

**Landscape Architect Services Sales Tax  
Clarification Amendment Act of 2023,  
Bill 25-277**

**The Committee on Business and Economic Development  
The Honorable Kenyan McDuffie, Chairman**

**January 24, 2024**



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Good morning, Chairman McDuffie, and members of the Committee on Business and Economic Development. I am Elissa Borges, Assistant General Counsel for the Office of Tax and Revenue. Thank you for the opportunity to provide testimony on behalf of the Office of Tax and Revenue (OTR) on Bill 25-277, the “Landscape Architect Services Sales Tax Clarification Amendment Act of 2023.”

**The Imposition of District Sales Tax on Services**

As this Committee is aware, the District’s sales tax laws are codified in Chapter 20 of Title 47 of the District Code. Under D.C. Code § 47-2002, sales tax is imposed on all vendors for either the privilege of (a) selling at retail certain tangible personal property or (b) selling certain *selected* services, defined as a “retail sale” or a “sale at retail”.

Accordingly, in general, services are not subject to District sales tax unless the Council has subjected a particular service to sales tax by expressly including such service in the definition of “retail sale” (or “sale at retail”) under D.C. Code § 47-2001(n)(1).

**The Imposition of District Sales Tax on “Landscaping Services”**

In 1989, D.C. Code § 47-2001(n)(1) was amended by the Revenue Amendment Act of 1989, D.C. Law 8-17, to expressly include “[t]he sale of or charges for the service of real property maintenance and landscaping” as a service subject to District sales tax.<sup>1</sup>

The definition of “landscaping” was expressly defined as:

- the activity of arranging or modifying areas of land and natural scenery for an improved or aesthetic effect;

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<sup>1</sup> Chapter 22 of the D.C. Code was also amended to impose a use tax on the sale of or charges for the service of real property maintenance and landscaping, including services provided by landscape designers or landscape architects. *See* D.C. Code § 47-2201(a)(1)(J).

- the addition, removal, or arrangement of natural forms, features, and plantings;
- the addition, removal, or modification of retaining walls, ponds, sprinkler systems, or other landscape construction services; and
- other services provided by landscape designers or landscape architects such as consultation, research, preparation of general or specific design or detailed plans, studies, specifications or supervision, or any other professional services or functions associated with landscaping.

See D.C. Code § 47-2001(n)(1)(M). OTR subsequently promulgated regulations further clarifying the imposition of District sales tax on landscaping services. See 9 D.C.M.R. § 473.1.

### **District Sales Tax Exemptions**

It is important to note that even if a sale is subject to District sales tax, it does not mean that sales tax will ultimately have to be paid on that transaction. If a sale of a selected service is subject to District sales tax, that sale may still be exempt from sales tax under the District's sales tax exemption statute – D.C. Code § 47-2005. In general, Section 47-2005 expressly defines and codifies nearly all transactions that are exempt from District sales tax and, by incorporation under D.C. Code § 47-2206, District use tax.

As introduced, Bill 25-277 does not seek to amend Section 47-2005 to exempt services provided by landscape architects and professional design firms licensed in the District. Rather, the bill, as drafted, effectively repeals the imposition of sales tax on all landscaping services provided by *any* vendor identifying themselves as a landscape designer, landscape architect, or other business associated with landscaping, including providers not licensed by the District.

Accordingly, OTR suggests that no amendments are needed to D.C. Code § 47-2001(n)(1)(M) or the regulations regarding the imposition of sales tax on landscaping services. Instead, OTR suggests that D.C. Code § 47-2005 be amended to add a new exemption for landscape architectural services provided by landscape architects and/or professional design firms licensed to provide such services in the District. These changes will accomplish the intent of the bill by exempting professional landscaping services provided by licensed landscape architects and/or professional design firms without effectively repealing the imposition of the tax on sales made by unlicensed vendors who provide consulting and design services related to landscaping.

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.

## **Landscape Architect Services Sales Tax Clarification Amendment Act of 2023, Bill 25-277**

### **AMENDMENTS IN THE INTRODUCED VERSION OF THE BILL:**

#### **§ 47–2001. Definitions.**

(n)(1) “Retail sale” and “sale at retail” mean the sale in any quantity or quantities of any tangible personal property or service, including any such sales effected via the internet, taxable under the terms of this chapter. These terms mean all sales of tangible personal property to any person for any purpose other than those in which the purpose of the purchaser is to resell the property so transferred in the form in which the same is, or is to be, received by him, or to use or incorporate the property so transferred as a material or part of other tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining. For the purpose of the tax imposed by this chapter, these terms shall include, but not be limited to, the following:

(M) The sale of or charges for the service of real property maintenance and landscaping; provided, that the sale of or charge for services described in D.C. Official Code § 47-2853.116, performed by a landscape architect licensed in the District or provided by a professional design firm that employs a landscape architect licensed in the District, shall be exempt.

(i)(I) For the purposes of this paragraph, the term “real property maintenance” means any activity that keeps the land or the premises of a building clean, orderly, and functional, including the performance of minor adjustments, maintenance, or repairs which include: floor, wall, and ceiling cleaning; pest control; window cleaning; servicing inground and in building swimming pools; exterior building cleaning; parking lot, garage, and recreation area maintenance; exterior and interior trash removal; restroom cleaning and stocking; lighting maintenance; chimney and duct cleaning; and ground maintenance; but does not include; painting, wallpapering, or other services performed as part of construction or major repairs; or services performed under an employee-employer relationship.

(II) The term “real property maintenance” shall not include the exterior or interior trash removal of recyclable material. For the purposes of this sub-sub-subparagraph, the term “recyclable material” means material that would otherwise become municipal solid waste and is shown by the provider of the interior or exterior trash removal that the material has been collected, separated, or processed to be returned into commerce as a raw material or product, or has been sold to a company in the business of separating or processing recyclable materials.

(ii) For the purposes of this paragraph, the term “landscaping” means the activity of arranging or modifying areas of land and natural scenery for an improved or aesthetic effect; the addition, removal, or arrangement of natural forms, features, and plantings; the addition, removal, or modification of retaining walls, ponds, sprinkler systems, or other landscape construction services.

**§ 47–2201. Definitions.** [NO CONFORMING AMENDMENT PROPOSED]

**9 D.C.M.R. § 473.1**

Landscaping is the activity of arranging or modifying an area of land or natural scenery, by planting, removing or replacing plant life or by altering the contours of the ground. The services of landscaping and landscape construction are taxable. Examples of services subject to tax under landscaping include, but are not limited to, the following:

- (a) Landscape consultation;
- (c-1) Installation or planting of plant materials;
- (d) Stump and tree removal;
- (e) Transplanting trees, shrubs, and other vegetation; or
- (f) Planting or replacing flowers, shrubs, trees or other vegetation.

PROPOSED TECHNICAL CHANGES BY OTR:

**§ 47–2001. Definitions.** [NO AMENDMENTS NEEDED]

**§ 47–2005. Exemptions.**

Gross receipts from the following sales shall be exempt from the tax imposed by this chapter:

**(40)** Notwithstanding §§ 47-2001(n)(1)(M)(ii) or 47-2201(a)(1)(J)(ii), any sales of landscape architectural services described in § 47-2853.116 by (a) a person licensed to practice landscape architecture in the District pursuant to Chapter 28, Subchapter I-B, Part H-i of this title or (b) a professional design firm licensed to provide landscape architecture services in the District pursuant to § 47–2853.65.

**§ 47–2201. Definitions.** [NO CONFORMING AMENDMENT NEEDED]

**9 D.C.M.R. § 473.1** [NO AMENDMENTS NEEDED]