

**HIV IN-HOME TEST TAX EXEMPTION AMENDMENT
ACT OF 2021, Bill 24-28**

Before the

**Committee on Business and Economic Development
Council of the District of Columbia
The Honorable Kenyan R. McDuffie, Chair**

**October 25 2022, 1:00 P.M.
Remote Hearing via Virtual Platform**



**Testimony of Andrew D. Reiter
Assistant General Counsel
Office of Tax and Revenue**

**Glen Lee
Chief Financial Officer
Government of the District of Columbia**

Good afternoon, Chairman McDuffie, and members of the Committee on Business and Economic Development. I am Andrew D. Reiter, Assistant General Counsel for the Office of Tax and Revenue (“OTR”). I am pleased to present testimony today on Bill 24-28, the “HIV In-Home Test Tax Exemption Amendment Act of 2021” (the “Bill”).

District law expressly exempts certain types of sales from its gross sales tax. Those exemptions are enumerated in D.C. Official Code § 47-2005. Under the Code, sales of medicines, pharmaceuticals, and drugs are exempt from the sales tax, whether or not prescribed by a medical professional. D.C. Code § 47-2005(14). Importantly, this exemption applies to any substance or mixture of substances containing at least one recognized medicine, pharmaceutical, or drug intended for *cure, mitigation, or prevention* of disease. D.C. Mun. Regs. 9 § 450.2. Since in-home HIV tests are not used to cure, mitigate, or prevent HIV, these tests are not currently exempt from District sales tax.

The Bill would amend § 47-2005 to add an exemption for the sale of in-home HIV tests. The proposed exemption can be administered by the OTR. OTR would publicize the new exemption and work with retailers, their vendors, and the general public to ensure that the sales tax is no longer charged on these tests. The challenge, however, is to communicate and answer questions about which tests are

exempt, since the Bill does not offer a definition of at-home tests. The United States Food and Drug Administration (“FDA”) regulates and authorizes all tests that detect HIV. The FDA’s website lists all authorized tests, including tests authorized for in-home use.¹ Currently, the FDA has authorized three tests for in-home use:

- Everlywell At-Home HIV Test;
- OraSure HIV-1 Oral Specimen; and
- OraQuick In-Home HIV Test;

As the Bill is currently written, OTR would interpret the exemption as applicable to any product that is sold as an in-home HIV test, even if it has not been authorized by the FDA. Retailers require clear definitions of exempt products to ensure the proper sales tax and avoid potential penalties and interest if OTR were to audit a retailer. Therefore, OTR recommends requiring that the test be authorized by the FDA to be exempt from the sales tax. Recommended language is appended to my testimony for the Committee’s consideration.

Thank you, Chairman McDuffie for the opportunity to comment on the Bill.

I am happy to answer any questions at this time.

¹ <https://www.fda.gov/vaccines-blood-biologics/complete-list-donor-screening-assays-infectious-agents-and-hiv-diagnostic-assays>

APPENDIX A

The Office of Tax and Revenue suggests amending Bill 24-28 as follows

“(41) Sales of human immunodeficiency virus (“HIV”) in-home tests *that have been authorized by the United States Food and Drug Administration.*”