Legislative Analysis

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ELIMINATE SALES AND USE TAXES ON FEMININE HYGIENE PRODUCTS

House Bill 5267 as enacted
Public Act 108 of 2021
Sponsor: Rep. Bryan Posthumus

Senate Bill 153 as enacted
Public Act 109 of 2021
Sponsor: Sen. Winnie Brinks

House Committee: Tax Policy
Senate Committee: Finance
Complete to 3-3-22

SUMMARY:

House Bill 5267 and Senate Bill 153 would amend the General Sales Tax and the Use 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.

The bills also would provide that the amount of the revenue lost to the School Aid Fund as a result of the above exemptions must be deposited into the School Aid Fund from the general fund.

Each bill would take effect 90 days after its enactment.

HB 5267: MCL 205.54a and 205.75
SB 153: MCL 205.94 and 205.111

BACKGROUND:

In recent years, there has been discussion around elimination of the so-called "tampon tax" 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... 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

[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

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]

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.

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[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