

STATE QUESTION NO. 2

Amendment to the Sales and Use Tax Act of 1955

Senate Bill 415 of the 79th Session

CONDENSATION (Ballot Question)

Shall the Sales and Use Tax Act of 1955 be amended to provide an exemption from the taxes imposed by this Act on the gross receipts from the sale and the storage, use or other consumption of feminine hygiene products?

Yes No

EXPLANATION & DIGEST

EXPLANATION—This proposed amendment to the Sales and Use Tax Act of 1955 would exempt from the taxes imposed by this Act the gross receipts from the sale and storage, use or other consumption of feminine hygiene products.

If this proposal is adopted, the Legislature has provided that the Local School Support Tax Law and certain analogous taxes on retail sales will be amended to provide the same exemptions.

Additionally, the Legislature has provided that in administering these sales and use tax exemptions for feminine hygiene products, Nevada’s Department of Taxation will interpret the term “feminine hygiene product” to mean a sanitary napkin or tampon.

Finally, the Legislature has provided that these sales and use tax exemptions for feminine hygiene products will become effective on January 1, 2019, and expire by limitation on December 31, 2028.

A “Yes” vote would exempt feminine hygiene products from the Sales and Use Tax Act of 1955, the Local School Support Tax Law and certain analogous sales and use taxes.

A “No” vote would keep the current provisions of the Sales and Use Tax Act of 1955, the Local School Support Tax Law and certain analogous sales and use taxes.

DIGEST—The Sales and Use Tax Act of 1955 imposes taxes on the gross receipts from the sale and storage, use or other consumption of all tangible personal property in this State unless the property is exempt from such taxation. Because the Sales and Use Tax Act of 1955 was approved by the voters at a referendum election held under the *Nevada Constitution*, the Act cannot be amended, annulled, repealed, set aside, suspended or in any way made inoperative

unless such action is also approved by the voters at an election. This ballot measure would amend the Sales and Use Tax Act of 1955 by creating an exemption from sales and use taxes for feminine hygiene products. This ballot measure would decrease public revenue because these products would no longer be subject to sales and use taxes.

Under existing laws, sales and use taxes are additionally imposed by: (1) the Local School Support Tax Law which provides revenue for the support of local schools; and (2) other tax laws which provide revenue for the support of counties, cities, towns, special and local districts, regional agencies and authorities, other political subdivisions and specific projects and purposes. This ballot measure would change those existing laws by creating exemptions from sales and use taxes for feminine hygiene products.

Under existing laws, Nevada's Department of Taxation is required to administer the collection of sales and use taxes under the Sales and Use Tax Act of 1955, the Local School Support Tax Law and other tax laws. In administering those existing laws, the Department is required to give specific meanings to particular terms. This ballot measure would add to those existing laws by requiring the Department to interpret the term "feminine hygiene product" to mean a sanitary napkin or tampon.

Under existing provisions of the *Nevada Constitution*, when any measure enacts exemptions from sales and use taxes, the measure must provide a specific date on which the exemptions will cease to be effective. Because this ballot measure would enact exemptions from sales and use taxes for feminine hygiene products, this ballot measure provides that the exemptions will cease to be effective on December 31, 2028

ARGUMENTS FOR PASSAGE

Feminine hygiene products should be exempt from Nevada's sales and use taxes. These products are not a luxury but a basic necessity of life that women use starting around age 12 until their early 50s. During those years, the average woman may use 20,000 or more of these products.

Feminine hygiene products should be treated like other medical products that are exempt from Nevada's sales and use taxes, such as splints, bandages, and prosthetic devices. This is consistent with the U.S. Food and Drug Administration's classification of tampons as a type of medical product.

There is no equivalent medical product that is used only by one sex on a monthly basis for decades. These sales and use taxes are especially unjust for low-income women who struggle to pay for basic necessities each month. Feminine hygiene products need to be more accessible, and eliminating these taxes on sanitary napkins and tampons will make them more affordable.

Nine states and the District of Columbia specifically exempt feminine hygiene products from their sales and use taxes. In some states, such as Maryland and Massachusetts, feminine hygiene products are exempt because they are considered medical products.

Nevada voters should eliminate these discriminatory sales and use taxes to lower the cost of feminine hygiene products, increase access to these necessities and improve women's health and welfare. Vote "yes" on Question 2.

ARGUMENTS AGAINST PASSAGE

Exempting feminine hygiene products from Nevada's sales and use taxes will result in less revenue for the State and local governments, including school districts. This loss of revenue may adversely affect the provision of state and local governmental services. California considered exempting these products in 2016, but the Governor vetoed the proposal because of concerns about lost revenue.

Consistent with sound tax policy, Nevada and 35 other states do not exempt feminine hygiene products from their sales and use taxes. A broader tax base generally leads to lower rates and is better suited to accommodate upturns and downturns in the economy. Instead of broadening the tax base, this exemption will narrow the tax base, creating the potential for more volatility in sales and use tax revenue and complicating the administration of these taxes with no gain in terms of tax policy.

Nevada's sales and use taxes are not discriminatory and do not tax products based on sex. Rather, products sold in Nevada are generally subject to these taxes regardless of who buys or uses them. As a result, many products that are considered necessities, such as soap, toothbrushes and toilet paper, are not exempt from sales and use taxes.

Nevada voters should not approve yet another tax exemption that violates sound tax policy, shrinks the tax base and decreases revenue for public services. Vote "no" on Question 2.

FISCAL NOTE

FINANCIAL IMPACT – YES

Under current law, feminine hygiene products, defined as tampons and sanitary napkins under the exemption in Question 2, are considered tangible personal property subject to state and local sales and use taxes in the State of Nevada. If approved by the voters, this exemption from state and local sales and use taxes for tampons and sanitary napkins purchased in the State of Nevada would reduce the revenue received by the State and local governments, including school districts, during the last six months of Fiscal Year 2019 (January 1, 2019–June 30, 2019), all of Fiscal Years 2020 through 2028 (July 1, 2019–June 30, 2028), and the first six months of Fiscal Year 2029 (July 1, 2028–December 31, 2028).

Although the actual ages during which females typically use tampons and sanitary napkins will vary by person, it is assumed that all females between the ages of 12 and 55 in the State of Nevada will use these products for the purposes of this fiscal note.

Based on projections by the State Demographer, there were approximately 867,000 females between the ages of 12 and 55 living in the State of Nevada on July 1, 2017. Assuming the average monthly consumption of these feminine hygiene products is between \$7 and \$10 per person, this would generate total taxable sales of between \$6.1 million and \$8.7 million each month, or total taxable sales of between \$72.8 million and \$104.0 million each fiscal year.

Applying these assumptions to the combined statewide sales and use tax rate of 6.85 percent, this exemption would result in the following estimated revenue reductions for each component of the combined rate:

Combined Statewide Sales & Use Tax Rate Component	Tax Rate	Recipient of Revenue	Estimated Revenue Loss Per Fiscal Year
State Sales Tax	2.0%	State General Fund	\$1.5 million – \$2.1 million
Local School Support Tax (LSST)	2.6%	School Districts, State Distributive School Account	\$1.9 million – \$2.7 million
Basic City-County Relief Tax (BCCRT)	0.5%	Counties, cities, towns, and other local governmental entities	\$360,000 – \$510,000
Supplemental City-County Relief Tax (SCCRT)	1.75%	Counties, cities, towns, and other local governmental entities	\$1.2 million – \$1.8 million
TOTAL	6.85%		\$4.96 million – \$7.11 million

The estimated revenue loss per fiscal year for each component of the combined statewide sales and use tax rate represents between 0.13 percent and 0.19 percent of the actual revenue collected for each of these components in Fiscal Year 2017.

In addition to the statewide taxes described above, thirteen of Nevada’s seventeen counties (Carson City, Churchill, Clark, Douglas, Elko, Lander, Lincoln, Lyon, Nye, Pershing, Storey, Washoe and White Pine) impose one or more optional local sales taxes for authorized uses. Applying the assumptions described above to these optional local sales taxes, this exemption would result in the following estimated local revenue reductions:

County	Total Combined	Estimated Revenue Loss from	Estimated Loss as a % of Total
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	Optional Local Tax Rate	Combined Optional Local Tax Rate Per Fiscal Year	Revenue from Combined Optional Local Tax Rate
Carson City	0.75%	\$8,200–\$11,700	0.11%–0.15%
Churchill	0.75%	\$4,500–\$6,500	0.22%–0.32%
Clark	1.40%	\$750,000–\$1,071,400	0.13%–0.19%
Douglas	0.25%	\$2,400–\$3,400	0.14%–0.19%
Elko	0.25%	\$3,400–\$4,900	0.10%–0.14%
Esmeralda	None	None	None
Eureka	None	None	None
Humboldt	None	None	None
Lander	0.25%	\$400–\$500	0.06%–0.07%
Lincoln	0.25%	\$300–\$400	0.40%–0.53%
Lyon	0.25%	\$3,000–\$4,300	0.28%–0.40%
Mineral	None	None	None
Nye	0.75%	\$6,400–\$9,200	0.15%–0.22%
Pershing	0.25%	\$300–\$400	0.11%–0.14%
Storey	0.75%	\$600–\$800	0.07%–0.09%
Washoe	1.415%	\$150,200–\$214,600	0.14%–0.19%
White Pine	0.875%	\$1,600–\$2,300	0.08%–0.11%
TOTAL		\$931,300–\$1,330,400	0.13%–0.18%

Additionally, under current law, Nevada’s Department of Taxation retains commissions, which are deposited in the State General Fund, for the cost of collecting sales and use taxes for local governments and school districts. The commissions are collected at a rate of 0.75 percent for the LSST and a rate of 1.75 percent for the BCCRT, SCCRT and the optional local sales taxes. It is estimated that these commissions will be reduced by a total of between \$59,500 and \$85,000 per fiscal year if this exemption is approved by the voters.

Finally, the State and local governments, including school districts, may lose additional sales tax revenue from this exemption for tampons and sanitary napkins purchased in Nevada by tourists and other nonresidents. However, the amount of these products that may be purchased by such nonresidents, and the resulting loss in revenue to these governmental entities, cannot be determined with any reasonable degree of certainty.

Note that the revenue loss to the State and local governments, including school districts, illustrated above are estimates based on the projected population of females between the ages of 12 and 55 and the estimated average purchases of feminine hygiene products of between \$7 and \$10 per month. The actual revenue loss to the State and local governmental entities during the 10 years when this exemption would be effective (January 1, 2019–December 31, 2028) may be higher or lower in any given fiscal year, depending on the amount of exempt products that are actually purchased. Additionally, changes in the statewide population and the number of nonresidents purchasing these products may affect the actual reduction in sales and use tax revenue.

Nevada’s Department of Taxation has indicated that no additional funding is required to implement and administer this exemption for feminine hygiene products from the state and local sales and use taxes.

FULL TEXT OF THE MEASURE

Senate Bill No. 415–Senators Cancela and Woodhouse

Joint Sponsors: Assemblywomen Jauregui,
Monroe-Moreno and Spiegel

CHAPTER 389

[Approved: June 5, 2017]

AN ACT relating to taxes on retail sales; providing for the submission to the voters of the question whether the Sales and Use Tax Act of 1955 should be amended to provide an exemption from the tax for feminine hygiene products; providing for the exemptions from certain analogous taxes if the voters approve this amendment to the Sales and Use Tax Act of 1955; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

The Sales and Use Tax Act of 1955 (part of chapter 372 of NRS) was approved by the voters by a referendum and therefore may not be amended, annulled, repealed, set aside, suspended or in any way made inoperative except by the direct vote of the people. (Nev. Const. Art. 19, § 1)

Sections 2-9 of this bill require the submission of a question to the voters at the 2018 General Election of whether the Sales and Use Tax Act of 1955 should be amended to provide an exemption for certain feminine hygiene products. **Section 10** of this bill construes the term “feminine hygiene product” to mean a sanitary napkin or tampon for the purposes of the exemption. **Sections 11 and 12** of this bill amend the Local School Support Tax Law to provide identical exemptions. This tax exemption becomes effective on January 1, 2019, and expires by limitation on December 31, 2028, only if the voters approve the amendment to the Sales and Use Tax Act of 1955 at the General Election in 2018.

Any amendment to the Local School Support Tax Law also applies to other sales and use taxes imposed under existing law. (NRS 354.705, 374A.020, 376A.060, 377.040, 377A.030, 377B.110, 543.600 and various special and local acts)

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The Legislature hereby finds that each exemption provided by this act from any excise tax on the sale, storage, use or consumption of tangible personal property sold at retail:

1. Will achieve a bona fide social or economic purpose and that the benefits of the exemption are expected to exceed any adverse effect of the exemption on the provision of services to the public by the State or a local government that would otherwise receive revenue from the tax from which the exemption would be granted; and

2. Will not impair adversely the ability of the State or a local government to pay, when due, all interest and principal on any outstanding bonds or any other obligations for which revenue from the tax from which the exemption would be granted was pledged.

Sec. 2. At the General Election on November 6, 2018, a proposal must be submitted to the registered voters of this State to amend the Sales and Use Tax Act, which was enacted by the 47th Session of the Legislature of the State of Nevada and approved by the Governor in 1955, and subsequently approved by the people of this State at the General Election held on November 6, 1956.

Sec. 3. At the time and in the manner provided by law, the Secretary of State shall transmit the proposed act to the several county clerks, and the county clerks shall cause it to be published and posted as provided by law.

Sec. 4. The proclamation and notice to the voters given by the county clerks pursuant to law must be in substantially the following form:

Notice is hereby given that at the General Election on November 6, 2018, a question will appear on the ballot for the adoption or rejection by the registered voters of the State of the following proposed act:

AN ACT to amend an Act entitled “An Act to provide revenue for the State of Nevada; providing for sales and use taxes; providing for the manner of collection; defining certain terms; providing penalties for violation, and other matters properly relating thereto.” approved March 29, 1955, as amended.

THE PEOPLE OF THE STATE OF NEVADA
DO ENACT AS FOLLOWS:

Section 1. Section 56.1 of the above-entitled Act, being chapter 397, Statutes of Nevada 1955, as added by chapter 306, Statutes of Nevada 1969, at page 532, and amended by chapter 627, Statutes of Nevada 1985, at page 2028, and amended by chapter 404, Statutes of Nevada 1995, at page 1007, is hereby amended to read as follows:

Sec. 56.1. 1. There are exempted from the taxes imposed by this act the gross receipts from sales and the storage, use or other consumption of:

(a) Prosthetic devices, orthotic appliances and ambulatory casts for human use, and other supports and casts if prescribed or applied by a licensed provider of health care, within his scope of practice, for human use.

(b) Appliances and supplies relating to an ostomy.

(c) Products for hemodialysis.

(d) Medicines:

(1) Prescribed for the treatment of a human being by a person authorized to prescribe medicines, and dispensed on a prescription filled by a registered pharmacist in accordance with law;

(2) Furnished by a licensed physician, dentist or podiatric physician to his own patient for the treatment of the patient;

(3) Furnished by a hospital for treatment of any person pursuant to the order of a licensed physician, dentist or podiatric physician; or

(4) Sold to a licensed physician, dentist, podiatric physician or hospital for the treatment of a human being.

(e) Feminine hygiene products.

2. As used in this section:

(a) “Medicine” means any substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment or prevention of disease or affliction of the human body and which is commonly recognized as a substance or preparation intended for such use. The term includes splints, bandages, pads, compresses and dressings.

(b) “Medicine” does not include:

(1) Any auditory, ophthalmic or ocular device or appliance.

(2) Articles which are in the nature of instruments, crutches, canes, devices or other mechanical, electronic, optical or physical equipment.

(3) Any alcoholic beverage, except where the alcohol merely provides a solution in the ordinary preparation of a medicine.

(4) Braces or supports, other than those prescribed or applied by a licensed provider of health care, within his scope of practice, for human use.

3. Insulin furnished by a registered pharmacist to a person for treatment of diabetes as directed by a physician shall be deemed to be dispensed on a prescription within the meaning of this section.

Sec. 2. This act becomes effective on January 1, 2019, and expires by limitation on December 31, 2028.

Sec. 5. The ballot page assemblies and the paper ballots to be used in voting on the question must present the question in substantially the following form:

Shall the Sales and Use Tax Act of 1955 be amended to provide an exemption from the taxes imposed by this Act on the gross receipts from the sale and the storage, use or other consumption of feminine hygiene products?

Yes No

Sec. 6. The explanation of the question which must appear on each paper ballot and sample ballot and in every publication and posting of notice of the question must be in substantially the following form:

(Explanation of Question)

The proposed amendment to the Sales and Use Tax Act of 1955 would exempt from the taxes imposed by this Act the gross receipts from the sale and storage, use or other consumption of feminine hygiene products.

If this proposal is adopted, the Legislature has provided that the Local School Support Tax Law and certain analogous taxes on retail sales will be amended to provide the same exemptions.

Sec. 7. If a majority of the votes cast on the question is yes, the amendment to the Sales and Use Tax Act of 1955 becomes effective on January 1, 2019, and expires by limitation on December 31, 2028. If less than a majority of votes cast on the question is yes, the question fails and the amendment to the Sales and Use Tax Act of 1955 does not become effective.

Sec. 8. All general election laws not inconsistent with this act are applicable.

Sec. 9. Any informalities, omissions or defects in the content or making of the publications, proclamations or notices provided for in this act and by the general election laws under which this election is held must be so construed as not to invalidate the adoption of the act by a majority of the registered voters voting on the question if it can be ascertained with reasonable certainty from the official returns transmitted to the Office of the Secretary of State whether the proposed amendment was adopted by a majority of those registered voters.

Sec. 10. Chapter 372 of NRS is hereby amended by adding thereto a new section to read as follows:

In administering the provisions of section 56.1 of chapter 397, Statutes of Nevada 1955, which is included in NRS as NRS 372.283, the Department shall construe the term "feminine hygiene product" to mean a sanitary napkin or tampon.

Sec. 11. Chapter 374 of NRS is hereby amended by adding thereto a new section to read as follows:

In administering the provisions of NRS 374.287, the Department shall construe the term "feminine hygiene product" to mean a sanitary napkin or tampon.

Sec. 12. NRS 374.287 is hereby amended to read as follows:

374.287 1. There are exempted from the taxes imposed by this chapter the gross receipts from sales and the storage, use or other consumption of:

(a) Prosthetic devices, orthotic appliances and ambulatory casts for human use, and other supports and casts if prescribed or applied by a licensed provider of health care, within his or her scope of practice, for human use.

(b) Appliances and supplies relating to an ostomy.

(c) Products for hemodialysis.

(d) Medicines:

(1) Prescribed for the treatment of a human being by a person authorized to prescribe medicines, and dispensed on a prescription filled by a registered pharmacist in accordance with law;

(2) Furnished by a licensed physician, dentist or podiatric physician to his or her own patient for the treatment of the patient;

(3) Furnished by a hospital for treatment of any person pursuant to the order of a licensed physician, dentist or podiatric physician; or

(4) Sold to a licensed physician, dentist, podiatric physician or hospital for the treatment of a human being.

(e) Feminine hygiene products.

2. As used in this section:

(a) "Medicine" means any substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment or prevention of disease or affliction of the human body and which is commonly recognized as a substance or preparation intended for such use. The term includes splints, bandages, pads, compresses and dressings.

(b) "Medicine" does not include:

(1) Any auditory, ophthalmic or ocular device or appliance.
(2) Articles which are in the nature of instruments, crutches, canes, devices or other mechanical, electronic, optical or physical equipment.

(3) Any alcoholic beverage, except where the alcohol merely provides a solution in the ordinary preparation of a medicine.

(4) Braces or supports, other than those prescribed or applied by a licensed provider of health care, within his or her scope of practice, for human use.

3. Insulin furnished by a registered pharmacist to a person for treatment of diabetes as directed by a physician shall be deemed to be dispensed on a prescription within the meaning of this section.

Sec. 13. 1. This section and sections 1 to 9, inclusive, of this act become effective on October 1, 2017.

2. Sections 10, 11 and 12 of this act become effective on January 1, 2019, and expire by limitation on December 31, 2028, only if the proposal submitted pursuant to sections 2 to 9, inclusive, of this act is approved by the voters at the General Election on November 6, 2018.
