

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1364

Bill Subtitle: TO CREATE A SALES AND USE TAX EXEMPTION FOR BREAST PUMPS, BREAST PUMP COLLECTION AND STORAGE SUPPLIES, BREAST PUMP KITS, AND RELATED ITEMS.

Basic Change :

Sponsors: Reps. Clowney, Bentley, Pilkington, and Lundstrum; Sen. B. Davis

HB1364 creates a new section, § 26-52-455, to provide a sales and use tax exemption for sales of breast pumps and related items. The bill would exempt from sales and use tax the following:

- Breast pumps;
- Breast pump collection and storage supplies;
- Breast pump kits;
- Breast pump travel bags and the accessories used to facilitate the use of a portable breast pump, including without limitation ice packs, labels, and other similar products; and
- Repair and replacement parts for a breast pump or a breast pump kit.

"Breast pump" is defined as an electrically or manually controlled pump device designed or marketed to be used to express milk from a human breast during lactation. A breast pump includes the electrically or manually controlled pump device and any battery, AC adapter, or other power supply unit packaged and sold with the pump device at the time of sale to power the pump device.

"Breast pump collection and storage supplies" is defined as items of tangible personal property designed or marketed to be used in conjunction with a breast pump to collect milk expressed from a human breast and to store collected milk until it is ready for consumption. The definition of "breast pump collection and storage supplies" includes:

- Breast shields and breast shield connectors;
- Breast pump tubes and tubing adapters;
- Breast pump valves and membranes;
- Backflow protectors and backflow protector adapters;
- Bottles and bottle caps specific to the operation of the breast pump;
- Breast milk storage bags; and
- Other items that may be useful to initiate, support, or sustain breastfeeding using a breast pump during lactation, that may be sold separately, but are generally sold as part of a breast pump kit.

The items below are not "breast pump collection and storage supplies" unless sold as part of a breast pump kit pre-packaged by the breast pump manufacturer or distributor:

- Bottles and bottle caps not specific to the operation of the breast pump;
- Breast pump travel bags and other similar carrying accessories, including ice packs, labels, and other similar products;
- Breast pump cleaning supplies;
- Nursing bras, bra pads, breast shells, and other similar products; and
- Creams, ointments, and other similar products that relieve breastfeeding-related symptoms or conditions of the breasts or nipples.

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"Breast pump kit" is defined as a kit that contains a breast pump and one or more of the following items:

- Breast pump collection and storage supplies; and
- Other taxable items of tangible personal property that may be useful to initiate, support, or sustain breastfeeding using a breast pump during lactation, so long as the other taxable items of tangible personal property sold with the breast pump kit at the time of sale are less than 10% of the total sales price of the breast pump kit.

The exemption is effective on the first day of the calendar quarter following the effective date of the act.

Revenue Impact :

FY2024

Total Approximate State Sales and Use Tax Loss **\$ - 197,000**

(Estimated Effective Date 10/1/23 --- 8 months reduced tax collection)

General Revenue - 4.5%	\$ - 132,157
Property Tax Relief - .5%	\$ - 14,684
Conservation Fund - .125%	\$ - 3,671
Educational Adequacy Fund - .875%	\$ - 25,697
Highway Fund - .5%	\$ - 15,154
Educational Excellence Trust Fund -	\$ - 0.00
Educational Adequacy (GR Transfer) -	\$ - 0.00
State Central Services -	\$ - 3,819
Constitutional Officers -	\$ - 1,818

Total Approximate Local City and County Sales and Use Tax Loss **\$ - 65,667**

FY2025

Total Approximate State Sales and Use Tax Loss **\$ - 295,000**

General Revenue - 4.5%	\$ - 177,561
Property Tax Relief - .5%	\$ - 21,989
Conservation Fund - .125%	\$ - 5,497
Educational Adequacy Fund - .875%	\$ - 38,480
Highway Fund - .5%	\$ - 22,692
Educational Excellence Trust Fund -	\$ - 18,687
Educational Adequacy (GR Transfer) -	\$ - 1,652
State Central Services -	\$ - 5,718
Constitutional Officers -	\$ - 2,723

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Total Approximate Local City and County Sales and Use Tax Loss

\$ - 98,333

Taxpayer Impact :

A taxpayer purchasing breast pumps, breast pump collection and storage supplies, breast pump kits, and related items would no longer be responsible for paying sales and use tax.

Resources Required :

None.

Time Required :

Adequate time is provided for implementation.

Procedural Changes :

Updates to the Sales and Use Tax Rules will need to be promulgated and Department of Finance and Administration staff would be trained on this update to existing Arkansas Tax law.

Other Comments :

None.

Legal Analysis :

The State of Arkansas is a full member of the Streamlined Sales and Use Tax Agreement (SSUTA). The SSUTA provides that Arkansas can exempt products from sales and use tax as a product-based exemption. The SSUTA provides that each member of SSUTA must utilize common definitions as provided in the SSUTA. A member state is not in compliance with the SSUTA if the member state excludes any product or service that is included within a product definition or includes a product or service that is excluded from a product definition.

SSUTA provides definitions for "breast pump," "breast pump collection and storage supplies," and "breast pump kit." The definitions in HB1364 are substantially the same as those in HB1364. New Jersey, also a SSUTA member, has adopted these same definitions.

SSUTA provides that a member state may choose to include or exclude repair and replacement parts for "breast pumps" or "breast pump kits" in its definition.

HB1364 meets the requirements of SSUTA and keeps Arkansas in compliance with the SSUTA agreement.

The definition of "breast pump kits" provides that otherwise taxable items can be included as part of the kit and exempt from sales and use tax, so long as the taxable items represent less than 10% of the

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total sales price of the breast pump kit. Retailers could potentially experience difficulty in determining whether a breast pump kit includes taxable property that represents 10% or more of the total sales price of the kit.