OTR shall require to administer the exemption.

(2) The Mayor shall notify OTR if any qualified legacy business or property certified as eligible under paragraph (1) of this subsection becomes ineligible for the rebate made under subsection (a) of this section. The notification shall identify:

(A) The property to which the notice applies by square and lot;

(B) The full legal name of the qualified legacy business or owner, including taxpayer identification number;

(C) The tax or taxes to which the notice applies;

(D) The portion of the property ineligible;

(E) The date on which the qualified legacy business, owner or property became ineligible; and

(F) Any other information OTR shall require to administer the termination of the exemption.