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SENATE BILL NO. 609

Offered January 12, 2022

Prefiled January 12, 2022

A BILL to amend and reenact §§ 58.1-603.1, as it is currently effective and as it may become effective, 58.1-603.2, 58.1-604.01, as it is currently effective and as it may become effective, 58.1-605.1, 58.1-606.1, and 58.1-611.1 of the Code of Virginia, relating to sales tax; exemption for food purchased for human consumption and essential personal hygiene products.

Patron—DeSteph

Referred to Committee on Finance and Appropriations

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-603.1, as it is currently effective and as it may become effective, 58.1-603.2, 58.1-604.01, as it is currently effective and as it may become effective, 58.1-605.1, 58.1-606.1, and 58.1-611.1 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-603.1. (Contingent expiration date) Additional state sales tax in certain counties and cities.

A. In addition to the sales tax imposed pursuant to § 58.1-603, there is hereby levied and imposed in each county and city located in a Planning District established pursuant to Chapter 42 (§ 15.2-4200 et seq.) of Title 15.2 that (i) as of January 1, 2013, has a population of 1.5 million or more as shown by the most recent United States Census, has not less than 1.2 million motor vehicles registered therein, and has a total transit ridership of not less than 15 million riders per year across all transit systems within the Planning District or (ii) as shown by the most recent United States Census meets the population criteria set forth in clause (i) and also meets the vehicle registration and ridership criteria set forth in clause (i), a retail sales tax at the rate of 0.70 percent. In any case in which the tax is imposed pursuant to clause (ii) such tax shall be effective beginning on the July 1 immediately following the calendar year in which all of the criteria have been met.

B. In addition to the sales tax imposed pursuant to § 58.1-603, there is hereby levied and imposed in each county and city located in Planning District 15 established pursuant to Chapter 42 (§ 15.2-4200 et seq.) of Title 15.2 a retail sales tax at the rate of 0.70 percent. In no case shall an additional sales tax be imposed pursuant to both clause (ii) of subsection A and this subsection.

C. The tax imposed pursuant to subsections A and B shall not be levied upon food purchased for human consumption and essential personal hygiene products, as such terms are defined in § 58.1-611.1. Such tax shall be added to the rate of the state sales tax imposed pursuant to § 58.1-603 in each such county and city and shall be subject to all the provisions of this chapter and the rules and regulations published with respect thereto. No discount under § 58.1-622 shall be allowed for the tax imposed under this section. Such tax shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state sales tax under § 58.1-603.

D. The revenue generated and collected pursuant to the tax authorized under this section, less the applicable portion of any refunds to taxpayers, shall be deposited by the Comptroller into special funds established by law. In the case of Planning District 8, the revenue generated and collected therein shall be deposited into the fund established in § 33.2-2509. In the case of Planning District 23, the revenue generated and collected therein shall be deposited into the fund established in § 33.2-2600. In the case of Planning District 15, the revenue generated and collected therein shall be deposited into the fund established in § 33.2-3701. For additional planning districts that may become subject to this section, funds shall be established by appropriate legislation.

§ 58.1-603.1. (Contingent effective date) Additional state sales tax in certain counties and cities.

In addition to the sales tax imposed pursuant to § 58.1-603, there is hereby levied and imposed in each county and city located in a Planning District established pursuant to Chapter 42 (§ 15.2-4200 et seq.) of Title 15.2 that (i) as of January 1, 2013, has a population of 1.5 million or more as shown by the most recent United States Census, has not less than 1.2 million motor vehicles registered therein, and has a total transit ridership of not less than 15 million riders per year across all transit systems within the Planning District or (ii) as shown by the most recent United States Census meets the population criteria set forth in clause (i) and also meets the vehicle registration and ridership criteria set forth in clause (i), a retail sales tax at the rate of 0.70 percent. In any case in which the tax is imposed pursuant to clause (ii) such tax shall be effective beginning on the July 1 immediately following the calendar year in which all of the criteria have been met. Such tax shall not be levied upon food purchased for human consumption and essential personal hygiene products, as such terms are defined in § 58.1-611.1. Such

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59 tax shall be added to the rate of the state sales tax imposed pursuant to § 58.1-603 in each such county
60 and city and shall be subject to all the provisions of this chapter and the rules and regulations published
61 with respect thereto. No discount under § 58.1-622 shall be allowed for the tax imposed under this
62 section. Such tax shall be administered and collected by the Tax Commissioner in the same manner and
63 subject to the same penalties as provided for the state sales tax under § 58.1-603.

64 The revenue generated and collected pursuant to the tax authorized under this section, less the
65 applicable portion of any refunds to taxpayers, shall be deposited by the Comptroller into special funds
66 established by law. In the case of Planning District 8, the revenue generated and collected therein shall
67 be deposited into the fund established in § 33.2-2509. In the case of Planning District 23, the revenue
68 generated and collected therein shall be deposited into the fund established in § 33.2-2600. For
69 additional Planning Districts that may become subject to this section, funds shall be established by
70 appropriate legislation.

71 **§ 58.1-603.2. (Contingent expiration date) Additional state sales and use tax in certain counties**
72 **and cities of historic significance; Historic Triangle Marketing Fund.**

73 A. For purposes of this section, "Historic Triangle" means all of the City of Williamsburg and the
74 Counties of James City and York.

75 B. In addition to the sales tax imposed pursuant to §§ 58.1-603 and 58.1-603.1, there is hereby
76 levied and imposed in the Historic Triangle a retail sales tax at the rate of one percent. ~~Such tax shall~~
77 ~~not be levied upon food purchased for human consumption and essential personal hygiene products, as~~
78 ~~such terms are defined in § 58.1-611.1.~~ Such tax shall be added to the rate of the state sales tax imposed
79 pursuant to §§ 58.1-603 and 58.1-603.1 in each such county and city and shall be subject to all the
80 provisions of this chapter and the rules and regulations published with respect thereto. No discount
81 under § 58.1-622 shall be allowed for the tax imposed under this section. Such tax shall be administered
82 and collected by the Tax Commissioner in the same manner and subject to the same penalties as
83 provided for the state sales tax under § 58.1-603.

84 C. In addition to the use tax imposed pursuant to §§ 58.1-604 and 58.1-604.01, there is hereby levied
85 and imposed in the Historic Triangle a retail use tax at the rate of one percent. ~~Such tax shall not be~~
86 ~~levied upon food purchased for human consumption and essential personal hygiene products, as such~~
87 ~~terms are defined in § 58.1-611.1.~~ Such tax shall be added to the rate of the state use tax imposed
88 pursuant to §§ 58.1-604 and 58.1-604.01 in each such county and city and shall be subject to all the
89 provisions of this chapter and the rules and regulations published with respect thereto. No discount
90 under § 58.1-622 shall be allowed for the tax imposed under this section. Such tax shall be administered
91 and collected by the Tax Commissioner in the same manner and subject to the same penalties as
92 provided for the state use tax under § 58.1-604.

93 D. The revenue generated and collected pursuant to the tax authorized under this section, less the
94 applicable portion of any refunds to taxpayers, shall be deposited by the Comptroller as follows:

95 1. Fifty percent of the revenues shall be deposited into the Historic Triangle Marketing Fund created
96 pursuant to subsection E and used for the purposes set forth therein; and

97 2. Fifty percent of the revenues shall be deposited into a special fund hereby created on the books of
98 the Comptroller under the name "Collections of Historic Triangle Sales Tax" and distributed to the
99 locality in which the sales or use tax was collected. The revenues received by a locality pursuant to this
100 subsection shall not be used to reduce the amount of other revenues appropriated by such locality to or
101 for use by the Greater Williamsburg Chamber and Tourism Alliance below the amount provided in fiscal
102 year 2018.

103 E. 1. There is hereby created in the state treasury a special nonreverting fund to be known as the
104 Historic Triangle Marketing Fund, referred to in this section as "the Fund," to be managed and
105 administered by the Tourism Council of the Greater Williamsburg Chamber and Tourism Alliance. The
106 Fund shall be established on the books of the Comptroller. All revenues generated pursuant to this
107 section shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the
108 Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including
109 interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the
110 Fund. Moneys in the Fund shall be used solely for the purposes of marketing, advertising, and
111 promoting the Historic Triangle area as an overnight tourism destination, with the intent to attract
112 visitors from a sufficient distance so as to require an overnight stay of at least one night, as set forth in
113 this subsection. Expenditures and disbursements from the Fund shall be made by the State Treasurer on
114 warrants issued by the Comptroller upon written request signed by the Secretary of Finance.

115 2. The Tourism Council of the Greater Williamsburg Chamber and Tourism Alliance (the Council)
116 shall consist of members as follows: one member of the James City County Board of Supervisors, one
117 member of the York County Board of Supervisors; one member of the Williamsburg City Council, one
118 representative of the Colonial Williamsburg Foundation, one representative of the Jamestown-Yorktown
119 Foundation, one representative of Busch Gardens Williamsburg, one representative of Historic
120 Jamestowne, one representative of the Williamsburg Hotel and Motel Association, and one representative

of the Williamsburg Area Restaurant Association. The Chief Executive Officer of the Virginia Tourism Alliance and the Chief Executive Officer of the Virginia Tourism Corporation shall serve as ex officio, non-voting members of the Council.

3. The Council shall establish the Historic Triangle Office of Marketing and Promotion (the Office) to administer a program of marketing, advertising, and promotion to attract visitors to the Historic Triangle area, as required by this subsection. The Council shall use moneys in the Fund to fund the pay for necessary expenses of the Office and to fund the activities of the Office. The Office shall be overseen by a professional with extensive experience in marketing or advertising and in the tourism industry. The Office shall be responsible for (i) developing and implementing, in consultation with the Council, long-term and short-term strategic plans for advertising and promoting the numerous facilities, venues, and attractions devoted to education, historic preservation, amusement, entertainment, and dining in the Historic Triangle as a cohesive and unified travel destination for local, national, and international travelers; (ii) assisting, upon request, with the coordination of cross-advertising and cross-marketing efforts between various tourism venues and destinations in the Historic Triangle region; (iii) identifying strategies for both increasing the number of overnight visitors to the region and increasing the average length of stay of tourists in the region; and (iv) performing any other function related to the promotion of the Historic Triangle region as may be identified by the Council.

4. The Council shall report annually on its long-term and short-term strategic plans and the implementation of such plans; marketing efforts; metrics regarding tourism in the Historic Triangle region; use of the funds in the Fund; and any other details relevant to the work of the Council and the Office. Such report shall be delivered no later than December 1 of each year to the managers or chief executive officers of the City of Williamsburg and the Counties of James City and York, and to the Chairmen of the House Committees on Finance and Appropriations and the Senate Committee on Finance and Appropriations.

§ 58.1-604.01. (Contingent expiration date) Additional state use tax in certain counties and cities.

A. In addition to the use tax imposed pursuant to § 58.1-604, there is hereby levied and imposed in each county and city located in a Planning District established pursuant to Chapter 42 (§ 15.2-4200 et seq.) of Title 15.2 that (i) as of January 1, 2013, has a population of 1.5 million or more, as shown by the most recent United States Census, has not less than 1.2 million motor vehicles registered therein, and has a total transit ridership of not less than 15 million riders per year across all transit systems within the Planning District or (ii) as shown by the most recent United States Census meets the population criteria set forth in clause (i) and also meets the vehicle registration and ridership criteria set forth in clause (i), a retail use tax at the rate of 0.70 percent. In any case in which the tax is imposed pursuant to clause (ii) such tax shall be effective beginning on the July 1 immediately following the calendar year in which all of the criteria have been met.

B. In addition to the sales tax imposed pursuant to § 58.1-603, there is hereby levied and imposed in each county and city located in Planning District 15 established pursuant to Chapter 42 (§ 15.2-4200 et seq.) of Title 15.2 a retail use tax at the rate of 0.70 percent. In no case shall an additional use tax be imposed pursuant to both clause (ii) of subsection A and this subsection.

C. The tax imposed pursuant to subsections A and B ~~shall not be levied upon food purchased for human consumption and essential personal hygiene products, as such terms are defined in § 58.1-611.1. Such tax~~ shall be added to the rate of the state use tax imposed pursuant to § 58.1-604 in such county and city and shall be subject to all the provisions of this chapter and the rules and regulations published with respect thereto. No discount under § 58.1-622 shall be allowed for the tax described under this section. Such tax shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state use tax under § 58.1-604.

D. The revenue generated and collected pursuant to the tax authorized under this section, less the applicable portion of any refunds to taxpayers, shall be deposited by the Comptroller into special funds established by law. In the case of Planning District 8, the revenue generated and collected therein shall be deposited into the fund established in § 33.2-2509. In the case of Planning District 23, the revenue generated and collected therein shall be deposited into the fund established in § 33.2-2600. In the case of Planning District 15, the revenue generated and collected therein shall be deposited into the fund established in § 33.2-3701. For any additional planning districts that may become subject to this section, funds shall be established by appropriate legislation.

§ 58.1-604.01. (Contingent effective date) Additional state use tax in certain counties and cities.

In addition to the use tax imposed pursuant to § 58.1-604, there is hereby levied and imposed in each county and city located in a Planning District established pursuant to Chapter 42 (§ 15.2-4200 et seq.) of Title 15.2 that (i) as of January 1, 2013, has a population of 1.5 million or more, as shown by the most recent United States Census, has not less than 1.2 million motor vehicles registered therein, and has a total transit ridership of not less than 15 million riders per year across all transit systems within the

182 Planning District or (ii) as shown by the most recent United States Census meets the population criteria
183 set forth in clause (i) and also meets the vehicle registration and ridership criteria set forth in clause (i),
184 a retail use tax at the rate of 0.70 percent. In any case in which the tax is imposed pursuant to clause
185 (ii) such tax shall be effective beginning on the July 1 immediately following the calendar year in which
186 all of the criteria have been met. ~~Such tax shall not be levied upon food purchased for human~~
187 ~~consumption and essential personal hygiene products, as such terms are defined in § 58.1-611.1.~~ Such
188 tax shall be added to the rate of the state use tax imposed pursuant to § 58.1-604 in such county and
189 city and shall be subject to all the provisions of this chapter and the rules and regulations published with
190 respect thereto. No discount under § 58.1-622 shall be allowed for the tax described under this section.
191 Such tax shall be administered and collected by the Tax Commissioner in the same manner and subject
192 to the same penalties as provided for the state use tax under § 58.1-604.

193 The revenue generated and collected pursuant to the tax authorized under this section, less the
194 applicable portion of any refunds to taxpayers, shall be deposited by the Comptroller into special funds
195 established by law. In the case of Planning District 8, the revenue generated and collected therein shall
196 be deposited into the fund established in § 33.2-2509. In the case of Planning District 23, the revenue
197 generated and collected therein shall be deposited into the fund established in § 33.2-2600. For any
198 additional Planning Districts that may become subject to this section, funds shall be established by
199 appropriate legislation.

200 **§ 58.1-605.1. Additional local sales tax in certain localities; use of revenues for construction or**
201 **renovation of schools.**

202 A. 1. In addition to the sales tax authorized under § 58.1-605, a qualifying locality may levy a
203 general retail sales tax at a rate not to exceed one percent as determined by its governing body to
204 provide revenue solely for capital projects for the construction or renovation of schools in each such
205 locality. Such tax shall be added to the rates of the state and local sales tax imposed by this chapter and
206 shall be subject to all the provisions of this chapter and the rules and regulations published with respect
207 thereto. No discount under § 58.1-622 shall be allowed on this local sales tax.

208 2. Any tax imposed pursuant to this section shall expire (i) if the capital projects for the construction
209 or renovation of schools are to be financed by bonds or loans, on the date by which such bonds or loans
210 shall be repaid or (ii) if the capital projects for the construction or renovation of schools are not to be
211 financed by bonds or loans, on a date chosen by the governing body and specified in any resolution
212 passed pursuant to the provisions of subdivision B 1. Such expiration date shall not be more than 20
213 years after the date of the resolution passed pursuant to the provisions of subdivision B 1.

214 B. 1. This tax may be levied only if the tax is approved in a referendum within the qualifying
215 locality held in accordance with § 24.2-684 and initiated by a resolution of the local governing body.
216 Such resolution shall state (i) if the capital projects for the construction or renovation of schools are to
217 be financed by bonds or loans, the date by which such bonds or loans shall be repaid or (ii) if the
218 capital projects for the construction or renovation of schools are not to be financed by bonds or loans, a
219 specified date on which the sales tax shall expire.

220 2. The clerk of the circuit court shall publish notice of the referendum in a newspaper of general
221 circulation in the qualifying locality once a week for three consecutive weeks prior to the election. The
222 question on the ballot for the referendum shall include language stating (i) that the revenues from the
223 sales tax shall be used solely for capital projects for the construction or renovation of schools and (ii)
224 the date on which the sales tax shall expire.

225 C. The governing body of the qualifying locality, if it elects to impose a local sales tax under this
226 section after approval at a referendum as provided in subsection B shall do so by the adoption of an
227 ordinance stating its purpose and referring to this section and providing that such ordinance shall be
228 effective on the first day of a month at least 120 days after its adoption. Such ordinance shall state the
229 date on which the sales tax shall expire. A certified copy of such ordinance shall be forwarded to the
230 Tax Commissioner so that it will be received within five days after its adoption.

231 D. Any local sales tax levied under this section shall be administered and collected by the Tax
232 Commissioner in the same manner and subject to the same exemptions and penalties as provided for the
233 state sales tax; ~~however, the local sales tax levied under this section shall not be levied on food~~
234 ~~purchased for human consumption or essential personal hygiene products, as such terms are defined in~~
235 ~~§ 58.1-611.1.~~

236 E. All local sales tax moneys collected by the Tax Commissioner under this section shall be paid
237 into the state treasury to the credit of a special fund that is hereby created on the Comptroller's books
238 for each qualifying locality under the name "Collections of Additional Local Sales Taxes in ____"
239 (INSERT NAME OF THE QUALIFYING LOCALITY)." Each fund shall be administered as provided
240 in § 58.1-605. A separate fund shall be created for each qualifying locality. Only local sales tax moneys
241 collected in that qualifying locality shall be deposited in that locality's fund.

242 F. As soon as practicable after the local sales tax moneys have been paid into the state treasury in
243 any month for the preceding month, the Comptroller shall draw his warrant on the State Treasurer in the

proper amount in favor of each qualifying locality, and such payments shall be charged to the account of the qualifying locality under its special fund created by this section. If errors are made in any such payment, or adjustments are otherwise necessary, whether attributable to refunds to taxpayers or to some other fact, the errors shall be corrected and adjustments made in the payments for the next two months as follows: one-half of the total adjustment shall be included in the payment for each of the next two months. In addition, the payment shall include a refund of amounts erroneously not paid to each qualifying locality and not previously refunded during the three years preceding the discovery of the error. A correction and adjustment in payments described in this subsection due to the misallocation of funds by the dealer shall be made within three years of the date of the payment error.

G. The revenues from this tax shall be used solely for capital projects for new construction or major renovation of schools in the qualifying locality, including bond and loan financing costs related to such construction or renovation.

§ 58.1-606.1. Additional local use tax in certain localities; use of revenues for construction or renovation of schools.

A. 1. The governing body of a qualifying locality may levy a use tax at the rate of such sales tax under § 58.1-605.1 to provide revenue for capital projects for the construction or renovation of schools in such locality. Such tax shall be added to the rates of the state and local use tax imposed by this chapter and shall be subject to all the provisions of this chapter, and all amendments thereof, and the rules and regulations published with respect thereto, except that no discount under § 58.1-622 shall be allowed on a local use tax.

2. Any tax imposed pursuant to this section shall expire (i) if the capital projects for the construction or renovation of schools are to be financed by bonds or loans, on the date by which such bonds or loans shall be repaid or (ii) if the capital projects for the construction or renovation of schools are not to be financed by bonds or loans, on a date chosen by the governing body and specified in any resolution passed pursuant to the provisions of subsection B. Such expiration date shall not be more than 20 years after the date of the resolution passed pursuant to the provisions of subsection B.

B. The governing body of the qualifying locality, if it elects to impose a local use tax under this section may do so only if it has previously imposed the local sales tax authorized by § 58.1-605.1, by the adoption of an ordinance stating its purpose and referring to this section and providing that the local use tax shall become effective on the first day of a month at least 120 days after its adoption. Such ordinance shall state the date on which the use tax shall expire. A certified copy of such ordinance shall be forwarded to the Tax Commissioner so that it will be received within five days after its adoption.

C. Any local use tax levied under this section shall be administered and collected by the Tax Commissioner in the same manner and subject to the same exemptions and penalties as provided for the state use tax; ~~however, the local use tax levied under this section shall not be levied on food purchased for human consumption or essential personal hygiene products, as such terms are defined in § 58.1-611.1.~~

D. The local use tax authorized by this section shall not apply to transactions to which the sales tax applies, the situs of which for state and local sales tax purposes is the locality of location of each place of business of every dealer paying the tax to the Commonwealth without regard to the locality of possible use by the purchasers. However, the local use tax authorized by this section shall apply to tangible personal property purchased outside the Commonwealth for use or consumption within the locality imposing the local use tax, or stored within the locality for use or consumption, where the property would have been subject to the sales tax if it had been purchased within the Commonwealth. The local use tax shall also apply to leases or rentals of tangible personal property where the place of business of the lessor is outside the Commonwealth and such leases or rentals are subject to the state tax. Moreover, the local use tax shall apply in all cases in which the state use tax applies.

E. Out-of-state dealers who hold certificates of registration to collect the use tax from their customers for remittance to the Commonwealth shall, to the extent reasonably practicable, in filing their monthly use tax returns with the Tax Commissioner, break down their shipments into the Commonwealth by counties and cities so as to show the county or city of destination. If, however, the out-of-state dealer is unable accurately to assign any shipment to a particular county or city, the local use tax on the tangible personal property involved shall be remitted to the Commonwealth by such dealer without attempting to assign the shipment to any county or city.

F. Local use tax revenue shall be deposited in the special fund established pursuant to subsection E of § 58.1-605.1. The Comptroller shall distribute the revenue to the qualifying locality.

G. All revenue from this local use tax revenue shall be used solely for capital projects for new construction or major renovation of schools in the qualifying locality, including bond and loan financing costs related to such construction or renovation.

§ 58.1-611.1. Exemption for food purchased for human consumption and essential personal hygiene products.

305 A. The tax imposed by §§ 58.1-603 and 58.1-604 on food purchased for human consumption and
306 essential personal hygiene products shall be one and one-half percent of the gross sales price. The
307 revenue from the tax shall be distributed as follows: (i) the revenue from the tax at the rate of one-half
308 percent shall be distributed as provided in subsection A of § 58.1-638 and (ii) the revenue from the tax
309 at the rate of one percent shall be distributed as provided in subsections B, C and D of § 58.1-638.

310 B. The provisions of this section shall not affect the imposition of tax on food purchased for human
311 consumption and essential personal hygiene products pursuant to §§ 58.1-605 and 58.1-606.

312 C. *No tax shall be imposed under this chapter, or pursuant to any authority granted under this*
313 *chapter, on food purchased for human consumption or essential personal hygiene products.*

314 B. 1. As used in this section, "food purchased for human consumption" has the same meaning as
315 "food" defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations
316 adopted pursuant to that Act, except it shall not include seeds and plants which produce food for human
317 consumption. For the purpose of this section, "food purchased for human consumption" shall not include
318 food sold by any retail establishment where the gross receipts derived from the sale of food prepared by
319 such retail establishment for immediate consumption on or off the premises of the retail establishment
320 constitutes more than 80 percent of the total gross receipts of that retail establishment, including but not
321 limited to motor fuel purchases, regardless of whether such prepared food is consumed on the premises
322 of that retail establishment. For purposes of this section, "retail establishment" means each place of
323 business for which any "dealer," as defined in § 58.1-612, is required to apply for and receive a
324 certificate of registration pursuant to § 58.1-613.

325 2. As used in this section, "essential personal hygiene products" means (i) nondurable incontinence
326 products such as diapers, disposable undergarments, pads, and bed sheets and (ii) menstrual cups and
327 pads, pantyliners, sanitary napkins, tampons, and other products used to absorb or contain menstrual
328 flow. "Essential personal hygiene products" does not include any item that is otherwise exempt pursuant
329 to this chapter.