

**DEPARTMENT OF TAXATION
2022 Fiscal Impact Statement**

1. **Patron** Joseph P. McNamara
3. **Committee** Senate Finance and Appropriations
4. **Title** Retail Sales and Use Tax; Exemption for Food and Essential Personal Hygiene Products

2. **Bill Number** HB 90
House of Origin:
 Introduced
 Substitute
 Engrossed
- Second House:**
 In Committee
 X **Substitute**
 Enrolled

5. Summary/Purpose:

This bill would, beginning January 1, 2023, provide an exemption from the state Retail Sales and Use Tax (“RSUT”) for food purchased for human consumption and essential personal hygiene products. Such sales would continue to be subject to the one percent local option sales tax. The bill would also provide, beginning February 1, 2023, an allocation of state revenues to fund the distribution to localities for educational funding that would have otherwise been distributed to them absent the exemption created by the bill.

Under current law, both food purchased for human consumption and essential personal hygiene products are taxed at the reduced rate of 2.5 percent. The rate of tax levied on these items is comprised of a 1.5 percent state sales and use tax and the one percent local option tax. Revenue equal to 1 percent of the state 1.5 percent rate is currently allocated to localities to fund education. The other one-half percent of the state sales tax rate on these items is allocated to the Commonwealth Transportation Fund (“CTF”).

This bill would become effective January 1, 2023.

6. **Budget amendment necessary:** Yes.
Page 1: Revenue Estimates
Item 137, State Education Assistance Programs
7. **Fiscal Impact Estimates are:** Preliminary. (See Line 8.)
8. **Fiscal implications:**

Administrative Cost

The Department of Taxation (“the Department”) considers implementation of this bill to be routine and does not require additional funding. This bill would have no impact on local administrative costs.

Revenue Impact

The table below shows the estimated impact that this bill would have on revenues before factoring in amounts included in the introduced budget and before the provision of the bill that would allocate additional state revenues to localities for educational funding.

Exempt Food and Personal Hygiene Products from RSUT (in Millions)

Fund	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
GF-Restricted K-12	-\$107.3	-\$265.1	-\$271.7	-\$273.3	-\$274.7	-\$275.8
CTF	-\$54.2	-\$133.9	-\$137.2	-\$138.1	-\$138.7	-\$139.3
Total	-\$161.6	-\$399.0	-\$408.9	-\$411.4	-\$413.5	-\$415.1

The introduced budget assumes the elimination of the General Fund portion of the tax on food for human consumption, effective January 1, 2023. In addition, the introduced budget makes a negative \$900,000 General Fund revenue adjustment to account for a partial exemption for essential personal hygiene products. The introduced budget also includes funding to local school divisions as hold harmless payments in support of the Standards of Quality in response to elimination of the tax on sales of food for human consumption. The table below shows the net impact for Fiscal Years 2023 and 2024 after taking into account these budget adjustments.

Net of Budget Adjustments (in Millions)

Fund	FY 2023	FY 2024
GF-Restricted K-12	-\$0.2	-\$1.9
CTF	-\$54.2	-\$133.9
Total	-\$54.4	-\$135.8

In order to authorize the transfer of state sales and use tax revenues to localities for educational funding that would have otherwise been distributed to them absent the exemption created by this bill, an amendment to Item 137(C)(5)(g) of House Bill 30 would be necessary. Such transfer would restore the loss in educational funds to localities and would reduce General Fund revenues by a corresponding amount, as shown in the table below.

Impact of Increase in Local Education Distribution (in Millions)

Fund	FY 2023	FY 2024
GF Unrestricted	-\$107.3	-\$265.1
GF Restricted, K-12	\$107.3	\$265.1

9. Specific agency or political subdivisions affected:

Department of Taxation
All localities

10. Technical amendment necessary: No.

11. Other comments:

Current Law

Food purchased for human consumption and essential personal hygiene products are subject to a reduced 1.5 percent state sales tax rate and 1 percent local option sales tax rate for a total rate of 2.5 percent. These items are not subject to the regional sales tax levied in transportation districts or the additional local sales tax levied in some localities to pay for school construction.

Revenues equivalent to 1 percent of the 1.5 percent state sales tax levied on these items is currently distributed to localities in proportion to their school age population to fund education. Revenues equal to the other one-half percent of state sales tax is currently allocated to the Commonwealth Transportation Fund (CTF).

“Food purchased for human consumption” has the same meaning as “food” defined in the Food Stamp Act of 1977, as amended, and federal regulations adopted pursuant to that Act, except it does not include seeds and plants which produce food for human consumption. “Food purchased for human consumption” does not include food sold by any retail establishment where the gross receipts derived from the sale of food prepared by such retail establishment for immediate consumption on or off the premises of the retail establishment constitutes more than 80 percent of the total gross receipts of that retail establishment, including but not limited to motor fuel purchases, regardless of whether such prepared food is consumed on the premises of that retail establishment.

“Essential personal hygiene products” means (i) nondurable incontinence products such as diapers, disposable undergarments, pads, and bed sheets and (ii) menstrual cups and pads, pantyliners, sanitary napkins, tampons, and other products used to absorb or contain menstrual flow.

As of January 2021, Virginia is one of thirteen states that imposes sales tax on groceries, as sales tax is not levied on groceries in 37 states or the District of Columbia. In addition, 13 states and the District of Columbia specifically exempt at least some type of personal hygiene products from sales tax.

Proposal

This bill would, beginning January 1, 2023, provide an exemption from the state 1.5 percent RSUT for food purchased for human consumption and essential personal hygiene products. The bill would also provide, beginning February 1, 2023, an allocation of state revenues to fund the distribution to localities for educational funding that would have otherwise been distributed to them absent the exemption created by the bill.

This bill would become effective January 1, 2023.

Similar Legislation

Senate Bill 451 would provide an exemption from the state and local sales and use tax for food purchased for human consumption and essential personal hygiene products. The bill would also require the distribution of a supplemental school payment to localities beginning in Fiscal Year 2023 totaling revenues equal to a 0.182 percent sales and use tax. The supplemental school payment would be based on each locality's estimated average share of monthly distributions of revenue from the local option 1 percent sales and use tax attributable to food for human consumption and essential personal hygiene products. Beginning on July 1, 2024, the distribution to localities would be based on each locality's pro rata share of all local option revenues. Beginning October 1, 2025, the Department would be required to make an annual review of the distributions and make any necessary adjustments. The bill would also increase the current distribution of sales and use tax revenues to localities for local education based on school age population from a 1 percent sales and use tax to a 1.182 percent sales and use tax.

cc : Secretary of Finance

Date: 3/4/2022 VB
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