

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 81

(Chair, Budget and Taxation Committee)(By Request -
Departmental - Comptroller)

Budget and Taxation

Ways and Means

Sales and Use Tax - Hygienic Aids - Exemption

This departmental bill specifies that sanitary pads, menstrual sponges, menstrual cups, or other similar feminine hygiene products are exempt from the State sales and use tax. **The bill takes effect July 1, 2018.**

Fiscal Summary

State Effect: General fund revenues decrease by a minimal amount beginning in FY 2019 to the extent that some retailers are currently collecting sales taxes on specified items. State expenditures are not affected.

Local Effect: None.

Small Business Effect: The Comptroller's Office has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Current Law: While the sale of diapers is subject to the State sales and use tax, sales of baby oil, baby powder, sanitary napkins, or tampons are exempt from the tax. In addition, the sales and use tax does not apply to the sale of disposable medical supplies. Disposable medical supplies are articles consumed in a single use to cure, mitigate, treat, prevent, or diagnose illnesses. Exempt items include incontinent pants, diapers, and other incontinent supplies for adults; adhesive tape; bandages; gauze and gauze pads; antiseptics; disposable

gloves; lubricating jelly; colostomy supplies; absorbent pads; dressing supplies; spray bandages; disposable syringes; condoms; and glucose monitoring strips.

Background: The sales and use tax is the State’s second largest source of general fund revenue, accounting for approximately \$4.6 billion in fiscal 2018 and \$4.7 billion in fiscal 2019, according to the December 2017 revenue forecast. **Exhibit 1** shows the sales and use tax rates in surrounding states and the District of Columbia.

Exhibit 1
Sales and Use Tax Rates in Maryland and Surrounding States

Delaware	0.0%
District of Columbia	5.75%; 10.0% for liquor sold for off-the-premises consumption and restaurant meals, liquor for consumption on the premises, and rental vehicles
Maryland	6.0% 9.0% for alcoholic beverages
Pennsylvania	6.0% plus 1.0% or 2.0% in certain local jurisdictions
Virginia*	5.3%; 2.5% for eligible food items; both rates include 1.0% for local jurisdictions
West Virginia	6.0% plus 0.5% (in two municipalities) or 1.0% (in 37 municipalities)

*An additional state tax of 0.7% is imposed in localities in Northern Virginia and the Hampton Roads region.

The City Council and Mayor of the District of Columbia approved legislation exempting feminine hygiene products and diapers from the District’s 5.75% sales and use tax in 2016.

The Comptroller’s Office advises that it is the agency’s interpretation that the feminine hygiene products specified in the bill are exempt under current law. However, the agency reports that there may be inconsistent sales tax treatment of the items by retailers in that some retailers may be collecting sales and use taxes on some of these items. As a result, the bill is intended to codify the current interpretation of the law by the Comptroller’s Office.

State Fiscal Effect: General fund revenues may decrease beginning in fiscal 2019 to the extent that some retailers are collecting the sales and use tax on menstrual sponges, menstrual cups, or other similar feminine hygiene products even though it is the interpretation of the Comptroller's Office that these items are exempt. The decrease in general fund revenues is expected to be minimal due to the limited market share of these products.

Additional Information

Prior Introductions: HB 95 of 2017 received a hearing in the House Ways and Means Committee and passed the House. The bill received a hearing in the Senate Budget and Taxation Committee, but no further action was taken.

Cross File: None.

Information Source(s): Comptroller's Office; Department of Legislative Services

Fiscal Note History: First Reader - January 16, 2018
md/hlb Third Reader - March 17, 2018

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Sales and Use tax- Hygienic Aids- Exemption

BILL NUMBER: SB 81

PREPARED BY: Anne Klase, Director of Legislative Affairs

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

This amendment retains the intent of the original exemption - to exempt certain feminine hygiene items used by women during their menstrual cycles from the sales and use tax - while acknowledging that other products are available that serve a similar hygienic purpose as sanitary napkins and tampons. Also, "sanitary napkins" is amended to "sanitary pads" so that the statute reflects current terminology.

Many states have been criticized recently for imposing a "tampon tax" on women when their laws have not permitted an exemption from the sales and use tax for these types of items. While our exemption has been in place for quite some time, we feel it is appropriate that the statute be amended to reflect current realities.

The Office of the Comptroller does not have any specific figures related to economic impact, but we understand that menstrual sponges and cups are a relatively small share of the market when compared to pads and tampons. Vendors currently selling menstrual sponges and menstrual cups should be collecting and remitting the sales and use tax on those items. Accordingly, by including these items in the exemption, the impact would be de minimis.