



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
RAÚL R. LABRADOR

April 14, 2025

VIA HAND DELIVERY

The Honorable Phil McGrane
Idaho Secretary of State
Statehouse

RE: Certificate of Review
Proposed Initiative for Adding a New Section to Title 63, Idaho Code,
Providing for a Sales Tax Exemption for Food.

Dear Secretary of State McGrane:

An initiative petition was filed on March 18, 2025, proposing to amend title 63 of the Idaho Code. Pursuant to Idaho Code section 34-1809, this office has reviewed the petition and prepared the following advisory comments. Given the strict statutory timeframe within which this office must review the petition, our review can only isolate areas of concern and cannot provide in-depth analysis of each legal or constitutional issue that may present problems. This letter therefore addresses only those matters of substance that are “deemed necessary and appropriate” to address at this time and does not address or catalogue all problems of substance or of form that the proposed initiative may pose under federal or Idaho law. Idaho Code § 34-1809(1)(a). Further, under the review statute, the Attorney General’s recommendations are “advisory only,” and the petitioners are free to “accept or reject them in whole or in part.” *Id.* § 34-1809(1)(b). This office offers no opinion with regard to the policy issues raised by the proposed initiative or the potential revenue impact to the state budget from likely litigation over the initiative’s validity.

MATTERS OF SUBSTANTIVE IMPORT

I. Summary of the Proposed Initiative

The proposed initiative seeks to add a sales tax exemption for “food sold for human consumption” to Chapter 36 (Sales Tax) of the Idaho Code. The proposed exemption is similar to a provision in a piece of legislation that was recently considered by the Idaho Legislature. *See* proposed House Bill No. 260; <https://legislature.idaho.gov/sessioninfo/2025/legislation/H0260/>. In both the proposed legislation and the proposed initiative, a new section (63-3622H) would add “food for human consumption” to the list of goods and services that are exempt from Idaho’s sales and use taxes.

The proposed initiative does not further specify what type of “food” would qualify for this sales tax exemption beyond simply noting that the exemption is for “food sold for human consumption.” Initiative Pet. § 1.

The proposed initiative includes a “severability provision” whereby if any portion of the initiative is “declared invalid for any reason, such declaration shall not affect the validity of the remaining portions” of the initiative. *Id.* at § 2.

Finally, the proposed initiative includes a fiscal impact statement and “funding source statement.” The impact statement notes the potential for lost state revenue as a result of no longer taxing food. The funding statement asserts that the initiative would not require the expenditure of funds and that the “state general fund and the Tax Commission may see cost savings due to a reduction in processing the Grocery Tax Refund.” *Id.* at 3.

II. Analysis of the Proposed Initiative

1. No Definition of “Food for Human Consumption”

The most obvious potential problem with the initiative is that it fails to provide a definition of “food for human consumption.” This creates ambiguity in interpreting and applying the statute, and raises the possibility that the initiative’s intent will not be fully realized. For example, does this definition include or exclude food purchased at a restaurant? Similarly, categories the petitioner may have intended to include, such as beverages (like milk), may not be covered by the proposed exemption.

For example, the second entry for “food” in Meriam-Webster’s online dictionary is: “nutriment in solid form.” <https://www.merriam-webster.com/dictionary/food>. This

definition would exclude beverages from the definition of food, even common grocery staples like milk and orange juice.

Beyond the potential problem of possibly not capturing the petitioner's intent, the failure to define "food" within the initiative poses potential issues for courts interpreting the initiative, if it were enacted. Typically, Idaho courts strictly construe tax exemptions against the taxpayer and in favor of the state. *Idaho State Tax Comm'n v. Haener Bros.*, 121 Idaho 741, 744, 828 P.2d 304, 307 (1992) (citing *Hecla Mining Co. v. Idaho State Tax Comm'n*, 108 Idaho 147, 697 P.2d 1161 (1985)). And "a statute granting [an] exemption [will not] be extended by judicial construction so as to create an exemption not specifically authorized." *Haener Bros.*, 121 Idaho at 744 (citing *Canyon County v. Sunny Ridge Manor, Inc.*, 106 Idaho 98, 675 P.2d 813 (1984)).

The above principles notwithstanding, sometimes courts will view a tax exemption "in light of the legislative intent." *Haener Bros.*, 121 Idaho at 744. But when legislation is enacted by ballot initiative, as is proposed here, there is no legislative history to discern legislative intent.

It is recommended, therefore, that the initiative include a thorough definition of "food sold for human consumption" to reflect the petitioner's intent as to the scope of the proposed sales tax exemption.

2. Uncertain Relationship to Other Food Tax Provisions

The proposed initiative mentions a possible "cost savings due to a reduction in processing the Grocery Tax Refund." Initiative Pet. at 3. However, the proposed initiative does not actually address Idaho's current "Grocery Tax Credit," which is not a true refund, but rather an income tax credit—set at \$155 for most taxpayers and each dependent—that offsets Idahoans' income tax. Idaho Code § 63-3024A. Although the goal of the "Grocery Tax Credit" is the same as the proposed sales tax exemption for food—to alleviate the tax burden on food purchases—the two provisions are distinct methods of accomplishing that goal and could both be in effect.

If the petitioner's intent is to replace the "Grocery Tax Credit" with the proposed tax exemption, as seems to be the intent, that should be made clear in the initiative's provisions, likely by proposing an amendment to repeal Idaho Code section 63-3024A.

Finally, it is unclear what effect the proposed initiative would have on the various other sales tax exemptions involving food. For example, Idaho Code section 63-3622J provides for a sales tax exemption of "meals by public or private schools under the federal school lunch program or under programs that provide nutritional meals

for the aging.” And section 63-3622FF exempts “[p]urchases of food made with benefits provided under the federal supplemental nutrition assistance program (SNAP).”

The proposed initiative, with its broad exemption of “food sold for human consumption,” would seem to overlap with the provisions noted above. But the failure to address these other provisions raises some uncertainty as to how the proposed initiative would affect the current laws. Again, a more thorough definition of “food sold for human consumption” could potentially address this issue, specifically by consulting other sources, including Idaho Department of Health & Welfare SNAP provisions. See <https://healthandwelfare.idaho.gov/services-programs/food-assistance/about-snap>.

CERTIFICATION

I HEREBY CERTIFY that the enclosed measure has been reviewed for form, style, and matters of substantive import. The recommendations set forth above have been communicated to the Petitioner via copy of this Certificate of Review, deposited in the U.S. Mail to Joseph Evans, P.O Box 1904, Boise, ID 83701.

Sincerely,



RAÚL R. LABRADOR
Attorney General

Analysis by:

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