

**PUBLIC HEARING ON
BILL 15-609, “SALES TAX HOLIDAY AMENDMENT
ACT OF 2003”**

**Before the
Committee on Finance and Revenue
Council of the District of Columbia**

The Honorable Jack Evans, Chairman

**May 5, 2004, 10:00 a.m.
Council Chambers
John A. Wilson Building**



**Testimony of
Dr. Julia Friedman
Deputy Chief Financial Officer
Office of Revenue Analysis**

**Natwar M. Gandhi
Chief Financial Officer
Government of the District of Columbia**

Good morning Chairman Evans and distinguished members of the Committee. I am Julia Friedman, deputy chief financial officer for revenue analysis. I am pleased to present testimony on Bill 15-609, the “Sales Tax Holiday Amendment Act of 2003.”

Bill 15-609 would provide two periods each year in which purchases of certain items would be exempt from District sales taxation. The first period would be a nine-day period spanning two weekends in early August. The second period would be a nine-day period spanning two weekends in late November and early December.

The exemption from taxation during these periods would apply to sales of articles of clothing, accessories, or shoes for \$100 or less. The bill provides specific rules governing the conditions under which sales would be exempt and the nature of exempted items.

The bill would result in foregone revenue of \$0.40 million for fiscal year 2004, \$1.05 million for fiscal year 2005, and a total of \$3.43 million for fiscal years 2006 through 2008. The estimates contain an adjustment for purchasers spending some of the money they save on non-exempt items, thus reducing the revenue loss.

As you know, OCFO staff are monitoring the Multi-State Tax Commission’s Streamlined Sales Tax Project. Our review of Bill 15-609 found that the proposed legislation conforms to the provisions of the Streamlined Sales Tax Agreement

(SSTA). However, two areas not addressed in the bill would require technical amendments for the purpose of clarification and conformance to the SSTA.

These areas concern (1) the sales tax treatment of items purchased during an exemption period, but later exchanged for another item or credit, and (2) the treatment of delivery charges on purchases during the exemption period. We have attached for your information a summary of SSTA provisions for sales tax holiday procedures and hope to work with the committee to address these areas before the bill is marked up.

This concludes my testimony. I will be glad to answer any questions you may have.

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ATTACHMENT

The Project approved moving this paper to Implementing States on July 18, 2003.

STREAMLINED SALES TAX PROJECT

SALES TAX HOLIDAY PROCEDURES

Proposed Amendments to SSTP Agreement

July 2003

Background

Section 322 of the Streamlined Sales and Use Tax Agreement regarding Sales Tax Holidays identified issues in which uniform sales tax holiday procedures should be developed to help in simplifying and streamlining the administration of sales tax holidays. The Sales Tax Holiday Work Group has discussed these issues and recommends amending the SSTP Agreement to provide the following procedures for the uniform administration of sales tax holidays.

Amend subsection C of Section 322: Sales Tax Holidays to read:

The following procedures are to be used by member states in administering a sales tax holiday exemption:

1. Layaway sales - A sale of eligible property under a layaway sale qualifies for exemption if:
 - (A) final payment on a layaway order is made by, and the property is given to, the purchaser during the exemption period; or
 - (B) the purchaser selects the property and the retailer accepts the order for the item during the exemption period, for immediate delivery upon full payment, even if delivery is made after the exemption period.
2. Bundled sales - Member states will follow the same procedure during the sales tax holiday as agreed upon for handling a bundled sale at other times.
3. Coupons and discounts - A discount by the seller reduces the sales price of the property and the discounted sales price determines whether the sales price is within a sales tax holiday price threshold of a member state. A coupon that reduces the sales price is treated as a discount if the seller is not reimbursed for the coupon amount by a third-party. If a discount applies to the total amount paid by a purchaser rather than to the sales price of a particular item and the purchaser has purchased both eligible property and taxable property, the seller should allocate the discount based on the total sales prices of the taxable property compared to the total sales prices of all property sold in that same transaction.

4. Splitting of items normally sold together - Articles that are normally sold as a single unit must continue to be sold in that manner. Such articles cannot be priced separately and sold as individual items in order to obtain the exemption. For example, a pair of shoes cannot have each shoe sold separately so that the sales price of each shoe is within a sales tax holiday price threshold.

5. Rain checks - A rain check allows a customer to purchase an item at a certain price at a later time because the particular item was out of stock. Eligible property that customers purchase during the exemption period with use of a rain check will qualify for the exemption regardless of when the rain check was issued. Issuance of a rain check during the exemption period will not qualify eligible property for the exemption if the property is actually purchased after the exemption period.

6. Exchanges - The procedure for an exchange in regards to a sales tax holiday is as follows:

(A) If a customer purchases an item of eligible property during the exemption period, but later exchanges the item for a similar eligible item, even if a different size, different color, or other feature, no additional tax is due even if the exchange is made after the exemption period.

(B) If a customer purchases an item of eligible property during the exemption period, but after the exemption period has ended, the customer returns the item and receives credit on the purchase of a different item, the appropriate sales tax is due on the sale of the newly purchased item.

(C) If a customer purchases an item of eligible property before the exemption period, but during the exemption period the customer returns the item and receives credit on the purchase of a different item of eligible property, no sales tax is due on the sale of the new item if the new item is purchased during the exemption period.

7. Delivery charges - Delivery charges, including shipping, handling and service charges, are part of the sales price of eligible property unless a member state defines "sales price" to exclude such charges. For the purpose of determining a sales tax holiday price threshold, if all the property in a shipment qualifies as eligible property and the sales price for each item in the shipment is within the sales tax holiday price threshold, then the seller does not have to allocate the delivery, handling, or service charge to determine if the price threshold is exceeded. The shipment will be considered a sale of eligible products.

If the shipment includes eligible property and taxable property (including an eligible item with a sales price in excess of the price threshold), the seller should allocate the delivery charge by using:

(1) a percentage based on the total sales prices of the taxable property compared to the total sales prices of all property in the shipment; or

(2) a percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment.

The seller must tax the percentage of the delivery charge allocated to the taxable property but does not have to tax the percentage allocated to the eligible property.

8. Order date and back orders - For the purpose of a sales tax holiday, eligible property qualifies for exemption if:

(A) the item is both delivered to and paid for by the customer during the exemption period; or

(B) the customer orders and pays for the item and the seller accepts the order during the exemption period for immediate shipment, even if delivery is made after the exemption period. The seller accepts an order when the seller has taken action to fill the order for immediate shipment. Actions to fill an order include placement of an "in date" stamp on a mail order or assignment of an "order number" to a telephone order. An order is for immediate shipment when the customer does not request delayed shipment. An order is for immediate shipment notwithstanding that the shipment may be delayed because of a backlog of orders or because stock is currently unavailable to, or on back order by, the seller.

9. Returns - For a 60-day period immediately after the sales tax holiday exemption period, when a customer returns an item that would qualify for the exemption, no credit for or refund of sales tax shall be given unless the customer provides a receipt or invoice that shows tax was paid, or the seller has sufficient documentation to show that tax was paid on the specific item. This 60-day period is set solely for the purpose of designating a time period during which the customer must provide documentation that shows that sales tax was paid on returned merchandise. The 60-day period is not intended to change a seller's policy on the time period during which the seller will accept returns.

10. Different time zones - The time zone of the seller's location determines the authorized time period for a sales tax holiday when the purchaser is located in one time zone and a seller is located in another.

Amend Library of Definitions in Appendix C, Part III to add the following sales tax holiday definitions:

PART III

Sales Tax Holiday Definitions

1. "Eligible property" means an item of a type, such as clothing, that qualifies for a sales tax holiday exemption in a member state.

2. "Layaway sale" means a transaction in which property is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time, and, at the end of the payment period, receives the property. An order is accepted for layaway by the seller, when the seller removes the property from normal inventory or clearly identifies the property as sold to the purchaser.

3. "Rain check" means the seller allows a customer to purchase an item at a certain price at a later time because the particular item was out of stock.

Amend Library of Definitions in Appendix C, Part I to add the following at the end of the definition of "Delivery charges" in Administrative Definitions:

If a shipment includes exempt property and taxable property, the seller should allocate the delivery charge by using:

- (1) a percentage based on the total sales prices of the taxable property compared to the total sales prices of all property in the shipment; or
- (2) a percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment.

The seller must tax the percentage of the delivery charge allocated to the taxable property but does not have to tax the percentage allocated to the exempt property.