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

Natwar M. Gandhi
Chief Financial Officer

MEMORANDUM

TO: **The Honorable Philip H. Mendelson**
Chairman, Council of the District of Columbia

FROM: **Natwar M. Gandhi**
Chief Financial Officer

DATE: **September 19, 2012**

SUBJECT: **Fiscal Impact Statement – "Fiscal Year 2013 Budget Support Technical Clarification Emergency Act of 2012"**

REFERENCE: **Draft bill shared with the Office of Revenue Analysis on September 17, 2012**

Conclusion

Funds are sufficient in the FY 2013 through FY 2016 budget and financial plan to implement the bill.

Background

The bill makes a number of technical corrections to the FY 2013 Budget Support Act of 2012 ("FY 2013 Budget Support Act").[1] Title I of the bill corrects mistakes and addresses the omissions in the FY 2013 Budget Support Act. These include:

- Amending the name of a Subtitle (IV) (C) to read Library Collections Account Amendment Act of 2012. The change was made in earlier drafts of the FY 2013 BSA, but was inadvertently left out of the final circulated version.
- Amend Title IX (D) - Fiscal Year 2012 Capital Project Reallocation Approval Act of 2012 to display the correct total amount in Table A.
- Amends Title VII (M) to clarify that the approved tax exemption would apply for affordable housing projects that are eligible for the low-income housing tax credit provided by Section 42 of the Internal Revenue code.

Title I also offers conforming amendments necessary to implement the FY 2013 BSA including the following:

- Amends District laws regarding property[2] and taxation of property[3] so the requirements of Title VII (M) could be implemented.

[1] Signed by the Mayor on June 22, 2012 (D.C. Act 19-385; 59 DCR 8025).

- Amends District laws regarding withholding of income[4] to conform to the requirements of the standard deduction limitations enacted by the Fiscal Year 2012 Budget Support Act of 2011.[5] These amendments were initially made by the Revised Fiscal Year 2012 Budget Support Technical Clarification Temporary Amendment Act of 2011[6] ("Technical Clarifications Act"), which expired on July 14, 2012.
- Makes permanent amendments to the laws on taxation of sales[7] to ensure that the compensating use tax follows the rates set for general sales tax, and off premise alcohol sales tax. These amendments were initially made by the Technical Clarifications Act.
- Makes permanent the reporting requirements on non-profits and businesses receiving a real property tax exemption or abatement under Chapters 10[8] and 46 of D.C. Official Code Title 47. These reporting requirements were first implemented by the Technical Clarifications Act.
- Repeals the subject to appropriations clause for Families Together Amendment Act of 2010.[9]
- Repeals the subject to appropriations clause for the Adoption Reform Amendment Act of 2010.[10]

Title II of establishes a salary schedule for Commissioners of the Real Property Tax Appeals Commission which will be effective fiscal year 2013.

Title III makes technical corrections to District laws on franchise taxes[11] necessary to implement the combined reporting requirements on multi-jurisdictional businesses. These changes, which would be applicable for tax years beginning after December 31, 2010, include:

- Replacing the term "surety" with "agent" to correctly reflect that an agent has broader duties that a surety, such as filing a return, which a surety would not usually do.[12]
- Clarifying that the definition of corporation includes regular partnerships, and not partnerships that are unincorporated businesses. Also clarifying that the definition of corporations also includes S corporations. This clarification was inadvertently taken out in earlier adopted legislation.
- Clarifies that D.C. Official Code's definition of a "person" includes unincorporated businesses. Also clarifies that a taxpayer in someone who is subject to taxes. The current Code includes in the definition persons who apply for a license, which need not result in tax liability.
- Uses the term "entity" in the definition of "trade or business" to cover both combined reporting and prior consolidated filing situations.

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[2] D.C. Official Code § 42-1102.
[3] D.C. Official Code § 47-902.
[4] D.C. Official Code § 47-1812.08.
[5] Subtitle (VIII) (J) – Standard Deduction Withholding Exclusion Act of 2011 of Fiscal Year 2012 Budget Support Act of 2011, effective September 14, 2012 (D.C. Law 19-21; 58 DCR 6226) requires that employers exclude standard deductions from their withholding calculations, starting January 1, 2012.
[6] Effective December 2, 2011 (D.C. Law 19-53; 58 DCR 8954).
[7] D.C. Official Code § 47-2202.
[8] Excluding property exempt under D.C. Official Code § 47-1002(1), (2), (3), or (21).
[9] Effective September 24, 2010 (D.C. Law 18-228; 57 DCR 6926).
[10] Effective September 24, 2010 (D.C. Law 18-230; 57 DCR 6951).
[11] D.C. Official Code § 47-1801 *et seq.*
[12] D.C. Official Code § 47-1810.06.

- Clarifies that with the enactment of combined reporting, for combined groups, consolidated returns are no longer permitted; these groups can only file the combined return.[13]
- Updates the Code to clarify that the District law does not permit a carry back of net operating losses.[14] This change ensures that combined filers and separate filers are treated the same way.
- Clarifies that for regular partnerships, only distributed, and not unitary income is taxed. It also ensures that income already taxed at the unincorporated business level will not be taxed to the partner at the combined level. This would apply to unincorporated businesses that are owned by corporate partners subject to combined reporting rules. The proposed change would allow for a deduction from partner's income so long as that income is already taxed at the unincorporated business level. This mechanism will also capture income excluded at the unincorporated business level, but subject to tax to the corporate partner. Examples include salary allowances, guaranteed payments and other exemptions or exclusions.
- Simplifies the administration of combined reporting by allowing continuity in the Designated Agent. Current law requires designated agent to be elected annually.
- Clarifies that Subpart F income is excluded from combined reporting. This clarification ensures that separate and combined entities are treated the same way with respect to Subpart F income.
- Clarifies that a taxpayer who inadvertently fails to renew the worldwide election, will not automatically default to another 10 years or worldwide reporting.
- Eliminates references to the International Finance Reporting Standards (IFRS) to ensure that all deductions allowed under current law can be implemented. For example, IFRS does not refer to Financial Accounting Standards 109 (FAS 109), but the District's combined reporting rules allow for a deduction under FAS 109, for the increase in the net deferred tax liability as a result of combined reporting. These amendments anchor combined reporting rules to the Generally Accepted Accounting Principles, which do refer to FAS 109.

Financial Plan Impact

Funds are sufficient in the FY 2013 through FY 2016 budget and financial plan to implement the bill.

Amendments offered in Title I do not have a fiscal impact, since they are all technical clarifications. The subject-to-appropriation repealers also do not have a fiscal impact since the Child and Family Services Agency, which is responsible for implementing the Families Together Amendment Act of 2010 and the Adoption Reform Amendment Act of 2010 can now absorb the costs associated with these acts.

The salary schedule approved in Title II does not have a fiscal impact. The Real Property Tax Appeals Commission must absorb its personnel costs in its approved FY 2013 budget.

The technical changes made to combined reporting requirements under Title III do not have a fiscal impact, since the changes are in agreement with the underlying intent of the bill, which shaped the fiscal impact calculations.

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[13] D.C. Official Code § 47-1805.02.
[14] See D.C. Official Code § 47-1803.03(a)(14)(A).