

Good morning Chairman Williams and Commission Members

My name is Bart Uze and I am appearing on behalf of Michael Allen, a Principal at Ryan, LLC. Ryan is North America's largest state and local tax consultant firm, as well as the world's largest property tax consultant firm. Following the currently pending acquisition of Thompson Reuters Property Tax Services, Ryan's staff will number approximately 1,600 dedicated property valuation experts, of which Mr. Allen is one. In my role as legal counsel I represent the owners of many commercial properties in the District of Columbia.

It is recommended that Title 47 of the District of Columbia Official Code, Taxation, Licensing, Permits, Assessments, and Fees, be amended to provide that in the event a taxpayer files a judicial appeal contesting a real estate assessment, such taxpayer shall only be required to pay the real estate tax based on the uncontested portion of the real estate assessment as a prerequisite to filing such judicial appeal.

The purpose of this proposed amendment to the DC tax law is to allow taxpayers to appeal real estate assessments without having their money tied up in the court system for years while the appeal is being litigated, and to recognize the fact that tax overpayments based on over assessed real estate are not revenues that belong to the District, and that such revenues should not be included as a component of any of the CFO's fiscal year budgets.

Each tax year the Office of Tax and Revenue ("OTR") over assesses millions of dollars' worth of residential and commercial property, which results in massive real estate tax overpayments. These overpayments are in essence forced loans, are not actual revenue to the District, must eventually be paid back to the taxpayers, and are always included in the CFO's revenue estimates when each Fiscal Year's budget is prepared. Not only are these overpayments more accurately characterized as forced loans to the District, but it is fiscally irresponsible and inaccurate to include them as revenues that can be used to pay employee salaries and other items in the District's budget. Loans must be paid back, are not properly accounted for as revenues, and should not be treated as such by the CFO. Moreover, when taxpayers contest their real estate assessments, one of the arguments used by the OTR to defend the assessments is that lowering such assessments will result in a loss of revenue to the District. The OTR is focused on "preserving revenue," rather than on accurately valuing the District's real estate.

The current law mandates that the taxpayer pay the entire amount of the real estate tax on the disputed assessment before he or she can file a judicial appeal contesting such assessment. Since judicial appeals typically take two to four years before final resolution, the District makes a practice of classifying the disputed portion of the real estate tax as revenue, includes it in the CFO's yearly budget, and spends the money, even though a significant portion of these funds are eventually returned to the taxpayer. Moreover, because the District is loath to return money that it has already spent, it consistently draws out the appeal process and employs numerous delaying tactics in order to defer paying the taxpayer his or her refund during the settlement process and after a settlement has been agreed to.

As noted above, these contested (overpayment) amounts are treated as revenue by the CFO. Moreover, during the litigation process, the District takes the position that it is "protecting the revenue" by contesting the taxpayer's assertion of a reduced real estate assessment value. Thus, the District's focus is based on how much money it will "lose" if the assessment is lowered, rather than on determining a realistically correct market value of the real property.

Changing the law to allow the taxpayer to file a judicial appeal of an alleged inflated real estate assessment after paying real estate tax on only the uncontested portion of the real estate assessment, will allow a more accurate accounting of revenues for budgeting purposes, will result in fewer cases of over-estimating revenues, will bring the focus of the appeal process back to the actual market value of the property rather than on preserving revenue, and will result in revenue windfalls for the District with respect to those appeal cases where the final assessment is more than the taxpayer's proposed (uncontested) assessment value. This practice is currently being used in a number of states, such as Ohio, Texas, and Tennessee.

Here is a suggested example of how this new proposed law would work in practice:

A property is assessed at \$1,000,000, but the owner asserts that the true market value of the property is \$800,000. The owner then pays the tax based on the uncontested value of the property (\$800,000) and files a judicial appeal of the real estate assessment in Superior Court claiming that the property should be assessed at \$800,000. Since the taxpayer has only paid the tax on the uncontested portion of the assessment, the judicial appeal issue is solely based on the correctly assessed market value of the property. It is not a suit filed for a real estate tax refund. If the

case in the above example is eventually settled for an assessed value of \$900,000, for example, the portion of the tax attributable to the difference between the settled amount (\$900,000) and the uncontested amount (\$800,000), which in this case would be \$100,000, would then be paid to the District, plus current market-based interest from the date the petition was filed. At this point, the tax would be revenue for the District.

If this change in the law is adopted, it would result in the following financial benefits for both the District and District taxpayers:

- Eliminating a source of spending dollars that are not properly classified as revenues,
- No longer creating budget deficits when tax refunds are paid
- Proposing more accurate and realistic FY budget proposals
- Creating an additional source of revenue
- Allowing assessors to concentrate on arriving at more accurate assessments rather than concentrating on “protecting the revenue”
- Speeding up the assessment judicial appeal process, since the District will realize additional revenue when cases are resolved

It is recommended that Title 47 of the District of Columbia Official Code, Taxation, Licensing, Permits, Assessments, and Fees, be amended to provide that in the event a taxpayer files a judicial appeal contesting a real estate assessment, the District of Columbia must obtain an independent appraisal from a certified DC Certified General Licensed Real Estate Appraiser not otherwise employed by the OTR during the discovery portion of the appeal.

During the Discovery process in the course of a judicial assessment appeal in the Superior Court for the District of Columbia the taxpayer/petitioner is required to designate an expert witness and obtain an appraisal of the subject property by a licensed DC appraiser. The taxpayer’s expert witness is usually the licensed DC appraiser who appraised the taxpayer’s property. Under current law, the District is not required to obtain such an appraisal from an independent, licensed DC appraiser. The taxpayer must spend a significant amount of money to obtain this appraisal, and its cost will often times preclude the taxpayer from continuing with its appeal, no matter how valid the taxpayer’s position may be. The District has no such problem, since it is not required to pay for an appraisal from an independent

DC licensed appraiser. Thus, the District is allowed to proceed with no appraisal, or with an “expert” appraisal that is merely assembled by an OTR employee assessor who has not previously looked at the subject property. Also, there is no requirement that the OTR’s “expert” appraiser be licensed in DC or be independent.

It is only fair and reasonable that the District should be required to assume the same burden as the taxpayer in a judicial appeal, and thus, be required to obtain an appraisal from a licensed DC appraiser that is independent and not an employee of the OTR at the same time as the taxpayer during discovery.

An added benefit from this proposed addition to the DC Code is that it will encourage both parties to make significant efforts to settle the case before proceeding to the discovery phase of the appeal. It would also reduce the likelihood of OTR pursuing appeals that are not well supported in generally accepted appraisal standards and practice or not market supported.

It is recommended that Title 47 of the District of Columbia Official Code, Taxation, Licensing, Permits, Assessments, and Fees, be amended to provide that in the process of any administrative appeal of a real estate assessment in which the OTR either increases or recommends an increase in its original published assessment, such increase or recommended increase must be supported by an appraisal performed by an independent general certified real estate appraiser, who is licensed in DC.

In a number of instances, the OTR has raised its original assessment after the first level administrative appeal. The taxpayer is not alerted to the fact that the assessment is to be increased, or given the opportunity to contest the increase or withdraw the appeal, before such increase is made effective. There are also instances where the OTR has recommended increases in assessments at Board level hearings with no support or prior notice.

This practice places the taxpayer in a precarious situation and acts as a deterrent and obstacle to the filing of assessment appeals. The appeal process should be encouraged and be operated in a fair and unbiased manner. States, such as Virginia, are now requiring local assessment authorities to not only notify the taxpayer at least 14 days before a higher assessment is to be recommended during the administrative appeal process, but, in addition, such assessment authorities are

also required to obtain an independent appraisal that supports such proposed increase in value as a prerequisite to proposing such increase over the original assessment. This practice will force the OTR to not only avoid making unsupported increases in assessments on appeal, it will also act as a deterrent to making punitive increases for the purpose of discouraging taxpayers from filing assessment appeals.

Overpayment Interest Rate: It is strongly recommended that the newly enacted reduction for the interest paid on tax refunds (overpayments) from 6% to approximately 1.75% be extended to property tax underpayments.

It is unreasonable, unfair, and discriminatory to lower the interest rate for overpayments to a mere 1.75% (compounded yearly), while continuing to use a 10% percent interest rate for general tax underpayments (compounded daily) and 1 ½ % per month (compounded monthly!), which is an **effective rate of over 19% per year for real property tax underpayments**. This new law is clearly intended to penalize innocent taxpayers who have accidentally overpaid their taxes or have been forced to overpay their taxes in order to file a judicial appeal to contest their real estate assessment. Leaving the underpayment rate at 10% is clearly an overtly punitive action by the Mayor in these difficult economic times. If the Commission believes that the rate for overpayments is too high, then it must also realize that the rate for underpayments is also too high. Based on the proposed rate of 1.75% for overpayments, it makes logical economic sense to also lower the rate for underpayments to approximately 4%. If only one rate is changed, it should be to lower the rate for underpayments, as this rate is usurious.

Moreover, lowering the interest rate for overpayments will most likely cause lengthy delays in judicial assessment appeal settlements and case resolutions. There are currently hundreds of real property tax appeal cases currently on the judicial appeal docket. The main reason there are so many of these cases being appealed judicially, is because the Office of Tax and Revenue (“OTR”) has been over assessing property values for many years. This practice of over assessing property values results in “forced” loans to the District’s tax coffers in the form of significant real property tax overpayments. In a significant number of these cases, the District eventually is required to make restitution to these innocent and aggrieved property owners in the form of tax refunds. However, it often takes

three or more years before such taxpayers are finally reimbursed by the District. It seems only fair that the District should be required to pay a significant rate of interest to these innocent property owners who have been forced, against their will, to make these "loans" to the District.

It is no coincidence that the CFO mischaracterizes these forced loans as "revenues" in each year's FY budget. These "forced loans" not only create a false revenue stream in the budget each year, but the interest paid on these loans amounts to an unnecessary expense to the districts residents. The OTR and the OAG's office have been resorting to extreme delaying tactics in order to avoid paying back these refunds to the aggrieved property owners. Typically, when a settlement offer has been reached regarding a disputed property assessment, a Stipulation is signed by the property owner's representative and the OAG Counsel setting forth the new property values agreed upon by the parties. The Stipulation and Order to be signed by the judge in the case are then filed with the court. Once the Order has been signed, it is sent to the OTR so that a refund check can be cut and sent to the Petitioner. However, this process is not working properly. The OTR and OAG have been delaying the signing and filing of the Stipulations and Orders. In many of my cases where settlements have been reached going back to November of 2011, the OAG has not yet signed and filed the Stipulation and Order to start the refund process. When asked why these documents have not been signed and filed, the OAG has informed me that they have "priorities" and these agreements are not "priorities." I have also been informed that there is a 90-day waiting period to finalize settlements, even though there is no law or procedure that supports this contention. Moreover, even this 90-period is not adhered to. Many of my colleagues have experienced similar results. It is clear that the CFO and OTR are aware of the major deleterious effect these refunds will have on the budget.

As an example, in August 2011 approximately 65 Orders for real estate tax refunds were sent to the OTR from the Superior Court. It should be noted that these Orders were a small fraction of the total cases that were waiting for refunds. In December 2011, shortly after the tax refund checks associated with these 65 Orders started going out to the property owners, the mayor signed an order freezing new hiring and all hiring for vacant positions, except those funded 100 percent by federal grants. The order also froze most travel and outside training. Gray cited financial

challenges and agency spending pressures as justification for the spending slow down. Most likely a substantial portion of these “financial challenges” related to the payment of refunds to these property owners.

Lowering the interest rate for overpayments to 1.75% will only encourage the OTR to continue its practice of over assessing property to create forced loans, which will become virtually interest free and continue to provide misleading financial information that distorts each FY budget. The lowering of this rate will also most likely result in more of a disincentive to settle and repay overpayments, since the Mayor will have the benefit of virtually interest free loans. The lowering of interest rates on overpayments will only serve to encourage such fiscal irresponsibility.

It is unreasonable, unfair, and **discriminatory** to lower the interest rate for overpayments to a mere 1.75% (compounded yearly), while continuing to use a 10% percent interest rate for general tax underpayments (compounded daily), and 1 ½ % per month (compounded monthly!) for property tax underpayments, which is an **effective rate of over 19% per year for real property tax underpayments**. This distinct imbalance in interest rates is clearly intended to penalize innocent taxpayers who have accidentally overpaid their taxes, or have been forced to overpay their taxes due to over assessed real estate. Leaving the underpayment rate at 10%, or 19%, also is clearly an overtly punitive action by the Mayor in these difficult economic times. Both Virginia and Maryland have the same interest rates for underpayments and overpayments. Charging interest for under and overpayments is meant to compensate for the time value of money. However, charging a 19% interest rate is not only usurious, it is tantamount to charging a steep penalty on top of the underpayment penalty of 10% that the District also charges. (Note that under DC Code section 28-3303(1) if a person or corporation verbally contracts to pay a greater rate of interest than 6% it is considered usury.) If the Commission believes that the rate for overpayments is too high, then it must also realize that the rate for underpayments is also too high.

During the DC City Council Hearing on April 30, 2012, Chairman Brown stated that the rate should be lowered for overpayments because a taxpayer could not get 6% interest if he or she put money in a bank. He compared an overpayment to a

bank deposit. This argument is invalid for a number of reasons. First, when a person puts money in a bank for investment, that money is usually discretionary income and it is invested voluntarily. When the District Government over assesses property and creates an overpayment, such overpayment is not made voluntarily, it is a forced payment, and it is not made with discretionary funds. Moreover, the taxpayer has lost the use of those funds until the District pays them back many years after they are forced to be paid. A taxpayer can use money invested in a bank anytime he or she wishes to withdraw such money. In addition, in order for the taxpayer to recover his or her overpayment from the District, such taxpayer must usually spend money for consultants, attorneys, appraisers, and court fees. The mere 6% interest earned for such overpayment does not come close to covering the cost to the taxpayer to recover the principal amount of the overpayment. Thus, comparing an overpayment to a bank deposit is ludicrous and inaccurate.

Moreover, there was a more practical reason to leave the rate for overpayments at 6%. As noted above, there are hundreds of real property tax appeal cases currently on the judicial appeal docket. The main reason there are so many of these cases being appealed judicially, is because the Office of Tax and Revenue (“OTR”) has been over assessing property values for many years. This practice of over assessing property values results in “forced” loans to the District’s tax coffers in the form of significant real property tax overpayments. In the vast majority of these cases, the District eventually is required to make restitution to these innocent property owners in the form of tax refunds. However, it often takes three or more years before such taxpayers are finally reimbursed by the District. It seems only fair that the District should be required to pay a significant rate of interest to these innocent property owners who have been forced, against their will, to make these “loans” to the District.

It is no coincidence that the CFO mischaracterizes these forced loans as “revenues” in each year’s FY budget. These “forced loans” not only create a false revenue stream in the budget each year, but the interest paid on these loans amounts to an unnecessary expense to the districts residents. The OTR and the OAG’s office have been resorting to extreme delaying tactics in order to avoid paying back these refunds to the aggrieved property owners. Typically, when a settlement offer has

been reached regarding a disputed property assessment, a Stipulation is signed by the property owner's representative and the district Counsel setting forth the new property values agreed upon by the parties. This Stipulation and Order to be signed by the judge in the case are then filed with the court. Once the Order has been signed, it is sent to the OTR so that a refund check can be cut and sent to the Petitioner. However, this process is not working properly. The OAG has been delaying the signing and filing of the Stipulations and Orders. In many of my cases where settlements have been agreed upon going back to November of 2011, the OAG has not yet signed and filed the Stipulation and Order to start the refund process. When asked why these documents have not been signed and filed, the OAG attorney has informed me either that they have "priorities" and these agreements are not "priorities," or that the OTR has delayed in approving the settlement. Most of my colleagues have experienced similar results. It is clear that the CFO and OTR are aware of the major deleterious effect these refunds will have on the budget. This is a bad situation that the CFO has knowingly created.

As an example, in August 2011 approximately 65 Orders for real estate tax refunds were sent to the OTR from the Superior Court. It should be noted that these Orders were a small fraction of the total cases that are waiting for refunds. In December 2011, shortly after the tax refund checks associated with these 65 Orders started going out to the property owners, the mayor signed an order freezing new hiring and all hiring for vacant positions, except those funded 100 percent by federal grants. The order also froze most travel and outside training. Mayor Gray cited financial challenges and agency spending pressures as justification for the spending slow down. Most likely a substantial portion of these "financial challenges" related to the payment of property tax refunds to these property owners.

Allowing the Mayor to lower the interest rate for overpayments to 1.75% only encourages the OTR to continue its practice of over assessing property to create forced loans, which will become virtually interest free and continue to provide misleading financial information that distorts each FY budget. Lowering this rate will also result in more of a disincentive to settle and repay overpayments, since the Mayor will have the benefit of virtually interest free loans. It is not fiscally responsible to reward this aberrant behavior by lowering the interest rate for overpayments, while leaving the interest rates for underpayments at usurious levels. Such action will only serve to encourage such fiscal irresponsibility.