

# DEPARTMENT OF TAXATION

## 2022 Fiscal Impact Statement

1. **Patron** Ryan T. McDougale

2. **Bill Number** SB 380

3. **Committee** Senate Finance and Appropriations

**House of Origin:**

X **Introduced**

       **Substitute**

       **Engrossed**

4. **Title** Retail Sales and Use Tax; Exemption for food purchased for human consumption and essential personal hygiene products

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

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

This bill would provide an exemption from the Retail Sales and Use Tax for food purchased for human consumption and essential personal hygiene products. This bill would also require the distribution of an annual supplemental school payment ("SSP") to localities beginning in Fiscal Year 2023. Such distribution would be based on the amount distributed to localities from the state and local sales and use tax levied on food purchased for human consumption and essential personal hygiene products during Fiscal Year 2022, adjusted annually based on an index that takes into account increases in each locality's sales tax revenues.

Under current law, both food purchased for human consumption and essential personal hygiene products are taxed at the reduced rate of 2.5 percent. The rate of tax levied on these items is 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 is currently allocated to localities to fund education. The other one-half percent of the state sales tax rate on these items is allocated to the Commonwealth Transportation Fund ("CTF").

If enacted during the regular session of the 2022 General Assembly, this bill would become effective July 1, 2022.

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

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

8. **Fiscal implications:**

#### Administrative Cost

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

## Revenue Impact

The table below shows the estimated impact that this bill would have on revenues before factoring in amounts included in the introduced budget:

Fund	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
GF-Restricted, K-12	-\$236.1	-\$265.1	-\$271.7	-\$273.3	-\$274.7	-\$275.8
CTF	-\$119.3	-\$133.9	-\$137.2	-\$138.1	-\$138.7	-\$139.3
Local	-\$238.5	-\$267.8	-\$274.5	-\$276.1	-\$277.5	-\$278.6
<b>Total</b>	<b>-\$593.9</b>	<b>-\$666.7</b>	<b>-\$683.4</b>	<b>-\$687.5</b>	<b>-\$690.9</b>	<b>-\$693.7</b>

The introduced budget assumes the elimination of the state portion of the tax on food for human consumption, effective January 1, 2023. In addition, the introduced budget makes a negative \$900,000 General Fund revenue adjustment to account for a partial exemption for essential personal hygiene products.

The bill also requires an appropriation for a Supplemental School Payment to localities, based on the amount distributed to localities from the sales tax on such exempt products during Fiscal Year 2022, adjusted annually based on an index that takes into account increases in each locality's sales tax revenues.

The table below shows the net impact for Fiscal Years 2023 and 2024 after taking into account these budget adjustments, as well as the estimated Supplemental School Payment appropriation to localities mandated by the bill:

Fund	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
GF-Unrestricted	-\$497.4	-\$517.8	-\$532.9	-\$546.2	-\$549.5	-\$552.2
Localities - SSP	\$497.4	\$517.8	\$532.9	\$546.2	\$549.5	\$552.2
GF Restricted, K-12	-\$129.0	-\$1.9	-\$2.8	-\$2.8	-\$2.9	-\$2.9
CTF	-\$65.6	-\$1.4	-\$1.4	-\$1.4	-\$1.4	-\$1.4
Local Option	-\$238.5	-\$267.8	-\$274.5	-\$276.1	-\$277.5	-\$278.6
<b>Total</b>	<b>-\$433.1</b>	<b>-\$271.1</b>	<b>-\$278.7</b>	<b>-\$280.3</b>	<b>-\$281.8</b>	<b>-\$282.9</b>

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

Department of Taxation

All localities

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

### **11. Other comments:**

#### Current Law

Food purchased for human consumption and essential personal hygiene products are subject to a reduced 1.5 percent state sales tax rate and 1 percent local option sales tax rate for a total rate of 2.5 percent. These items are not subject to the regional sales tax

levied in transportation districts or the additional local sales tax levied in some localities to pay for school construction.

Revenues equivalent to 1 percent of the 1.5 percent state sales tax levied on these items is currently distributed to localities in proportion to their school age population to fund education. Revenues equal to the other one-half percent of state sales tax is currently allocated to the CTF.

This bill would require the distribution of a supplemental school payment (“SSP”) to each locality to be paid out of state sales tax revenues. The SSP would be comprised of (i) the amount that the locality would have received attributable to the 1% percent state sales tax on food and essential personal hygiene products currently dedicated to localities in proportion to their school age population to fund education, and (ii) an amount equal to the 1 percent local option sales tax attributable to food and essential personal hygiene products that the localities would have received if not for the exemption created by this bill.

“Food purchased for human consumption” has the same meaning as “food” defined in the Food Stamp Act of 1977, as amended, and federal regulations adopted pursuant to that Act, except it does not include seeds and plants which produce food for human consumption. “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.

As of January 2021, Virginia is one of thirteen states that imposes sales tax on groceries, as sales tax is not levied on groceries in 37 states or the District of Columbia. In addition, 13 states and the District of Columbia specifically exempt at least some type of personal hygiene products from sales tax.

### Proposal

This bill would provide an exemption from the state and local sales and use tax for food purchased for human consumption and essential personal hygiene products.

This bill would also require the distribution of an annual supplemental school payment (“SSP”) to localities beginning in Fiscal Year 2023. Such distribution would be based on the amount distributed to localities from the state and local sales and use tax levied on food purchased for human consumption and essential personal hygiene products during Fiscal Year 2022, which would be adjusted annually based on a “local sales tax index” that takes into account increases in each locality’s sales tax revenues. For purposes of this distribution, the “local sales tax index” would be defined as the ratio by which sales

tax revenues in a county or city for the current year exceed the previous year's revenues. If the calculated ratio is less than one, such ratio would be one. Therefore, the annual SSP distribution could increase over time, but could not decrease.

If enacted during the regular session of the 2022 General Assembly, this bill would become effective July 1, 2022.

#### Similar Legislation

**House Bill 90** is identical to this bill.

**House Bill 1008, Senate Bill 609** and **Senate Bill 571** would provide an exemption from the state and local sales and use tax for food purchased for human consumption and essential personal hygiene products.

**House Bill 696** and **Senate Bill 451** would provide an RSUT exemption for essential personal hygiene products.

**House Bill 848** would provide an RSUT exemption for incontinence products.

cc : Secretary of Finance

Date: 1/23/2022 VB  
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