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MEMORANDUM

To: Madam Chair and Members of the Committee on Assessment and Taxation
From: Amelia Kovar-Donohue, Assistant Revisor
Date: February 21, 2019
Subject: Senate Bill No. 76

Summary

Senate Bill No. 76 reduces the sales tax on certain food and food ingredients over the course of the next three years by one percent per year. Food and food ingredients are defined in K.S.A. 2018 Supp. 79-3602(n) and are further modified in section 2 of the bill.

New section 1, subsection (a) imposes a retailers' sales tax on the gross receipts from the sale of food and food ingredients at the following rates:

- Commencing on July 1, 2019, at a rate of 5.5%;
- Commencing on July 1, 2020, at a rate of 4.5%; and
- Commencing on July 1, 2021, and thereafter, at a rate of 3.5%.

New section 1, subsection (b) states that the provisions of this section shall not apply to prepared food, unless sold without eating utensils provided by the seller and described below:

- (1) Food sold by a seller whose proper primary NAICS classification is manufacturing in sector 311, except subsector 3118 (bakeries);
- (2) (A) food sold in an unheated state by weight or volume as a single item; or (B) only meat or seafood sold in an unheated state by weight or volume as a single item;
- (3) bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies and tortillas;
- (4) food sold that ordinarily requires additional cooking, as opposed to just reheating, by the consumer prior to consumption; or
- (5) bottled water that is not otherwise sold as prepared food.

New section 1, subsection (c) provides that this section shall be a part of and supplemental to the Kansas retailers' sales tax act.

Section 2 amends K.S.A. 2018 Supp. 79-3602 to address certain definitions. Specifically, "food and food ingredients" in subsection (n) is amended to exclude candy, dietary supplements, soft drinks, and food sold through vending machines, and to include bottled water. Definitions for "bottled water," "candy," "food sold through vending machines," "prepared food," "soft drinks" and "dietary supplement" are added in subsections (hhh) through (nnn).

Section 3 amends K.S.A. 2018 Supp. 79-3603, the statute imposing the Kansas retailers' sales tax, to express the new rate exception from the current 6.5% for food and food ingredients as provided in section 1.

Section 4 amends K.S.A. 2018 Supp. 79-3620 to increase the percentage of sales tax revenue collected pursuant to K.S.A. 79-3603 and section 1 to be credited in the state highway fund, in an effort to maintain the current sales tax funding level to the state highway fund.

Section 5 amends K.S.A. 2018 Supp. 79-3703 to incorporate the new sales tax rates for food and food ingredients in the compensating use tax.

Section 6 amends K.S.A. 2018 Supp. 79-3710 to reference the rates provided in section 1, in addition to K.S.A. 79-3703, when describing the percentage of compensating use tax to be credited in the state highway fund.

The bill would take effect from and after its publication in the statute book.