

## Feminine Hygiene Products Whitepaper - March 10, 2017

**Disclaimer:** *This paper only addresses the issue of how the Agreement should be amended to uniformly allow the member states to exempt certain feminine hygiene products. It is not an endorsement in support of (or opposition to) a member state providing an exemption for certain feminine hygiene products.*

**Issue:** The last couple of years there has been an active movement by some members of the public and some state legislators in several states to exempt certain menstrual products. The policy rationale typically centers around how these products are a necessity and that it is unjust to impose a sales/use tax on those products when it only impacts women.<sup>1</sup> Most of the focus has centered around menstrual products, not products related to cleansing or deodorizing.

**Agreement's Terms:** The Agreement's Library of Definitions, Appendix C, Part II, has definitions for "Clothing" and "Grooming and Hygiene Products." While diapers (adult and children) are defined as part of "clothing," menstrual products do not fit in that category because it is not "human wearing apparel suitable for general use." Menstrual products also do not fit in the definition of "grooming and hygiene products" because that definition is limited to soaps, cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and sun tan lotions and screens. While menstrual products do not fit in the definition of "Grooming and Hygiene Products," cleansing and deodorant products such as douches and feminine wipes that are sold over-the counter (without a prescription) fit into that definition.

**Proactive Approach:** Several representatives from the Business Advisory Council (BAC), along with the Governing Board's executive director, presented this issue to the State and Local Advisory Council (SLAC) and then to the Governing Board. They requested member states to proactively address this issue by providing a uniform definition of feminine hygiene products to states seeking to exempt such products. At the Governing Board's fall 2016 meeting, it agreed SLAC should conduct some research to determine whether a uniform definition should be placed in the Agreement. Given that some states have already started to exempt these products, to act proactively (and prevent member states from having to amend their laws later to comply with the Agreement), SLAC was

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<sup>1</sup> Several articles have been written covering this issue. See New York Times Editorial Board, "End the Tampon Tax," available at: <https://www.nytimes.com/2016/02/08/opinion/end-the-tampon-tax.html>; Washington Post, Danielle Paquette, "The Sudden Controversy Around the COST of Tampons," available at: [https://www.washingtonpost.com/news/wonk/wp/2016/03/15/the-sudden-controversy-around-the-cost-of-the-tampons/?utm\\_term=.fd01f803d98f](https://www.washingtonpost.com/news/wonk/wp/2016/03/15/the-sudden-controversy-around-the-cost-of-the-tampons/?utm_term=.fd01f803d98f); and NPR, Jordan Gass-Poore, "Citing Gender Bias, State Lawmakers Move to Eliminate 'Tampon Tax'," available at: <http://www.npr.org/2016/03/06/467377295/citing-gender-bias-state-lawmakers-move-to-eliminate-tampon-tax>.

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assigned the task of putting a whitepaper together on this issue and provide that report to the Governing Board at its May 2017 meeting.

### States With Feminine Hygiene Product Exemptions – Enacted and Proposed

The following list identifies the states that have enacted a feminine hygiene product exemption as of February 1, 2017, along with a listing of some states that have introduced such legislation.

<b>States That Have Enacted Policy/Legislation to Exempt Feminine Hygiene Products</b>		
<b>State</b>	<b>Reference</b>	<b>Language</b>
Connecticut	SB 502	Sales of feminine hygiene products
Illinois	SB 2776	Menstrual pads, tampons, and menstrual cups
Maryland	Medical Equip. Guide	Sanitary napkins and tampons
Massachusetts	Sales Tax Guide	Sanitary napkins, belts and tampons
*Minnesota	297A.67	Sanitary napkins, tampons, or similar items used for feminine hygiene are exempt
*New Jersey	P.L. 2005, c.126	Feminine products such as tampons, sanitary napkins and panty liners
New York	A. 7555	Feminine hygiene products, including, but not limited to sanitary napkins, tampons and panty liners
Pennsylvania	PA Code 9.2	Household paper goods and soaps ... sanitary napkins, tampons or similar items used for feminine hygiene
Washington D.C.	Bill 21-696	Sanitary napkin, sanitary towel, tampon, menstrual cup, or sanitary pad
<b>Sample of States with Proposed Legislation Exempting Feminine Hygiene Products</b>		
<b>State</b>	<b>Reference</b>	<b>Language</b>
Federal Proposal	HR 3117 (114 <sup>th</sup> Ses.)	Tampons, pads, liners, cups, sponges, douches, wipes, sprays, and similar products used by women with respect to menstruation and other genital-tract secretions
California	AB 1561	Tampons, sanitary napkins, menstrual sponges, and menstrual cups.
*Michigan	HB 5234	Tampons, sanitary napkins, and other similar tangible personal property
Mississippi	SB 2053	Feminine hygiene products, including, but not limited to, sanitary napkins and tampons

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*Ohio	HB 484	Tampons, panty liners, menstrual cups, sanitary napkins, and other similar tangible personal property the principal purpose of which is feminine hygiene in connection with the menstrual cycle
*Rhode Island	H 7714	Tampons, panty liners, menstrual cups, sanitary napkins, and other similar products the principal use of which is feminine hygiene in connection with the menstrual cycle
*Tennessee	Hb 2059	Product used by women with respect to menstruation or other genital-tract secretions; and includes tampons, pads lines, cups and douches
*Utah	HB 202	Pads or liners, underpads, tampons, sanitary napkins
Virginia	HB 952	Tampons and sanitary napkins
* = Streamlined Sales Tax State		

**Proposed Menstrual Product Exemption Provision:** It is proposed that a definition of “Feminine Hygiene Products”<sup>2</sup> be added to the Health-Care definitions in the Library of Definitions, Appendix C, Part II. It is suggested that this definition should only apply to “tampons, panty liners, menstrual cups, sanitary napkins, and other similar tangible personal property designed for human feminine hygiene in connection with the menstrual cycle, excluding grooming and hygiene products.” “Other similar items” is needed to address new products.<sup>3</sup> It should not include products such as douches and feminine wipes because those products already fall under the Agreement’s definition of “grooming and hygiene products.” The proposed exemption would read as follows:

*“Feminine Hygiene Products” means tampons, panty liners, menstrual cups, sanitary napkins, and other similar tangible personal designed for feminine hygiene in connection with the human menstrual cycle, but does not include “grooming and hygiene products” as defined in this Agreement.*

**Existing Member States’ Compliance:** The Agreement requires every state to be in substantial compliance with each requirement of the Agreement.<sup>4</sup> While the wording used

<sup>2</sup> A better definition may be “Menstrual Products” to limit the breadth of products covered under that definition; however, given all the enacted and proposed legislation to date have used “Feminine Hygiene Products,” it is suggested that term continue to be used.

<sup>3</sup> Other products such as liquid-catching latex discs are also being marketed; see Washington Post, Danielle Paquette, “Why Your Daughter May Never Need to Buy a Tampon,” available at: [https://www.washingtonpost.com/news/wonk/wp/2016/10/22/its-liberating-the-revolutionary-products-transforming-the-way-women-think-about-their-periods/?utm\\_term=.ea57d50e991a](https://www.washingtonpost.com/news/wonk/wp/2016/10/22/its-liberating-the-revolutionary-products-transforming-the-way-women-think-about-their-periods/?utm_term=.ea57d50e991a).

<sup>4</sup> See Section 805 of the Agreement.

for Minnesota's and New Jersey's exemption is not the same as the proposed language above, Minnesota and New Jersey would still be in substantial compliance using their current definition because those states' administration of that exemption is consistent with the proposed definition (*e.g.*, the words used by a state do not have to be exactly the same but the resulting interpretation is the same). The only state that could have a compliance issue if its version of the law was enacted is Tennessee (associate member state) because it also references douches. As indicated above, douches should be excluded from the feminine hygiene products definition because they are already included in the definition of "grooming and hygiene products" contained in the Agreement.

**Impact to Sellers:** While toggles can add another layer of complexity, there are benefits to sellers being able to rely on all Streamlined states using the same uniform definition when those states seek to exempt certain products. A uniform definition also minimizes sellers risk of class-action lawsuits on allegations by purchasers that a seller imposed tax on a product that should have been exempt.<sup>5</sup>

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<sup>5</sup> There are other class-action suits in states such as New York, Ohio and Florida that allege the state's tax on feminine hygiene products is discriminatory. If those states choose to exempt feminine hygiene products, the use of a uniform definition would benefit sellers in those states.