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## SECTIONS

### THE DISTRICT OF COLUMBIA BAR

**TO:** Board of Governors  
Section Chairpersons  
(Designated to Receive Public Statements)

**FROM:** Carol Ann Cunningham *CAC*

**DATE:** February 27, 1992

**SUBJECT:** EMERGENCY PUBLIC STATEMENT regarding Comments  
on the Proposed District of Columbia  
Professional License Amendment Act of 1992,  
Bill 9-454, by the Section on Taxation

Eileen Sobeck  
Chair, Council on Sections  
Susan L. Moss  
Vice Chair,  
Council on Sections

James Robertson  
D.C. Bar President  
Jamie S. Gorelick  
D.C. Bar President-Elect  
Katherine A. Mazzafferri  
D.C. Bar Executive Director

Carol Ann Cunningham  
Sections Manager

Special 24-hour expedited consideration requested on  
behalf of the Taxation Section

Enclosed please find for your immediate review a one-page summary of a public statement prepared by the Taxation Section. Copies of the full text will be provided upon request. If you wish to have this matter placed on the next Board of Governors' agenda on March 10, please call me by 2:00 p.m. on Friday, February 28. I can be reached at (202) 331-4364.

Please note that according to the Guidelines regarding public statements (pp. 39-52) your telephone call "must be supplemented by a written objection lodged within seven days of the oral objection."

#### Enclosures

cc w/full public statement text:  
James Robertson, Esq.  
Jamie S. Gorelick, Esq.  
Andrew H. Marks, Esq.  
Eileen Sobeck, Esq.  
Susan L. Moss, Esq.  
Katherine A. Mazzafferri, Esq.

DRAFT 2-27-92

**Statement of the Section of Taxation  
District of Columbia Bar  
on the Proposed District of Columbia  
Professional License Amendment  
Act of 1992, Bill 9-454**

**Before the Committee of the Whole  
Council of the District of Columbia**

**February 28, 1992**

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The views expressed herein represent only those of the Section of Taxation of the District of Columbia Bar and not those of the District of Columbia Bar or the Bar's Board of Governors. The Section of Taxation is comprised of approximately 1,400 members. Members of the Section's Tax Policy Task Force and Steering Committee participated in the preparation of this statement. The members of the Steering Committee and Tax Policy Tax Force are: Celia Roady (Co-Chair, Steering Committee), Donald C. Lubick (Co-Chair, Tax Policy), O. Donaldson Chapoton (Co-Chair, Tax Policy), Stephen Csontos, Ellen A. Hennessy, Gerald A. Kafka, Patricia G. Lewis, Charles B. Temkin, Joseph A. Rieser, F. David Lake, Jr., J. Mark Iwry, Marian S. Block, Lynn K. Pearle, James E. McNair, Suzanne R. McDowell, Barbara L. Kirschten, Jane C. Bergner, Richard C. Stark, Collette C. Goodman, Leonard J. Henzke, George P. Levendis, Reeves Westbrook, C. David Swenson, Steven Welles and Blake Rubin.

**EXECUTIVE SUMMARY OF D.C. BAR TAXATION SECTION'S  
WRITTEN SUBMISSION TO THE D.C. CITY COUNCIL  
ON THE PROPOSED BUSINESS LICENSE FEE**

The Taxation Section of the D.C. Bar is committed to playing a constructive role in solving the D.C. fiscal crisis. It has already participated in efforts to address the problem, and is prepared to assist in the future. However, we believe the answer lies in reduced expenditures, a greater Federal payment, improved collection and enforcement and expansion of the tax base -- not in increased taxes.

Within the brief time frame that we have had to review the "District of Columbia Professional License Amendment Act of 1992," we believe that there are serious deficiencies in the proposed legislation, including the following:

- **Legality.** The proposed legislation appears to be a thinly disguised effort to resurrect a commuter tax in violation of the Home Rule Act and the Bishop case.
- **Anti-Competitive Impact.** The proposed legislation would have an anti-competitive impact on District service providers vis-a-vis the neighboring jurisdictions. It would encourage the creation of multi-city firms and cause significant numbers of service providers to leave the District altogether. This would, in turn, decrease employment, rental of office space, and purchases of goods and services in the District.
- **Fairness.** The rate of the tax, 2% of gross receipts, is extremely high as a function of net income for most service businesses. The tax will have a regressive effect and the most significant adverse impact will be on lower income service providers. The proposed imposition of a minimum rate of \$1,200 per year is inappropriately high as a license fee.
- **Administrability.** The proposed legislation reflects a lack of understanding as to the structure and operations of professional service providers. There are many substantive and technical deficiencies in the statutory scheme. These would make compliance difficult and expensive, and would create insuperable problems in enforcement and tax administration.

Several years ago, the Rivlin Commission studied the District's fiscal situation and provides an excellent framework for the resolution of the budget crisis. The fundamental problem surfaced by the business license tax proposal is the limitation on the District's taxing authority over nonresidents. This problem should be addressed directly. The District should, through the Council of Governments, seek a unified approach that fairly apportions revenues among the three jurisdictions and does not unfairly burden taxpayers. With the cooperation of Maryland and Virginia, the Home Rule Act could be amended to allow for a revenue approach acceptable to all three jurisdictions.

# TAXATION SECTION



## The District of Columbia Bar

### Steering Committee:

Steven A. Nauheim, Cochair  
Celia A. Roady, Cochair  
Stephen J. Csontos  
Ellen A. Hennessy  
Gerald A. Kafka  
Patricia G. Lewis  
Charles B. Temkin

James Robertson  
D.C. Bar President  
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Eileen Sobeck

Chair, Council on Sections

Susan L. Moss

Vice Chair, Council on Sections

Andrew H. Marks

Board of Governors Liaison

Carol Ann Cunningham

Sections Manager

### Statement of the Section of Taxation District of Columbia Bar on the Proposed District of Columbia Professional License Amendment Act of 1992, Bill 9-454

Before the Committee of the Whole  
Council of the District of Columbia

February 28, 1992

### Committees:

Business Related Taxes

Employee Benefits

Estate Planning/Death Related Taxes

Exempt Organizations

Tax Audits and Litigation

I am Steve Nauheim, Co-Chair of the Section of Taxation of the D.C. Bar.<sup>1</sup> I appreciate the opportunity to appear before you to discuss the Mayor's proposed Business License Tax. As Co-Chair of the Bar's Taxation Section, I speak only on behalf of the approximately 1,400 members of our Section and not for the D.C. Bar or its Board of Governors. We are very sensitive to the need to address the fiscal crisis the District of Columbia faces and want

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to play a constructive role in finding practical solutions. To that end, the Section of Taxation sponsored a public seminar on the subject approximately one year ago at which, I am pleased to note, several concerned members of the City Council were present and participated. In addition, representatives of the Taxation Section have met with members of the Department of Finance and Revenue to provide technical input with respect to what has been referred to in the past as the "professionals tax". We further have made known our availability to the Administration and the City Council to assist in the search for a solution -- and that commitment remains in place today.

We, along with I believe most who have carefully examined the subject, feel the answer to the D.C. fiscal crisis lies in reduced expenditures, a greater Federal payment, improved collection and enforcement and expansion of the base on which taxes are collected. I would add to that list a fifth prong, which I will address momentarily: not repeating costly mistakes of the past.

We also believe that the solution does not lie in the imposition of new, or increased, taxes -- regardless of whether those taxes are imposed on a select category of professionals, property owners, businessmen or the general populace.

1. The Proposal's Impact on a Declining Economic Base

The D.C. professional services community is very broadly defined in the Mayor's bill, covering everything from lawyers to bookkeepers. It is, without question, one of the most important pillars of the District's economy. The District has a services-based economy. To improve D.C. revenues we must find ways to expand this key pillar to the economy, not chip away at it. In the early years of Japan's entry into the U.S. automobile market, I was always dumbfounded by the response of the U.S. automakers to their rapidly declining sales -- they increased the price of their product! Needless to say, sales continued to decline. The District's professional services community is facing economic decline like the balance of our economy. As addressed in more depth below, the Mayor's proposed business license tax is the equivalent of raising net income tax rates on the services sector by anywhere from 50 percent to 100 percent or more. This is the exact opposite of what the District now needs.

2. Impact of the Home Rule Act and the Bishop Case

I will return to this economic analysis shortly, but first I will turn to the other macro issue -- not repeating costly mistakes of the past that have contributed to today's fiscal crisis. In 1975, the District made such a mistake -- it enacted an unincorporated business tax on professionals. Without the benefit

of time to research the legislative history, I would speculate that it is highly likely that those who testified at the hearings on the unincorporated business tax warned of its doubtful legality. As I am sure each of you know, in 1979, the unincorporated business tax was declared invalid as a violation of the Home Rule Act. The direct costs to the District of this experience was a refund of the \$40 million in revenues the District had collected plus interest. The indirect and, to my knowledge, unquantified cost must have been substantial in term of the manpower devoted to administration, enforcement and collection of the tax and the unsuccessful legal defense, not to mention the cost this ill-fated measure must have had in terms of diverting business and employment. A modest estimate of the cost of this past mistake would be \$50-75 million, a significant part of the deficit we face today. It is my personal belief that the tax proposed today would suffer the same fate.

As you know, the District is prohibited by the Home Rule Act from imposing a tax on the personal income of non-residents. Our analysis of the proposed tax suggests the distinct possibility that the courts would find it to be in violation of that prohibition, under the principles of Bishop v. District of Columbia, 401 A.2d 955 (D.C. App. 1979), 411 A.2d 997 (D.C. App. 1980) (en banc). We do not regard the proposed tax as basically different for this purpose from the tax that was invalidated in the Bishop case. In the services field, gross receipts are tantamount to gross income. A tax on gross receipts from services is a tax on income. There is

no requirement in the Home Rule Act that a tax be on net income to be within the prohibited category. Gross income is income. The fact that the proposal includes a credit against personal income taxes of some taxpayers reinforces the conclusion that this is a tax on income. The character of the proposed tax as an income tax is altered by the use of a "license fee" label, any more than it was by the use of a "sales tax" label in similar proposals in 1980 and 1990, or by the use of the "franchise tax" label in the 1975 tax invalidated in Bishop itself. Administration after administration has tried to put a succession of labels on what is really the same thing. A tax is a tax. Indeed, the use of such labels will only encourage many to assert in court the invalidity of what they regard as only a commuter tax in disguise. If there was any doubt that this is a disguised commuter tax, that doubt is removed by the Mayor's explanatory letter accompanying the transmittal of the legislative proposals to the City Council. Such assertions would be credible and would have a significant likelihood of success.<sup>2</sup>

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<sup>2</sup> A commuter tax was rejected by the Home Rule Charter enacted by Congress. The District may not do indirectly that which it is prohibited from doing directly, namely impose a commuter tax. Bishop v. District of Columbia, 401 A.2d 955 (D.C. App. 1979), reh'g. en banc, 411 A.2d 997 (1980). The title for a tax is not determinative of its character. Flint v. Stone Tracy Co., 227 U.S. 107 (1910). Instead, the character of a tax is determined by its nature and effect. Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977); Dawson v. Kentucky Distilleries and Warehouse Co., 255 U.S. 288, 292 (1921); Commr. v. American Metal Co., 21 F.2d 134, 137 (2d Cir. 1955), cert. denied, 350 U.S. 829 (1955); New York and Honduran Rosario Min. Co. v. Commr., 168 F.2d 745, 748 (1948). An enforced pecuniary burden laid on individuals or property to support government is a tax, subject to all requirements of law  
(continued...)



There are also various sound constitutional grounds on which the proposed tax will most likely be challenged, including the First Amendment right of free speech and right to petition the government, the Fifth Amendment guarantee of due process and equal protection, the Sixth Amendment right to counsel, and limitations under the commerce and due process clauses on the imposition of a District sales tax, without any apportionment mechanism, on services that are performed outside the District.

If an unwise and unfair tax such as this is enacted, it will undoubtedly engender a vigorous and most likely successful challenge in court. Such a challenge could very well produce the enormous refunds and administrative costs and burdens that followed the Bishop decision. At best, such a challenge will produce a long period of instability, uncertainty, and adverse publicity.

3. The Standards Established in the Rivlin Commission Report

In the portion of the report of the Commission on the Budget Priorities (the "Rivlin Commission Report") dealing with tax revenue alternatives, the Commission identified six specific standards. Specifically, any tax proposal should:

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<sup>2</sup>(...continued)  
relating to taxes. Eastern Airlines v. Department of Revenue, 488 So.2d 311 (Fla. 1984), Appeal Dismissed 474 U.S. 892 (1985). A tax on gross employment income is an income tax. Bank of America Nat'l Tr. and Savings Assn. v. U.S., 459 F.2d 513 (Ct.Cls. 1972), cert. denied 409 U.S. 949.

- Produce revenues that are adequate to meet the needs of the jurisdiction and grow at reasonable and predictable rates;
- Have reasonably broad bases so that tax preferences are minimized and tax rates are low as possible;
- Be fair or equitable, so that a tax is based on benefits received and ability to pay;
- Be simple for taxpayers to calculate and understand;
- Be easy for the government to collect and administer; and
- Not hinder economic development and competitiveness or inadvertently interfere with private business decisions.

The Mayor's proposed business license tax fails these standards. Fundamentally, any new tax must meet three basic criteria -- it must be fair, it must be effective and it must not hinder economic development.

As co-chair of an organization of tax experts practicing in the District of Columbia, I am here to say it is our conclusion that the Mayor's proposed license tax is neither fair nor effective. Further, the proposed tax would hinder economic

development in the District of Columbia by driving professionals from the City and promoting the growth of branch offices in Maryland and Virginia.

At first blush, one might say that any form of tax that is limited to a 2 percent rate cannot be attacked on the grounds of fairness. Leaving aside potential future increases in the rate (the Federal income tax, when originally enacted, was a 1/2 percent tax), I note that the cost to the taxpayer is far greater than the 2 percent charge. In addition, as discussed later, since the proposed tax would be imposed on gross receipts, when typical overhead factors are taken into account, it becomes a tax of 5 or 6 percent or more on a taxpayer's net income. In some professions it may approach 50% of net income. Hidden compliance costs not only will make it more difficult for D.C. professionals to compete with Maryland and Virginia professionals, but also will reduce D.C. income tax revenues since these costs are deductible in computing taxable income. Thus, do not be lulled by the nominally low rate.

When you judge the propriety of this tax, you must look at it in terms of whether it makes sense from a policy and pragmatic standpoint -- and this tax does not make sense.

#### 4. Fairness

I could go on at length on the subject of fairness but, in the interest of time, I will hone in on what we have, at this time, identified as some of the most blatant examples of the unfairness of this proposal.

(a) Gross Receipts v. Net Income. First, as a tax on gross receipts, it does not take into account the taxpayers' costs in generating those gross receipts. As a result, the effective rate on net income is decidedly higher than 2 percent.

To illustrate, a bookkeeper earning \$24,000 per year would be subject to the minimum business license tax which would be \$1,200. This is 5 percent of her income. As a D.C. resident, she is currently paying about 3 percent of her gross income in D.C. income taxes. This proposal, even after claiming a credit for the license tax, would effectively increase her income tax rate by 67 percent, if she can claim the credit, and 150 percent if she cannot claim the credit.

An architect operating as a professional corporation employs 2 junior architects and 3 draftsmen. 90 percent of his gross receipts is applied to pay salaries, rent and other overhead costs. A 2 percent tax on his firm's gross revenues would become a 20 percent tax on the net income generated by his architectural

practice. As a D.C. resident, he is currently paying an effective rate of 4 percent of his adjusted gross income in D.C. income taxes and, under the proposed legislation, would receive no credit against his D.C. income tax because he operates in the corporate form. Accordingly, his D.C. tax burden would be increased by 500 percent.

These examples demonstrate the regressive nature of the Mayor's proposed tax, since it is assessed on gross receipts without reference to ability to pay.

The adverse impact on other service providers would also be substantial. Large law firms in D.C. typically incur overhead costs of 60 to 70 percent of their gross revenues and commonly operate as professional corporations. Thus, the 2 percent tax would represent a 5 or 6 percent tax on the net income of partners/shareholders. Many of these individuals are currently paying the maximum 9 1/2 percent D.C. income tax, which would be increased by over 50 percent by this proposal.

(b) Targeting of a Small Group of Taxpayers. In addition, the proposal unfairly discriminates by its imposition on a select group of people who work for a living. The tax would not be imposed on the wealthy who receive interest and dividends, or on medical professionals, or on people who own office buildings, restaurants or other businesses. It would not be imposed on the

salaries of people who work for banks, universities or government. Thus, on a typical block, two or three families will be forced to pay 50 percent or more in additional D.C. taxes on their earnings while their neighbors would not be affected by the proposed tax. This is neither rational nor fair. We find this discriminatory treatment particularly ironic in a city that uniquely suffers from discrimination itself -- being the only city in our nation whose residents do not have voting representatives in Congress.

(c) Professional License Fee Credit. On Tuesday, the Mayor also transmitted to the City Council the "District of Columbia Income and Franchise Tax Act Professional License Credit Amendment Act of 1992" which proposes to allow D.C. residents a credit against the resident's D.C. income tax for his or her share of the license tax paid by a professional sole proprietorship or partnership. This crediting arrangement fails to the extent that the license tax exceeds the resident's D.C. income tax liability, meaning that for residents that qualify for the credit, only those at the lower end of the income scale face an increased burden. Further, the credit does not apply to individuals who are shareholders in corporations. In most multi-jurisdictional firms, it will provide only partial relief. Finally, if these Acts taken together effectively limit the application of the business license tax to non-residents, that would increase the likelihood of the tax being overturned on the grounds that it violates the Home Rule Act prohibition against commuter taxes.

5. Ineffectiveness

(a) An Enforcement Nightmare. Perhaps even more damning is the ineffectiveness of the Mayor's proposed tax. We submit that, in spite of the projections of increased revenues, the proposed tax will aggravate the D.C. fiscal crisis -- not lessen it. We believe that the cost of administering the tax and the negative competitive effect will result in costs exceeding any benefit. The difficulty of enforcing the proposed tax is dramatically illustrated by the fact that jurisdictions such as Florida and Massachusetts that have, in recent time, unwisely enacted similar taxes, have shortly thereafter realized the error of their ways and repealed the tax. Only an isolated few jurisdictions have similar taxes and they are generally imposed at minimal rates, ranging from .1 to .5 percent.

(b) The Multi-Jurisdictional Nature of D.C. Professional Services. As I am sure you are aware, a great number of professional firms in the D.C. area are multi-jurisdictional firms -- many have offices in the suburbs or other cities and many others are branch offices of firms based in other cities. This creates two elemental problems -- (1) how will the Department of Finance and Revenue be able to police the allocation of client fees received by a multi-jurisdictional firm (and how will the firm itself maintain adequate records) and (2) the tax surcharge on D.C.-based services will have the obvious effect of influencing

firms to perform services outside the District which, in turn, will have the dual effect of reducing the business license tax base and the income tax base. For this, and a multitude of other reasons, the tax, in addition to being unadministrable, will drive business out of the District.

(c) Impractical Recordkeeping Requirements. Under the bill, the method for determining which gross receipts of a professional firm are subject to the license fee is generally as follows. First, the firm must classify its personnel as being inside or outside the District -- typically on the basis of whether the personnel operate out of a District or non-District office. Next, the firm must analyze its receipts to determine the extent to which they are attributable to District or non-District personnel.

Although this sounds simple, in practice it would entail an extraordinary bookkeeping burden on a firm with multiple offices. While this formula for determining whether personnel are District or non-District is borrowed from the three-factor formula used in apportioning the taxable income of a business, the method of categorizing receipts is wholly unique. A firm would have to take each payment, associate that payment with one or more bills sent to the client, and keep track of which personnel's work was being billed. This is complicated by the fact that, frequently, not all the time put into a project is billed and not all billed amounts are collected, thereby necessitating some types of specific



allocation or proration of write-offs. Moreover, there is always a lag time, and occasionally a very long period, between when bills are sent out and collections come in; one year's receipts could easily involve three or more years' worth of bills. Further complicating the matter is the fact that frequently fees are paid in advance making it a virtual impossibility to trace the fee to D.C. or non-D.C. sources. Even though firms commonly have automated billing systems, it is extremely unlikely that the existing systems could provide the necessary information. Finally, each office of a firm typically prepares the bill for "its" clients, even though personnel in other offices may have worked for the clients, or one central location sends out the bills for all offices. It is thus likely that firms will have to examine records that are not routinely kept in the District.

(d) Treatment of Reimbursements. The bill would also include in taxable receipts all client reimbursements for expenses incurred by the service provider unless (1) the expense was paid to a third party on behalf of the client, and (2) the reimbursement equalled the expense paid. This is troublesome in two respects. First, it penalizes the use of in-house employees and services. Thus, for example, charges by a law firm for messengers who are employees would be treated unfavorably compared to similar charges for an outside messenger service. Second, it penalizes a firm for attempting to recover any portion of its own direct costs along with the third party's fee. It is not even clear how the District

will monitor the requirement that the reimbursement be equal to the expense. Would a separate charge for administrative services violate this requirement?

(e) Tendency to Drive Business Out of D.C. I have already alluded to the prospect that this additional tax burden will drive business out of the District. In the short-time frame we have had, we have conducted an informal survey of several trade associations asking about their historical experience following enactment of the ill-fated unincorporated business tax in 1975. One of the major trade associations reported that 40 percent of its membership moved to the suburbs following the 1975 legislation. Another responded that when it was formed in 1965, 80 percent of its membership was based in D.C. Now, only 15 percent remain in D.C. Two other trade associations, that could not provide historical data on short notice observed that their member's typical profit margins (ranging from 3 to 6 percent) were so low that the bulk of the members would have no choice but to move.

This tax would cause a number of law firms to move to the Maryland and Virginia suburbs, particularly in cases where their practices deal with regulatory agencies now located outside the City. More significantly, perhaps, the tax would promote the growth of branch offices of D.C. firms in the suburbs. These locations are already attractive due to the significantly reduced rents, lower costs for support services and reduced commuting

times. Shifting growth to the suburbs would delay recovery in D.C. from the current economic depression, which would be counterproductive and reduce overall tax revenues.

6. Anti-Competitive Effect

A third aspect of the ineffectiveness of the proposal also relates to the somewhat unique nature of this city, being a part of a larger metropolitan area encompassing the neighboring jurisdictions of Maryland and Virginia. Because of the proximity of these neighboring jurisdictions, D.C. professionals compete directly with professionals in Maryland and Virginia. A D.C. license tax will have a serious negative impact on our ability to compete. Increasingly in today's depressed economy clients are price sensitive. Complicating the equation is the fact that professional services are not subject to precise quantification up front since they are a multiple of hourly rates and the hours expended. Thus, even if a D.C. professional asserts to a prospective client that his rates are competitive with a competing Maryland or Virginia professional, the client knows that there is an additional 2 percent tax burden on the D.C. professional's services and will believe that he will bear the burden of this additional charge regardless of any representation to the contrary by the professional.

In summary, the proposed tax is unfair, it is discriminatory and it is anticompetitive. The questionable validity of the tax, the difficulty and cost of administration to the District, the compliance burdens on taxpayers, the anticompetitive impact and the impetus for multi-jurisdictional firms to perform more services outside the District all strongly suggest that this proposal is ill-conceived and counterproductive.

7. Free Ride

I am a resident of the District, and I am as anxious as anyone else to broaden the District's revenue base. In her February 25, 1992 letter to Chairman Wilson, the Mayor asserted that professionals who commute to the District do not pay for the fire, police, legal and other services they consume. Candidly, that assertion is inaccurate. These professionals pay the commercial real estate taxes assessed on the buildings they occupy, they pay sales taxes, and they create jobs for D.C. residents who in turn pay D.C. income taxes. It is true that they pay less taxes than D.C. residents, but they also consume much less of the education, welfare and other services which comprise the bulk of the D.C. budget.

8. More Fruitful Avenues to Pursue

We support the proposition that those who receive the benefits of the District's services should share in the costs. However, attempting to skirt the Home Rule Act by doing indirectly what cannot be done directly is clearly not the answer. The issue must be confronted directly. While, at present, it would likely be fruitless to petition Congress to remove the commuter tax restriction in the Home Rule Act, a more practical and direct approach would be to work with our neighboring jurisdictions to devise a uniform approach to the problem that equitably apportions revenues among the three jurisdictions. A vehicle exists for this approach -- the Council of Governments. We believe the District can find a suitable solution through this means and, with the support of Maryland and Virginia, could then successfully seek a modification to the Home Rule Act that equitably addresses the issue.

Fundamentally, the Home Rule Act prohibition presents the District with a political problem that should be resolved through political processes. The solution is not to impose additional taxes on the citizens who are pawns in this process. Residents of Maryland and Virginia suburbs already pay the highest taxes in their respective states. To penalize them for political problems associated with the Home Rule Act is like blaming a rape victim for being too attractive.

9. Lack of Legislative Due Process

The Taxation Section of the District of Columbia Bar, like other members of the public, has had only a short period of time to review and prepare comments on the "District of Columbia Professional License Amendment Act of 1992." The legislation, a bill that is over 35 pages long and outlines a new and complicated taxing scheme, was made public only two days before the public hearing. Despite the recent publicity, many of the service providers I spoke with who are not traditionally considered "professionals" are unaware that this tax would apply to them. The lack of a timely dissemination of a legislative proposal that would significantly impact an integral part of the District's economy and work force raises fundamental issues of due process, and we urge the City Council to take steps to ensure that the citizens of the District and those impacted by the proposed legislation have a full and fair opportunity to be heard on this subject. Whatever the pros and cons of this proposed legislation tax may be, both the Mayor and the City Council will be subject to criticism if you allow this legislation to be pushed through at the last minute without providing yourselves or the public an adequate opportunity to analyze, understand and respond to this proposed legislation.

10. Conclusion

We urge the City Council, and the Administration, to focus their efforts on the diligent and thorough work done by the Rivlin Commission, a commission comprised of some of the nation's leading experts on fiscal matters. The Report establishes clear and meaningful guidelines on means to resolve the District's budgetary problems.

I have simply highlighted in this testimony some of the more patent reasons why this tax proposal should be rejected. Few jurisdictions have adopted a tax on professional services -- and for good reason. And some that have enacted such a tax were quick to reverse that decision. However inappropriate and counterproductive a tax of this nature may be in other jurisdictions, the case against such a tax is even stronger in the District of Columbia due to (1) the unique Federal nature of the law practice, (2) the Federal restraints on imposing a commuter tax, and (3) the proximity of Maryland and Virginia as alternative bases for professional practices. The District should learn from the adverse experience of other jurisdictions, as well as its own past experience, and reject going down this wrong road.

Again, we are deeply concerned about the D.C. fiscal crisis. We wish to make a positive contribution to the solution. While our opposition to this proposed tax on professionals, on its face,

appears self-serving, we believe opposition to this well-intended but misguided proposal is a positive contribution. We stand ready to be of further service in seeking constructive and meaningful solutions.