

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



OTR TAX NOTICE 2008-02

Taxpayer Appeal Rights

A taxpayer has certain appeal rights within the Office of Tax and Revenue (OTR), and, depending on the kind of tax or fee in dispute, appeal rights from a decision of OTR to the Office of Administrative Hearings (OAH) or to the Superior Court of the District of Columbia.

The taxpayer appeal rights discussed herein do not apply to real estate and possessory interest taxes¹.

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¹ Generally, possessory interest tax is imposed on a person who leases or otherwise uses government-owned real property for business or residential purposes.

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I. Deficiency Cases

A. Definition:

1. Generally, a **deficiency** is the difference between the correct tax or fee owed, less the tax liability shown on the taxpayer’s return.
2. If no return was filed, the deficiency is generally the correct tax or fee owed less taxpayer payments, credits, or other adjustments, if any, applied to the correct tax.
3. A deficiency may relate to the following taxpayers including but not limited to:

- Individuals
- Corporations
- Estates
- Trusts
- Partnerships
- Other unincorporated businesses

4. A deficiency may arise but is not limited to all of the following taxes or fees:

- Alcohol Beverage Tax
- Ballpark fee
- Income tax
- Estate tax
- Franchise tax
- Cigarette tax
- Motor fuel tax
- Personal property tax
- Public utility tax
- Recordation tax

Rolling Stock tax
Sales and use tax
Telecommunication tax
Transfer tax

B. How to Contest Proposed Audit Changes for Deficiency Cases with OTR:

Notice of Proposed Audit Changes

1. If the Audit Division, OTR, does not agree with the taxpayer's return as filed, OTR sends a Notice of Proposed Audit Changes to the taxpayer showing a potential deficiency in tax.

Informal Conference

2. A taxpayer may contest the changes within 30 calendar days of the date of the notice by requesting an informal conference with a conferee in the Review and Conference Section of the Audit Division. The taxpayer may offer additional information to show that no deficiency or a reduced deficiency is owed but should contact the Auditor to arrange delivery of the taxpayer's records prior to the conference. If no return has been filed, the taxpayer may be asked to file tax returns with supporting documentation.

Information to be Included with Taxpayer's Request for Informal Conference

3. The taxpayer should include the following information in the request for an informal conference:
- a. Taxpayer's name, address, telephone and fax numbers;
 - b. Taxpayer's Federal Employer Identification Number (FEIN) or Social Security Number (SSN);
 - c. The name, address, telephone and fax numbers of the taxpayer's representative, if any. A copy of a Power of Attorney (Form D-2848) should be attached;
 - d. Type of tax and period(s) involved;
 - e. Amount contested and amount uncontested, if any;
 - f. Statement of facts why there is no deficiency or reduced deficiency;
 - g. Statement of applicable law;
 - h. Nature of the relief requested; and
 - i. Name of Auditor assigned to the case.

4. **The taxpayer should mail the request to:**

**Audit Division
Government of the District of Columbia
Office of Tax and Revenue
P.O. Box 556
Washington, D.C. 20004
Attention: (Name of Tax Auditor)**

Taxpayer Required to Attend Informal Conference

5. If a conference is requested, the taxpayer is required to attend the informal conference and to show identification with a picture. The personal representative may also be required to show such identification.

Notice of Proposed Assessment of Tax Deficiency

6. If a settlement is not reached at the informal conference, a “Notice of Proposed Assessment of Tax Deficiency” will be mailed to the taxpayer after the informal conference. If additional information presented to the conferee results in a change to the original Notice of Proposed Audit Changes, a revised Notice of Proposed Assessment of Tax Deficiency will be mailed to the taxpayer reflecting the determination of the conferee.

Taxpayer Can Choose One of Two Courts

7. After receiving a Notice of Proposed Assessment of Tax Deficiency, a taxpayer has the option of appealing this determination either to the Office of Administrative Hearings (no payment of proposed tax, penalty, or interest required to appeal) or to the D.C. Superior Court (full payment of assessed tax, penalty, or interest required to appeal). The taxpayer cannot appeal to both courts. D.C. Code § 47-4312(d).

8. D.C. law does not require a taxpayer to participate in the “Informal Conference” described in paragraph 2 above as a pre-condition to appealing either to OAH or the D.C. Superior Court.

Appeal to Office of Administrative Hearings (“OAH”)

9. If the taxpayer elects to appeal to OAH, the taxpayer has 30 calendar days² to protest to OAH from the date of the “Notice of Proposed Assessment Tax

² See Office of Administrative Hearings Rules of Practice and Procedure, Rules 2811.2 and 2811.3 for how the 30-day period is determined. For any questions as to OAH rules or practices, please access the OAH website at oah.dc.gov or call OAH at (202) 442-9094.

Deficiency” with respect to any tax or fee described in the Notice of Proposed Assessment of Tax Deficiency.³

10. Appeal to OAH does not require the taxpayer to pay the proposed tax, penalty, or interest as a prerequisite for obtaining court review by OAH. No final assessment of a deficiency in tax, penalty, or interest will be made until after the decision of OAH.

Appeals of Certain Interest and Penalties to OAH

11. OAH has jurisdiction to hear OTR cases arising only from proposed deficiencies in taxes or fees, or interest and penalties relating to such deficiencies, with certain important exceptions listed below in Section I. C. See D.C. Code §§ 2-1831.03(b)(4); 47-1528, -1812.05, -2019, -2410(a), -3717(b), -3908(a) and -4312(a).

12. For example, even though a taxpayer settles a deficiency in tax with OTR, a taxpayer can still appeal to OAH interest and/or penalties imposed thereon because they arose in connection with the proposed deficiency in tax.

13. By contrast, interest and/or penalties arising from a filed tax return showing no payments or partial payments of tax (a “balance due” return such as one on which a taxpayer shows \$10,000 owing on his return, but pays only \$8,000), do not give rise to a deficiency and cannot be appealed to OAH. (See Section II. A.5.) This is because there is no tax owing in excess of the tax liability reported on the taxpayer’s return.

14. Note that recordation and transfer taxes are subject to the deficiency procedures and a notice of proposed deficiency for recordation tax and transfer tax, as well as interest and penalties relating to those taxes may be appealed to OAH. See D.C. Code §§ 42-1108.01 and 47-4312.

15. An estimated tax penalty under D.C. Code §§ 47-4214 (individuals) or 47-4215 (corporations, financial institutions, and unincorporated businesses) is appealable to OAH as a deficiency if no return is filed. In this regard, D.C. law is similar to I.R.C. § 6665(b)(2). However, if a return is filed, but, for example, the taxpayer makes his estimated tax payments late, the penalty is not appealable to OAH because it is not measured by a deficiency. See Section II. A. 6.

³ The final determination of whether OAH has jurisdiction to hear a case lies first with that court and then with the D.C. Court of Appeals.

Notice of Final Assessment

16. If the taxpayer does not appeal to OAH within 30 calendar days from the date of “Notice of Proposed Assessment of Tax Deficiency,” OTR will issue a final assessment of tax, penalty, and interest to the taxpayer, D.C. Code § 47-4312(b).

Appeal to D.C. Superior Court (Refund Suit)

17. If the taxpayer wishes to appeal to court after the notice of final assessment, the taxpayer must first pay the assessed amounts of tax or fee, penalty, and interest, in full, and may then file a complaint with the Superior Court of the District of Columbia seeking a refund of the paid amounts. See D.C. Code § 47-3303. A taxpayer may not file a petition with OAH after the notice of final assessment seeking a refund of paid amounts.

18. Appeal to the D.C. Superior Court includes but is not limited to assessments of any tangible personal property, estate, business privilege, income and franchise, sales, alcoholic beverage, gross receipts, gross earnings, or motor-vehicle fuel tax or taxes, ballpark fee, or penalties or interest thereon. The taxpayer has six (6) months from the date of the final assessment to file a complaint with the District of Columbia Superior Court for a refund of such tax or fee, penalty, and interest.

Appeal from OAH and D.C. Superior Court to D.C. Court of Appeals

19. A taxpayer may appeal a decision of OAH or the D.C. Superior Court to the District of Columbia Court of Appeals. Consult appellate rules for the District of Columbia Court of Appeals.

C. Appeals to OAH Involving Either Final Assessments in Tax or Certain Non-Deficiency Matters

A taxpayer may appeal to OAH from certain final assessments or non-deficiency matters described below. Please note the differing times for filing an appeal with OAH. If no time is specifically listed, the taxpayer has 30 calendar days from the date of the final determination letter by OTR to file a protest with OAH:

Refund Offsets—Internal and External, Appeal

An internal refund offset described in paragraph 1 refers only to OTR’s applying an overpayment of District tax against the taxpayer’s liability for another District tax, U.S. tax, or other state tax.

1. Only if a refund offset concerns the division of a joint refund (including a real property tax refund) under D.C. Code § 47-4432, the taxpayer may appeal the following to OAH, under D.C. Code § 47-4433: (1) the proposed referral for

offset of the tax refund, (2) the offset of the tax refund, or (3) the apportionment of the tax refund.

An external refund offset described in paragraph 2 relates to matters that arise outside of OTR.

2. A taxpayer may also appeal to OAH under D.C. Code § 47-4433, a notice of refund offset concerning (1) the existence of an unpaid amount of court-ordered child support, (2) a default under a federal student loan program, or (3) the overpayment of unemployment compensation benefits under D.C. Code § 47-4431(c).

A “refund offset” in the case of the matters referred to in paragraph (2) involves OTR’s applying the amount of any overpayment of District tax, including interest thereon, against the amounts owed arising outside of OTR.

Appeal to D.C. Superior Court—Refund Offsets in Paragraphs 1 and 2

3. Alternatively, a taxpayer may appeal to the D.C. Superior Court from a final determination of any refund offset discussed above within 6 months of the determination under D.C. Code § 47-4437.

NOTE: A taxpayer may not appeal the determination of real property tax to OAH. A taxpayer may only contest the determination of real property tax or possessory interest tax first through other administrative procedures not covered by this notice and then only to the Board of Real Property Assessments and Appeals (BRRPA) and ultimately to the D.C. Superior Court. See D.C. Code § 47-825.01. For rules relating to real property tax appeals, please visit the Real Property Assessment Appeals website.

Tax Return Preparer Penalties

4. A preparer may appeal tax return preparer penalties under D.C. Code § 47-4217(f)(2).

Nursing Facility Tax

OTR collects the tax due from nursing facilities for the Department of Health (“DOH”).

5. A nursing facility may appeal its annual assessment for nursing facility tax, any determination or redetermination thereof, any interest thereon, and administrative penalties imposed for failure to file with DOH its annual net resident revenue reports. See D.C. Code §§ 47-1263(d) and 1264(b).

6. A notice of appeal (protest) must be filed with OAH within 60 calendar days

after the date of a notice of: (1) annual assessment; (2) determination or redetermination of an assessment based on an audit; or (3) imposition of interest or administrative penalties. However, no appeal can be filed with OAH until the facility has paid the tax due, plus any interest and penalties related to that assessment. See D.C. Code § 47-1266.

7. A nursing facility may not appeal to OAH the non-administrative penalty levied under D.C. Code §47-1264(c) for knowingly providing false information on a net revenue report.

Cigarette Tax Refunds

8. Applications for refund of cigarette tax or interest and penalties thereon (such as the civil penalty under D.C. Code § 47-2422(b)) that were not previously adjudicated by OAH under D.C. Code § 47-2410(a) or by the D.C. Superior Court and that were erroneously or illegally collected, provided an application is made to OAH within one year of payment. D.C. Code § 47-2412.

9. Any taxpayer (1) aggrieved by a final determination of tax (except a final determination by OAH), or (2) a denial of a claim for refund (except a refund claim as finally determined by OAH), may, within 6 months from the date of such determination, appeal to the D.C. Superior Court. See D.C. Code § 47-2413.

Cigarette Penalties under D.C. Code § 7-1803.06

10. Appeals of penalties imposed by OTR under D.C. Code § 7-1803.06(a)(2) on any person for selling, offering, or possessing for sale in the District cigarettes not on the Directory, for importing such cigarettes into the District, or for affixing District tax stamps to packages of cigarettes not on the Directory. See D.C. Code §§ 2-1803.01, -1831.02(a), -1831.03(a)(3), -1831.03(b)(4), -1831.03(f), and 47-2402(c).

Jeopardy Assessment

11. If a jeopardy assessment or collection of a deficiency in tax (except real property tax) has been made under D.C. Code § 47-4451, the taxpayer shall have the right to file, within 5 business days, a protest of the assessment of tax, the seizure of property, or both to OAH. If a timely protest is filed, the property seized for the collection of the tax shall not be sold until completion of the proceedings in OAH.

II. Non-Deficiency Cases—Matters Resolved by OTR’s Compliance Administration

A. The following Compliance Administration matters cannot be appealed to OAH since they do not give rise to a proposed deficiency in tax or fee.

1. OTR's denial of a claim for refund due to (a) the taxpayer's filing a refund claim after the statute of limitations on assessment has expired, or (b) disallowed adjustments to income or deductions claimed in an original or amended return that does not result in a proposed deficiency.
2. OTR's denial of applications for an exemption from sales tax otherwise imposed on utilities used in the production of a finished product for sale, including sales of natural or artificial gas, oil, electricity, solid fuel, or steam, directly used in manufacturing, assembling, processing, or refining.
3. OTR's denial of all other specific sales and/or use tax exemptions (including issuance of a parking sales tax exemption card under D.C. Code § 47-2001(n)(1)(L)).
4. OTR's denial of applications to qualify as an exempt organization for franchise tax purposes.
5. Assessments of interest and penalties not related to a deficiency in tax or ballpark fee, such as interest and/or penalties arising from the failure of a taxpayer to pay the full amount of tax reported as owing on the taxpayer's filed return. See Section III. A. 1. below.
6. Assessments of estimated tax penalties under D.C. Code § 47-4214(c)(1) and -4215(c)(1) cannot be appealed to OAH if a return is filed since the penalty is ordinarily not measured by a deficiency. See I. B.13.

B. Request to CARO for Reconsideration of OTR's Decision in Non-Deficiency Cases Described in Section II.A., 1-6

1. The taxpayer will be notified in writing of the Audit Division's decision on matters described in Section II.A., 1-6. The taxpayer has 30 calendar days from the date of the notice to request a reconsideration with the Compliance Administration Reconsideration Office (CARO) by mailing a written request to:

Compliance Administration Reconsideration Office
Fifth Floor, 941 North Capitol Street, NE
Washington, D.C. 20002
Attention: Deputy Director

Reconsideration Request

2. The taxpayer should also include in the reconsideration request, the same information as listed above in section I. B. 3. This is the taxpayer's Reconsideration Request.

Determination on Reconsideration Request

3. The determination on the Reconsideration Request will be made by the Deputy Director, Compliance Administration.

4. If the decision by CARO is to disallow the refund, or deny an application for exemption, the taxpayer may file a complaint with the Superior Court of the District of Columbia within six (6) months from the date of the determination.

5. The denial of exempt status for the exemption requests mentioned above can only be appealed to the District of Columbia Superior Court by following the procedures in D.C. Code § 47-3303 relating to such appeal.

III. Decisions of the Collection Division Appealable to CARO (Please see the Collection Division website for further discussion)

A. The Collection Division has jurisdiction over all matters involving the collection of assessments of tax, interest, and/or penalties whether arising from a final assessed deficiency in tax or other final determination. While most collection matters are not appealable to CARO, certain final determinations of the Collection Division on the matters below are appealable to CARO:

1. Requests for waiver of a penalty and/or interest (except a final determination of a penalty or interest by OAH)
2. Offers in compromise
3. Determinations of personal liability for failure to collect or pay "trust fund" taxes such as sales tax or D.C. income tax withholding. See D.C. Code § 47-4491.