

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 said 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) There are exempted from the tax imposed by this
2 chapter food products for human consumption.

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

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

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

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

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

24 1. When the food products are sold as meals for
25 consumption on or off the seller's premises.

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 seller or by a person with whom the seller 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 seller's premises or near a
3 location at which parking facilities are provided primarily
4 for the use of patrons in consuming the products purchased at
5 the location, even though such products are sold on a "take
6 out" or "to go" order and are actually packaged or wrapped and
7 taken from the seller's premises.

8 4. Sandwiches sold ready for immediate consumption on
9 or off the seller's 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. Soft drinks, which include, but are not limited to,
14 any nonalcoholic beverage, any preparation or beverage
15 commonly referred to as a "soft drink," or any noncarbonated
16 drink made from milk derivatives or tea, when sold in a liquid
17 form.

18 7. Ice cream, frozen yogurt, and similar frozen dairy
19 or nondairy products in cones, small cups, or pints,
20 popsicles, frozen fruit bars, or other novelty items, whether
21 or not sold separately.

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

26 9. When the food products are sold through a vending
27 machine, pushcart, motor vehicle, or any other form of
28 vehicle.

29 10. Candy and any similar product regarded as candy or
30 confection, based on its normal use, as indicated on the label
31 or advertising thereof.

1 11. Bakery products sold by bakeries, pastry shops, or
2 like establishments which have eating facilities, except when
3 sold for consumption off the seller's premises.

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

7 13. Food products sold as hot prepared food products.

8 (d) For purposes of this subsection:

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

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

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

25 4. "Hot prepared food products" means those products,
26 items, or components which have been prepared for sale in a
27 heated condition and which are sold at any temperature which
28 is higher than the air temperature of the room or place where
29 they are sold. "Hot prepared food products," for the purposes
30 of this subsection, includes a combination of hot and cold
31 food items or components where a single price has been

1 established for the combination and the food products are sold
2 in such combination, such as a hot meal, a hot specialty dish
3 or serving, or a hot sandwich or hot pizza, including cold
4 components or side items.

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

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

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

26 3. ~~Soft drinks, which include, but are not limited to,~~
27 ~~any nonalcoholic beverage, any preparation or beverage~~
28 ~~commonly referred to as a "soft drink," or any noncarbonated~~
29 ~~drink made from milk derivatives or tea, when sold in cans or~~
30 ~~similar containers. The term "soft drink" does not include:~~
31 ~~natural fruit or vegetable juices or their concentrates or~~

1 ~~reconstituted natural concentrated fruit or vegetable juices,~~
2 ~~whether frozen or unfrozen, dehydrated, powdered, granulated,~~
3 ~~sweetened or unsweetened, seasoned with salt or spice, or~~
4 ~~unseasoned; coffee or coffee substitutes; tea except when sold~~
5 ~~in containers as provided herein; cocoa; products intended to~~
6 ~~be mixed with milk; or natural fluid milk;~~

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

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

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

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

27 2. This paragraph is effective only while federal law
28 prohibits a state's participation in the federal food coupon
29 program or Special Supplemental Food Program for Women,
30 Infants, and Children if there is an official determination

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1 that state or local sales taxes are collected within that
2 state on purchases of food or drinks with such coupons.

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

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

13 (7) MISCELLANEOUS EXEMPTIONS.--

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

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

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

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

27 (rr) Donated foods or beverages.--Any food or beverage
28 donated by a dealer that sells food products at retail to a
29 food bank or an organization which holds current exemption
30 from federal corporate income tax pursuant to s. 501(c) of the
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1 Internal Revenue Code, 1986, as amended, is exempt from the
2 tax 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 of the
9 year in which enacted.

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