Government of the District of Columbia
Office of the Chief Financial Officer

Natwar M. Gandhi
Chief Financial Officer

MEMORANDUM

TO:	**The Honorable Kwame R. Brown** **Chairman, Council of the District of Columbia**
FROM:	**Natwar M. Gandhi** **Chief Financial Officer**
DATE:	**November 28, 2011**
SUBJECT:	**Fiscal Impact Statement – "Old Naval Hospital Real Property Tax Assistance Act of 2011"**
REFERENCE:	**Bill Number 19-503 – Draft Committee Print**

Conclusion

Funds are sufficient in the FY 2012 through FY 2015 budget and financial plan to implement the provisions of the proposed legislation.

Background

The proposed legislation would amend current law[1] to exempt from real property taxation the real property described as Lot 5, Square 948 (the "Property") for five years, as long as it continues to be leased by the Old Naval Hospital Foundation (ONHF) and used as a community center. Under the real property tax statute, possessory interest tax applies when a tax-exempt entity, such as ONHF, leases or otherwise conveys a possessory interest in the property to an entity that is not tax-exempt.[2] The intent of this legislation is to exempt the property from possessory interest taxation in all instances where the conveyance is not prohibited by the Ground Lease between ONHF and the District (the "Lease"). In addition, the proposed legislation exempts such conveyance transactions from deed recordation taxes.[3] It would further require the District to forgive and refund any real

[1] D.C. Official Code § 47-1085.
[2] The proposed legislation as currently drafted does not include an exemption from possessory interest tax. The OCFO understands based on conversations with Council staff that the bill will be marked up to include an exemption from possessory interest tax.
[3] The proposed legislation as currently drafted does not include an exemption from the transfer tax. The OCFO understands based on conversations with Council staff that the bill will be marked up to include an exemption from the transfer tax.

property and recordation taxes, interest, penalties, fees, or other related charges that have been assessed to qualifying lessees, grantees, or assignees as a result of conveying the property.

The Office of Property Management (now the Department of General Services) competitively selected ONHF to rehabilitate the dilapidated Civil War-era Old Naval Hospital (Old Naval Hospital), which is located on the Property. In 2010, ONHF entered into a grant agreement with the District, which authorized up to $5.5 million in District funds for the rehabilitation of the Old Naval Hospital. Also in 2010, the ONHF signed the 65-year Lease with the District, which required the ONHF to rehabilitate the Old Naval Hospital and to operate it as the Hill Center, offering various community amenities. The Lease stipulated that ONHF's rehabilitation meet the requirements of the Federal Historic Preservation Tax Incentives Program,[4] and stated an expectation that ONHF would finance the project through this program.[5] The Lease indicated that the District would support OHNF's actions to claim the federal credits.[6]

Financial Plan Impact

Funds are sufficient in the FY 2012 through FY 2015 budget and financial plan to implement the proposed legislation. Both the Grant Agreement and the Lease anticipated that the ONHF would retain its tax exempt status, thus no tax revenue was anticipated from the rehabilitation of the Old Naval Hospital.

Conveyances permitted under the Lease are primarily intended to allow ONHF, a non-profit entity, to benefit from Federal Historic Preservation Tax Credit (HTC) financing through a syndication. In order to take advantage of the HTC, a non-profit normally will set up a pass-through lease structure, in which it will lease the property to a for-profit LLC whose managing member is a for-profit subsidiary of the non-profit parent.

Thus, to comply with the IRS HTC requirements, ONHF created a number of for-profit entities, including one to which ONHF has leased the Property. The Property has therefore become subject to possessory interest and deed recordation and transfer taxes. However, in the absence of ONHF's pursuit of federal subsidy as anticipated by the District, ONHF would continue to be the lease-holder, and the property would be tax exempt under existing District law.

[4] Section 2.1.3 (1) of the Lease executed on December 20, 2011 states that any alternation, restoration, rehabilitation, demolition, or modification of the Property must follow the Secretary of the Interior's Standards for Rehabilitation (U.S. Department of Interior, National Park Service, 1992.) *pp. 14, 15.*
[5] Section 5.15 of the Lease executed on December 20, 2010, pp. 32, 33.
[6] *Ibid.*