

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF THE CHIEF FINANCIAL OFFICER  
OFFICE OF TAX AND REVENUE



**DO 2013-01**  
March 22, 2013

**District of Columbia Declaratory Order  
Regarding District of Columbia Qualified High Technology Company Status**

This Declaratory Order is issued pursuant to Title 9, chapter 42 of the District of Columbia Municipal Regulations.

**ISSUE**

Whether the Petitioner, considering its sales and services and its proposed DC office, would meet the eligibility requirements for a Qualified High Technology Company under D.C. Code Ann. §47-1817.01(5)(A) entitling the Petitioner to the benefits outlined in D.C. Code Ann. §47-2001 (n)(2)(G) and D.C. Code Ann. §47-1817.06(a)(1).

**FACTS**

The Petitioner provides information technology infrastructure services via the internet to customers. The Petitioner is a for profit entity. The services allow customers to access applications, platforms, server bandwidth, and storage capacity through the internet without having to spend capital purchasing their own servers, employing their own information technology support staff, or buying real estate to house their own servers.

The Petitioner's flagship services are the Service A and the Service B. Both services are accessed via the internet. The Service A service allows customers to store their information in data centers located across the globe, both uploading and retrieving data securely via the internet. The Service B service allows customers to remotely access the computing power of data centers to do any computing action an on-premises server could do. Customers use the computing power to run applications, process data, host websites, and perform many other functions. The Petitioner also offers a variety of other internet-based services with similar functionality to Service A and Service B. These other services allow customers to create and manage, through the internet, databases of information, their email infrastructure, their software applications, and to efficiently distribute content over the web. The Petitioner derives over 51% of its revenue from the sale of Service B, Service A, and all other internet-based services.

The Petitioner is headquartered and also has offices outside the District. While the Petitioner does not own any data centers, it does utilize large and small data centers to provide its services. Those data centers are owned by affiliated entities and are also located outside of the District of Columbia.

The Petitioner is proposing to establish a sales office in the District of Columbia. The office would be leased by an affiliated entity which is likely not a QHTC, but would be staffed by the Petitioner personnel. At a minimum, the sales office would employ two or more sales team members and support staff.

Employees of the proposed office would engage in sales and marketing related tasks such as phoning or visiting businesses, creating marketing collateral, showing prospective customers how they can use the Petitioner, and negotiating special pricing or terms and conditions that may differ from the standard online customer agreement. The goal of the sales team is to have customers sign up for an account whereby they can start requesting services on an as-needed basis in the future. No specific services would be requested from the sales office employees as those requests are sent to data centers through the internet after a customer has signed up for an account.

## **ANALYSIS**

In order for an entity to qualify as a DC QHTC, it must meet the following requirements as provided in D.C. Code Ann. §47-1817.01(5):

- Be an individual or entity organized for profit and maintaining an office, headquarters, or base of operations in the District of Columbia;
- Have 2 or more employees in the District; and
- Derive at least 51% of its gross revenues earned in the District from:

(I) Internet-related services and sales, including website design, maintenance, hosting, or operation; Internet-related training, consulting, advertising, or promotion services; the development, rental, lease, or sale of Internet-related applications, connectivity, or digital content; or products and services that may be considered e-commerce;

(II) Information and communication technologies, equipment and systems that involve advanced computer software and hardware, data processing, visualization technologies, or human interface technologies, whether deployed on the Internet or other electronic or digital media. Such technologies shall include operating and applications software; Internet-related services, including design, strategic planning, deployment, and management services and artificial intelligence; computer modeling and simulation; high-level software languages; neural networks; processor architecture; animation and full-motion video; graphics hardware and software; speech and optical character recognition; high-volume information storage and retrieval; data compression; and multiplexing, digital signal processing, and spectrum technologies;

(III) Advanced materials and processing technologies that involve the development, modification, or improvement of one or more materials or methods to produce devices and structures with improved performance characteristics or special functional attributes, or to activate, speed up, or otherwise alter chemical, biochemical, or medical processes. Such materials and technologies shall include metal alloys; metal matrix and ceramic composites; advanced polymers; thin films; membranes; superconductors; electronic and photonic materials; bioactive materials; bioprocessing; genetic engineering; catalysts; waste emissions reduction; pharmaceuticals; and waste processing technologies;

(IV) Engineering, production, biotechnology and defense technologies that involve knowledge-based control systems and architectures; advanced fabrication and design processes, equipment, and tools; or propulsion, navigation, guidance, nautical, aeronautical and astronautical ground and airborne systems, instruments, and equipment. Such technologies shall include: computer-aided design and engineering; computer-integrated manufacturing; robotics and automated equipment; integrated circuit fabrication and test equipment; sensors; biosensors; signal and image processing; medical and scientific instruments; precision machining and forming; biological and genetic research equipment; environmental analysis, remediation, control, and prevention equipment; defense command and control equipment; avionics and controls; guided missile and space vehicle propulsion units; military aircraft; space vehicles; and surveillance, tracking, and defense warning systems; or

(V) Electronic and photonic devices and components for use in producing electronic, optoelectronic, mechanical equipment and products of electronic distribution with interactive media content. Such technologies shall include microprocessors; logic chips; memory chips; lasers; printed circuit board technology; electroluminescent, liquid crystal, plasma, and vacuum fluorescent displays; optical fibers; magnetic and optical information storage; optical instruments, lenses, and filters; simplex and duplex data bases; and solar cells.

The Petitioner is an entity organized for profit and proposes to open an office in the District employing at least 2 employees in the DC office to gain a larger customer base in the District. The Petitioner's proposed sales office and staffing plan meet the criteria of D.C. Code Ann. §47-1817.01(5)(A)(i)&(ii).

The Petitioner purports that more than 51% of its DC revenues will derive from information technology infrastructure services via the internet to customers using their Service A, Service B and other services. the Petitioner's sales of Service A, Service B, and other services qualify as internet-related services and/or information technologies for purposes of meeting the 51% threshold provided for in D.C. Code Ann. §47-1817.01(5)(A)(iii).

Additionally a QHTC cannot be:

- an individual or entity that derives 51% or more of its gross revenues from the operation in the District of:

(I) A retail store; or

(II) An electronic equipment facility that is primarily occupied, or intended to be occupied, by electronic and computer equipment that provides electronic data switching, transmission, or telecommunication functions between computers, both inside and outside the facility;

- A professional athletic team, as defined in D.C. Code Ann. § 47-2002.05(a)(3); or
- A business entity located in the DC Ballpark TIF Area, as defined in D.C. Code Ann. § 2-1217.12a(a).

The Petitioner provides that they are not deriving 51% of their sales from a retail store nor an electronic equipment facility primarily occupied by data switching, transmission or telecommunication electronic and computer equipment. Nor are they a profession athletic team or a business entity in the Ballpark TIF area.

The Petitioner purports that they would be earning more than 51% of its income from qualifying activities and that 51% of its DC income will be earned from QHTC qualifying activities. If it meets these requirements in operation, the Petitioner will be a QHTC certified after January 1, 2012. Thus, under D.C. Code Ann. § 47-1817.06(a)(2)(A)(ii), it will not be subject to the franchise tax for the lesser of \$15million or for the first five years that the QHTC has taxable income. It will also be exempt from collecting DC sales tax under D.C. Code Ann. § 47-2001(n)(2)(G) and from paying DC sales tax on purchases under D.C. Code Ann. § 47-2005(29).

This DO is based on the proposed facts provided in your request. This order shall be binding between the Chief Financial Officer and the petitioner on the stated facts alleged unless such order is altered or set aside by a court. The declaratory order shall be binding as to a transaction in reliance upon the declaratory order, unless a change in the legal basis of the declaratory order is made by statute, regulation, or judicial decision after the issuance of the declaratory order and before any affected transaction.

No opinion is expressed or implied concerning the tax treatment of any item discussed in this declaratory order except as expressly stated herein. This DO does not have the force and effect of law and can be relied on only by the taxpayer who requested it.