Legislative Analysis

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ELIMINATE SALES AND USE TAXES ON FEMININE HYGIENE PRODUCTS

House Bill 4270 (H-2) as reported from committee
Sponsor: Rep. Tenisha Yancey

House Bill 5267 (H-2) as reported from committee
Sponsor: Rep. Bryan Posthumus

Committee: Tax Policy
Complete to 10-13-21

SUMMARY:

House Bills 4270 and 5267 would amend the Use Tax Act and the General Sales Tax Act, respectively, to exempt ***feminine hygiene products*** from sales and use taxes.

> ***Feminine hygiene products*** would mean tampons, panty liners, menstrual cups, sanitary napkins, and other similar tangible personal property designed for feminine hygiene in connection with the human menstrual cycle.

Each bill would take effect 90 days after its enactment.

HB 4270: MCL 205.94 and 205.111
HB 5267: MCL 205.54a and 205.75

BACKGROUND:

In recent years, there has been discussion around elimination of the so-called "tampon tax," which is levied on feminine hygiene products. In Michigan, feminine hygiene products are subject to the 6% sales tax as "luxury items." In deciding a class action lawsuit[1] challenging the tampon tax on June 9, 2021, the Court of Claims held that the application of sales and use taxes to those products does not violate state or federal guarantees of equal protection. The court stated that "only the Legislature may impose tax or exempt items from taxation."[2] This legislation aims to do just that.

Between 2016 and 2020, Nevada, New York, Florida, Connecticut, Illinois, Ohio, Utah, and Washington eliminated the tax. Five other states already had an exemption in place (with some including feminine hygiene products as medical products and some as paper goods), and five others do not have sales tax. Other states have adopted measures that eliminate the tax for a period of time (for instance, until 2022 in California)[3] or decreased it (in Virginia).[4] Thirty states continue to tax those products as of February 2021.[5]

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[1] *Beggs et al v State of Michigan*, issued June 9, 2021.
[2] https://www.michigan.gov/documents/treasury/Treasury_Update_Newsletter_Aug2021_732655_7.pdf on pg. 8-9
[3] https://www.kcra.com/article/sales-tax-for-tampons-diapers-eliminated-in-california-for-2-years/30463779#
[4] https://wjla.com/news/local/virginia-tampon-tax-law
[5] https://www.forbes.com/sites/taxnotes/2021/03/25/taking-down-the-tampon-tax/?sh=18c27a567744

FISCAL IMPACT:

As written, the bills would be expected to reduce sales and use tax revenue by approximately $7.0 million on a full-year basis. Because the bills contain language to hold the School Aid Fund harmless against any revenue loss, the majority of the revenue reduction would be borne by the general fund, although sales tax revenue earmarked for constitutional revenue sharing would be expected to decline by about $690,000.

POSITIONS:

The following entities indicated support for the bills (8-31-21):

- Department of Treasury
- Consumer Health Products Association
- Michigan Coalition to End Domestic and Sexual Violence
- Michigan State Medical Society
- American Association of University Women of Michigan
- Michigan Council for Maternal and Child Health
- Michigan League for Public Policy
- American College of Obstetrics and Gynecologists
- Helping Women Period
- Alliance for Period Supplies
- Women in the NAACP

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