Legislative Analysis

Phone: (517) 373-8080
http://www.house.mi.gov/hfa

Analysis available at
http://www.legislature.mi.gov

ELIMINATE USE TAX ON FEMININE HYGIENE PRODUCTS

Senate Bill 153 (S-2) as passed by the Senate
Sponsor: Sen. Winnie Brinks
House Committee: Tax Policy
Senate Committee: Finance
Complete to 10-26-21

SUMMARY:

Senate Bill 153 would amend the Use Tax Act to exempt ***feminine hygiene products*** from 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.

The bill is identical to the H-2 substitute for House Bill 4270,[1] which was reported from the House Tax Policy committee in September 2021 and passed by the House in October 2021. HB 4270's companion bill, HB 5267, which would amend the General Sales Tax to exempt feminine hygiene products from sales taxes, has been passed by the House and the Senate and was ordered enrolled on October 26, 2021.

The bill would take effect 90 days after its enactment.

MCL 205.94 and 205.111

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[2] 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."[3] 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

[1] House Fiscal Agency summary of HBs 4270 and 5267: http://www.legislature.mi.gov/documents/2021-2022/billanalysis/House/pdf/2021-HLA-4270-00FEEA3E.pdf
[2] *Beggs et al v State of Michigan*, issued June 9, 2021.
[3] https://www.michigan.gov/documents/treasury/Treasury_Update_Newsletter_Aug2021_732655_7.pdf on pg. 8-9

period of time (for instance, until 2022 in California)[4] or decreased it (in Virginia).[5] Thirty states continue to tax those products as of February 2021.[6]

FISCAL IMPACT:

Together, House Bill 5267 and Senate Bill 153 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.

Legislative Analyst: Jenny McInerney
Fiscal Analyst: Jim Stansell

[4] https://www.kcra.com/article/sales-tax-for-tampons-diapers-eliminated-in-california-for-2-years/30463779#
[5] https://wjla.com/news/local/virginia-tampon-tax-law
[6] https://www.forbes.com/sites/taxnotes/2021/03/25/taking-down-the-tampon-tax/?sh=18c27a567744