

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 29 Tax Exemption for Diapers and Incontinence Products

SPONSOR(S): Eskamani and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 114

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Ways & Means Committee	21 Y, 0 N	LaTorre	Aldridge
2) Appropriations Committee			

SUMMARY ANALYSIS

HB 29 exempts from sales and use tax the sale of diapers, incontinence undergarments, incontinence pads, and incontinence liners for human use.

The Revenue Estimating Conference determined that in FY 2023-24, the bill would have a -\$22.7 million cash and a -\$54.5 million recurring impact on General Revenue, an insignificant negative impact on state trust funds, and a -\$6.1 million cash and -\$14.5 million recurring impact on local governments.

The bill takes effect January 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Sales Tax

Chapter 212, F.S., contains the state's statutory provisions authorizing the levy and collection of Florida's sales and use tax, as well as the requirements for dealers to collect and remit sales tax. Florida imposes a 6 percent tax on tangible personal property sold, used, consumed, distributed, stored for use or consumption, rented, or leased in Florida. In addition to the 6 percent sales tax, Florida law authorizes counties to levy discretionary sales surtaxes. Generally, the sales tax is added to the price of a taxable good and collected from the purchaser at the time of sale.

Chapter 212, F.S., contains provisions authorizing 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 270 exemptions, exclusions, deductions, and credits from sales and use tax.¹

Diapers and Incontinence Products

In the first year of a child's life, parents can expect to use approximately 3,000 diapers, or an average of eight diapers per day.² The average cost for a diaper is around \$0.30, but some brands are closer to \$0.75 per diaper.³ The average state sales tax paid for disposable diapers for a single child over one year, based on those numbers, is anywhere from \$54 to \$135.

Certain medical products and supplies are exempt from sales and use tax, including supplies or medicine dispensed according to a prescription and other non-prescription common household remedies used in the cure, mitigation, treatment, or prevention of illness or disease.⁴ Alcohol wipes, bandages, and gauze are examples of common household remedies. Cosmetics⁵ and toilet articles⁶ are specifically excluded from the common household remedy exemption, notwithstanding the presence of medicinal ingredients therein.

Diapers and incontinence products are not statutorily exempt from sales and use tax in Florida. However, diapers for children and adults, diaper bags, and diaper inserts have been temporarily exempted from sales tax during certain sales tax holidays.⁷ Additionally, children's diapers including single-use diapers, reusable diapers, and reusable diaper inserts are currently exempt from sales tax until June 30, 2023.⁸

Other States

¹ Office of Economic and Demographic Research, Florida Tax Handbook (2022), at 166-171, available at <http://edr.state.fl.us/content/revenues/reports/tax-handbook/taxhandbook2022.pdf> (last visited March 24, 2023).

² Buying Diapers, American Academy of Pediatrics healthychildren.org website, available at <https://www.healthychildren.org/English/ages-stages/baby/diapers-clothing/Pages/Buying-Diapers.aspx> (last visited March 24, 2023)

³ *Id.* In addition, a search of major retailers showed a significant variety in prices for name brand diapers.

⁴ Section 212.08(2)(a), F.S.

⁵ Section 212.08(2)(b)2., F.S., defines "cosmetics" as articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance and also means articles intended for use as a compound of any such articles, including, but not limited to, cold creams, suntan lotions, makeup, and body lotions.

⁶ Section 212.08(2)(b)3., F.S., defines "toilet articles" as any article advertised or held out for sale for grooming purposes and those articles that are customarily used for grooming purposes, regardless of the name by which they may be known, including, but not limited to, soap, toothpaste, hair spray, shaving products, colognes, perfumes, shampoo, deodorant, and mouthwash.

⁷ See, e.g., Department of Revenue, 2022 Back-to-School Sales Tax Holiday Tax Information Publication, p.4, available at https://floridarevenue.com/taxes/tips/Documents/TIP_22A01-08.pdf (last visited March 24, 2023).

⁸ Ch. 2022-97, s. 50, Laws of Fla.

Of the 45 states that impose a sales tax,⁹ California, Colorado, Connecticut, Indiana, Iowa, Louisiana, Maryland, Massachusetts, Minnesota, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and the District of Columbia do not subject the sale of diapers to state sales tax.¹⁰ North Dakota exempts diapers used for incontinence, but not baby diapers.¹¹

Effect of Proposed Changes

The bill amends s. 212.08(7), F.S., to exempt diapers, incontinence undergarments, incontinence pads, and incontinence liners for human use from state sales and use tax.

The bill takes effect January 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 212.08(7), F.S., exempting diapers, incontinence undergarments, incontinence pads, and incontinence liners for human use from state sales and use tax.

Section 2: Provides an effective date of January 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference estimated that in FY 2023-24, the bill would have a -\$22.7 million cash and a -\$54.5 million recurring impact on General Revenue and an insignificant negative impact on state trust funds.

2. Expenditures:

The Department of Revenue estimates that they will incur a cost associated with printing and mailing a Tax Information Publication (TIP) to businesses advising of the new sales tax exemption. The estimated cost to print and mail the TIP is \$77,220.¹²

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference estimated that in FY 2023-24, the bill would have a -\$6.1 million cash and -\$14.5 million recurring impact on local governments.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Consumers will see a reduction in the cost of purchasing diapers and incontinence products.

D. FISCAL COMMENTS:

⁹ Alaska, Delaware, Montana, New Hampshire, and Oregon do not levy a state sales tax. See Tax Foundation, State and Local Sales Tax Rates (2020), available at <https://files.taxfoundation.org/20200115132659/State-and-Local-Sales-Tax-Rates2020.pdf> (last visited March 24, 2023).

¹⁰ National Diaper Bank Network, Sales Tax on Diaper Purchases by State, available at <https://nationaldiaperbanknetwork.org/diaper-tax/> (last visited March 24, 2023).

¹¹ *Id.*

¹² Department of Revenue, HB 29, 2023 Agency Legislative Bill Analysis, available at <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=33873> (last visited March 24, 2023).

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES