Department of Finance and Administration

Legislative Impact Statement

Bill: JAP056 (Amendment to HB1064) Bill Subtitle: AN ACT FOR THE DEPARTMENT OF FINANCE AND ADMINISTRATION APPROPRIATION FOR THE 2024-2045 FISCAL YEAR.

Basic Change:

Sponsor: Rep. Pilkington

JAP056 would create a sales and use tax exemption on the sale of a "diaper" or "feminine hygiene product."

A "diaper" is defined as an absorbent garment worn by humans who are incapable of, or having difficulty, controlling their bladder or bowel movements.

"Feminine hygiene products" are defined as tampons, panty liners, menstrual cups, sanitary napkins, and other similar tangible personal property designed for feminine hygiene in connection with the human menstrual cycle, but does not include grooming and hygiene products.

The items listed below are "grooming and hygiene products" and are not included in the definition of "feminine hygiene products" regardless of whether the items meet the definition of "over-the-counter drugs":

- Soaps and cleaning solutions;
- Shampoo;
- Toothpaste;
- Mouthwash;
- Antiperspirants; and
- Sun tan lotions and screens.

"Over-the-counter drugs" are drugs that contain a label that identifies the product as a drug as required by 21 C.F.R. § 201.66, as it existed on January 1, 2024.

The exemption would be effective on the first day of the calendar quarter following the effective date of the act.

Revenue Impact:

FY2025

Total Approximate State Sales and Use Tax Loss \$ - 39,528,625

(Estimated Effective Date 07/01/2024 – 11 months reduced tax collection)

6,517,626
,946,403
36,601
,040,663
.00
.00

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State Central Services Constitutional Officers	\$766,247 \$364,880
Total Approximate Local City and County Sales and Use Tax Loss	\$ - 18,902,94 8
FY2026	
Total Approximate State Sales and Use Tax Loss	\$ - 44,415,800
General Revenue 4.5% Property Tax Relief5% Conservation Fund125% Highway Fund5% Educational Excellence Trust Fund Educational Adequacy (GR Transfer) State Central Services Constitutional Officers	\$29,796,169 \$3,310,685 \$827,671 \$3,416,600 \$3,749,592 \$331,470 \$860,983 \$409,992
Total Approximate Local City and County Sales and Use Tax Loss	\$ - 21,240,040

Taxpayer Impact:

The seller of a diaper or a feminine hygiene product as defined in the bill would not collect and remit sales tax from the purchaser.

Resources Required:

Computer programs, tax forms, and instructions will need to be updated. Updates to the Sales and Use Tax Rules will need to be promulgated.

Time Required:

Adequate time is provided for implementation.

Procedural Changes:

Department employees will need to be educated as well as the tax community.

Other Comments:

None.

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Legal Analysis:

JAP056 creates a product-based exemption from sales and use tax. Under the Streamlined Sales and Use Tax Agreement (SSUTA), a member state may enact a product-based exemption for a product if Part II of the Library of Definitions has a definition for such product and the member state utilizes in the exemption the product definition in a manner consistent with Part II of the Library of Definitions. The definitions contained in JAP056 are substantially the same as those in the SSUTA.

Fiscal sessions of the Arkansas General Assembly may only entertain appropriation bills. Ark. Const. Art. 5, § 5(b) (as amended by Amendment 86). A bill other than an appropriation bill may be considered in a fiscal session if two-thirds of the members of each house of the General Assembly approve consideration of the bill. *Id.* at (c)(2). Article 5, § 29 of the Arkansas Constitution requires that appropriations be made by law with a distinctly stated purpose. These appropriations may only encompass one purpose pursuant to Article 5, § 30 of the Arkansas Constitution. An appropriation bill may not include substantive provisions distinct from the appropriation itself. *See Reid v. Jones*, 261 Ark. 550, 551 S.W.2d 191 (1977). JAP056 may be subject to challenge under the Arkansas Constitution.