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**Washington DC - Memo of
Understanding**

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Memo of Understanding*

Draft 3. 7. 1997

MEMORANDUM OF UNDERSTANDING BETWEEN:

THE DISTRICT OF COLUMBIA

Marion Barry, Jr., Mayor _____
Charlene Drew Jarvis, Council President Pro Tem _____

DISTRICT OF COLUMBIA FINANCIAL RESPONSIBILITY AND MANAGEMENT ASSISTANCE AUTHORITY

Andrew Brimmer, Chair (Given the way in which this is structured it may be better to have the Authority "Affirm or Attest") _____

OFFICE OF MANAGEMENT AND BUDGET, EXECUTIVE OFFICE OF THE PRESIDENT

Franklin D. Raines, Director _____

Dated: _____

SECTION I. PURPOSE

The parties respect the Home Rule Charter as the fundamental basis for governance in the District. The purpose of this memorandum is to strengthen Home Rule and to agree to work toward the revitalization of the District of Columbia.

This memorandum is intended only to improve the management of, and the relationship between, the District of Columbia and the Federal Government, and is not intended to and does not create any right, benefit, trust or responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person.

SECTION II. PUBLIC LAW 104-8, "THE DISTRICT OF COLUMBIA FINANCIAL RESPONSIBILITY AND MANAGEMENT ASSISTANCE ACT OF 1995"

The parties recognize the effectiveness of PL 104-8 and dedicate themselves to the cooperative implementation of its provisions. Among these provisions: (Note the purpose of this listing of provisions is to remind everyone of the obligations that the District already has. Treasury at one time had wanted "general conditions" I believe that a restatement of the Authority language (either these provisions or others) serves this purpose. However, we could easily delete the specifics.)

Finance.

- For each Fiscal Year for which the District is in a control period, the Mayor shall develop and submit to the Financial Authority and Council a financial plan and budget for the applicable Fiscal Year and the next 3 Fiscal Years.
- Expenditures for the District government for each Fiscal Year, beginning in FY1999, may not exceed revenues for that Fiscal Year.
- During Fiscal Years 1996, 1997, and 1998, the District government shall make continuous, substantial progress toward equalizing its expenditures and revenues.
- The District may not borrow money during a control year unless the Authority provides prior certification that the borrowing is consistent with the financial plan and budget for the year.
- For the Secretary of the Treasury to make a short-term advance to the District, an Authority-approved budget and financial plan must be in place, the Mayor must submit a requisition for an advance including a schedule for timing and amounts for advances, the Inspector General certifies the

accuracy of the information provided to the Secretary, the Secretary determines -- and the Authority certifies -- that the District lacks market access on reasonable terms, and that the Treasury has reasonable assurance of being reimbursed.

Management.

- An Office of the Chief Financial Officer will be established in the executive branch of the District government, headed by the Chief Financial Officer, and including the Office of the Treasurer, Controller, Budget, Financial Information Services, and Finance and Revenue.
- An Office of the Inspector General will be established in the executive branch of the District government.
- During the control period, the Mayor shall submit proposed contracts and leases to the Authority for review, and cannot enter into a contract or a lease unless the Authority determines it is consistent with the financial plan and budget.
- The Authority may submit recommendations to the Mayor, the Council, the President, and Congress on actions the District or Federal governments may take to ensure the District's compliance with a financial plan and budget or promote its financial stability, management responsibility, and service delivery efficiency. The Mayor and the Council shall submit a statement to the Authority, President, and Congress providing notice as to whether the District will adopt the recommendations. An affirmative statement must include a written implementation plan, with performance measures and a schedule for audit compliance. If the statement rejects the recommendations, the Authority may vote to take what actions it deems appropriate, after consulting with Governmental Affairs Committee of the Senate and the House Government Reform and Oversight Committee.

SECTION III. GENERAL PROVISIONS

1. ***Balanced Budget.*** PL 104-8 requires that the District balance its budget by FY1999. By this agreement, the District agrees to present and/or approve a balanced budget for the Fiscal Year beginning October 1, 1997.
2. ***Agreement to be Bound.*** The District agrees to be bound by and to use its offices and best efforts to implement this agreement.

SECTION IV. SUBMISSION OF LEGISLATION & FEDERALLY ASSUMED FUNCTIONS

On behalf of the Executive Office of the President, the Director of the Office Management and Budget intends to recommend the submission of legislation to the Congress that is consistent with the *National Capital Revitalization and Self Government Improvement Plan* announced by the President on January 14, 1997.

Once implemented, the Plan will provide the District substantial relief from its operating expenditures, relief which will grow over time. It will also invest considerable resources to improve the City's criminal justice systems and capital infrastructure. If this legislation is enacted, the Federal government will ~~The Federal government agrees to~~ undertake the functions described below. The Federal government will not undertake a function until the District government meets the conditions for that function, described in Section V.

1. **Medicaid.** The Federal government will increase its share of the District's Medicaid payments to 70 percent, thereby reducing the District's share to 30 percent. The Department of Health and Human services will provide more intensive technical assistance to help the District improve the management of its Medicaid program.
2. **Pensions.** The Federal government will take financial and administrative responsibility for virtually all pension benefits accrued under the plans for all active and retired police and firefighters, teachers, and judges. Assets of the retirement plans will be transferred to the Federal government. The Federal government will pledge its full faith and credit to meet its responsibilities to these beneficiaries. It will "freeze" benefits payable to current employees based on service earned as of the date the legislation is introduced, and will pay their future retirement, death and some of their disability benefits to the extent they are earned based on the frozen service. While the Federal government will not be responsible for benefits earned during future years of service by members of the current retirement programs, these members will get the benefit of pay increases on the frozen benefits. Frozen benefits will continue to be subject to cost-of-living adjustments under the terms of the existing programs. For those employees covered by new plans, their contributions will be paid into those plans. The Secretary of the Treasury will appoint a third-party Trustee to administer the plans and manage pension assets.
3. **Intermediate-Term and Short-Term Lending.** The United States Treasury will provide an intermediate-term loan to eliminate the accumulated fund balance deficit of no more than 15 years, at an interest rate of Treasuries plus 1/8th of 1 percent. The Treasury may also provide inter-year loans for liquidity

purposes. The combined amount of the intermediate-term and inter-year liquidity loans will not exceed \$500 million. The Treasury may also provide intra-year loans for the purposes of liquidity.

4. ***Criminal Justice.*** The Federal and District governments, in consultation with representatives of the Federal and District judiciary, will develop and implement a transition plan transferring responsibility over a three-to-five-year period for incarcerating felons of D.C. Code violations. The Federal Bureau of Prisons (BOP) will house felons who are convicted of violating the D.C. Code and sentenced to terms of imprisonment in correctional institutions operated or contracted by the BOP, after BOP's capacity has been increased through new construction at Lorton and other locations selected by BOP, through renovation of existing facilities at Lorton, Virginia. After October 1, 2001, the BOP will also designate to Federal correctional institutions sentenced D.C. felons in the custody of the D.C. Department of Corrections, as the Director of BOP deems appropriate, in accordance with available capacity, until they have all been designated to Federal institutions. The BOP will accept employment applications from persons currently employed by the D.C. Department of Corrections for existing BOP vacancies, and will process such applications in accordance with existing Federal procedures and standards.

The Attorney General will select, with the approval of the Chairman of the D.C. Financial Responsibility and Management Assistance Authority, and in consultation with the Mayor of the District of Columbia, a Trustee to oversee operations of the D.C. Department of Corrections until the BOP assumes responsibility for all incarcerated District felons.

Consulting with representatives of the Federal and District judiciary, the Federal and District governments will also develop and implement a transition plan transferring responsibility for D.C. Code violation offender pre-trial, parole, probation, and post-adjudication/post-conviction adult offender supervision from the District government to the Federal government over a three-to-five-year period. The United States Parole Commission will continue to assume responsibility for all D.C. felons housed in Federal Correctional Institutions who have sentences subject to provisions of parole. The Federal government will take direct responsibility for funding the District Court System. The Courts will remain self-managed.

5. ***Economic Development.*** The Federal government will make tax benefits available to the District both to encourage hiring by firms throughout the District of District residents of distressed areas and to encourage economic revitalization throughout the District, and to encourage the employment of disadvantaged D.C. residents.

An economic development corporation (EDC) will be established as a non-Federal

public authority in the District of Columbia, with the mission of revitalizing the nation's capital and benefitting the residents and businesses of Washington, D.C. A majority of the EDC's Board will be private sector, community and civic leaders, with Federal and local representation as well. The Federal government will provide the initial capitalization of the EDC. Building on current strategic planning and development efforts, the EDC will formulate a strategic economic development plan for the District, and will have significant powers to spur large-scale and other development to implement that plan, in all of the District's neighborhoods.

6. ***Infrastructure.*** The National Capital Infrastructure Commission (NCIC) will be established to assume certain State-like responsibilities for selection, funding, and oversight of National Highway System capital projects (including roads, bridges, and transit) and NHS operations and maintenance projects (excluding police authority, National Park Service roads, and transit) within the District. The NCIC will be governed by a five-member board to be composed of three representatives from the District and two representatives from the Department of Transportation. Contract administration will be performed by the Federal Highway Administration. In addition, eligibility for Surface Transportation Program (STP) funds will be expanded to include local public roads. To support NCIC projects, the National Capital Infrastructure Fund (NCIF) will be established in FY1998 with \$108 million for road, bridge, and transit capital projects. An additional \$17 million will be provided in FY1998-03 for NHS operations and maintenance. Federal-aid funds for the District's NHS, Interstate Maintenance, and Bridge programs will be transferred to the NCIC in FY1998-03. The Administration also proposes that the NCIC be authorized to accept contributions from other sources.
7. ***Personal Income Tax Collection.*** The Internal Revenue Service will assume responsibility from the District of Columbia for administering and enforcing D.C. individual income and payroll taxes. This would include the processing of those taxes paid by individuals, as well as the payment of related employment and payroll taxes. The District of Columbia will maintain processing and collection responsibility for all other taxes collected for the City.

Upon enactment of the legislation to implement the Plan, the parties to the MOU will review the legislation and confer on whether any revisions to the MOU are necessary to ensure its consistency with the legislation.

SECTION V. DISTRICT CONDITIONS

The District government understands that it will be expected to undertake significant actions as part of the National Capital Revitalization and Self-Government Improvement Plan. This section sets out the actions that the District government agrees to take as a condition of the Federal government actions

under the legislation to carry out the Improvement Plan.

1. **Medicaid.** The District agrees to develop and implement plans satisfactory to the Secretary of Health and Human Services to accomplish each of the following:
 - 1.1. To develop an effective system for the identification and collection of amounts owed by third parties for medical care and services furnished to individuals under the District's Medicaid plan.
 - 1.2. To ensure the timely audit and settlement of cost reports of institutional providers (including hospitals, nursing facilities, and intermediate care facilities for the mentally retarded) under the District's Medicaid plan, including prompt elimination of the backlog of such audits and settlements.
 - 1.3. To develop and implement, directly or under contract, a comprehensive health care management information system that will standardize data base development and management, and integrate health care delivery with a public health data system. Such a system shall at a minimum have the capacity to accomplish the following functions:
 - 1.3.1. To assist eligibility verification.
 - 1.3.2. To create utilization and financial profiles of providers.
 - 1.3.3. To identify services (including preventive services) received by program beneficiaries.
 - 1.3.4. To monitor the claims processing and other Medicaid operations of the fiscal agent.
 - 1.3.5. To monitor the quality of care provided under managed care contracts.
 - 1.3.6. To coordinate information management with respect to the District's Medicaid program and other public health programs and functions.
 - 1.4. To develop a comprehensive behavioral managed health care system, which combines substance abuse and mental health grant programs. Development of such a plan shall include a pilot project for better evaluation of inpatient acute psychiatric patient admissions, and the purchase of a comprehensive, risk-based system for managed care of behavioral health which covers all eligible populations and services.
 - 1.5. To complete the delegation to the District's Department of Health of

independent authority for contracting and personnel activities and to establish and ensure adequate procurement and personnel systems and controls.

2. ***Pensions.*** The District Government agrees:1

~~2.1. To establish replacement retirement programs, through collective bargaining if applicable, that cover new and existing employees who are or would have been covered by the transferred retirement programs.~~

~~2.1.1. Once the new retirement programs are adopted, they may not be amended to increase their costs without providing a means to fund the increase.~~

2.1. To establish a Replacement Plan for the Retirement Program

2.1.1. The Replacement Plan will cover all existing and new Employees who are, or would be, covered by the Retirement Program, if the Retirement Program continued unchanged, and will be established by the date specified in legislation.

2.1.2. To the extent required by current law, the Replacement Plan will be established through collective bargaining.

2.1.3. After the Adoption Date, the Replacement Plan may not be amended in any manner that materially increases the cost of the Replacement Plan without provision of a mechanism for funding such increases, in accordance with Section 2.2.

2.2 That the replacement retirement programs will use appropriate funding methods and costs that do not exceed the sum available in the District of Columbia Budget and Financial Plan.

2.2.1. The cost of any defined benefit plan will be determined in accordance with the measurement standards of Governmental Accounting Standards Board Statement No. 27 (GASB 27), with the following additional restrictions:

2.2.1.1. funding methods will be limited to *entry age* or *frozen entry age*; and

2.2.1.2. amortization of any unfunded actuarial liability is required over no more than 30 years on a *closed* basis.

- 2.2.2. The cost of any defined contribution plan is the employer contribution required under the provisions of the plan.
- 2.2.3. All costs of the replacement retirement programs must be reflected in the *D.C. Budget and Financial Plan* in accordance with the standards described above.
- 2.2.4. All costs of the replacement retirement program must be paid in a timely manner.
- 2.2.5. For those employees covered by new plans, their contributions will be paid into those plans.
- 2.3. To transfer copies of books and records of the Retirement Program and the Fund and to be financially responsible for errors and omissions, including all necessary records of individual employees.
 - 2.3.1. Copies of any books and records pertaining to the Retirement Program and the Fund required by the Secretary of the Treasury or the Trustee must be made available to the Secretary or Trustee within 30 days after the Secretary or Trustee requests them.
 - 2.3.2. The District will reimburse the Trustee for all costs, including benefit payments, resulting from errors or omissions in the books and records pertaining to the Fund.
- 2.4. To transfer assets from the Fund
 - 2.4.1. Any and all assets of the Fund required to be transferred to the Trustee shall be transferred on the Transfer Date in a form specified by the Trustee.
 - 2.4.2. The District of Columbia Retirement Board will administer the retirement programs until the Trustee assumes these responsibilities. The District government will reimburse the Fund before the transfer date for any benefits paid out of the fund between the freeze date and the transfer date that exceed payments that would have been the responsibility of the Federal government if the transfer had occurred simultaneously with the freeze.
- 2.5. To implement reforms in the retirement program
 - 2.5.1. Double COLAs [to come: legal opinion as to the District's capacity to rescind double COLAs through amending D.C. Code and technical analysis of economic materiality of double COLAs still pending].

- 3. *Intermediate-Term and Short-Term Lending*** The District agrees that:
- 3.1. Any intermediate-term loan to eliminate the accumulated fund balance deficit would be for no more than 15 years, with an interest rate of Treasuries + 1/8 of 1 percent.
 - 3.2. Any inter-year loan for liquidity purposes and/or intermediate-term loan to eliminate the accumulated fund balance deficit will not exceed the amount of \$500 million.
 - 3.3. The Secretary of the Treasury may require early reimbursement if the District can obtain credit on the commercial market on favorable terms for refinancing as determined by the Secretary.
 - 3.4. The District must be in compliance with the approved Budget and Financial Plan before any lending can occur.
 - 3.5. The District must provide a requisition for an advance of funds and a promissory note to reimburse the Treasury for the advance.
 - 3.6. The Financial Responsibility and Management Assistance Authority must certify that there is an approved Budget and Financial Plan in effect for the District for the Fiscal Year that the requisition is made.
 - 3.7. The Secretary of the Treasury must receive certification that the District is unable to obtain enough credit elsewhere to meet the DC government's need for financing.
 - 3.8. The Federal government will work with the District government to amend its debt limit provisions in order to allow implementation of the District's capital plan in an orderly and sustainable manner.
- 4. *Criminal Justice.*** [EXOP and Agencies have not had a chance to comment on this language. Comments will be included, where appropriate, on Monday.]

This Memorandum of Understanding (MOU) between the Federal government and the District of Columbia government (D.C.) outlines the offer of the Federal government to assist D.C. by taking over certain traditionally State responsibilities and the conditions that D.C. must agree to and fulfill should it choose to accept that offer as it relates to criminal justice functions including, but not limited to, certain defendant and offender services, corrections, and the judiciary. The MOU

sets forth the expectations and responsibilities relating to proposed changes and reforms in the District of Columbia criminal justice and judicial system and the procedures (including the new statutory and regulatory provisions) the Federal government and D.C. will use to implement the MOU.

In particular, the MOU is designed to:

- ensure an appropriate transfer and transition of responsibility from D.C. to the Federal government for D.C. Code violation pretrial, public defender, parole, probation, and post-conviction supervision and services for adult defendants and offenders.
 - ensure an appropriate transfer of responsibility from D.C. to the Federal government for the incarceration of felons convicted of D.C. Code violations.
 - provide the framework for needed reforms in the D.C. sentencing system which are a prerequisite for the Federal government accepting responsibility for the incarceration of felons convicted of D.C. Code violations.
 - provide the basis for establishing an independent budgetary, financial oversight, and administrative support system for the District of Columbia courts.
 - define the respective roles of the District of Columbia and the Federal government in relation to lawsuits and resulting liability,, as they may be affected by the reforms agreed to in this memorandum of understanding.
 - ensure development by D.C. and the Federal government of transition plans
 - (in consultation with the Federal and D.C. judiciaries) for transferring responsibility for D.C. Code violation pretrial, public defender, parole, probation, and post-conviction supervision and services for adult defendants and offenders over a transition period of (one to three) years from the enactment date of the Federal implementing legislation.
 - for transferring responsibility over approximately a three to five year period for incarcerating felons convicted of D.C. Code violations.
 - (in consultation with the D.C. judiciary) for transferring responsibility for funding the D.C. Courts system and related services, including plans relating to retirement benefits and other personnel matters.
- 4.1. Administration of District of Columbia Jails and Pretrial, Public Defender, Parole, Probation, and Post-Conviction Offender Supervision and Services

4.1.1. *Federal Government Responsibilities*

4.1.1.1. The Attorney General will select, with the approval of the Chairman of the D. C. Financial Responsibility and Management Assistance Authority (Financial Authority), and in consultation with representatives of the Federal and D.C. judiciary, and the Mayor of the District of Columbia, among others, an Offender Supervision and Courts Services Trustee to:

- A. assure the smooth transition and continued operations of the District of Columbia's Pretrial Services Agency and Public Defender Service (PDS)
- B. implement timely shutdown of the D.C. Parole Board in coordination with the U.S. Parole Commission
- C. establish and initially operate a new D.C. Offender Supervision and Services Agency
- D. accomplish without disruption of services the transfer of the adult offender probation supervision functions of the D. C. Courts Social Services Division,

until the Federal government assumes responsibility for each of these functions.

4.1.1.2. During the transition period, under the auspices of the Trustee, the D.C. Pretrial Services Agency will continue uninterrupted to provide services and support for both juvenile and adult D.C. Code and Federal defendants and offenders to the U.S. District Court for the District of Columbia, the U.S. Court of Appeals for the District of Columbia, the Superior Court for the District of Columbia, and the District of Columbia Court of Appeals. The executive committee of the Pretrial Services Agency will continue to include the chief judges of the courts served by the agency; mayoral appointment of part of the executive committee will be terminated.

4.1.1.3. Following the transition period, the D.C. Pretrial Services Agency will be organizationally housed in a new Federal D.C. Offender Supervision and Services Agency.

4.1.1.4. After the Offender Supervision and Courts Services Trustee establishes a transition agency with the capacity to provide adequate field supervision to adult D.C. offenders on parole, probation or supervised release, and the U.S. Parole Commission is capable of carrying out parole

functions for D.C. Code offenders, the D.C. Board of parole will be terminated, and its functions and jurisdiction will be assumed by the U.S. Parole Commission. The District of Columbia Superior Court Division of Social Services will continue to provide supervision to D.C. Code juvenile offenders.

4.1.1.5. The Offender Supervision and Courts Services Trustee will accept employment applications from persons currently employed by the District of Columbia Parole Board for new positions in the Offender Supervision and Services Agency and will process such applications in accordance with existing Federal procedures and standards. Positions for related agencies will be advertised prior to being filled.

4.1.1.6. During the transition period, the Federal government will transfer funds for the Pretrial Services Agency, the Public Defender Service and the supervision of D.C. offenders through the Control Board to the Offender Supervision and Courts Services Trustee. The head of any Federal department or agency may provide the services of any personnel to the Trusteeship to assist in carrying out its duties.

4.1.1.7. During the transition period, under the general auspices of the Trustee, the PDS will continue uninterrupted to provide services to D.C. Code defendants and the District of Columbia court system. The Director of PDS shall employ such personnel as may be necessary.

4.1.1.8. During the transition period, the employees of and funds allocated to the Offender Services and Courts Trustee and the agencies for which the Trustee is responsible shall not be counted against the personnel and budget ceiling imposed on the District of Columbia by the Control Board or Congress. (N.B. placeholder language required clarification and/or citation).

4.1.1.9. The Federal government will assess the feasibility and cost-effectiveness of contracting for limited bed space at the District's Correctional Treatment Facility (CTF) as may be necessary to supplement existing Federal detention and treatment contracts.

4.1.2. *District of Columbia Responsibilities*

4.1.2.1. The District of Columbia will maintain responsibility for all D.C. Code juvenile offenders not prosecuted as adults.

4.1.2.2. The District of Columbia will have responsibility for housing and supervising persons charged and/or convicted of misdemeanor violations in D.C. superior Court, both before and after sentencing.

- 4.1.2.3. the District of Columbia will continue to house persons charged with felonies, and persons convicted of felonies but not yet sentenced., in the district of Columbia Superior Court. To the extent beds are available, the District of Columbia will continue to house persons charged with felonies, and persons convicted of felonies but not yet sentenced, in the District Court, and will continue to receive reimbursement by the Federal government at a mutually negotiated rate for the costs of housing such persons. "House" and "housing" include subsistence, transportation of persons to and from court appearances and medical facilities, and the maintaining of necessary prison records.
- 4.1.2.4. The District of Columbia will continue to house persons sentenced by the Superior Court and detained pending a hearing for revocation of parole, probation, or supervised release, and will provide suitable facilities for such hearings. To the extent beds are available, the District of Columbia will house persons sentenced by the District Court and detained pending a hearing for revocation of parole, probation, or supervised release, will provide suitable facilities for such hearings, and will continue to receive reimbursement by the Federal government at a mutually negotiated rate for the costs of housing such persons and for providing such facilities. "House" and "housing" include subsistence, transportation of persons to and from court appearances, revocation hearings, and medical facilities, and the maintenance of necessary prisoner records.
- 4.1.2.5. The Trustee will operate under the general auspices of the Chairman of the Control Board and can be removed only by the Attorney General.
- 4.1.2.6. the Trustee will propose funding requests for offender supervision and services to the Control Board, and the request will be included in the Control Board budget to the President and Congress each fiscal year.
- 4.1.2.7. the Trustee will allocate funds for offender supervision in the District of Columbia, including funds for short term improvements, equipment contracts, and salary increases that are necessary to retain key personnel, maintain and enhance current levels of service, including offender drug testing, and provide for the safety and security of the community.
- 4.1.2.8. Upon receipt from the Control Board of funds identified by congress or other entities for Pretrial Services, the Trustee will immediately transfer such funds to the Pretrial Services Agency.
- 4.1.2.9. Upon receipt from the Control Board, the D.C. Court system, or the Administrative Office of the United States Courts, of funds identified by

Congress or other entities for the D.C. Public Defender Service the Trustee will immediately transfer such funds to the Public Defender Service.

4.1.2.10 In view of the responsibility to be undertaken by the U.S. parole Commission to carry out the functions of the D.C. Board of Parole pursuant to the parole laws and regulations of the District of Columbia, effective immediately, the D.C. Council will not enact legislation that changes or modifies these laws and regulations without the concurrence of the Attorney General. Following the assumption by the Parole Commission of the functions of the D.C. Board of Parole, the council will cede to Congress the sole authority to legislate changes to the District of Columbia Code that pertain to the parole of D.C. felony offenders.

4.1.2.11. It is expected that the transition period for these offender and court services will end no sooner than one year nor later than three years after the enactment of the related legislation. (Insert respective effective dates)

4.1.2.12. The D.C. Corporation Counsel will provide representation for the Trustee and Trustee supervised agencies. (See litigation and liability section)

4.2. Administration of District of Columbia and Federal Prisons

4.2.1. *Federal Government Responsibilities*

4.2.1.1. The Bureau of Prisons (BOP) will house felons, in correctional institutions operated or contracted by the Federal Bureau of Prisons, who were convicted of violating the D.C. Code and sentenced to terms of imprisonment, after the BOP's capacity has been increased through renovation of existing facilities and new construction at the corrections complex in Lorton, Virginia and other locations selected by the BOP. D.C. Code offenders will be housed together with Federal offenders in BOP facilities based on inmate program and security needs and BOP population management regulations. The BOP will oversee the operation of community corrections centers in the District of Columbia as necessary to provide an appropriate transition for inmates who are nearing release from Federal prisons, including those convicted of D.C. Code violations. The BP intends to use existing community corrections centers in the District of Columbia to the extent practicable and will work with D.C. officials in the identification of prospective sites, as needed to establish new community correction facilities.

4.2.1.2. The BOP intends to operate several correctional facilities in Lorton,

Virginia and elsewhere to house a mix of both Federal and D.C. felons. Every effort will be made to house D.C. felons at facilities that are as close to the District of Columbia as permitted by inmate program and security needs and BOP population management regulations. D.C. felons will be designated in the same manner as Federal inmates, and ordinarily initially assigned to institutions located within a 500-mile radius of their residence. BOP also will work with D.C. officials to identify sites for possible Federal correctional facility construction within the District.

- 4.2.1.3. Based upon assurances from the District of Columbia that felons convicted of violating the D.C. Code will, in the future, receive sentences similar to those received by comparable offenders convicted of comparable Federal offenses, during the transition period, the BOP will house those sentenced D.C. felons in the custody of the D.C. Department of Corrections as the Director of the BOP deems appropriate in accordance with available capacity. After October 1, 2001, the BOP will accept D.C. felons sentenced under the new sentencing structure in accordance with the capacity of the BOP. By October 1, 2002, and assuming fulfillment of all requisite conditions, the BOP will have assumed responsibility for incarcerating all D.C. felons.
- 4.2.1.4. The BOP will accept employment applications from persons currently employed by the District of Columbia Department of Corrections for BOP vacancies and will make hiring selections in accordance with existing Federal procedures and standards. Positions for new BOP facilities will be advertised prior to being filled.
- 4.2.1.5. The Attorney General will select, with the approval of the Chairman of the D.C. Financial Responsibility and Management Assistance Authority, and in consultation with the Mayor of the District of Columbia, a Trustee to oversee operations of the District of Columbia Department of Corrections relating to incarcerated felons, until the BOP assumes responsibility for all incarcerated D.C. felons.
- 4.2.1.6. The Federal government will transfer funds for the incarceration of D.C. felons through the Financial Authority to the Trustee. The head of any Federal department or agency may provide the services of any personnel to the Trustee to assist in carrying out the Trustee's duties.
- 4.2.1.7. Of the funds received by the Trustee from Congress through the Financial Authority, the Trustee will reimburse to the BOP those funds identified by Congress to be used for the construction of new facilities and the renovation of existing facilities. The Federal Bureau of Prisons will be responsible and accountable for determining how these funds will be used,

including type, security level, and location of new facilities.

4.2.1.8. During the transition period, the employees of, and appropriations allocated to, the Corrections Trustee and the agencies for which the Trustee is responsible shall not be scored or counted against the personnel and budget ceilings imposed on the District of Columbia by the Financial Authority or Congress. [N.B. placeholder language requires clarification].

B. *District of Columbia Responsibilities*

4.2.2.1. Offenders convicted of violations of the D.C. Code shall be sentenced pursuant to a new D.C. sentencing system, described below. If the new sentencing system is not promulgated within [24 months], however, the BOP may not obligate any funds appropriated for the absorption of D.C. Code felons into the Federal prison system and will have no responsibility to house any persons convicted of felony offenses under the D.C. Code.

4.2.2.2. The District of Columbia will continue to house felons sentenced to terms of imprisonment by the District of Columbia Superior Court until such persons have been designated by the BOP. To the extent beds are available, the District of Columbia will continue to house felons sentenced to terms of imprisonment by the U.S. District Court until such persons have been designated by the BOP, and will continue to receive reimbursement at a mutually negotiated rate by the Federal government for costs of housing such persons.

4.2.2.3. The Trustee will operate under the general auspices of the Chairman of the Financial Authority and can be removed only by the Attorney General.

4.2.2.4. The Trustee will propose funding requests for the incarceration of D.C. felons to the Financial Authority, and the request will be included in the Financial Authority budget to the President and Congress each fiscal year.

4.2.2.5. The Trustee will allocate funds to the District of Columbia Department of Corrections, including funds for short-term improvements that are necessary for the safety and security of staff, inmates, and the community.

4.2.2.6. Upon receipt from the Financial Authority of Federal funds identified by Congress for constructing new prisons and making major renovations to existing facilities for the incarceration of D.C. felons, the Trustee will immediately reimburse such funds to the BOP.

4.2.2.7. The D.C. Corporation Counsel will provide representation for the Trustee and Trustee-supervised agencies (see the litigation and liability

section).

4.3. Sentencing

The District of Columbia understands and agrees that the D.C. sentencing system will be changed, pursuant to the proposed Act, in the following manner:

- 4.3.1. Congress will amend the D.C. Code to abolish parole for all persons convicted of D.C. offenses (felonies and misdemeanors) committed on or after 3 years from the date of enactment of the Act.
- 4.3.2. Congress will amend the D.C. Code so that good time calculations for all persons convicted of D.C. offenses (felonies and misdemeanors) committed on or after 3 years from the date of enactment of the Act will be made according to the Federal requirements.
- 4.3.3. Congress will establish a new D.C. Board of Criminal Sentences (the Board) as an independent body within the D.C. government. All persons convicted of D.C. felonies committed on or after 3 years from the date of enactment of the Act will be sentenced according to a determinate sentencing system promulgated by the Board no later than 18 months after the date of enactment of the Act.
- 4.3.4. The Board will develop such amendments or repeals of provisions in the D.C. Code relating to the maximum and minimum prison terms as are necessary to accomplish the purposes of the Act. Ninety days after they are promulgated by the Board, the sentencing system, amendments and repeals will become effective unless disapproved as a whole by a majority of the District of Columbia Council. If disapproved by the Council, the system may be enacted by Congressional action.
- 4.3.5. The promulgated sentencing system will supersede any inconsistent provision of the D.C. Code and will provide for post-release supervision of offenders.
- 4.3.6. Congress will repeal certain other provisions of the D.C. Code to conform with the new sentencing system (D.C. Code Title 24, Chapters 2 and 8), including the Youth Rehabilitation Act.
- 4.3.7. The sentencing system developed will ensure the effective continuation of the D.C. Superior Court Drug Intervention Program by including appropriate minimum mandatory sentences and adequate related judicial discretion.

- 4.3.8. Congress will amend the D.C. Code Title 33, section 541 to adopt certain mandatory penalties necessary for effective local law enforcement.
- 4.3.9. The Board will not have the authority to provide for capital punishment under any law applicable exclusively in the District of Columbia.
- 4.3.10. The Board will have seven voting members. The Attorney General (or her designee) will chair the Board. The other members will include two judges of the D.C. Superior Court and one representative each for the D.C. Council, the Executive Branch of the D.C. government, the D.C. Public Defender Service, and the U.S. Attorney for the District of Columbia. A representative of the Bureau of Prisons will serve as a non-voting, *ex officio* member.
- 4.3.11. An affirmative vote of at least six Board members will be necessary to adopt guidelines, promulgate the sentencing system, and make any amendments or repeals of D.C. Code provisions relating to maximum and minimum prison terms.
- 4.3.12. In developing the sentencing system, the Board will hold three or more public hearings, review appropriate State system models, consult with sentencing reform experts, and solicit written comments from the public.
- 4.3.13. If the Board fails to promulgate a sentencing system within 18 months, the Board will terminate and the Attorney General will develop the system and transmit it to the Council for approval. The system will take effect unless the D.C. Council disapproves the system and Congress, in turn, does not approve it.
- 4.3.14. The Board will have the mandate to ensure that the sentencing system it establishes, among other things:
- 4.3.14.1. Will result in sentences for those convicted of felony offenses similar to those that would be imposed upon comparable offenders convicted of comparable offenses in the Federal system;
 - 4.3.14.2. Will result in sentences that reflect the seriousness of the offense and provide for just punishment, afford adequate deterrence to potential future criminal conduct of the offender and others, and provide the defendant with needed educational or vocational training, medical care, and other correctional treatment;
 - 4.3.14.3. Will provide certainty and fairness in meeting the purposes of sentencing, avoiding unwarranted sentencing disparities among similar

- defendants, while maintaining sufficient flexibility to permit individualized sentences;
- 4.3.14.4. Will take into account the high volume of sentencing proceedings in the District of Columbia Superior Court as bearing upon the degree of complexity of the sentencing system; and
- 4.3.14.5. Will ensure that the system is neutral as to the race, sex, marital status, ethnic origin, religious affiliation, national origin, creed, socioeconomic status, and sexual orientation of offenders, if not related to the commission of the offense.
- 4.3.15. As part of the sentencing system, the Board will develop binding guidelines for use in determining the sentence to be imposed upon convicted felons. The guidelines will specify:
- 4.3.15.1. When to impose a sentence to probation, a fine, or a term of imprisonment and the appropriate amount or length, as well as intermediate sanctions;
- 4.3.15.2. When to impose a term of supervised release following imprisonment, and the appropriate length; and
- 4.3.15.3. Whether multiple sentences to terms of imprisonment should run concurrently or consecutively.
- 4.3.16. Thirty days after promulgating the sentencing system, the Board will be terminated. There will be a successor Federal agency in the judicial branch to amend the guidelines consistent with the purposed of the Act. The D.C. Council may recommend to Congress whether or not these amendments should be approved. The amendments will take effect as prescribed by the successor agency, however, unless they are modified or disapproved by Congress. The successor agency will have no powers to revise the District of Columbia Code but will recommend changes to the Code as may be necessary to further the purposes of the Act.
- 4.3.17. The D.C. Superior Court, D.C. Department of Corrections, and other agencies as necessary will submit information about convicted felons as required by the Board and the U.S. Department of Justice. This would permit an assessment of the extent to which sentences imposed by the D.C. Superior Court are comparable to those imposed for comparable offenders by U.S. District Courts. The results of this assessment would be used by the Board in developing the new sentencing system for the District of Columbia.

4.3.18. Four years after the new sentencing system takes effect, there will be an evaluation to determine the extent to which the sentencing system has succeeded in accomplishing the goals set forth in the Act.

4.4. Liability and Litigation Authority

4.4.1. *Federal Government Responsibilities*

4.4.1.1. United States, its agencies, and personnel will not incur any liability on the basis of the activities of the District of Columbia, its agencies, or personnel as a result of the reforms agreed to in this Memorandum of Understanding.

4.4.1.2. The Attorney General, in her discretion, will have the authority to direct any litigation involving the Trustees, pretrial services, and sentencing reform during the transitional period, and to provide litigation services for the Trustees and the agencies responsible for pretrial services and sentencing reform during the transitional period in lieu of representation by the District of Columbia.

4.4.2. *District of Columbia Responsibilities*

4.4.2.1. The District of Columbia will remain responsible for the defense of pending suits against the District of Columbia or its personnel, and will remain responsible for any liability resulting from such suits.

4.4.2.2. The District of Columbia will be responsible for the defense of suits arising from the correctional, offender supervision, pretrial services, public defender, parole, and sentencing reform activities of agencies of the District of Columbia, and for any resulting liability, notwithstanding the contemplated transfer of these functions to existing or new Federal agencies. This will include responsibility for defense of suits and for resulting liability arising from the activities of the Corrections Trustee and the offender Supervision and Courts Services Trustee.

4.4.2.3. The District of Columbia Corporation Counsel will provide litigation services as required to carry out this section, but the Trustees and the agencies responsible for pretrial services, public defender services, and sentencing reform during the transitional period will also have the option of making their own arrangements for litigation services or requesting such services from the Financial Authority.

4.5. District of Columbia Courts

- 4.5.1. Congress will make all necessary amendments to the D.C. Code and other laws to terminate budgetary control and other involvement of the D.C. government in the finances and administration of the District of Columbia court system, including the D.C. Superior Court and the D.C. Court of Appeals.
- 4.5.2. The Joint Committee on Judicial Administration of the D.C. Courts will prepare and submit the budget for the D.C. Court system. The budgetary requests of the D.C. Courts will not be subject to revision by the D.C. government or the Executive Branch of the Federal government.
- 4.5.3. The D.C. Court system, through its Executive Office, will be authorized to contract with D.C. and Federal agencies, and with other public and private entities, for necessary supplies, equipment, and services.
- 4.5.4. Expenditures of the District of Columbia Courts will be paid out of funds appropriated for those Courts, and credited to a Treasury account established for that purpose. Funds received by the District of Columbia Courts will no longer be part of the funds of the District of Columbia.
- 4.5.5. During a transitional period of one to three years, the implementing legislation may provide that the budgetary requests of the D.C. Courts are to be submitted through the Offender Supervision and Courts Services Trustee or other appropriate intermediary, and that the designated intermediary is to be responsible for receiving and transmitting to the District of Columbia Court system all funds appropriated for the District of Columbia Courts.

5. ***Economic Development*** The District agrees that:

- 5.1. Consistent ~~in cooperation~~ with ongoing private sector recommendations, the D.C. government ~~efforts~~, it will implement ~~more~~ timely and efficient zoning, permitting and licensing processes, by the end of FY1997.
- 5.2. The District government will offer personnel resources and fully cooperate with the EDC in its review and evaluation of existing economic development plans for the District of Columbia, in the development of the EDC strategic plan, and in subsequent implementation of the plan.
- 5.3. The District government will ~~allocate~~ support a legislative allocation to the EDC 50 percent of the applicable State ceiling on the authority of the District government to issue private activity bonds in each calendar year under section 141 of the Internal Revenue Code.

- 5.4. The District government will give expedited and favorable attention to the EDC's requests for land transfers (including transfers from the RLA), zoning adjustments (including variances and special exceptions), and building and other permits and licenses for projects and activities ~~of~~ as requested by the EDC, and will support the legislative granting of authority to the EDC to exercise certain powers, including the right of eminent domain.
- 5.5. The District will cooperate with the Federal government and the private sector to establish promptly an Organizing Committee which is primarily composed of members of the private sector. The Organizing Committee will be responsible for encouraging businesses and other members of the private and non-profit communities -- District, regional and national -- to invest in the District. ~~through the EDC.~~

6. *Infrastructure.*

The District agrees:

6.1. Establishment of the National Capital Infrastructure Commission (NCIC)

- 6.1.1. Beginning on October 1, 1997, the NCIC shall assume certain State-like responsibilities for selection (consistent with the planning requirements in 23 U.S.C. 134 and 135), funding and oversight of the National Highway System (NHS) capital projects and shall assume responsibilities for funding the operations and maintenance of the NHS within the District of Columbia (exclusive of police authority and exclusive of funding those NHS routes currently under the jurisdiction of the National Park Service) with funds made available under Title ____.
- 6.1.2. The NCIC shall be governed by a five member Board of Governors (one member to be appointed by the Mayor, one member to be appointed by the City Council, one member to be appointed by the Financial Responsibility and Management Assistance Authority, and two members to be appointed by the Secretary of Transportation), all of whom are voting members.
- 6.1.3. The NCIC shall implement its responsibilities for funding and oversight and shall advance NHS projects through the Department of Transportation, Federal Highway Administration (FHWA). ~~The FHWA shall provide staffing support to assist the NCIC in fulfilling its responsibilities and shall serve as the contracting agent for executing all contracts for performance of eligible NHS activities and projects, as defined in Title _____.~~

- 6.1.4. Beginning on October 1, 1997, the NCIC [at the discretion of the District of Columbia] shall assume responsibility for advancing those NHS projects approved prior to that date that are not under construction or under a contract for such construction by October 1, 1997, [unless the NCIC and the District of Columbia agree to continue to vest responsibility for such project advancement with the District of Columbia]. Such projects that are transferred under this section shall also be governed by the requirements contained in section 6.2.4.
- 6.1.5. The NCIC may flex National Capital Infrastructure Funds authorized under section ____ and NHS apportioned funds authorized to be transferred under section _____ to other Federal-aid highway funding categories, consistent with Title 23, United States Code flexing provisions, provided performance measures relating to bridge, pavement, safety or other such performance measures that are established by the Secretary, or that shall be established, are met. In the event the Secretary of Transportation determines that such performance measures are not being met, NHS funds made available under Title ____ shall not be flexed to another funding category, but shall only remain available for eligible NHS projects.
- 6.1.6. Funds made available to the NCIC shall be administered by FHWA, which shall obligate and expend funds as the agent for the NCIC in accordance with such procedures that shall be established by the Secretary.
- 6.1.7. For FY1998, \$108 million is authorized to be appropriated to the National Capital Infrastructure Fund, which shall be used for construction, reconstruction, and rehabilitation of the NHS in accordance with 23 U.S.C. 103(i).
- 6.1.8. In each of the fiscal years 1998 through 2003, the Secretary shall transfer to the NCIC:
- 6.1.8.1. 100 percent of the District of Columbia's apportionment for the NHS;
 - 6.1.8.2. 100 percent of the apportionment for Interstate Maintenance; and
 - 6.1.8.3. 75 percent of the apportionment for the Highway Bridge Replacement for use consistent with 23 U.S.C. 103(i).
- 6.1.9. In each of the fiscal years 1998 through 2003, \$17 million is authorized to be appropriated to fund the operation and maintenance of the NHS within the District of Columbia, exclusive of the NHS routes under the

jurisdiction and control of the National Park Service and to fund the administrative costs of the NCIC.

- 6.1.10. The NCIC shall be responsible for funding those operations and maintenance activities and costs, excluding police services (except for those construction zone, incident management, and other police activities are eligible for Federal-aid highway reimbursement under Title 23, United States Code) associated with the management and operation of NHS highways including the following activities: routine maintenance of roadways and rights-of-way, and road repair, snow removal, repair, lighting, signage, and those utilities necessary for NHS operations.

6.2. District of Columbia Responsibilities

- 6.2.1. The District of Columbia shall continue to be responsible for providing police services on NHS highways (including, but not limited to civil police functions, crime prevention, investigations including traffic and accident investigation, and emergency traffic direction). The District shall continue to own the right-of-way of NHS highways that are located within the District of Columbia.

- 6.2.2. The District of Columbia will continue to be responsible for all utilities and utility work that are not necessary for operation of the NHS, even if such utilities are located within the right-of-way of the NHS. ~~The District of Columbia shall continue to be responsible for non-NHS projects funded with Federal-aid highway funds. The authority to use Surface Transportation Program funds on local streets, highways, and roadways does not relieve the District of Columbia of the responsibility for the non-Federal matching share. The use of other Federal-aid highway apportioned funds by the District of Columbia other than as provided below also require a non-Federal matching share.~~

- 6.2.3. The District of Columbia shall continue to be responsible for non-NHS projects funded with Federal-aid highway funds. The authority to use Surface Transportation Program funds on local streets, highways, and roadways (except alleyways) does not relieve the District of Columbia of the responsibility for the non-Federal matching share. The use of other Federal-aid highway apportioned funds by the District of Columbia other than as provided below also requires a non-Federal matching share.

- 6.2.4. Beginning on October 1, 1997, the District of Columbia is relieved of the responsibility to provide the non-Federal match for NHS projects that are funded by the NCIC with monies made available for NHS projects under Title _____. The relief from providing the non-Federal match shall not include

those projects that were approved by FHWA prior to October 1, 1997, for which Federal-aid highway funds have been obliged. The District of Columbia is responsible for providing the non-Federal match, the Federal-aid funds, and any obligation authority for any such projects transferred to the NCIC for project administration, oversight, or contracting.

6.3. Department of Transportation Responsibilities

The Secretary agrees to:

- 6.3.1. Continue to provide oversight and technical assistance to the District of Columbia for projects not funded with NCIF/NCIC funds.
- 6.3.2. To have FHWA provide technical assistance to the NCIC on project planning and selecting criteria consistent with 23 U.S.C. 134 and 135.
- 6.3.3. To have the FHWA serve (on a reimbursable basis) as the executive agent of the NCIC to enter into any agreements or contracts with any entity to advance, construct, reconstruct, rehabilitate, repair, maintain, and operate the NHS within the District of Columbia, excluding those NHS roadways under the jurisdiction and control of the National Park Service, consistent with 23 U.S.C. 103(i) and have FHWA provide staffing support to assist the NCIC in fulfilling its responsibilities as forth in Title ____.
- 6.3.4. To be responsible for management of those funds that are authorized and appropriated for the NCIF or authorized or transferred to the NCIC for the NHS, consistent with 23 U.S.C. 103(i).
- 6.3.5. To encourage the hiring of local labor by contractors awarded contracts, including welfare-to-work labor on NHS projects financed under Title ____ to the maximum extent possible and consistent with Federal law.

7. ***Personal Income Tax Administration*** The District agrees that:

7.1. General

- 7.1.1. The IRS shall administer and enforce the District's individual income and employment taxes.
- 7.1.2. The District shall continue to administer its unemployment benefits program.

7.2. Tax Codes

- 7.2.1. The IRS will administer the District's existing individual income and employment tax laws. The only provision the IRS cannot administer is the District's refundable property tax credit. If the District wishes to retain this provision, it must be transferred to its real estate tax administration.
- 7.2.2. All of the administrative, procedural, and enforcement provisions of the Internal Revenue Code of 1986 and related statutes will govern IRS administration of District taxes. The District will have to amend its own tax code to achieve this. The specific provisions of District law and the manner in which they must be amended are set forth on the attached Exhibit 7-A.
- 7.2.3. To avoid the possibility of any inconsistent interpretations of similar provisions, the District will have to amend its definitional provisions to conform them to the Internal Revenue Code. The specific provisions of District law and the manner in which they must be amended are set forth on the attached Exhibit 7-A.
- 7.2.4. The District must notify the Secretary of the Treasury of any future changes to its individual income and employment tax laws. The Secretary may object if, in his judgement, the prospective change would prove overly burdensome to the IRS, in which case such change shall not be administered or enforced by the IRS. If the Secretary does not object within 60 days after notification, the IRS will administer the provision within a reasonable time after enactment.
- 7.3. Transfers to the District
- 7.3.1. The IRS will set up separate accounting and deposit systems for its collections of District taxes. The District must, in turn, identify the person and/or office authorized to receive transfers of collected amounts and set up related deposit accounts.
- 7.4. Effective Date
- 7.4.1. The IRS administration of District taxes shall be prospective, starting on January 1 of the calendar year that is at least 18 months after the Secretary certifies that the District of Columbia has met the conditions set forth in the Memorandum of Understanding dated _____ between the United States and the District of Columbia.

Appendix 1

DEFINITIONS FOR THE PENSIONS SECTION OF THE MOU

"Adoption Date" means the date the Replacement Plan is adopted by the District Government or, if later, October 1, 1997.

"District Government" means, as appropriate, the "District government" as defined by section 305(5) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995 (Pub. L 104-8) or the District of Columbia Retirement Board as defined in section 102(5) of the Reform Act.

"Freeze Date" means the date of introduction of the Revitalization Act.

"Fund" means the District of Columbia Police Officers and Fire Fighters' Retirement Fund, the District of Columbia Teachers' Retirement Fund, and the District of Columbia Judges' Retirement Fund as defined in section 102(10) of the Reform Act.

"Reform Act" means the District of Columbia Retirement Reform Act (Pub. L. 96-122).

"Replacement Plan" means the plan or plans described under Title I of the Revitalization Act.

"Retirement Program" means any of the retirement programs as described in section 102(7) of the Reform Act as in effect on the day before the freeze date.

"Revitalization Act" means the "District of Columbia Revitalization Act of 1997."

"Secretary" means the Secretary of the Treasury or the Secretary's designee.

"Transfer Date" means the date on which the assets and obligations of the Fund are transferred to the Trust.

"Trust" means the District of Columbia Retirement Trust created under Title I of the Revitalization Act.

"Trustee" means the person designated by the Secretary of the Treasury under Title I of the Revitalization Act.

EXHIBIT 7-A

AMENDMENTS TO DISTRICT OF COLUMBIA CODE

Pursuant To

MEMORANDUM OF UNDERSTANDING
BETWEEN THE UNITED STATES AND
THE DISTRICT OF COLUMBIA
AND THE
DISTRICT OF COLUMBIA TAX ASSISTANCE ACT

AMENDMENTS TO DISTRICT OF COLUMBIA CODE
Pursuant to Memorandum of Understanding Between
the United States and the District of Columbia
and DISTRICT OF COLUMBIA TAX ASSISTANCE ACT

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TITLE 47. TAXATION & FISCAL AFFAIRS

CHAPTER 1. GENERAL PROVISIONS

CHAPTER 1A. TAX RETURN PREPARERS

- 47-161 Definitions.
- 47-162 Penalty for failure to sign return.
- 47-163 Understatement of taxpayer's liability.
- 47-164 Penalty for aiding & abetting understatement.
- 47-165 Frivolous tax return.
- 47-166 Statute of limitations on assessment of penalties.
- 47-167 Determination of penalty.
- 47-168 Claim for refund.
- 47-169 Right to judicial appeal.
- 47-170 Abatement of penalty.

(New section) Amend the chapter by adding a new introductory override section that, for income and employment taxes, makes applicable the IRC provisions relating to tax return preparers (e.g. IRC §§ 6694, 6695, 6713, 7407, 7427, 7701(a)(36)), in lieu of the above D.C. Code provisions, as follows:

"Sec. 47-161a. Tax Return Preparers - Income and Employment Taxes. Notwithstanding any other provision of this chapter or any other chapter of this title, the provisions of sections 6060, 6107, 6694, 6695, 6713, 7407, 7427, and 7701(a)(36) of the Internal Revenue Code of 1986 shall be applicable to income tax return preparers of returns of individual income taxes imposed by the District of Columbia."

CHAPTER 1B. CREDITING OF TAX REFUNDS AGAINST DELINQUENT TAXES

- 47-171 Definitions.
- 47-172 Crediting a tax refund.
- 47-173 Multiple party returns.
- 47-174 Priority over intercepts.
- 47-175 Notice; protest.
- 47-176 Remedy not exclusive.

(New section) Amend the chapter by adding a new introductory override section that, for income and employment taxes, makes applicable the IRC provisions relating to credits and refunds (IRC ch. 65), in lieu of the above D.C. Code provisions, as follows:

"Sec. 47-171a Crediting of Tax Refunds - Income and Employment Taxes. Notwithstanding any other provision of this chapter or any other chapter of this title, the provisions of chapter 65 of subtitle F of the Internal Revenue Code of 1986 (except section 6405 relating to reports to the Joint Committee on Taxation) shall constitute the procedures relating to credits and refunds of overpayments of income and employment taxes imposed by the District of Columbia."

CHAPTER 4. COLLECTION AND DISBURSEMENT OF TAXES

- 47-404 Account books.
- 47-405 Tax certificates. These provisions require the Collector of Taxes (a now abolished position) to maintain tax account books and furnish certificates of taxes and assessments due. Amend Ch. 4 to assign such functions to Secretary of the Treasury for income and employment taxes.
- 47-407 Waiver of interest & penalties. Amend to exclude income and

employment taxes.

- 47-408 Omission from records. Amend to exclude income and employment taxes.
- 47-453 Interest. Amend to reference IRS § 6601 et seq. for determination of interest on income and employment taxes (including interest rate).
- 47-454 Substantial understatement penalty. Amend to reference IRC § 6662 for determination of penalty on income and employment taxes (including penalty rate).
- 47-455 Failure to pay penalty. Amend to reference IRC § 6651 for determination of penalty on income and employment taxes (including penalty rate).
- 47-456 Fraud penalty. Amend to reference IRC § 6663 for determination of penalty on income and employment taxes (including penalty rate).
- 47-457 Garnishment. Amend to exclude income and employment taxes; cross reference Secretary of the Treasury's collection authority under Chapter 18, Subchapter XII.
- 47-458 Collection. Amend to reference IRC § 6601(e) for collection of interest and penalties on income and employment taxes.

CHAPTER 5. TAX RATES, RECORDS, AND SURPLUS FUNDS

- 47-504 Tax rates. No amendment. D.C. retains the right to set tax rates.

CHAPTER 18. INCOME AND FRANCHISE TAXES

- 47-1801.1 Applicability. Amend to add broad enabling language specifying that the administration of D.C. income taxes, including withholding, are (beginning on specified effective date) to be administered by the Secretary of the Treasury pursuant to the applicable provisions of the IRC and related statutes, including the making of returns; examination of books, records and witnesses; determination, assessment and collection of taxes, and the imposition of civil and criminal penalties.

(See Vermont Code § 5820 for model language.)

- 47-1801.1a Transition Rules. Amend to specify applicable transition rules (civil and criminal) with respect to subject amendments.
- 47-1801.3 Effective Date. Amend to add effective date rules with respect to subject amendments.
- 47-1801.4 General definitions. Amend to add "pre-emptive" introductory clause specifying that, with respect to income and employment taxes, the definition of any term will be only as defined or treated under the IRC.
- 47-1803.3[©] Standard deduction. No amendment; the D.C. standard deduction amount will be retained.
- 47-1803.3(d) Deductions not allowed. Amend to reference IRC sec 261 et seq. for definition of terms used.
- 47-1803.3(e) Lower income rental housing depreciation deduction. (Needs more analysis as to applicability in income taxes)
- 47-1804.1 Accounting periods. Amend to include override language that, for income taxes, the applicable provisions of IRC (§ 444 et seq.) will apply.
- 47-1804.2 Year of inclusion. Amend to include override language that, for income taxes, the applicable provisions of IRC (§ 61, 451 et seq.) will apply.
- 47-1804.3 Year of deductions. Amend to include override language that, for income taxes, the applicable provisions of IRC (§ 162, 461 et seq.) will apply.
- 47-1804.4 Installment sales. No change.
- 47-1804.5 Inventories. Amend to include override language that, for income taxes, the applicable provisions of IRC (§ 471 et seq.) will apply.
- 47-1804.6 Authority to reject returns. Amend to include override language that, for income taxes, the provision is inapplicable.
- 47-1804.7 Amounts. Amend to include override language that, for income

taxes, the applicable provisions of IRC (§ 6102) will apply.

Subchapter V. Returns

- 47-1805.1 Returns - Forms.
- 47-1805.2 Persons required to file.
- 47-1805.3 Time and place of filing.

For the above provisions, amend the subchapter with a single new override section that, for income taxes, the applicable provisions of IRC (Subtitle F, Chapter 61) will apply (e.g. requirements for returns (6011); persons required to file (6012); time and place for filing (6071, 6091, 7502)).

- 47-1805.4 Divulgence of information. Amend to reconcile the treatment of return information with IRC § 6103 by adding a new subsection (i) as follows:

"(i) **Federal tax information.**--Confidentiality and disclosure of all documents filed with, and all information generated or collected by, the Secretary of the Treasury or his delegate with respect to the administration of specified District of Columbia taxes pursuant to the provisions of sections 6371 through 6374 of the Internal revenue Code of 1986, shall be governed by the provisions of section 6103 of the Internal Revenue Code of 1986."

Subchapter VI. Tax on Residents and Nonresidents

- 47-1806.1 Taxable income defined. No change
- 47-1806.2 Personal exemptions.
Amend section to conform to definition of qualified dependents in IRC § 151(c).
- 47-1806.3 Rates. No change. D.C. will set tax rates.
- 47-1806.4 Credits. Amend subsection (b) to include override language that, for income taxes, IRC § 31 applies.
Amend subsection (c) (credit for household and dependent care services) to conform to IRC § 21.
Repeal Subsection (e) (low income credit) as there is no federal counterpart.
- 47-1806.6 Property tax credit.
Repeal this section which has no federal counterpart.
- 47-1810.1 Purpose of chapter. No change.
- 47-1811.3 Bases - property dividends. Amend to reference IRC sec. 301(D), for income tax purposes, for determination of property

dividends.

Subchapter XII. Assessment and Collection

- 47-1812.1 General duties of Mayor.
- 47-1812.2 Records and statements.
- 47-1812.3 Examination of books & witnesses.
- 47-1812.4 Duty of Mayor to make return.
- 47-1812.5 Determination of deficiency.
- 47-1812.6 Jeopardy assessment.
- 47-1812.7 Payment of tax.
- 47-1812.8 Withholding of tax.
- 47-1812.9 Lien liability.
- 47-1812.10 Period of limitation upon assessment & collection.
- 47-1812.11a Tax check-off.
- 47-1812.11 Credits and refunds for overpayments.
- 47-1812.12 Closing agreements.
- 47-1812.13 Compromises.
- 47-1812.15 "Person" defined.
- 47-1812.16 Collection by Mayor.
- 47-1812.17 Furnishing copy of federal return.

(New Section) Amend the subchapter by adding a new introductory override section that, for income and employment taxes, makes applicable the IRC provisions relating to assessment and collection, in lieu of the above D.C. Code provisions, as follows:

"Sec. 47-1812.1a Assessment and Collection of Income and Employment Taxes by Secretary of the Treasury. Notwithstanding any other provision of this subchapter or any other subchapter or chapter of this title, the provisions of subtitle F, subtitle G and chapter 24 of the Internal Revenue Code of 1986 shall apply to the administration by the Secretary of the Treasury of District of Columbia income and employment taxes, pursuant to the District of Columbia Tax Assistance Act."

In addition, amend each of the above D.C. Code provisions to reference new section 47-1812.1a as the overriding authority for income and employment taxes.

47-1812.8 Repeal current DC Code provisions and replace with:

- a. The provisions of chapter 24 of the Internal Revenue Code shall apply.
- b. The provision of section 3501 of the Internal Revenue Code shall apply.
- c. The provisions of section 3502 of the Internal Revenue Code shall apply but nothing contained therein shall be construed to not allow a deduction from federal income taxes under section 164 of the Internal Revenue Code that would otherwise be allowable.
- d. The provisions of sections 3504, 3505, 3506, 3508 and 3509 of the Internal Revenue Code shall apply.
- e. The provisions of section 530 of the Revenue Act of 1978, as amended, shall apply with regard to the income tax withholding provisions and the unemployment insurance contributions of the DC Code.

47-1812.11(b) Repealed.

47-1812.11(c) Repealed.

Subchapter XIII. Penalties and Interest

47-1813.1 Additions to tax - delinquencies.

47-1813.2 Same - Interest on deficiencies.

47-1813.3 Same - Fraud.

47-1813.4 Same - Nonpayments.

47-1813.5 Same - Payment extensions.

(New Section) Amend the subchapter by adding a new introductory override section that, for income and employment taxes, makes applicable the IRC provisions relating to penalties and interest, in lieu of the above D.C. Code provisions, as follows:

"Sec. 47-1813.1a Penalties and Interest on Income and Employment Taxes. Notwithstanding any other

provision of this subchapter or any other subchapter or chapter of this title, the provisions of subtitle F, subtitle G and chapter 24 of the Internal Revenue Code of 1986 shall apply to the determination and administration of penalties and interest on income and employment taxes."

In addition, amend each of the above D.C. Code provisions to reference new section 47-1813.1a as the overriding authority for penalties and interest on income and employment taxes.

"47-1813.6 (a) Criminal violations.--All criminal penalties and sanctions relating to the administration of the United States internal revenue laws (including but not limited to title 26 and title 18 of the United States Code) shall apply to the District of Columbia taxes specified in 26 U.S.C. § 6372. In all criminal actions brought under this section, the interests of the District of Columbia shall be represented by the United States in the same manner in which the interests of the United States are represented in corresponding proceedings involving the administration of the internal revenue laws. All criminal actions shall be brought in the judicial courts and applying the judicial procedures that apply to the administration of the internal revenue laws."

Subchapter XV. Appeal

47-1815.1 Right of aggrieved persons to judicial appeal. Amend to exclude income and employment taxes.

Subchapter XVI. Rules and Regulations

47-1816.1 Rules and regulations.

47-1816.2 Same - Revenue Act of 1956. Amended both sections to specify that, for income and employment taxes, rules and regulations will be prescribed by the Secretary of the Treasury.

47-1816.3 Report on amendment of IRC. Amend to specify that, for income and employment tax amendments to the IRC, the applicable reporting requirements will be carried out by the Secretary of the Treasury.

CHAPTER 33. SUPERIOR COURT, TAX DIVISION

47-3301 Tax appeals; definitions.

- 47-3303 Appeal from assessment.
- 47-3304 Review by Court; finality of decision.
- 47-3306 Refund of erroneous collections.
- 47-3307 Certain suits forbidden.
- 47-3308 Manner of serving notices.
- 47-3309 Reference by Mayor to Superior Court.
- 47-3310 Overpayments; refund; appeal.

Amend the above provisions to exclude jurisdiction over any matters relating to income and employment taxes.

TITLE 11 ORGANIZATION AND JURISDICTION OF THE COURTS

CHAPTER 12. TAX DIVISION OF THE SUPERIOR COURT

- 11-1201 Exclusive jurisdiction.
- 11-1202 Abolition of other remedies.
- 11-1203 Rules and regulations.

Amend the above provisions to exclude jurisdiction over any matters, including civil or criminal proceeding, involving income and employment taxes.

TITLE 46 SOCIAL SECURITY

CHAPTER 1. UNEMPLOYMENT COMPENSATION

Amend as follows:

I. Unemployment Compensation Contributions I. . . .

3. Section 46-101(1) shall be amended to include the provisions of IRC §3306 with the following exceptions:

- a. (b)(1) . . . equal to ~~\$7,000~~ such amount as is determined

in section 46-103 herein . . .

- b. (b)(1) . . . with respect to employment equal to ~~\$7,000~~ such amount as is determined in section 46-103 herein . . .
- c. Section 3306(c)(7) and (8) of the Internal Revenue Code shall not be included in section 46-101(1).