Period Law / South Carolina Tampon Tax / Talking Points
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The Tampon Tax Unfairly Burdens Poor Women.

- A sales tax on menstrual products (aka the tampon tax) unfairly burdens the state's lowest income group,[1] women and children. 14.70% of women in South Carolina live in poverty while the national figure is 11.70%.[2] Low-income citizens may be forced to choose between purchasing menstrual products and other necessities.[3]
- The American Medical Association deems menstrual products "essential for women's health" and has called the tampon tax a "regressive" penalty.[4] After a comprehensive study, the American College of Obstetrics and Gynecology concluded that "research supports the repeal of this tax in consideration of its financial, social, and political implications." [5] The average usage is more than 16,000 tampons or pads in a lifetime.[6]
- South Carolina exempts many other items from sales tax, including Viagra and wrapping paper. [7]
- A study conducted in New Jersey[8] showed that removing the tampon tax provides a disproportionate economic benefit to poor women who, unlike wealthier women, cannot afford to buy period products more cheaply in bulk.

Menstrual Products are Medical Necessities.

- The U.S. Food and Drug Administration (FDA) classifies menstrual tampons as Class II medical devices and pads as Class I medical devices.[9] The 2020 CARES Act designated menstrual products medical necessities for the purpose of HSA and FSA accounts.[10]

The Cost of Removing the Tax Is Negligible.

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[1] https://talkpoverty.org/state-year-report/south-Carolina-2020-report/

[2] https://nwlc.org/in-the-states/state-by-state/

[3] Anne Sebert Kuhlmann, Ph.D., MPH; Eleanor Peters Bergquist, MA, MSPH; Djenie Danjoint, MPH; Lewis L. Wall, MD, DPhil, "Unmet Menstrual Hygiene Needs Among Low-Income Women," Obstetrics & Gynecology, v. 133, Issue 2, (February 2019), pp. 238-244.

[4] https://www.ama-assn.org/press-center/press-releases/ama-adopts-new-policies-final-day-annual-meeting

[5] Singh, Bhuchitra MD, MS, MPH; Zhang, Jiahui BA; Segars, James MD, Period Poverty and the Menstrual Product Tax in the United States, Obstetrics & Gynecology: May 2020, Volume 135, Issue p68S.

[6] Findings for Robin Danielson Menstrual Product and Intimate Care Product Safety Act of 2022, H.R.8724, 117th Congress (2021-2022).

[7] https://sdlegislature.gov/Statutes/Codified_Laws/2038870

[8] Christopher A. Cotropia & Kyle Rozema, *Who Benefits from Repealing Tampon Taxes? Empirical Evidence from New Jersey*, 15 J. Empirical Legal Stud. 620 (2018).

[9] https://www.fda.gov/

[10] Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 4402, 134 Stat. 281 (2020) ("Inclusion of Certain Over-the-Counter Medical Products as Qualified Medical Expenses.").

- South Carolina collects approximately $4.5 million from the sales tax on menstrual products.[11] Record-high tax revenues over the last year have yielded a surplus of $2 billion.[12] The tampon tax amounts to less than .01% of South Carolina's total revenue.[13]

Removing The Tax Is a Bipartisan Issue.

- Eliminating the tampon tax has garnered bipartisan support across the country, with members of both political parties introducing legislation and signing bills into law to eliminate it.[14]
- Earlier this year, Governor Greg Abbott called for a tampon tax exemption in Texas, recognizing that "[t]hese are essential products for women's health and quality of life."[15]
- When exempting menstrual products in California in 2019, Governor Gavin Newsom said "We can afford to do that and it's the right thing to do."[16]

The Tampon Tax Is Unconstitutional.

- The sales tax on menstrual products treats individuals differently based solely on their sex.
- Constitutional law scholars from across the country, including Erwin Chemerinsky, Dean of UC Berkeley Law School, have argued that the tampon tax amounts to sex-based discrimination in violation of equal protection at both the state and federal level.[17]
- The tampon tax runs afoul of the South Carolina Constitution's in that it does not "guarantee equal protection of the laws to all persons." [18]
- Period Law has successfully sued on this issue. We coordinated a class action lawsuit in New York in 2016 on behalf of women who paid the tax, prompting the state to end its tax within months.[19] Four states – Connecticut, Florida, Illinois, and Nevada—followed suit. In 2020, we sued the state of Michigan with the same result. Forty states taxed menstrual products when we began and 18 have now ended the practice, either voluntarily or under pressure of a lawsuit.

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[11] Period Law estimates available at www.periodlaw.org/resources

[12] https://www.southcarolinapublicradio.org/sc-news/2022-06-17/sc-general-assembly-approves-record-setting-budget

[13] www.periodlaw.org/resources

[14] Ohio Governor Mike DeWine (R) signed into law a bipartisan bill that passed the state legislature nearly unanimously. See also Jennifer Weiss-Wolf and Steve Andersson, "Republican or Democrat — We Can All Agree on Axing the Tampon Tax," Newsweek (April 15, 2019) https://www.newsweek.com/tampon-tax-republican-democrat-opinion-1391763

[15] Texas Gov. Greg Abbott Joins Other Key Republicans in Supporting Repealing the "Tampon Tax", TEXAS TRIBUNE (August 18, 2022).

[16] No More Sales Taxes on Diapers and Tampons Under Gov. Gavin Newsom's Proposed Budget, LA TIMES (May 7, 2019).

[17] Erwin Chemerinsky and Jennifer Weiss-Wolf, "Taxing Tampons Isn't Just Unfair, it's Unconstitutional," Los Angeles Times (July 11, 2019); https://www.latimes.com/opinion/op-ed/la-oe-chemerinsky-weiss-wolf-tampons-tax-20190711-story.html

[18] S.D. Const. art. VI, § 18. *State v. Krahwinkel*, 656 N.W.2d 451, 460 (S.D. 2002).

[19] See Complaint, Seibert v. New York State Department of Taxation and Finance (N.Y. Sup. Ct. 2016), http://www.ecbalaw.com/wp-content/uploads/2016/03/Tampon-Tax.-Revised-Class-Action-Summons-and-Complaint-3-3-16-00243311x9CCC2.pdf