

# DEPARTMENT OF TAXATION

## 2023 Fiscal Impact Statement

1. **Patron** David R. Suetterlein

3. **Committee** Senate Finance and Appropriations

4. **Title** Local sales and use tax; Exemption for food purchased for human consumption and essential personal hygiene products

2. **Bill Number** SB 850

**House of Origin:**

X **Introduced**

       **Substitute**

       **Engrossed**

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

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

This bill would provide, beginning July 1, 2023, an exemption from local sales and use tax for food purchased for human consumption and essential personal hygiene products. This exemption would render these items completely exempt from sales and use tax. The bill would also provide an allocation to fund the distribution to localities for funding that would have been distributed to them absent the exemption created by the bill.

Under current law, food purchased for human consumption and essential personal hygiene products are exempt from state sales and use tax but are subject to local sales and use taxation.

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

6. **Budget amendment necessary:** Yes.

Page 1, Revenue Estimates

7. **Fiscal Impact Estimates are:** Preliminary. (See Line 8.)

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

#### Revenue Impact

As this bill would create a local tax exemption, it would reduce local sales tax revenues. However, the bill would hold localities harmless for the lost revenue through the distribution of a supplemental school payment. Therefore, there would be no net impact on overall local revenues. The total estimated impact of this distribution would be \$263.3 million in Fiscal Year 2024, \$299.4 million in Fiscal Year 2025, \$307.8 million in Fiscal Year 2026, \$315.8 million in Fiscal Year 2027, \$324.0 million in Fiscal Year 2028, and \$332.4 million in Fiscal

Year 2029. This distribution to localities would reduce the amount of General Fund revenues available for appropriation.

### Administrative Costs

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

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

Department of Taxation  
All localities

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

## **11. Other comments:**

### Background

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.

“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 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.

### Proposal

This bill would provide, beginning July 1, 2023, an exemption from local sales and use tax for food purchased for human consumption and essential personal hygiene products. This exemption would render these items completely exempt from sales and use tax.

The bill would also fund a distribution to localities beginning July 1, 2023 to replace the revenue that would have been distributed to them absent the exemption created by the bill. The bill would provide that the revenue be distributed as a supplemental school payment

calculated based on each locality's estimated average share of monthly distributions attributable to food purchased for human consumption and essential personal hygiene products between February 2021 and December 2022. Beginning July 1, 2025, the bill would require that such distribution be based on each locality's pro rata share of all local sales tax collections.

The bill would also provide that beginning October 1, 2026, the Department shall make an annual review of the distributions mandated by the bill and make any adjustments necessary to align with the allocation of local sales tax under current law.

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

#### Similar Legislation

**House Bill 1484** is identical to this bill.

**House Bill 1686** and **Senate Bill 1008** would authorize the governing board of a locality to, by ordinance, exempt food purchased for human consumption and essential personal hygiene products from local sales and use tax.

cc: Secretary of Finance

Date: 1/17/2023 VB  
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