Question 2: The Amendment to the Sales and Use Tax Act of 1955

Executive Summary

Question 2: The Amendment to the Sales and Use Tax Act of 1955 is a statewide statutory ballot initiative that proposes to exempt certain feminine hygiene products, defined specifically as sanitary napkins or tampons, from sales and use taxes in Nevada, the Local School Support Tax (LSST), and other analogous taxes, such as those that provide revenue to local governments.

A "YES" vote means that sanitary napkins or tampons would be exempt from sales and use taxes, the Local School Support Tax (LSST), and other analogous taxes in Nevada. The exemption would be effective from January 1, 2019, through December 31, 2028.

A "NO" vote means that no further action will be taken on the legislation. Sanitary napkins and tampons would remain subject to sales and use taxes, the Local School Support Tax (LSST), and other analogous taxes in Nevada, as current law does not exempt these products.

Our intent, in the pages that follow, is to summarize the primary arguments for and against the measure and to answer questions voters may have. The following are the questions this Voter Guide addresses:

1. What is Question 2: The Amendment to the Sales and Use Tax Act of 1955?
2. Why is it coming before the voters?
3. What happens if it passes?
4. What happens if it fails to pass?
5. What are the primary arguments for The Amendment to the Sales and Use Tax Act of 1955?
6. What are the primary arguments against The Amendment to the Sales and Use Tax Act of 1955?
7. Have other states exempted feminine hygiene products from sales and use taxes?

The Guinn Center will not take a position on Question 2.

Question 2: The Amendment to the Sales and Use Tax Act of 1955

1. What is Question 2: The Amendment to the Sales and Use Tax Act of 1955?

Nevada levies sales and use tax on all tangible personal property.[a, 1] However, several items sold in the State are exempt from these taxes, such as unprepared food, prescription drugs, and domestic fuels, amongst others.[2]

Question 2: The Amendment to the Sales and Use Tax Act of 1955 is a statewide statutory ballot initiative that proposes to exempt certain feminine hygiene products, defined specifically as sanitary napkins or tampons, from sales and use taxes in Nevada, the Local School Support Tax (LSST), and other analogous taxes, such as those that provide revenue to local governments.[b, 3]

Question 2 reads:

> 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?[4]

Passage of the amendment by a majority of registered voters at the November 6, 2018, General Election would mean that sales and use taxes, as well as the LSST and other analogous taxes, would not be levied on sanitary napkins or tampons for a 10-year period.[5] The measure would become effective on January 1, 2019, and expire by limitation on December 31, 2028.[6]

2. Why is it coming before the voters?

In the 79th (2017) Legislative Session, Senate Bill (SB) 415 passed in the Nevada State Assembly and the Nevada State Senate; it was approved by Governor Sandoval on June 5, 2017.[7] The legislation provided exemptions from sales and use taxes, the Local School Support Tax (LSST), and other analogous taxes for certain feminine hygiene products but required submission to the voters at the General Election on November 6, 2018.[8]

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[a] Tangible personal property is defined as, "property that can be touched and moved, such as equipment, furniture, and other possessions." *Source*: Joyce Errecart, Ed Gerrish, and Scott Drenkard. "States Moving Away From Taxes on Tangible Personal Property." Tax Foundation. October 4, 2012. Available: https://taxfoundation.org/states-moving-away-taxes-tangible-personal-property/.

[b] Question 2 is designated on the Nevada Secretary of State's website as the "Pink Tax Repeal - Senate Bill 415 of the 79th Legislative Session." However, the amendment to the Sales and Use Tax Act of 1955 is not a "pink tax," which is defined as "the idea that the 'female' versions of the same products and services cost more than the male versions" (*Source*: Clare Sebastian. "Why Women Pay More than Men for the Same Stuff." *CNN*. March 7, 2016. Available: https://money.cnn.com/2016/03/07/pf/pink-tax/index.html). In other words, a "pink tax" is one in which the mark-up for identical products sold to women and men is higher for the former than the latter. The Nevada ballot initiative would provide an exemption from certain taxes on feminine hygiene products, which are used only by biologically female individuals. This means that current law is not a "pink tax," as there is no variation in costs across men and women by virtue of the products' use by only one of the sexes.

Any amendments, revisions, modifications, et cetera, to the Sales and Use Tax Act of 1955 must come before the voters in order to be enacted, as the original 1955 legislation passed via referendum. Specifically, "The Sales and Use Tax Act of 1955…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."[9]

3. What happens if it passes?

If Question 2 passes in 2018, it would exempt certain feminine hygiene products, defined specifically as sanitary napkins or tampons, from sales and use taxes, the Local School Support Tax (LSST), and other analogous taxes in Nevada. The exemption would be effective from January 1, 2019, through December 31, 2028.[10]

4. What happens if it fails to pass?

Failure to pass in 2018 would mean that the Sales Tax and Use Act of 1955 would not be amended to exempt certain feminine hygiene products, defined specifically as sanitary napkins or tampons, from sales and use taxes, the Local School Support Tax (LSST), and other analogous taxes in Nevada. Sanitary napkins and tampons would remain subject to the taxes delineated above, as current law does not exempt these products.

5. What are the primary arguments for The Amendment to the Sales and Use Tax Act of 1955?

This section addresses two primary arguments in favor of Question 2: The Amendment to the Sales and Use Tax Act of 1955: (1) elimination of discriminatory policy; and (2) reduction of financial burden.

<u>Elimination of Discriminatory Policy</u>

Proponents of sales tax exemptions for feminine hygiene products argue that such taxes discriminate against women, who, by virtue of their sex, require these items.[c] They view taxation on menstrual products as a form of "gender injustice." For example, California introduced a version of a sales tax exemption on feminine hygiene products in 2016, and in introducing the bill, Assemblywoman Cristina Garcia stated, "Basically we are being taxed for being women[.]This is a step in the right direction to fix this gender injustice."[d, 11]

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[c] For the purposes of this Voter Information Guide, women are defined as biologically female individuals.

[d] The bill—Assembly Bill (AB) 1561—passed both chambers of the California State Legislature but was vetoed by Governor Jerry Brown on September 13, 2016. *Source*: California Legislative Information. "Bill History: AB-1561 Sales and Use Taxes: Exemption: Sanitary Napkins: Tampons: Menstrual Sponges and Menstrual Cups. (2015-2016)." Available: https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=201520160AB

An analysis of taxation on feminine hygiene products stated that:

> The tampon tax is discriminatory in three main ways: it is a tax on a sex-based product, (2) it places a unique economic burden on biological women, and (3) it is based on stereotyping and misunderstandings about female biology....the tampon tax is a sex-based tax because it is a tax on a product solely used by biological women. A sex-based tax is discriminatory even if members of the other sex occasionally are the purchasers of the product. Biological men may still pay the tax occasionally because they may purchase feminine hygiene products for a partner, child, friend, or family member, but that does not change the fact that the government is using sex to push a product out of a tax-exemption zone into an area of taxation. There is no comparable tax on any sex-based medical product overwhelmingly used by men, for example.[12]

As one op-ed notes, with respect to the sales tax on sanitary napkins and tampons, "If the government were to say that only men or only women had to pay an additional tax of several hundred dollars a year solely because of their sex, that would clearly be an unconstitutional denial of equal protection."[13]

Advocates for sales tax exemptions on menstrual products thus frequently raise the question, "Why are tampons taxed when Viagra is not?"[14] In other words, a product that is gender-differentiated, insofar that it is used solely by biologically male individuals, may be the most comparable equivalent to feminine hygiene products, yet it enjoys tax-exempt status in many states.

Nevada state law neither provides a carve-out for erectile dysfunction medications, such as Viagra, nor does it levy a tax specifically on menstrual products. As with most other states, tangible personal property is subject to sales and use taxes unless otherwise exempted.[15] However, Nevada previously has implemented specific exemptions; among these are: (1) fuel used to propel motor vehicles; (2) animal and plants intended for human consumption, and feed and fertilizer; (3) medicines, prescription drugs, and certain medical supplies; (4) gas, electricity, and water; (5) domestic fuels; (6) newspapers; (7) manufactured and mobile homes; and (8) amount of used vehicle trade-in allowance provided against the purchase price of another vehicle.[16]

By virtue of its classification as a medication not otherwise disallowed by law (e.g., hearing and vision aids, etc.), Viagra is exempt from sales and use taxes in the State.[17] Were Question 2 to be passed by a majority of registered voters at the November 6, 2018, General Election, feminine hygiene products would be added to the section of the *Nevada Revised Statutes* that pertains to medicines, medical supplies, and medical equipment.[18]

Reduction of Financial Burden

One estimate shows that "[t]he average woman has her period for 2,535 days of her life," which translates into seven years of sanitary napkin or tampon usage.[19] On a yearly basis, "the tampon tax

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1561. In 2016, California Governor Jerry Brown vetoed the feminine hygiene products exemption as part of a package of seven bills that would have created new tax breaks or expanded existing tax breaks, amounting to a potential revenue loss of $300 million through 2017-2018. *Source*: State of California, Office of the Governor (Edmund G. Brown, Jr.). "Veto Message: To the Members of the California State Assembly." September 13, 2016. Available: https://www.gov.ca.gov/wp-content/uploads/2017/09/AB_1561_Veto_Message.pdf.

currently costs American women approximately $3.1 billion."[20] Accordingly, proponents argue that it represents an unfair tax burden, given that the products are an unavoidable biological necessity.[21]

The tax on menstrual products is viewed as particularly burdensome for poorer women. Jennifer Weiss-Wolf, vice president at the New York University School of Law's Brennan Center for Justice and author of the book *Periods Gone Public: Taking a Stand for Menstrual Equity*, has found that sanitary napkins and tampons are in high demand at food pantries, as poor women sometimes can find such products unaffordable; food stamps cannot be used to purchase these goods.[22] Advocates assert that low-income women occasionally have had to resort to substituting such items as socks and plastic bags for feminine hygiene products when they have been unable to afford sanitary napkins or tampons.[23] As such, supporters of tax exemptions on feminine hygiene products observe that women bear the costs for purchasing these items and that inclusion of the taxes in a state's base compounds the effect.[24]

Expressed more formally, the issue is one of regressivity. Sales taxes are inherently regressive, or "tax[es] that take[s] a larger percentage of income from low-income groups than from high-income groups."[25] This means that a disproportionate share of a low-income menstrual product user's income is allocated to sales taxes on feminine hygiene products, relative to a high-income user's income. Specifically, "[w]hen a poorer woman and a wealthy woman buy the same menstrual hygiene product, the poorer woman must spend a larger percentage of her disposable income on the tax than the wealthy woman."[26]

Individuals who require menstrual products in Nevada spend approximately $7.00 to $10.00 per month on these items.[27] According to the Guinn Center's estimates, the average Nevada woman would save roughly $0.73 to $1.04 per month and $8.72 to $12.46 per year if Question 2 were passed by a majority of registered voters in November 2018.[28]

6. What are the primary arguments against The Amendment to the Sales and Use Tax Act of 1955?

This section addresses two primary arguments against Question 2: The Amendment to the Sales and Use Tax Act of 1955: (1) unsound tax policy; and (2) revenue losses for the State and local governments.

Unsound Tax Policy

"Sound tax principle" holds that there should be a broad base and low rates.[29] In discussing general tax policy, the Institute on Taxation and Economic Policy (ITEP), a nonprofit, nonpartisan tax policy organization shares, "At any given tax rate, a broad-based tax will raise more revenue than a narrow-based tax—because more is taxed."[30] ITEP also notes that tax rates can be lower as the tax base broadens, which means that, conversely, as the tax base narrows, tax rates may increase to support a particular level of public services.[31] In other words, exemptions narrow the tax base, which means that other goods must be taxed at higher rates to offset the revenue losses. This can produce system-wide distortions, such as higher overall tax rates in the long run.[32]

Opponents of sales tax exemptions on feminine hygiene products assert that such exemptions emblematize unsound tax policy.[33] They contend, for example, that:

> An ideal sales tax should apply to all final consumer purchases, without regard to whether items are classified as "necessities" or "luxuries." Sales taxes "should apply to all consumption expenditures… at a uniform rate." First, this allows for the lowest possible rate. The broader the base, the lower the rate can be to generate a given amount of revenue. Second, a broad sales tax does not distort preferences or production across items or services. Third, it does not favor one type of consumption over another, meaning that a consumer does not have to choose between one item that is taxed versus another item that isn't taxed.[34]

In addition, some opponents argue that the exemption could lead to volatility and that the narrowing of the tax base could yield inflexibility in adjustments to economic upturns and downturns.[35]

<u>Revenue Losses for the State and Local Governments</u>

The State is highly dependent on the sales tax as a revenue source. For the 2017-2019 biennium, sales and use taxes ($2.5 billion) made up the largest share (30 percent) of the General Fund, Nevada's major operating fund.[36] The Digest for The Amendment to the Sales and Use Tax Act of 1955 states that, "This ballot measure would decrease public revenue because these products would no longer be subject to sales and use taxes."[37]

Currently, four separate tax rates comprise the total state sales and use tax rate of 6.85 percent. Components of sales and use taxes include the State Sales Tax, along with "…(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" (i.e., the Basic City-County Relief Tax [BCCRT] and the Supplemental City-County Relief Tax [SCCRT]).[38]

Table 1 shows these four components, with their respective tax rates, revenue recipients, and estimated revenue losses for each fiscal year that the exemption would be in effect, were Question 2 to be passed by a majority of registered voters at the November 6, 2018, General Election.[39] (See page 6.)

According to these estimates, the State, schools, and local governments could lose roughly $5 million to $7 million in revenue for each of the 10 fiscal years in which feminine hygiene products would be tax-exempt. The legislatively approved budget for fiscal year (FY) 2019 is about $13.2 billion.[40] This means that the loss to the State of $1.5 million to $2.1 million, for example, may not seem considerable. However, in absolute dollars, it still represents a loss of revenue that may need to be offset by cuts to services or increased taxes elsewhere.

As Table 1 indicates, counties could see revenue losses in the range of $360,000 to $500,000 from the exemption to the Basic City-County Relief Tax (BCCRT) and $1.2 million to $1.8 million from the exemption to the Supplemental City-County Relief Tax (SCCRT). However, in addition, optional local sales taxes imposed for authorized uses in the 13 of 17 counties in Nevada that levy such taxes would be subject to the exemption.[41] Projected losses are displayed in Table 2.[42] (See page 6.)

Table 1. Estimated Revenue Reductions for Each Component of the Combined Rate (per Fiscal Year)

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

Table 2. Estimated Local Revenue Reductions (per Fiscal Year)

Estimated Local Revenue Reductions (per Fiscal Year)			
County	**Total Combined Optional Local Tax Rate**	**Estimated Revenue Loss from Combined Optional Local Tax Rate Per Fiscal Year**	**Estimated Loss as a Percent of Total Revenue from Combined Optional Local Tax Rate**
Carson City	0.75 percent	\$8,200 – \$11,700	0.11 percent – 0.15 percent
Churchill	0.75 percent	\$4,500 – \$6,500	0.22 percent – 0.32 percent
Clark	1.40 percent	\$750,000 – \$1,071,400	0.13 percent – 0.19 percent
Douglas	0.25 percent	\$2,400 – \$3,400	0.14 percent – 0.19 percent
Elko	0.25 percent	\$3,400 – \$4,900	0.10 percent – 0.14 percent
Esmeralda	–	–	–
Eureka	–	–	–
Humboldt	–	–	–
Lander	0.25 percent	\$400 – \$500	0.06 percent – 0.07 percent
Lincoln	0.25 percent	\$300 – \$400	0.40 percent – 0.53 percent
Lyon	0.25 percent	\$3,000 – \$4,300	0.28 percent – 0.40 percent
Mineral	–	–	–
Nye	0.75 percent	\$6,400 – \$9,200	0.15 percent – 0.22 percent
Pershing	0.25 percent	\$300 – \$400	0.11 percent – 0.14 percent
Storey	0.75 percent	\$600 – \$800	0.07 percent – 0.09 percent
Washoe	1.415 percent	\$150,200 – \$214,600	0.14 percent – 0.19 percent
White Pine	0.875 percent	\$1,600 – \$2,300	0.08 percent – 0.11 percent
TOTAL	**–**	**\$931,300 – \$1,330,400**	**0.13 percent – 0.18 percent**

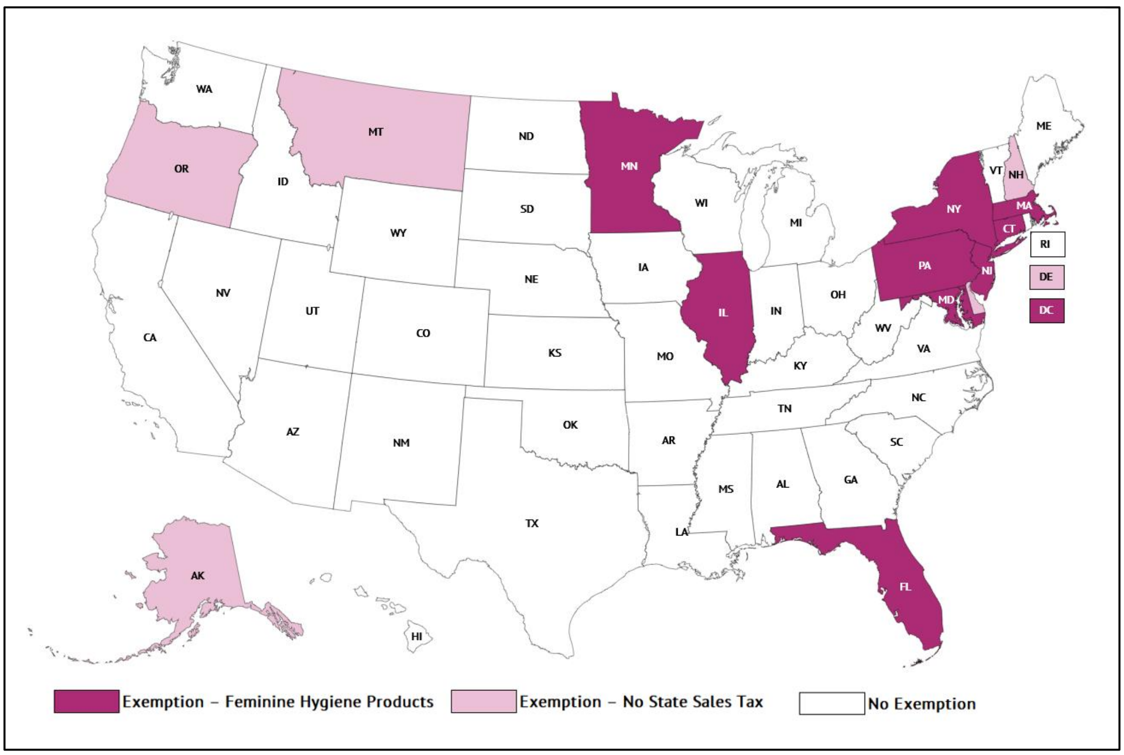
The total estimated revenue loss from combined optional local tax rate for each fiscal year ranges from \$931,300 to just over \$1.3 million. In terms of absolute dollars, Lincoln County (\$300 to \$400), Pershing County ($300 – $400), and Lander County ($400 – $500) are projected to be the least affected, while Washoe County ($150,200 – $214,600) and Clark County ($750,000 – $1.1 million) could be the most affected. For all counties, the estimated loss as a percent of total revenue is expected to be relatively low, with the highest projection at just over 0.5 percent for Lincoln County.

However, local governments have argued recently that policy interventions, such as property tax relief in the form of partial abatements, have "undercut their ability to conduct business."[43] In fact, "Budgets are becoming more stressed, with the long-term shift over time from the more stable property tax to the more volatile sales tax as the primary revenue source for local governments."[44] Although the projected revenue losses from the BCCRT, SCCRT, and optional local sales taxes are somewhat low, in the context of concerns raised by local governments regarding the capacity of revenue streams to finance their operations, even some revenue loss could present challenges.

7. Have other states exempted feminine hygiene products from sales and use taxes?

Fourteen states and the District of Columbia exempt feminine hygiene products from sales taxes, as shown in Figure 1.[45] Of these, five states—Alaska, Delaware, Montana, New Hampshire, and Oregon—do not have state sales taxes, and thus, menstrual products are exempt by default.[46] Nine states (Connecticut, Florida, Illinois, Maryland, Massachusetts, Minnesota, New Jersey, New York, and Pennsylvania) and the District of Columbia have specific sales tax exemptions for feminine hygiene products.[47] Some states, such as Connecticut and the District of Columbia, for example, have exempted other hygiene-related items, along with menstrual products, such as diapers.[48]

Figure 1. Sales Tax Exemptions on Feminine Hygiene Products



About the Guinn Center

The Kenny C. Guinn Center for Policy Priorities is a 501(c)(3) nonprofit, bipartisan, independent policy institute focused on providing fact-based, relevant, and well-reasoned analysis of critical policy issues facing Nevada and the Intermountain West. The Guinn Center engages policy-makers, experts, and the public with innovative, data-driven research and analysis to advance policy solutions, inform the public debate, and expand public engagement.

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[28] Guinn Center calculation based on the estimates of $7.00 to $10.00 per month, multiplied by the total sales and use tax rate in each county, and then averaged by the number of counties (17) in the State. Data on monthly estimates, combined sales and use tax rate, and optional local tax rates (where applicable) obtained from: Nevada Secretary of State. 2018. "Statewide Ballot Questions: To Appear on the November 6, 2018 General Election Ballot." Available: https://www.nvsos.gov/sos/home/showdocument?id=5824.

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