

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Commerce and Tourism

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BILL: SB 252

INTRODUCER: Senators Book and Passidomo

SUBJECT: Tax Exemption for Personal Hygiene Products

DATE: February 16, 2017

REVISED: \_\_\_\_\_

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Little</u>	<u>McKay</u>	<u>CM</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>AFT</u>	_____
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 252 exempts the sale of diapers and baby wipes from state sales and use tax.

The Revenue Estimating Conference (REC) has not yet determined the fiscal impact of the bill. However, the REC reviewed similar language and estimated a reduction of General Revenue receipts by \$21.7 million in Fiscal Year 2017-2018, with a \$52.1 million recurring impact, and a reduction of local government revenue by \$5.6 million in Fiscal Year 2017-2018, with a \$13.3 million recurring impact.

The bill provides an effective date of January 1, 2018.

**II. Present Situation:**

**Florida Sales and Use Tax**

Florida levies a six percent state sales and use tax on the sale or rental of most tangible personal property, admissions, rentals of transient accommodations, rental of commercial real estate, and a limited number of services.<sup>1</sup> In addition to the six percent state sales tax, Florida law authorizes counties to levy a discretionary sales surtax.<sup>2</sup> Sales tax is added to the price of taxable goods or services and the tax is collected from the purchaser at the time of sale.

Chapter 212, F.S., contains statutory provisions that authorize the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or

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<sup>1</sup> Chapter 212, F.S.

<sup>2</sup> Sections 212.054 and 212.055, F.S.

uses under specified circumstances. There are currently more than 200 different exemptions, exclusions, deductions, and credits from sales and use tax.<sup>3</sup>

Medical products and supplies considered necessary to human health are among the items exempt from sales and use tax.<sup>4</sup> Such products and supplies include ostomy pouches, catheters, and mastectomy pads. Common household remedies used in the cure, mitigation, treatment, or prevention of illness or disease are also exempt from sales and use tax.<sup>5</sup> Alcohol wipes, bandages, and gauze are examples of common household remedies.<sup>6</sup> Certain products relating to infants are also exempt, including baby food, formulas, and teething lotion.<sup>7</sup>

Diapers and baby wipes are not currently exempt from sales and use tax in Florida.<sup>8</sup>

### *Other States*

Currently, eleven states do not subject any diapers to state sales tax.<sup>9</sup> Massachusetts,<sup>10</sup> Minnesota,<sup>11</sup> Pennsylvania,<sup>12</sup> New York,<sup>13</sup> Rhode Island,<sup>14</sup> and Vermont<sup>15</sup> provide sales tax exemptions for diapers or incontinence products.

Connecticut<sup>16</sup> and Maryland<sup>17</sup> provide a tax exemption for disposable pads used for incontinency, but not baby diapers.

### **III. Effect of Proposed Changes:**

The bill creates a sales tax exemption for the sale of diapers and baby wipes.

The bill defines “diaper” as “a product used to absorb or contain body waste, including, but not limited to, baby diapers and adult diapers and pads designed and used for incontinence.”

The bill defines “baby wipe” as “a moistened, disposable, often antiseptic tissue used chiefly for cleansing the skin, especially of babies and children.”

The bill provides an effective date of January 1, 2018.

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<sup>3</sup> Florida Revenue Estimating Conference, *Florida Tax Handbook*, (2016), available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2016.pdf> (last visited Feb. 17, 2017).

<sup>4</sup> Section 212.08(2)(a), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> The Department of Business and Professional Regulation is responsible for prescribing and approving a list of common household remedies, which is then certified by the Department of Revenue. Section 212.08(2)(a), F.S.

<sup>7</sup> Rule 12A-1.097, F.A.C.

<sup>8</sup> However, diapers for children and adults, diaper bags, and diaper inserts have been temporarily exempt from sales tax during sales tax holidays. *See* Rule 12AER16-01, F.A.C.

<sup>9</sup> Alaska, Delaware, Montana, New Hampshire, and Oregon do not impose a state sales tax.

<sup>10</sup> Mass. Gen. Laws ch. 64H, § 6.

<sup>11</sup> Minn. Stat. § 297A.67.9.

<sup>12</sup> 72 Pa. Cons. Stat. § 7204.

<sup>13</sup> N.Y. Tax Law §1115.

<sup>14</sup> Code. R.I. S.U. 07-13.

<sup>15</sup> Minn. Stat. § 297A.67.9.

<sup>16</sup> Conn. Gen. Stat. §12-412.

<sup>17</sup> Md. Regs. Code §03.06.01.09.

#### IV. Constitutional Issues:

##### A. Municipality/County Mandates Restrictions:

Article VII, section 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds or that limit their ability to raise revenue or receive state tax revenue.

Subsection (b) of Article VII, section 18 of the Florida Constitution provides that, except upon approval by each house of the Legislature by two-thirds vote of its membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate. These requirements do not apply to laws that have an insignificant fiscal impact<sup>18</sup> on local governments, which for Fiscal Year 2017-2018, is approximately \$2 million.<sup>19</sup>

The REC has not yet determined the fiscal impact of the bill. However, the REC reviewed similar language and estimated a reduction of local government revenue by \$5.6 million in Fiscal Year 2017-2018, with a \$13.3 million recurring impact.

The bill may require a two-thirds vote of approval by each house of the Legislature.

##### B. Public Records/Open Meetings Issues:

None.

##### C. Trust Funds Restrictions:

None.

#### V. Fiscal Impact Statement:

##### A. Tax/Fee Issues:

The REC has not yet determined the fiscal impact of the bill. However, the REC reviewed similar language and estimated a reduction of General Revenue receipts by \$21.7 million in Fiscal Year 2017-2018, with a \$52.1 million recurring impact and a reduction of local government revenue by \$5.6 million in Fiscal Year 2017-2018, with a \$13.3 million recurring impact.

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<sup>18</sup> An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Feb. 17, 2017).

<sup>19</sup> For purposes of the legislative application of Art VII, Section 18, the term “insignificant” means an amount not greater than the average statewide population for the applicable fiscal year times ten cents. See FLA. CONST. art. VII, s. 18(d).

**B. Private Sector Impact:**

Indeterminate, but positive. Individuals will see a reduction in the cost of baby wipes and diapers. Businesses such as daycare providers, diaper service providers, and hospitals would also see a reduction in the cost of baby wipes and diapers.

**C. Government Sector Impact:**

The Department of Revenue will likely incur a cost associated with notifying businesses of the sales tax exemption; that cost is indeterminate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The definition of “diaper” includes the use of the word being defined.

**VIII. Statutes Affected:**

This bill substantially amends section 212.08 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.