LEGAL REVIEW NOTE

Bill No.: SB 371

LC#: LC 3248, To Legal Review Copy, as of February 13, 2025

Short Title: Generally revise agriculture laws - MT made products

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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 371, as drafted, amends 15-30-2120 to allow for an exclusion of “50% of the net income from the sale of Montana-produced goods as defined in 15-31-113”.

SB 371, also amends the definition of gross income in 15-31-113 to exclude **“**50% of the net income from the sale of Montana-produced goods.”

The term “Montana-produced goods” is defined in SB 371 as:

> "Montana-produced goods" means articles identified by the vendor as planted, cultivated, grown, harvested, raised, collected, processed, or manufactured in Montana, including but not limited to:
> (i) food and drink used for humans or other animals;
> (ii) devices, instruments, fine arts, musical arts, crafts, and clothing; and
> (iii) any other good produced by a small business that is independently owned and operated primarily within the state of Montana

SB 371 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 371 as drafted provides exemptions from state and corporate income tax for a percentage of income derived from the "sale of Montana-produced goods”. The legislation does not provide an exemption for goods produced out of state. Given that the legislation provides a commercial advantage for entities that sell 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:

The Court's interpretation of the Commerce Clause regarding taxation is not as black and white as this report suggests. First, the United States Supreme Court's interpretation of the Commerce Clause, both generally and in relation to the State's power to tax interstate commerce, has evolved substantially and fitfully over the years. There is nothing to prevent the current Supreme Court, which has an enthusiasm for overturning long standing precedent in the name of "State's rights," from overturning another precedent. See, e.g., Dobbs v. Jackson Women's Health Organization, 597 U.S. ___ (2022) (returning the right to regulate abortions to the states). More relevantly, the Court's attitude toward state taxation of interstate commerce has alternated between a blanket prohibition and varying degrees of accommodation. In 1977,

the Court fashioned a four-part test that governs the validity of state taxes under the Commerce Clause. Today, a tax will survive a Commerce Clause challenge if it (1) is applied to an activity with a substantial nexus with the taxing state; (2) is fairly apportioned; (3) does not discriminate against interstate commerce; and (4) is fairly related to services provided by the state. See Complete Auto Transit, Inc. v. Brady, 430 U.S. 274, 279 (1977). As such, the Court has rejected the interpretation that state taxes levied on interstate commerce are *per se* invalid. Id.; see also Washington Revenue Dept. v. Association of Wash. Stevedoring Cos., 435 U.S. 734 (1978).