

# **PRELIMINARY DISCUSSION DRAFT**

**Measure Number:** IP 37

**Subject:** Amends Constitution: Prohibits taxes/fees based on transactions for “groceries” (defined) enacted or amended after September 2017

**Government Unit Affected:** Unknown

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## **Comments**

Initiative Petition 37 prohibits state and local governments from “adopting, approving or enacting” any “tax, fee, or other assessment” on the sale, distribution, purchase, receipt of, or for the privilege of selling or distributing “groceries” on or after October 1, 2017. This includes increasing or otherwise modifying an *existing* tax, fee, or assessment that was passed prior to October 1, 2017 that affects this class of transactions.

Groceries are defined in the initiative as “any raw or processed food or beverage intended for human consumption except alcoholic beverages, marijuana products, and tobacco products”, while the “sale or distribution of groceries” is defined as “any transaction for the sale, purchase, distribution, or transfer of groceries sold, distributed, transferred to, or purchased, or received from, any individual or entity that:

- (A) Is licensed, registered, or inspected by the Food Safety Modernization Act, U.S. Food and Drug Administration, U.S. Department of Agriculture Federal Grain Inspection Service, or any successor agency or program that provides the safety of groceries; or.
- (B) Is licensed and inspected by the State Department of Agriculture’s Food Safety Program or Commodity Inspection Program or any successor agency or program that provides for the safety of groceries; or
- (C) Operates a farm stand, farmers market, or food bank.

Although the definition of groceries includes any raw or processed food or beverage intended for human consumption, the definition of the transactions that are prohibited from being taxed more limited to individuals or entities regulated by the designated food safety agencies. The Department of Agriculture currently regulates about 12,000 entities that range from bakeries, to retail food establishments (grocery stores), to food storage warehouses. The Attorney General’s summary of the initiative states that restaurants are also included in the prohibitions of the initiative.

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## *Impact on Existing State Revenues*

The initiative excludes the sale of alcoholic beverages, marijuana products, and tobacco products from the definition of groceries and states that taxes based on the net income of an individual or entity are allowed. Fees and assessments that fund the State Department of Agriculture's Food Safety Program or Commodity Inspection Program are not limited by this measure. The taxes passed via House Bill 2017 (2017 session) are also not affected by the initiative because they were enacted prior to October 1, 2017.

Another government imposed charge considered in this analysis is bottle deposits for non-alcoholic beverages. It is possible that the bill would limit the Legislature's ability to increase the bottle deposit rate, but it is not clear that the bottle deposit is a tax, fee, or assessment as defined in the initiative. Bottle deposits are refundable to consumers. The State of Oregon does not receive proceeds from un-refunded deposits, meaning that there would be no fiscal impact regardless of whether they were covered by the prohibitions in IP 37.

## *Impact on Existing Local Revenues*

The approved ballot title and summary for the initiative drafted by the Attorney General indicate that restaurants are also to be included in the entities that would be exempt from a new tax, fee or assessment. The cities of Ashland and Yachats have a tax on sales at restaurants; this initiative would limit the ability for these cities to increase this tax or other cities or local governments from implementing a similar tax. The City of Ashland's 5% tax on gross restaurant sales is scheduled to sunset in 2030. The City of Yachats' 5% tax on restaurants sales does not have a sunset. In the case of the City of Ashland, the revenue impact is still indeterminate because the initiative functions through constraining the city's future choices, not by reducing current revenues.

## **Fiscal Impact Summary**

*Executive Branch Assumptions:* IP 37 does not require state government to take any immediate actions, but does limit future revenue raising options that the state may consider

*Local Government Assumptions:* IP 37 does not require local governments to take any immediate actions, but does limit future revenue raising options that local governments may consider.

## **Estimate of Financial Impact**

The fiscal impact is indeterminate. The Initiative does not reduce existing state or local government tax or fees, nor does it require any additional state or local government spending to implement. The initiative constrains the future revenue raising options that a government in Oregon may consider.