

**Energy-Efficiency and Water-Efficiency Sales Tax Holiday
Amendment Act of 2017, Bill 22-576**

Before the

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

The Honorable Jack Evans, Chairman

**October 10, 2018, 10:00 A.M.
John A. Wilson Building, Room 500**



**Testimony of Elissa F. Borges
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**Jeffrey S. DeWitt
Chief Financial Officer
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Good morning, Chairman Evans, and members of the Committee on Finance and Revenue. I am Elissa Borges, Assistant General Counsel, for the Office of Tax and Revenue of the District of Columbia. I am pleased to present testimony today on Bill 22-576, the “Energy-Efficiency and Water- Efficiency Sales Tax Holiday Amendment Act of 2017.”

The District expressly exempts certain types of sales from its gross sales tax as enumerated in D.C. Code § 47-2005 and from compensating use tax under D.C. Code § 47-2206. This bill adds a new exemption for sales of certain energy-efficient and water-efficient products when the sale takes place during a proscribed period of time described as a “sales tax holiday”. The sales tax holiday will occur during two time periods each year – (1) between 12:01 a.m., on the Saturday preceding the last Monday in May and 11:59 p.m., on the last Monday of May and (2) between 12:01 a.m., on the Saturday preceding the second Monday in October and 11:59 p.m., on the second Monday of October. These time periods generally correspond with the Memorial Day and Columbus Day holiday weekends.

This exemption applies to certain products certified by the United States Environmental Protection Agency that meet or exceed its Energy Star efficiency requirements or are certified products under its WaterSense program.

This exemption applies to eligible products that are sold in retail stores in the District. This exemption also applies to the sale of eligible products that are made through a catalog or over the internet if the products are delivered into the District. Further, the sale of products sold in retail stores outside the District that are brought into the District will be exempt from District use tax.

The bill clarifies the applicability of the exemption to transactions when the delivery of the product and payment in full are not simultaneous, such as lay-away sales, rainchecks and returns and exchanges. The bill further clarifies that charges for shipping and handling for exempt energy-efficient and water-efficient products are exempt from sales tax.

Finally, the bill excludes certain transactions from the exemption including the sale of energy-efficient and water-efficient products that are sold in a “public lodging establishment.” It is not apparent if such an exclusion from the exemption for sales that take place in public lodging establishments is necessary.

The Office of Tax and Revenue can administer energy-efficiency and water-efficiency sales tax holidays as contemplated in this bill. However, OTR proposes various technical and clarifying changes to the legislation. I have attached to this testimony a mark-up of the bill with OTR’s proposed changes. Thank you for the opportunity to testify. I am happy to answer any questions you may have.

"(41)(A) ~~Subject to the other provision of this paragraph, S~~sales of ~~any~~ energy efficient products or water-efficient products ~~if, when~~ the sale takes place during an exemption period as defined in this paragraph. ~~between 12:01 a.m., on the Saturday preceding the last Monday in May and 11:59 p.m., on the last Monday of May, and when the sale takes place between 12:01 a.m., on the Saturday preceding the second Monday in October and 11:59 p.m., on the second Monday of October.~~

"(B) The exemption shall apply to:

"(i) Each eligible ~~item-product~~ regardless of how many items are sold on the same invoice to a customer;

"(ii) ~~Catalogue and Online sales~~ Eligible items products sold by mail, telephone, email or over the internet, if:

(A) the purchaser pays for the eligible item-product in full during the exemption period; and

(B) the ~~seller-vendor~~ accepts the order during the exemption period for immediate shipment.

"(iii) Shipping and hHandling charges ~~shall be included as part of the sales price of the~~ for an eligible ~~item-product~~, whether or not separately stated. If multiple ~~items-products~~ are ~~shipped-sold~~ on a single invoice, the shipping and handling charges shall be proportionately allocated to each item ordered and separately identified on the invoice;

"~~(iii)~~iv) Lay-away sales, if the sale, agreement or other arrangement for transfer of the eligible item-product from the vendor to the purchaser ~~contract of sale is entered into~~ and the initial payment ~~is~~are made during the ~~specified period~~ exemption period and the ~~product-eligible item-product~~ is removed from normal inventory by the

vendor and set aside for the purchaser ~~at that time~~ during the exemption period;

"(iv) Sales using a raincheck, regardless of when the raincheck is issued, if the sale of the eligible product item is made ~~actually purchased~~ during the exemption period; and

"(v) Sales of eligible ~~items-products~~ purchased during the exemption period if the eligible item-product is later exchanged for another ~~exempt item~~ eligible product after the exempt period;

"(C) The exemption shall not apply to:

"(i) Nonexempt ~~items-products~~ which are exchanged for ~~exempt-eligible~~ items; or

"(ii) Repairs and alterations to ~~exempt-eligible items-products~~; ~~or~~

~~"(iii) Items sold in public lodging establishments.~~

"(D) For purposes of this paragraph, the term:

"(i) "Eligible products" means an energy-efficient product or a water-efficient product.

"(ii) "Energy-~~e~~fficient ~~p~~Product" means an Energy Star Qualified Product which means an air conditioner, clothes washer, clothes dryer, ceiling fan, programmable thermostat, dishwasher, heat pump, refrigerator, dehumidifier, boiler, fan and a light-emitting diode light bulb that has been approved as meeting or exceeding the Energy Star efficiency requirements as developed by the U.S. Environmental Protection Agency and the United States Department of Energy and is authorized to carry the Energy Star Label.

"(iii) "Exemption period" means the time period between 12:01 a.m., on the Saturday preceding the last Monday in May and 11:59 p.m., on the last Monday of May or the time period between 12:01 a.m., on the Saturday preceding the second Monday

in October and 11:59 p.m., on the second Monday of October.

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"(iii) "Water-Efficient pProduct" means a product that has been designated as a WaterSense certified product under the WaterSense program operated by the United States Environmental Protection Agency."