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DEPARTMENT OF JUSTICE
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January 11, 2024
OPINION 23-0129

Ms. Sandy Teal
Council Clerk
Livingston Parish Council
P.O. Box 335
Livingston, LA 70754

160 – TAXATION – Sales Tax

La. Const. art. VI, §29

La. R.S. 47:305.75

La. R.S. 47:337.10.2

Pursuant to La. R.S. 47:337.10.2, Livingston Parish may adopt an ordinance exempting feminine hygiene products and diapers from parish sales and use taxes.

Dear Ms. Teal:

On behalf of the Livingston Parish Council (the “Parish”), you have requested an opinion from this office concerning sales and use tax exemptions. Specifically, you ask whether the Parish may adopt an ordinance that provides for a “pink tax exemption,” which exempts feminine hygiene products and diapers from the Parish’s 1% sales and use tax for roads and jail facilities.

We begin with La. Const. art. VI, §29(D)(2) which provides the following:

Except when bonds secured thereby have been authorized, the legislature may provide for the exemption or exclusion of any goods, tangible personal property, or services from sales or use taxes only pursuant to one of the following:

...

(2) Exemptions or exclusions applicable to the taxes of the state or applicable to political subdivisions whose boundaries are coterminous with those of the state, or both.¹

...

Thus, we note at the outset that in the event this tax 1% sales and use tax has been secured by bonds (or other indebtedness), the Parish should consult their bond attorney.

Turning to the language of La. Const. art. VI, §29(D)(2), the legislature is authorized to provide for local sales and use tax exemptions under three scenarios. One such scenario is sales and use tax exemptions or exclusions that apply to State of Louisiana sales and

¹ La. Const. art. VI, §29(D)(2) emphasis added.

use taxes. Accordingly, the legislature enacted La. R.S. 47:305.75, which exempts the purchase of feminine hygiene products and diapers from state sales and use taxes.²

In addition, the legislature also enacted La. R.S. 47:337.10.2 which states that “[a]ny political subdivision may by ordinance or resolution exempt purchases of feminine hygiene products, diapers, or both for individual personal use from all or part of the sales and use tax levied by the political subdivision.”³ Here, the Parish is certainly a political subdivision of the state that has adopted an ordinance providing for such an exemption. Therefore, it appears the Parish has followed the correct procedure in implementing this particular sales and use tax exemption.

Based upon the information in your request, it seems the issue is actually whether such an exemption runs afoul of Louisiana law regarding dedicated taxes. The Louisiana Supreme Court has long held that:

[W]hen citizens are presented with a proposition that would impose a special tax for a specific purpose, and they approve the imposition of that tax, a covenant is created which must be respected and upheld. Once citizens vote for a tax dedicated to one purpose, the tax cannot be used for a purpose other than that approved by the citizens.⁴

In 2020, citizens of the Parish approved a 1% sales and use tax for the purpose of funding roads and jail facilities.⁵ There was no mention of any such tax exemption on the ballot proposition. Nonetheless, this exemption adopted by the Parish would not appear to violate any such *covenant* created with its citizens because tax proceeds are not being used for any purpose contrary to the ballot language. Instead, certain items (i.e., feminine hygiene products and diapers) are merely being exempted from the levy of this particular tax altogether. Therefore, the Parish (like any other political subdivision) may utilize the provisions of La. R.S. 47:337.10.2 to exempt feminine hygiene products and diapers from all or part of its sales tax levy. Doing so would not be considered using tax proceeds contrary to what was approved by the voters.

Considering the foregoing, it is the opinion of this office that pursuant to La. R.S. 47:337.10.2, Livingston Parish may adopt an ordinance exempting feminine hygiene products and diapers from parish sales and use taxes.

² See La. R.S. 47:305.75.

³ See La. R.S. 47:337.10.2(A).

⁴ See *W. Feliciana Par. Gov't v. State*, 2019-00878, p. 14 (La. 10/11/19); 286 So.3d 987, 997; see also *Denham Springs Economic Development District*, 04-1674 at 14, 894 So.2d at 335; *City of New Orleans v. Louisiana Assessors' Ret. & Relief Fund*, 2005-2548, p. 14 (La. 10/1/07); 986 So.2d 1, on reh'g (Jan. 7, 2008); *Orleans Parish School Board v. City of New Orleans*, 238 La. 738, 116 So.2d 505 (La.1959).

⁵ See election results from November 3, 2020 at <https://voterportal.sos.la.gov/graphical#!/#TabFull>. (last accessed August 28, 2023).

We trust this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

Yours very truly,

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BY: 
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LM/BAR