The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Finance and Tax

BILL: SB 176

INTRODUCER: Senator Passidomo and others

SUBJECT: Sales and Use Tax Exemption for Feminine Hygiene Products

DATE: February 21, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Little	McKay	CM	**Favorable**
2.	Fournier	Diez-Arguelles	AFT	**Pre-meeting**
3.			AP	

I. Summary:

SB 176 exempts the sale of feminine hygiene products from state sales and use tax.

The Revenue Estimating Conference has estimated that SB 176 reduces General Revenue receipts by $3.8 million in Fiscal Year 2017-2018 and by $8.9 million on a recurring basis. It reduces local revenue by $1.0 million in Fiscal Year 2017-2018 and by $2.3 million on a recurring basis. The Department of Revenue is expected to incur additional costs of approximately $90,000 to notify sales tax dealers of this new exemption.

The bill provides an effective date of January 1, 2018.

II. Present Situation:

Florida Sales and Use Tax

Florida levies a six percent state sales and use tax on the sale or rental of most tangible personal property, admissions, rentals of transient accommodations, rental of commercial real estate, and a limited number of services.[1] In addition to the six percent state sales tax, Florida law authorizes counties to levy discretionary sales surtaxes.[2] Sales tax is added to the price of taxable goods or services and the tax is collected from the purchaser at the time of sale.

Chapter 212, F.S., contains statutory provisions that authorize the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. There are currently more than 200 different exemptions,

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[1] Chapter 212, F.S.

[2] Sections 212.054 and 212.055, F.S.

exclusions, deductions, and credits from sales and use tax.[3] Medical products and supplies are among the items exempt from sales and use tax.[4] Common household remedies used in the cure, mitigation, treatment, or prevention of illness or disease are also exempt from sales and use tax.[5] Cosmetics and toilet articles are not exempt from sales and use tax.[6]

Feminine Hygiene Products and Sales Tax Exemption

Feminine hygiene products are products used to absorb or contain menstrual flow. These products include tampons, sanitary napkins, panty liners, and menstrual cups. Feminine hygiene products are currently subject to state sales and use tax.

However, in 1977, feminine hygiene products were added to the list of medical items exempt from sales and use tax.[7] In 1986, feminine hygiene products were removed from the list of exempt medical items and a study commission was created to review the public policy and fiscal impact of sales tax exemptions.[8] In 1987, the Sales and Tax Exemption Study Commission reviewed the fiscal impact of levying sales tax on feminine hygiene products and estimated such taxation would generate $2.6 million taxes in 1987-1988 and $3.9 million taxes in 1988-1989.[9]

In 2016, a class action lawsuit was filed in Leon County, Florida to challenge the state sales tax levied on the sale of feminine hygiene products.[10] The plaintiffs argue that feminine hygiene products are necessary for women's health and should be exempt as common household remedies.[11] The plaintiffs seek declaratory and injunctive relief, along with a refund of taxes.[12]

Other States

Currently, thirteen states and the District of Columbia do not impose sales and use tax on the sale of feminine hygiene products or have enacted legislation to exempt these products in the future. Five of those states do not impose a state sales tax at all.[13] The District of Columbia,[14] Illinois,[15]

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[3] Florida Revenue Estimating Conference, *Florida Tax Handbook*, (2016), *available at* http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2016.pdf (last visited Jan. 12, 2017).
[4] Section 212.08(2)(a), F.S.
[5] *Id.*
[6] The Department of Business and Professional Regulation is responsible for prescribing and approving a list of common household remedies, which is then certified by the Department of Revenue, *available at* http://floridarevenue.com/Forms_library/current/dr46nt.pdf
[7] Ch. 77-193, Laws of Fla.
[8] Ch. 86-166, Laws of Fla.
[9] Sales Tax Exemption Study Commission, *Report and Recommendations of the Sales Tax Exemption Study Commission* (April, 1987).
[10] *Wendell v. Florida Dep't. of Rev.*, No. 2016 CA 001526 (Fla. Leon Cty. Ct. July 7, 2016).
[11] *Id.*
[12] *Id.*
[13] Alaska, Delaware, Montana, New Hampshire, and Oregon do not impose state sales tax.
[14] D.C. Official Code §47-2005 (2016)
[15] 35 Ill. Comp. Stat. 110/3-5 (2016).

Maryland,[16] Massachusetts,[17] Pennsylvania,[18] Minnesota,[19] New Jersey,[20] Connecticut,[21] and New York,[22] have passed legislation to exempt the sale of feminine hygiene products from sales and use tax.

III. Effect of Proposed Changes:

The bill creates a sales tax exemption for the sale of feminine hygiene products. The bill also defines "feminine hygiene product" as "a product used to absorb or contain menstrual flow, including, but not limited to, tampons, sanitary napkins, panty liners, and menstrual cups."

The bill provides an effective date of January 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds or that limit their ability to raise revenue or receive state tax revenue.

Subsection (b) of Article VII, section 18 of the Florida Constitution provides that, except upon approval by each house of the Legislature by two-thirds vote of its membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, these requirements do not apply to laws that have an insignificant fiscal impact on local governments, which for Fiscal Year 2017-2018, is $2 million or less.[23,24,25]

Because this bill reduces local option tax revenue of counties and municipalities by $1.1 million on a recurring bases, it has an insignificant impact on local governments and the provisions of Article VII, section 18 of the Florida Constitution do not apply.

B. Public Records/Open Meetings Issues:

None.

[16] Md. Tax-Gen. Code Ann., §11-211 (2016).
[17] Mass. Gen. Laws ch. 64H, § 6 (2016).
[18] 72 Pa. Cons. Stat. § 7204 (2016).
[19] Minn. Stat. §297A.67 (2016).
[20] N.J. Stat. Ann. § 54:32B-8.1 (2016).
[21] Conn. Gen. Stat. § 12-412 (2016).
[22] N.Y. Tax Law §1115 (2016).
[23] FLA. CONST. art. VII, s. 18(d).
[24] An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times $0.10. S*ee* Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), *available at* http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf (last visited Jan. 17, 2017).
[25] Based on the Demographic Estimating Conference's population adopted on November 1, 2016. The conference packet is *available at* http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf (last visited Jan. 15, 2017).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has estimated that SB 176 reduces General Revenue receipts by $3.8 million in Fiscal Year 2017-2018 and by $8.9 million on a recurring basis. It reduces local revenue by $1.0 million in Fiscal Year 2017-2018 and by $2.3 million on a recurring basis.[26]

B. Private Sector Impact:

Indeterminate, but positive. Individuals will see a reduction in the cost of purchasing feminine hygiene products.

C. Government Sector Impact:

The Department of Revenue estimates the cost associated with notifying businesses of the sales tax exemption, by printing and mailing a Tax Information Publication (TIP), will be approximately $90,000.[27]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 212.08(7)(ooo) of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

[26] http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/_pdf/Impact0120.pdf
[27] Department of Revenue, *Senate Bill 176 Fiscal Analysis* (Jan. 12, 2017) (on file with the Senate Appropriations Subcommittee on Finance and Tax).