DISTRICT OF COLUMBIA
TAX REVISION COMMISSION

Tuesday, November 12, 2013
5:00 P.M.-9:00 P.M.

TESTIMONY OF

ANDREW J. KLINE, LEGISLATIVE COUNSEL
RESTAURANT ASSOCIATION
METROPOLITAN WASHINGTON

1225 19th Street, NW, Suite 320
Washington, DC 20036

(202) 686-7600
akline@veritaslla.com

Good evening, Mayor Williams, and members of the Tax Revision Commission. My name is Andrew Kline, and I am Legislative Counsel to The Restaurant Association Metropolitan Washington (RAMW). RAMW has over 840 members, which operate over 400 restaurants in the District of Columbia, almost all of which are locally owned. As we know you are aware, RAMW is the primary representative of restaurant interests in the Washington Metropolitan Area, and particularly in the District.

We understand the Commission is considering recommendations that include several changes in tax rates in the District, including a possible increase in the sales tax levied on restaurant dining, which currently stands at 10%. Our members are categorically opposed to and gravely concerned about any such increase.

Several years ago, I believe during your administration, RAMW introduced District leaders to the Small Business Survival Index, published by the Small Business and Entrepreneurship Council ("SBE"). We noted that the District of Columbia ranked 51st, among the 50 states and the District of Columbia. In the years thereafter, RAMW was joined by the DC Chamber and other business groups in calling on our leaders to take steps to improve the District's hostile business climate. Many wondered if it was a reasonable policy goal to see the District improve its standing to at least 50 on the Small Business Survival Index. Our elected leaders began quoting the index and calling for improvement.

Well, I can report today that the District need no longer concern itself with its 51st ranking on the Small Business Survival Index. Unfortunately, it is not because of any great strides in improving the business climate. It is simply because the SBE renamed its ranked list as the U.S. Small Business Policy Index, and dropped the District as a ranked jurisdiction. Likewise, after being dead last in the SBE's 2012 Business Tax Policy rankings, the District was dropped from that list as well.

The District does, however, have an extremely high place on another list. According to most rankings, the District of Columbia is in the top 5 cities for its meals tax rate of 10%. Forgive us if we do not have enthusiasm for the first place honors resulting from raising the sales tax to 11%, as some have proposed.

To many, restaurant meals taxes seem an easy target for increases. At a recent Council public hearing on another topic, I was stunned to hear one of the members of your Commission cavalierly remark that higher sales taxes have no effect on restaurant spending by consumers. He stated that consumers only look at the menu prices, and have no regard for the overall cost of the meal. Of course, if he is correct, we should raise sales taxes to 200 or 300 percent: consumers won't notice, and you can fund all of government.

It is always dangerous when professionals offer analysis outside of their field of enterprise. So let me not delve into the realm of economic theory, but instead simply exercise some common sense. Let's assume District annual restaurant sales total $2.5 billion. Presumably, that money represents some portion of the discretionary income of persons living in and visiting the metropolitan area. An increase of 1% in sales tax is $25 million. Where does that money come from? Do we really believe that the additional $25 million in taxes comes out of the ether, and that the imposition of this additional tax has no effect on consumer behavior? That can't be true. Instead, what is true is that people allocate a certain portion of their discretionary income to dining out. If dining out is more expensive, they either dine out less, spend less money in some other area, or dine where it is less expensive. Maybe they dine out in a jurisdiction where the sales tax, and the overall cost, is less.

Let's look at an example. You live in Arlington, VA, and you want to have an event, maybe a birthday party or a bar mitzvah for your kid. There will be 200 guests, your budget is $25,000, and you'd like to keep the food and drink to $100 a head. The rest of the budget you will spend on entertainment, maybe a band or a DJ, and decorations. You hear Maggiano's has a private party room and does a nice job on the food service. You realize that there is a Maggiano's in upper northwest and one at Tyson's Corner. Both locations are about 20 minutes from your house, but you prefer the more urban setting of Friendship Heights. So you call each for estimates. Both locations offer identical menus and put together food and beverage proposals at your budget of $20,000, $100 a head. With tax, under the current tax rates, however, the Friendships Height location totals $22,000 leaving you $3,000 to spend on entertainment and decorations. The Tyson's location proposal totals $21,200, leaving you $3,800 on entertainment in decorations, a $1,200 difference. Is the urban setting worth it? If DC sales tax is at 11%, the difference is $1,400. We really believe nobody cares about this money? Do I need an economics degree to credibly tell you they do??

Local restaurant clientele are not the only groups that would be impacted by this scenario. Convention bookings could easily see a decline when you take that $1,000 differential and multiply it many times over for a single group considering where to book their next convention.

Consider also that the District loves finding new and creative ways to charge fees, and forever increasing permits, inspections, and licensing. The nature of the restaurant industry puts restaurants in contact with a vast array of offices and agencies in the District and just about every contact results in a fee. DCRA, ABRA, DOH, DDOT, DPW, MPD, DOE, DOES, OTR … fees for business and alcohol licenses, health inspection fees, public space permits and fees, filing fees, reporting fees, certificate of use fees, certificate of occupancy fees, and then, of course, the cycle of paying fees is never-ending as renewal dates roll around.

Additional taxes cannot be considered without taking into consideration other pressures that are or will be at play over the next few years. Consider the impact of sequestration and the lost spending power of a segment of the resident dining public. Consider the impact of the government shutdown and the city not swelling to its usual weekday numbers. Consider the impact of the Affordable Care Act on an industry that has not had high participation in healthcare coverage and must now offer coverage to greater numbers of employees. And, consider other potential pressures being discussed to raise the minimum wage and expand sick leave coverage to tipped workers whose compensation comes primarily from the diner, not the employer.

Taken separately, any of the above pressures could destabilize the restaurant industry in the District of Columbia. Taken together, it looks like an all-out assault on the second largest employment sector in the city with thousands of small independent employers and an estimated 60,000 employees suffering the brunt of these attacks.

We would hope the District aspires to be looked at as a leader by the rest of the country. We believe, however, putting the District first on the meals tax list by raising the tax to 11% sends the wrong message to the country and, more importantly, to our small business operators who employ so many. We hope you agree that a tax revision policy which places such a burden upon those who have done so much for the District---those who have taken chances, invested, and created neighborhoods---cannot be called progressive. We urge you to reject any proposed increase in the District's sales tax on restaurant meals.