Date of Hearing: April 22, 2019

ASSEMBLY COMMITTEE ON REVENUE AND TAXATION
Autumn R. Burke, Chairwoman

AB 31 (Cristina Garcia) – As Amended April 4, 2019

FOR VOTE ONLY

Majority vote. Tax levy. Fiscal committee.

SUBJECT: Sales and use taxes: exemption: sanitary napkins: tampons: menstrual sponges and menstrual cups

SUMMARY: Establishes a sales and use tax (SUT) exemption for tampons, sanitary napkins, menstrual sponges, and menstrual cups. Specifically, **this bill**:

1) Contains the following legislative findings and declarations:

   a) Menstrual products, including tampons, pads, and menstrual cups, are the only gender-specific items in California's tax laws;

   b) Menstrual products are not luxuries, and, in fact, are necessary health products for menstruating women to participate in society;

   c) The goal of exempting tampons, pads, and menstrual cups from the sales and use tax laws is to bring gender equity to California's tax laws;

   d) Each year, California women pay over $20 million in taxes on menstrual products. That money, paid as taxes, belongs in the pockets of California women;

   e) The sales and use tax laws exempt items that are deemed "necessities of life," such as food and medicine; and,

   f) The fact that there are no other examples of an essential health product within the state tax laws that one gender must use each month for 40 years of life speaks to the outdated nature of the tax laws.

2) Provides that, notwithstanding existing law, the state shall not reimburse any local agency for SUT revenues lost as a result of this exemption.

3) Takes immediate effect as a tax levy, but only becomes operative on January 1, 2020.

4) Sunsets the exemption on January 1, 2025.

EXISTING LAW:

1) Imposes a sales tax on retailers for the privilege of selling tangible personal property (TPP), absent a specific exemption. The tax is based upon the retailer's gross receipts from TPP sales in this state.

2) Imposes a complimentary use tax on the storage, use, or other consumption of TPP purchased out-of-state and brought into California. The use tax is imposed on the purchaser; and unless the purchaser pays the use tax to an out-of-state retailer registered to collect California's use tax, the purchaser remains liable for the tax. The use tax is set at the same rate as the state's sales tax and must generally be remitted to the California Department of Tax and Fee Administration (CDTFA).

FISCAL EFFECT: This bill would result in estimated state and local revenue losses of $9.4 million in fiscal year (FY) 2019-20 and $19 million in FY 2020-21.

COMMENTS:

1) The author has provided the following statement in support of this bill:

   Each year, California women pay over 20 million dollars in taxes on menstrual products. 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. Having your period when you are poor or homeless means that once a month you have the added stress of finding a way to pay for these essentials. The money from this tax belongs in the pockets of California women.

   The sales and use tax exempts items that are deemed "necessities of life" such as food or medicine. In other words any item not on this list is deemed unnecessary or even a luxury for consumers. California's tax code exempts health items like walkers, medical identification tags, and prescription medication, including Viagra®. Menstrual products are not exempt even though they are far from being luxuries and women do not have the choice to stop the flow. The fact that there is no other example of a set of essential health products within our tax code that one gender must use each month for 40 years of life speaks to the outdated nature of our code. The FDA regulates both tampons and sanitary napkins as medical devices; yet, our tax law does not recognize menstrual products as necessary health products for women.

   Connecticut, District of Columbia, Florida, Illinois, Maryland, Massachusetts, Minnesota, Pennsylvania, Massachusetts, New Jersey, New York and most recently Nevada, have exempted the sales and use tax on menstrual products. Though California originally led this discussion we have now fallen behind the curve. It is time for California to step up on equitable access.

2) This bill is supported by the Sacramento Homeless Period Project, which notes:

   California women pay $20 million in taxes on tampons and sanitary napkins each year. 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. Women face more expenses than men and at the same time are paid less. Gender pricing led to women paying an average of $1,351 more than men per year on goods and services in 1994. Adjusting for inflation, that number is now $2,161. At the same time women make 79 cents on the dollar when compared to men. The pay gap and gender pricing make the fact that California's tax law unfairly targets women that much more unjust.

3) This bill is opposed by the California Tax Reform Association, which notes:

   The line drawn in this bill would be new to the state's sales tax – gender necessity.

   [. . .]

   The problem with drawing such a line is that many possibilities for exemption follow the logic of gender specificity. Clothing, cosmetics, over-the-counter and pharmaceuticals are all examples of products that can be construed as both gender-based and necessary. Should condoms and over-the-counter birth control be taxed, since these are arguably positive and necessary products?

4) Committee Staff Comments

   a) *What is a "tax expenditure"*? Existing law provides various credits, deductions, exclusions, and exemptions for particular taxpayer groups. In the late 1960s, U.S. Treasury officials began arguing that these features of the tax law should be referred to as "expenditures" since they are generally enacted to accomplish some governmental purpose and there is a determinable cost associated with each (in the form of foregone revenues).

      As the Department of Finance notes in its annual Tax Expenditure Report, there are several key differences between tax expenditures and direct expenditures. First, tax expenditures are reviewed less frequently than direct expenditures. Second, there is generally no control over the amount of revenue losses associated with any given tax expenditure. Finally, it should also be noted that, once enacted, it takes a two-thirds vote to rescind an existing tax expenditure absent a sunset date. This effectively results in a "one-way ratchet" whereby tax expenditures can be conferred by majority vote, but cannot be rescinded, irrespective of their efficacy or cost, without a supermajority vote.

   b) *An overview of the SUT Law*: The SUT represents the state's second largest source of General Fund (GF) revenues. Nevertheless, the past 70 years have seen a dramatic reduction in the state's reliance on the SUT and a corresponding increase in its reliance on personal income tax revenues. In FY 2019-20, SUT revenues are estimated to comprise only 19% of the state's GF revenues, down from nearly 60% in FY 1950-51.

   c) *What accounts for the state's reduced reliance on SUT revenues*? The SUT Law was enacted in a very different era. In the 1930s, California's economy was largely dominated by manufacturing, and residents mostly bought and sold tangible goods. Thus, in establishing the base for a new consumption tax, it made sense to impose the tax on sales of TPP, defined as personal property that may be "seen, weighed, measured, felt, or touched." Over the past 80 years, however, California's economy has seen dramatic growth in the service and information sectors, resulting in a significant erosion of the SUT base. For example, the Commission on the 21st Century Economy noted that spending on taxable goods represented 34.6% of personal income in 2008, down from

55.4% in 1980. As a result, tax experts and economists from across the political spectrum argue that California should expand its SUT base.

It could be argued that, while well-intentioned, additional SUT exemptions further erode an already shrinking SUT base. This, in turn, increases fiscal pressures to maintain or even increase California's relatively high SUT rate. High rates arguably promote non-compliance and encourage out-of-state purchases, placing California retailers at a competitive disadvantage. High rates also risk impacting consumer decision-making, which runs counter to widely accepted principles of sound tax policy.

d) *What would this bill do*? This bill would provide a complete SUT exemption, until January 1, 2025, for tampons, sanitary napkins, menstrual sponges, and menstrual cups.

e) *An inherently regressive tax*: The SUT has been widely criticized as a regressive exaction that most heavily impacts those least able to pay. For example, a survey by the Nevada Legislative Counsel Bureau long ago concluded that in the case of a retail sales tax with food exempt, "the lowest income group would experience the highest ratio of tax to income . . . ." (Survey of Sales Taxes Applicable to Nevada 59 (Bull. No. 3, May, 1948).) Others, however, contend that a degree of progressivity is provided via the various exemptions built into most state SUT laws (i.e., for certain necessities of life such as food, housing, and medical care).

Proponents of this bill might argue that an exemption for sanitary napkins and tampons would further promote a degree of progressivity in an already regressive tax regime. Proponents might also note that, to reduce the regressive nature of the SUT tax, exemptions have been enacted for numerous necessities of life, including food and prescription medications. Critics, however, might contend that SUT exemptions are a blunt instrument for affecting social policy. While this bill would provide financial relief to low-income women struggling to make ends meet, it would also provide relief indiscriminately to wealthy consumers who might not even notice the exemption.[1]

f) *Policy on tax expenditures*: SB 1335 (Leno), Chapter 845, Statutes of 2014, added Revenue and Taxation Code (R&TC) Section 41, which recognized that the Legislature should apply the same level of review used for government spending programs to tax credits introduced on or after January 1, 2015. This Committee has recently adopted a new policy, requiring that all new tax expenditure proposals comply with the requirements of R&TC Section 41. A tax expenditure proposal must outline specific goals, purposes, and objectives that the tax expenditure will achieve, along with detailed performance indicators for the Legislature to use when measuring whether the tax expenditure meets those stated goals, purposes, and objectives. A tax expenditure bill will not be eligible for a Committee vote unless it has complied with these requirements. This bill has been amended to specify the goals being advanced by providing a SUT exemption for menstrual products.

In addition to the R&TC Section 41 requirements, this Committee's policy also requires

[1] The author's office has previously noted that women in California pay roughly $7 per month on sanitary napkins and tampons. Applying a statewide average SUT rate of 8.5%, purchasers are paying roughly $0.60 per month in SUT on these products.

that all tax expenditure proposals contain an appropriate sunset provision to be eligible for a vote. According to the new policy, an "appropriate sunset provision" shall mean five years, except in the case of a tax expenditure measure providing relief to California veterans, in which case "appropriate sunset provision" shall mean ten years. This bill has been amended to add a five-year sunset.

g) *Prior legislation*:

   i) AB 9 (Garcia), of the 2017-18 Legislative Session, proposed a similar SUT exemption. AB 9 was held on the Assembly Appropriations Committee's suspense file.

   ii) AB 10 (Garcia), Chapter 687, Statutes of 2017, required public schools serving students from grades 6 to 12 that meet a 40% pupil poverty threshold specified in federal law to: (i) stock at least half of the school's restrooms with feminine hygiene products and (ii) provide the menstrual products to pupils at no charge.

   iii) AB 1561 (Garcia), of the 2015-16 Legislative Session, proposed a similar SUT exemption. On September 13, 2016, Governor Brown vetoed AB 1561, noting in part:

   > As I said last year, tax breaks are the same as new spending – they both cost the General Fund money. As such, they must be considered during budget deliberations so that all spending proposals are weighed against each other at the same time. This is even more important when the state's budget remains precariously balanced.

REGISTERED SUPPORT / OPPOSITION:

Support

American Academy of Pediatrics, California
American College of Obstetricians and Gynecologists, District IX
Anti-Defamation League
Business and Professional Women of Nevada County
California Grocers Association
CaliforniaHealth+ Advocates
California Legislative Women's Caucus
California Pan-Ethnic Health Network
California State PTA
California Voices for Progress
Courage Campaign
City of Alameda
City of El Monte
City of Stockton Mayor Michael Tubbs
City of West Hollywood
End the Tampon Tax in California Grassroots Coalition
Equal Rights Advocates
IGNITE
Indie-Activists

Junior League of Riverside
National Association of Social Workers, California Chapter
National Women's Political Caucus of California
Pad Project
Sacramento Homeless Period Project
Western Center on Law and Poverty
Women's Empowerment

Opposition

California State Association of Counties (unless amended)
California Tax Reform Association (unless amended)

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