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Citing Gender Bias, State Lawmakers Move To Eliminate 'Tampon Tax'

March 06, 2016

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There's a sales tax exemption for treating erectile dysfunction in Wisconsin.

The same can't be said for feminine hygiene products.

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Sales tax isn't applied to Viagra in Wisconsin, but it is applied to tampons and pads. Birth control, medicated condoms and yeast infection medication are exempt because they are considered drugs.

One lawmaker in that state says the taboo around menstruation that prevents women from openly talking about their periods may also explain why women are paying extra to manage those periods.

"Women's health has been misunderstood and neglected throughout history," Rep. Melissa Sargent, a Democrat from Madison, told NPR. "Some women are ashamed of their period," she said, adding that she feels the reluctance to talk about it has prevented the issue from gaining more momentum in state legislatures.

That's why she's sponsored a bill that calls for lawmakers to exempt feminine hygiene products from the state sales tax.

Sargent is part of a nationwide movement to remove taxes on tampons and pads that advocates feel penalize women for their biology.

The debate isn't new, but exemptions like the one Sargent is pushing for are seeing a new wave of support. Five states have already dropped the tax, including Minnesota in [1981](#), Pennsylvania in 1991 and New Jersey in [2005](#).

But some lawmakers say the taxes aren't a product of simple discrimination, and that presenting the issue as an instance of sexism may ignore the nuances

and inconsistencies of state tax codes.

In order for all women to stop paying an tax on feminine hygiene products, all 50 states would have to eliminate the sales tax on tampons and pads.

Is the 'tampon tax' fair?

Five new bills have been introduced this year, mostly by female lawmakers, that are now at various stages of the legislative process.

If Wisconsin's bill passes, the state would become one of 11 that don't tax feminine hygiene products. Five states exempt feminine hygiene products from sales taxes, and five others have no statewide sales taxes.

That leaves 40 states and the [District of Columbia](#) that still do tax tampons and pads.

Alongside Wisconsin, lawmakers in Chicago, Utah, Ohio, California, New York, Michigan and [Connecticut](#) have proposed similar legislation to eliminate the tax that they say unfairly treats periods as a "disease" or "illness," or considers the products to be "luxury" items. The bill in Utah has been rejected, while New York and Connecticut have resurrected bills from the previous session. In Michigan, a bill is in the state's tax policy committee, but no hearing date has been scheduled.

So, what is sales tax? There's the simple definition: a tax that's assessed by a government when a good or service is purchased. But even that doesn't quite work when, unlike other countries, the U.S. leaves it up to the states to decide how and what's going to be taxed — there's no unified way of taxing something.

Some states don't have a sales tax, others tax at both the state and local level. And it just so happens that the majority of states tax tampons and pads.

Even in cases where there's a state and local sales tax, in all but two states the tax base is the same, meaning they're taxing the same goods and services the

same way, there just may be a split of where the revenue is going — maybe some of it's going to the locality instead of the state.

Of the 40 states (and the District of Columbia) that do tax menstrual products, the tax ranges from 2.9 to 7.5 percent, according to the Tax Foundation, a right-leaning tax policy think tank. Plus, some local governments have their own additional taxes. These are applied to each purchase of a good or service that's not tax exempt, said [Nicole Kaeding](#), an economist with the Center for State Tax Policy at the Tax Foundation.

For example, Chicago taxes tampons and pads at the combined state-local rate of 10.25 percent, the highest tax rate of any major U.S. city, after increasing by 1 percentage point in January.

Sales tax rates are applied to all goods and services until lawmakers agree it's not, Kaeding said.

To be clear, no jurisdiction has a tampon-specific tax, as it might an alcohol or tobacco tax, and there is no additional tax imposed on these products. In places where feminine hygiene products are taxed, they're taxed under the general sales tax, she said.

"It's not that we are proactively taxing tampons," says Kaeding. "It's that we tax everything. And tampons are just something that we tax."

By virtue of this, states typically consider tampons and pads as "feminine hygiene" products, and aren't exempt from sales tax because they're not "intended for use, internally or externally, in the diagnosis, cure, mitigation, treatment, or prevention of illnesses or diseases in human beings," as [New York's](#) tax code states. Tax codes in other states have similar definitions for medical supplies and drugs.

Tampons are considered "medical devices" by the federal Food and Drug Administration, which made the classification after hundreds of cases of Toxic Shock Syndrome — a bacterial infection typically caused by superabsorbent tampons — were reported in the 1970s.

But to Rep. Greta Johnson, a Democratic state legislator in Ohio, that definition doesn't work. To her, a period isn't an "illness or a disease."

"These are medically necessary products," Johnson said. Ohio's tax code disagrees, although the medicine prescribed to treat yeast and urinary tract infections (as well as breast implants, contraceptives, and birth control) is exempt from the state sales tax.

It's not that the taxes are malicious, says menstrual health advocate and writer Jennifer Weiss-Wolf – rather, she thinks many lawmakers simply haven't understood the financial implications of this tax because they — being men — have never had to purchase tampons or pads.

Not that much money?

Support for the Ohio bill has been "lukewarm at best," Johnson said, because most state lawmakers don't think it's a huge tax for women to pay.

Although the revenue Ohio gets from the sales tax is minimal, she said, the amount of money a woman spends on feminine hygiene products annually and in their lifetime is a costly variable.

The "tampon tax" can add an upwards of 66 cents per box, but over the course of a woman's lifetime, that adds up. And considering that in many states more than half the population spends decades getting periods (and therefore paying these taxes), a large chunk of the U.S. population has paid millions for this extra expense.

Recent estimates by Euromonitor International, a market research firm, suggest that an American woman between the ages of 12 and 54 spent \$17.60 on average on tampons and pads last year. About 70 percent of menstruating American women use tampons. Tampons in the U.S. cost around \$7 for a box of 36.

The average woman menstruates from ages [12-50](#). That means women are estimated to have roughly [450](#) periods during their lifetime.

On paper that looks like it would be a massive revenue-generator, but proponents of eliminating the tax say it's modest – and, therefore, that the tax should be easy to eliminate.

For instance, if California eliminates its [7.5 percent sales tax](#) on feminine hygiene products it would be a \$20 million loss to the state's general fund. Compare that to California Gov. Jerry Brown's recently [proposed](#) 2016-2017 more than \$170 billion state budget.

"The amount of sales tax on these products, compared to the size of most government budgets is a drop in the bucket," says Weiss-Wolf.

But it's not that easy, says the Tax Foundation's Kaeding. She says that arguments made by "tampon tax" opponents often ignore the reality of how state sales tax laws work.

The more product-specific sales tax exemptions, the higher the tax rates on other products will be to make up the lost revenue, she said.

That in turn increases the incentive for other interest groups to lobby for more exemptions or find ways to evade the sales tax by reclassifying their own products, she added.

That matter of classification makes things even harder. When politicians pass legislation that exempts a good from sales tax they have to interpret the category that it's under. That's where things get "really, really complicated really, really quickly," Kaeding says.

[Minnesota](#), for example, exempts feminine hygiene products, and its tax code goes on to specify items that it feels fit in that category, which includes tampons, sanitary napkins and panty liners. But it excludes douches, wipes and washes.

The logic behind fighting the "tampon tax" for some advocates is that people shouldn't be taxed for *any* items that are a "necessity." It's less an argument of

patriarchal privilege and more a refusal to see tampons and pads as being comparable to food in terms of necessity.

Opponents argue that hygienic items used exclusively by one gender shouldn't be exempt because it would require the re-configuring of state tax codes, even in some states that exempt tampons, such as Massachusetts, which doesn't exempt pregnancy tests.

The unsung global history of the 'tampon tax'

While some politicians cite gender equality as the reason to not classify menstruation as an illness or disease, it's a multibillion-dollar global industry, headed in the U.S. by the likes of Kimberly-Clark and Procter & Gamble, makers of Kotex and Tampax, respectively. (Neither Kimberly-Clark nor Procter & Gamble has publicly taken a position on the "tampon tax.")

However, Weiss-Wolf says this is a "citizens' movement" without the influence of corporate interests or national organizations.

And this movement is gaining steam. In January, President Obama said in a [YouTube](#) interview that there's no reason this tax exists other than men made the law when those taxes were passed.

Similar sentiments have been expressed through online petitions worldwide, with a unified goal of globally redefining tampons and pads as essential items. Women and girls in almost every country have to pay their governments extra for a product that some feel they have no choice but to buy.

There has been movement to eliminate the tax in [Australia](#) and the [United Kingdom](#), who charge an extra 10 and 5 percent, respectively, for a box of tampons or pads. And after years of complaints, Canada lifted its tax last summer.

Even the United Nations has gotten into the ring. The organization in 2013 [declared](#) menstrual hygiene a public health and human rights issue.

There was a time, not so long ago, when a group of women in Chicago won a class action lawsuit challenging the city's sales tax on feminine hygiene products.

In 1989, Anne Burke and fellow Chicago attorney Sidney Karasik alleged that the city illegally taxed these products purchased from various retailers.

Burke, now an Illinois Supreme Court Justice, and Karasik believed the products were wrongly taxed and that refunds from the state should be given to people who bought them.

Sales tax on feminine hygiene products had been collected in Chicago for an unspecified time after the state's department of revenue exempted the items on July 1, 1985.

The Illinois Supreme Court ruled in 1990 that tampons and pads met the state's definition of "medical appliances" and were exempt from a sales tax imposed by the city of Chicago, according to a [summary](#) of the case in the Loyola Consumer Law Review.

This was a brief win for advocates. The state subsequently narrowed the exemption and feminine hygiene products were, once again, taxed at the full rate.

More than two decades later, the debate over whether or not to exempt tampons and pads from sales tax continues.

Burke's husband, Alderman Edward Burke, proposed an ordinance in February to eliminate Chicago's sales tax on the products. He and Alderman Leslie Hairston want to reclassify these products from "grooming and hygiene" to "medical appliances" in the municipal code.

Eliminating the tax is a short-term monetary loss that can lead to the long-term success of girls, said California Democratic Assemblywoman Cristina Garcia. She says girls have told her they've missed school because they couldn't afford feminine hygiene products — one even used socks instead.

She co-introduced a [bill](#) in in her state in January that would eradicate the tax on feminine hygiene products at both the state and local level by reclassifying them as medical necessities that qualify for insurance coverage.

"It's about equity and access," she said. "There's no other tax that's this gender bias[ed]."

The National Coalition For Men, a nonprofit organization, offered [written](#) support of the bill in January, on condition that the bill be amended so that men are also not taxed based on their gender. The letter suggested that adding jockstraps and condoms to the list of sales-tax free items would help achieve gender tax equality.

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