OKLAHOMA TAX COMMISSION

REVENUE IMPACT STATEMENT AND/OR ADMINISTRATIVE IMPACT STATEMENT
SECOND REGULAR SESSION, FIFTY-EIGHTH OKLAHOMA LEGISLATURE

DATE OF IMPACT STATEMENT: February 8, 2022

BILL NUMBER: HB 3621 **STATUS AND DATE OF BILL:** Introduced 12/29/2021

AUTHORS: House Virgin Senate n/a

TAX TYPE (S): Sales Tax **SUBJECT:** Exemption/Tax Rate

PROPOSAL: New Law & Amendatory

The measure proposes a state sales tax exemption for retail sales of food and food ingredients pursuant to a graduated state rate reduction. It also provides that the proposed sales tax exemption shall not apply to any sales tax imposed by local taxing jurisdiction. Further, it defines terms such as *food and food ingredients*, *candy*, *alcoholic beverages*, *dietary supplements*, *prepared food*, *soft drinks and tobacco.*

EFFECTIVE DATE: Emergency – July 1, 2022

REVENUE IMPACT:

Insert dollar amount (plus or minus) of the expected change in state revenues due to this proposed legislation.

FY 23: $95,728,000 decrease in state sales tax revenues
FY 24: $203,708,000 decrease in state sales tax revenues
FY 25: $325,118,000 decrease in state sales tax revenues

ADMINISTRATIVE COST:

FY 23: $62,500 increase in OTC administrative costs

Feb. 9, 2022 Rick Miller
DATE DIVISION DIRECTOR msm

2/9/2022 Huan Gong
DATE HUAN GONG, ECONOMIST

2/9/2022
DATE FOR THE COMMISSION

The revenue impact provided herein is an estimate of the potential impact on the collection or apportionment of tax revenues affected by the proposed legislation. It is not intended to be an estimate of the overall fiscal impact on the state budget if the proposed legislation is enacted.

ATTACHMENT TO REVENUE IMPACT – HB 3621 [Introduced] Prepared 02/02/2022

The measure proposes a partial state sales tax exemption for retail sales of food and food ingredients pursuant to a graduated state rate reduction as follows:

- FY 23 - 1.5% reduction to the current state rate of 4.5% resulting in a 3% state sales tax rate
- FY 24 – Additional 1.5% reduction to the 3% rate resulting in a 1.5% state sales tax rate
- Thereafter, the described sales shall be exempt from state sales tax.

It also provides that the proposed sales tax exemption shall not apply to any sales tax imposed by local taxing jurisdictions. Further, it defines relevant terms such as *food and food ingredients*[1], *alcoholic beverages*[2], *candy*[3], *dietary supplements*[4], *prepared food*[5], *soft drinks*[6] *and tobacco*[7].

REVENUE IMPACT

The U.S. Census Bureau reports 1,480,061 households in Oklahoma with an average household consisting of 2.58 persons.[8] Based on U.S. Bureau of Labor Statistics the amount of estimated monthly food expenditures for home consumption per household was $412 for FY 20. The inflation rate for home consumption food increased 0.9% for FY 21 resulting in an estimated $416 in monthly food expenditures. Multiplying the average food expenditure by 1,480,061 households, results in $615,705,376 in monthly expenditures for food. Multiplying $615,705,376 by 12 (months), yields a yearly average expenditure for home food consumption in the amount of $7,388,464,512. An adjustment for FY 21 food stamp[9] and WIC sales which are currently exempt, in the combined amount of $1,390,495,640 results in a total at home food expenditure amount of $5,997,968,872 for FY22. Application of the current 4.5% state sales tax rate results in an estimated $269,908,599 in state sales tax revenues.

The state sales tax rate on food and food ingredients is reduced to 3% for FY 23 and to 1.5% for FY 24. Thereafter, the described sales are exempt from the state sales tax levy. Application of an

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1 "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value and do not include alcoholic beverages, bottled water, candy, dietary supplements, marijuana, prepared food, soft drinks, or tobacco.

2 "Alcoholic beverages" shall mean beverages that are suitable for human consumption and contain one-half of one percent (0.5%) or more of alcohol by volume.

3 "Candy" shall mean a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy shall not include any preparation containing flour or require refrigeration.

4 "Dietary supplement" shall mean any product, other than tobacco, intended to supplement the diet that contains, vitamins, minerals, herbs or other botanicals, amino acids, a dietary substance for use by humans to supplement the diet by increasing the total dietary intake, or a concentrate, metabolite, constituent, extract, or combination of any ingredient described in the division and is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet and is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts" box found of the label as required pursuant to 21 CFR, Part 101.36.

5 "Prepared food" shall mean food sold in a heated state or heated by the seller, two or more food ingredients mixed or combined by the seller for sale as a single item, or food sold with eating utensils provided by the seller including plates, knives, forks, spoons, glasses, cups, napkins, or straws, but does not include a container or packaging used to transport the food and shall not include soft drinks, dietary supplements, or candy.

6 "Soft drinks" shall mean any non-alcoholic beverages, that contain natural or artificial sweeteners, but does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty (50%) of vegetable or fruit juice by volume.

7 "Tobacco" shall mean cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

8 Population Estimates, July 1, 2021.

9 Source: Oklahoma Tax Commission and United States Department of Agriculture.

inflation rate adjustment of 6.4% for each fiscal year will result in estimated decrease of $95,727,583 in state sales tax revenues for FY 23, an estimated decrease of $203,708,297 in state sales tax revenues for FY 24, and an estimated $325,118,442 in state sales tax revenues for FY 25.[10]

ADMINISTRATIVE COSTS

In order to administer the measure, the Oklahoma Tax Commission will require a minimum of two months to modify the sales tax reporting and remittance format, which will also result in an increase of $62,500.00 in administrative costs for FY 23.

[10] Members of the Governing Board of the Streamlined Sales and Use Tax Agreement ("Agreement") have reviewed the language proposed in the measure and have identified certain drafting issues which could potentially cause the State of Oklahoma - a current full member of the Agreement - to be out of compliance therewith.