

LEGAL REVIEW NOTE

Bill No.: SB 537

LC#: LC 0863, To Legal Review Copy, as
of March 14, 2023

Short Title: Provide tax incentives for the
sale of Montana-produced food

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Date: March 22, 2023

CONFORMITY WITH STATE AND FEDERAL CONSTITUTIONS

As required pursuant to section 5-11-112(1)(c), MCA, it is the Legislative Services Division's statutory responsibility to conduct "legal review of draft bills". The comments noted below regarding conformity with state and federal constitutions are provided to assist the Legislature in making its own determination as to the constitutionality of the bill. The comments are based on an analysis of jurisdictionally relevant state and federal constitutional law as applied to the bill. The comments are not written for the purpose of influencing whether the bill should become law but are written to provide information relevant to the Legislature's consideration of this bill. The comments are not a formal legal opinion and are not a substitute for the judgment of the judiciary, which has the authority to determine the constitutionality of a law in the context of a specific case.

*This review is intended to inform the bill draft requestor of potential constitutional conformity issues that may be raised by the bill as drafted. This review IS NOT dispositive of the issue of constitutional conformity and the general rule as repeatedly stated by the Montana Supreme Court is that an enactment of the Legislature is presumed to be constitutional unless it is proven beyond a reasonable doubt that the enactment is unconstitutional. See *Alexander v. Bozeman Motors, Inc.*, 356 Mont. 439, 234 P.3d 880 (2010); *Eklund v. Wheatland County*, 351 Mont. 370, 212 P.3d 297 (2009); *St. v. Pyette*, 337 Mont. 265, 159 P.3d 232 (2007); and *Elliott v. Dept. of Revenue*, 334 Mont. 195, 146 P.3d 741 (2006).*

Legal Reviewer Comments:

SB 537, as drafted, may raise potential federal constitutional issues related to the Commerce Clause under Article II, section 8, of the United States Constitution. The Commerce Clause provides that Congress has the power "to regulate Commerce ... among the several States." The United States Supreme Court has stated:

One of the fundamental principles of Commerce Clause jurisprudence is that no State, consistent with the Commerce Clause, may "impose a tax which discriminates against interstate commerce . . . by providing a direct commercial advantage to local business." This antidiscrimination principle "follows inexorably from the basic purpose of the Clause" to prohibit the multiplication of preferential trade areas destructive of the free commerce anticipated by the Constitution.

Maryland v. Louisiana, 451 U.S. 725, 754 (1981) (citations omitted).

SB 537 as drafted provides exemptions from state and corporate income tax for income derived from the "sale of Montana-produced food" and "expenses paid or incurred for purchasing for resale Montana-produced food". The term "Montana-produced" means "planted, cultivated, grown, harvested, raised, collected, processed, or manufactured in the state". The legislation does not provide an exemption for food produced out of state. Given that the legislation provides a commercial advantage for entities that sell and purchase a product produced in Montana, the legislation may raise potential constitutional conformity issues with the Commerce Clause under Article II, Section 8, of the United States Constitution.

Requester Comments: