

# DEPARTMENT OF TAXATION

## 2023 Fiscal Impact Statement

1. **Patron** Bill R. DeSteph, Jr.

3. **Committee** Senate Finance and Appropriations

4. **Title** Local sales and use tax; Exemption for Food and Essential Personal Hygiene Products

2. **Bill Number** SB 1008

**House of Origin:**

  X   **Introduced**

       **Substitute**

       **Engrossed**

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

### 5. **Summary/Purpose:**

This bill would authorize the governing board of any locality to, by ordinance, exempt food purchased for human consumption and essential personal hygiene products from the local sales and use tax.

Under current law, food purchased for human consumption and essential personal hygiene products are exempt from the state and additional local sales and use taxes but are subject to the local sales and use tax at a rate not to exceed one percent.

If enacted during the regular session of the 2023 General Assembly this bill would become effective July 1, 2023.

6. **Budget amendment necessary:** No.

7. **Fiscal Impact Estimates are:** Not available. (See Line 8.)

### 8. **Fiscal implications:**

#### Administrative Costs

The Department would incur estimated administrative costs of \$248,580 in Fiscal Year 2023 and \$346,920 in Fiscal Year 2024 as a result of this bill. Such costs are primarily due to the need to modify the Department's forms and systems. Due to existing implementation priorities from the 2022 General Assembly session, the programming work would need to be completed using contract labor, and the earliest the Department could implement the required changes would be October 2023. However, if the effective date of the bill is delayed until January 1, 2024, the Department would consider this bill as routine and would not require additional funding.

#### Revenue Impact

This bill would have an unknown revenue impact in localities that choose to exercise the authority granted by the bill. This bill would have no impact on state revenues.

**9. Specific agency or political subdivisions affected:**

All localities

**10. Technical amendment necessary:** No.

**11. Other comments:**

Background

Prior to January 1, 2023, both food purchased for human consumption and essential personal hygiene products were taxed at the reduced rate of 2.5 percent. The rate of tax levied on these items was 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 was allocated to localities to fund education. The other one-half percent of the state sales tax rate on these items was allocated to the Commonwealth Transportation Fund (“CTF”).

Legislation enacted during the 2022 General Assembly exempted food purchased for human consumption and essential personal hygiene products from the state 1.5 percent Retail Sales and Use Tax beginning January 1, 2023. The local one percent rate of the tax continues to apply to these items. Beginning February 1, 2023, an allocation of state revenues will fund a distribution to localities for educational funding to replace the amount that have would otherwise been distributed to them from the state sales tax on food for human consumption.

“Food purchased for human consumption” has the same meaning as “food” defined in the Food Stamp Act of 1977, [7 U.S.C. § 2012](#), except it does not include seeds and plants which produce food for human consumption. Also, “food purchased for home 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.

Proposal

This bill would authorize the governing board of any locality to, by ordinance, exempt food purchased for human consumption and essential personal hygiene products from the local sales and use tax.

If enacted during the regular session of the 2023 General Assembly this bill would become effective July 1, 2023.

### Similar Legislation

**House Bill 1686** is identical to this bill.

**House Bill 1484** and **Senate Bill 850** would, beginning July 1, 2023, exempt food purchased for human consumption and essential personal hygiene products from the local sales and use tax. The bills would also require the state to hold the localities harmless for the amount of revenue lost due to the local tax exemption.

cc: Secretary of Finance

Date: 1/17/2023 VB  
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