

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1006

Bill Subtitle: TO CLARIFY THE DEFINITION OF FOOD AND FOOD INGREDIENTS TO INCLUDE DIETARY SUPPLEMENTS FOR SALES AND USE TAX PURPOSES.

Basic Change :

Representative Altes

The proposal would include "Dietary Supplements" in the items subject to the reduced state sales tax rate levied on "food and food ingredients". "Dietary supplement" is defined to include a product, other than tobacco, intended to supplement the diet that:

- (A) Contains one (1) or more of the following dietary ingredients:
 - (i) A vitamin;
 - (ii) A mineral;
 - (iii) An herb or other botanical;
 - (iv) An amino acid;
 - (v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or
 - (vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in this subdivision (7)(A) 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
- (B) Is required to be labeled as a dietary supplement, identifiable by the "Supplement Facts" box found on the label and as required pursuant to 21 C.F.R. § 101.36, as in effect on January 1, 2007.

The proposal would be effective the first day of the calendar quarter following the effective date of the act. (Revenue Impact calculated with an October 1, 2013 estimated effective date.)

Revenue Impact :

FY14 Tax Decrease

Total Impact to State Revenues -\$4.09 million****

[8 Months of Reduced Tax Collections --? 10/1/2013 Effective Date]

- \$ 2.73 million ---State General Revenue (4.5%)
- \$ 0.53 million ---Educational Adequacy (.875% tax)
- \$ 0.30 million ---Property Tax Relief Trust Fund (.5%)
- \$ 0.00 million ---Conservation Tax (.125%)
- \$ 0.40 million ---Highway Fund (.5%)
- \$ 0.00 million ---Educational Excellence Trust Fund
- \$ 0.00 million ---Educational Adequacy (GR transfer)
- \$ 0.09 million ---State Central Services
- \$ 0.04 million ---Constitutional Officers

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FY15 Tax Decrease

Total Impact to State Revenues	-\$6.51 million
- \$ 3.92 million ---State General Revenue (4.5%)	
- \$ 0.84 million ---Educational Adequacy (.875% tax)	
- \$ 0.48 million ---Property Tax Relief Trust Fund (.5%)	
- \$ 0.00 million ---Conservation Tax (.125%)	
- \$ 0.63 million ---Highway Fund (.5%)	
- \$ 0.39 million ---Educational Excellence Trust Fund	
- \$ 0.03 million ---Educational Adequacy (GR transfer)	
- \$ 0.15 million ---State Central Services	
- \$ 0.07 million ---Constitutional Officers	

Taxpayer Impact :

Sellers of dietary supplements would change their accounting and computer systems to collect the reduced state sales taxes on these items.

Resources Required :

None

Time Required :

Adequate time is provided for implementation

Procedural Changes :

Modification of sales tax rules and education of DFA personnel.

Legal Analysis :

Pursuant to Act 436 of 2009, food and food ingredients are taxed at a reduced state sales and use tax rate. Food and food ingredients are defined by statute as 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. The term "food and food ingredients" does not include dietary supplements, which are required to be labeled as such and are identifiable by a "Supplement Facts" box found on the label.

HB 1006 operates to amend the language in Ark. Code Ann. Sections 26-52-103(12) and 26-53-102(5)(A) to expressly include "dietary supplements" in the definition of "food and food ingredients" and to strike out portions of those statutes which excluded "dietary supplements" from the definition of "food and food ingredients."

Dietary supplements have historically been subject to sales and use tax and will continue to be with passage of HB1006; however, passage of the bill would serve to reduce the applicable tax rate on dietary supplements, making these supplements subject to the reduced state sales and use tax applicable to food and food ingredients.