Assembly Bill 1561 (Garcia)
Date: 01/04/16
Program: Sales and Use Tax
Sponsor: Author
Revenue and Taxation Code Section 6363.10
Effective: Upon enactment, but operative 90 days following 1st calendar quarter

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Summary: Exempts from the sales and use tax sanitary napkin and tampon sales and purchases.

Purpose: According to the author, "We are being taxed for being women. This bill is a step in the right direction to fix this gender injustice. This is not insignificant to women, especially poor women on a tight budget who struggle to pay for basic necessities like a box of tampons or pads every month for their adult life. If we can't make them free we should at least make them more affordable."

Fiscal Impact Summary: Annual state and local revenue loss of $20 million.

Existing Law: Except where the law provides a specific exemption or exclusion, California's Sales and Use Tax Law[1] imposes the sales tax on all retailers for the privilege of selling tangible personal property at retail in this state or the use tax on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer.

Existing law provides for numerous exemptions from the sales and use tax. Some of the more significant exemptions relate to "necessities of life," including:

- Food, as specified and defined.[2]
- Prescription medicines, as specified and defined.[3]
- Gas, electricity and water sold to consumers through mains, lines, and pipes.[4]
- "Food" animals, such as cows, pigs and chickens, and "food" plants, such as asparagus, nut trees, and strawberry plants.[5]

The sales and use tax is imposed on a variety of other "necessities of life" sold at retail, such as feminine hygiene products, toilet paper, clothing, shoes, soap, and baby and adult diapers and other incontinence products.

Proposed Law: This bill exempts from the sales and use tax sanitary napkin and tampon sales and purchases.

Commentary:

1. **Effect of the bill.** Exempts specified feminine hygiene product sales from sales and use tax.
2. **Terms should be defined.** The difficulty with both administering and complying with new exemptions is determining the sales that qualify for the exemption under the statutory language. This bill provides no definitions for the products proposed to be exempted. Women use other products for menstrual hygiene purposes that may not fall within the commonly understood term, "sanitary napkin" or "tampon," such as cloth menstrual pads and feminine protection cups. As the bill progresses, staff will work with the author to clearly define these terms consistent with the author's intent.

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[1] Part 1 of Division 2 of the Revenue and Taxation Code (RTC) (commencing with Section 6001).
[2] RTC Section 6359.
3 RTC Section 6369.
4 RTC Section 6353.
5 RTC Section 6358.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.

3. **Certain care providers and hospitals would additionally benefit from the proposed exemption.** Since sales of these products to these service enterprises are currently subject to tax, this bill would provide an additional benefit to these entities that purchase these products for their clients or patients.

Administrative Costs: BOE will incur absorbable administrative costs to notify affected retailers, audit claimed exemptions, amend appropriate regulations, and answer inquiries from the general public.

Revenue Impact:

Background, Methodology, and Assumptions. According to a 2015 *Time* magazine article, American women spend over $2 billion per year on feminine hygiene products. Based on California's population, staff estimated California annual sales of $240 million ($2 billion × 12% = $240 million).

Assuming a July 1, 2016 effective date, staff estimates that the sales and use tax loss for fiscal year (FY) 2016-17 would be $20 million (8.335% statewide average × $240 million = $20 million).

Revenue Summary. The proposed sales and use tax exemption for sales and purchases of sanitary napkins and tampons would result in estimated sales and use tax loss of $20 million in FY 2016-17.

Qualifying Remarks. This revenue estimate does not account for any changes in economic activity that may or may not result from enactment of the proposed law.

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