

# **Feminine Hygiene and Diapers Sales Tax Exemption Amendment Act of 2016**

**Before the**

**Committee on Finance and Revenue  
Council of the District of Columbia**

**The Honorable Jack Evans, Chairman**

**September 28, 2016, 10:00 A.M.  
John A. Wilson Building, Room 500**



**Testimony of Elissa F. Borges  
Assistant General Counsel  
Office of Tax and Revenue  
Office of the Chief Financial Officer**

**Jeffrey S. DeWitt  
Chief Financial Officer  
Government of the District of Columbia**

Good morning, Chairman Evans, and members of the Committee on Finance and Revenue. I am Elissa Borges, Assistant General Counsel, for the Office of Tax and Revenue of the District of Columbia. I am pleased to present testimony today on Bill 21-696, the “Feminine Hygiene and Diapers Sales Tax Exemption Amendment Act of 2016.”

As you are aware, the District expressly exempts certain types of sales from its gross sales tax. Those exemptions are enumerated in § 47-2005 of the D.C. Code. For our discussion today, it is important to note that the District does not currently exempt any personal hygiene products, disposable medical supplies or clothing. Rather, the only current exemptions that relate to products typically purchased by individual consumers are for the sale of (1) medicines, pharmaceuticals and drugs; and (2) certain types of durable medical equipment, devices or aids. Bill 21-696 would amend § 47-2005 to add two new exemptions for the sale of (1) feminine hygiene products and (2) diapers.

These amendments would bring the District in line with several other jurisdictions that exempt such products from sales tax. With regard to the sale of feminine hygiene products, Connecticut, Illinois, Maryland, Massachusetts, Minnesota, New Jersey, New York and Pennsylvania exempt sanitary napkins, tampons and/or other similar items used for feminine hygiene. Last month, however, the California legislature passed a bill exempting such products which

was vetoed by the governor. A bill was also introduced in the Virginia legislature earlier this year to exempt feminine hygiene products, but this proposal did not make it out of committee. None of these jurisdictions expressly included feminine hygiene *wipes* in the definition of feminine hygiene products for purposes of sales tax exemption.

With regard to diapers, at least nine other jurisdictions directly or indirectly exempt the sale of diapers from sales tax. In Minnesota, New Jersey, New York, Rhode Island and Vermont, both *adult* and *baby* diapers fall under each state's general exemption for clothing. In Massachusetts, both *adult* and *baby* diapers are covered under that state's exemption for certain health care items. In Maryland and North Dakota, *adult* diapers (but not *baby* diapers) fall under that state's general exemption for disposable or other medical supplies. Only Connecticut and Pennsylvania expressly exempt by statute disposable diapers and similar incontinence products. Virginia does not exempt adult or baby diapers.

From an administrative standpoint, the new exemptions proposed by Bill 21-696 can be handled relatively easily by the Office of Tax and Revenue. For the most part, all that would be required is to publicize the new exemptions and to work with retailers, their vendors and the general public to make sure that the sales tax is no longer charged on the exempt products. The challenge, however, is to be able to communicate and answer questions about the specific types of products that

are included in the definitions of feminine hygiene products and of diapers. To that end, there are some ambiguities in Bill 21-696 that should be clarified.

With respect to feminine hygiene products, Bill 21-696 defines that term as “sanitary napkins, sanitary towels, tampons, menstrual cups, sanitary pads, and feminine wipes.” The last term in that definition, “feminine wipes”, is ambiguous. Does it include only brands of personal hygiene wipes marketed exclusively to women for feminine hygiene purposes?<sup>1</sup> Or does it include all brands of personal hygiene wipes that may be used by women for feminine hygiene purposes?<sup>2</sup> As the bill is currently written, the Office of Tax and Revenue would interpret it as only applying to personal hygiene wipes marketed exclusively to women for feminine hygiene purposes.

With regard to diapers, Bill 21-696 defines diaper as “an absorbent garment that is washable or disposable that is worn by a person who cannot control bladder or bowel movements.” Again, the challenge is to determine exactly which specific types of diapers and similar type products would be covered by this exemption. First, the phrase “a person who cannot control bladder or bowel movements” includes both babies and adults. However, as previously discussed, there are

---

<sup>1</sup> These types of products are sold under brand names such as Summer’s Eve Cleansing Cloths®, Playtex Personal Wipes® and Always Clean Wipes to Go®.

<sup>2</sup> These types of products are sold under brand names such as Cottonelle Fresh Care Flushable Cleansing Cloths®.

several states in which their statutes have been interpreted only to exempt adult diapers. So that there is no confusion, the Office of Tax and Revenue recommends that Bill 21-696 expressly state if both baby and adult diapers are intended to be exempt or, conversely, only adult diapers or baby diapers are intended to be exempt. Second, there are absorbent incontinence products that are worn by persons but those products may not technically be a “garment”. These types of products are similar to sanitary napkins or pads and are worn by both men and women but are not feminine hygiene products.<sup>3</sup> These types of products would not be covered under the proposed exemption for diapers or feminine hygiene products as Bill 21-696 is currently written.

Thank you, Chairman Evans, for the opportunity to comment on this bill. I would be happy to answer any questions at this time.

---

<sup>3</sup> These products are sold under brand names such as Poise<sup>®</sup>, Depend<sup>®</sup> Incontinence Guards for Men and Depend<sup>®</sup> Incontinence Shields for Men.

## **APPENDIX A**

The Office of Tax and Revenue suggests amending Bill 21-696 as follows:

(39)(A) Sales of *adult [and baby]* diapers.

(B) For the purpose of this paragraph:

(i) Diaper' means an absorbent garment *or other similar incontinence product* that is washable or disposable that is worn by a person who cannot control bladder or bowel movements.”