



October 19, 2022

Hon. Steve Barnett
Secretary of State
500 E Capitol Avenue
Pierre, SD 57501

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SD Secretary of State

Dear Secretary Barnett,

The Legislative Research Council received an initiated measure to reduce the tax on anything sold for eating or drinking by humans, except alcoholic beverages and prepared food. The initiated measure requires a fiscal note because it was determined it may have an impact on revenues, expenditures, or fiscal liability of the state or its agencies and subdivisions. SDCL 2-9-31 requires the fiscal note be no longer than fifty words. If this measure is approved by the people of South Dakota, the measure will take effect on July 1, 2025.

The fiscal note examines the fiscal impacts associated with no longer taxing anything sold for eating or drinking by humans, except alcoholic beverages and prepared food. The methodology revolves around calculating the revenue generated with and without the exemption based the proportion of total expenditures attributable to food. Data on expenditures of food at home from the U.S. Bureau of Labor Statistics, income elasticity of consumption, state sales tax revenues, and other research and data contributed to this methodology. The South Dakota Department of Revenue was contacted to provide relevant data for this analysis.

The model produced an estimate showing a reduction in state sales tax of \$119.1 million for fiscal year FY2026, beginning July 1, 2025. Municipalities could still tax anything sold for eating or drinking by humans. The actual amount of state sales tax revenue lost will vary from this estimate, as it is a point-in-time estimate completed at least two years prior to implementation.

In any estimate, assumptions must be made due to lack of data or ambiguities. The language presented in the initiated measure, specifically the phrase "anything sold for eating or drinking," is ambiguous, and the LRC is unclear how the Legislature or the Department of Revenue would interpret the wording. Merriam-Webster's definition of eat/eating is, "to take in through the mouth as food: ingest, chew, and swallow in turn." As "food" is included in the definition of eating, SDCL 10-45-1(5) defines food as, "any substance, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that is sold for ingestion or chewing by humans and is consumed for its taste or nutritional value. The term, food, does not include alcoholic beverages, tobacco, or prepared food." Therefore, items like aspirin or tobacco products would still be taxed, and items like supplements and gum would not be taxed for purposes of this analysis.

Enclosed is a copy of the initiated measure, in final form, that was submitted to this office. In accordance with SDCL 2-9-31, I hereby submit the Legislative Research Council's fiscal note with respect to this initiated measure.

Sincerely,



Reed Holwegner
Director

Enclosures

Cc: Rick Weiland

SOUTH DAKOTA LEGISLATIVE RESEARCH COUNCIL

FISCAL NOTE

INITIATED MEASURE

AN INITIATED MEASURE –

THE STATE MAY NOT TAX THE SALE OF ANYTHING SOLD FOR EATING OR DRINKING BY HUMANS, EXCEPT ALCOHOLIC BEVERAGES AND PREPARED FOOD.

Beginning July 1, 2025, the State could see a reduction in sales tax revenues of \$119.1 million annually from no longer taxing the sale of anything sold for eating or drinking by humans, except alcoholic beverages and prepared food. Municipalities could continue to tax anything sold for eating or drinking.

Approved: Reed Holwegner Date: October 19, 2022
Director, Legislative Research Council