

2/7/23 Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

FISCAL IMPACT REPORT

LAST UPDATED _____

SPONSOR Trujillo/Hernandez/Dixon/Serrato/Alcon **ORIGINAL DATE** 2/6/23

BILL

SHORT TITLE Diaper Sale Gross Receipts **NUMBER** House Bill 222

ANALYST Graeser

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25	FY26	FY27		
	(\$2,670.0) to (\$8,600.0)	(\$2,770.0) to (\$8,800.0)	(\$2,870.0) to (\$9,100.0)	(\$2,970.0) to (\$9,300.0)	Recurring	General Fund
	(\$2,940.0) to (5,700.0)	(\$3,040.0) to (\$5,900.0)	(\$3,150.0) to (5,900.0)	(\$3,260.0) to (6,200.0)	Recurring	Local Governments

Parenthesis () indicate revenue decreases.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	\$5.5		\$5.5	Nonrecurring	TRD-IT (General Fund)

Parenthesis () indicate expenditure decreases

Companion to Laws 2022, Chapter 47, Section 15, which allowed a deduction for feminine hygiene products.

Sources of Information

LFC Files

Responses Received From
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of House Bill 222

House Bill 222 proposes a deduction from Gross Receipts and Governmental Gross Receipts for the sale of diapers. Both baby diapers and adult incontinent diapers would be covered by this deduction. The deduction would be separately reported and TRD would include this data in the annual Tax Expenditure Report.

The effective date of this bill is July 1, 2023. There is no delayed repeal date and LFC advises to include a sunset date to allow the Legislature to consider if the deduction is meeting its purpose. TRD advises that the effective date should be moved to January 1, 2024 to allow sufficient time for implementation.

FISCAL IMPLICATIONS

This bill creates or expands a tax expenditure with a cost that is difficult to determine but likely significant. LFC has serious concerns about the significant risk to state revenues from tax expenditures and the increase in revenue volatility from erosion of the revenue base. The committee recommends the bill adhere to the LFC tax expenditure policy principles for vetting, targeting and reporting or be held for future consideration.

According to [statista.com](https://www.statista.com),¹ revenue from baby diapers sold in the U.S. is expected to total \$7.7 billion, with a per capita expenditure of \$22.98. Adjusting for the difference in personal income of New Mexicans and a slightly lower birth rate, the sales of baby diapers in New Mexico is expected to total \$44.8 million in 2023 and grow at 2.88 percent for the next four years. Additionally, revenue from adult incontinent diapers sold in the U.S. is expected to total \$4.0 billion, with a per capita expenditure of \$12.06 and grow at 4.75 percent for the next four years.

Ninety-eight percent of food deductions are reported in municipalities. We assume that diapers follow this same pattern. This adjusts the usual formula for general fund/local governments from 60/40 to 48/52. Relatively low New Mexico personal income also requires an adjustment. We have applied a 95 percent income ratio to the U.S. averages.

TRD expects the deduction to be about 3 times as costly as the LFC estimate:

The Taxation and Revenue Department (TRD) employed estimates of New Mexico state's population aged 0 to 2 and 50 and over with incontinence, as well as the average cost and consumption of diapers, to estimate the revenue loss attributable to this deduction. TRD estimates that around 12 percent of all women and 5 percent of men experience some form of urinary incontinence, which is more prevalent in people over the age of 50². The fiscal impact used the gross receipts tax (GRT) revenue growth from the December 2022 Consensus Revenue Estimating Group (CREG) forecast and is based on the effective gross receipts tax rate.

Both estimates are shown in the Fiscal Impact Table.

SIGNIFICANT ISSUES

This bill narrows the gross receipts tax (GRT) base. Many of the efforts over the last few years to reform New Mexico's taxes focused on broadening the GRT base and lowering the rates. Narrowing the base leads to continually rising GRT rates, increasing volatility in the state's largest general fund revenue source. Higher rates compound tax pyramiding issues and force consumers and businesses to pay higher taxes on all other purchases without an exemption, deduction, or credit.

The purpose of this deduction is not just to save citizens with young children and older adults a significant amount of money from household budgets, but to address issues of horizontal equity. Citizens with babies in diapers and older adults with incontinence issues are not situated

¹[https://www.statista.com/outlook/cmo/tissue-hygiene-paper/baby-diapers/united-states#:~:text=Revenue%20in%20the%20Baby%20Diapers,\(CAGR%202023%2D2027\)](https://www.statista.com/outlook/cmo/tissue-hygiene-paper/baby-diapers/united-states#:~:text=Revenue%20in%20the%20Baby%20Diapers,(CAGR%202023%2D2027))

² National Association for Continence, www.nafc.org

similarly to citizens without these spending requirements. This is a similar argument as was used last year to justify the deduction for feminine hygiene products. Women bear a financial burden for these products but men do not. This is not the same argument that justified the deduction for food and medical services in 2003. That argument was about vertical equity and the regressive nature of the gross receipts tax, as well as the argument from the 16th century philosopher Desiderius Erasmus, “A good prince will tax as lightly as possible those commodities which are used by the poorest members of society: grain, bread, beer, wine, clothing, and all other staples without which human life could not exist.”

TRD notes similar considerations:

This deduction would aide families with young children and adults that might have trouble carrying out day-to-day activities due to incontinence. These products may be considered as necessary healthcare products and as such, this bill may provide financial relief to families that struggle to afford these necessary products.

However, the proliferation of tax incentives complicates the tax code, creates special treatment to the code, narrows the tax base, with a negative impact on the general fund, and increases the burden of compliance on both taxpayers and TRD. In general, adding complexity and exceptions to the tax code does not comport generally with the best tax policy. For these reasons, if the aim is to aid parents with the costs of raising children, the Legislature could appropriate funds targeted at child care programs, and similar appropriations for senior populations.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is met with the bill’s requirement to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the deduction and other information to determine whether the deduction is meeting its purpose.

ADMINISTRATIVE IMPLICATIONS

TRD will need to update forms, instructions, and publications and make information system changes. The implementation of this bill will cost TRD’s Information Technology Division (ITD) approximately one month and \$5,554 of staff workload.

Subsection 1.D will require a new code in the tax system of record (GenTax) and Taxpayer Access Point (TAP) to track this deduction. Adding a new deduction with an effective date of July 1, 2023, does not allow enough time to update changes to forms, instructions, GenTax, and TAP. Therefore, to properly implement this deduction, it is recommended to add an effective date of January 1, 2024.

TECHNICAL ISSUES

LFC policy recommends this deduction include a delayed repeal to allow the legislature to consider if the deduction is meeting its purpose.

POSSIBLE QUESTIONS

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy:** Revenue should be adequate to fund needed government services.
2. **Efficiency:** Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity:** Different taxpayers should be treated fairly.
4. **Simplicity:** Collection should be simple and easily understood.
5. **Accountability:** Preferences should be easy to monitor and evaluate

Does the bill meet the Legislative Finance Committee tax expenditure policy principles?

1. **Vetted:** The proposed new or expanded tax expenditure was vetted through interim legislative committees, such as LFC and the Revenue Stabilization and Tax Policy Committee, to review fiscal, legal, and general policy parameters.
2. **Targeted:** The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals.
3. **Transparent:** The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies.
4. **Accountable:** The required reporting allows for analysis by members of the public to determine progress toward annual targets and determination of effectiveness and efficiency. The tax expenditure is set to expire unless legislative action is taken to review the tax expenditure and extend the expiration date.
5. **Effective:** The tax expenditure fulfills the stated purpose. If the tax expenditure is designed to alter behavior – for example, economic development incentives intended to increase economic growth – there are indicators the recipients would not have performed the desired actions “but for” the existence of the tax expenditure.
6. **Efficient:** The tax expenditure is the most cost-effective way to achieve the desired results.

LFC Tax Expenditure Policy Principle	Met?	Comments
Vetted	✘	
Targeted Clearly stated purpose Long-term goals Measurable targets	✔ ✘ ✘	Not stated, but evident.
Transparent	✔	Separately reported
Accountable Public analysis Expiration date	✔ ✘	
Effective Fulfills stated purpose Passes “but for” test	✔ ✘	Parents will continue buying baby diapers; elderly will continue buying incontinence diapers.
Efficient	?	
Key: ✔ Met ✘ Not Met ? Unclear		