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DATE: March 26, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS DEVELOPMENT AND INTERNATIONAL TRADE
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 315

RELATING TO: Sales Tax/Food and Drinks

SPONSOR(S): Representative Fuller

STATUTE(S) AFFECTED: Section 212.08, Florida Statutes

COMPANION BILL(S): SB 1660 (identical), SB 1868 (compare)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS DEVELOPMENT AND INTERNATIONAL TRADE 8 YEAS 0 NAYS
- (2) FINANCE AND TAXATION
- (3)
- (4)
- (5)

I. SUMMARY:

This bill revises language relating to the sales tax exemption for food products sold for human consumption, and is intended to clarify current law on the taxability of food products. The effect of these revisions is to delineate that some items currently determined as taxable by the Department of Revenue will now be exempt, and some items currently determined as tax exempt by the Department will now be taxable.

The bill revises language relating to the makeup of the technical assistance advisory committee to include representatives of both manufacturers and retailers.

The bill also creates two new sales tax exemptions for “complimentary food items,” and “donated foods or beverages.”

Finally, the bill requires the Department of Revenue to develop guidelines to help dealers determine whether specific products are taxable. The Department is also authorized to develop a central database of information on the taxability of specific products.

The Revenue Estimating Conference has not reviewed this bill yet.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 212.08(1), F.S., currently provides an exemption from the sales and use tax for food and drinks sold for human consumption. Current rules and law identifies items that are exempt or taxable. The list of items that are currently exempt includes:

1. Food for human consumption.
2. Tea, unless sold in liquid form.
3. Coffee or coffee substitutes, even if sold in liquid form.
4. Bakery products cooked or prepared for consumption off the premises.
5. Ice cream or frozen yogurt sold in quarts or larger containers for consumption off the premises.
6. Food or drinks cooked or prepared in a grocery store and given to customers as samples.

The list of items that are taxable includes:

1. Food and drinks sold in hotels, restaurants, cafeterias, drugstores, lunch counters, amusement parks, racetracks, taverns, concession stands at arenas, auditoriums, carnivals, fairs, stadiums, theaters, or other like places of businesses.
2. Food and drinks sold ready for immediate consumption from vending machines, pushcarts, motor vehicles, or any other form of vehicle.
3. Tea sold in liquid form.
4. Bakery products sold ready for immediate consumption on the premises.
5. Soft drinks when sold in cans or similar containers.
6. Food or drinks cooked or prepared on the seller's premises and sold ready for immediate consumption either on or off the premises.
7. Sandwiches sold ready for immediate consumption.
8. Candy.
9. Ice cream and frozen yogurt in cones, small cups or pints, popsicles, frozen fruit bars or other novelty items.
10. Gum and breath mints.
11. Water to which carbonation or minerals have been added.

12. Taxable items such as candy and soft drinks given away to a customer as a sample.

The terms "for consumption off the premises" and "for consumption on the premises" are not defined in rule or statute.

The Department of Revenue notes that there are approximately 1,000 new food products introduced each month. The determination of whether such products are taxable must be made before the product can be sold, and within approximately 10 days from the time a buyer orders such products.

B. EFFECT OF PROPOSED CHANGES:

This bill revises and clarifies the sales tax exemption for food and drinks sold for human consumption. The bill provides specific definitions for terms used in section 212.08(1), F.S. The net effect of the revisions contained in this bill is to delineate that some items currently determined as taxable by the Department of Revenue will now be exempt, and some items currently determined as tax exempt by the Department will now be taxable. Specific items that are currently considered taxable, but would now be tax exempt are:

1. All bakery products sold by bakeries or pastry shops that do not have eating facilities.
2. Items that are not considered candy, based on their normal use, as indicated on the label or advertising.

The bill also defines/clarifies the terms "food products," "for consumption off the premises," and "for consumption on the premises."

The bill creates a new sales tax exemption for "complimentary food items," and "donated foods or beverages." The bill defines "complimentary food items" as follows:

1. Any food or drink that is provided without charge as a sample or for the convenience of customers.
2. Any item given to a customer as part of a price guarantee plan.

Business with the primary activity of serving prepared meals or alcoholic beverages for immediate consumption are not eligible for the exemption for complimentary food items. "Donated foods or beverages" are defined as food or drink donated to a food bank or a non-profit organization that is exempt from the state sales and use tax.

Finally, the bill requires the Department of Revenue to develop guidelines to help dealers determine whether specific products are taxable. The bill exempts the development of these guidelines from administrative rule procedures contained in Chapter 120, F.S., but does allow the guidelines to be challenged pursuant to an administrative hearing proceeding conducted under ss. 120.569 and 120.57, F.S. The Department is also authorized to develop a central database of information on the taxability of specific products.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

The bill requires the Department of Revenue to develop guidelines for determining the taxability of certain products.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

The bill requires the Department of Revenue to develop guidelines and a database of information on the taxability of specific products.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A.

(2) what is the cost of such responsibility at the new level/agency?

N/A.

(3) how is the new agency accountable to the people governed?

N/A.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

The bill clarifies current law on the taxability of food products. Some products currently determined as tax exempt by Department of Revenue will now be taxable. There will be an increase in taxes for specific items which were formerly tax exempt, but the increase would be offset by certain items that were taxed and will now be tax exempt.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

The bill clarifies current law on the taxability of food products. Some products currently determined as taxable by Department of Revenue will now be exempt from taxation.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A.

(2) Who makes the decisions?

N/A.

(3) Are private alternatives permitted?

N/A.

(4) Are families required to participate in a program?

N/A.

(5) Are families penalized for not participating in a program?

N/A.

b. Does the bill directly affect the legal rights and obligations between family members?

N/A.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A.

(2) service providers?

N/A.

(3) government employees/agencies?

N/A.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 amends s. 212.08, F.S., relating to specific exemptions from the state sales and use tax. Revises language relating to the sales tax exemption for food products sold for human consumption. Deletes current language delineating which products are exempt, non-exempt items and activities, and which sellers of such products are exempt. Adds new language specifically defining "food products," "for consumption off the premises," "for consumption on the premises," "premises," "hot prepared food products," and non-exempt items and activities.

Creates two new sales tax exemptions for "complimentary food items," and "donated foods or beverages." Delineates what qualifies as a "complimentary food item," and a "donated food or beverage." Adds representatives of both manufacturers and retailers to advisory committee membership.

Requires the Department of Revenue to develop guidelines to determine the taxability of specific food products sold for human consumption, and products, supplies, or medicine dispensed in a retail establishment. Authorizes the department to establish a central data base of taxability of specific products.

Section 2 provides that this act shall take effect July 1, 1997.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

The Department of Revenue will incur indeterminate costs associated with developing guidelines to determine the taxability of certain food and medical products.

2. Recurring Effects:

The Revenue Estimating Conference has not reviewed this bill.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See A2.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

See A2.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Dealers not currently collecting and remitting sales and use tax on certain items or transactions made taxable under this bill, will now have to collect and remit such tax.

2. Direct Private Sector Benefits:

Dealers currently collecting and remitting sales and use tax on certain items or transactions made exempt under this bill, will no longer have to collect and remit such tax. The bill may also help clarify which food products are taxable or exempt.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

The provisions of the bill relating to the development of guidelines may be confusing or problematic for the parties involved in their development. Although the bill and current law exempt the development of these guidelines from current administrative rule making procedures Chapter 120, F.S., they also allow for substantially affected parties to challenge the guidelines pursuant to a proceeding conducted under s. 120.57, F.S. Representatives from the Florida Retail Federation note that the development of the rules under Chapter 120, F.S., often takes too long in responding to the myriad of new products introduced each month. However, it is unclear whether the process contemplated in the bill will circumvent the time constraints incumbent in the Chapter 120, F.S., rule making process.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 19, 1997, the Business Development and International Trade Committee adopted a strike everything after the enacting clause amendment. The amendment's effect was to remove provisions of the bill that may have had a positive fiscal impact.

VII. SIGNATURES:

COMMITTEE ON BUSINESS DEVELOPMENT AND INTERNATIONAL TRADE:

Prepared by:

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