

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



**These Proposed Regulations are scheduled to appear
in the District of Columbia Register on Friday, May 6, 2005.**

OFFICE OF TAX AND REVENUE

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 their intent to adopt proposed Ballpark Sales Tax regulations. Upon adoption as final regulations, these rules will add new sections 494 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 (1) the Ballpark Sales Taxes imposed by the Ballpark Omnibus Financing and Revenue Tax Provisions Emergency Act of 2004, approved by the Mayor on January 2005, and the Ballpark Omnibus Financing and Revenue Tax Provisions Congressional Review Emergency Act of 2005, approved by the Mayor on February 14, 2005 (“Emergency Baseball Act”), and (2) the Ballpark Omnibus Financing and Revenue Act of 2004, approved by the Mayor on December 29, 2004 (“Act”).

The following new sections 494, **BALLPARK SALES TAXES UNDER THE EMERGENCY AND PERMANENT BASEBALL ACT**, is added to Chapter 4 of Title 9 DCMR:

SECTION 494 - BALLPARK SALES TAXES (EMERGENCY BASEBALL ACT)

DISTRICT OF COLUMBIA MUNICIPAL REGULATIONS

TITLE 9 TAXATION AND ASSESSMENTS

CHAPTER 4 – SALES AND USE TAXES

494.1 **In general.** The regulations in this section apply for purposes of the Ballpark sales taxes in sections 201 of the Ballpark Omnibus Financing and Revenue Tax Provisions Emergency Act of 2004, approved by the Mayor on January 4, 2005, and of the Ballpark Omnibus Financing and Revenue Tax Provisions Congressional Review Emergency Act of 2005, approved by the Mayor on February 17, 2005 (“Emergency Baseball Act”).

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

Answer 1: The term “Ballpark” means Robert F. Kennedy Stadium and any future additions thereto (“RFK”) as defined in D.C. Official Code § 47-2002.05 (a)(1)(B), as enacted by the Emergency Baseball Act.

494.2 **Ticket Sales Under the Emergency Baseball Act for RFK**

Question 1: After the enactment of the Emergency Baseball Act, what rate of sales tax is imposed on tickets sold for public events held at RFK other than professional baseball games or professional baseball-related events or exhibitions?

Answer 1: District law continues to impose its general sales tax on tickets sold to public events held at RFK. Thus, unless exempted under D.C. Official Code § 47-2001(n)(1)(H), tickets sold to any such public event at RFK (that is not a professional baseball game or professional baseball-related event or exhibition) are subject to a sales tax of 5.75%.

Question 2: What is the rate of sales tax imposed by the Emergency Baseball Act on tickets to professional baseball games or professional baseball-related events or exhibitions held at RFK?

Answer 2: As enacted by the Emergency Baseball Act, D.C. Official Code § 47-2002.05(b) levies a 10% sales tax on the gross receipts derived by any person from ticket sales to professional baseball games or professional baseball-related events and exhibitions held at RFK. This obligation applies whether the sale takes place at a box office, over the phone, or on the Internet and whether the seller is the professional baseball team (“Team”), is an agent selling on behalf of the Team, or is any other person except a person making casual sales. This tax is in lieu of any other sales tax that would otherwise be imposed under District law.

Question 3: Does the 10% sales tax apply to ticket sales made by the Team or by Major League Baseball (“MLB”) to a person that intends to resell those tickets at retail to third parties?

Answer 3: Yes. D.C. Official Code § 47-2002.05(b) requires the Team or MLB to collect the tax on the gross receipts that it derives from selling tickets to professional baseball games or professional baseball-related events or exhibitions 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 4: Assume the Team contracts with an agent to sell professional 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 4: 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 the \$10 of sales tax received from the agent to the District.

Question 5: Assume the same facts as in question 4 except that the Team pays the agent a commission in exchange for the agent's services. Does D.C. Official Code § 47- 2002.05(b) levy the 10% sales tax on the total gross receipts from ticket sales made by the agent or on those total gross receipts less the commission paid to the agent?

Answer 5: 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 (2005). 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 6: 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 6: 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 7: Assume the same facts as in Question 6, 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 7: 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 8: Assume the Team licenses to a corporation a private suite containing ten seats at RFK for the 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 8: 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 RFK. 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 9: Assume the same facts as in question 8, except the Team licenses to a corporation a private suite at RFK 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 RFK for each game during the MLB season? Does the term "ticket" include the right to enter RFK as a result of licensing a private suite at RFK?

Answer 9: Yes. 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 RFK 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 RFK 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 10: On what amount is the 10% tax on the sale of professional 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 10: 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 11: When does the 10% sales tax imposed by D.C. Official Code §47-2002.05(b) apply to sales of tickets to professional baseball games or professional baseball-related events and exhibitions at RFK?

Answer 11: The 10% sales tax on tickets applies to any tickets sold during the period that begins on December 1, 2004 and ends on April 7, 2005 (“Emergency Period”).

494.3 **Sales of Tangible Personal Property and Services at RFK Under the Emergency Baseball Act.**

Question 1: What rates of sales tax apply to gross receipts from sales during professional baseball games or professional baseball-related events and exhibitions by any person at RFK of (a) the services of parking or storing motor vehicles (“motor vehicle parking services”), (b) services other than motor vehicle parking services (“other services”), (c) food and drink prepared for immediate consumption (“food and drink”), (d) beer, wine, and spirituous or malt liquors (“alcoholic beverages”) sold for consumption at RFK, and (e) tangible personal property other than the above food and drink and alcoholic beverages (“other tangible personal property”)?

Answer 1: The rates are 12% on sales of motor vehicle parking services at RFK including valet parking services, 10% on sales of other services at RFK, 10% on sales of food and drink at RFK, 10% on alcoholic beverages consumed at RFK, and 10% on sales of all other tangible personal property at RFK. D.C. Official Code §47-2002.05(b), as enacted by the Emergency Baseball Act. These taxes are in lieu of any sales taxes otherwise imposed by District law on these items.

Question 2: When are services described in question 1 considered sold at RFK for purposes of the Emergency Baseball Act?

Answer 2: Services are considered sold at RFK for purposes of this act when those services are performed at RFK.

Question 3: Do the rates in Answer 1 apply to sales at RFK only on days when professional baseball games or professional baseball-related events or exhibitions are scheduled, or do they also apply to any days that reasonably relate to such games, events, or exhibitions at RFK?

Answer 3: These rates apply to sales at RFK of the items described in question 1 during such times that reasonably relate to the performance of professional baseball games or professional baseball-related events or exhibitions at RFK during the Emergency Period. See Answer 11 of D.C. Mun. Regs. tit.9, §494.2 (2005).

Question 4: What rates of sales tax apply to sales at RFK of items described in question 1 during such times that do not reasonably relate to the performance of professional baseball games or professional baseball-related events or exhibitions at RFK (“non-baseball periods”)?

Answer 4: During non-baseball periods the rates are 12% on sales of motor vehicle parking services at RFK, 5.75% on sales of other services at RFK, 10% on sales of food and drink at RFK, 10% on sales of alcoholic beverages consumed at RFK, and 5.75% on sales of all other tangible personal property at RFK. D.C. Official Code §§ 47-2002(1), (3)(A)-(B), 2002.02(2)(A)-(B).

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

Answer 5: Except for sales of motor vehicle parking services described in question 19 below, sales at RFK reasonably relate to the performance of professional baseball games or professional baseball-related events and exhibitions at RFK if made: (a) on any day during the MLB season, and (b) on any day in the off-season that a professional baseball game or professional baseball-related event or exhibition is held at RFK.

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 non-professional baseball-related event is held at RFK for which tickets are sold, such as a professional soccer game or an amateur baseball game, provided that no professional baseball game is also scheduled to be played at RFK on that day. The off-season includes any day during the year that is not part of the MLB season.

Question 7: Under the Emergency Baseball Act what do the words “professional baseball games” at RFK mean?

Answer 7: Professional baseball games at RFK include team home games during the regular Major League Baseball (“MLB”) season, post-season games, All-Star games, spring training games, and exhibition games to be held at RFK by professional baseball teams.

Question 8: Under the Emergency Baseball Act what does the phrase “professional baseball-related events or exhibitions” at RFK mean?

Answer 8: Professional baseball-related events or exhibitions at RFK include Team practices that are open to the public; theme events organized by the Team’s fans or sponsors related to professional baseball; and Team-sponsored baseball, baseball clinics, fan-related events or activities but not including amateur baseball games.

Question 9: What sales of other tangible personal property at RFK during such times as reasonably relate to the performance of professional baseball games or professional baseball-related events or exhibitions (“professional baseball times”) at RFK are subject to the 10% sales tax imposed by the Emergency Baseball Act?

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

Question 10: Assume the Team grants a for-profit vendor the right to sell souvenirs at RFK during the entire year including professional baseball times at RFK. In exchange for this right, the for-profit vendor must pay a royalty to the Team. On whom does District law impose the 10% sales tax?

Answer 10: The for-profit vendor must collect and pay over to the District the 10% sales tax on the total gross receipts (unreduced by any royalties paid to the Team) derived from sales of souvenirs during professional baseball times at RFK. The for-profit vendor must collect and pay over a 5.75% sales tax in case of sales made during any other times.

Question 11: Do sales of other tangible personal property at RFK include sales by the Team of the media distribution rights to professional baseball games at RFK or sales by the Team of the rights to televise, broadcast, transmit, record, advertise, promote, or create descriptions or accounts, of professional baseball games held at RFK?

Answer 11: No. Sales of these rights at RFK during professional baseball times do not qualify as sales of 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 RFK does not apply to sales at RFK of the above rights.

Question 12: Do sales at RFK of, for example, films, sound recordings on CDs, or video tapes of professional baseball games during professional baseball times qualify as sales of other tangible personal property subject to the 10% sales tax?

Answer 12: Yes.

Question 13: Assume the Team owns the rights to sell temporary day-of-game electronic advertising in designated areas inside RFK. 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 license of RFK) to project the advertiser's display on an electronic scoreboard or other electronic billboard inside RFK. Do sales by the Team of the right to display such advertising qualify as sales at RFK of other tangible personal property or of other services subject to the 10% sales tax?

Answer 13: 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 license). This act by the Team is a service. Before the passage of the Emergency Baseball 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 Emergency Baseball Act 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 14: Assume the same facts as in question 13, 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 RFK. 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 RFK of other tangible personal property or of other services subject to the 10% sales tax?

Answer 14: 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 RFK 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 RFK. D.C. Official Code §47-2001(n)(1)(F).

Question 15: Assume the same facts as in question 14, except that the Team also sells the rights to display signs on temporary structures inside RFK. The temporary structures are removed at the end of the MLB season or during public events at RFK not involving professional baseball games. Do sales by the Team of the right to display signs on temporary structures inside RFK qualify as sales of other tangible personal property or of other services subject to the 10% sales tax?

Answer 15: The temporary structures are not real property but 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% sales tax.

Question 16: Assume the Team also sells advertising space in its game-day programs (magazines). The programs are sold to fans attending a professional baseball game at RFK. 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 tangible personal property?

Answer 16: Before the passage of the Emergency Baseball 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 (2005). The Emergency Baseball Act does not change this result. Therefore, District law requires the Team to pay the 10% tax on gross receipts from sales of game-day programs but not on gross receipts from the sale of advertising in those programs.

Question 17: District law authorizes the Sports and Entertainment Commission (“Commission”), an independent agency of the District government, to manage and operate RFK including the RFK parking lots. Instead of operating the parking lots itself using its own employees, assume that the Commission has entered into a contract granting a professional, for-profit parking company (“Parkco”) a license to sell and manage motor vehicle parking services in the parking lots at RFK during the entire year. This contract also authorizes Parkco to sell motor vehicle parking services on days when professional baseball games and professional baseball-related events and exhibitions are scheduled at RFK. Parkco is neither an instrumentality nor a partner of the Commission. In exchange for performing these services, assume the contract allows Parkco to retain $x\%$ of the parking gross receipts and pay the balance ($y\%$) of the parking gross receipts over to the Commission. A separate agreement requires the Commission to pay its share of the gross receipts to the Team. Under District law the Sports Commission is exempt from all District taxes including sales taxes.

Are the parking gross receipts collected by Parkco from selling motor vehicle parking services (including valet parking services) at RFK during professional baseball games and professional baseball-related events and exhibitions subject to District sales tax?

Answer 17: Yes. D.C. Official Code §47-2002.05(b), as enacted by the Emergency Baseball Act, imposes a 12% sales tax on the total gross receipts derived by any person from selling at RFK the above motor vehicle parking services. Because Parkco is not an instrumentality of the Commission and is selling the above services, Parkco must collect and pay over this tax to the District.

Question 18: Assume Parkco charges a flat fee per vehicle which includes the sales tax for motor vehicle parking services. How much of that fee is total gross receipts subject to the 12% tax?

Answer 18: The total gross receipts subject to the 12% tax are equal to the total of the flat fees collected less the embedded sales tax.

Question 19: Assume the same facts as in question 17, except that during the MLB season or the off-season Parkco also sells motor vehicle parking services at RFK to commuters and to persons attending non-professional baseball-related events or exhibitions at RFK, such as concerts or soccer games. Are these motor vehicle parking services sold by Parkco reasonably related to the performance of professional baseball games or professional baseball-related events or exhibitions?

Answer 19: No.

Question 20: What is the rate of sales tax imposed on parking gross receipts derived from rendering the motor vehicle parking services described in question 19?

Answer 20: Parkco must collect and pay over to the District the general sales tax of 12% on those services. D.C. Official Code §47-2002(1).

Question 21: Assume that the Commission and certain other persons other than the Team (“users”) have the right during the year to sell parking passes or other parking rights (“parking rights”) at RFK on behalf of Parkco for future events at RFK. The users must sell these parking rights at rates established by the Commission and Parkco (which include the sales tax) and must pay all of the parking gross receipts from these sales to Parkco without any reduction for fees or expenses. Are these gross receipts subject to sales tax, and who is responsible for paying the sales taxes on these parking gross receipts?

Answer 21: Parkco is responsible for paying a 12% sales tax to the District on these receipts less the embedded sales tax (“total gross receipts”). Parkco must distinguish between which total parking gross receipts are subject to the tax imposed by the Emergency Baseball Act and which are subject to the District’s general sales tax on parking in reporting these taxes to the District.

Question 22: In selling season tickets to professional baseball games, assume the Team also offers season ticket holders the option of buying preferential parking at RFK in lots managed by Parkco employees. The Team pays a portion of the total gross receipts from season ticket holders attributable to parking to Parkco. Who is obligated to collect and pay over the sales tax on these receipts?

Answer 22: The Team must collect and pay over the 12% sales tax on the total gross receipts received from season ticket holders unreduced by any payments made to Parkco.

Question 23: Assume the Team licenses to a corporation a private suite at RFK containing 10 seats for use during the MLB 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 RFK lots managed by Parkco. The Team shares a portion of the parking revenue with Parkco. Is the cost of the food and the parking subject to sales tax?

Answer 23: 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 sales tax is subject to the 10% sales tax, and the \$4,000 for parking less the embedded sales tax is subject to the 12% sales tax.

Question 24: Assume the Commission has granted a for-profit vendor (the “Concessionaire”) the right to operate food and beverage concessions and provide catering services at RFK 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 Commission 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. 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 RFK

of food and beverages and catering services during professional baseball times, must the Concessionaire pay the sales tax imposed by the Emergency Baseball Act?

Answer 24: The gross receipts subject to the 10% 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 Commission.

Question 25: District law does not permit the Commission to contract out the management, operation, or maintenance of RFK to any RFK tenant. As part of its statutory obligations the Commission is responsible for general maintenance. This general maintenance includes necessary repairs and maintenance of the grounds including lawns and landscaping services. D.C. Official Code §3-1407(a)(3) and (b). The Commission enters into contracts directly with for-profit vendors for the purpose of providing these services during both the MLB season and the off-season. Does the provision of these services during professional baseball times qualify as “other services” sold at RFK that are subject to the 10% sales tax?

Answer 25: The services of repairing tangible personal property and performing real property maintenance and landscaping qualify as sales of other services at RFK. District law would ordinarily require for-profit vendors rendering the services to charge a sales tax. D.C. Official Code §47-2001(n)(1)(I),(M). However, the vendors have contracted directly with the Commission to provide these services, and no person except the Commission is liable to the vendors for the payment of these services. Under these circumstances D.C. Mun. Regs. tit.9, §445.2 (2005) excuses the vendors from the obligation to collect sales taxes on the sale of these services to the Commission.

Question 26: Assume the same facts as in question 25, except that as part of its responsibilities, the Commission is also responsible for providing certain day-of-game services, such as cleaning and custodial, crowd management, medical, security, usher, and ticket-taker services. The Commission enters into contracts directly with for-profit vendors for the purpose of providing these services at RFK on days in which professional baseball games are scheduled. In some cases the vendors under these contracts also provide these services for public events at RFK other than professional baseball games or professional baseball-related events and exhibitions. Assume further that the Team has contracted with the Commission to reimburse the latter for the reasonable cost of some of these services. However, there is no contract between the Team and these vendors that would make the Team legally obligated to the vendors for payment of these services. Does the provision of these services at RFK qualify as “other services” subject to the 10% sales tax imposed by the Emergency Baseball Act?

Answer 26: No. Because crowd management, security, medical, usher, and ticket-taker services are not “selected services” within the meaning D.C. Official Code §§47- 2001(n)(1), they are not subject to the 10% sales tax on other services sold at RFK. Cleaning and custodial services are not subject to the above tax for the same reasons that the services in question 25 were not taxable.

494.5 **Collection and Payment of Ballpark Sales Taxes Including Electronic Filing**

Question 1: 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 1: All provisions of Chapter 20 apply to the collection and payment of Ballpark sales taxes except those provisions that are inconsistent with the Emergency Baseball Act or these regulations. Ballpark sales taxes are those sales taxes described in Answer 1 to D.C. Mun. Regs. §9-494.3 (2005) above. If the vendor has collected sales taxes in addition to Ballpark sales taxes, the vendor should continue to 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.

The provisions of Chapters 41 (except §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 2: Will OTR 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(f), as enacted by the Emergency Baseball Act?

Answer 2: Yes. All vendors that have made any sales subject to any Ballpark sales tax during the preceding calendar month must electronically file monthly sales tax returns and electronically pay over such taxes collected in accordance with instructions contained in a notice published on OTR's website. See D.C. Official Code §§ 47-2015, 2016. This requirement to file electronically begins with the monthly returns due on March 20, 2005.

Question 3: Are promoters of professional baseball-related events or exhibitions held at RFK required to comply with the requirements of D.C. Official Code § 47-2002.04 to notify OTR they are organizing such an event or exhibition and to provide certain information on District tax obligations to the participating vendors and exhibitors?

Answer 3: Promoters of professional baseball-related events and exhibitions at RFK do not have to comply with D.C. Official Code § 47-2002.04 if they are using the same vendors at those events and exhibitions that are regularly authorized by the Commission or the Team to sell services, alcoholic beverages, food and drink, and other tangible personal property at professional baseball games at RFK. However, if other vendors ("outside vendors") are to be used, then all the requirements of the above section apply to those promoters except for the 50-vendor requirement in D.C. Official Code §47-2001(w-1)(1). Under such circumstances the promoters must inform the outside vendors of their obligation to file and pay over the Ballpark sales taxes electronically as described in Answer 2. See D.C. Official Code §47-2002.05(f), as enacted by the Emergency Baseball Act. 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 4: Should the Sports Commission notify OTR before a professional baseball-related event or exhibition is held at RFK?

Answer 4: Yes. The Commission should notify OTR in writing that a professional baseball-related event or exhibition will be held at RFK and should identify the promoter at least 40 days before the date of such event.

PROPOSED REGULATIONS

SECTION 495- BALLPARK SALES TAXES (PERMANENT BASEBALL ACT)

DISTRICT OF COLUMBIA MUNICIPAL REGULATIONS

TITLE 9 TAXATION AND ASSESSMENTS

CHAPTER 4 – SALES AND USE TAXES

- 495.1 **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, approved by the Mayor on December 29, 2004 (“Act”).

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

Answer 1: Until ticket sales to professional athletic team events at a newly-constructed stadium commence, the term “Ballpark” means Robert F. Kennedy Stadium and any future additions thereto (“RFK”) as defined in D.C. Official Code § 47-2002.05 (a)(1)(B).

- 495.2 **Ticket Sales Under the Act for RFK.**

Question 1: After the enactment of the Act, what rate of sales tax is imposed on tickets sold for public events held at RFK other than professional baseball games or professional baseball-related events or exhibitions?

Answer 1: District law continues to impose its general sales tax on tickets sold to public events held at RFK. Thus, unless exempted under D.C. Official Code § 47-2001(n)(1)(H), tickets sold to any such public event at RFK (that is not a professional baseball game or professional baseball-related event or exhibition) are subject to a sales tax of 5.75%.

Question 2: What is the total rate of sales tax imposed on tickets sold for professional baseball games or professional baseball-related events or exhibitions held at RFK?

Answer 2: 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 professional baseball games or professional baseball-related events and exhibitions held at RFK. This obligation applies whether the sale takes place at a box office, over the phone, or on the Internet and whether the seller is the professional baseball team (“Team”), is an agent selling on behalf of the Team, or is any other person except a person making casual sales.

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 3: Does the 10% sales tax apply to ticket sales made by the Team or by Major League Baseball (“MLB”) to a person that intends to resell those tickets at retail to third parties?

Answer 3: Yes. D.C. Official Code § 47-2002.05(b) and (d)(2) requires the Team or MLB to collect the tax on the gross receipts that it derives from selling tickets to professional baseball games or professional baseball-related events or exhibitions 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 4: Assume the Team contracts with an agent to sell professional 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 4: 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 the \$10 of sales tax received from the agent to the District.

Question 5: Assume the same facts as in question 4 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 total gross receipts less the commission paid to the agent?

Answer 5: 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 (2005). 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 6: 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 6: 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 7: Assume the same facts as in Question 6, 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 7: 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 8: Assume the Team licenses to a corporation a private suite containing ten seats at RFK for the 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 8: 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 RFK. 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 9: Assume the same facts as in question 8, except the Team licenses to a corporation a private suite at RFK 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 RFK for each game during the MLB season? Does the term "ticket" include the right to enter RFK as a result of licensing a private suite at RFK?

Answer 9: Yes. 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 RFK 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 RFK 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 RFK.

Question 10: On what amount is the 10% tax on the sale of professional 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 10: 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 11: When does the 10% sales tax imposed by District law apply to sales of tickets to professional baseball games or professional baseball-related events and exhibitions at RFK?

Answer 11: The Act becomes law on April 8, 2005, the day immediately following the expiration of the 30-day Congressional review period. The 10% sales tax on tickets applies to any tickets sold on or after that date.

495.3 **Sales of Tangible Personal Property and Services at RFK Under the Permanent Baseball Act.**

Question 1: What rates of sales tax apply to gross receipts from sales during professional baseball games or professional baseball-related events and exhibitions by any person at RFK of (a) the services of parking or storing motor vehicles (“motor vehicle parking services”), (b) services other than motor vehicle parking services (“other services”), (c) food and drink prepared for immediate consumption (“food and drink”), (d) beer, wine, and spirituous or malt liquors (“alcoholic beverages”) sold for consumption at RFK, and (e) tangible personal property other than the above food and drink and alcoholic beverages (“other tangible personal property”)?

Answer 1: The rates are 12% on sales of motor vehicle parking services at RFK including valet parking services, a total of 10% on sales of other services at RFK, 10% on sales of food and drink at RFK, 10% on alcoholic beverages consumed at RFK, and a total of 10% on sales of all other tangible personal property at RFK. D.C. Official Code §§47-2002(1),(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 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 §47-2002, plus an additional sales tax of 4.25%. D.C. Official Code § 47-2002, 2002.05(c),(d)(3).

Question 2: When are services described in question 1 considered sold at RFK for purposes of the Act?

Answer 2: Services are considered sold at RFK for purposes of the Act when those services are performed at RFK.

Question 3: Do the rates in Answer 1 apply to sales at RFK only on days when professional baseball games or professional baseball-related events or exhibitions are scheduled, or do they also apply to any days that reasonably relate to such games, events, or exhibitions at RFK?

Answer 3: These rates apply to sales at RFK on or after April 8, 2005, of the items described in question 1 during such times that reasonably relate to the performance of professional baseball games or professional baseball-related events or exhibitions at RFK. See Answer 11 of D.C. Mun. Regs. tit. 9, §495.2 (2005).

Question 4: What rates of sales tax apply to sales at RFK of items described in question 1 during such times that do not reasonably relate to the performance of professional baseball games or professional baseball-related events or exhibitions at RFK (“non-baseball periods”)?

Answer 4: During non-baseball periods the rates are 12% on sales of motor vehicle parking services at RFK, 5.75% on sales of other services at RFK, 10% on sales of food and drink at RFK, 10% on sales of alcoholic beverages consumed at RFK, and 5.75% on sales of all other

tangible personal property at RFK. D.C. Official Code §§ 47-2002(1), (3)(A)-(B), 2002.02(2)(A)-(B).

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

Answer 5: Except for sales of motor vehicle parking services described in question 19 below, sales at RFK reasonably relate to the performance of professional baseball games or professional baseball-related events and exhibitions at RFK if made: (a) on any day during the MLB season, and (b) on any day in the off-season that a professional baseball game or professional baseball-related event or exhibition is held at RFK.

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 non-professional baseball-related event is held at RFK for which tickets are sold, such as a professional soccer game or an amateur baseball game, provided that no professional baseball game is also scheduled to be played at RFK 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 “professional baseball games” at RFK mean?

Answer 7: Professional baseball games at RFK include team home games during the regular Major League Baseball (“MLB”) season, post-season games, All-Star games, spring training games, and exhibition games to be held at RFK by professional baseball teams.

Question 8: Under the Act what does the phrase “professional baseball-related events or exhibitions” at RFK mean?

Answer 8: Professional baseball-related events or exhibitions at RFK include Team practices that are open to the public; theme events organized by the Team’s fans or sponsors related to professional baseball; and Team-sponsored baseball, baseball clinics, fan-related events or activities but not including amateur baseball games.

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

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

Question 10: Assume the Team grants a for-profit vendor the right to sell souvenirs at RFK during the entire year including professional baseball times at RFK. In exchange for this right, the for-profit vendor must pay a royalty to the Team. On whom does District law impose the 10% sales tax?

Answer 10: The for-profit vendor must collect and pay over to the District the 10% sales tax on the total gross receipts (unreduced by any royalties paid to the Team) derived from sales of souvenirs during professional baseball times. The for-profit vendor must collect and pay over a 5.75% sales tax in case of sales made during any other times.

Question 11: Do sales of other tangible personal property at RFK include sales by the Team of the media distribution rights to professional baseball games at RFK or sales by the Team of the rights to televise, broadcast, transmit, record, advertise, promote, or create descriptions or accounts, of professional baseball games held at RFK?

Answer 11: No. Sales of these rights at RFK during professional baseball times do not qualify as sales of 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 RFK does not apply to sales at RFK of the above rights.

Question 12: Do sales at RFK of, for example, films, sound recordings on CDs, or video tapes of professional baseball games during professional baseball times qualify as sales of other tangible personal property subject to the 10% sales tax?

Answer 12: Yes.

Question 13: Assume the Team owns the rights to sell temporary day-of-game electronic advertising in designated areas inside RFK. 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 license of RFK) to project the advertiser’s display on an electronic scoreboard or other electronic billboard inside RFK. Do sales by the Team of the right to display such advertising qualify as sales at RFK of other tangible personal property or of other services subject to the 10% sales tax?

Answer 13: 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 license). 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 14: Assume the same facts as in question 13, 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 RFK. 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 RFK of other tangible personal property or of other services subject to the 10% sales tax?

Answer 14: 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 RFK 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 RFK. D.C. Official Code §47-2001(n)(1)(F).

Question 15: Assume the same facts as in question 14, except that the Team also sells the rights to display signs on temporary structures inside RFK.

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

Answer 15: The temporary structures are not real property but 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% sales tax.

Question 16: Assume the Team also sells advertising space in its game-day programs (magazines). The programs are sold to fans attending a professional baseball game at RFK. 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 tangible personal property?

Answer 16: 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 (2005). The Act does not change this result. Therefore, District

law requires the Team to pay the 10% tax on gross receipts from sales of game-day programs but not on gross receipts from the sale of advertising in those programs.

Question 17: District law authorizes the Sports and Entertainment Commission (“Commission”), an independent agency of the District government, to manage and operate RFK including the RFK parking lots. Instead of operating the parking lots itself using its own employees, assume that the Commission has entered into a contract granting a professional, for-profit parking company (“Parkco”) a license to sell and manage motor vehicle parking services in the parking lots at RFK during the entire year. This contract also authorizes Parkco to sell motor vehicle parking services on days when professional baseball games and professional baseball-related events and exhibitions are scheduled at RFK. Parkco is neither an instrumentality nor a partner of the Commission. In exchange for performing these services, assume the contract allows Parkco to retain $x\%$ of the parking gross receipts and pay the balance ($y\%$) of the parking gross receipts over to the Commission.

A separate agreement requires the Commission to pay its share of the gross receipts to the Team. Under District law the Sports Commission is exempt from all District taxes including sales taxes. Are the parking gross receipts collected by Parkco from selling motor vehicle parking services (including valet parking services) at RFK during professional baseball times subject to District sales tax?

Answer 17: Yes. D.C. Official Code §47-2002(1) imposes a 12% sales tax on the total gross receipts derived by any person from selling at RFK the above motor vehicle parking services. Because Parkco is not an instrumentality of the Commission and is selling the above services, Parkco must collect and pay over this tax to the District.

Question 18: Assume Parkco charges a flat fee per vehicle which includes the sales tax for motor vehicle parking services. How much of that fee is total gross receipts subject to the 12% tax?

Answer18: The total gross receipts subject to the 12% tax are equal to the total of the flat fees collected less the embedded sales tax.

Question 19: Assume the same facts as in question 17, except that during the MLB season or the off-season Parkco also sells motor vehicle parking services at RFK to commuters and to persons attending non-professional baseball-related events or exhibitions at RFK, such as concerts or soccer games. Are these motor vehicle parking services sold by Parkco reasonably related to the performance of professional baseball games or professional baseball-related events or exhibitions?

Answer 19: No.

Question 20: What is the rate of sales tax imposed on parking gross receipts derived from rendering the motor vehicle parking services described in question 19?

Answer 20: Parkco must collect and pay over to the District the general sales tax of 12% on those services. D.C. Official Code §47-2002(1).

Question 21: Assume that the Commission and certain other persons other than the Team (“users”) have the right during the year to sell parking passes or other parking rights (“parking rights”) at RFK on behalf of Parkco for future events at RFK. The users must sell these parking rights at rates established by the Commission and Parkco (which include the sales tax) and must pay all of the parking gross receipts from these sales to Parkco without any reduction for fees or expenses. Are these gross receipts subject to sales tax, and who is responsible for paying the sales taxes on these parking gross receipts?

Answer 21: Parkco is responsible for paying a 12% sales tax to the District on these receipts less the embedded sales tax (“total gross receipts”). Parkco must distinguish between which total gross receipts are subject to the tax imposed by the Emergency Baseball Act and which are subject to the District’s general sales tax on parking in reporting these taxes to the District.

Question 22: In selling season tickets to professional baseball games, assume the Team also offers season ticket holders the option of buying preferential parking at RFK in lots managed by Parkco employees. The Team pays a portion of the total gross receipts from season ticket holders attributable to parking to Parkco. Who is obligated to collect and pay over the sales tax on the receipts attributable to parking?

Answer 22: The Team must collect and pay over the 12% sales tax on the total gross receipts received from season ticket holders unreduced by any payments made to Parkco.

Question 23: Assume the Team licenses to a corporation a private suite at RFK containing 10 seats for use during the MLB 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 RFK lots managed by Parkco. The Team shares a portion of the parking revenue with Parkco. Is the cost of the food and the parking subject to sales tax?

Answer 23: 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% sales tax, and the \$4,000 for parking less the embedded tax is subject to the 12% sales tax.

Question 24: Assume the Commission has granted a for-profit vendor (the “Concessionaire”) the right to operate food and beverage concessions and provide catering services at RFK 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 Commission 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. 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 RFK of food and beverages and catering services during professional baseball times, must the Concessionaire pay the sales tax imposed by the Emergency Baseball Act?

Answer 24: The gross receipts subject to the 10% 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 Commission.

Question 25: District law does not permit the Commission to contract out the management, operation, or maintenance of RFK to any RFK tenant. As part of its statutory obligations the Commission is responsible for general maintenance. This general maintenance includes necessary repairs and maintenance of the grounds including lawns and landscaping services. D.C. Official Code §3-1407(a)(3) and (b).

The Commission enters into contracts directly with for-profit vendors for the purpose of providing these services during both the MLB season and the off-season. Does the provision of these services during professional baseball times qualify as “other services” sold at RFK that are subject to the 10% sales tax?

Answer 25: The services of repairing tangible personal property and performing real property maintenance and landscaping qualify as sales of other services at RFK. District law would ordinarily require for-profit vendors rendering the services to charge a sales tax. D.C. Official Code §47-2001(n)(1)(I),(M). However, the vendors have contracted directly with the Commission to provide these services, and no person except the Commission is liable to the vendors for the payment of these services. Under these circumstances D.C. Mun. Regs. tit.9, §445.2 (2005) excuses the vendors from the obligation to collect sales taxes on the sale of these services to the Commission.

Question 26: Assume the same facts as in question 25, except that as part of its responsibilities, the Commission is also responsible for providing certain day-of-game services, such as cleaning and custodial, crowd management, medical, security, usher, and ticket-taker services. The Commission enters into contracts directly with for-profit vendors for the purpose of providing these services at RFK on days in which professional baseball games are scheduled. In some cases the vendors under these contracts also provide these services for public events at RFK other than professional baseball games or professional baseball-related events and exhibitions. Assume further that the Team has contracted with the Commission to reimburse the latter for the reasonable cost of some of these services.

However, there is no contract between the Team and these vendors that would make the Team legally obligated to the vendors for payment of these services. Does the provision of these services at RFK qualify as “other services” subject to the 10% sales tax imposed by the Act?

Answer 26: No. Because crowd management, security, medical, usher, and ticket-taker services are not “selected services” within the meaning D.C. Official Code §§47- 2001(n)(1), they are not subject to the 10% sales tax on other services sold at RFK. Cleaning and custodial services are not subject to the above tax for the same reasons that the services in question 25 were not taxable.

494.4 **Collection and Payment of Ballpark Sales Taxes Including Electronic Filing**

Question 1: 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 1: All provisions of Chapter 20 apply to the collection and payment of Ballpark sales taxes except those provisions that are inconsistent with the Emergency Baseball Act or these regulations. Ballpark sales taxes are those sales taxes described in Answer 1 to D.C. Mun. Regs. §9-495.3 (2005) above. If the vendor has collected sales taxes in addition to Ballpark sales taxes, the vendor should continue to 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. The provisions of Chapters 41 (except §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 2: Will OTR 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 the preceding calendar month must electronically file monthly sales tax returns and electronically pay over such taxes collected in accordance with instructions contained in a notice published on OTR’s website. See D.C. Official Code §§ 47-2015, 2016. This requirement to file electronically begins with the monthly returns due on March 20, 2005.

Question 3: Are promoters of professional baseball-related events or exhibitions held at RFK required to comply with the requirements of D.C. Official Code §47-2002.04 to notify OTR they are organizing such an event or exhibition and to provide certain information on District tax obligations to the participating vendors and exhibitors?

Answer 3: Promoters of professional baseball-related events and exhibitions at RFK do not have to comply with D.C. Official Code § 47-2002.04 if they are using the same vendors at those events and exhibitions that are regularly authorized by the Commission or the Team to sell services, alcoholic beverages, food and drink, and other tangible personal property at professional baseball games at RFK.

However, if other vendors (“outside vendors”) are to be used, then all the requirements of the above section apply to those promoters except for the 50-vendor requirement in D.C. Official Code §47-2001(w-1)(1). Under such circumstances the promoters 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).

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 4: Should the Sports Commission notify OTR before a professional baseball-related event or exhibition is held at RFK?

Answer 4: Yes. The Commission should notify OTR in writing that a professional baseball-related event or exhibition will be held at RFK and should identify the promoter at least 40 days before the date of such event.

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: Office of the Associate 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 Associate General Counsel in OTR participated in their development.