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# Review and Conference Unit

Presenter:  
Olufemi A. Obikoya, Program Analyst



# Who are We?

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- The Review and Conference Unit ("R&C") is a unit within the Audit Division made up mostly of senior tax auditors and support staff members.



# What is our Mission Statement?

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- The primary function of the Review and Conference unit is to ensure that auditors produce quality audits that accurately reveal the proper amount of tax obligation(s) due to the District in accordance with prevailing auditing standards and applicable tax laws of the District of Columbia.

# What do We Do?

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- In order to fulfill the mandate of our mission statement, we do the following:
  - (a) We review the auditors' work to ensure accuracy and compliance with the District's laws and regulations; and
  - (b) We hold informal conferences between taxpayers and the Audit Division to try and resolve disagreements on the outcome of audits between taxpayers and the Audit Division.



# Audits Review

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- One of the primary functions of our unit is to measure the quality of an examination (with respect to completed cases) and provide accurate data to management for their consideration and action.
- Some of the goals of Audit Reviews are:
  - To express an understanding of the taxpayer's business operation;
  - Identify the manner in which the taxpayer's books and records are kept, e.g. whether on a cash basis, accrual method or hybrid; and
  - Identify the records available.

# Audits Review Cont'd

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- Check the applicable D.C. Official tax code and regulation the auditor relied on;
- Review the auditor's expression of his or her interpretation of the applicable statute(s) and the circumstances;
- Review the manner in which audit findings and work-papers were presented to the taxpayer and/or representative;

# Audits Review Cont'd

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- Check application of the correct tax rate for sales tax cases;
- Check for verification of the estimated tax payments for income and franchise tax cases;
- Review apportionment factors re-calculation for franchise tax audits;
- Check for add-back of bonus depreciation and excess Section 179 deductions for income and franchise tax audits etc.



# Informal Conference

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- The Informal Conference allows an informal conference to be conducted between the taxpayer and the Office of Tax and Revenue (OTR) at the Audit Division at the independent appeal level, which will be the final administrative appeal within OTR, prior to filing with the Superior Court of the District of Columbia. The Office of Administrative Hearings (OAH) is an independent forum for the filing of protests by taxpayers pursuant to the provisions of § 47-4312(a)-(e) of the D.C. Official Code.



# Purpose of the Informal Conference

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- It provides a level of appeal outside the realm of the original decision-maker. It is a forum for the discussion of pertinent tax laws and regulations and their interpretive values and to resolve issues with taxpayers.

# Procedures

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- Once an audit is complete, a Form OTR-111T, Notice of Proposed Audit Changes is prepared by the auditor, signed by the auditor's supervisor, and mailed to the taxpayer. If no response is received within 30 days and after an additional 15 day grace period, a bill or adjusted refund is issued. If the taxpayer agrees and signs a waiver, a final bill or adjusted refund is issued.
- The taxpayer must file a protest within 30 days and request an informal conference with OTR if he/she disagrees with the auditor's findings and conclusion and the Proposed Notice of Audit Changes. Informal conferences are usually conducted by senior tax auditors within the R&C unit.

# Procedures Cont'd

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- Once a case is submitted to the R&C unit, it determines whether additional substantiation is required before an informal conference. If so, the case is returned to the Audit unit.
- Once the case is ready for an informal conference, the informal conference will be scheduled and held by a conferee from the R&C unit with the auditor in attendance, if necessary.
- If the taxpayer reaches an agreement with the conferee, an informal conference report is issued and the case returned to the audit unit for final processing and closure.
- A settlement agreement (via a closing agreement) may also be negotiated at the review and conference level, and once signed by both parties, it will be returned to the audit unit.

# Procedures Cont'd

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- If the taxpayer does not agree with the decision rendered by the R&C unit, an informal conference report is issued and a Form 112T "Notice of Assessment of Tax Deficiency" is mailed to the taxpayer.
- It is important to mention at this point that pursuant to the provisions of Section 47-4312(a) of the D.C. Official Code, the Mayor (via OTR) is required to send the taxpayer a proposed assessment before a final assessment of a deficiency, interest, and penalties; if applicable, is assessed against a taxpayer.

# Procedures Cont'd

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- If the taxpayer still disagrees and protests within 30 days, the informal conference report and the case-file are sent to the Office of Administrative Hearings (OAH) for a final, administrative appeal.
- The OAH then schedules and conducts the final appeal and issues a letter of determination.
- If the OAH confirms the determination of the R&C unit, it issues a letter and the case returns to the R&C unit.
- If the OAH denies or adjusts the determination of the R&C unit, it issues a letter, and the case returns to the R&C unit.

# Procedures Cont'd

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- The R&C unit then returns the case to the auditor to make any necessary changes and to issue a bill or reduced refund.
- The taxpayer now has six (6) months, from the date of the billing, to pay the tax, penalty, and updated interest before filing a petition with the Superior Court of the District of Columbia.
- If a reduced refund is issued, the taxpayer must file a claim for refund, and the OTR will immediately issue a denial letter. Then, the taxpayer has six (6) months from the date of the refund to petition the Superior Court of the District of Columbia.

# Procedures Cont'd

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- Also, within 30 days after a Form OTR-111T, Notice of Proposed Audit Changes, is sent to a taxpayer, instead of requesting an informal conference with the R&C unit, a taxpayer has the option of filing a protest with the OAH.
- Or, after receiving a final assessment (tax, interest and penalty) from OTR, a taxpayer may file a petition with the Superior Court of the District of Columbia directly. However, the taxpayer must first pay the assessed tax plus interest and penalty; if applicable and then petition the court for a refund.

# The Voluntary Disclosure Agreement ("VDA") Program

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- The District's VDA program was designed to encourage taxpayers who are not in full compliance with their tax obligations to the District to come forward on their own.
- In order to be eligible to participate in the program, the taxpayer must come forward on his her own and must not have been contacted by either OTR or any of its representatives and/or agent(s) regarding any tax liabilities.
- The taxpayer must then file all returns or spreadsheet documentation that are due and pay the tax and interest. OTR will waive civil penalties.
- It is important to note that if a taxpayer has been contacted by OTR or any of its representatives and/or agent (s), then the taxpayer is not eligible to participate in the voluntary disclosure program.

# Procedures Cont'd

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- To date, the program has generated approximately \$47 million for the District; at a yearly average of approximately \$5.2 million.
- In today's challenging economic environment and in light of dwindling revenues for several states and jurisdictions, it is important to note that several states are now scrambling to put similar voluntary tax disclosure programs in place.

# Procedures Cont'd

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- On December 16, 2008, several local newspapers reported that several states such as: New York, Connecticut, and Massachusetts either have a tax amnesty program under way or are in the process of drafting one.
- One of the arguments in favor of establishing a program like the voluntary disclosure program is that it brings taxpayers on our tax rolls for a limited number of past years which then continues to future years.
- However, there are others who argue that establishing such a program rewards tax cheaters and bad behavior.



# Revenue Protection Unit

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Presenter:

Michael Farinha, Supervisory Tax Auditor

# Revenue Protection

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- In existence for approximately seven years – OTR will continue to monitor:
  - Schedule A
  - EITC
  - Schedule C
  - Schedule E
  - Other supporting schedules/documentation



# Revenue Protection

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- Case Selection
- Automated
- Non automated



# Revenue Protection

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- Standard Letter-21
- Mailed to taxpayer requesting information concerning Schedule A or Schedule C
- Taxpayers have 15 days to respond and submit documentation or indicate documentation not available.



# Revenue Protection

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- Documentation Submitted
- Match documentation with Tax Return (case file)
- Examine taxpayer's documentation and tax return and determine tax liability (adjustments)
- Notify taxpayer of proposed adjustments



# Revenue Protection

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- No documentation submitted
- Perform computation for correspondence cases (automated) if no response within 30 days taxpayer will be issued a reduced refund or assessed.
- Notify taxpayer of computations (adjustments) by sending certified letter containing notice of proposed audit changes and appeal rights.



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# Internet Cigarette Sales/Jenkins Act

Presenter:

Vanessa Faulkner, Supervisory Tax Auditor



# Internet Cigarette Sales

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- The Office of Tax and Revenue, Audit Division is responsible for the enforcement of cigarette taxation in the District of Columbia pursuant to DC Code Title 47, Chapter 24. In addition to the collection of cigarette excise tax, the Audit Division's objective is to discourage the sale of illegal cigarettes in the District of Columbia through on-site audits and to encourage voluntary compliance.

# Internet Cigarette Sales

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- The District of Columbia imposes an excise tax on the sale or possession of all cigarettes in the District at a rate of ten cents for each cigarette (\$2 for a pack of 20 cigarettes and \$2.50 for a pack of 25 cigarettes).
- The payment of the tax shall be evidenced by stamps purchased from the District of Columbia Office of Finance and Treasury. Each licensed wholesaler is required to affix these stamps evidencing payment of the tax to each original package of cigarettes sold in the District of Columbia. Cigarette stamps can only be affixed to cigarettes whose brands are included in the DC Tobacco Directory.
- The excise tax is paid by the cigarette wholesaler and passed on to the consumer. The consumer pays the excise tax as part of the purchase price charged by the District retailer. In addition, the consumer must pay a sales tax of 5.75% for the purchase of cigarettes in the District of Columbia.

# Internet Cigarette Sales

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- As a result of the rise in cigarette prices at retail stores, consumers have turned to the Internet to find cheaper alternatives. The cheaper cigarette prices offered by these websites occur in part due to the avoidance of taxes.
- Internet vendors are able to sell cigarettes cheaper since they avoid the collection of state and/or federal cigarette excise taxes. These websites that sell cigarettes can be grouped into three categories: 1) sites that sell from low-excise tax states 2) sites that sell from Native American land purported to be exempt from the application of state excise tax and 3) sites that sell cigarettes for non-U.S. markets but ship into the U.S. without the consent of the manufacturer.



# Internet Cigarette Sales

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Although there are no specific federal laws requiring the collection of taxes from Internet vendors, there is a federal law that requires vendors who sell cigarettes across state lines to report the transaction to the state taxing authorities.

# Internet Cigarette Sales

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Under the Jenkins Act (15 U.S.C. §375-378), the cigarette vendors who sell and ship cigarettes across state line to a buyer other than a licensed distributor are required to report:

(1) the name and address of the person (s) to whom cigarette shipments were made;

(2) the brands of cigarettes shipped; and

(3) the quantities of cigarettes shipped. Reports must be filed with a state's tobacco tax administrator no later than the 10th day of each calendar month covering every cigarette shipment made to the state during the previous month. The seller must also file a statement with the state's tobacco tax administrator listing the seller's name and trade name (if any) and the address of all business locations. Failure to comply with this act will result in a misdemeanor offense, and the violators are to be fined not more than \$1,000 or imprisoned not more than 6 months, or both. Compliance with this federal law enables states to collect excise tax from consumers.

# Internet Cigarette Sales

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- In the District of Columbia, consumers who purchase unstamped packages of cigarettes from sellers on the Internet, by mail order or by phone are liable for the excise tax on their purchases.
- In addition, the consumer must file a Form FR-329: Consumer Use Tax on Purchases and Rental to remit the applicable use tax on purchases for which the consumer did not pay sales tax.
- This return is required to be filed by April 15th. The penalty charged for failure to pay any tax due on time is 5% per-month, not to exceed 25%. Also, the consumer will be charged interest of 10% per year, compounded daily on any tax not paid on time.
- Please be advised that failure to file and remit payment for the excise and use tax owed will result in the Office of Tax and Revenue issuing a bill for the assessment of the aforementioned taxes, including applicable penalties and interest.