

POLICY NOTE

Citizens' Guide to Initiative 1634, to ban local taxes on food items

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Key Findings

1. Washington voters have twice adopted ballot measures to repeal taxes on food items.
2. If enacted, Initiative 1634 would ban local discriminatory food taxes, such as a tax on soda distribution.
3. Taxes on soda drinks are regressive and disproportionately impact low income families.
4. Initiative 1634 would not prohibit possible discriminatory food taxes at the state level.
5. Initiative 1634 is not the first effort to ban local food taxes in the country. Bans were recently enacted in California, Arizona and Michigan and one is being considered by voters in Oregon.

Introduction

In November the people of Washington will vote on Initiative 1634.¹ If enacted, the measure would work as a restriction on imposing discriminatory food taxes, such as a tax on soda distribution. Under current law, local governments are not able to place a sales tax on food items (with few exceptions).²

As demonstrated by Seattle's new soda tax, however, cities do currently have the authority to impose a "privilege tax" on the distribution of food products. Initiative 1634 would close this loophole at the local level. A "yes" vote on Initiative 1634 would prevent new local discriminatory food taxes. It would not prohibit new discriminatory food taxes enacted at the state level.

Text of Initiative 1634

Here is the official ballot summary for Initiative 1634:³

Ballot Measure Summary

This measure would prohibit new or increased local taxes, fees, or assessments on raw or processed foods, beverages, or their ingredients, intended for human consumption except alcoholic beverages, marijuana products, and tobacco, unless they are generally applicable and meet specified requirements.

Collection of local sales and use taxes, and of taxes, fees, and assessments on such raw or processed foods or beverages, or any ingredients thereof, that were in effect January 15, 2018, may continue.

Section 4 of the ballot measure would restrict local taxing authority. Existing discriminatory food taxes (such as Seattle's soda tax) would not be repealed, but the rate, scope or base of an existing tax could not be increased.

1 "Text of Initiative 1634," Washington Secretary of State's Office, accessed on July 23, 2018, at https://sos.wa.gov/assets/elections/initiatives/finaltext_1513.pdf

2 "Collecting Retail Sales Tax," Washington State Department of Revenue, accessed on July 23, 2018, at <https://dor.wa.gov/doing-business/business-types/industry-guides/restaurants-and-retailers-prepared-food/retail-sales-tax>

3 "Initiative No. 1634," Washington State Attorney General's Office, April 20, 2018 at https://www.sos.wa.gov/assets/elections/initiatives/ballottitleletter_1513.pdf

Under Initiative 1634 local government officials would retain the authority to impose broad-based taxes and fees on grocery items, as long as the tax rates were applied equally to non-grocery items. This means local taxes and fees in the future could not be imposed if they were discriminatory on only certain food products. If taxed, food items would have to be treated the same as other consumer goods; food consumers could not be singled out for discriminatory treatment. For example, a local standalone tax could not be imposed on candy or soda that did not apply equally to other grocery food purchases.

The state's taxing authority would remain unchanged. This would include statewide food taxes like those proposed last year in HB 1975, which would have imposed a new tax on sugar-sweetened beverages (ultimately not enacted by lawmakers).⁴

Can local governments currently tax food items?

Washington voters have twice passed ballot measures to repeal taxes on food items. In 1977, 54 percent of voters adopted Initiative 345 to exempt food products from sales tax.⁵ The sales tax on food items, however, was temporarily re-imposed by lawmakers in 1982 (the tax ended in 1983).⁶

Also, in 2010, 60 percent of voters adopted Initiative 1107 that repealed the legislature's tax increase that year on soda and candy (among other food items).⁷ Under current law, local governments are prohibited from imposing a sales tax on food items.

State law has a few exceptions to the general policy of not taxing food. As noted by the state Department of Revenue:

“Washington law exempts most grocery type food from retail sales tax. However, the law does not exempt ‘prepared food,’ ‘soft drinks,’ or ‘dietary supplements.’”⁸

“Prepared food” generally means heated food that is sold with an eating utensil. “Soft drinks” generally means any sealed beverage with natural or artificial sweeteners. Like the state, a local government is able to impose a sales tax on these types of food items under current law. As demonstrated by Seattle's new soda tax, however, cities can also impose a so-called “privilege tax” on the distribution, as opposed to the sale, of food products.

For example, consider the City of Seattle's official explanation of its soda tax:

Is this tax a sales tax?

4 “HB 1975 - Concerning a tax on sugar-sweetened beverages (2017),” Washington State Legislature, accessed on July 23, 2018, at <http://apps2.leg.wa.gov/bills/summary?BillNumber=1975&Year=2017&BillNumber=1975&Year=2017>

5 “Washington Food Products Exempt from Sales Tax, Initiative 345 (1977),” Ballotpedia, accessed on August 1, 2018, at [https://ballotpedia.org/Washington_Food_Products_Exempt_from_Sales_Tax_Initiative_345_\(1977\)](https://ballotpedia.org/Washington_Food_Products_Exempt_from_Sales_Tax_Initiative_345_(1977))

6 “Chapter 35, WASHINGTON LAWS, 1982 1st Ex. Sess.,” Washington State Legislature, April 19, 1982, at <http://leg.wa.gov/CodeReviser/documents/sessionlaw/1982ex1c35.pdf>

7 “Washington Repeal Tax Law Amendments, Initiative 1107 (2010),” Ballotpedia, accessed on August 1, 2018, at [https://ballotpedia.org/Washington_Repeal_Tax_Law_Amendments_Initiative_1107_\(2010\)](https://ballotpedia.org/Washington_Repeal_Tax_Law_Amendments_Initiative_1107_(2010))

8 “Collecting Retail Sales Tax,” Washington State Department of Revenue, accessed on July 23, 2018, at <https://dor.wa.gov/doing-business/business-types/industry-guides/restaurants-and-retailers-prepared-food/retail-sales-tax>

No, it is not a sales tax or use tax or other excise tax on the sale, consumption, use or gross receipts of sweetened beverages. The tax imposed is a general excise tax on the privilege of conducting certain business within the City. The tax is imposed on the act of distributing sweetened beverages in Seattle.⁹

Other local governments could similarly impose a “privilege tax” on the distribution of targeted food products. Initiative 1634 would prohibit this type of discriminatory local taxation.

Are soda taxes regressive?

Though it could be applied to other food items, the most likely target of a local government for a discriminatory food tax is soda. Taxes on soda drinks, however, are very regressive and disproportionately impact low-income families. The following analysis is provided by the City of Seattle’s fiscal note for its soda tax:

The proposed tax will likely increase the price of sugar-sweetened and diet beverages to all consumers in Seattle. People with lower incomes will pay a higher proportion of their income for this tax than those with higher incomes for each ounce of beverage purchased.¹⁰

The national Tax Foundation has also found that local soda taxes are unlikely to achieve their purported public policy benefit:

At the end of the day, soda taxes are a regressive tax on a product that’s probably fine in moderation. These taxes likely won’t fund what’s being promised, won’t resolve the obesity problem, and will hurt workers and consumers. Based on the mounting evidence, fans of the soda tax might want to take a step back and consider what’s best in the long-term, not just the short-term political gains.¹¹

Initiative 1634 would stop the spread of local soda taxes to prevent regressive taxes with a poor record of achieving their policy goals from being imposed on the community.

Several states act to ban local food taxes

Initiative 1634 is not the first effort to ban local food taxes in the country. The state of California recently enacted a law prohibiting new local soda taxes until

9 “Sweetened Beverage Tax - A quick guide for distributors,” City of Seattle, accessed on July 23, 2018, at <https://www.seattle.gov/Documents/Departments/FAS/BusinessLicenseTax/SBT-distributor-FAQ.pdf>

10 “MO Sweetened Beverage Tax – Summary and Fiscal Note,” by David B. Mendoza, City of Seattle, accessed on July 23, 2018, at <http://seattle.legistar.com/View.ashx?M=F&ID=5137526&GUID=10E9C8B8-1064-41B9-8F58-35603DC7E23C>

11 “The Case Against Soda Taxes,” by John Buhl, Tax Foundation, March 15, 2017 at <https://taxfoundation.org/case-against-soda-taxes/>



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2031.¹² Arizona earlier this year adopted a law to prohibit local governments from imposing discriminatory food taxes.¹³

Last year Michigan also enacted a law preventing local governments from imposing food taxes.¹⁴ Voters in Oregon are considering a constitutional amendment this year to prohibit a “sales tax, gross receipts tax, commercial activity tax, value-added tax, excise tax, privilege tax, and any other similar tax on the sale of groceries.”¹⁵

Conclusion

Washington voters have twice adopted ballot measures to repeal taxes on food items. Though local governments in the state do not generally impose taxes on targeted food items, the City of Seattle’s imposition of a “privilege tax” on the distribution of soda demonstrates that the threat exists for these types of local taxes on food items.

Initiative 1634 would close this loophole at the local level, although it would not prohibit possible discriminatory food taxes at the state level. A “yes” vote on Initiative 1634 would prevent new local discriminatory food taxes.

Along with voters in Oregon, Washingtonians are being asked with this ballot measure to follow the lead of Arizona, California and Michigan and prohibit local governments from imposing discriminatory taxes on food items.

¹² “California bans local soda taxes,” by Liam Dillon, *Los Angeles Times*, June 28, 2018 at <http://www.latimes.com/politics/la-pol-ca-soda-tax-ban-20180628-story.html>

¹³ “Arizona bans extra taxes on soda, sugary drinks,” by Dustin Gardiner, *Arizona Republic*, March 19, 2018, at <https://www.azcentral.com/story/news/politics/legislature/2018/03/19/arizona-bans-extra-taxes-soda-sugary-drinks/433235002/>

¹⁴ “No local soda taxes in Michigan under bill headed to Gov. Rick Snyder,” by Emily Lawler, *Michigan Live.com*, October 12, 2017, at https://www.mlive.com/news/index.ssf/2017/10/no_local_soda_taxes_in_michiga.html

¹⁵ “Oregon Ban Tax on Groceries Initiative (2018),” *Ballotpedia*, accessed on July 23, 2018, at [https://ballotpedia.org/Oregon_Ban_Tax_on_Groceries_Initiative_\(2018\)](https://ballotpedia.org/Oregon_Ban_Tax_on_Groceries_Initiative_(2018))