



Summary of Initiative 1107

Prepared for members of the Washington House of Representatives by the House Office of Program Research.

This information has been prepared in response to various requests for a summary of Initiative 1107. It is provided for analytical and legislative policy purposes only. It is not provided as an expression of support for or opposition to any ballot measure. These materials are intended to provide general information and are not intended to be an exhaustive analysis of all issues presented by the measure.

BRIEF SUMMARY

- Eliminates the state carbonated beverage tax by repealing the relevant provisions of Second Engrossed Substitute Senate Bill 6143 (2010).
- Eliminates state and local sales and use taxes on bottled water and candy by repealing the relevant provisions of 2ESSB 6143 (2010).
- Eliminates the narrowing of state business and occupation tax preferences for certain agricultural products by repealing the relevant provisions of 2ESSB 6143 (2010).
- Makes other conforming changes necessary to repeal the relevant provisions of 2ESSB 6143 (2010) relating to the taxation of carbonated beverages, bottled water, candy, and certain agricultural products.

BACKGROUND

Initiative 1107

Initiative 1107 was certified to the ballot on July 29, 2010. The ballot title and ballot measure summary prepared by the Attorney General, and amended by court order on June 10, 2010, are as follows:

Ballot Title

Statement of Subject: Initiative Measure No. 1107 concerns reversing certain 2010 amendments to state tax laws.

Concise Description: This measure would end sales tax on candy; end temporary

sales tax on some bottled water; end temporary excise taxes on carbonated beverages; and reduce tax rates for certain food processors.

Should this measure be enacted into law? Yes [] No []

Ballot Measure Summary

This measure would reverse certain 2010 amendments to state tax laws, thereby: ending the sales tax on candy and the temporary sales tax on some bottled water; and ending temporary excise taxes on the activity of selling certain carbonated beverages, not including alcoholic beverages or carbonated bottled water. It would also reinstate a reduced business and occupation tax rate for processors of certain foods.

Carbonated Beverage Tax

In 1989 the Legislature enacted a tax on carbonated beverages and syrup used to produce carbonated beverages. The tax was effective July 1, 1989, and was originally set to expire on July 1, 1995. The tax was dedicated to the Violence Reduction and Drug Enforcement Account. (This account was eliminated in 2009.) In 1994 the voters modified the tax through the passage of Referendum Bill No. 43. The referendum allowed the carbonated beverage tax to expire as originally scheduled, but increased the tax rate for syrup and eliminated the original expiration date for the syrup tax.

In 2010 the Legislature, through the enactment of Second Engrossed Substitute Senate Bill 6143 (2ESSB 6143), reestablished a tax on carbonated beverages, effective July 1, 2010, through June 30, 2013. The carbonated beverage tax is imposed on the sale of carbonated beverages at wholesale or retail in Washington. The tax does not apply to successive sales of previously taxed carbonated beverages. The legislation also provided an exemption for the first \$10 million of carbonated beverages sold in the state by a bottler.

Sales and Use Taxes on Bottled Water and Candy

Retail sales and use taxes are imposed by the state, most cities, and all counties. Retail sales taxes are imposed on retail sales of most articles of tangible personal property, digital products, and some services. If retail sales taxes were not collected when the property, digital products, or services were acquired by the user, then use taxes are applied to the value of most tangible personal property, digital products, and some services when used in this state. Use tax rates are the same as retail sales tax rates.

Washington specifically exempts "food and food ingredients" from state and local sales and use taxes. Therefore, any food product included within the definition of "food and food ingredients" is exempt from sales and use taxes. The term "food and food ingredients" is defined to mean substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold

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for ingestion or chewing by humans and are consumed for their taste or nutritional value. Prepared food, soft drinks, and dietary supplements are excluded from the definition and are therefore subject to sales and use taxes. In 2010 the Legislature, through the enactment of 2ESSB 6143, excluded candy and bottled water from the definition of "food and food ingredients," thereby extending state and local sales and use taxes to these items. The sales and use taxes on bottled water are temporary, with the exemption restored on July 1, 2013. The sales and use taxes on candy are permanent. The legislation includes certain narrow exemptions for bottled water. The legislation also includes a business and occupation (B&O) tax credit for candy manufacturers.

Also in 2010, the Legislature submitted Referendum Bill No. 52 (Referendum 52) to the voters at the November 2010 election, which, if approved by the voters, authorizes bonds for energy efficiency projects in schools and higher education buildings. Referendum 52 would also amend 2ESSB 6143 (2010) by eliminating the July 1, 2013, expiration date for state and local sales and use taxes on bottled water, i.e. sales and use taxes on bottled water would be made permanent.

Tax Preferences for Manufacturers of Certain Agricultural Products

Washington law provides a preferential B&O tax rate for the business of slaughtering, breaking, or processing of perishable meat products and the wholesaling of such perishable meat products. In *Agrilink Foods, Inc. v. Dep't of Revenue*, 153 Wn.2d 392 (2005), the Washington Supreme Court held that the preferential B&O tax rate applies to the processing of perishable meat products into nonperishable finished products, such as canned food. In 2010 the Legislature, through the enactment of 2ESSB 6143, narrowed the exemption for slaughtering, breaking, or processing perishable meat products, or selling these perishable meat products at wholesale, by requiring that the end product be either: a perishable meat product; a nonperishable meat product that is comprised primarily of animal carcass by weight or volume other than a canned meat product; or a meat by-product.

A B&O tax exemption is provided for manufacturing by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables, and selling such products at wholesale by the manufacturer to purchasers who transport the goods out of state in the ordinary course of business. The exemption expires July 1, 2012, and is replaced by a preferential B&O tax rate. In 2010 the Legislature, through the enactment of 2ESSB 6143, narrowed these tax preferences for fruit and vegetable manufacturers by requiring that the end product be comprised either exclusively of fruits or vegetables, or any combination of fruits, vegetables, and certain other substances that, cumulatively, may not exceed the amount of fruits and vegetables contained in the product measured by weight or volume.

SUMMARY

Carbonated Beverage Tax

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The provisions of 2ESSB 6143 (2010) imposing a tax on the retail and wholesale sale of carbonated beverages are repealed. The \$10 million exemption for bottlers as well as the other provisions in 2ESSB 6143 (2010) relating to the carbonated beverage tax are also repealed.

Sales and Use Taxes on Bottled Water and Candy

The provisions of 2ESSB 6143 (2010) eliminating the sales and use tax exemption for candy and bottled water are repealed, i.e. the exemption is restored. The narrow exemptions for bottled water and the B&O tax credit for candy manufacturers are also repealed.

If Referendum 52 and Initiative 1107 are both adopted by the voters at the November 2010 election, Initiative 1107 repeals the provisions of Referendum 52 that permanently extend sales and use taxes to bottled water.

Tax Preferences for Manufacturers of Certain Agricultural Products

The provisions of 2ESSB 6143 (2010) narrowing the B&O tax preferences for processors of meat products and fruits and vegetables are repealed.

Effective Date:

The initiative takes effect December 2, 2010, except Sections 302 and 304, relating to sales and use taxes on bottled water and candy, which take effect on the date that related sections of Referendum Bill No. 52, if approved by the voters at the November election, take effect.

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