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Feminine Hygiene Products Tax

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In January 2021, the United Kingdom became the latest country to eliminate taxes on feminine hygiene products. Illinois has had a long history on this issue, dating from the 1970s through an Illinois Supreme Court case in the 1980s, changes in regulations, and culminating in a new law in 2016 that made Illinois the third state to eliminate the so-called "tampon tax."

Various states and countries classify feminine hygiene products differently. States that have a sales tax (all but five) also may have exemptions for medical appliances. Some states refer to feminine hygiene products as medical appliances and others do not, resulting in confusion over the taxation of a gender-specific product. On top of state sales taxes, some municipalities have their own sales tax, causing some feminine hygiene products to be taxed at more than 10 percent. The principal question is whether these products are luxury, non-necessary items, in which most items are taxed at the standard rate, or are they basic health and hygiene necessities?

In the 1970s, tampons were alternately classified as cosmetic or medical devices, depending on the jurisdiction. In 1989, the Illinois Supreme Court heard *Geary v. Dominick's*, 129 Ill. 2d 389 (1989) in which several female plaintiffs brought a class action suit against major grocery store chain Dominick's, the City of Chicago, and other retail establishments to declare taxes on feminine hygiene products illegal. The Chicago Sales Tax Ordinance exempted medical devices from its sales tax, but did not define what a medical device was. The State of Illinois's Department of Revenue did make that distinction, and in 1985, began to include feminine hygiene products in that exemption. Sales tax did not apply to those products in the state but did apply in Chicago.

The plaintiffs in *Geary*, represented by current Illinois Supreme Court Chief Justice Anne M. Burke, challenged the City of Chicago's argument that medical appliances only related to illnesses and that tampons were not medical appliances because menstruation was a normal bodily function. The Illinois Supreme Court, in an opinion by Justice Horace Calvo, agreed with the plaintiffs, noting that feminine hygiene products "serve an absorbent function similar to that of cotton and bandaids, and these latter two items are explicitly defined as 'medical appliances' by the Chicago department's regulation."

Twenty years later, the Illinois Department of Revenue changed its sales tax regulations for many medical-related products with drugs and medical appliances taxed at 1% and grooming and hygiene products taxed at the standard state rate of 6.25%. Feminine hygiene products fell into the grooming and hygiene category.

In the 2010s, there was a national and world-wide movement to end taxes on feminine hygiene products. Proponents argued that this gender specific tax disproportionately hurt lower income women. Opponents generally argued the loss of significant tax revenue. The Illinois General Assembly passed a law in 2016 to eliminate all taxes on tampons and pads, and Governor Bruce Rauner signed it into law. Illinois became the third state to do so, after Connecticut and New York. Since 2016, ten states total have eliminated the tax: California, Connecticut, Florida, Illinois, Nevada, New York, Ohio, Rhode Island, Utah, and Washington. A number of countries have done the same, including, Germany, Australia, Canada, India, Malaysia, and now the United Kingdom.