

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



OTR TAX NOTICE 2008-04

NOTICE OF PROPOSED RULEMAKING

The Office of Tax and Revenue (OTR), pursuant to the authority set forth in the D.C. Official Code § 1-204.24c, as amended by Section 155 of the District of Columbia Appropriations Act 2001, approved November 22, 2000 (114 Stat. 2476; Pub. L. 106-522) and the Office of the Chief Financial Officer, Financial Management and Control Order No. 00-5, effective June 7, 2000, hereby gives notice of its intent to adopt proposed Ballpark Sales Tax regulations. Upon adoption as final regulations, these rules will add new section 496 to Chapter 4, SALES AND USE TAXES, of Title 9 of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

The proposed regulations provide rules under Chapter 20 of Title 47 of the DC Official Code interpreting the Ballpark Sales Taxes imposed by the Ballpark Omnibus Financing and Revenue Act of 2004, approved by the Mayor on December 29, 2004 (“Act”) as they apply to public events including baseball games, baseball-related events and exhibitions performed at the new Ballpark (“Ballpark”).

OTR previously published proposed regulations on May 6, 2005, interpreting the Ballpark Sales Taxes as they applied to professional baseball games and related activities performed at Robert F. Kennedy Stadium (“RFK”). However, there are some differences in the statutory requirements for events at the new Ballpark and for those at RFK as well as differences in the lease for the new Ballpark that makes new regulations necessary.

Those differences are that there is (a) a 10% Ballpark Sales Tax on tickets for all non-exempt public events at the Ballpark rather than just on tickets for professional baseball games and baseball-related events and exhibitions at RFK; (b) a 12% Ballpark Sales Tax on parking that reasonably relates to all baseball games or baseball-related events or exhibitions (whether amateur or professional) performed at the Ballpark rather than just on parking during professional baseball games and professional baseball-related events or exhibitions (“Professional Baseball Times”) at

RFK; (c) a 10% Ballpark Sales Tax on certain food, drink, and alcoholic beverages sold for consumption at the Ballpark during such times as reasonably relate to **all** baseball games or baseball-related events or exhibitions (whether amateur or professional) performed at the Ballpark (“Baseball Times”) rather than just on these items during Professional Baseball Times at RFK; (d) a 10% Ballpark Sales Tax on otherwise taxable, non-parking services (which now include certain telephone, repair, and real property maintenance and landscaping services) performed at the Ballpark during Baseball Times; and (e) a 10% Ballpark Sales Tax on sales of tangible property (other than food, drink, and alcoholic beverages) at the Ballpark which may now include commodities, such as electricity, natural gas, and heating oil in addition to souvenirs rather than just on souvenirs sold during Professional Baseball Times at RFK.

Interested parties may comment on these proposed regulations by submitting written comments (a signed original and two copies) within thirty (30) days after the date of publication of this notice in the D.C. Register, to Michael J. Cooper, Chief Counsel with the Office of the General Counsel, Office of Tax and Revenue, Attn: Michael Cooper, 941 North Capitol Street, NE, Suite 810, Washington, DC 20002.

The principal author of these regulations is Michael Cooper (202) 442-6510. However, other personnel from OTR and the Office of the General Counsel at OTR participated in their development.

The following new section 496, **BALLPARK SALES TAXES UNDER PERMANENT BASEBALL ACT**, is added to Chapter 4 of Title 9 DCMR:

SECTION 496- BALLPARK SALES TAXES (PERMANENT BASEBALL ACT)

DISTRICT OF COLUMBIA MUNICIPAL REGULATIONS

TITLE 9 TAXATION AND ASSESSMENTS

CHAPTER 4 – SALES AND USE TAXES

496.1 In general. The regulations in this section apply for purposes of the Ballpark sales taxes described in section 110 of the Ballpark Omnibus Financing and Revenue Act of 2004 (“Act”).

Question 1: What does the term “Ballpark” mean under the Act?

Answer 1: For the calendar year 2008 and thereafter, the term “Ballpark” means the stadium constructed on the site described in D.C. Official Code § 47-2002.05(a)(1)(B), the facilities constructed on the site that are part of or physically connected to that stadium, the parking facilities, and the facilities and improvements on that site that provide service vehicle and fan access.

496.2 Ticket Sales Under the Act for the Ballpark.

Question 1: What is the total rate of Ballpark sales tax imposed on tickets sold for any public event held at the Ballpark?

Answer 1: District law, as amended by the Act, imposes a total sales tax of 10% on the gross receipts derived by any person from ticket sales to any public event held at the Ballpark unless exempted under D.C. Code § 47-2001 (n)(1)(H). This total sales tax of 10% (“the 10% sales tax”) is the sum of the general sales tax of 5.75% imposed by D.C. Official Code §47-2002, plus an additional sales tax of 4.25%. D.C. Official Code § 47-2002, 2002.05(b),(d)(2).

Question 2: Who qualifies as a “person” referred to in Answer 1?

Answer 2: A person referred to Answer 1 is (a) any individual, trust, estate, partnership, association, company, corporation, or other entity that sponsors a public event to be performed at the Ballpark (“Sponsor”), and (b) any such person other than the Sponsor (whether related or not) that is engaged or allowed by the Sponsor to sell tickets to that event (including an agent or independent contractor) and any sub-agent or independent contractor thereof. Thus, the obligation to collect the 10% sales tax applies, for example, whether the sale takes place at a box office or over the phone or on the Internet and whether the seller is a professional baseball team or is an agent selling on behalf of such a team.

Question 3: Under the Act, what is a public event that is performed at the Ballpark for purposes of D.C. Mun. Regs., Title 9, §496 (2008)?

Answer 3: A public event performed at the Ballpark includes baseball games, baseball-related events and exhibitions, Special Events, and Commission Events.

Question 4: What is a Special Event or a Commission Event for purposes of D.C. Mun. Regs., Tit. 9, §496 (2008)?

Answer 4: A Special Event is performed pursuant to a Rental Promotion Agreement (“RPA”) promoted or managed by third parties under a contract with the Washington Nationals (the “Team”), as described in Section 2.3(b) of the Lease Between the D.C. Sports and Entertainment Commission (“Commission”) and Baseball Expos, L.P., dated March 6, 2006 (the “Lease”). A Special Event does not include a baseball game or a baseball-related event or exhibition even if performed pursuant to an RPA.

A Commission Event is an event described in Section 8.2 of the Lease that is sponsored, promoted, or facilitated by the Commission. However, it does not include a baseball game or baseball-related event or exhibition even if sponsored, promoted, or facilitated by the Commission.

Question 5: Does the 10% sales tax apply to ticket sales made by the Team or the Commission to a person that intends to resell those tickets at retail to third parties?

Answer 5: Yes. D.C. Official Code § 47-2002.05(b) and (d)(2) requires the Team, the Commission, or any other person described in Answer 2, to collect the tax on the gross receipts that it derives from selling tickets to any public event at the Ballpark, regardless of whether the tickets are sold to a person who resells the tickets to another person. Therefore, D.C. Official Code §47-2001(n)(1) (which exempts from sales tax certain sales of tangible personal property intended for resale) does not apply to the above sales.

Question 6: Assume the Team contracts with an agent to sell baseball tickets to the public on the Team's behalf. The agent does not acquire title to the tickets. Assume the agent sells a baseball ticket for a total of \$110, which includes \$10 of sales tax, and pays the \$110 to the Team. How much of the \$110 received by the Team from the agent is subject to sales tax?

Answer 6: Under District law the \$10 of tax is not subject to sales tax. D.C. Official Code §47-2001(p)(2)(D). Thus, the Team must pay a 10% sales tax only on the \$100 and must pay to the District the \$10 of sales tax received from the agent.

Question 7: Assume the same facts as in question 6, except that the Team pays the agent a commission in exchange for the agent's services. Does District law levy the 10% sales tax on the total gross receipts from ticket sales made by the agent or on those receipts less the commission paid to the agent?

Answer 7: District tax regulations provide that discounts allowed to a sales agent as compensation for ticket sales are selling expenses. Therefore, the Team cannot deduct discounts and similar compensation in determining the amount of gross receipts subject to sales tax. See D.C. Mun. Regs. tit. 9, §430.4 (1998). Thus, District law levies the 10% sales tax on the total gross receipts derived by the Team from the sale of the tickets without any reduction for the agent's commission.

Question 8: Assume that the agent has a contract with the Team to sell tickets and to receive a 5% commission from the Team on the gross receipts from the sale. For purposes of calculating the agent's commission, gross receipts from the sale of the tickets do not include the tax included in the price of the tickets. The agent sells the tickets for a total price of \$110 which includes \$10 of sales tax (10% of \$100). The agent retains \$5 as its commission (5% of \$100) and pays \$105 to the Team. What are the total gross receipts subject to the sales tax, and how much sales tax must be paid by the Team?

Answer 8: The total gross receipts subject to the 10% sales tax are \$100, and therefore, the Team must pay \$10 (10% of \$100) of sales tax to the District.

Question 9: Assume the same facts as in Question 8, except the agent conducts no business and has no physical presence in the District. Are the ticket sales made by the agent under these facts still subject to the 10% sales tax?

Answer 9: Yes. The agent's activities are imputed to the Team which does have a physical presence in the District. The Team will be responsible for that tax as the principal.

Question 10: Assume the Team licenses to a corporation a private suite containing ten seats at the Ballpark for the Major League Baseball ("MLB") season at a cost of \$30,000. As a condition of the license, the Team requires that the corporation buy season tickets for the ten seats at a cost of \$81,000 (\$100 face value per ticket x 10 seats x 81 games). On what amounts does District law impose the 10% tax on tickets?

Answer 10: The 10% sales tax on tickets applies only to the \$81,000. No sales tax applies to the remaining \$30,000 of gross proceeds because that amount is not paid for the right to enter the Ballpark. See D.C. Official Code § 47-2002.05(a)(4) (defining the term "ticket"). Instead, the \$30,000 is for the long-term right to use real property, the suite. District law only imposes sales tax on the proceeds from leases of "tangible personal property," not real property. See D.C. Official Code §47-2001(n)(1)(F).

Question 11: Assume the same facts as in question 10, except the Team licenses to a corporation a private suite at the Ballpark for a flat fee of \$111,000. In addition to obtaining the use of the suite, the payment of that fee entitles ten individuals designated by the corporation to be admitted to the Ballpark for each game during the MLB season? Does the term "ticket" include the right to enter the Ballpark as a result of licensing a private suite at the Ballpark?

Answer 11: Yes. D.C. Official Code § 47-2002.05 (a)(4). The 10% sales tax on ticket sales applies to that portion of the gross receipts received by the Team from selling, leasing, or licensing private suites at the Ballpark that are attributable to the face value of the admission tickets for seats in those suites.

For example, assume that the face value of an admission ticket for a seat in that suite is \$100 per game. Since the Team will play 81 home games at the Ballpark during the regular season, the amount of gross receipts subject to the 10% sales tax will be \$81,000 (10 seats x \$100 per game x 81 games). The Team would collect and pay over this sales tax to the District. No sales tax applies to the remaining \$30,000 of gross proceeds because those proceeds are not paid for the right to enter the Ballpark.

Question 12: On what amount is the 10% tax on the sale of baseball tickets imposed if the face value of the admission tickets for seats in a private suite is substantially below an arm's length sales price?

Answer 12: If the face value of the admission tickets for seats in a private suite is substantially below an arm's length sales price, the Office of Tax and Revenue ("OTR") shall increase the portion of the total gross receipts received for the private suite that is attributable to the seats to reflect an arm's length price on which the 10% sales tax will be imposed.

Question 13: When does the 10% sales tax imposed by District law begin to apply to sales of tickets to public events at the Ballpark?

Answer 13: The 10% sales tax on tickets applies to any tickets sold for public events that are held at the Ballpark during the calendar year 2008 and thereafter unless exempted under D.C. Code § 47-2001(n)(1)(H).

496.3 Sales of Tangible Personal Property and Services at the Ballpark Under the Permanent Baseball Act.

Question 1: What Ballpark sales tax applies to gross receipts from sales by any person of parking or storing motor vehicles ("parking") during such times as reasonably relate to the performance of baseball games or baseball-related events and exhibitions at the Ballpark.

Answer 1: The rate is 12% on sales of such parking including valet parking services. D.C. Official Code §§47-2002(1), 2002.05(d)(4).

Question 2: What Ballpark sales taxes apply to gross receipts from sales at the Ballpark by any person of (a) services enumerated in D.C. Code § 47-2001(n)(1) other than parking ("other enumerated services"), (b) food and drink prepared for immediate consumption ("food and drink") at the Ballpark, (c) beer, wine, and spirituous or malt liquors ("alcoholic beverages") sold for consumption at the Ballpark, and (e) tangible personal property other than the above food and drink and alcoholic beverages ("other tangible personal property"), during such times as reasonably relate to the performance of baseball games or baseball-related events and exhibitions at the Ballpark.

Answer 2: 10% on sales of other enumerated services at the Ballpark, 10% on sales of food and drink at the Ballpark, 10% on alcoholic beverages consumed at the Ballpark, and 10% on sales of other tangible personal property at the Ballpark. D.C. Official Code §§47-2002(3)(A)-(B), 2002.02(2)(A-B), 2002.05(c). The total sales tax of 10% ("the 10% sales tax") on sales of other enumerated services and on sales of other tangible personal property is the sum of the general sales tax of 5.75% imposed by D.C. Official Code §47-2002, plus an additional sales tax of 4.25%. D.C. Official Code § 47-2002, 2002.05(c),(d)(3).

Question 3: When are services described in Question 2 considered sold at the Ballpark for purposes of the Act?

Answer 3: Services are considered sold at the Ballpark for purposes of the Act when those services are performed at the Ballpark.

Question 4: Do the rates in Answers 1 and 2 apply to sales only on days when baseball games or baseball-related events or exhibitions are scheduled at the Ballpark, or do they also apply to any other days that reasonably relate to such games, events, or exhibitions at the Ballpark?

Answer 4: These rates apply to sales of the items described in Questions 1 and 2, on or after March 30, 2008, during such times that reasonably relate to the performance of baseball games or baseball-related events or exhibitions at the Ballpark.

Question 5: When are sales of the items described in Questions 1 and 2 considered to be reasonably related to the performance of baseball games or professional baseball-related events and exhibitions at the Ballpark?

Answer 5: Whether or not these sales are considered reasonably related to baseball games or baseball-related events and exhibitions performed there is a factual question. In general, except for sales of parking described in Question 22 below, such sales reasonably relate to the performance of baseball games or baseball-related events and exhibitions at the Ballpark if made: (a) on any day during the Major League Baseball (“MLB”) season, and (b) on any day in the off-season that a baseball game or baseball-related event or exhibition is held at the Ballpark. However, other enumerated services performed at the Ballpark during the off-season that are necessary or desirable to permit the performance of such games, events, or exhibitions there, even if done in the off-season, are sales of services reasonably related to such baseball games and baseball-related events or exhibitions. Examples would include real property maintenance services performed on the baseball diamond or the outfield grass.

Question 6: What is the MLB season, and what is the off-season?

Answer 6: The MLB season begins on the earliest day of the calendar year on which the first regular season game is scheduled to be played by any MLB team. The season ends immediately after the last day that any regular season game is played by a MLB team during that year. If the Team qualifies for post-season play, the MLB season shall continue until the day after the Team completes post-season play. However, the MLB season does not include any day on which a Special Event or Commission Event is performed at the Ballpark, provided that no professional baseball game is also scheduled to be played at the Ballpark on that day.

The off-season includes any day during the year that is not part of the MLB season.

Question 7: Under the Act what do the words “baseball games” performed at the Ballpark mean for purposes of D.C. Mun. Regs., Tit. 9, §496 (2008)?

Answer 7: Baseball games include Team home games during the regular MLB season, post-season games, All-Star games, spring training games, and exhibition games performed by professional baseball teams at the Ballpark. They also include baseball games performed at the Ballpark by non-professionals.

Question 8: Under the Act what does the phrase “baseball-related events or exhibitions” at the Ballpark mean for purposes of D.C. Mun. Regs., Tit. 9, §496 (2008)?

Answer 8: Baseball-related events or exhibitions at the Ballpark include (a) Team practices that are open to the public; (b) theme events organized by the Team’s fans or sponsors related to baseball; (c) Team-sponsored baseball, baseball clinics, fan-related events or activities; and (d) similar occurrences related to amateur or college baseball sponsored by persons other than the Team.

Question 9: What sales of other tangible personal property at the Ballpark during such times as reasonably relate to the performance of baseball games or baseball-related events or exhibitions at the Ballpark are subject to the 10% sales tax?

Answer 9: Sales by any person at the Ballpark subject to this 10% tax include sales of other tangible personal property, such as, jerseys, memorabilia, novelties, pennants, souvenirs, and other products (“souvenirs”) as well as electricity, heating oil, and natural gas.

Question 10: What rates of sales tax apply to sales of items described in Questions 1 and 2 during such times that do not reasonably relate to the performance of baseball games or baseball-related events or exhibitions at the Ballpark?

Answer 10: The rates are 12% on sales of motor vehicle parking services, 5.75% on sales of other enumerated services, 10% on sales of food and drink, 10% on sales of alcoholic beverages, and 5.75% on sales of all other tangible personal property. D.C. Official Code §§ 47-2002(1), (3)(A)-(B), 2002.02(2)(A)-(B). These taxes must be reported and paid over the District separately from Ballpark sales taxes. See D.C. Mun. Regs. Tit.9, §496.4 (2008).

Question 11: Assume the Team grants a vendor the right to sell souvenirs at the Ballpark during the entire year including all periods that reasonably relate to the performance of baseball games or baseball-related events or exhibitions (“Baseball Times”) at the Ballpark. In exchange for this right, the vendor must pay a royalty to the Team. On whom does District law impose the 10% sales tax?

Answer 11: The vendor must collect and pay over to the District the 10% Ballpark sales tax on the total gross receipts (unreduced by any royalties paid to the Team) derived from sales of souvenirs during Baseball Times. The vendor must collect and separately pay over a 5.75% sales tax on such gross receipts in case of sales made during any other times. See D.C. Mun. Regs. Tit.9, §496.4 (2008).

Question 12: Do sales of other tangible personal property at the Ballpark include sales by the Team of the media distribution rights to baseball games at the Ballpark or sales by the Team of the rights to televise, broadcast, transmit, record, advertise, promote, or create descriptions or accounts, of baseball games held at the Ballpark?

Answer 12: No. Sales of these rights at the Ballpark during Baseball Times do not qualify as sales of other tangible personal property. They are sales of intangible property rights. Therefore, the 10% sales tax on gross receipts from sales of other tangible personal property at the Ballpark does not apply to sales at the Ballpark of the above rights.

Question 13: Do sales at the Ballpark of, for example, films, sound recordings on CDs, or video tapes, or other storage media of baseball games during Baseball Times qualify as sales of other tangible personal property subject to the 10% Ballpark sales tax?

Answer 13: Yes, except for rentals of these items to theatres and radio and television broadcasting stations. D.C. Official Code §47-2001(n)(1)(F).

Question 14: The Team owns the rights to sell temporary day-of-game electronic advertising in designated areas inside the Ballpark. The Team retains the gross receipts from these sales. In the case of electronic advertising the Team uses its own computer property (or property it controls pursuant to its Lease of the Ballpark) to project the advertiser's display on an electronic scoreboard or other electronic billboard inside the Ballpark. Do sales by the Team of the right to display such advertising qualify as sales at the Ballpark of other tangible personal property or of other services subject to the 10% sales tax?

Answer 14: No. Under District law a "sale" includes any transaction for consideration in which selected services are rendered or title or possession of tangible personal property is transferred by any means including a rental, lease, license, or sale. D.C. Official Code §47-2001(q). Here, the advertiser does not obtain direct use of the Team's property or property under the Team's control. The fees derived by the Team from electronic advertising are received in exchange for the Team displaying the advertiser's message on an electronic scoreboard or billboard using the Team's own property (or property which it controls pursuant to the Lease). This act by the Team is a service.

Before the passage of the Act, this type of service did not qualify as the sale of an information service or any other "selected service" subject to District sales tax. D.C. Official Code §§47- 2001(n)(1), 2002. The Act generally does not expand the scope of services subject to the sales tax to include electronic displays of advertisers' messages. Therefore, the gross receipts received by the Team from displaying electronically an advertiser's message are not subject to the 10% sales tax.

Question 15: Assume the same facts as in question 14, except the Team also owns the rights to sell non-electronic, temporary day-of-game or permanent advertising and signage (“signs”) in designated areas inside the Ballpark. Assume the designated areas include the outfield fences, certain stadium walls, and other permanent structures erected intentionally for the purpose of displaying the signs. Either the advertiser or the Team installs the signs in the designated areas. Do sales by the Team of the right to display such signs qualify as sales at the Ballpark of other tangible personal property or of other services subject to the 10% sales tax?

Answer 15: The signs are tangible personal property. By paying the Team, the advertiser obtains the right to use space to display the signs in designated areas of the Ballpark that qualify as real property. District law only imposes sales tax on gross receipts derived from renting or leasing tangible personal property. Since the Team is renting real property rather than tangible personal property, the Team is not subject to sales tax on gross receipts received from advertisers to display signs in designated areas of the Ballpark. D.C. Official Code §47-2001(n)(1)(F).

Question 16: Assume the same facts as in question 15, except that the Team also sells the rights to display signs on temporary structures inside the Ballpark.

The temporary structures are removed at the end of the MLB season or during public events at the Ballpark not involving baseball games. Do sales by the Team of the right to display signs on temporary structures inside the Ballpark qualify as sales of other tangible personal property or of other services subject to the 10% sales tax?

Answer 16: The temporary structures are not real property but other tangible personal property. Gross receipts received for the right to display advertising on these temporary structures are payments for the right to use (rent) space on the temporary structures and therefore are sales of tangible personal property subject to the 10% Ballpark sales tax.

Question 17: Assume the Team also sells advertising space in its game-day programs (magazines). The programs are sold to fans attending a baseball game at the Ballpark. Are the gross receipts derived by the Team from selling this advertising space or from selling game-day programs subject to the 10% tax on sales of other tangible personal property?

Answer 17: Before the passage of the Act, District law did not impose its sales tax on gross receipts from the sale of advertising space in game-day programs. Instead, it levied the sales tax on gross receipts from sales to the ultimate consumer of programs containing that advertising. D.C. Mun. Regs. tit.9, §452.3 (1998). The Act does not change this result. Therefore, District law requires the Team to pay the 10% Ballpark sales tax on gross receipts from sales of game-day programs but not on gross receipts from the sale of advertising in those programs.

Question 18: The Lease between the Team and the Commission authorizes the Team to select a third-party parking management company (“Parking Manager”) approved by the Commission to manage and operate the parking facilities at the Ballpark in return for a parking management fee. The Parking Contract requires the Parking Manager to make all parking spaces at the Ballpark available to parkers for a fixed charge during a block of hours beginning before and ending after any baseball games, baseball-related events and exhibitions, Special Events, or Commission Events performed at the Ballpark. The Lease provides that the Team will generally receive from the Parking Manager the net parking revenues from any baseball game, baseball-related event or exhibition, and Special Event. The Commission will receive the net parking revenues from Commission Events, with certain adjustments and limitations. Net parking revenues are the gross receipts from parking, less the sum of the parking management fee and any applicable sales or other excise taxes.

Are the parking gross receipts collected by the Parking Manager from selling parking (including valet parking services, if any) at the Ballpark during Baseball Times or during the performance of Special Events subject to District sales tax?

Answer 18: Yes. The Parking Manager must collect and pay over to the District a 12% Ballpark sales tax on the total gross receipts derived by any person from selling at the Ballpark during Baseball Times the above motor vehicle parking services. It must also collect and separately pay over to the District a 12% sales tax on parkers attending Special Events at the Ballpark. See D.C. Mun. Regs. Tit.9, §496.4 (2008).

Question 19: Since the Commission is an independent agency of the D.C. government and exempt from all D.C. taxes, are the parking gross receipts collected by the Parking Manager from selling parking during Commission Events performed at the Ballpark subject to District sales tax?

Answer 19: Yes. Because the Parking Manager is not an instrumentality of the Commission and is selling this parking, it must collect and pay over this 12% tax to the District.

Question 20: Since the Parking Manager collects a fixed charge per vehicle which includes both the sales tax for parking and the parking management fee, how much of that charge is subject to the 12% tax?

Answer 20: The total gross receipts subject to the 12% tax are equal to the total of the fixed charges collected less only the embedded sales tax.

Question 21: Except for the block of hours reserved for parkers attending baseball games, baseball-related events and exhibitions, Special Events, or Commission Events, the Lease requires that the parking facilities at the Ballpark must be made available for public parking on a monthly, hourly, or other basis. The Commission and the Team share the net parking revenues from these sales of parking under a

formula. Are the gross receipts received from these public parkers subject to District sales tax?

Answer 21: Yes. The Parking Manager is responsible for collecting and paying a 12% sales tax to the District on these receipts less only the embedded sales tax.

Question 22: Is the parking sold by the Parking Manager in Question 21 reasonably related to the performance of baseball games or baseball-related events or exhibitions, Special Events, or Commission Events at the Ballpark?

Answer 22: No.

Questions 23: Assume the Team sells parking to baseball season ticket holders in lots and garages not at the Ballpark, must the Team collect and pay over to the District the 12% Ballpark sales tax on these sales?

Answer 23: Yes.

Question 24: In selling season tickets to professional baseball games, assume the Team also offers season ticket holders the option of buying preferential parking at the Ballpark in lots managed by the Parking Manager's employees. The Team pays the parking management fee on those sales to the Parking Manager and retains the balance of parking charge received for preferential parking. Who is obligated to collect and pay over the sales tax on the receipts attributable to parking?

Answer 24: The Team must collect and pay over the 12% Ballpark sales tax on the total gross receipts received from season ticket holders unreduced by the parking management fee paid to the Parking Manager.

Question 25: Assume the Team licenses to a corporation a private suite at the Ballpark containing 10 seats for use during the MLB season at a cost of \$39,000. The Team also requires the corporation to buy season tickets for the ten seats as a condition of receiving the license. Of the \$39,000, \$30,000 is for the long-term right to use the suite, and \$5,000 (which includes sales tax) is for the cost of food provided by the Team. The remaining \$4,000 (which includes sales tax) is for parking provided to the suite occupants by the Team on Ballpark lots managed by the Parking Manager. Is the cost of the food and the parking subject to sales tax?

Answer 25: Yes. The charges for food and parking are not charges for leasing, licensing, or purchasing private suites. The \$5,000 for food less the embedded tax is subject to the 10% Ballpark sales tax, and the \$4,000 for parking less the embedded tax is subject to the 12% Ballpark sales tax.

Question 26: Assume the Team has granted a vendor (the "Concessionaire") the right to operate food and beverage concessions and provide catering services at the Ballpark during both the MLB season and the off-season. The Concessionaire is

neither an instrumentality nor a partner of the Commission. The Concessionaire charges a sales price for food and beverages and catering services that includes a sales tax. In exchange for this concession, the Team requires the Concessionaire to pay it a certain percentage of the receipts derived by the Concessionaire from selling the above food and beverages and catering services except during Commission Events. Receipts for this purpose are an amount equal to the total gross receipts received by the Concessionaire from selling the above items, minus the sales tax included in the sales price, and minus certain other expenses incurred by the Concessionaire.

On what amount of receipts derived from sales at the Ballpark of food and beverages and catering services during Baseball Times, must the Concessionaire pay the Ballpark sales tax?

Answer 26: The gross receipts subject to the 10% Ballpark sales tax are the total gross receipts collected less the embedded sales tax with no reductions for any expenses incurred by the Concessionaire or for any receipts paid by the Concessionaire to the Team.

Question 27: The Lease authorizes the Commission to receive generally all of the proceeds from the sale of concessions at the Ballpark on the day of a Commission Event. Assume the same facts as in Question 26, except that it is the Commission that has entered into an agreement with the Concessionaire to share the proceeds from selling food and beverages and catering services on the day of the Commission Event. Are gross receipts from the above sales subject to District sales tax?

Answer 27: Yes. Since the Concessionaire is not an instrumentality of the Commission, gross receipts subject to the sales tax are the total gross receipts collected less only the embedded sales tax.

Question 28: The Lease vests in the Team the management, operation, or maintenance of the Ballpark. As part of its contractual obligations the Team is responsible for general maintenance. This general maintenance includes trash removal, necessary repairs, and maintaining and cleaning the Ballpark including lawns and landscaping services. The Team may enter into contracts directly with vendors for the purpose of providing these services during both the MLB season and the off-season.

Does the provision of these services by vendors during Baseball Times qualify as sales of “other enumerated services” at the Ballpark that are subject to the 10% Ballpark sales tax?

Answer 28: Generally, the services of repairing tangible personal property and performing real property maintenance and landscaping (which includes cleaning and trash removal) would qualify as sales of “other enumerated services” at the Ballpark. See Answer 4 above. District law would ordinarily require vendors rendering these

services to charge a 10% Ballpark sales tax, except no tax is imposed on charges for trash removal of recyclable material. D.C. Official Code §47-2001(n)(1)(I),(M).

Question 29: Under the Lease the Team is responsible for paying the costs for electricity, natural gas, heating oil, and telephone necessary for the operation of the Ballpark. Assume that the Team buys these commodities or buys these telephone services from a provider with nexus in the District. Are these sales of utility commodities or telephone services considered to be consummated at the Ballpark?

Answer 29: Yes. These sales are considered to be consummated at the Ballpark because physical delivery of these commodities or telephone services occurs at the Ballpark.

Question 30: Are the sales of the commodities and services in Question 29 subject to Ballpark sales tax.

Answer 30: Yes. These items are necessary to the use and operation of the Ballpark by the Team throughout the calendar year. Thus, sales of such commodities and telephone services to the Team during both the MLB season and the off-season are reasonably related to the performance of baseball games and baseball-related events or exhibitions except for sales of that portion of such commodities that are consumed on days in which a Special Event or a Commission Event is held at the Ballpark. However, since it is administratively infeasible for the utility provider to determine what portion of the purchased commodity or telephone service is consumed on Special or Commission Event days, the vendor must collect a 10% Ballpark sales tax on all sales of such utilities to the Team.

Question 31: Under the Lease the Team is also responsible for providing certain day-of-game services, such as crowd management, medical, security, usher, and ticket-taker services. To the extent that these services are not performed by employees of the Team, the Team will enter into contracts directly with vendors for the purpose of providing these services at the Ballpark during Baseball Times. In some cases the vendors under these contracts also provide these services at the Ballpark for public events other than baseball games or baseball-related events and exhibitions. Does the provision of these services at the Ballpark during Baseball Times qualify as “other enumerated services” subject to the 10% Ballpark sales tax imposed by the Act?

Answer 31: No. Because crowd management, security, medical, usher, and ticket-taker services are not “enumerated services” within the meaning D.C. Official Code §47- 2001(n)(1), they are not subject to any sales tax when performed at the Ballpark by for-profit vendors.

496.4 Collection and Payment of Ballpark Sales Taxes Including Electronic Filing

Question 1: What are Ballpark sales taxes?

Answer 1: Ballpark sales taxes are those sales taxes described in Answer 1 to D.C. Mun. Regs. §9-496.2 and .3 (2008) above.

Question 2: Will OTR continue to require vendors obligated to collect Ballpark sales taxes to file monthly sales tax returns and pay the taxes reflected thereon electronically pursuant to D.C. Official Code § 47-2002.05(e)?

Answer 2: Yes. All vendors that have made any sales subject to any Ballpark sales tax during any preceding calendar month must electronically file monthly sales tax returns and electronically pay over such taxes collected on Form FR-800SM (Specialized Sales Tax Monthly Return) in accordance with instructions contained in a notice published on OTR's website. See D.C. Official Code §§ 47-2015, 2016.

Question 3: If a vendor is obligated to collect other sales taxes in addition to Ballpark sales taxes, should that vendor also report and pay over those non-Ballpark sales taxes on the Form FR-800SM?

Answer 3: No. The vendor should report and pay over those non-Ballpark sales taxes on a Form FR-800M that is separate from the return on which the Ballpark sales taxes are reported

Question 4: To what extent do the provisions of Chapters 20, 41, 42, and 43 of Title 47 of the District of Columbia Code apply to the collection, payment, and enforcement of Ballpark sales taxes?

Answer 4: All provisions of Chapter 20 apply to the collection and payment of Ballpark sales taxes except those provisions that are inconsistent with the Act or these regulations. The provisions of Chapters 41 (except D.C. Official Code §47-4108.01), 42 (except D.C. Official Code §§47-4211(b)(1)(B), 4214-15), and 43 of Title 47 of the District of Columbia Code shall apply as appropriate to any taxpayer who fails to file the required sales tax returns or pay the Ballpark sales taxes when due.

Question 5: Regarding baseball-related events or exhibitions organized or sponsored by the Team and held at the Ballpark, is the Team required to comply with the requirements of D.C. Official Code §47-2002.04, to notify OTR it is organizing such an event or exhibition and to provide certain information on District tax obligations to the participating vendors and exhibitors?

Answer 5: The Team does not have to comply with D.C. Official Code § 47-2002.04 (Special Event Promoter Obligations) if it is using the same vendors at those events and exhibitions that are regularly authorized by the Team to sell services, alcoholic beverages, food and drink, and other tangible personal property at professional baseball games at the Ballpark. However, if other vendors ("outside vendors") are to be used, then the Team must comply with the above Code section just for those

outside vendors, whether or not the 50-vendor requirement in D.C. Official Code §47-2001(w-1)(1) is met. Therefore, the Team must inform the outside vendors of their obligation to file and pay over the Ballpark sales tax electronically as described in Answer 2. See D.C. Official Code §47-2002.05(e).

Question 6: Must (a) promoters of Special Events performed at the Ballpark, (b) promoters of non-professional baseball or baseball-related events or exhibition games performed at the Ballpark and not sponsored the Team, and (c) promoters of Commission Events, comply with D.C. Official Code §47-2002.04 (Special Event Promoter Obligations)?

Answer 6: Yes. Whether or not the 50 vendor requirement is met, the promoters must comply with that section by advising in writing their vendors and exhibitors of their District tax obligations and by delivering the required information on vendors and exhibitors to the:

Director, Compliance
Office of Tax and Revenue
941 North Capital Street N.E.
Washington, D.C. 20002

or such other address as be designated by OTR by certified mail.

Failure to comply with the requirements of D.C. Official Code § 47-2002.04 may result in OTR assessing the penalties provided by that section.

For purposes of this section the term “promoter” has the same meaning as in D.C. Official Code § 47-2002.04(f).

Question 7: Should the Commission notify OTR before a Commission Event held at the Ballpark?

Answer 7: Yes. The Commission should notify OTR in writing that a professional baseball-related event or exhibition will be held at the Ballpark and should identify the promoter at least 40 days before the date of such event. If the Commission itself is promoting a Commission Event, then the Commission must comply with this requirement.
