

# **Small and Local Business Assistance Amendment Act of 2019, Bill 23-438**

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

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 23-438, the “Small and Local Business Assistance Amendment Act of 2019.”

The Bill, as introduced, builds on the small retailer tax credit that was enacted as part of the Fiscal Year 2019 Budget Support Act (D.C. Law 22-168), which provided for a refundable tax credit up to \$5,000 per year based on 10% of rent paid or the property taxes paid by the small retailer.

In general, the tax provisions of the Bill would, beginning in 2019, provide a new corporation franchise tax credit for certain qualified small local businesses. The “small local business credit” would be available to businesses that are either (1) a District-based business as defined in § 2-1208.31(2) that is registered with the Department of Small and Local Business Development or (2) certified by the Department of Small and Local Business Development as a local business enterprise pursuant to § 2-218.3. This credit would operate in a manner similar to the small retailer credit except that it would be up to \$10,000 per year based on 20% of rent paid or the property taxes paid by the qualified small local business. The Bill also provides an assessment reduction of up to \$100,000 for property owned or leased by a qualifying small local business for purposes of computing the

real property tax imposed. To receive the assessment reduction, the owner of the property would apply for the benefit, which would be applied beginning with the half tax year in which the application is filed.

The Office of Tax and Revenue (OTR) recommends that certain provisions of the Bill be revised to facilitate administration of these tax benefits. My testimony will summarize some of OTR's concerns, and we are available to work with the Committee on these issues.

First, under the Bill as introduced, this new small local business credit is an amendment to the small retailer statute set forth in D.C. Official Code § 47-1807.14. However, rather than amending § 47-1807.14, it would be preferable to add a new section for the small local business credit.

Second, although both the small retailer credit and the proposed small local business credit are similar, there are significant differences. Importantly, businesses eligible for the small retailer credit must, in fact, be "retailers". In order for the small retailer credit to be paid, OTR verifies that the small retailer has a sales and use tax account and that it is current on all tax filings. Small local businesses, on the other hand, may or may not be retailers or have a sales and use tax account with OTR. (For example, a qualified small local business could be a manufacturer or craftsman who sells their products to retailers.) Further, the

property that the qualified small local business owns or leases may not be a retail location. (For example, the property could be office or studio space.)

Also, the Bill as introduced does not have a comparable section for the unincorporated business franchise tax, which should be added. Additionally, some minor conforming changes are needed to the small retailer credit provisions (D.C. Official Code §§ 47-1807.14 and 47-1808.14) to clarify that a business cannot claim both the small retailer credit and the small local business credit. Other technical changes are needed to make sure that only small retailers and/or small local businesses can claim the credits.

As to applicability, OTR needs sufficient time to develop the forms and systems to implement the small local business credit. Therefore, OTR suggests that this credit be available beginning in tax year 2021.

With respect to the real property tax benefit for small local businesses, OTR recommends that this be restructured as a rebate, rather than as an assessed value reduction to facilitate administration. OTR would be better able to verify eligibility if the benefit was structured as a rebate, since all of the facts needed to establish entitlement would be known by the end of the tax year and could be included in the rebate application. If the benefit is provided as an assessment reduction when the tax is billed, it is possible that the property could have lost

eligibility during the tax year, and OTR would be in the position of attempting to recover the uncollected taxes.

Suggested language to implement these 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

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Small and Local Business Assistance Amendment Act of 2019”.

Sec. 2. Chapter 8 of Title 47 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended by adding a new section designation read as follows:

“§ 47–869.01. Qualified Small Local Business Real Property Tax Rebate.”.

(b) A new § 47–802(17) is added to read as follows:

“(17)(A) The phrase “qualified small local business cost-of-living adjustment” for any real property tax year means \$1,890 multiplied by the difference between the Consumer Price Index for the preceding real property tax year and the Consumer Price Index for the real property tax year beginning October 1, 2021, divided by the Consumer Price Index for the real property tax year beginning October 1, 2021.

(B) For the purposes of this paragraph, the Consumer Price Index for any real property tax year is the average of the Consumer Price Index for the Washington-Baltimore Metropolitan Statistical Area for all-urban consumers published by the Department of Labor, or any successor index, as of the close of the 12-month period ending on September 30 of such real property tax year.

(c) A new § 47–869.01 is added to read as follows:

“§ 47–869.01. Qualified Small Local Business Real Property Tax Rebate.

“(a) For the purposes of this section, the term:

“(1) "Qualified commercial property" means Class 2 Property, as that class of property is established in [§ 47-813](#), that is occupied, in whole or in part, by a qualified small local business during all or a portion of the tax year.

“(2) “Qualified small local business” means a qualified small local corporation as that term is defined in [§ 47-1806.16\(a\)\(3\)](#), or a qualified small local unincorporated business as that term is defined in [§ 47-1808.16\(a\)\(3\)](#).

“(b) For taxable years beginning after September 30, 2020, a qualified small local business that owns or leases qualified commercial property that is taxed under this chapter or under Chapter 10 of this title shall receive a rebate of that portion of the tax that represents 10 percent of the taxes allocable to the portion of the property occupied by the qualified small local business if:

“(1) In the case of a qualified small local business leasing the space it occupies, such business is liable under the lease for its pro rata share of the tax;

“(2) The qualified small local business applies for the rebate of the tax on or before September 15; and

“(3) The real property tax was paid.

“(c) The application shall include:

“(1) A copy of the lease with the lessor, if applicable;

“(2) Documentation of the portion of the net rentable area of the property occupied by the qualified small local business and the portion of the tax year that the property was occupied by such business;

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

“(4) Documentation that the applicant was a qualified small local business and that the property was a qualified commercial property during the tax year for which the rebate is being requested.

"(d) If a proper application has been submitted, the Chief Financial Officer shall rebate the real property tax on or before December 31 of the same calendar year.

“(e) The rebate provided pursuant to this section shall be:

“(1) The lesser of:

“(A) 10 percent of the real property tax allocable to the portion of the qualified commercial property occupied by the qualified small local business during the portion of the tax year so occupied that was paid, directly or indirectly, by the qualified small local business; or

“(B) \$1,890, increased annually, beginning October 1, 2021, by the qualified small local business cost-of-living adjustment, per applicant per year; and

“(2) 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.

Sec. 3. Chapter 18 of Title 47 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended by adding the following new section designations to read as follows:

(1) “§ 47–1807.16. Small local business property tax relief credit.”.

(2) “§ 47–1808.16. Small local business property tax relief credit.”.



(b) Section 47-1807.14(a)(1)(C) is amended by striking the term “ payments” and inserting the phrase “payments at the time the return is filed claiming the credit under this section”.

(c) Section 47-1807.14(d) is amended to read as follows:

“(1) The qualified corporation:

“(A) Receives any other tax credits towards payment of the real property tax for the qualified rental retail location or qualified owned retail location;

“(B) Is a member of a combined group as defined under this chapter; or

“(C) Receives a credit pursuant to § 47-1807.16.

(d) A new section § 47–1807.16 is added to read as follows:

“§ 47–1807.16. Small local business property tax relief credit.

“(a) For the purposes of this section, the term:

“(1) "Qualified owned location" means a building or part of a building in the District that during the taxable year is:

“(A) The primary place of the business of the qualified small local corporation;

“(B) Owned by the qualified small local corporation; and

“(C) Classified, in whole or in part, as Class 2 Property, as defined in [§ 47-813](#) and has obtained a Certificate of Occupancy for commercial use.

“(2) "Qualified rental location" means a building or part of a building in the District that during the taxable year is:

“(A) The primary place of the business of the qualified small local corporation;

“(B) Leased by the qualified small local corporation; and

“(C) Classified, in whole or in part, as Class 2 Property, as defined in [§ 47-813](#) and has obtained a Certificate of Occupancy for commercial use.

“(3) "Qualified small local corporation" means a corporation that:

“(A) (i) Certifies that it is a District-based business as defined in § 2-1208.31(2) and is registered with the Department of Small and Local Business Development; or

“(ii) Is certified by the Department of Small and Local Business Development as a local business enterprise pursuant to § 2-218.31;

“(B) Has less than \$2,500,000 in federal gross receipts or sales;

“(C) Is current on all District tax filings and payments at the time the return is filed claiming the credit under this section.

“(b) For taxable years beginning after December 31, 2020, a qualified small local corporation may claim a credit against the tax imposed by this chapter as follows:

“(1) A tax credit equal to 20% of the total rent paid by the qualified small local corporation for a qualified rental location during the taxable year not to exceed \$10,000; or

“(2) A tax credit equal to the total Class 2 real property taxes, pursuant to § 47-811, paid by the qualified small local corporation for a qualified owned location during the taxable year not to exceed the lesser of the real property tax paid during the taxable year or \$10,000.

“(c) The credit claimed under this section in any one taxable year may exceed the qualified small local corporation's tax liability, including any minimum tax due under § 47-

1807.02(b), under this chapter for that taxable year and shall be refundable to the qualified small local corporation claiming the credit.

“(d) This section shall not apply if:

“(1) The qualified small local corporation:

“(A) Receives any other tax credits towards payment of the real property tax for the qualified rental location or qualified owned location;

“(B) Is is a member of a combined group as defined under this chapter; or

“(C) Receives a credit pursuant to § 47-1807.14.

“(2) The qualified retail location or qualified owned location is exempt from real property tax.

(d) Section 47-1808.14(a)(1)(C) is amended by striking the term “ payments” and inserting the phrase “payments at the time the return is filed claiming the credit under this section”.

(c) Section 47-1808.14(d) is amended to read as follows:

“(1) The qualified unincorporated business:

“(A) Receives any other tax credits towards payment of the real property tax for the qualified rental retail location or qualified owned retail location;

“(B) Is a member of a combined group as defined under this chapter; or

“(C) Receives a credit pursuant to § 47-1808.16.

(d) A new section § 47–1808.16 is added to read as follows:

“§ 47–1808.16. Small local business property tax relief credit.

“(a) For the purposes of this section, the term:

“(1) "Qualified owned location" means a building or part of a building in the District that during the taxable year is:

“(A) The primary place of the business of the qualified small local unincorporated business;

“(B) Owned by the qualified small local unincorporated business; and

“(C) Classified, in whole or in part, as Class 2 Property, as defined in [§ 47-813](#) and has obtained a Certificate of Occupancy for commercial use.

“(2) "Qualified rental location" means a building or part of a building in the District that during the taxable year is:

“(A) The primary place of the business of the qualified small local unincorporated business;

“(B) Leased by the qualified small local unincorporated business; and

“(C) Classified, in whole or in part, as Class 2 Property, as defined in [§ 47-813](#) and has obtained a Certificate of Occupancy for commercial use.

“(3) "Qualified small local unincorporated business " means a corporation that:

“(A) (i) Certifies that it is a District-based business as defined in § 2-1208.31(2) and is registered with the Department of Small and Local Business Development; or

“(ii) Is certified by the Department of Small and Local Business Development as a local business enterprise pursuant to § 2-218.31;

“(B) Has less than \$2,500,000 in federal gross receipts or sales;

“(C) Is current on all District tax filings and payments at the time the return is filed claiming the credit under this section.

“(b) For taxable years beginning after December 31, 2020, a qualified small local unincorporated business may claim a credit against the tax imposed by this chapter as follows:

“(1) A tax credit equal to 20% of the total rent paid by the qualified small local unincorporated business for a qualified rental location during the taxable year not to exceed \$10,000; or

“(2) A tax credit equal to the total Class 2 real property taxes, pursuant to § 47-811, paid by the qualified small local unincorporated business for a qualified owned location during the taxable year not to exceed the lesser of the real property tax paid during the taxable year or \$10,000.

“(c) The credit claimed under this section in any one taxable year may exceed the qualified small local unincorporated business tax liability, including any minimum tax due under § 47-1807.02(b), under this chapter for that taxable year and shall be refundable to the qualified small local unincorporated business claiming the credit.

“(d) This section shall not apply if:

“(1) The qualified small local unincorporated business:

“(A) Receives any other tax credits towards payment of the real property tax for the qualified rental location or qualified owned location;

“(B) Is a member of a combined group as defined under this chapter; or

“(2) The qualified retail location or qualified owned location is exempt from real property tax.