

# Essential Hygiene Products Exemptions



OFFICE OF THE STATE AUDITOR

C O L O R A D O

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The Essential Hygiene Products Exemptions allow people to purchase period products and incontinence products without paying Colorado state sales or use tax on these items. More specifically, a product is exempt under the Period Products Exemption if its primary purpose is to absorb or contain menstrual flow. The Incontinence Products Exemption applies to any absorbent cloth or disposable products, such as diapers, worn by humans who are incapable of or have difficulty controlling their bladder or bowel movements.

The purpose of these exemptions is to increase the affordability of these hygiene products and to redress the inequitable burden that the imposition of sales tax places on millions of Coloradans for whom such products are essential [Section 39-26-717(2)(m)(II)(B) and (2)(n)(II)(B), C.R.S.].

**The Essential Hygiene Products Exemptions appear to be effective in exempting essential hygiene products from state sales tax. However, many local governments do not provide a similar exemption. As a result, the extent to which the exemptions are accomplishing their statutory purpose varies based on the tax policies of the local jurisdictions where they are purchased.**

- The major retailers we examined are applying the exemptions to eligible products.
- Most local governments have not adopted the Essential Hygiene Products Exemptions, which reduces the exemptions' effectiveness at meeting their purposes.
- A significant portion of Coloradans are still paying county and/or municipal sales taxes on purchases of essential hygiene products, and the local sales tax rate imposed on these products can vary substantially depending on where the purchaser lives.
- The exemptions increase the affordability of essential hygiene products to a modest extent.

## Policy Considerations

We did not identify any policy considerations for these exemptions.

|                                                              | Period Products Exemption            | Incontinence Products Exemption     |
|--------------------------------------------------------------|--------------------------------------|-------------------------------------|
| Tax Type:                                                    | <b>Sales and use</b>                 | <b>Sales and use</b>                |
| Expenditure Type:                                            | <b>Exemption</b>                     | <b>Exemption</b>                    |
| Statutory Citation:                                          | <b>Sections 39-26-717(m), C.R.S.</b> | <b>Section 39-26-717(n), C.R.S.</b> |
| Year Enacted:                                                | <b>2022</b>                          | <b>2022</b>                         |
| Repeal/Expiration Date:                                      | <b>None</b>                          | <b>None</b>                         |
| Revenue Impact:                                              | <b>\$2.6 million (CY 2024)</b>       | <b>\$11.3 million (CY 2024)</b>     |
| Purpose given in statute or enacting legislation? <b>Yes</b> |                                      |                                     |

# Essential Hygiene Products Exemptions

## Background

The Essential Hygiene Products Exemptions allow people to purchase period products and incontinence products without paying Colorado state sales or use tax on these items.

Colorado statute provides a variety of exemptions from the state sales tax for medical supplies, such as prescription drugs, insulin, and corrective eyeglasses. In 2022, the General Assembly enacted two additional sales tax exemptions for medical supplies—the Period Products Exemption and the Incontinence Products Exemption—which we refer to collectively in this report as the Essential Hygiene Products Exemptions. A product is exempt under the Period Products Exemption if its primary purpose is to absorb or contain menstrual flow. The Incontinence Products Exemption applies to any absorbent cloth or disposable products, such as diapers, worn by people who are incapable of or have difficulty controlling their bladder or bowel movements. Of the 45 states and the District of Columbia that have a sales tax, 23 states have an exemption for menstrual products, and 18 states have an exemption for incontinence products.

### Exhibit 1

#### Products Eligible for the Essential Hygiene Products Exemptions<sup>1</sup>

| Period Products                                                                                                                                                                                                                                                                       | Incontinence Products                                                                                                                                                                                                      |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"><li>• Tampons</li><li>• Menstrual pads and sanitary napkins</li><li>• Pantliners</li><li>• Menstrual sponges, cups, and discs</li><li>• 2-in-1 incontinence and period pads</li><li>• Menstrual underwear designed to hold menstrual flow</li></ul> | <ul style="list-style-type: none"><li>• Cloth diapers</li><li>• Disposable diapers</li><li>• Diaper inserts and liners</li><li>• Pads and liners for bladder leaks</li><li>• 2-in-1 incontinence and period pads</li></ul> |

Source: Department of Revenue Sales and Use Tax Topics on Period Products and Incontinence Products and Diapers.

<sup>1</sup>These lists are not exhaustive.

**The purpose of the Period Products Exemption is “to increase the affordability of period products and to redress the inequitable burden that the imposition of sales tax places on millions of women in Colorado for whom such products are essential”** [Section 39-26-717(2)(m)(II)(B), C.R.S.]. The Colorado State Demography Office (SDO) estimated that there were about 1.6 million women between the ages of 12 and 51 (i.e. women who are likely menstruating) in Colorado as of 2022. On average, menstruation lasts for about 5 days, and the American College of Obstetricians and Gynecologists recommends changing a typical menstrual product every 4 to 8 hours. Menstruators who change products as recommended would use between 15 and 30 products per menstrual cycle, or 196 to 391 products per year.

**The purpose of the Incontinence Products Exemption is “to increase the affordability of incontinence products and diapers and to redress the inequitable burden that the imposition of sales tax places on millions of parents, individuals caring for infants and young children, and other users of incontinence products in Colorado for whom such products are essential”** [Section 39-26-717(2)(n)(II)(B), C.R.S.]. There are two significant portions of the population that use incontinence products: infants and young children who do not yet have full control of their bladder and bowel movements, as well as adults who have lost some control of their bladder and/or bowel movements due to age or medical reasons. A 2015 article on diaper health published in Pediatric Nursing noted that infants need between six and eight diapers per day until they are toilet trained, which occurs by 36 months of age for about half of children, according to a publication on toilet training from the American Academy of Family Physicians. Based on data from the National Health and Nutrition Examination Survey between 2007 and 2010, about 8 percent of adults aged 65 and over who do not live in an institutional setting experience severe bladder incontinence. In 2022, there were about 188,000 children below the age of 36 months and 929,000 adults at least 65 years old living in Colorado.

Sales taxes are generally regressive—they impose a larger burden in proportion to income on those with low incomes than on individuals with high incomes. For example, according to the Department of Revenue’s (Department’s) 2020 Colorado Tax Profile Study, Colorado’s lowest income group paid an estimated 3.8 percent of their income in state sales taxes, while the highest income group paid an estimated 0.4 percent of their income in state sales taxes. This occurs because people with lower incomes must consume a higher proportion of their income on taxable goods, such as clothing, gas, and food, than people with higher incomes, who tend to spend more on nontaxable purchases, such as services, and also have the flexibility to save rather than spend. As a result, exemptions for necessities, including essential hygiene products, have the potential to provide proportionally greater savings to lower income households than to higher income households.

In addition to the Essential Hygiene Products Exemptions, the General Assembly has also enacted other bills in recent years in order to assist Coloradans in accessing essential hygiene products:

- House Bill 19-1224, passed in 2019, required correctional facilities to provide menstrual products to individuals in custody at no cost and established that the State will reimburse correctional facilities for these expenses.
- Senate Bill 21-027, passed in 2021, established a state diaper distribution program in Colorado and allocated \$2 million to fund this program in Fiscal Year 2021-22.
- House Bill 24-1164, passed in 2024, required Colorado schools to provide menstrual products at no cost to students in grades 6 through 12 by June 30, 2028.

Statute provides that our office will measure the effectiveness of both of the Essential Hygiene Products Exemptions by estimating the savings the exemptions provide to Colorado taxpayers for whom these products are essential. We also developed the following performance measures in order to evaluate how well the Essential Hygiene Products Exemptions are meeting their statutory purpose:

1. To what extent are vendors applying the Essential Hygiene Products Exemptions?
2. To what extent do the Essential Hygiene Products Exemptions increase the affordability of period and incontinence products?

## Evaluation Results

**The Essential Hygiene Products Exemptions appear to be effective in exempting essential hygiene products from state sales tax. However, many local governments do not provide a similar exemption. As a result, the extent to which the exemptions are accomplishing their statutory purpose—addressing the inequity of imposing tax on these products and increasing their affordability—varies based on the tax policies of the local jurisdictions where they are purchased.**

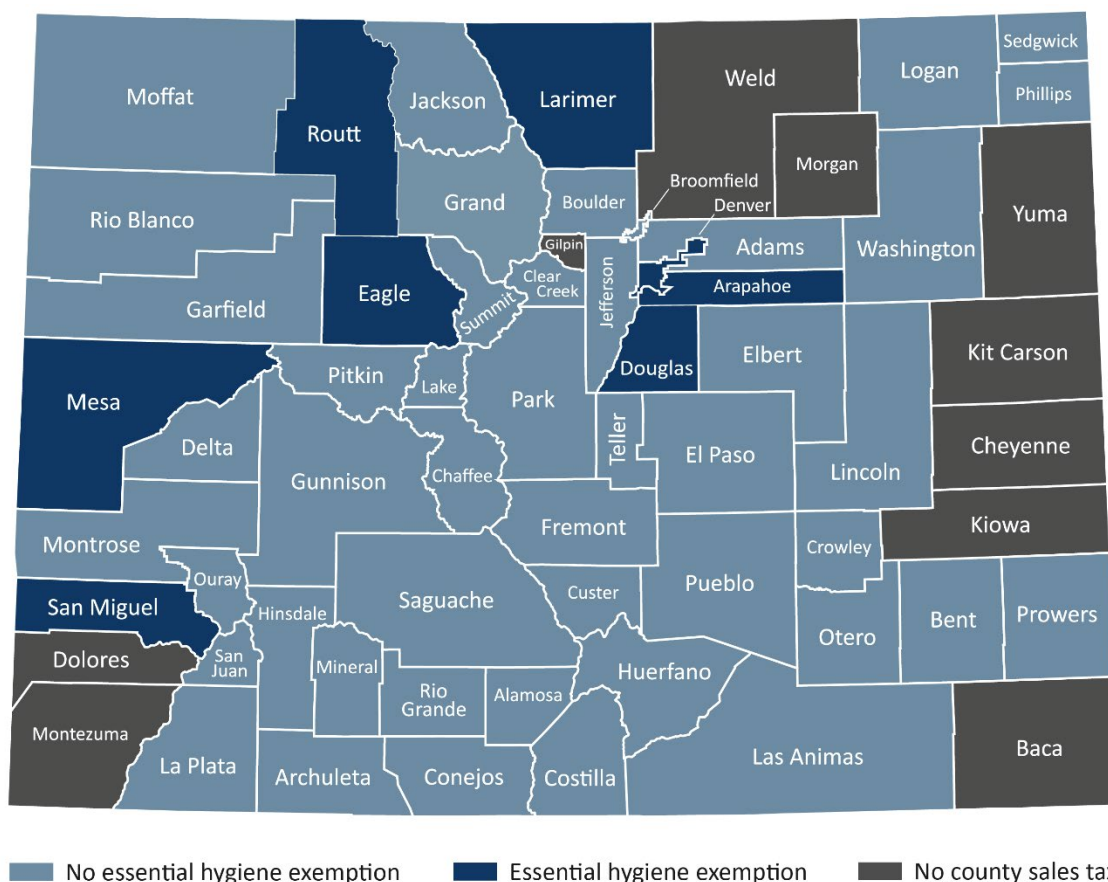
**The major retailers we examined are applying the Essential Hygiene Products Exemptions to eligible products.** Due to vendors reporting the exemption in aggregate to the Department and the large number of vendors in the state, we were not able to determine how frequently vendors are applying the exemption to all eligible sales. In order to get a sense for how large vendors across Colorado are applying the state and local exemptions for these products, we examined 20 sales of these products using the websites of 5 large retailers at 4 different Colorado locations. We found that these vendors are applying the exemptions correctly at all of the locations examined.

**Most local governments have not adopted the Essential Hygiene Products Exemptions, which reduces the exemptions' effectiveness at meeting their purposes.** In general, statute requires counties and municipalities with sales taxes that are collected by the State to adopt the same

exemptions as apply to the state sales tax. The Essential Hygiene Products Exemptions are one of several exceptions to this rule; the exemptions do not apply to state-collected local sales taxes unless the local jurisdiction expressly adopts the exemptions via local ordinance. Colorado's home rule jurisdictions can set their own sales tax policies if they collect their own sales taxes, so these jurisdictions can also choose whether to adopt an exemption for essential hygiene products. According to the Tax Foundation, Colorado has the third highest average local sales tax rate in the United States, at 4.9 percent, which is higher than the Colorado state sales tax rate of 2.9 percent. Therefore, local sales tax policies have a significant impact on the extent to which the exemptions are meeting their purposes.

Of Colorado's 64 counties, almost all of which are state-collected, 8 counties have adopted the exemptions, and an additional 10 counties do not have a sales tax, as summarized in Exhibit 2.

**Exhibit 2**  
**Summary of Essential Hygiene Products Exemptions**  
**Applicable to County Sales Taxes as of 2024<sup>1</sup>**



Source: Department of Revenue Form DR 1002: Colorado Sales/Use Tax Rates and municipal codes for Broomfield and Denver Counties.

<sup>1</sup>This exhibit does not account for the sales tax policies in local tax jurisdictions other than counties, such as towns, cities, and special districts. Each of these jurisdictions may or may not have a sales tax and may or may not have adopted an exemption for essential hygiene products from their sales tax.

Of Colorado's 15 most populous cities, all of which are self-collected home rule jurisdictions, 5 have an exemption for menstrual products and 4 have an exemption for incontinence products. About 8 percent of Coloradans live in state-collected municipalities, and only 6 of Colorado's 163 state-collected municipalities (less than 4 percent) have adopted the exemptions.

**A significant portion of Coloradans are still paying county and/or municipal sales taxes on purchases of essential hygiene products, and the local sales tax rate imposed on these products can vary substantially depending on where the purchaser lives.** We combined information from the Department on the sales tax exemptions available in each county with SDO data on county populations in 2022 to estimate that about 52 percent of Colorado's population lives in counties that impose sales tax on essential hygiene products. Based on Department information, SDO data, and municipal codes for some of Colorado's home rule cities, we estimate that between a third and one-half of Coloradans are subject to municipal sales tax on these products. The total amount of local sales tax imposed on a purchase of essential hygiene products depends on a number of factors, including the sales tax rate in the county, municipality, and any special districts in which the purchase is made, along with whether each of these tax jurisdictions has adopted exemptions for essential hygiene products. For example, Milliken has not adopted the exemptions and has a sales tax rate of 2.5 percent and is located in Weld County, which does not have a sales tax, so the local sales tax rate on essential hygiene products is 2.5 percent. However, Silverton's sales tax rate is 1 percent, and the sales tax rate in San Juan County is 6.5 percent, so essential hygiene products are subject to a total local sales tax rate of 7.5 percent because neither the county nor the city has adopted the exemptions.

**The exemptions increase the affordability of essential hygiene products to a modest extent.**

As shown in Exhibit 3, exempting essential hygiene products from state sales tax could allow individuals to purchase a small amount of additional products per year, about 2 days' worth of menstrual products or 11 days' worth of incontinence products. The impact of a local sales tax exemption on product affordability depends on the local sales tax rate; Exhibit 3 estimates this impact based on the average local sales tax rate in Colorado.

### Exhibit 3

#### Summary of Essential Hygiene Products Exemptions' Effect on Affordability, Per Year<sup>1</sup>

|                                                                                              | Menstrual Products                                 | Infant Diapers                                       | Adult Incontinence Products <sup>2</sup>             |
|----------------------------------------------------------------------------------------------|----------------------------------------------------|------------------------------------------------------|------------------------------------------------------|
| Estimated number of products used per year                                                   | 300                                                | 2,600                                                | 730                                                  |
| Estimated increase in affordability per year due to state exemption                          | 9 products, covering about 2 days<br>or<br>\$2.27  | 75 diapers, covering about 11 days<br>or<br>\$25.71  | 21 products, covering about 11 days<br>or<br>\$23.55 |
| Estimated increase in affordability per year due to local exemption, if adopted <sup>3</sup> | 15 products, covering about 3 days<br>or<br>\$3.85 | 128 diapers, covering about 18 days<br>or<br>\$43.52 | 36 products, covering about 18 days<br>or<br>\$39.87 |

Source: Office of the State Auditor analysis of product prices from retailer websites; Department of Revenue and Tax Foundation materials; Colorado State Demography Office data; and various articles and studies.

<sup>1</sup>These calculations are based on the estimated price of the relevant product in Colorado as of 2024. Additionally, the savings presented here are based on the average estimated or recommended usage of products in each category. Actual savings will vary from person to person depending on the quantity and prices of products purchased.

<sup>2</sup>Adult usage of incontinence products can vary depending on individual need. These calculations assume that adults use an average of two incontinence products per day. We estimated this usage based on the total estimated sales of adult incontinence products in Colorado, the estimated price of these products in Colorado, and the estimated number of Colorado seniors experiencing moderate to severe incontinence in 2024.

<sup>3</sup>Based on the 4.9 percent average local sales tax rate in Colorado in 2024, as reported by the Tax Foundation.

Notably, individual purchasers may decide to use the savings from the exemption in different ways depending on their unique circumstances. For example, individuals who could already afford a sufficient quantity of products may choose to purchase higher quality products than they had used in the past. Alternatively, those who struggle to obtain a sufficient quantity of products due to financial strain may purchase a larger quantity of products than they were previously able to afford.

According to articles on diaper need and menstrual poverty published in *Pediatrics* and the *International Journal of Environmental Research and Public Health*, individuals who struggle to afford these products are more likely to “stretch” their supplies by using essential hygiene products for a longer period of time than is advised. Such practices can lead to health concerns such as toxic shock syndrome, polycystic ovary syndrome (PCOS), and endometriosis for menstruators or urinary tract infections and dermatitis for those using incontinence products. Therefore, to the extent that the Essential Hygiene Products Exemptions allow individuals to afford more products and reduce the need to stretch hygiene supplies, the exemptions may improve health outcomes for individuals who rely on and struggle to afford these products. Finally, some purchasers may choose to use the savings from the exemption in some other way unrelated to their purchases of essential hygiene products.

**As shown in Exhibit 4, we estimated that the Period Products Exemption reduced state revenue by about \$2.6 million in Calendar Year 2024, and the Incontinence Products**

**Exemption reduced state revenue by about \$11.3 million in Calendar Year 2024.** Data on the revenue impact of these exemptions is not available from the Department because both exemptions are reported on the same line as other miscellaneous exemptions on the Department’s sales tax return. Therefore, in order to estimate the impact of the Essential Hygiene Products Exemptions on state revenue, we used the same methods as Legislative Council Staff when they prepared the revenue impact analysis for the enacting legislation’s fiscal note (House Bill 22-1055), updating the calculations with more recent estimates on prices, population, and inflation. For menstrual products, this involved estimating the number of menstruating women in Colorado—adjusted for pregnancy, breastfeeding, and similar factors—and multiplying this by the average number of menstruation days per year, the number of menstrual products used per day, and the prices of these products. We used a similar approach for diapers, multiplying the estimated number of diapers used per child, per year by the estimated number of children using diapers in Colorado, also accounting for the portion of the population that may be using cloth diapers instead of disposable diapers, and finally by the estimated average price. For both exemptions, we examined a selection of products at multiple retailers in Colorado to estimate the average price of these products in Calendar Year 2024. Finally, for adult incontinence products, we began with a 2001 estimate of the cost of adult incontinence products from an academic article and multiplied this by the relevant inflation rate to estimate the current cost of adult incontinence products. We used this approach because we did not identify sufficient data to quantify current incontinence rates and severity—and thus, the total need for incontinence products—among Colorado adults.

#### Exhibit 4

#### Estimated Impact of the Essential Hygiene Products Exemptions on State Revenue, Calendar Year 2024

|                                                          | Period Products Exemption        | Incontinence Products Exemption |                                            |
|----------------------------------------------------------|----------------------------------|---------------------------------|--------------------------------------------|
| Estimated amount spent on products in Colorado           | menstrual products: \$91 million | child diapers: \$197 million    | adult incontinence products: \$192 million |
| Colorado sales tax rate                                  | 2.9%                             | 2.9%                            | 2.9%                                       |
| Estimated state revenue impact by product                | \$2.6 million                    | \$5.7 million                   | \$5.6 million                              |
| Estimated state revenue impact by exemption              |                                  | \$11.3 million                  |                                            |
| Total estimated state revenue impact, Calendar Year 2024 | \$13.9 million                   |                                 |                                            |

Source: Office of the State Auditor updates to Legislative Council Staff fiscal estimate for the Essential Hygiene Products Exemptions. Sources include the Colorado State Demography Office, the U.S. Bureau of Labor Statistics, product prices from retailer websites, and various articles and studies.

## Policy Consideration

We did not identify any policy considerations for these exemptions.

## Office of the State Auditor

|                       |                                                       |
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