F I S C A L I M P A C T R E P O R T

ORIGINAL DATE 02/04/19

SPONSOR HHHC **LAST UPDATED** **HB** CS/119&179/HHHC

SHORT TITLE Feminine Hygiene Product Gross Receipts **SB**

ANALYST Iglesias

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY19	**FY20**	**FY21**	**FY22**	**FY23**		
$0.0	($972.5)	($978.7)	($985.0)	($991.3)	Recurring	General Fund
$0.0	($656.9)	($661.1)	($665.3)	($669.6)	Recurring	Local Governments
$0.0	($22.3)	($22.4)	($22.6)	($22.7)	Recurring	County Supported Medicaid Fund
$0.0	($16.7)	($16.8)	($16.9)	($17.0)	Recurring	Safety Net Care Pool
$0.0	($1,668.4)	($1,679.1)	($1,689.8)	($1,700.7)	Recurring	TOTAL

Parenthesis ( ) indicate revenue decreases

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)
Department of Finance and Administration (DFA)
Human Services Department (HSD)
Department of Health (DOH)

SUMMARY

Synopsis of Bill

The Health and Human Services Committee Substitute for House Bill 119 and House Bill 179 adds a new deduction from gross receipts tax (GRT) and government gross receipts tax (GGRT) for receipts from the sale of feminine hygiene products. This deduction would require separate reporting and it will require the Taxation and Revenue Department (TRD) to compile an annual report on the deduction and present the report to specified interim legislative committees. The effective date of this bill is July 1, 2019.

FISCAL IMPLICATIONS

This bill narrows the GRT base. See *Significant Issues* for more information.

LFC staff used statistics on the New Mexico female population and age demographics, average prices of feminine hygiene products, and statistics on average menstruation patterns to determine the estimated impact. U.S. Census data indicates there were 458 thousand woman in New Mexico in 2017 between the age of 15 and 50. The estimate assumes all women of this age range use feminine hygiene products, with an estimated tax base of about $23 million on these products. Thus, creating a new GRT deduction will result in reduced revenue for the state and local governments, with an estimated annual cost of nearly $1 million to the state and about $650 thousand to local governments.

The Department of Finance and Administration (DFA) points out the loss of revenue collected from GGRT would affect funding for Public Project Revolving Fund at New Mexico Finance Authority, the Energy, Minerals and Natural Resource Department, and the Department of Cultural Affairs.

The Human Services Department (HSD) estimated this bill will also have an impact on the revenues received from the County Supported Medicaid Fund (CSMF) and the Safety Net Care Pool Fund (SNCP), but states the impact should be minimal. Both of these funds are calculated off the Matched Taxable Gross Receipts (MTGR) collected in a county. Any gross receipts tax deduction will reduce the amount of MTGR. This will therefore reduce the amount of revenues that are distributed to the CSMF and SNCP funds. HSD estimates the impact to be about $22 thousand and $17 thousand, respectively.

This bill may be counter to the LFC tax policy principle of adequacy, efficiency, and equity. Due to the increasing cost of tax expenditures, revenues may be insufficient to cover growing recurring appropriations.

Estimating the cost of tax expenditures is difficult. Confidentiality requirements surrounding certain taxpayer information create uncertainty, and analysts must frequently interpret third-party data sources. The statutory criteria for a tax expenditure may be ambiguous, further complicating the initial cost estimate of the expenditure's fiscal impact. Once a tax expenditure has been approved, information constraints continue to create challenges in tracking the real costs (and benefits) of tax expenditures.

SIGNIFICANT ISSUES

This bill narrows the GRT base. Many of the efforts over the last few years to reform New Mexico's taxes focused on broadening the GRT base and lowering the rates. Narrowing the base leads to continually rising GRT rates, increasing volatility in the state's largest general fund revenue source. Higher rates compound tax pyramiding issues and force consumers and businesses to pay higher taxes on all other purchases without an exemption, deduction, or credit.

The GRT is New Mexico's general consumption tax, similar to the sales taxes imposed by other states. The advantage of consumption taxes, generally, is that they can be imposed on a broad base at a relatively low rate—so that their impact is spread out over many goods and services and over many taxpayers. The disadvantage of consumption taxes is that they are regressive, falling more heavily on low-income taxpayers who spend most of their earnings on taxable consumption. For example, paying $10 in tax has a greater impact on someone earning $100 per week than on someone earning $1,000 per week.

Tax expenditures are special provisions of the tax code that benefit specific activities or groups of taxpayers. Because this bill does not include a purpose statement, it is difficult to determine the exact goal of the expenditure. Analyses provided by TRD and the Department of Finance and Administration (DFA) suggest the goal of this deduction is to address regressivity in the tax code. However, the proposed deduction does not target low- or middle-income earners; instead, the deduction applies to everyone purchasing these products, no matter how much income they earn.

According to the Tax Foundation[1], 13 states including the District of Columbia considered proposals in 2016 to remove feminine hygiene products from the state sales tax base. Of these, three states and one district enacted legislation to this end (Connecticut, Illinois, New York, and the District of Columbia). Seven other states specifically exempt feminine hygiene products from the sales tax base - Illinois, Maryland, Massachusetts, Minnesota, New Jersey, New York, and Pennsylvania. Five states—Alaska, Delaware, New Hampshire, Montana, and Oregon—do not have a sales tax. No state subjects feminine hygiene products to a special or unique tax.

The Tax Foundation points out "exempting feminine hygiene products is part of a broader trend of shrinking state sales tax bases. Smaller sales tax bases lead to higher overall sales tax rates…. An ideal sales tax should apply to all final consumer purchases, without regard to whether items are classified as necessities or luxuries." This allows for lower rates, provides a broad sales tax that does not distort preferences or production across items or services, and does not favor one type of consumption over another.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is met with the bill's requirement to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the deduction and other information to determine whether the deduction is meeting its purpose.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill is a duplicate of House Bill 179.

TECHNICAL ISSUES

This bill does not contain a delayed repeal date. LFC recommends adding a delayed repeal date.

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[1] Tax Foundation, 2017. *Tampon Taxes: Do Feminine Hygiene Products Deserve a Sales Tax Exemption?* Retrieved from https://taxfoundation.org/tampon-taxes-sales-tax/.

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy**: Revenue should be adequate to fund needed government services.
2. **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity**: Different taxpayers should be treated fairly.
4. **Simplicity**: Collection should be simple and easily understood.
5. **Accountability**: Preferences should be easy to monitor and evaluate.

Does the bill meet the Legislative Finance Committee tax expenditure policy principles?

1. **Vetted**: The proposed new or expanded tax expenditure was vetted through interim legislative committees, such as LFC and the Revenue Stabilization and Tax Policy Committee (RSTP), to review fiscal, legal, and general policy parameters.
2. **Targeted**: The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals.
3. **Transparent**: The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies.
4. **Accountable**: The required reporting allows for analysis by members of the public to determine progress toward annual targets and determination of effectiveness and efficiency. The tax expenditure is set to expire unless legislative action is taken to review the tax expenditure and extend the expiration date.
5. **Effective**: The tax expenditure fulfills the stated purpose. If the tax expenditure is designed to alter behavior – for example, economic development incentives intended to increase economic growth – there are indicators the recipients would not have performed the desired actions "but for" the existence of the tax expenditure.
6. **Efficient:** The tax expenditure is the most cost-effective way to achieve the desired results.

LFC Tax Expenditure Policy Principle	Met?	Comments
Vetted	✘	Proposal not heard in the interim by LFC or RSTP.
Targeted		
Clearly stated purpose	✘	None.
Long-term goals	✘	None.
Measurable targets	✘	None.
Transparent	✓	Annual reporting by TRD required. However, since the deduction is not separately reported, TRD will have to estimate the number of taxpayers claiming the deduction and the associated costs.
Accountable		
Public analysis	?	It is uncertain whether reporting on the number of claimants and cost of the deduction will be sufficient to determine the effectiveness of the tax expenditure.
Expiration date	✘	There is no delayed repeal date.

LFC Tax Expenditure Policy Principle	Met?	Comments
Effective		
Fulfills stated purpose	✘	No stated purpose.
Passes "but for" test	✘	
Efficient	?	Because the purpose of the deduction is not stated, it is unclear whether a GRT deduction on these products is the most efficient way to achieve the desired results.
Key: ✓ Met ✘ Not Met ? Unclear		

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