

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

Before the Joint Standing Committee on Taxation
Hearing Date: *March 26, 2025, Wednesday at 1:00 P.M.*

LD 1077 – “*An Act to Exempt Drinking Water from Sales and Use Tax*”

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 1077, “*An Act to Exempt Drinking Water from Sales and Use Tax.*”

Under the current Sales and Use Tax Law, “water”—including mineral bottled and carbonated waters and ice—is excluded from the exemption for “grocery staples.” LD 1077 would amend the definition of “grocery staples” to repeal that exclusion and instead include within the “grocery staples” exemption “drinking water that is placed in a container or package and is intended for human consumption.”

The sales tax law already contains a narrower exemption for certain water. Further narrowing of the sales tax base as proposed by LD 1077 would result in a significant revenue loss and provide sales tax relief in an untargeted manner.

There are also several technical issues with the bill that should be addressed. The term “drinking water” should be further defined, preferably in its own subsection. It is unclear whether the term is intended to exempt only unflavored, uncarbonated water, or if the objective of the bill is to exempt any form of water that may be consumed, including seltzer water, flavored water, or mineral water.

A relevant reference for defining the term is the Streamlined Sales and Use Tax Agreement (“SSUTA”), which defines the term to mean “water that is placed in a safety sealed container or package for human consumption [... that] is calorie free and does not contain sweeteners or other additives.” The definition does allow bottled water to contain additives such as carbonation, vitamins, minerals, electrolytes, or certain flavorings. The SSUTA definition also provides that “‘bottled water’ includes water that is delivered to the buyer in a reusable container that is not sold with the water.”

Additionally, an effective date should be added to the bill to provide definitive notice to assist retailers, who would be required to update their point-of-sale systems to recognize the exemption.

The Sales and Use Tax Law currently provides two water-related sales tax exemptions. The first exempts “residential water,” meaning “water purchased for use in buildings designed and used for both human habitation and sleeping, with the exception of hotels.” 36 M.R.S. § 1760(39). This exemption includes both residential water service from a water district and bottled water delivered to a residence. The second exempts purchases using SNAP benefits, including bottled water regardless of residential use. 36 M.R.S. § 1760(54). The Committee should note that, as drafted, this bill would exempt all sales of bottled or packaged drinking water, including those sold to commercial enterprises – for example, a hotel.

The broadened exemption proposed by LD 1077 would further narrow what is already a relatively narrow sales tax base. Further, there is a better way to provide sales tax relief. Sales tax exemptions apply to all taxpayers, regardless of their ability to pay. Increasing the Sales Tax Fairness Credit would target tax relief to those truly overburdened by the sales tax on drinking water.

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.