

**TESTIMONY OF
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DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES**

Before the Joint Standing Committee on Taxation
Hearing Date: *Wednesday, March 26, 2025, 1:00 PM*

LD 908 – *“An Act to Eliminate the Sales Tax on Prepared Foods and Support the State’s Hospitality Industry”*

Senator Grohoski, Representative Cloutier, and members of the Taxation Committee – good afternoon, my name is Michael Allen, Associate Commissioner for Tax Policy in the Department of Administrative and Financial Services. I am testifying at the request of the Administration Against LD 908, *“An Act to Eliminate the Sales Tax on Prepared Foods and Support the State’s Hospitality Industry.”*

LD 908 is a Concept Draft, and the proposed language for the bill has not been made available as of the time of the testimony’s writing. As such, my testimony today is limited to the proposal as described in the bill’s summary.

The bill proposes to eliminate the 8% sales tax on the sale of all prepared foods for the policy purpose of “boosting economic activity by making dining out more affordable.” Further, the bill proposes to offset the revenue loss by the following: i) imposing sales tax on a class of “high-end” and “elective” items and at an increased tax rate; ii) performing review of sales tax exemptions on nonessential goods and services; and iii) conducting an audit of state programs and expenditures.

Although the bill summary indicates that bill would achieve “tax-free” dining, it is important to note – in terms of matching the bill intent with bill

language – that repealing the imposition of the 8% prepared food rate in Section 1811 would remove that 8% rate but not the imposition of sales tax, as those prepared food sales would then become taxable at the 5.5% rate.

Turning next to technical comments on the scope of the term “prepared food.” Under current law, the definition of “prepared food” in the sales tax provisions contains three categories: meals served on and off the premises of the retailer, which includes food ordered as “take-out”; food and drink prepared by the retailer, ready for consumption without further preparation, which can include take-out food, sandwiches, pastries, coffee, juices, and other beverages; and all food or drinks sold by a retailer at a particular retail location when the prepared food sold by the retailer account for more than 75% of the gross receipts reported with respect to that location by the retailer. The summary of LD 908 clearly states that the intent of the bill is to “[boost] economic activity by making dining out more affordable.” However, an exemption for all sales of prepared food would also eliminate the sales tax on sales of prepared food served by event centers and catering companies at events such as weddings, corporate meetings and parties, as well as food sold at roadside stands, food trucks and other street vendors, bakeries, and food prepared and sold at grocery, convenience stores and gas stations. Edible cannabis products prepared and sold by a registered caregiver or registered dispensary would also become non-taxable under this concept draft proposal.

It should also be noted that there is an overlap between “food and drinks prepared by the retailer and ready for consumption without further preparation” and liquor sold in licensed establishments. A cocktail prepared by the retailer is both prepared food and liquor sold by a licensed establishment. The bill’s summary is clear that the sponsor intends to exclude alcoholic beverages from the elimination of the prepared food rate of sales tax; to achieve that goal, the

definition of “prepared food” would need to be amended to exclude “alcoholic drinks prepared by the retailer” so the exemption for “prepared food” would apply to non-alcoholic beverages.

If a convenience store sells both prepared food (e.g., pizza, sandwiches, pasta dishes prepared by the retailer) and other food products (chips, soda, ice cream, candy, snack items), the third category of the “prepared food” definition currently subjects all food and drink sold at that location to the “prepared food” rate of tax when the retailer’s sales of prepared food (the pizza, sandwiches, and pasta dishes prepared by the retailer) account for 75% or more of the retailer’s gross receipts. Operating under the assumption that this bill would not amend the definition of “prepared food” while exempting sales of “prepared food,” all sales of food and drink sold at that location would be exempt of sales tax.

Turning to the other proposals included in the bill’s summary: eliminating the 8% tax on the sale of prepared food would eliminate a source of funding for the Tourism Marketing Promotion Fund, administered by the Department of Economic and Community Development (DECD)’s Maine Office of Tourism, and yet the bill would require DECD to “initiate an advertising campaign to encourage tourism ... and promote dining establishments as tax-free.” The bill’s summary is unclear whether the language would direct the revenue raised by increasing the sales tax rate on certain high-end luxury items to the Tourism Marketing Promotion Fund to avoid that Fund’s loss of revenue.

It is also unclear whether an additional statutory directive for evaluation of sales tax exemptions is necessary. Maine Revenue Services, Office of Tax Policy is required biennially to submit to this Committee a report regarding tax expenditures, which includes a description of the purpose for each tax expenditure and an estimate of the cost for each tax expenditure. Additionally, the Office of

Program Evaluation and Government Accountability (OPEGA) conducts both full evaluations and expedited reviews on tax expenditures to determine whether the tax expenditures are achieving the desired goals.

Eliminating the prepared food tax rate would result in an annual revenue loss of approximately \$350 million; reducing the 8% rate to the general sales tax rate of 5.5% would reduce annual revenue by approximately \$115 million. Administrative costs for the proposal will be researched upon publication of the language, but at minimum, based on the bill's summary and assuming that the "luxury items" would be subject to a single tax rate, the Sales and Use Tax Return would have to add one line, two fields to report those sales.

The Administration looks forward to working with the Committee on the bill; representatives from MRS will be here for the Work Session to provide additional information and respond in detail to the Committee's questions.