

Period Law / Texas Tampon Tax / March 2023

Where We Stand in Texas.

- HB300 had its first hearing on March 6, 2023 in the House Committee on Ways and Means. In addition to exempting menstrual products, the bill includes diapers, baby bottles, breast feeding devices, maternity clothing, and other "family care products." The bill sponsor, Representative Donna Howard, has been bringing versions of this bill since 2017.
- The Speaker stressed that this bill was a priority. He is expected to bring HB300 to a floor vote in the coming weeks.

Contact your local representatives and/or members of the House Ways and Means Committee to voice your support for HB300. See below for the reasons why.

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, women and children. 14.20% of women in Texas live in poverty while the national figure is 11.70%.ⁱⁱ Low-income citizens may be forced to choose between purchasing menstrual products and other necessities.
- The American Medical Association deems menstrual products "essential for women's health" and has called the tampon tax a "regressive" penalty. 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."^v The average usage is more than 16,000 tampons or pads in a lifetime.^{vi}
- Texas exempts many other items from sales tax, including cowboy boots and Viagra.
- A study conducted in New Jersey 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. The 2020 CARES Act enables the IRS to categorize menstrual products as medical necessities for the purpose of HSA and FSA accounts.
- Dr. John Irwin, the former chief of surgical service at the Women's Hospital of Texas in Houston's Texas Medical Center, is an obstetrician and gynecologist with over 40 years of experience. He has reported that, medically speaking, menstruation creates what is in effect an open wound in the uterine cavity. Menstrual products wick away and absorb the resulting drainage and thereby protect the healing tissue from bacterial contamination. Menstrual products are medical necessities. Texas already exempts band aids and incontinence products.

The Cost of Removing the Tax Is Negligible.

- Texas unconstitutionally collects approximately \$28 million from the sales tax on menstrual products. Record-high tax revenues over the last year have given Texas an astounding extra \$27 billion to spend in the 2023 legislative session. The tampon tax amounts to less than .01% of Texas's total revenue.

The Governor and Comptroller Agree.

- 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.” It’s time the governor delivered on his promise.
- Texas Comptroller Glenn Hegar also supports eliminating the tax, saying: “Taxing these products is archaic... Our economy and state revenues are strong, and Texans are grappling with inflation and challenging price increases on everyday goods. These circumstances provide a tremendous opportunity to rectify this issue and exempt these products that represent a critical need for Texas women.”

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.
- 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.”

Period Law and Baker Botts Are Prepared to Fight in Court.

- 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. 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.
- The preeminent Texas law firm, Baker Botts, is currently pursuing a sales tax refund claim on behalf of Sahar Punjwani and the Texas Menstrual Equity Coalition in an effort to end the tampon tax in Texas. A member of that legal team has promised: **“Baker Botts L.L.P. is fully committed to this matter and will see it through to every stage of the process, whether that be at the administrative level or ultimately at the Texas Supreme Court.”**
- The denial issued by the Comptroller’s office in response to the refund claim failed to properly apply Rule 3.284, under Title 34, of the Texas Administrative Code. This rule allows the Comptroller’s to include “wound care dressings” in the definition of statutorily exempt drugs and medicines. If Rule 3.284 was properly applied, “Feminine Hygiene Products” would be exempt from sales tax in Texas. Baker Botts has officially notified the Comptroller of their position in this matter and requested a hearing.

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.
- The tampon tax runs afoul of Article I, Section 3a of the Texas Constitution which mandates that “[e]quality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin.” Texas jurisprudence recognizes gender as a suspect classification. The Texas constitution provides broader protection than federal law in matters of gender discrimination. The Texas Equal Rights Amendment "is more extensive and provides more specific protection than both the United States and Texas due process and equal protection guarantees."