



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

June 17, 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 May 22, 2025, proposing to amend title 63 of the Idaho Code. Pursuant to Idaho Code § 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 proposed during the most recent session of the Idaho Legislature. *See* proposed House Bill No. 260, Sixty-eighth Legislature; First Regular Session 2025; <https://legislature.idaho.gov/session-info/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 further specifies that “the types and kinds of food products eligible for exemption by this section shall be the same types and kinds of food products that are eligible for purchase with benefits provided under the federal supplemental nutrition assistance program (SNAP).” Initiative Pet. § 1. The proposed initiative goes on to state that the term “food,” as used in the section, “shall have the same definition as provided in 7 U.S.C. § 2012 as that section existed on January 1, 2027.

Sections 2 – 7 of the proposed initiative go on to list various sections of the Idaho Code that would be repealed by the initiative, including § 63-3024A (Grocery Credit); § 63-3077G (provision for information exchange between department of correction and state tax commission); § 63-3077H (provision for information exchange between department of health and welfare and state tax commission); § 32-706 (child support provision); § 63-3622J (church and senior citizen meals tax exemption); and § 63-3622FF (SNAP food purchases tax exemption). Most of the provisions to be repealed relate to the current Idaho Grocery Credit or existing tax exemptions for food. Initiative Pet. Sections 2 – 7.

Finally, the proposed initiative includes a fiscal impact statement. The impact statement notes the potential for lost state revenue as a result of no longer taxing “food for human consumption.” The funding statement asserts that the initiative would not require the expenditure of “state or local funds beyond normal expenses associated with the initiative process” and that the State Tax Commission may see cost savings due to not having to process the Grocery Credit. *Id.* at 2.

II. Analysis of the Proposed Initiative

1. The Proposed Initiative May Violate the Single-Subject Rule

The most problematic aspect of the proposed initiative is Section 5, where it calls for the wholesale repeal of Idaho Code § 32-706. Idaho Code § 32-706 is the provision in Idaho law that deals with child support in divorce cases, something completely unrelated to the proposed initiative. Although § 32-706 does reference the Grocery Credit in passing,¹ the statute deals with child support, not sales tax exemptions or food tax credits. Therefore, the wholesale repeal of §32-706 embraces a different subject, wholly separate from the proposed initiative’s main purpose—taxation of food and related exemptions and credits.

In other words, the proposed initiative appears to violate the single subject rule—the initiative embraces more than one subject. Under Idaho Code § 34-1802A, “[a]n initiative petition shall embrace only one (1) subject and matters properly connected with it.” Idaho’s single subject rule applies also to constitutional amendments (Idaho Constitution article XX, section 2) and legislative acts (*id.* at article III, section 16). The single subject rule considers whether a proposed change can “be divided into subjects distinct and independent, ... any one of which be adopted without in any way being controlled, modified or qualified by the other.” *Idaho Watersheds Project v. State Bd. of Land Comm’rs*, 133 Idaho 55, 60 (1999). This rule is intended to prevent initiatives from addressing multiple subjects at the same time and “forcing the voter to approve or reject such amendment as a whole.” *Id.* (citation omitted).

Because this proposed initiative relates to repealing the Idaho Grocery Credit and replacing it with a sales tax exemption for food purchased for human consumption, to also call for the wholesale repeal of § 32-706 would seemingly venture into a new subject (child support). Given that the proposed initiative currently embraces these two distinct subjects, it likely runs afoul of Idaho Code § 34-1801A.

The straightforward remedy in this instance would be to, instead of calling for the wholesale repeal of § 32-706, simply amend the statute and remove the passing reference to the Grocery Credit within § 32-706. Indeed, this may have been the petitioner’s intent. If that is the petitioner’s intent, it is recommended that Section 5 be

¹ Idaho Code §32-706(6) notes that “the food tax credit under section 63-3024A” (the Grocery Credit) is a tax benefit that may be awarded in a child support order, and the statute requires the tax commission to recognize such an award.

edited to clarify that only the brief reference to the Grocery Credit would be removed from § 32-706.²

2. Other Uncertain or Unintended Effects of Wholesale Repeal

The proposed initiative calls for the wholesale repeal of several sections of the Idaho Code. *See* Initiative Pet. §§ 2 – 7. In each case, the initiative lists out the section of the Idaho Code to be repealed, followed by the words “and the same is hereby repealed.” *Id.* In this way, the proposed initiative calls for the complete repeal of each identified section of the Idaho Code. Each of these Idaho Code sections identified for repeal under the proposed initiative have to do with sales tax exemptions or the Idaho Grocery Credit (aside from the anomaly noted above regarding Idaho’s child support provision).

Repealing at least portions of some of the identified Idaho Code sections does make some sense. In principle, it is helpful for the petitioner to address the various Idaho laws that could potentially be affected by the initiative’s proposed tax exemption on “food for human consumption.” However, the wholesale repeal of each of the identified laws could have uncertain or unintended effects.

For example, Idaho Code §§ 63-3622J and 63-3622FF both reference, federal laws. Idaho Code § 63-3622J provides for a sales tax exemption on meals sold “under the federal school lunch program” or “meals for the aging,” as articulated in the federal Older Americans Act. Similarly, § 63-3622FF provides for a sales tax exemption on food purchased “with benefits provided under the federal supplemental nutrition assistance program (SNAP).” In other words, each of these Idaho laws provides for Idaho tax exemptions based on federal programs and definitions. The wholesale repeal of these Idaho tax exemptions may adversely impact the federal programs they are linked to. Alternatively, the repeal of these Idaho tax exemptions could disqualify Idaho from receiving certain federal funds to the extent Idaho law is inconsistent with federal requirements. It is not uncommon for federal programs to require participating states’ laws to meet federal requirements. *See* 7 U.S.C. § 2013 (“[A] State may not participate in the supplemental nutrition assistance program if the Secretary determines that State or local sales taxes are collected within that State on purchases of food made with benefits issued under this chapter.”).

² The following clause would be removed from §32-706(6): “the food tax credit under section 63-2034A, Idaho Code.”

It is recommended, therefore, that the repeal provisions in the initiative petition more fully explain the intent behind repealing each of the identified Idaho laws. At a minimum, the petitioner should explain 1) how each Idaho law identified for repeal relates to the initiative, and 2) why the identified law should be repealed. Additionally, the initiative could leave in place those provisions that exempt from sales tax the purchase of items using funds from those federal programs.

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 Howard Rynearson, 2245 NE 19th Ave., Payette, ID 83661.

Sincerely,



RAÚL R. LABRADOR
Attorney General

Analysis by:

Matthew L. Maurer, Deputy Attorney General
Civil Litigation and Constitutional Defense