

By Senator Ostalkiewicz

12-1537-98

1 A bill to be entitled
2 An act relating to taxation (RAB); amending s.
3 212.08, F.S., relating to the tax on sales,
4 use, and other transactions; revising the sales
5 tax exemption provided for food and drinks;
6 providing definitions; exempting additional
7 medical supplies and equipment; providing
8 definitions for purposes of such exemption;
9 revising the exemption for school books and
10 school lunches; providing exemptions with
11 respect to parent-teacher organizations and
12 associations, to schools with grades K through
13 12, to mobile home lot improvements, and to
14 sales of certain personal property supported
15 through the Veterans Administration; providing
16 a partial exemption for certain commercial
17 fishing vessels; providing an exemption for
18 certain foods, drinks, and other items provided
19 to customers on a complimentary basis by a
20 dealer who sells food products at retail;
21 providing an exemption for foods and beverages
22 donated by such dealers to certain
23 organizations; revising provisions relating to
24 the technical assistance advisory committee
25 established to provide advice in determining
26 the taxability of specific products; providing
27 membership requirements; directing the
28 Department of Revenue to develop guidelines for
29 determining the taxability of specific
30 products; requiring that the department notify
31 persons substantially affected and the

1 Administrative Procedures Committee of proposed
2 guidelines; providing for use of the guidelines
3 by the committee; providing for determining the
4 taxability of specific products by the
5 department; authorizing the department to
6 develop a central database with respect to the
7 taxability of specific products; providing an
8 effective date.

9

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

11

12 Section 1. Subsections (1), (2), and (14), paragraph
13 (q) of subsection (7), and paragraph (a) of subsection (8) of
14 section 212.08, Florida Statutes, are amended, and paragraphs
15 (qq), (rr), (ss), (tt), and (uu) are added to subsection (7)
16 of that section, to read:

17 212.08 Sales, rental, use, consumption, distribution,
18 and storage tax; specified exemptions.--The sale at retail,
19 the rental, the use, the consumption, the distribution, and
20 the storage to be used or consumed in this state of the
21 following are hereby specifically exempt from the tax imposed
22 by this chapter.

23 (1) EXEMPTIONS; GENERAL GROCERIES.--

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

26 (b) As used in this subsection, the term "food
27 products" means edible commodities, whether processed, cooked,
28 raw, canned, or in any other form, which are generally
29 regarded as food. This includes, but is not limited to:

30 1. Cereals and cereal products, baked goods,
31 oleomargarine, meat and meat products, fish and seafood

1 products, frozen foods and dinners, poultry, eggs and egg
2 products, vegetables and vegetable products, fruit and fruit
3 products, spices, salt, sugar and sugar products, milk and
4 dairy products, and products intended to be mixed with milk.

5 2. Natural fruit or vegetable juices or their
6 concentrates or reconstituted natural concentrated fruit or
7 vegetable juices, whether frozen or unfrozen, dehydrated,
8 powdered, granulated, sweetened or unsweetened, seasoned with
9 salt or spice, or unseasoned; coffee, coffee substitutes, or
10 cocoa; and tea, unless it is sold in a liquid form.

11 3. Bakery products sold by bakeries, pastry shops, or
12 like establishments that do not have eating facilities.

13 (c) The exemption provided by this subsection does not
14 apply:

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

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

22 3. When the food products are ordinarily sold for
23 immediate consumption on the premises or near a location at
24 which parking facilities are provided primarily for the use of
25 patrons in consuming the products purchased at the location,
26 even though such products are sold on a "take out" or "to go"
27 order and are actually packaged or wrapped and taken from the
28 premises of the dealer.

29 4. To sandwiches sold ready for immediate consumption
30 on or off the premises.

31

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

4 6. When the food products are sold as hot prepared
5 food products.

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

11 8. To ice cream, frozen yogurt, and similar frozen
12 dairy or nondairy products in cones, small cups, or pints,
13 popsicles, frozen fruit bars, or other novelty items, whether
14 or not sold separately.

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

19 10. When the food products are sold through a vending
20 machine, pushcart, motor vehicle, or any other form of
21 vehicle.

22 11. To candy and any similar product regarded as candy
23 or confection, based on its normal use, as indicated on the
24 label or advertising thereof.

25 12. To bakery products sold by bakeries, pastry shops,
26 or like establishments that have eating facilities, except
27 when sold for consumption off the premises.

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

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

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

4 2. "For consumption on the premises" means that the
5 food or drink sold may be immediately consumed on the premises
6 where the dealer conducts his or her business. In determining
7 whether an item of food is sold for immediate consumption,
8 there shall be considered the customary consumption practices
9 prevailing at the selling facility.

10 3. "Premises" shall be construed broadly, and means,
11 but is not limited to, the lobby, aisle, or auditorium of a
12 theater; the seating, aisle, or parking area of an arena,
13 rink, or stadium; or the parking area of a drive-in or outdoor
14 theater. The premises of a caterer with respect to catered
15 meals or beverages shall be the place where such meals or
16 beverages are served.

17 4. "Hot prepared food products" means those products,
18 items, or components which have been prepared for sale in a
19 heated condition and which are sold at any temperature that is
20 higher than the air temperature of the room or place where
21 they are sold. "Hot prepared food products," for the purposes
22 of this subsection, includes a combination of hot and cold
23 food items or components where a single price has been
24 established for the combination and the food products are sold
25 in such combination, such as a hot meal, a hot specialty dish
26 or serving, or a hot sandwich or hot pizza, including cold
27 components or side items.

28 ~~(a) There are exempt from the tax imposed by this~~
29 ~~chapter food and drinks for human consumption except candy.~~
30 ~~Unless the exemption provided by paragraph (7)(q) for school~~
31 ~~lunches, paragraph (7)(i) for meals to certain patients or~~

1 ~~inmates, paragraph (7)(k) for meals provided by certain~~
2 ~~nonprofit organizations, or paragraph (7)(z) for food or~~
3 ~~drinks sold through vending machines pertains, none of such~~
4 ~~items of food or drinks means:~~

5 1. ~~Food or drinks served, prepared, or sold in or by~~
6 ~~restaurants; drugstores; lunch counters; cafeterias; hotels;~~
7 ~~amusement parks; racetracks; taverns; concession stands at~~
8 ~~arenas, auditoriums, carnivals, fairs, stadiums, theaters, or~~
9 ~~other like places of business; or by any business or place~~
10 ~~required by law to be licensed by the Division of Hotels and~~
11 ~~Restaurants of the Department of Business and Professional~~
12 ~~Regulation, except bakery products sold in or by pastry shops,~~
13 ~~doughnut shops, or like establishments for consumption off the~~
14 ~~premises;~~

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

18 3. ~~Soft drinks, which include, but are not limited to,~~
19 ~~any nonalcoholic beverage, any preparation or beverage~~
20 ~~commonly referred to as a "soft drink," or any noncarbonated~~
21 ~~drink made from milk derivatives or tea, when sold in cans or~~
22 ~~similar containers. The term "soft drink" does not include:~~
23 ~~natural fruit or vegetable juices or their concentrates or~~
24 ~~reconstituted natural concentrated fruit or vegetable juices,~~
25 ~~whether frozen or unfrozen, dehydrated, powdered, granulated,~~
26 ~~sweetened or unsweetened, seasoned with salt or spice, or~~
27 ~~unseasoned; coffee or coffee substitutes; tea except when sold~~
28 ~~in containers as provided herein; cocoa; products intended to~~
29 ~~be mixed with milk; or natural fluid milk;~~

30 4. ~~Foods or drinks cooked or prepared on the seller's~~
31 ~~premises and sold ready for immediate consumption either on or~~

1 ~~off the premises, excluding bakery products for off-premises~~
2 ~~consumption unless such foods are taxed under subparagraph 1.~~
3 ~~or subparagraph 2.; or~~

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

5
6 ~~For the purposes of this paragraph, "seller's premises" shall~~
7 ~~be construed broadly, and means, but is not limited to, the~~
8 ~~lobby, aisle, or auditorium of a theater; the seating, aisle,~~
9 ~~or parking area of an arena, rink, or stadium; or the parking~~
10 ~~area of a drive-in or outdoor theater. The premises of a~~
11 ~~caterer with respect to catered meals or beverages shall be~~
12 ~~the place where such meals or beverages are served.~~

13 ~~(e)(b)1.~~ Food or drinks not exempt under paragraphs
14 (a), (b), (c), and (d)~~paragraph (a)~~ shall be exempt,
15 notwithstanding those paragraphs ~~that paragraph~~, when
16 purchased with food coupons or Special Supplemental Food
17 Program for Women, Infants, and Children vouchers issued under
18 authority of federal law.

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

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

28 ~~4. Notwithstanding any other provision of law, the~~
29 ~~department shall make refunds or allow credits to a~~
30 ~~distributor equal to the fee imposed and paid under s.~~
31 ~~403.7197 on containers purchased by consumers with food~~

1 ~~coupons or Special Supplemental Food Program for Women,~~
2 ~~Infants, and Children vouchers issued under authority of~~
3 ~~federal law.~~

4 (2) EXEMPTIONS; MEDICAL.--

5 (a) There shall be exempt from the tax imposed by this
6 chapter any medical products and supplies ~~product, supply, or~~
7 ~~medicine dispensed in a retail establishment by a pharmacist~~
8 ~~licensed by the state, according to an individual prescription~~
9 ~~or prescriptions written by a prescriber authorized by law to~~
10 ~~prescribe medicinal drugs; hypodermic needles; hypodermic~~
11 ~~syringes; chemical compounds and test kits used for the~~
12 ~~diagnosis or treatment of human disease, illness, or injury;~~
13 ~~and common household remedies recommended and generally sold~~
14 ~~for internal or external use in the cure, mitigation,~~
15 ~~treatment, or prevention of illness or disease in human~~
16 ~~beings, but not including cosmetics or toilet articles,~~
17 ~~notwithstanding the presence of medicinal ingredients therein,~~
18 ~~according to a list prescribed and approved by the Department~~
19 ~~of Health and Rehabilitative Services, which list shall be~~
20 ~~certified to the Department of Revenue from time to time and~~
21 ~~included in the rules promulgated by the Department of~~
22 ~~Revenue. There shall also be exempt from the tax imposed by~~
23 ~~this chapter artificial eyes and limbs; orthopedic shoes;~~
24 ~~prescription eyeglasses and items incidental thereto or which~~
25 ~~become a part thereof; dentures; hearing aids; crutches;~~
26 ~~prosthetic and orthopedic appliances; and funerals. In~~
27 ~~addition, any items intended for one-time use which transfer~~
28 ~~essential optical characteristics to contact lenses shall be~~
29 ~~exempt from the tax imposed by this chapter; however, this~~
30 ~~exemption shall apply only after \$100,000 of the tax imposed~~
31 ~~by this chapter on such items has been paid in any calendar~~

1 year by a taxpayer who claims the exemption in such year.

2 Funeral directors shall pay tax on all tangible personal
3 property used by them in their business.

4 (b) For the purposes of this subsection:

5 1. "Prosthetic and orthopedic appliances" means any
6 apparatus, instrument, device, or equipment used to replace or
7 substitute for any missing part of the body, to alleviate the
8 malfunction of any part of the body, or to assist any disabled
9 person in leading a normal life by facilitating such person's
10 mobility. Such apparatus, instrument, device, or equipment
11 shall be exempted according to an individual prescription or
12 prescriptions written by a physician licensed under chapter
13 458, chapter 459, chapter 460, chapter 461, or chapter 466, or
14 according to a list prescribed and approved by the Department
15 of Health ~~and Rehabilitative Services~~, which list shall be
16 certified to the Department of Revenue from time to time and
17 included in the rules promulgated by the Department of
18 Revenue.

19 2. "Cosmetics" means articles intended to be rubbed,
20 poured, sprinkled, or sprayed on, introduced into, or
21 otherwise applied to the human body for cleansing,
22 beautifying, promoting attractiveness, or altering the
23 appearance and also means articles intended for use as a
24 compound of any such articles, including, but not limited to,
25 cold creams, suntan lotions, makeup, and body lotions.

26 3. "Toilet articles" means any article advertised or
27 held out for sale for grooming purposes and those articles
28 that are customarily used for grooming purposes, regardless of
29 the name by which they may be known, including, but not
30 limited to, soap, toothpaste, hair spray, shaving products,
31 colognes, perfumes, shampoo, deodorant, and mouthwash.

1 4. "Prescription" includes any order for drugs or
2 medicinal supplies written or transmitted by any means of
3 communication by a duly licensed practitioner authorized by
4 the laws of the state to prescribe such drugs or medicinal
5 supplies and intended to be dispensed by a pharmacist. The
6 term also includes an orally transmitted order by the lawfully
7 designated agent of such practitioner. The term also includes
8 an order written or transmitted by a practitioner licensed to
9 practice in a jurisdiction other than this state, but only if
10 the pharmacist called upon to dispense such order determines,
11 in the exercise of his or her professional judgment, that the
12 order is valid and necessary for the treatment of a chronic or
13 recurrent illness. The term also includes a pharmacist's order
14 for a product selected from the formulary created pursuant to
15 s. 465.186. A prescription may be retained in written form, or
16 the pharmacist may cause it to be recorded in a
17 data-processing system, provided that such order can be
18 produced in printed form upon lawful request.

19 5. "Medical products and supplies" means and includes,
20 but is not limited to, such items as cotton, knives, sewing
21 and surgical needles, scissors, microscopes, x-ray machines,
22 I.V. administration sets, laboratory apparatus, surgeons'
23 gloves, ear syringes, and hospital beds.

24 (c) Chlorine shall not be exempt from the tax imposed
25 by this chapter when used for the treatment of water in
26 swimming pools.

27 (d) Lithotripters are exempt.

28 (e) Human organs are exempt.

29 (f) Sales of drugs to or by physicians, dentists,
30 veterinarians, and hospitals in connection with medical
31 treatment are exempt.

1 (g) Medical products and supplies used in the cure,
2 mitigation, alleviation, prevention, or treatment of injury,
3 disease, or incapacity which are temporarily or permanently
4 incorporated into a patient or client by a practitioner of the
5 healing arts licensed in the state are exempt.

6 (h) The purchase by a veterinarian of commonly
7 recognized substances possessing curative or remedial
8 properties which are ordered and dispensed as treatment for a
9 diagnosed health disorder by or on the prescription of a duly
10 licensed veterinarian, and which are applied to or consumed by
11 animals for alleviation of pain or the cure or prevention of
12 sickness, disease, or suffering are exempt. Also exempt are
13 the purchase by a veterinarian of antiseptics, absorbent
14 cotton, gauze for bandages, lotions, vitamins, and worm
15 remedies.

16 (i) X-ray opaques, also known as opaque drugs and
17 radiopaque, such as the various opaque dyes and barium
18 sulphate, when used in connection with medical x-rays for
19 treatment of bodies of humans and animals, are exempt.

20 (j) Parts, special attachments, special lettering, and
21 other like items that are added to or attached to tangible
22 personal property so that a handicapped person can use them
23 are exempt when such items are purchased by a person pursuant
24 to an individual prescription.

25 (k)~~(d)~~ This subsection shall be strictly construed and
26 enforced.

27 (7) MISCELLANEOUS EXEMPTIONS.--

28 (q) School books and school lunches.--This exemption
29 applies to school books used in regularly prescribed courses
30 of study, and to school lunches served ~~to students~~, in public,
31 parochial, or nonprofit schools operated for and attended by

1 pupils of grades K through ~~1 through~~ 12. Yearbooks, magazines,
2 newspapers, directories, bulletins, and similar publications
3 distributed by such educational institutions to their students
4 are also exempt. School books and food sold or served at
5 community colleges and other institutions of higher learning
6 are taxable.

7 (qq) Parent-teacher organizations, parent-teacher
8 associations, and schools having grades K through
9 12.--Parent-teacher organizations and associations qualified
10 as educational institutions under paragraph (o) associated
11 with schools having grades K through 12, and schools having
12 grades K through 12, may pay tax to their suppliers on the
13 cost price of school materials and supplies purchased, rented,
14 or leased for resale or rental to students in grades K through
15 12, including items used for fund-raising purposes or sold
16 through vending machines located on the school premises, in
17 lieu of collecting the tax imposed by this chapter from the
18 student. The tax paid to the supplier may be included in the
19 sale price of the school materials and supplies to the student
20 or public. This paragraph does not apply to sales of food and
21 beverages through vending machines that are not operated by
22 qualified parent-teacher organizations, parent-teacher
23 associations, and schools having grades K through 12 on the
24 school's premises, other than sales of food or beverages
25 through vending machines located in the student lunchroom or
26 dining room of a school having grades K through 12.

27 (rr) Mobile home lot improvements.--Items purchased by
28 developers for use in making improvements to a mobile home lot
29 owned by the developer may be purchased tax-exempt as a sale
30 for resale if made pursuant to a contract that requires the
31 developer to sell a mobile home to a purchaser, place the

1 mobile home on the lot, and make the improvements to the lot
2 for a single lump-sum price. The developer must collect and
3 remit sales tax on the entire lump-sum price.

4 (ss) Veterans Administration.--When a veteran of the
5 armed forces purchases an aircraft, boat, mobile home, motor
6 vehicle, or other vehicle from a dealer pursuant to the
7 provisions of s. 3902(a), Title 38, United States Code, or any
8 successor provision of the United States Code, the amount that
9 is paid directly to the dealer by the Veterans Administration
10 is not taxable. However, any portion of the purchase price
11 which is paid directly to the dealer by the veteran is
12 taxable.

13 (tt) Complimentary items.--There is exempt from the
14 tax imposed by this chapter:

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

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

22
23 The exemptions in this paragraph do not apply to businesses
24 with the primary activity of serving prepared meals or
25 alcoholic beverages for immediate consumption.

26 (uu) Donated foods or beverages.--Any food or beverage
27 donated by a dealer that sells food products at retail to a
28 food bank or an organization that holds a current exemption
29 from federal corporate income tax pursuant to s. 501(c) of the
30 Internal Revenue Code of 1986, as amended, is exempt from the
31 tax imposed by this chapter.

1 (8) PARTIAL EXEMPTIONS; VESSELS ENGAGED IN INTERSTATE
2 OR FOREIGN COMMERCE.--

3 (a) The sale or use of vessels and parts thereof used
4 to transport persons or property in interstate or foreign
5 commerce, including commercial fishing vessels, is subject to
6 the taxes imposed in this chapter only to the extent provided
7 herein. The basis of the tax shall be the ratio of intrastate
8 mileage to interstate or foreign mileage traveled by the
9 carrier's vessels which were used in interstate or foreign
10 commerce and which had at least some Florida mileage during
11 the previous fiscal year. The ratio would be determined at
12 the close of the carrier's fiscal year. This ratio shall be
13 applied each month to the total Florida purchases of such
14 vessels and parts thereof which are used in Florida to
15 establish that portion of the total used and consumed in
16 intrastate movement and subject to the tax at the applicable
17 rate. The basis for imposition of any discretionary surtax
18 shall be as set forth in s. 212.054. Items, appropriate to
19 carry out the purposes for which a vessel is designed or
20 equipped and used, purchased by the owner, operator, or agent
21 of a vessel for use on board such vessel shall be deemed to be
22 parts of the vessel upon which the same are used or consumed.
23 Vessels and parts thereof used to transport persons or
24 property in interstate and foreign commerce are hereby
25 determined to be susceptible to a distinct and separate
26 classification for taxation under the provisions of this
27 chapter. Vessels and parts thereof used exclusively in
28 intrastate commerce do not qualify for the proration of tax.

29 (14) TECHNICAL ASSISTANCE ADVISORY COMMITTEE.--

30 (a) The department shall establish a technical
31 assistance advisory committee with public and private sector

1 members, including representatives of both manufacturers and
2 retailers, to advise the Department of Revenue and the
3 Department of Children and Family ~~Health and Rehabilitative~~
4 Services in determining the taxability of specific products
5 and product lines pursuant to subsection (1) and paragraph
6 (2)(a). In determining taxability and in preparing a list of
7 specific products and product lines ~~that~~ which are or are not
8 taxable, the committee shall not be subject to the provisions
9 of chapter 120. Private sector members shall not be
10 compensated for serving on the committee.

11 (b) The department, with the advice of the committee,
12 shall develop guidelines for determining the taxability of
13 specific products. The guidelines shall not be subject to the
14 provisions of chapter 120 and shall be a public record. In
15 developing the guidelines, if the department determines that a
16 proposed guideline substantially affects a particular person,
17 it shall notify the person of the development of the proposed
18 guideline. The guidelines shall be submitted to the
19 Administrative Procedures Committee and the department shall
20 respond to any comments made by the committee or to any person
21 substantially affected by the guidelines.

22 (c) The advisory committee shall use guidelines
23 determined by the department in making its recommendations.
24 The committee shall forward its recommendations to the
25 department, which shall determine the taxability of specific
26 products. The determination is a public record, is final upon
27 its publication, and shall remain effective unless a change of
28 determination is published. The determination may be
29 challenged pursuant to a proceeding conducted under ss.
30 120.569 and 120.57.

31

1 (d) The department may develop a central database and
2 publish the determination as to the taxability of specific
3 products in a manner that generally provides retailers with
4 information to properly tax products based on their universal
5 product codes. To assure maximum benefit to the retail
6 community, the advisory committee shall help in identifying
7 the scope of information that should be included in the
8 central database and the appropriate methods to assure
9 efficient and effective communication. Information contained
10 in the central database shall not be subject to the provisions
11 of chapter 120 and shall be a public record.

12 Section 2. This act shall take effect July 1, 1998.

14 *****

15 SENATE SUMMARY

16 Revises the exemption from the state sales tax provided
17 for food and drinks. Specifies the food products that are
18 subject to the tax. Exempts certain food, drinks, and
19 other items from the sales tax if the items are provided
20 to customers on a complimentary basis by a retail dealer.
21 Exempts food and beverages from the sales tax if such
22 items are donated to a tax-exempt organization. Provides
23 for the Department of Revenue to determine the taxability
24 of specific products and publish its determinations.
25 Exempts additional medical supplies and equipment;
26 yearbooks, magazines, and other printed materials
27 distributed by educational institutions to their
28 students; materials and supplies furnished to students in
29 grades K-12 by schools or parent-teacher associations or
30 organizations; mobile home lot improvements; and
31 aircraft, boats, mobile homes, and vehicles purchased in
 whole or in part with support from the Veterans
 Administration. Provides a partial exemption for
 commercial fishing vessels in the same manner as is
 provided to vessels in interstate or foreign commerce.