

## NOTICE OF PENDENCY OF CLASS ACTION

*A Court authorized this Notice. This is not a solicitation from a lawyer.*

- The purpose of this Notice is to advise your organization of a pending lawsuit in the Superior Court of the District of Columbia (“Court”) and that your organization may be a member of a class recently certified by that Court. If your organization is a member of the Class and this class action is successful, your organization will be entitled to obtain a refund of sales and hotel taxes it paid for events that your organization held in the District of Columbia (the “District”) since December 12, 2016.
- The lawsuit was filed in the Superior Court of the District of Columbia by the American Philosophical Association and American Anthropological Association on June 12, 2017, and is currently proceeding under the caption: *American Philosophical Association v. District of Columbia*, 2019 CVT 000003. By their Complaint, these organizations allege that a District law discriminates against out-of-District “semipublic institutions” (as defined below) and violates the Commerce Clause of the United States Constitution because that law only allows semipublic institutions *that have physical offices in the District* to obtain an exemption from paying sales and hotel taxes.
- While the Court has not yet ruled on the merits of this Constitutional Claim, the Court has ruled that the lawsuit can proceed as a class action on behalf of the following Class:

All semipublic institutions *that do not have offices within the District* that paid a sales or hotel tax to any of the hotels listed below in connection with any meetings held at any such hotels for the purpose for which the institution was organized or for honoring the institution or its members from December 12, 2016, and continuing until there is a final determination that the requirement under D.C. Code § 47-2005(3)(C) that a semipublic institution must reside in the District in order to obtain an exemption from sales and hotel taxes violates the Commerce Clause of the United States Constitution (the “Class Period”).

A “semipublic institution,” is defined in the D.C. Code § 47-2001(r) as “any corporation, and any community chest, fund, or foundation, organized exclusively for religious, scientific, charitable, or educational purposes, including hospitals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.”

The Hotels are: The Washington Hilton, the Marriott Marquis, the Renaissance Washington, the Omni Shoreham Hotel, the Grand Hyatt Hotel, the Mayflower Hotel, the Hyatt Regency, the JW Marriot, the Capital Hilton, the Willard Intercontinental, the Marriott Wardman Park Hotel, the Fairmont, the Mandarin Oriental, the Watergate Hotel, the Hilton D.C. National Mall Hotel, the Marriott Georgetown, the Washington Marriott at Metro Center, and the Westin Washington City Center.

- If Plaintiffs are not successful in proving their claim, there will be no recovery. The District denies that the District law violates the United States Constitution.

<b>YOUR ORGANIZATION’S LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT</b>	
<b>DO NOTHING</b>	<p><b>Stay in this lawsuit. Await the outcome. Give up certain rights.</b></p> <p>By doing nothing, your organization keeps the possibility of getting a tax refund that may come from a resolution of this lawsuit in favor of Plaintiffs and the Class or a Class settlement. But your organization would give up any rights to sue the District on its own about the legal claims in this lawsuit.</p>
<b>ASK TO BE EXCLUDED</b>	<p><b>Exclude your organization from participation in this class action lawsuit. Get no benefits from it. Keep certain rights.</b></p> <p>If your organization asks to be excluded from this case, the District law is ultimately held to be unconstitutional, and your organization would have been entitled to a tax refund if it had stayed in the case, your organization will not be able to obtain a tax refund from this lawsuit. But your organization will then keep any rights it might presently have to sue the District separately about the same legal claims in this lawsuit. If your organization wishes to be excluded, please follow the instructions below for Requesting Exclusion from the Class. You must send any Request for Exclusion so that it is postmarked by <b>January 27, 2022</b>. See <i>How do I exclude my organization from the class?</i> on page 5.</p>

- If the District law at issue is ultimately held to be unconstitutional, or there is a settlement, you will be notified about how to establish your organization’s entitlement to a tax refund. In order to ensure that you can be notified, should your organization move, you should provide Class Counsel (identified below) with an update of your organization’s mailing address and contact information.

## **BASIC INFORMATION**

### Why did my organization get this Notice?

Your organization has received this Notice because records obtained from Hotels in the District (identified above), from event booking agents, or other sources show that your organization may be a semipublic institution that paid a sales or hotel tax to any of the Hotels, in connection with any meeting or event at that Hotel for the purpose for which your organization was organized or for honoring your organization or its members since December 12, 2016 (which is the beginning of the Class Period), and that your organization did not have an office within the District at the time of such meetings. If so, you are a member of the Class.

### What is this lawsuit about?

This action concerns the constitutionality of D.C. Code § 47-2005(3), which allows a semipublic institution to obtain an exemption from sales and hotel taxes *if the organization has an office in the District*. Plaintiffs allege that this law violates the Commerce Clause of the United States Constitution and that the District is obligated to refund the sales and hotel taxes that Class members paid to one of the Hotels that then paid them to the District.

The District moved to dismiss Plaintiffs' Amended Class Action Complaint, but by Order dated January 29, 2019, the Court denied the District's motion to dismiss. The Court, however, limited the relief Plaintiffs can obtain to a refund of the taxes paid and also held that only meetings held on or after December 12, 2016 would qualify for refunds.

The District contends that the Code is constitutional and that it owes no tax refunds.

### Why is this lawsuit a class action?

The Court ruled on April 30, 2021 that the case satisfies the applicable legal requirements for a class action. Among other things, the Court found that the predominant issue to be decided in this lawsuit is the constitutionality of the District law at issue and that Plaintiff American Anthropological Association ("Class Representative") and Class Counsel (identified below) will adequately represent the interests of the Class. See *Does my organization have a lawyer in this case?* on page 5. The Court did not appoint the American Philosophical Association as a Class Representative because the meeting it alleged it held at a Hotel was prior to December 12, 2016.

## THE CLAIMS IN THE LAWSUIT

Has the Court decided who is right?

The Court has not yet decided whether the Class Representative's or the District's contentions are correct. By establishing the Class and issuing this Notice, the Court is not suggesting that Class Representative will win or lose this case. The Court has only ruled that this action qualifies as a class action. Class Representative must establish that the D.C. Code provision is unconstitutional for any member of the Class to be entitled to a refund.

What is the Class Representative asking for?

Class Representative is seeking to have the Court rule that D.C. Code § 47-2005(3) violates Article 1, Section 8, Clause 3 of the United States Constitution. If this Court so holds, or if there is a settlement, a procedure will be established for Class members to establish that they are an out-of-District semipublic institution, that they held one or more meetings during the Class Period at one or more of the Hotels that was for the purpose for which the institution was organized or for honoring the institution or its members, and to establish the amount of sales and hotel taxes they paid for such meetings.

Is my organization entitled to any tax refunds now?

No, because the Court has not yet decided whether the D.C. Code at issue violates the United States Constitution, and there has been no final disposition of this lawsuit, meaning a resolution of any appeals from the Court's ruling on that issue. There is therefore no guarantee that tax refunds will ever be obtained.

## YOUR ORGANIZATION'S RIGHTS AND OPTIONS

What are my organization's options?

Your organization has to decide whether to stay in the Class or ask to be excluded. If your organization decides to request exclusion from the Class, your organization must provide notice to *District of Columbia Tax Exemption Class Action* at the address indicated below of its decision by **January 27, 2022** in accordance with the instructions below. See *How do I exclude my organization from the class?* on page 5. The Court will exclude from the Class any member who requests exclusion in accordance with the instructions below by **January 27, 2022**.

## What happens if my organization does nothing at all?

Your organization will stay in the Class. If the Class Representative then obtains a ruling that the D.C. Code at issue violates the United States Constitution, and that ruling stands after any appeals, or a settlement on behalf of the Class is reached, your organization will be notified about how to obtain its tax refund. If your organization remains in the Class, it will be legally bound by the Court's judgment in this class action lawsuit, whether favorable to the Class or not.

Should your organization move, you should provide Class Counsel with an update of your organization's mailing address and contact information.

## Should your organization ask to be excluded?

If your organization decides to exclude itself from the Class—which also means to remove itself from the Class—then it will not be entitled to submit a claim to get any tax refund from this lawsuit even if the Class Representative ultimately prevails in establishing the unconstitutionality of the D.C. Code at issue or reach a settlement with the District. However, your organization may then be able to individually sue the District on its own and at its own expense.

If your organization excludes itself, it will not be legally bound by the Court's judgment in this class action lawsuit, whether favorable to the Class or not.

## How do I exclude my organization from the class?

To ask to be excluded, your organization must complete and send a letter on your organization's letterhead stating that your organization wants to be excluded from the "*American Philosophical Association v. District of Columbia Class Action*." Be sure to sign the letter and state your position with your organization. You must mail your request for exclusion so that it is postmarked no later than **January 27, 2022** to: *District of Columbia Tax Exemption Class Action*, P.O. Box 59479, Philadelphia, PA 19102-9479.

## **THE LAWYERS REPRESENTING YOUR ORGANIZATION IN THIS CASE**

### Does my organization have a lawyer in this case?

The Court decided that the Class Representative's lawyers, from the law firms of Klafter Lesser, LLP and Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C. are adequate to represent the Class. Together, the law firms are called "Class Counsel." They are experienced in handling numerous class action lawsuits, including lawsuits involving similar constitutional challenges to laws. More information about these law firms, their practices, and their lawyers' experience is available at [www.klafterlesser.com](http://www.klafterlesser.com) and [www.kellogghansen.com](http://www.kellogghansen.com). Your organization is not individually responsible to pay any fee to, or expenses of, the lawyers representing the Class. See *How will the*

*lawyers be paid?* on page 6.

### Should my organization get its own lawyer?

Your organization does not need to hire its own lawyer, because Class Counsel is working on its behalf and will represent the interests of the Class members in this lawsuit. But, if your organization wants to retain its own lawyer, it may do so at its own expense.

### How will the lawyers be paid?

If Class Counsel obtains a determination from the Court that the D.C. Code provision at issue is unconstitutional, and such determination is affirmed on any appeals, Class members will be afforded an opportunity to establish their entitlement to a tax refund and the amount of such tax refund. In such event, Class Counsel will ask the Court to approve an award of legal fees and expenses to be paid by the District but, failing that, will ask the Court to approve an award of legal fees and expenses to be paid out of each tax refund paid by the District. Your organization won't have to pay these fees and expenses directly. If the Court grants a request by Class Counsel for fees and expenses, the fees and expenses would therefore be either deducted from any tax refund to which a Class member is entitled or paid separately by the District.

## **THE DETERMINATION OF THE CONSTITUTIONAL ISSUE**

### How and when will the Court decide who is right?

The Court has not yet decided who is right in this case.

Following the deadline for Class members to opt-out of this lawsuit, the Class Representative intends to ask the Court to rule that D.C. Code § 47-2005(3) is unconstitutional. The Court could rule that it is unconstitutional, is constitutional, or that there are factual issues that must be determined at a trial. There is no guarantee that the Class Representative will prevail on this issue. You can check for periodic updates as to the status of the case at [www.dctaxrefundclassaction.com](http://www.dctaxrefundclassaction.com).

If the Class Representative does obtain a ruling—that is upheld on appeal—that the D.C. Code at issue is unconstitutional, or the case is settled, you will be notified about how to claim your organization's tax refund. We do not know at this time how long this will take.

## **GETTING MORE INFORMATION**

If your organization requires any additional information, you may contact Class Counsel, by emailing them, either at [nancy.velasquez@klafterlesser.com](mailto:nancy.velasquez@klafterlesser.com) or [sstrikis@kelloggghansen.com](mailto:sstrikis@kelloggghansen.com) or calling them at 1-914-934-9200 (Klafter Lesser LLP) or 1-202-326-7939 (Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C.).

**DO NOT ADDRESS ANY QUESTIONS ABOUT THIS LITIGATION TO THE COURT,  
THE JUDGE, OR THE DISTRICT'S COUNSEL. THEY ARE NOT PERMITTED TO  
ANSWER YOUR QUESTIONS.**

DATE: December 13, 2021

**BY ORDER OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**