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

December 16, 2015

OTR NOTICE 2015-09

D.C. COURT OF APPEALS DECISION IN NBC SUBSIDIARY WRC-TV, LLC V. DISTRICT OF COLUMBIA

In *NBC Subsidiary WRC-TV, LLC v. District of Columbia Office of Tax and Revenu*e, No. 14-AA-174 (D.C. 2015), the D.C. Court of Appeals affirmed a ruling by the Office of Administrative Hearings which held that WRC-TV, a broadcast television station which received a majority of its income from advertisements, was not a Qualified High Technology Company (QHTC).

To qualify as a QHTC, a company must meet certain statutory requirements, including the requirement that the company derive at least 51% of its gross revenues from certain enumerated high technology activities. The Office of Tax and Revenue (OTR) argued before OAH and on appeal that WRC-TV did not derive at least 51% of its revenue from high technology activities, but derived its revenue mostly from advertising.

In holding in favor of OTR, the Court of Appeals gave deference to OTR's interpretation of a statute it administers, finding the QHTC statute to be ambiguous and OTR's interpretation to be reasonable. Under its interpretation, OTR found that the statute required a much closer nexus between the listed activities and a QHTC's revenues than the mere use of high technology and systems to transmit television programming. In particular, OTR interpreted the statute to grant the preferential tax treatment only to companies engaged in the development and marketing of high technology systems. In agreeing with OTR, the Court too drew a distinction between companies who develop technology, and those who simply use technology.

Further, the Court was persuaded by OTR's analysis of the legislative history of the QHTC statute—the fiscal impact statement related to the original bill referred to a report that would exclude broadcast companies like WRC-TV from QHTC classification.