

By the Committees on Finance & Taxation, Business
Development & International Trade and Representatives Fuller,
Feeney and Saunders

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.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Subsections (1) and (14) of section 212.08,
28 Florida Statutes, 1996 Supplement, are amended, and paragraphs
29 (nn) and (oo) are added to subsection (7) of said section, to
30 read:

31

1 212.08 Sales, rental, use, consumption, distribution,
2 and storage tax; specified exemptions.--The sale at retail,
3 the rental, the use, the consumption, the distribution, and
4 the storage to be used or consumed in this state of the
5 following are hereby specifically exempt from the tax imposed
6 by this part.

7 (1) EXEMPTIONS; GENERAL GROCERIES.--

8 (a) There are exempted from the tax imposed by this
9 chapter food products for human consumption.

10 (b) For the purpose of this chapter, "food products"
11 means edible commodities, whether processed, cooked, raw,
12 canned, or in any other form, which are generally regarded as
13 food. This includes, but is not limited to, all of the
14 following:

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

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

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

29 (c) None of the exemptions provided in paragraph (b)
30 applies to any of the following:

31

- 1 1. When the food products are sold as meals for
2 consumption on or off the seller's premises.
- 3 2. When the food products are furnished, prepared, or
4 served for consumption at tables, chairs, or counters or from
5 trays, glasses, dishes, or other tableware, whether provided
6 by the seller or by a person with whom the seller contracts to
7 furnish, prepare, or serve food products to others.
- 8 3. When the food products are ordinarily sold for
9 immediate consumption on the seller's premises or near a
10 location at which parking facilities are provided primarily
11 for the use of patrons in consuming the products purchased at
12 the location, even though such products are sold on a "take
13 out" or "to go" order and are actually packaged or wrapped and
14 taken from the seller's premises.
- 15 4. Sandwiches sold ready for immediate consumption on
16 or off the seller's premises.
- 17 5. When the food products are sold ready for immediate
18 consumption within a place, the entrance to which is subject
19 to an admission charge.
- 20 6. Soft drinks, which include, but are not limited to,
21 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 a liquid
24 form.
- 25 7. Ice cream, frozen yogurt, and similar frozen dairy
26 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 8. Food prepared, whether on or off the premises, and
30 sold for immediate consumption. This does not apply to food
31

1 prepared off the premises and sold in the original sealed
2 container, or the slicing of products into smaller portions.
3 9. When the food products are sold through a vending
4 machine, pushcart, motor vehicle, or any other form of
5 vehicle.
6 10. Candy and any similar product regarded as candy or
7 confection, based on its normal use, as indicated on the label
8 or advertising thereof.
9 11. Bakery products sold by bakeries, pastry shops, or
10 like establishments which have eating facilities, except when
11 sold for consumption off the seller's premises.
12 12. 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 13. Food products sold as hot prepared food products.
16 (d) For purposes of this subsection:
17 1. "For consumption off the seller's premises" means
18 that the food or drink is intended by the customer to be
19 consumed at a place away from the seller's premises.
20 2. "For consumption on the seller's premises" means
21 that the food or drink sold may be immediately consumed on the
22 premises where the seller conducts his or her business. In
23 determining whether an item of food is sold for immediate
24 consumption, there shall be considered the customary
25 consumption practices prevailing at the selling facility.
26 3. "Premises" shall be construed broadly, and means,
27 but is not limited to, the lobby, aisle, or auditorium of a
28 theater; the seating, aisle, or parking area of an arena,
29 rink, or stadium; or the parking area of a drive-in or outdoor
30 theater. The premises of a caterer with respect to catered
31

1 meals or beverages shall be the place where such meals or
2 beverages are served.

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

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

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

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.~~

22
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) 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 ~~(nn) 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 products 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.

31

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

4 (oo) 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 which holds current exemption
7 from federal corporate income tax pursuant to s. 501(c) of the
8 Internal Revenue Code, 1986, as amended, is exempt from the
9 tax 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 shall not be subject to the
25 provisions of chapter 120 and shall be a public record. In
26 developing the guidelines, if the department determines that a
27 proposed guideline substantially affects a particular person,
28 it shall notify the person of the development of the proposed
29 guideline. The guidelines shall be submitted to the
30 Administrative Procedures Committee and the department shall

31

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

3 (c) The advisory committee shall use guidelines
4 determined 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 shall be a public record and shall
8 be final upon its publication and shall remain effective
9 unless a change of determination is published. The
10 determination shall not be subject to the provisions of
11 chapter 120 except that the determination may be challenged
12 pursuant to a proceeding conducted under ss. 120.569 and
13 120.57.

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

25 Section 2. This act shall take effect July 1, 1997.
26
27
28
29
30
31