

Legislative Analysis



PROHIBIT LOCAL EXCISE TAXES ON FOOD

Phone: (517) 373-8080

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House Bill 4999 as enacted

Public Act 135 of 2017

Sponsor: Rep. Rob VerHeulen

Committee: Michigan Competitiveness

Complete to 11-13-17

Analysis available at

<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4999 would create a new act to prohibit local units of government from imposing an excise tax on, or administering any policy imposing a tax or fee on, the manufacture, distribution, or sale of food. The prohibition would apply to food for immediate and nonimmediate consumption, and would be in effect except as otherwise provided by federal or state law.

“Food” is defined in the bill as “articles used for food or drink for humans or other animals, chewing gum, and articles used for components of any such article.”

FISCAL IMPACT:

The bill would have no fiscal impact on state or local government relative to current law. Currently, no local unit of government has instituted or sought to institute a local excise tax, fee, or other tax on the manufacture, distribution, wholesale sale, or retail sale of food for immediate consumption or nonimmediate consumption. The provisions of the bill would prohibit prospective actions to institute an excise tax, fee, or other tax.

THE APPARENT PROBLEM:

The Michigan Constitution prohibits sales and use taxes on food for nonimmediate consumption, and allows the Legislature to impose a maximum 6% sales and use tax rate (composed of a 4% rate set in the 1963 Constitution and a 2% rate added by Proposal A in 1994).¹ It is not clear, however, if these sales and use tax limitations (both in base and rate) would apply to any type of locally levied tax, otherwise allowable by law, potentially imposed on food. It has been proposed that legislation be introduced to ensure that the Constitutional limitations on the taxation of food be extended to other types of taxes or fees.

¹ Constitution of Michigan of 1963, Art. IX, Section 5. Available online at: [http://www.legislature.mi.gov/\(S\(gevgkzko1xhw50vm0graxiaz\)\)/mileg.aspx?page=getObject&objectName=mcl-Article-IX-8](http://www.legislature.mi.gov/(S(gevgkzko1xhw50vm0graxiaz))/mileg.aspx?page=getObject&objectName=mcl-Article-IX-8)

BACKGROUND INFORMATION:

The bill is understood to address recent efforts outside of Michigan to tax pop and other sweetened beverages. Reportedly, Philadelphia was the first major U.S. city to pass such a tax, levying a tax that amounts to 1.5 cents per ounce; and Cook County, Illinois (City of Chicago) passed a one-cent per ounce tax in 2016.^{2, 3}

ARGUMENTS:

For:

Proponents of the bill note that the state Constitution is clear in protecting food from the sales and use taxes. This intent and protection should be extended to other types of taxes—excise taxes or fees—that could potentially be levied by local units of government.

For:

Proponents also point to the negative impacts in cities that have instituted these types of taxes, specifically Philadelphia and Chicago. The taxes are difficult to administer for small businesses, result in a consumption shift to businesses outside the taxing jurisdiction, and disproportionately impact low-income consumers.

Against:

Opponents note that the bill would take away a tool of local government that could be used to promote public health. The taxation of certain items—like tobacco and alcohol—has served to limit consumption and improve public health. Reportedly, reducing the consumption of sugary beverages could be the most effective method of reducing the prevalence of obesity in the U.S.

Legislative Analyst: Patrick Morris
Fiscal Analyst: Ben Gielczyk

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

² See “Philadelphia Becomes 1st Major U.S. City To Pass A Tax On Soda.” *National Public Radio*, June 16, 2016. Available online at: <http://www.npr.org/sections/thetwo-way/2016/06/16/482359140/philadelphia-becomes-1st-major-u-s-city-to-pass-a-tax-on-soda>

³ See “Cook County soda pop tax approved with Preckwinkle breaking tie vote.” *Chicago Tribune*, November 11, 2016. Available online at: <http://www.chicagotribune.com/news/local/politics/ct-cook-county-soda-pop-tax-vote-met-1111-20161110-story.html>