

Greater Sioux Falls Chamber of Commerce – Overview of Sales Tax Repeal on Items Sold for Human Consumption

Background

An Initiated Measure that would exempt the State of South Dakota from collecting Sales Taxes on anything sold for human consumption, except on alcohol and prepared food, will appear before South Dakota citizens on the 2024 General Election Ballot for consideration. The language for the measure appears as follows.

“Notwithstanding any other provision of law, the state may not tax the sale of anything sold for human consumption, except alcoholic beverages and prepared food. Municipalities may continue to impose such taxes.”

Financial Impact

According to the South Dakota Legislative Research Council, if this measure is passed it will decrease yearly revenues by \$124 million. In South Dakota, our state constitution requires that the legislature pass a balanced budget each fiscal year. Consequently, to offset lost revenue and maintain a balanced budget, government services and programs will likely be cut. In the event no budget cuts are made, the state will have to impose a new tax to generate the previously lost revenue and to maintain a balanced budget.

Potential Impact to Municipalities

While the language in the initiated measure states that “*municipalities may continue to impose such taxes*”, current South Dakota Codified Law requires that State and municipal tax code must conform in all aspects except for the rate.

SDCL 10-52-2: 10-52-2. Imposition of tax--Conformance to state sales and use tax--Rate.

“Any incorporated municipality within this state may impose any non-ad valorem tax in accordance with the provisions of this chapter, except upon fuel used for motor vehicles, by ordinance enacted by its local governing board. However, no tax may be levied on the sale, use, storage and consumption of items taxed under chapters 10-45 and 10-46, unless such tax conforms in all respects to the state tax on such items with the exception of the rate, and the rate levied does not exceed two percent.”

Sales tax is one of the few major revenue generators for South Dakota municipalities. If municipalities lose the ability to tax a large portion of items sold, it will be a significant impact to their bottom line.

Other Potential Impacts

There is no definition in state law for “human consumption”. This can have unintended consequences on which items may be exempt from taxes under the terms used in this measure. The South Dakota Attorney General's opinion states the following potential impacts of said language:

“Human consumption is not defined by state law. However, it’s common definition includes more than foods and drinks...”

The measure may affect the State’s obligations under the tobacco settlement agreement and the streamlined sales tax agreement. The master settlement agreement resulted from multi-state lawsuits against cigarette manufacturers... South Dakota’s annual share of the agreement is approximately \$20 million. The streamlined sales tax agreement is a multistate program designed to simplify the collection of sales and use tax for companies selling in multiple jurisdictions. Judicial or legislative clarification of the measure will be necessary.”

The loss of streamlined sales taxes would also have a significant impact to the state’s retailers who sell remotely.

Greater Sioux Falls Chamber’s Policy Statement

The Greater Sioux Falls Chamber’s policy statement supports a balanced state budget. It also supports continued funding for things important to quality of life, quality education, safe infrastructure, and economic development.

If this measure is passed and the state loses a minimum of \$124 million in revenue annually, the legislature may be unable to continue addressing programs funded by the State. Such funding includes public education at all levels, public infrastructure, healthcare, agricultural programs, and many other items that the Chamber actively supports.

A second remedy for a balanced budget would be to increase or implement new taxes. Increases in sales, fuel, contractors, and other taxes could be implemented to make up for the lost revenue. Furthermore, a state income tax may be implemented. This can be done either through traditional legislative means, or the initiated measure process.

Summary:

While the Greater Sioux Falls Chamber supports low taxes on individuals and businesses, we also understand the need to support the pillars of our state’s continued success. These pillars include quality education, robust infrastructure, healthcare access, and economic development opportunities. Should this initiated measure to repeal sales tax on human consumables be passed, the state will lose a significant amount of revenue. This revenue loss will ultimately lead to cuts in important government programs, the increase on existing taxes, or creation of a new tax to recover the lost revenue.