

Period Law / Georgia Tampon Tax / Talking Points January 2024

What is the Tampon Tax?

- Georgia levies a 4% state sales tax on personal property, which includes tampons, pads, liners, and menstrual cups.
- As one of 24 Streamlined Sales Tax (SST) member states, Georgia has adopted a uniform definition of these products and, until recently, referred to them as “feminine hygiene products.”
 - At Period Law’s request,¹ the SST changed the name of this tax category to “menstrual discharge collection devices”—to provide clarity and end the use of a deceptive, euphemistic term.
 - Period Law and allied organizations and retailers support using “menstrual products” or “period products” as the conventional term for these items.

How Does Repealing the Tampon Tax Address Period Poverty?

- Period poverty refers to the reality that millions of Americans cannot afford menstrual products. As a result, they risk health complications by relying on unsanitary items (e.g., socks²); the shame of bleeding through their clothes; and are denied fundamental rights and privileges, including attending school, seeking employment, and engaging in civil society with dignity.
- As a national leader in addressing period poverty by allocating funding for free period products in public schools, Georgia has an opportunity to continue trendsetting for the rest of the country. Repealing the Tampon Tax is a matter of uniformity and fairness in the sales tax code. It also has real monetary value for low-income menstruators and their families.
 - A study conducted in New Jersey³ 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.
 - A sales tax on menstrual products unfairly burdens the state’s lowest income group,⁴ women and children. 13.70% of women in Georgia live in poverty; the national figure is 11.70%.⁵
 - Low-income citizens may be forced to choose between purchasing menstrual products and other necessities.⁶

¹ <https://www.periodlaw.org/wp-content/uploads/2024/01/Streamlined-Board-OKs-Tax-Changes-for-Menstrual-Products.pdf>

² https://allianceforperiodsupplies.org/wp-content/uploads/2022/05/U_by_Kotex_Period_Poverty_-_PPAW_Data_Set.pdf

³ Christopher A. Cotropia & Kyle Rozema, *Who Benefits from Repealing Tampon Taxes? Empirical Evidence from New Jersey*, 15 J. Empirical Legal Stud. 620 (2018).

⁴ <https://talkpoverty.org/state-year-report/Georgia-2020-report/>

⁵ <https://nwlc.org/in-the-states/state-by-state/>

⁶ 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.

Georgia and the Federal Government Deem Menstrual Products Medical Necessities.

- The 2020 CARES Act designated menstrual products medical necessities for the purpose of HSA and FSA accounts.⁷
- The U.S. Food and Drug Administration (FDA) classifies menstrual tampons as Class II medical devices and pads as Class I medical devices.⁸
- The Georgia Emergency Management and Homeland Security Agency and the Georgia Department of Corrections provide menstrual products to women who are receiving aid from the state.⁹
- The American Medical Association deems menstrual products “essential for women’s health” and has called the tampon tax a “regressive” penalty.¹⁰ 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.”¹¹ The average usage is more than 16,000 tampons or pads in a lifetime.¹²

Uniformity in Georgia’s Tax Code

- Georgia currently exempts many medical devices, such as hearing aids, insulin syringes, and blood glucose test strips, from sales tax. It would not fundamentally change Georgia’s taxability matrix to exempt another medical device.
- **Repealing the tax on menstrual products does not set a precedent for other tax exemptions or carve-outs. This category is singular: menstrual products are medical products that have been improperly taxed.**
- There is no comparable category of medically necessary products used only by men where the same arguments can be made.
- Necessities like food (including soda and candy) and prescription drugs (including Viagra) are exempt in Georgia.¹³ Menstrual products are not discretionary purchases, they are unavoidable necessities.

Compelling Market Factors

- According to NielsenIQ, between July 2021 and July 2022, **the average price of tampons rose 10.8%; pads 8.9%**. The average cost of menstrual products was \$20 per cycle as of January 2021, according to the National Organization for Women, before inflation hit decade-highs. That adds up to an estimated \$200 to \$300 per year and thousands of dollars over the course of a lifetime.

⁷ 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.”).

⁸ <https://www.fda.gov/>

⁹ <https://www.ajc.com/news/state--regional-govt--politics/georgia-lawmakers-push-repeal-tampon-tax/6HSTwS1EohrvGTiiMvUeKP/>

¹⁰ <https://www.ama-assn.org/press-center/press-releases/ama-adopts-new-policies-final-day-annual-meeting>

¹¹ 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.

¹² Findings for Robin Danielson Menstrual Product and Intimate Care Product Safety Act of 2022, H.R.8724, 117th Congress (2021-2022)

¹³ <https://www.salestaxhandbook.com/georgia>

- Meanwhile, the cost of repealing the Tampon Tax is negligible. The state of Georgia collects approximately \$6.1 million from the sales tax on menstrual products.¹⁴ Record-high revenues yielded a record \$6.6 billion revenue surplus in 2023.¹⁵ The tampon tax amounts to less than .01% of Georgia’s total revenue.¹⁶

Texas Eliminated the Tampon Tax This Year.

- In 2022, Governor Greg Abbott (R) called for a Tampon Tax exemption in Texas, recognizing that “[t]hese are essential products for women’s health and quality of life.”¹⁷
- Texas Comptroller Glenn Hegar agreed: “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.”¹⁸
- **This past June, Texas passed a menstrual product exemption.**¹⁹ SB 379 highlighted Texas’s priority of providing economic relief to families. The bill exempts menstrual products along with diapers, baby bottles, breastfeeding devices, maternity clothing, and other “family care products.”
- The bill was sponsored by Senator Joan Huffman (R), who acknowledged that these products are “not optional” and “essential to women’s health and well-being.”
- Up until September 1, 2023, when the law went into effect, Texas collected almost \$30 million annually—far more than any other state—on the sale of period products.

The Tampon Tax Is Unconstitutional.

- A 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.²⁰
- Period Law has successfully sued on this issue. It 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.²¹ Four states – Connecticut, Florida, Illinois, and Nevada—followed suit. In 2020, Period Law sued the state of Michigan with the same result. Forty states taxed menstrual products when Period Law began its national legal campaign and 19 have since ended the practice, either voluntarily or under pressure of a lawsuit.

¹⁴ Period Law estimates available at www.periodlaw.org/resources

¹⁵ <https://www.usnews.com/news/best-states/georgia/articles/2022-09-23/huge-surplus-leaves-georgia-with-6-6b-in-cash-to-spend>

¹⁶ www.periodlaw.org/resources

¹⁷ Texas Gov. Greg Abbott Joins Other Key Republicans in Supporting Repealing the “Tampon Tax”, TEXAS TRIBUNE (August 18, 2022).

¹⁸ <https://comptroller.texas.gov/about/media-center/news/20220818-texas-comptroller-glenn-hegar-state-sen-joan-huffman-support-repeal-of-sales-tax-on-feminine-hygiene-products-1660679141544>

¹⁹ SB 379: <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=88R&Bill=SB00379#vote106>

²⁰ 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>

²¹ 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>