

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



OTR TAX NOTICE 2007-2

November 29, 2007

**GUIDANCE ON APPLICATION FOR EXEMPTION FROM DISTRICT OF
COLUMBIA FRANCHISE, SALES AND USE, AND PERSONAL PROPERTY
TAXES**

Nonprofit organizations intending to conduct activities in the District of Columbia that may subject them to liability for franchise, sales and use, or personal property taxes are advised to submit an application for exemption from these taxes no later than the time that those activities commence.¹

An Application Is Required to Obtain an Exemption

Under District law, a determination of exempt status by the Internal Revenue Service (“IRS”) does not by itself confer exemption from these taxes. Applicable exemptions from District of Columbia taxes must be secured from the Office of Tax and Revenue (“OTR”). The statutes governing each of these taxes provide that an organization cannot claim the available exemptions from these taxes unless the organization first obtains a letter (in the case of the franchise and personal property taxes) or a certificate (in the case of the sales and use taxes) from OTR stating that it is entitled to an exemption. D.C. Code secs. 47-1508 (personal property tax); 47-1802.01 (franchise taxes); 47-2005(3) (sales and use taxes). It should be noted that the tax exemptions conferred by these statutes generally apply only with respect to activities in furtherance of an organization’s exempt purposes, and no exemption is provided with respect to business activities that are not related to an organization’s exempt purposes. Such unrelated business activities remain subject to tax.

Application Procedures

In order to apply for exemption from these taxes, an organization must submit Form FR-164 to OTR. Filing instructions are provided with the form, which is available through OTR’s Taxpayer Service Center. If an application is hand-delivered to an OTR unit authorized to receive the filing, it is considered filed on the date shown by the OTR date stamp placed on the filing. If a properly addressed application is delivered to OTR by mail or private delivery service, it is considered filed on the postmark date shown on the envelope or wrapper. If a properly addressed application is received by OTR via facsimile, it is considered filed on the date that the facsimile is received by OTR.

¹ This notice does not address the process of securing exemption from real property or other District taxes.

Because an exemption cannot take effect prior to the filing of the application, and because OTR encourages prompt filing of the application, OTR will accept applications submitted before a determination of exempt status is made by the IRS. Consequently, the Form FR-164 may be filed immediately after the Department of Consumer and Regulatory Affairs issues a certificate of incorporation with respect to a domestic corporation. OTR's practice in these cases is to hold the application pending submission of the IRS determination letter and to process it once all required information is received. While an application is pending, OTR may periodically verify that the applicant is continuing to seek an IRS determination of its exempt status.

Effective Date of Exemption

For franchise tax purposes, the exemption, if granted, is generally effective from the date Form FR-164 is filed. The exemption may take effect at a later date if OTR determines that the organization did not qualify for the exemption during a portion of the period following the filing of the Form FR-164, as generally would be the case if the IRS limits the retroactive effect of its own determination of an organization's exempt status.

The sales and use tax exemption, if granted, becomes effective when the exemption certificate is issued.

The personal property tax exemption, if granted, becomes effective on the July 1 following the date of the filing of Form FR-164.

Procedure for Organizations That Do Not Promptly File an Application

OTR encourages any organization that has commenced activities in the District, or that has become liable for franchise, sales and use, or personal property tax prior to filing an application for exemption, to promptly file Form FR-164 so as to help forestall the accumulation of additional tax liability. OTR has instituted a Voluntary Disclosure Program under which noncompliant taxpayers are permitted to pay certain tax liabilities and interest without imposition of civil penalties. An organization that has delayed filing an application for exemption, but that has not been contacted by OTR or its representatives, should consider entering this program to clear outstanding liabilities.