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# SENATE COMMITTEE ON REVENUE AND TAXATION

Senator Jerry McNerney, Chair  
2025 - 2026 Regular

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<b>Bill No:</b>	SB 1151	<b>Hearing Date:</b>	5/6/26
<b>Author:</b>	Cervantes	<b>Tax Levy:</b>	Yes
<b>Version:</b>	4/29/26 Amended	<b>Fiscal:</b>	Yes
<b>Consultant:</b>	Summers		

## ***SALES AND USE TAX LAW: EXEMPTIONS: INFANT FORMULA***

*Clarifies that infant formula is an exempt food product not subject to sales and use tax.*

### **Background**

**Tax expenditures.** California law allows various tax incentives, such as credits, deductions, exemptions, and exclusions. When a tax law is determined to have a cost in the form of foregone revenues, such as a sales and use tax exemption, state law refers to them as “tax expenditures.” The Legislature enacts such tax incentives to compensate taxpayers for incurring certain expenses, such as costs related to child adoption, or to influence certain behaviors, such as participating in charitable giving. The Legislature uses tax incentives to encourage taxpayers to do something they would not otherwise do but for the tax incentive. The Department of Finance must publish an annual list of tax expenditures, currently totaling around \$94.2 billion in foregone general fund revenue.

**Sales and use tax (SUT).** State law imposes the sales tax on every retailer selling tangible personal property in this state. Retailers must register with the California Department of Tax and Fee Administration (CDTFA) and remit sales tax amounts collected at sale to CDTFA. If the purchaser does not pay the sales tax to the retailer, the purchaser is liable for paying use tax to the CDTFA. The use tax is imposed on any person consuming tangible personal property in the state. The use tax must be remitted on or before the last day of the month following the quarterly period in which the person made the purchase. The use tax rate is the same as the sales tax rate. The table below shows that the current statewide SUT rate is 7.25%. Additionally, cities and counties may increase the sales and use tax rate up to 2% with voter approval for specific or general purposes pursuant to the California Constitution’s vote requirements.

<b>Rate</b>	<b>Jurisdiction</b>	<b>Purpose/Authority</b>
3.9375%	State (General Fund)	State general purposes
1.0625%	Local Revenue Fund (2011 Realignment)	Local governments to fund local public safety services
0.50%	State (1991 Realignment)	Local governments to fund health and welfare programs
0.50%	State (Proposition 172 - 1993)	Local governments to fund public safety services
1.25%	Local (City/County) 1.00% City and County	City and county general operations.

<b>Rate</b>	<b>Jurisdiction</b>	<b>Purpose/Authority</b>
	0.25% Local transportation	Dedicated to county transportation purposes
<b>7.25%</b>	<b>Total Statewide Rate</b>	

**Tax exemptions.** Many items, such as prescription drugs, food, and poultry litter, are fully exempt from the SUT in California. Other items are exempted only from the state sales tax of 3.9375%, but not the local share, such as farm equipment and machinery, diesel fuel used for farming and food processing, teleproduction and postproduction equipment, timber harvesting equipment and machinery, and racehorse breeding stock. Further, while the United States government is exempt from paying the state SUT, state law does not provide a blanket exemption from the SUT for other public agencies such as cities, counties, special districts, or state agencies. As a result, these public agencies generally pay tax when purchasing tangible personal property or using it in the state.

**Food exemption.** State law generally exempts sales of food products for human consumption. When the exemption was first enacted in 1941, “food products” included common grocery items that are cold when purchased, including: cereals and cereal products, milk and milk products, oleomargarine, meat and meat products, fish and fish products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices and salt, sugar and sugar products other than candy and confectionery, coffee and coffee substitutes, tea, cocoa and cocoa products other than candy and confectionery. “Food products” did not include: spirituous, malt or vinous liquors; soft drinks, sodas, or beverages such as are ordinarily dispensed at bars and soda fountains or in connection therewith; medicines, tonics, and preparations in liquid, powdered, tablet, capsule, lozenge, and pill form sold as dietary supplements or adjuncts.

The exemption has been amended several times since its enactment to clarify that hot prepared food, food sold for consumption at retail establishments, and cannabis and cannabis products are not exempt food products.

The author wants to ensure that infant formula is exempt from sales and use tax by clarifying that it *is* an exempt food product.

### **Proposed Law**

Senate Bill 1151 amends the existing sales and use tax exemption for food products to include infant formula, and states that this clarification is declaratory of existing law.

### **State Revenue Impact**

According to CDTF, Senate Bill 1151 is a clarification of existing law and will not result in a revenue impact.

### **Comments**

1. Purpose of the bill. According to the author, “SB 1151 would codify the infant formula sales tax exemption, ensuring that we continue to lower costs for parents purchasing formula, baby food, and related products. SB 1151 would tax-exempt the gross receipts from the sale in this

state, and the storage, use, or other consumption in this state, of infant formula, to codify that infant formula is a food product. SB 1151 seeks to recognize infant formula as an essential item under the law, as a declaratory act, ensuring that financial burdens and supporting family stability and health are not imperiled.”

2. Best way? CDTFAs regulations provide further clarification and examples of exempt food products, among which they specifically list baby foods and any other similar type beverages composed, at least in part, of milk or a milk product and requiring the use of milk or a milk product in their preparation. However, the regulations also state that “food products” do not include any product for human consumption in powdered form, which is described on its package or label as a food supplement, food adjunct, dietary supplement, or dietary adjunct, and prescribed or designed to remedy specific dietary deficiencies. Infant formula is distinct from baby food in that it is most frequently sold in powdered form and often includes packaging and labeling that describe the formula’s digestive and immune support, vitamin content, prebiotic and probiotic benefits, and protein hydrolysis. However, CDTFAs indicates that there are no known issues with retailers mislabeling infant formula as a powdered food supplement and collecting sales tax reimbursement from consumers, nor are they aware of any issues arising at audit with respect to this matter. The Committee may wish to consider whether providing clarification regarding the exempt status of infant formula is best suited to CDTFAs’s regulatory process.

**Support and Opposition** (5/1/26)

Support: None received.

Opposition: None received.

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