



Memo on Fiscal Analysis of IM 28

Understanding the Language of IM 28

Identifying Products Sold for Human Consumption

Calculating the Fiscal Impact of IM 28



Understanding the Language of IM 28



- Key Phrase is “anything sold for human consumption”
- “human consumption” can be interpreted in several different ways.
- One interpretation limits the phrase to “food” only as the language mentions human consumption and mentions specific food items in the same sentence.
- Human consumption in this case means the ingestion absorption of items meant for humans into the body.
- There are 36 statutes mentioning the phrase with most referencing food products
 - SDCL 39-6-3.1, “Any producer of milk who is selling raw milk for human consumption direction to the consumer shall obtain a license...”
 - SDCL 10-45-18.2, “...or the production of eggs for human consumption.”

“Notwithstanding any other provisions of law, the state may not tax the sale of anything sold for human consumption, except alcoholic beverages and prepared food. Municipalities may continue to impose such taxes.”

Understanding the Language of IM 28



- Another interpretation of “human consumption” includes more than just food.
- If the intent was to limit the application to food, the word “food” would have been used.
 - “...the state may not tax the sale of food sold for human consumption...”
 - Food is defined in SDCL 10-45-1(5)
- The plain and ordinary definition of "consume" or "consumption," means "to do away with completely, to spend, or use up“.
- Consumed goods are considered "nondurable", meaning those goods are "able to exist for only a short time before deteriorating”
- Human consumption could be interpreted to include nondurable goods and services.

“Notwithstanding any other provisions of law, the state may not tax the sale of anything sold for human consumption, except alcoholic beverages and prepared food. Municipalities may continue to impose such taxes.”

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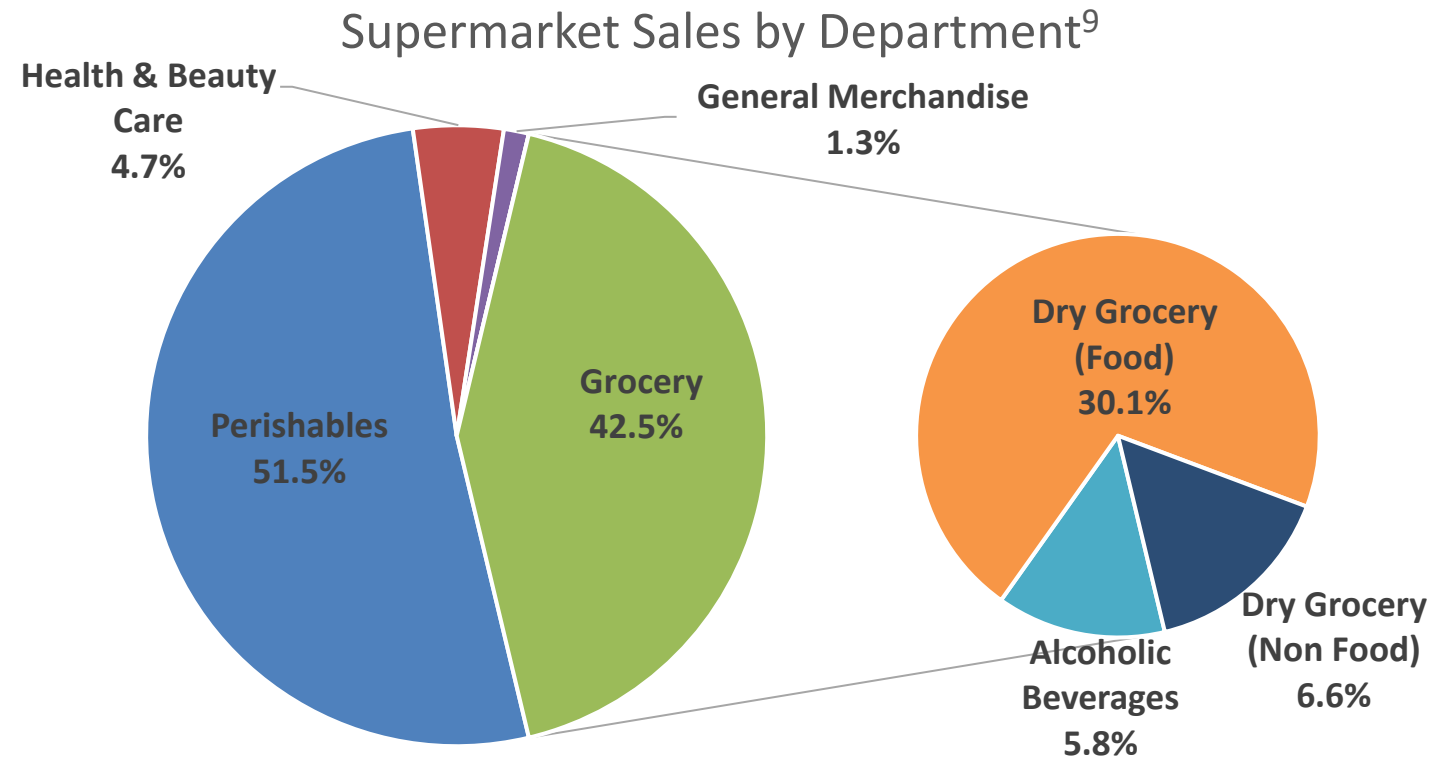
- The state may continue to tax alcoholic beverages and prepared food
- SDCL 10-45-1(8) defines prepared food as,
 - “any food sold in a heated state or heated by the seller; two or more food ingredients mixed or combined by the seller for sale as a single item; or food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food. Prepared food does not include food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer...”
- The State will continue to collect sales tax on most items sold by restaurants, fast food establishments, food trucks, and bars, and on off-sale liquor products
- A soft drink ordered at a restaurant would likely be taxed. However, a bottle of the same soft drink purchased at a retail store would likely not be taxed.
- Items like milk, juice drinks, or other products where the seller does not combine or mix two or more food ingredients to sell as a single, non-heated item would likely not be taxed.

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Identifying Products Sold for Human Consumption



- Supermarket sales consist mainly of food products.
- 51.5% of sales are perishables
 - Meat, deli, produce, bakery, dairy, frozen foods, floral
- 30.1% of sales are dry groceries (food).
- About 81% of what supermarkets sell is "food"
- Up to about 93% of sales could be considered items for human consumption.
- Source: The Food Industry Association via the Progressive Grocer's 72nd Annual Consumer Expenditures Study

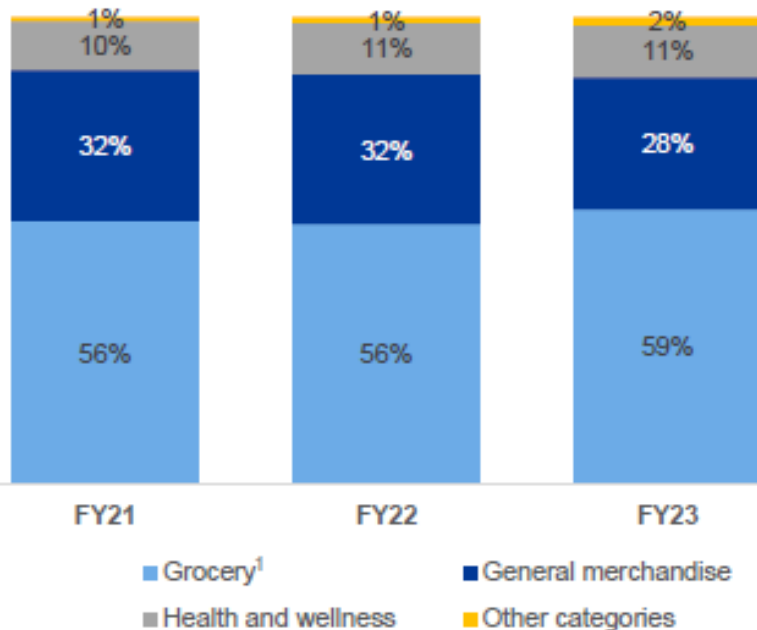


Identifying Products Sold for Human Consumption

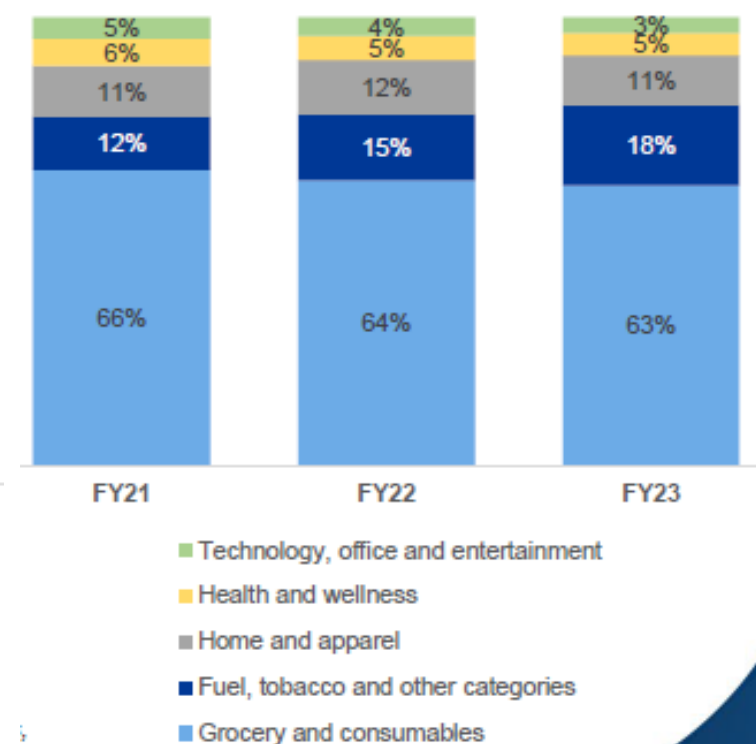


- Walmart classifies 59% of its sales as groceries including dry groceries, snacks, dairy, meat, produce, deli & bakery, frozen foods, alcohol, and nonalcoholic beverages, and consumables such as health and beauty aids, pet supplies, household chemicals, paper goods, and baby products.
- Sam's Club classifies 63% of its sales as groceries and consumables.
- IM 28 could affect the sales tax of 59% to 63% of what Walmart, Sam's Club and similar stores sell in South Dakota.
- Source: Walmart 2023 Annual Report

Walmart U.S. merchandise category, % of segment net sales



Sam's Club merchandise category, % of segment net sales



Identifying Products Sold for Human Consumption



- The Dollar General considers 81% of what it sells as consumables.
- Dollar General defines consumables as paper and cleaning products, packaged foods, perishables, snacks, health and beauty products, pet supplies, and tobacco.
- There are 78 Dollar Generals operating in South Dakota.
- Source: Dollar General 2023 Annual Report

Dollar General Classification of Consumables ¹¹						
Paper & Cleaning Products	Packaged Foods	Perishables	Snacks	Health & Beauty	Pet	Tobacco
Paper Towels	Cereals	Milk	Candy	Soap	Pet Food	Cigarettes
Bath Tissue	Pasta	Eggs	Cookies	Body Wash	Pet Supplies	Chewing Tobacco
Paper Dinnerware	Canned Soups	Bread	Crackers	Shampoo		
Trash Bags	Canned Meats	Beer	Salty Snacks	Cosmetics		
Storage Bags	Fruits	Frozen Food	Carbonated Beverages	Over the Counter Medicines		
Disinfectants	Vegetables	Refrigerated Food		Dental Hygiene Products		
Laundry	Condiments	Wine		Foot Care Products		
	Spice	Produce				
	Sugar					
	Flour					

Calculating the Fiscal Impact of IM 28



- The total possible fiscal impact on state sales tax revenues could be a reduction between (\$133.6) and (\$646.2) million.
- This amount represents 9.3% to 46% of the annual state sales tax revenues.
- The (\$42.7) million for Tobacco would be a 100% reduction in tobacco taxes.

Items Possibly Defined as Being for Human Consumption and the Effect on State Sales Tax Revenues

Items	Estimated Fiscal Impact to State Sales Tax Revenue
Services ^①	(\$335,844,178)
Food ^②	(\$133,576,072)
Energy ^③	(\$91,690,694)
Tobacco ^④	(\$42,723,674)
Personal Care ^⑤	(\$17,929,338)
Paper & Stationary ^⑥	(\$15,244,234)
Other Consumables ^⑦	(\$9,237,777)
Total Possible Fiscal Impact	(\$646,245,968)

Notes:

- ① Services includes the hiring of someone to perform a certain function.
- ② Food includes items which would be included in the definition of food as provided in SDCL 10-45-1(5).
- ③ Energy includes water, electricity, propane, gas, diesel, and other energy products.
- ④ Tobacco includes the lose of sales and excise taxes on cigarettes, cigars, chewing tobacco, vaping products, and any other product containing nicotine.
- ⑤ Paper & Stationary includes any items made out of paper, except books.
- ⑥ Personal Care includes products like toothpaste, cosmetics, shampoo, soap, non-prescription medicines, ointments, and many others.
- ⑦ Other consumables include household chemicals, disposalable plastics (plates, cups, silverware), certain baby products, and other consumables.