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

DO 2015-2
District of Columbia Declaratory Order
Regarding District of Columbia Qualified High Technology Company (QHTC) Status

This Declaratory Order is issued pursuant to Title 9, chapter 42 of the District of Columbia Municipal Regulations.

I. ISSUE

Whether Petitioner ("Petitioner" or "Company" or "Taxpayer" or "Platform") is eligible to claim benefits as a Qualified High Technology Company ("QHTC").

II. CONCLUSION

Petitioner, considering its sales and services and its proposed DC office, would meet the eligibility requirements for a Qualified High Technology Company under D.C. Code Ann. §47-2001(n)(2)(G) and D.C. Code Ann. §47-1817.06(a)(1).

III. FACTS

Company, through its online platform, provides promotion and marketing services for Sellers who sell admittance to various events ("Licenses") to Purchasers. Sellers can use the Company's website tools to facilitate the sale of Licenses to Purchasers. In some situations, the Company leases tangible property to the Seller for Seller's use. The Company also sells a credit card swiper ("Swiper") to the Seller for a nominal fee. The Swiper is used by the Seller for processing in person credit card sales to the Purchasers. Finally, the Company sometimes sends consultants and staff to the Seller's location to assist Sellers. Compensation for leased property, Swipers, and the provision of consultants makes up a small minority of the Company's revenue.

The Seller's Purchasers can purchase Licenses through the Company's website or the Company's mobile phone application. If the Seller utilizes the Swiper, Purchasers can make purchases of Licenses at the Seller's location.

The bulk of the Company's revenue comes from the following 2 streams:

1. Service Fee = The service fee is earned only when the Purchaser purchases Licenses through the Company's online platform. The service fee is a percentage of the selling price, which is set by the Sellers.

2. Credit Card Processing Fee = The Company charges a credit card processing fee for all credit card transactions which are processed by the Company.

The Company currently has an employee in DC working from a home office and is proposing to hire additional employee(s) in the District, who may also work from home. The potential employee(s) would be qualified consultant(s) to help the Sellers coordinate events, or engineer(s) to assist in the development and maintenance of the Company's platform. In addition, the Company is considering acquiring an office location within the District.

IV. LAW

In order for an entity to qualify as a QHTC in the District of Columbia (the "District"), the entity must meet the following requirements as provided in D.C. Code Ann. §47-1817.01(5)(A):

> (i) Be an individual or entity organized for profit and maintaining an office, headquarters, or base of operations in the District of Columbia;
>
> (ii) Have 2 or more employees; and
>
> (iii) Derive at least 51% of its gross revenues earned in the District from:
>
>> (I) Internet-related services and sales, including website design, maintenance, hosting, or operation; Internet-related training, consulting, advertising, or promotion services; the development, rental, lease, or sale of Internet-related applications, connectivity, or digital content; or products and services that may be considered e-commerce;
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>> (II) Information and communication technologies, equipment and systems that involve advanced computer software and hardware, data processing, visualization technologies, or human interface technologies, whether deployed on the Internet or other electronic or digital media. Such technologies shall include operating and applications software; Internet-related services, including design, strategic planning, deployment, and management services and artificial intelligence; computer modeling and simulation; high-level software languages; neural networks; processor architecture; animation and full-motion video; graphics hardware and software; speech and optical character recognition; high-volume information storage and retrieval; data compression; and multiplexing, digital signal processing, and spectrum technologies;
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>> (III) Advanced materials and processing technologies that involve the development, modification, or improvement of one or more materials or methods to produce devices and structures with improved performance characteristics or

> special functional attributes, or to activate, speed up, or otherwise alter chemical, biochemical, or medical processes. Such materials and technologies shall include metal alloys; metal matrix and ceramic composites; advanced polymers; thin films; membranes; superconductors; electronic and photonic materials; bioactive materials; bioprocessing; genetic engineering; catalysts; waste emissions reduction; pharmaceuticals; and waste processing technologies;
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> (IV) Engineering, production, biotechnology and defense technologies that involve knowledge-based control systems and architectures; advanced fabrication and design processes, equipment, and tools; or propulsion, navigation, guidance, nautical, aeronautical and astronautical ground and airborne systems, instruments, and equipment. Such technologies shall include: computer-aided design and engineering; computer-integrated manufacturing; robotics and automated equipment; integrated circuit fabrication and test equipment; sensors; biosensors; signal and image processing; medical and scientific instruments; precision machining and forming; biological and genetic research equipment; environmental analysis, remediation, control, and prevention equipment; defense command and control equipment; avionics and controls; guided missile and space vehicle propulsion units; military aircraft; space vehicles; and surveillance, tracking, and defense warning systems; or
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> (V) Electronic and photonic devices and components for use in producing electronic, optoelectronic, mechanical equipment and products of electronic distribution with interactive media content. Such technologies shall include microprocessors; logic chips; memory chips; lasers; printed circuit board technology; electroluminescent, liquid crystal, plasma, and vacuum fluorescent displays; optical fibers; magnetic and optical information storage; optical instruments, lenses, and filters; simplex and duplex data bases; and solar cells.

According to the opinion in *NBC Subsidiary WRC-TV, LLC v. District of Columbia Office of Tax and Revenue*, OAH Case No. 2013-0TR-00017 (D.C. O.A.H. Jan. 17, 2014), appeal docketed, No. 14-AA-174 (D.C. Feb. 21, 2014), for purposes of the D.C. Code Ann. §47-1817.01(5)(A)(iii) requirement that a company derive 51% of its revenue from an enumerated activity, "derive" is properly defined to mean "to take, receive, or obtain especially from a specified source." In *NBC Subsidiary WRC-TV, LLC*, an Administrative Law Judge held that a broadcast television station was not a QHTC, even when using a variety of high technology equipment in its business, where its revenue was primarily derived from advertising.

Additionally, under D.C. Code Ann. § 47-1817.01(5)(B) a QHTC cannot be:

> (i) An individual or entity that derives 51% or more of its gross revenues from the operation in the District of:
>
> > (I) An on-line or brick and mortar retail store; or
> >
> > (II) An electronic equipment facility that is primarily occupied, or intended to be occupied, by electronic and computer equipment that provides electronic data switching, transmission, or telecommunication functions between computers, both inside and outside the facility;
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> (ii) A professional athletic team, as defined in § 47-2002.05(a)(3); or
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> (iii) A business entity located in the DC Ballpark TIF Area, as defined in [§ 2-1217.12a(a)].

V. ANALYSIS

A. District QHTC Qualifications: Office and Employees

Petitioner is an entity organized for profit. Petitioner proposes to establish an office in the District with 2 or more employees and/or employ more than 2 employees in the District at home offices. Petitioner's proposed office and/or staffing plan meet the criteria of D.C. Code Ann. §47-1817.01(5)(A)(i)&(ii).

B. District QHTC Qualifications: Gross Revenue

To qualify as a QHTC, a company must derive at least 51% of its gross revenue from any of the enumerated activities listed under D.C. Code Ann. §47-1817.01(5)(A)(iii). In this context, "derive" means to take, receive, or obtain especially from a specified source. *NBC Subsidiary WRC-TV, LLC v. District of Columbia Office of Tax and Revenue*, OAH Case No. 2013-0TR-00017 (D.C. O.A.H. Jan. 17, 2014), appeal docketed, No. No. 14-AA-174 (D.C. Feb. 21, 2014). Thus, in order to qualify as a QHTC, Petitioner must demonstrate that at least 51% of its District gross revenue comes directly from one of the activities enumerated in D.C. Code Ann. §47-1817.01(5)(A)(iii).

Petitioner has asserted that it derives revenue from "internet-related services and sales" as defined in D.C. Code Ann. §47-1817.01(5)(A)(iii)(I). Under D.C. Code Ann. §47-1817.01(5)(A)(iii)(I), qualified QHTC activities are defined to include:

> Internet-related services and sales, including website design, maintenance, hosting, or operation; Internet-related training, consulting, advertising, or promotion services; the development, rental, lease, or sale of Internet-related applications, connectivity,

or digital content; or products and services that may be considered e-commerce.

Based on a review of the facts presented, Petitioner's gross revenue is derived from two sources: service fees upon third party Sellers sales Licenses, and credit card processing fees. These fees are triggered only when Licenses are sold through the Company's platform.

Petitioner's contract with Sellers provides that the service fees charged are for the sale of Licenses to the Purchasers via the online platform. Only actual sales of Licenses by third party Sellers generate revenue for the Company—the promotion and marketing services do not generate revenue for the Company. Accordingly, it is clear that the Company "derives" its District gross revenue not from promotional or marketing services, but rather from sales of Licenses.

While the term "internet-related services and sales" is broad on its face, the context of the statute makes it clear that the term "internet-related" refers to services and sales performed with regard to the internet, not simply over the internet. The examples of "internet-related services and sales" in the statute are website design, maintenance, hosting, and operation—each of the activities described requires more than that a transaction simply occur via the internet.

However, gross revenues from "products and services that may be considered e-commerce" are also eligible for QHTC qualification. "E-commerce" is defined as activities that relate to the buying and selling of goods and services over the Internet. "E-commerce." Merriam-Webster.com. Merriam-Webster, n.d. Web. 25 June 2015. <http://www.merriam-webster.com/dictionary/e-commerce>. Company is deriving its District gross revenue from service fees for sales of Licenses over the internet. Given the broad definition of "e-commerce," it is clear that the revenues of the Company are derived from a qualified QHTC activity. Company does meet the gross revenue requirement under D.C. Code Ann. § 47-1817.01(5)(A)(iii)(I) for QHTC status.

C. <u>District QHTC Qualification: Online Retailer Exclusion</u>

D.C. Code Ann. § 47-1817.01(5)(B) states that 51% of the income of a QHTC must not be derived from the operation of an "on-line or brick and mortar retail store." Under the specific facts and relevant contractual relationships, the Company is not an on-line retail store.

VI. CONCLUSION

Company is eligible to receive the benefits of qualification as a QHTC because all the requirements of QHTC qualification will be met.

CAVEAT

This DO is based on the facts provided in the initial request and subsequently. This declaratory order shall be binding between the Chief Financial Officer and the petitioner on the stated facts alleged unless such order is altered or set aside by a court. Should the facts change, the QHTC qualification can be reevaluated. The declaratory order shall be binding as to a transaction in reliance upon the declaratory order, unless a change in the legal basis of the declaratory order or of any of the issues discussed above is made by statute, regulation, or judicial decision after the issuance of the declaratory order and before any affected transaction.

No opinion is expressed or implied concerning the tax treatment of any item discussed in this declaratory order except as expressly stated herein. This declaratory order does not have the force and effect of law and can be relied on only by the taxpayer who requested it.