

DOR Rhode Island Department of Revenue
Division of Taxation

Via Electronic Mail

March 14, 2024

The Honorable Joseph J. Solomon, Jr.
Chair, House Committee on Corporations
Rhode Island State House
Providence, RI 02903

RE: Letter Regarding House Bill 7231 – An Act Relating to Food and Drugs-Kratom Consumer Protection Act

Dear Chair Solomon:

I am writing on behalf of the Rhode Island Department of Revenue, Division of Taxation (“Division”), to: i) express concerns regarding issues with proposed House Bill 7231 as currently drafted; ii) explain the background and current statutory context in order to clarify the intended and unintended consequences of this bill; and iii) make recommendations and request your support in implementing those recommendations.

This letter is not intended as a position in support of or opposition to the bill, but only as recommendations on drafting to provide clarity in the bill and to aid tax administration and compliance.

As you know, this bill adds a new chapter to Title 21, Chapter 28.12 entitled “Kratom Consumer Protection Act,” which proposes to enact statutory enforcement definitions and mandates on “Kratom extract,” “Kratom product[s]” and also includes a definition of “Food” in the statutory scheme.

The following are potential issues that impact tax administration, including, but not limited to:

1. It is not clear whether there are other references to kratom as a “controlled substance” or other drug in other relevant chapters of Rhode Island law. To the extent that kratom (or its related products) is considered a “controlled substance,” it may be subject to the tax under Title 44, Chapter 9 (“Controlled Substances Taxation Act”).
2. While the bill does provide for “kratom products” to be subject to sales and use taxes, as detailed further below, this may conflict, in part, with current statutory provisions regarding the taxability of food and food ingredients. This would significantly impact administrability and amendments to Title 44 would be needed to ensure a clear and consistent administration in line with the intent of the bill. Further, for tax purposes, the language in the bill is broad as to what could be included as a “kratom product” given the enumerated limitations.

3. There are terms defined in the bill that are inconsistent with definitions for the same terms in current Title 44 definitions, which may cause confusion for retailers and consumers. Specifically, the proposed “Food” definition in this bill is vague and does not detail the intended policy goal for the definition. Additionally, the following examples set forth some of the tax consequences of construing kratom as “food” as well as other related definitions in Title 44 of the Rhode Island General Laws:
 - a. The current definition of “Food and food ingredients,” R.I. Gen. Laws § 44-18-7.1(1)(i), exempts any food where the ingredients listed fit within the definition. If the specific product being sold contained kratom and fits under this definition, it would be exempt.
 - i. Some examples would include: ice-cream containing kratom and a loaf of bread containing kratom. While this is unlikely, the examples are provided for illustrative purposes, defining food.
 - ii. Any (food) product with an ingredients list, containing flour (i.e. a candy bar containing kratom) would also be considered exempt. If kratom is added to any candy containing flour, it would not be considered “candy” and would be considered a food product, thus exempt.
 - b. R.I. Gen. Laws § 44-18-7.1(1)(iii) defines “candy.” Candy is subject to sales tax.
 - i. Based on research, kratom may be sold as a “gummy.”
 - ii. The ingredients listed in these kratom gummies would classify this product meeting the definition of “candy.”
 - c. All other kratom products would fall under R.I. Gen. Laws § 44-18-7.1(1)(v) which defines “dietary supplement.” Dietary supplements are subject to tax. The dietary ingredient kratom would be considered a “botanical” under R.I. Gen. Laws § 44-18-7.1(1)(v)(A)(3).
4. Kratom is an evolving product and may impact R.I. Gen. Laws Chapter 44-20 (“Cigarette and Other Tobacco Products Tax”) given its potential for variable uses.

The Division takes no position with respect to the remainder of the proposed legislation. Rather, the Division is concerned solely with the issues of clarity, tax compliance, and tax administration. As such, the Division respectfully suggests that the bill be redrafted for clarity.

I look forward to working with you and appreciate your consideration.

Very truly yours,



Neena S. Savage
Tax Administrator

cc: The Honorable Members of the House Committee on Corporations (via:
HouseCorporations@rilegislature.gov)
The Honorable John G. Edwards (via: rep-edwards@rilegislature.gov)
Nicole McCarty, Esquire, Chief Legal Counsel to the Speaker of the House
Lynne Urbani, Director of House Policy
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