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MEMORANDUM

To: Madam Chairperson and Members of the Committee on Assessment and Taxation
From: Office of Revisor of Statutes
Date: March 23, 2021
Subject: Senate Bill No. 296

Summary

Senate Bill No. 296 provides for the reduction of sales tax and compensating use tax rates on certain food and food ingredients based on a formula.

New Section 1, subsection (a) imposes a retailers' sales tax on the gross receipts from the sale of food and food ingredients at a rate of 6.5%, except as otherwise provided pursuant to Section 2, and amendments thereto.

New Section 1, subsection (b) states that the provisions of this section shall not apply to prepared food, unless sold without eating utensils provided by the seller and described below:

- (1) Food sold by a seller whose proper primary NAICS classification is manufacturing in sector 311, except subsector 3118;
- (2) (A) food sold in an unheated state by weight or volume as a single item; or (B) only meat or seafood sold in an unheated state by weight or volume as a single item;
- (3) bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies and tortillas;
- (4) food sold that ordinarily requires additional cooking, as opposed to just reheating, by the consumer prior to consumption; or
- (5) bottled water that is not otherwise sold as prepared food.

New Section 1, subsection (c) provides that this section shall be a part of and supplemental to the Kansas retailers' sales tax act.

New Section 2 provides that, commencing with fiscal year 2021, in any fiscal year in which an increase in compensating use tax revenue exceeds the base year revenue for fiscal year 2018 plus 3% annually, the director of legislative research shall certify the excess amount to the secretary of revenue and the director of budget. The secretary shall compute the rate reduction based on the certified amount rounded down to the nearest 0.1% to go into effect for the next calendar year that would reduce the revenue from sales and compensating use tax on food and food ingredients in an amount approximately equal to the amount computed by the secretary. The secretary shall publish the new rates to take effect July 1, 2021, and on January 1 for all calendar years thereafter.

Section 3 amends K.S.A. 79-3602 to address certain definitions. Specifically, "food and food ingredients" in subsection (n) is amended to include bottled water, candy, food sold through vending machines and soft drinks and to exclude dietary supplements. Definitions of "bottled water," "candy," "food sold through vending machines," "prepared food," "soft drinks" and "dietary supplement" are added in subsections (iii) through (ooo).

Section 4 amends K.S.A. 2020 Supp. 79-3603, the statute imposing the Kansas retailers' sales tax, to incorporate the new rate exception for food and food ingredients as provided in Section 1.

Section 5 amends K.S.A. 79-3620 to incorporate the new rate for food and food ingredients as provided in Section 1 or 2. The bill does not adjust the percentage of revenue, 16.154%, distributed to the state highway fund.

Section 6 amends K.S.A. 2020 Supp. 79-3703, the statute imposing the compensating use tax, to incorporate the new sales tax rate for food and food ingredients as provided in Section 1.

Section 7 amends K.S.A. 79-3710 to incorporate the new rate for food and food ingredients as provided in Section 1 or 2.

The bill would take effect from and after its publication in the statute book.