

By Senator Ostalkiewicz

12-742-98

1 A bill to be entitled
2 An act relating to tax on sales, use, and other
3 transactions; amending s. 212.08, F.S.;
4 revising the exemption for food and drinks;
5 providing definitions; providing an exemption
6 for certain foods, drinks, and other items
7 provided to customers on a complimentary basis
8 by a dealer who sells food products at retail;
9 providing an exemption for foods and beverages
10 donated by such dealers to certain
11 organizations; revising provisions relating to
12 the technical assistance advisory committee
13 established to provide advice in determining
14 taxability of foods and medicines; providing
15 membership requirements; directing the
16 Department of Revenue to develop guidelines for
17 such determination and providing requirements
18 with respect thereto; providing for use of the
19 guidelines by the committee; providing for
20 determination of the taxability of specific
21 products by the department; authorizing the
22 department to develop a central database with
23 respect thereto; providing an effective date.

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25 Be It Enacted by the Legislature of the State of Florida:

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27 Section 1. Subsections (1) and (14) of section 212.08,
28 Florida Statutes, are amended, and paragraphs (qq) and (rr)
29 are added to subsection (7) of that section, to read:

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31 212.08 Sales, rental, use, consumption, distribution,
and storage tax; specified exemptions.--The sale at retail,

1 the rental, the use, the consumption, the distribution, and
2 the storage to be used or consumed in this state of the
3 following are hereby specifically exempt from the tax imposed
4 by this chapter.

5 (1) EXEMPTIONS; GENERAL GROCERIES.--

6 (a) Food products for human consumption are exempt
7 from the tax imposed by this chapter.

8 (b) As used in this subsection, the term "food
9 products" means edible commodities, whether processed, cooked,
10 raw, canned, or in any other form, which are generally
11 regarded as food. The term includes, but is not limited to:

12 1. Cereals and cereal products, baked goods,
13 oleomargarine, meat and meat products, fish and seafood
14 products, frozen foods and dinners, poultry, eggs and egg
15 products, vegetables and vegetable products, fruit and fruit
16 products, spices, salt, sugar and sugar products, milk and
17 dairy products, and products intended to be mixed with milk.

18 2. Natural fruit or vegetable juices or their
19 concentrates or reconstituted natural concentrated fruit or
20 vegetable juices, whether frozen or unfrozen, dehydrated,
21 powdered, granulated, sweetened or unsweetened, seasoned with
22 salt or spice, or unseasoned; and coffee, coffee substitutes,
23 tea, or cocoa, unless these products are sold in a liquid
24 form.

25 3. Bakery products sold by bakeries, pastry shops, or
26 like establishments which do not have eating facilities.

27 (c) The exemption provided by this subsection does not
28 apply:

29 1. When the food products are sold as meals for
30 consumption on or off the premises of the dealer.

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1 2. When the food products are furnished, prepared, or
2 served for consumption at tables, chairs, or counters or from
3 trays, glasses, dishes, or other tableware, whether provided
4 by the dealer or by a person with whom the dealer contracts to
5 furnish, prepare, or serve food products to others.

6 3. When the food products are ordinarily sold for
7 immediate consumption on the premises or near a location at
8 which parking facilities are provided primarily for the use of
9 patrons in consuming the products purchased at the location,
10 even though such products are sold on a "take out" or "to go"
11 order and are actually packaged or wrapped and taken from the
12 premises of the dealer.

13 4. To sandwiches sold ready for immediate consumption
14 on or off the premises.

15 5. When the food products are sold ready for immediate
16 consumption within a place, the entrance to which is subject
17 to an admission charge.

18 6. When the food products are sold as hot prepared
19 food products.

20 7. To soft drinks, which include, but are not limited
21 to, any nonalcoholic beverage, any preparation or beverage
22 commonly referred to as a "soft drink," or any noncarbonated
23 drink made from milk derivatives or tea, when sold in cans or
24 similar containers.

25 8. To ice cream, frozen yogurt, and similar frozen
26 dairy or nondairy products in cones, small cups, or pints,
27 popsicles, frozen fruit bars, or other novelty items, whether
28 or not sold separately.

29 9. To food prepared, whether on or off the premises,
30 and sold for immediate consumption. This does not apply to
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1 food prepared off the premises and sold in the original sealed
2 container, or the slicing of products into smaller portions.

3 10. When the food products are sold through a vending
4 machine, pushcart, motor vehicle, or any other form of
5 vehicle.

6 11. To candy and any similar product regarded as candy
7 or confection, based on its normal use, as indicated on the
8 label or advertising thereof.

9 12. To bakery products sold by bakeries, pastry shops,
10 or like establishments which have eating facilities, except
11 when sold for consumption off the premises.

12 13. When food products are served, prepared, or sold
13 in or by restaurants, lunch counters, cafeterias, hotels,
14 taverns, or other like places of business.

15 (d) As used in this subsection, the term:

16 1. "For consumption off the premises" means that the
17 food or drink is intended by the customer to be consumed at a
18 place away from the dealer's premises.

19 2. "For consumption on the premises" means that the
20 food or drink sold may be immediately consumed on the premises
21 where the dealer conducts his or her business. In determining
22 whether an item of food is sold for immediate consumption,
23 there must be considered the customary consumption practices
24 prevailing at the selling facility.

25 3. "Premises" must be construed broadly, and means,
26 but is not limited to, the lobby, aisle, or auditorium of a
27 theater; the seating, aisle, or parking area of an arena,
28 rink, or stadium; or the parking area of a drive-in or outdoor
29 theater. The premises of a caterer with respect to catered
30 meals or beverages is the place where such meals or beverages
31 are served.

1 4. "Hot prepared food products" means those products,
2 items, or components that have been prepared for sale in a
3 heated condition and that are sold at any temperature that is
4 higher than the air temperature of the room or place where
5 they are sold. The term "hot prepared food products" includes
6 a combination of hot and cold food items or components with
7 respect to which a single price has been established for the
8 combination and the food products are sold in such
9 combination, such as a hot meal, a hot specialty dish or
10 serving, or a hot sandwich or hot pizza, including cold
11 components or side items.

12 ~~(a) There are exempt from the tax imposed by this~~
13 ~~chapter food and drinks for human consumption except candy.~~
14 ~~Unless the exemption provided by paragraph (7)(q) for school~~
15 ~~lunches, paragraph (7)(i) for meals to certain patients or~~
16 ~~inmates, paragraph (7)(k) for meals provided by certain~~
17 ~~nonprofit organizations, or paragraph (7)(z) for food or~~
18 ~~drinks sold through vending machines pertains, none of such~~
19 ~~items of food or drinks means:~~

20 ~~1. Food or drinks served, prepared, or sold in or by~~
21 ~~restaurants; drugstores; lunch counters; cafeterias; hotels;~~
22 ~~amusement parks; racetracks; taverns; concession stands at~~
23 ~~arenas, auditoriums, carnivals, fairs, stadiums, theaters, or~~
24 ~~other like places of business; or by any business or place~~
25 ~~required by law to be licensed by the Division of Hotels and~~
26 ~~Restaurants of the Department of Business and Professional~~
27 ~~Regulation, except bakery products sold in or by pastry shops,~~
28 ~~doughnut shops, or like establishments for consumption off the~~
29 ~~premises;~~

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1 ~~2. Foods and drinks sold ready for immediate~~
2 ~~consumption from vending machines, pushcarts, motor vehicles,~~
3 ~~or any other form of vehicle;~~

4 ~~3. Soft drinks, which include, but are not limited to,~~
5 ~~any nonalcoholic beverage, any preparation or beverage~~
6 ~~commonly referred to as a "soft drink," or any noncarbonated~~
7 ~~drink made from milk derivatives or tea, when sold in cans or~~
8 ~~similar containers. The term "soft drink" does not include:~~
9 ~~natural fruit or vegetable juices or their concentrates or~~
10 ~~reconstituted natural concentrated fruit or vegetable juices,~~
11 ~~whether frozen or unfrozen, dehydrated, powdered, granulated,~~
12 ~~sweetened or unsweetened, seasoned with salt or spice, or~~
13 ~~unseasoned; coffee or coffee substitutes; tea except when sold~~
14 ~~in containers as provided herein; cocoa; products intended to~~
15 ~~be mixed with milk; or natural fluid milk;~~

16 ~~4. Foods or drinks cooked or prepared on the seller's~~
17 ~~premises and sold ready for immediate consumption either on or~~
18 ~~off the premises, excluding bakery products for off-premises~~
19 ~~consumption unless such foods are taxed under subparagraph 1.~~
20 ~~or subparagraph 2.; or~~

21 ~~5. Sandwiches sold ready for immediate consumption.~~

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23 ~~For the purposes of this paragraph, "seller's premises" shall~~
24 ~~be construed broadly, and means, but is not limited to, the~~
25 ~~lobby, aisle, or auditorium of a theater; the seating, aisle,~~
26 ~~or parking area of an arena, rink, or stadium; or the parking~~
27 ~~area of a drive-in or outdoor theater. The premises of a~~
28 ~~caterer with respect to catered meals or beverages shall be~~
29 ~~the place where such meals or beverages are served.~~

30 ~~(e)(b)1. Food or drinks not exempt under paragraphs~~
31 ~~(a), (b), (c), and (d) are paragraph (a) shall be exempt,~~

1 notwithstanding those paragraphs ~~that paragraph~~, when
2 purchased with food coupons or Special Supplemental Food
3 Program for Women, Infants, and Children vouchers issued under
4 authority of federal law.

5 2. This paragraph is effective only while federal law
6 prohibits a state's participation in the federal food coupon
7 program or Special Supplemental Food Program for Women,
8 Infants, and Children if there is an official determination
9 that state or local sales taxes are collected within that
10 state on purchases of food or drinks with such coupons.

11 3. This paragraph shall not apply to any food or
12 drinks on which federal law shall permit sales taxes without
13 penalty, such as termination of the state's participation.

14 4. Notwithstanding any other provision of law, the
15 department shall make refunds or allow credits to a
16 distributor equal to the fee imposed and paid under s.
17 403.7197 on containers purchased by consumers with food
18 coupons or Special Supplemental Food Program for Women,
19 Infants, and Children vouchers issued under authority of
20 federal law.

21 (7) MISCELLANEOUS EXEMPTIONS.--

22 (qq) Complimentary items.--There is exempt from the
23 tax imposed by this chapter:

24 1. Any food or drink, whether or not cooked or
25 prepared on the premises, provided without charge as a sample
26 or for the convenience of customers by a dealer that primarily
27 sells food product items at retail.

28 2. Any item given to a customer as part of a price
29 guarantee plan related to point-of-sale errors by a dealer
30 that primarily sells food products at retail.

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1 The exemptions in this paragraph do not apply to businesses
2 the primary activity of which is serving prepared meals or
3 alcoholic beverages for immediate consumption.

4 (rr) Donated foods or beverages.--Any food or beverage
5 donated by a dealer that sells food products at retail to a
6 food bank or an organization that holds current exemption from
7 federal corporate income tax under s. 501(c) of the Internal
8 Revenue Code of 1986, as amended, is exempt from the tax
9 imposed by this chapter.

10 (14)(a) The department shall establish a technical
11 assistance advisory committee with public and private sector
12 members, including representatives of both manufacturers and
13 retailers,to advise the Department of Revenue and the
14 Department of Children and Family ~~Health and Rehabilitative~~
15 Services in determining the taxability of specific products
16 and product lines pursuant to subsection (1) and paragraph
17 (2)(a). In determining taxability and in preparing a list of
18 specific products and product lines which are or are not
19 taxable, the committee shall not be subject to the provisions
20 of chapter 120. Private sector members shall not be
21 compensated for serving on the committee.

22 (b) The department, with the advice of the committee,
23 shall develop guidelines for determining the taxability of
24 specific products. The guidelines are not subject to chapter
25 120 and must be a public record. In developing the
26 guidelines, if the department determines that a proposed
27 guideline substantially affects a particular person, it must
28 notify the person of the development of the proposed
29 guideline. The guidelines must be submitted to the
30 Administrative Procedures Committee, and the department shall

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1 respond to any comments made by the committee or to any person
2 who is substantially affected by the guidelines.

3 (c) The advisory committee shall use guidelines
4 developed by the department in making its recommendations.
5 The committee shall forward its recommendations to the
6 department, which shall determine the taxability of specific
7 products. The determination must be a public record, is final
8 upon its publication, and remains effective unless a change of
9 determination is published. The determination may be
10 challenged in a proceeding conducted under ss. 120.569 and
11 120.57.

12 (d) The department is authorized to develop a central
13 database and to publish the determination as to the taxability
14 of specific products in a manner that generally provides
15 retailers with information enabling them to properly tax
16 products based on their universal product codes. To assure
17 maximum benefit to the retail community, the advisory
18 committee shall help in identifying the scope of information
19 that should be included in the central database and the
20 methods appropriate for assuring efficient and effective
21 communication. Information contained in the central database
22 is not subject to chapter 120 and must be a public record.

23 Section 2. This act shall take effect July 1, 1998.
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LEGISLATIVE SUMMARY

Revises the sales tax exemption for food and drinks. Provides definitions and clarifying language. Provides an exemption for certain foods, drinks, and other items provided to customers on a complimentary basis by a dealer who sells food products at retail, and an exemption for foods and beverages donated by such dealers to certain organizations.

Revises provisions relating to the technical assistance advisory committee established to provide advice in determining taxability of foods and medicines. Provides membership requirements. Directs the Department of Revenue to develop guidelines for such determination and provides requirements with respect thereto. Provides for use of the guidelines by the committee. Provides for determination of the taxability of specific products by the department, and authorizes the department to develop a central database with respect thereto.