

By the Committee on Ways and Means; and Senator Ostalkiewicz

301-2244-98

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; amending s. 213.22,
16 F.S.; providing for the issuance of technical
17 assistance advisements; providing an effective
18 date.

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

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

25 212.08 Sales, rental, use, consumption, distribution,
26 and storage tax; specified exemptions.--The sale at retail,
27 the rental, the use, the consumption, the distribution, and
28 the storage to be used or consumed in this state of the
29 following are hereby specifically exempt from the tax imposed
30 by this chapter.

31 (1) EXEMPTIONS; GENERAL GROCERIES.--

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

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

7 1. Cereals and cereal products, baked goods,
8 oleomargarine, meat and meat products, fish and seafood
9 products, frozen foods and dinners, poultry, eggs and egg
10 products, vegetables and vegetable products, fruit and fruit
11 products, spices, salt, sugar and sugar products, milk and
12 dairy products, and products intended to be mixed with milk.

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

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

22 (c) The exemption provided by this subsection does not
23 apply:

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

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

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

8 4. To sandwiches sold ready for immediate consumption
9 on or off the premises.

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

13 6. When the food products are sold as hot prepared
14 food products.

15 7. To soft drinks, which include, but are not limited
16 to, any nonalcoholic beverage, any preparation or beverage
17 commonly referred to as a "soft drink," or any noncarbonated
18 drink made from milk derivatives or tea, when sold in cans or
19 similar containers.

20 8. To ice cream, frozen yogurt, and similar frozen
21 dairy or nondairy products in cones, small cups, or pints,
22 popsicles, frozen fruit bars, or other novelty items, whether
23 or not sold separately.

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

28 10. When the food products are sold through a vending
29 machine, pushcart, motor vehicle, or any other form of
30 vehicle.

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1 11. To candy and any similar product regarded as candy
2 or confection, based on its normal use, as indicated on the
3 label or advertising thereof.

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

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

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

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

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

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

27 4. "Hot prepared food products" means those products,
28 items, or components that have been prepared for sale in a
29 heated condition and that are sold at any temperature that is
30 higher than the air temperature of the room or place where
31 they are sold. The term "hot prepared food products" includes

1 a combination of hot and cold food items or components with
2 respect to which a single price has been established for the
3 combination and the food products are sold in such
4 combination, such as a hot meal, a hot specialty dish or
5 servings, or a hot sandwich or hot pizza, including cold
6 components or side items.

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

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

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

28 3. ~~Soft drinks, which include, but are not limited to,~~
29 ~~any nonalcoholic beverage, any preparation or beverage~~
30 ~~commonly referred to as a "soft drink," or any noncarbonated~~
31 ~~drink made from milk derivatives or tea, when sold in cans or~~

1 ~~similar containers. The term "soft drink" does not include:~~
2 ~~natural fruit or vegetable juices or their concentrates or~~
3 ~~reconstituted natural concentrated fruit or vegetable juices,~~
4 ~~whether frozen or unfrozen, dehydrated, powdered, granulated,~~
5 ~~sweetened or unsweetened, seasoned with salt or spice, or~~
6 ~~unseasoned; coffee or coffee substitutes; tea except when sold~~
7 ~~in containers as provided herein; cocoa; products intended to~~
8 ~~be mixed with milk; or natural fluid milk;~~

9 ~~4. Foods or drinks cooked or prepared on the seller's~~
10 ~~premises and sold ready for immediate consumption either on or~~
11 ~~off the premises, excluding bakery products for off-premises~~
12 ~~consumption unless such foods are taxed under subparagraph 1.~~
13 ~~or subparagraph 2.; or~~

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

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16 ~~For the purposes of this paragraph, "seller's premises" shall~~
17 ~~be construed broadly, and means, but is not limited to, the~~
18 ~~lobby, aisle, or auditorium of a theater; the seating, aisle,~~
19 ~~or parking area of an arena, rink, or stadium; or the parking~~
20 ~~area of a drive-in or outdoor theater. The premises of a~~
21 ~~caterer with respect to catered meals or beverages shall be~~
22 ~~the place where such meals or beverages are served.~~

23 ~~(e)(b)1. Food or drinks not exempt under paragraphs~~
24 ~~(a), (b), (c), and (d) are paragraph (a) shall be exempt,~~
25 ~~notwithstanding those paragraphs ~~that paragraph~~, when~~
26 ~~purchased with food coupons or Special Supplemental Food~~
27 ~~Program for Women, Infants, and Children vouchers issued under~~
28 ~~authority of federal law.~~

29 ~~2. This paragraph is effective only while federal law~~
30 ~~prohibits a state's participation in the federal food coupon~~
31 ~~program or Special Supplemental Food Program for Women,~~

1 Infants, and Children if there is an official determination
2 that state or local sales taxes are collected within that
3 state on purchases of food or drinks with such coupons.

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

7 4. Notwithstanding any other provision of law, the
8 department shall make refunds or allow credits to a
9 distributor equal to the fee imposed and paid under s.
10 403.7197 on containers purchased by consumers with food
11 coupons or Special Supplemental Food Program for Women,
12 Infants, and Children vouchers issued under authority of
13 federal law.

14 (7) MISCELLANEOUS EXEMPTIONS.--

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

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

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

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

28 (rr) Donated foods or beverages.--Any food or beverage
29 donated by a dealer that sells food products at retail to a
30 food bank or an organization that holds current exemption from
31 federal corporate income tax under s. 501(c) of the Internal

1 Revenue Code of 1986, as amended, is exempt from the tax
2 imposed by this chapter.

3 (14) TECHNICAL ASSISTANCE ADVISORY COMMITTEE.--The
4 department shall establish a technical assistance advisory
5 committee with public and private sector members, including
6 representatives of both manufacturers and retailers, to advise
7 the Department of Revenue and the Department of Health ~~and~~
8 ~~Rehabilitative Services~~ in determining the taxability of
9 specific products and product lines pursuant to subsection (1)
10 and paragraph (2)(a). In determining taxability and in
11 preparing a list of specific products and product lines that
12 ~~which~~ are or are not taxable, the committee shall not be
13 subject to the provisions of chapter 120. Private sector
14 members shall not be compensated for serving on the committee.

15 Section 2. Subsection (1) of section 213.22, Florida
16 Statutes, is amended to read:

17 213.22 Technical assistance advisements.--

18 (1) The department may issue informal technical
19 assistance advisements to persons, upon written request, as to
20 the position of the department on the tax consequences of a
21 stated transaction or event, under existing statutes, rules,
22 or policies. After the issuance of an assessment, a technical
23 assistance advisement may not be issued to a taxpayer who
24 requests an advisement relating to the tax or liability for
25 tax in respect to which the assessment has been made, except
26 that a technical assistance advisement may be issued to a
27 taxpayer who requests an advisement relating to the exemptions
28 in s. 212.08(1) or (2) at any time. Technical assistance
29 advisements shall have no precedential value except to the
30 taxpayer who requests the advisement and then only for the
31 specific transaction addressed in the technical assistance

1 advisement, unless specifically stated otherwise in the
2 advisement. Any modification of an advisement shall be
3 prospective only. A technical assistance advisement is not an
4 order issued pursuant to s. 120.565 or s. 120.569 or a rule or
5 policy of general applicability under s. 120.54. The
6 provisions of s. 120.53(1) are not applicable to technical
7 assistance advisements.

8 Section 3. This act shall take effect July 1, 1998.

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10 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
11 COMMITTEE SUBSTITUTE FOR
12 SB 1504

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13 For purposes of determination of the taxability of new items
14 sold in grocery stores, instead of applying recommendations of
15 a technical assistance advisory council, the committee
16 substitute provides for the Department of Revenue to issue
17 Technical Assistance Advisements at any time to a taxpayer who
18 requests an advisement relating to grocery or medical
19 exemptions.

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