TESTIMONY OF
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Before the Joint Standing Committee on Taxation
Hearing Date: *May 14, 2025, Wednesday at 1:30 P.M.*

LD 1954 – "*An Act to Lower Household Costs by Expanding the Sales Tax Exemption for Certain Grocery Staples Sold in Grocery Stores*"

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 1954, "*An Act to Lower Household Costs by Expanding the Sales Tax Exemption for Certain Grocery Staples Sold in Grocery Stores.*"

The statutory text for the current applicable sales tax exemption provision is short and simple: there is an exemption for "sales of grocery staples." The statutory definition of "grocery staples," however, is more complicated but well addressed through MRS guidance bulletins and outreach to affected retailers. LD 1954 would repeal the current definition of "grocery staples," and enact a new definition in its place. This bill would effectively establish two different definitions of "grocery staples," one of which would provide a broader sales tax exemption benefit when those items are sold by a "grocery store." "Grocery store" would be defined as a store "primarily engaged" in the retail sale of canned food, dry goods, fresh fruits and vegetables, fresh meats, fish and poultry and includes a convenience store (which the bill does not define), but would not include a separately owned eating establishment located within a grocery store.

LD 1954 is a complicated and costly proposal. Any change in the taxation of grocery staples and prepared foods should be carefully studied and considered.

Turning to technical matters: the bill's proposed definition of "grocery store" is too imprecise to be administrable. Measuring whether a retailer is "primarily engaged" in the sale of certain items and is therefore, a "grocery store," could be ascertained by many different methods, such as the percentage of square footage of retail space, sales volume by dollar amount, or sales volume by units of grocery staples sold, etc. Further, while "grocery store" includes a "convenience store," it is not clear whether a "convenience store" must also be "primarily engaged" in the retail sale of specified items. If so, most "convenience stores" likely would not qualify as "grocery stores," regardless of how "primarily" is measured. "Primarily engaged" would also have to be measured against a period of time. The phrase "separately owned eating establishment located within a grocery store" should also be clarified.

The bill extends the "grocery staples" sales tax exemption for sales by a "grocery store" to "products for internal human consumption," which is defined in 36 M.R.S. § 1752(5-A). The broader exemption would include prepared foods, such as sandwiches and salads as well as supplemental meal items such as pretzels, cheese sticks and dips, fruit bars and granola bars, nuts and seeds, and meat sticks. Sales of liquor, medicine, tonics, vitamins, dietary supplements, cigarettes, soft drinks, candy, dessert and bakery items, and cannabis would remain subject to tax, regardless of sale location.

Additionally, the bill would redefine both categories of "grocery staples," which currently "includes bread and bread products, jam, jelly, pickles, honey, condiments, maple syrup, spaghetti sauce or salad dressing when packaged as a separate item for retail sale," to also "include items *such as* [those listed]," including “when packaged as a bundled product that contains taxable and exempt items.” This language could be read broadly to exempt any bundled sale containing one of these or similar items, which would exempt many prepared or otherwise taxable foods.

The term “dry goods” should be defined. The Merriam-Webster dictionary defines “dry goods” to mean “grocery items (such as tobacco, sugar, flour and coffee) that do not contain liquid,” but the secondary definition can also mean textiles, ready-to-wear clothing, and notions distinguished especially from hardware and groceries. The definition of the term “candy” is taken from the Streamlined Sales and Use Tax Agreement (SSUTA), and already does not include fruit bars, granola bars, trail mix, breakfast bars, rice cakes, popcorn cakes, bread sticks and dried sugared fruit—meaning the last sentence of proposed subparagraph (B)(2) (p.2, lines 11-13) is unnecessary.

It is also important to note that a retailer of grocery staples operating a store in an area where there is more limited access to grocery staples may not qualify as a “grocery store” under this definition because its sales of canned food, dry goods, fresh fruits and vegetables, fresh meats, fish and poultry may not exceed 50% of its total sales (if that is the chosen metric), and such a retailer would still be required to charge tax. Additionally, all retailers would be required to determine whether they are “grocery stores,” and whether the new definition of “grocery staples” would require updates to their point-of-sale systems. MRS would be required to develop interpretive guidance and provide taxpayer education in the form of webinars, etc.

The estimated administrative costs are not available at this time.

The estimated fiscal impact is a revenue loss of $23,332,000 in FY 2026. By fund, the impact would be a $22,399,000 loss in the General Fund and a $933,000 loss for the Local Government Fund.

In FY 2027, there would be an estimated revenue loss of $56,329,000. By fund, the impact would be a $51,703,000 loss for the General Fund, a $1,811,000 loss for the Tourism Marketing Promotion Fund, and a $2,815,000 loss for the Local Government Fund.

In FY 2028, there would be an estimated revenue loss of $57,428,000. By fund, the impact would be a $52,739,000 loss to the General Fund, a $1,822,000 loss for the Tourism Marketing Promotion Fund, and a $2,867,000 loss for the Local Government Fund.

In FY 2029, there would be an estimated revenue loss of $58,291,000. By fund, the impact would be a $53,522,000 loss for the General Fund, a $1,858,000 loss for the Tourism Marketing Promotion Fund, and a $2,911,000 loss for the Local Government Fund.

Estimated projections beyond FY 2029 are not available at this time.

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.