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Tampon Taxes: Do Feminine Hygiene Products Deserve a Sales Tax Exemption?

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Key Findings

- In 2016, at least 13 states and the District of Columbia considered proposals to exempt feminine hygiene products from the state sales tax. Ultimately, Connecticut, Illinois, New York, and the District of Columbia adopted the proposed exemptions.
- Ideally, sales tax should apply to all final consumer purchases, without regard for whether a product is a “necessity” or “luxury.”
- Of the 45 states which impose statewide sales taxes, seven—Illinois, Maryland, Massachusetts, Minnesota, New Jersey, New York, and Pennsylvania—specifically exempt feminine hygiene products from the sales tax base.
- No state assesses a special or unique tax on feminine hygiene products.
- Exempting feminine hygiene products is part of a broader trend of shrinking state sales tax bases. Smaller sales tax bases lead to higher overall sales tax rates.

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Introduction

Over the last two years, a number of states have considered bills to exempt tampons and other feminine hygiene products from their sales tax bases. Supporters of “tampon tax” repeal bills argue that women face an injustice when buying these necessity items, but that argument doesn’t hold water. First, it’s factually inaccurate—no state subjects tampons to a special or unique tax. Second, the solution—exempting tampons and other feminine hygiene products from the sales tax—violates the principles of sound tax policy. Ideally, sales taxes should tax all final consumer purchases, without regard to whether items are classified as necessities or luxuries.

Exempting feminine hygiene products from the sales tax base results in less revenue for the state, leading to higher overall rates in the long run.

The Ideal Sales Tax

An ideal sales tax should apply to all final consumer purchases, without regard to whether items are classified as “necessities” or “luxuries.” Sales taxes “should apply to all consumption expenditures... at a uniform rate.”¹

First, this allows for the lowest possible rate.² The broader the base, the lower the rate can be to generate a given amount of revenue. Second, a broad sales tax does not distort preferences or production across items or services. Third, it does not favor one type of consumption over another, meaning that a consumer does not have to choose between one item that is taxed versus another item that isn’t taxed.

While ideally, the sales tax should apply to all final consumer purchases of goods and services, states have exempted many goods, such as groceries and prescription drugs, from their sales tax base, in many cases for political reasons. Sales taxes, as applied to goods, tend to be viewed as regressive.³ Low-income households as a general rule spend more of their income on consumption than high-income households do, and so a tax on consumption like a sales tax tends to encompass more of this group’s spending as a percentage of their income.

However, this idea of exempting necessities is a political one, not an economic one. “Most [exemptions] accomplish little in the terms of usual standards of taxation. Unfortunately, there is a tendency in some states to add exemptions, one by one, in every legislative session, often with complications for operation of the tax and little gain in terms of principle.”⁴

Viewed through this lens, attempts to exempt feminine hygiene products from the sales tax are part of a broader trend in sales tax policy toward a narrowing tax base.

1 John F. Due and John L. Mikesell, *Sales Taxation: State and Local Structure and Administration*, (Washington, D.C., Urban Institute Press, 1994), 2nd ed., 15.

2 Due and Mikesell actually point out that for full economic efficiency, the rate wouldn’t be uniform, but rather inelastically demanded goods would have a higher rate than those with elastic demands, but it is too difficult to truly know the elasticities of demand for every product. Under this argument, necessities would actually be taxed at a higher rate than luxury goods.

3 John F. Due and John L. Mikesell, *Sales Taxation: State and Local Structure and Administration*, (Washington, D.C., Urban Institute Press, 1994), 2nd ed., 9.

4 *Ibid.*, 88.

The Taxation of Feminine Hygiene Products

During the last two years, a number of states have considered removing feminine hygiene products from their sales tax bases. In some cases, arguments have focused on equity concerns, arguing that feminine hygiene products are necessities and should be exempt.

States That Exempt Feminine Hygiene Products

There are 12 states where feminine hygiene products are not taxed under a state's sales tax. Five states—Alaska, Delaware, New Hampshire, Montana, and Oregon⁵—do not have sales tax. Seven states specifically exempt feminine hygiene products—Illinois, Maryland, Massachusetts, Minnesota, New Jersey, New York, and Pennsylvania.⁶

In some states, such as Maryland⁷ and Massachusetts,⁸ feminine hygiene products are exempt because they are considered medical products. In other states, they are specifically exempted, meaning tampons (or feminine hygiene products) are enumerated in statute as being exempt. Pennsylvania, for instance, exempts “toilet paper, sanitary napkins, tampons, or similar items used for feminine hygiene.”⁹ Typically, the statutory language is broad enough to include a number of feminine hygiene products, not just tampons.

The District of Columbia will exempt tampons from the sales tax starting on October 1, 2017, and Connecticut's exemption will start July 1, 2018.

5 Alaska and Montana have some local sales taxes.

6 The California legislature passed a bill in 2016 to remove feminine hygiene products from their sales tax base, but Governor Jerry Brown (D) vetoed the measure.

7 Comptroller of Maryland, “Taxability of Medical Equipment,” Bulletin 01-1, March 2001, http://taxes.marylandtaxes.com/Resource_Library/Tax_Publications/Tax_Bulletins/Sales_and_Use_Tax_Bulletins/su_bul01-1.pdf.

8 Massachusetts Department of Revenue, “A Guide to Sales and Use Tax,” <http://www.mass.gov/dor/individuals/taxpayer-help-and-resources/tax-guides/salesuse-tax-guide.html#home>.

9 Pennsylvania Code, P.L. 97 No. 22 §9.2(4).

TABLE 1.**Sales Tax Treatment of Feminine Hygiene Products***As of January 1, 2017*

State	State General Sales Tax	Feminine Hygiene Treatment
Alabama	4.00%	Included in Base
Alaska	0.00%	n/a
Arizona	5.60%	Included in Base
Arkansas	6.50%	Included in Base
California	7.25%	Included in Base
Colorado	2.90%	Included in Base
Connecticut (a)	6.35%	Included in Base
Delaware	0.00%	n/a
Florida	6.00%	Included in Base
Georgia	4.00%	Included in Base
Hawaii	4.00%	Included in Base
Idaho	6.00%	Included in Base
Illinois	6.25%	Exempt
Indiana	7.00%	Included in Base
Iowa	6.00%	Included in Base
Kansas	6.50%	Included in Base
Kentucky	6.00%	Included in Base
Louisiana	5.00%	Included in Base
Maine	5.50%	Included in Base
Maryland	6.00%	Exempt
Massachusetts	6.25%	Exempt
Michigan	6.00%	Included in Base
Minnesota	6.875%	Exempt
Mississippi	7.00%	Included in Base
Missouri	4.225%	Included in Base
Montana	0.00%	n/a
Nebraska	5.50%	Included in Base
Nevada	6.85%	Included in Base
New Hampshire	0.00%	n/a
New Jersey	6.875%	Exempt
New Mexico	5.125%	Included in Base
New York	4.00%	Exempt
North Carolina	4.75%	Included in Base
North Dakota	5.00%	Included in Base
Ohio	5.75%	Included in Base
Oklahoma	4.50%	Included in Base
Oregon	0.00%	n/a
Pennsylvania	6.00%	Exempt
Rhode Island	7.00%	Included in Base
South Carolina	6.00%	Included in Base
South Dakota	4.50%	Included in Base
Tennessee	7.00%	Included in Base
Texas	6.25%	Included in Base
Utah	5.95%	Included in Base
Vermont	6.00%	Included in Base
Virginia	5.30%	Included in Base
Washington	6.50%	Included in Base
West Virginia	6.00%	Included in Base
Wisconsin	5.00%	Included in Base
Wyoming	4.00%	Included in Base
D.C. (b)	5.75%	Included in Base

(a) Exemption effective July 1, 2018.

(b) Exemption effective October 1, 2017.

Source: State statutes, forms, and instructions.

Of the states that exempt tampons or other feminine hygiene products from their sales tax, three states (Connecticut, Illinois, and New York) and the District of Columbia adopted their exemptions in 2016. At least 10 other states considered such proposals.¹⁰

It is worth noting that some arguments regarding the taxation of feminine hygiene products seem to imply¹¹ that tampons are subject to a specific type of tax. That is not correct. In no state are tampons subject to a special or unique tax, or a “tampon tax.” Rather, the question is whether feminine hygiene products are included in a state’s sales tax base. Traditionally, we don’t discuss sales tax as being a tax on a specific item, as it is misleading.

Losses in Revenue

In addition to all of the arguments regarding sound sales tax policy, states should also be hesitant to exempt items such as feminine hygiene products from their sales tax base because they continue to erode the revenue productivity of these taxes. As the sales tax base gets smaller, states must raise tax rates on the remaining items to generate the same amount of revenue.

In 2016, California considered a bill to remove feminine hygiene products from its sales tax base. The California Board of Equalization estimated that California would lose \$20 million in state and local revenue from this one change.¹² New York estimated that it would lose \$10 million in revenue from its feminine hygiene exemption.¹³ While these exemptions are a small part of California’s and New York’s total state and local revenues, the exemption of feminine hygiene products is part of a broader trend to continue to shrink the state’s sales tax base. Over time, these small changes lead to large losses of revenue.

This is particularly troubling for the exact reason why proponents suggest exempting feminine hygiene products: they are necessities for some individuals. Other items that are still included in the sales tax base could be “necessities” for other individuals. Exempting one item from the sales tax base puts all the remaining items at risk of a higher rate. Unfortunately, this is the trade-off that exists within sales taxes. Moves to exempt items from the sales tax base are moves to tax the remaining goods (and sometimes services) at a higher rate.

10 These states are California, Michigan, Mississippi, Missouri, Rhode Island, Tennessee, Utah, Virginia, Washington, and Wisconsin.

11 Julia Craven, “GOP Governor Brings Illinois Into the 21st Century By Nixing Antiquated Tampon Tax,” *The Huffington Post*, August 21, 2016, http://www.huffingtonpost.com/entry/illinois-tampon-tax_us_57ba0bdb4b0b51733a4267d.

12 California Assembly Committee on Revenue and Taxation, Assembly Bill 1561 Bill Analysis, March 31, 2016, https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160AB1561#.

13 Governor Andrew Cuomo, “Governor Cuomo Signs Legislation to Exempt Sales and Use Taxes on Feminine Hygiene Products,” July 21, 2016, <https://www.governor.ny.gov/news/governor-cuomo-signs-legislation-exempt-sales-and-use-taxes-feminine-hygiene-products>.

Conclusion

Advocates continue to push states to remove feminine hygiene products from their state sales tax bases, calling the sales taxation a “tampon tax.” Tampon and other feminine hygiene products are not subject to a special or unique tax in any state. Currently, 12 states do not include feminine hygiene products in their sales tax base for a variety of reasons, but moves to exempt these goods from taxation violate the principles of sound sales tax policy.