

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3888H.02C
 Bill No.: HCS for HB 1992
 Subject: Taxation and Revenue - General; Taxation and Revenue - Sales and Use; Food;
 Department of Revenue
 Type: Original
 Date: February 23, 2022

Bill Summary: This proposal repeals the statutory provisions imposing a sales tax on food.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
General Revenue*	\$312,142,374	\$416,189,833	\$416,189,833
Total Estimated Net Effect on General Revenue	\$312,142,374	\$416,189,833	\$416,189,833

*The definition of “food” (and sales-taxability thereof) is changed in this House Committee Substitute. The new definition would narrow the list of food items that would not be charged the 3% sales tax rate attributed to the state’s General Revenue Fund, effectively increasing sales tax collections.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
School District Trust Fund (0688)**	(\$4,264,632)	(\$5,686,177)	(\$5,686,177)
Total Estimated Net Effect on <u>Other</u> State Funds	(\$4,264,632)	(\$5,686,177)	(\$5,686,177)

** Currently the 1% sales tax attributed to the School District Trust Fund is still collected on the retail sale of food (the 3% for General Revenue is not). This proposal removes the 1% tax.

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Total Estimated Net Effect on FTE	0	0	0

- Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.
- Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Section 144.014 Sales Tax Exemption on Food

Officials from the **Office of Administration - Budget and Planning (B&P)** note this proposal may increase TSR by \$410.5 million once fully implemented.

This proposal will impact the calculation under Article X, Section 18(e). B&P notes that the net increase in state revenues by this proposal exceeds the limit to revenue growth set forth by Article X, Section 18(e). The limit for the 2022 session is \$104.6M. However, the calculation under Article X, Section 18(e) is based on the fully implemented impacts of all legislation passed during a session. Therefore, it is unknown at this time whether the cumulative impact of all legislation passed during the 2022 session will be greater than the limited allowed.

B&P states this proposal would exempt food from the 1% state sales tax that is deposited into the School District Trust Fund (SDTF). This proposal also narrows the definition of food from items that may be purchased with the Federal Food Stamp Program, which was replaced with the Supplemental Nutrition Assistance Program (SNAP), to items that may be purchased with the Women, Infants, and Children (WIC) program.

B&P notes that the food items purchasable under WIC are significantly smaller than the food items purchasable under SNAP. In addition to limiting the food categories (such as milk versus bottled water), the WIC¹ program also limits the sizes and brands allowed. For example: while yogurt is an allowable item, only certain flavors of certain brands are allowed and only a 32 oz. container qualifies. Therefore any flavor, brand, or size not allowable under WIC, would not qualify under the definition of “food”.

Therefore, because this proposal narrows the definition of “food”, B&P notes that items that are currently exempt from the 3% state general revenue sales tax would now become taxable.

Using data published by DSS for the amount of SNAP benefits used to purchase food and data published by the USDA for the amount of WIC benefits used to purchase food, B&P estimates that WIC purchases make up 3.9% of total SNAP and WIC purchases. In FY21, there were \$14,441,612,081 in food purchases under the current definition of “food”. Therefore, B&P estimates that approximately \$568,617,662 of those purchases may have fallen under the proposed definition of “food” (WIC eligible food items), while \$13,872,994,419 would fall under the broader definition of “food” (SNAP eligible food items).

¹ <https://health.mo.gov/living/families/wic/pdf/MissouriWICApprovedFoodList2018.pdf>

Therefore, B&P estimates that this proposal would exempt \$5,686,177 (\$568,617,662 x 1%) in sales from the 1% state education sales tax once fully implemented. This proposal would also increase general revenue by \$416,189,833 (\$13,872,994,419 x 3%) once fully implemented, by narrowing the definition of food. Table 1 shows the estimated impact by fund and fiscal year.

Table 1: Estimated Food Tax Impact by Fund

<u>State Fund</u>	FY 2023	FY 2024	FY 2025
General Revenue			
Gain from restricted exemption	\$312,142,374	\$416,189,833	\$416,189,833
Education (SDTF)			
Loss from "WIC" defined food	(\$4,264,632)	(\$5,686,177)	(\$5,686,177)
TSR Impact	\$307,877,742	\$410,503,656	\$410,503,656

B&P notes that this proposal will not impact the remaining 0.225% state sales tax (0.125% Conservation and 0.1% DNR) as well as local sales taxes as they are levied on all types of food, regardless of the definition under Section 144.014.

Officials from the **Department of Revenue (DOR)** note food is defined in statute as items that can be purchased with SNAP benefits (food stamps). The definition of food is used to determine the tax rate that is assessed. Food is subject to the current state sales tax rate of 1.225%. The state sales tax rate on food purchased with SNAP, includes .225% that is distributed to the Conservation Commission and DNR's Park, Soil & Water Funds. This .225% is constitutionally created and is not impacted by this proposal.

If an item is not determined to fit the definition of food, it is assessed a tax rate of 4.225%, the rate of tangible personal property.

Section 144.014, besides defining food, established a 1% sales tax on food that is to be distributed to the School District Trust Fund. This brings the total tax on food to 1.225%. This proposal removes that 1% state sales tax that is distributed to the School District Trust Fund.

Instead of classifying food based on the SNAP program, this proposal changes the classification of food to the Women, Infants and Children (WIC) program. Therefore, items that can be purchased using WIC are now the only items eligible for the 1.225% rate while all other items would be taxed at the 4.225% rate. However, since this proposal also removes the 1% rate the rate on food purchased under the WIC program would have a tax rate of .225%.

Per the Department of Social Services' 2020 Annual Report the following amount of SNAP benefits have been distributed the last four years:

Year	SNAP Benefits
2017	\$1,118,930,607
2018	\$1,079,320,336
2019	\$1,009,800,131
2020	\$1,169,322,638

Information from the USDA indicates the following amount of WIC benefits were distributed in Missouri.

Year	WIC Benefits
2017	\$49,328,818
2018	\$47,697,107
2019	\$43,641,164
2020	\$38,058,169

Using the above information, DOR was able to determine that roughly 3.9% is the average WIC purchases from SNAP and WIC.

The Department notes that in FY 2021 there was \$14,441,612,081 in taxable sales on food. Subtracting out the 3.9% average WIC purchases, DOR estimates that \$13,872,994,419 is the taxable sales on food that will be assessed the 4.225% tax rate under this proposal.

It should be noted that this proposal would go into effect on August 28, 2022 and that sales tax is distributed 1 month behind collections, therefore this will result in revenue being reported for only 9 months of FY 2023.

The loss of impact to the School District Trust Fund from the 1% tax being removed is:

	FY 2023 (9 months)	FY 2024+
School District Trust	(\$4,264,632)	(\$5,686,177)

This proposal will result in an increase in the number of taxable products at the 4.225%. Since Conservation, School Districts and Park, Soil & Water funds already collect their 1.225% portion of the state tax, the remaining items this only will result in an increase of the general revenue 3% portion of the tax.

	Tax Rate	FY 2023(9 Months)	FY 2024+
General Revenue	3%	\$312,142,374	\$416,189,833

DOR notes since local tax is already collected on food purchases; this will not result in any change to locals.

Officials from the **City of Kansas City** note this proposal would have a negative fiscal impact on Kansas City in an indeterminate amount.

Oversight notes the above local political subdivision stated this proposal would have negative fiscal impact on their organization of an indeterminate amount. Oversight notes since local sales taxes are levied on all types of food, regardless of the definition under Section 144.014, there will be no impact to locals.

Officials from the **Missouri Department of Conservation** assume the proposal will have an unknown fiscal impact but greater than \$250,000. The Conservation Sales Tax funds are derived from one-eighth of one percent sales and use tax pursuant to Article IV Section 43 (a) of the Missouri Constitution. Any decrease in sales and use tax collected would decrease revenue to the Conservation Sales Tax funds. However, the initiative is very complex and may require adjustments to Missouri sales tax law which could cause some downside risk to the Conservation Sales Tax. The Department assumes the Department of Revenue would be better able to estimate the anticipated fiscal impact that would result from this proposal.

Oversight notes that the Conservation Sales Tax funds are derived from one-eighth of one percent sales and use tax pursuant to Article IV Section 43 (a) of the Missouri Constitution thus MDC's sales taxes are constitutional mandates. Therefore, Oversight will reflect the B&P's and DOR's estimates of impact on the fiscal note.

Officials from the **City of Claycomo, City of O'Fallon, City of Springfield, Department of Health and Senior Services, Department of Social Services, and Department of Natural Resources** each assume the proposal will have no fiscal impact on their respective organizations. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

Oversight only reflects the responses received from state agencies and political subdivisions; however, other cities and counties were requested to respond to this proposed legislation but did not. A listing of political subdivisions included in the Missouri Legislative Information System (MOLIS) database is available upon request.

<u>FISCAL IMPACT – State Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
GENERAL REVENUE			
<u>Revenue - Gain from changed definition of food §144.014 p. 3-6</u>	<u>\$312,142,374</u>	<u>\$416,189,833</u>	<u>\$416,189,833</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE	<u>\$312,142,374</u>	<u>\$416,189,833</u>	<u>\$416,189,833</u>
<u>FISCAL IMPACT – State Government (continued)</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
SCHOOL DISTRICT TRUST FUND			
<u>Revenue Reduction – Removing 1% tax rate on food and the changed definition of “food” relative to sales tax - §144.014 p. 3-6</u>	<u>(\$4,264,632)</u>	<u>(\$5,686,177)</u>	<u>(\$5,686,177)</u>
ESTIMATED NET EFFECT ON SCHOOL DISTRICT TRUST FUND (0688)	<u>(\$4,264,632)</u>	<u>(\$5,686,177)</u>	<u>(\$5,686,177)</u>

<u>FISCAL IMPACT – Local Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT – Small Business

Small businesses that sell food, as defined in the legislation, could be impacted by this proposal.

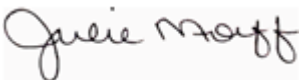
FISCAL DESCRIPTION

The proposed legislation changes the statutory provisions imposing a sales tax on food.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Natural Resources
Department of Health and Senior Services
Department of Social Services
Department of Revenue
Office of Administration - Budget and Planning
Missouri Department of Conservation
City of Kansas City
City of Claycomo
City of O'Fallon
City of Springfield



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