

Bill No. CS for CS for SB 1776

Amendment No. \_\_\_\_ Barcode 480790

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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2	04/29/2003	WD/2R	
	03:06	PM	
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11 Senator Bennett moved the following amendment:

12

13 **Senate Amendment (with title amendment)**

14 On page 31, line 5, through

15 page 42, line 23, delete those lines

16  
17 and insert:

18 Section 6. Subsections (1) and (2) of section 212.08,

19 Florida Statutes, are amended and paragraph (ccc) is added to

20 subsection (7) of that section, to read:

21 212.08 Sales, rental, use, consumption, distribution,

22 and storage tax; specified exemptions.--The sale at retail,

23 the rental, the use, the consumption, the distribution, and

24 the storage to be used or consumed in this state of the

25 following are hereby specifically exempt from the tax imposed

26 by this chapter.

- 27 (1) EXEMPTIONS; GENERAL GROCERIES.--
- 28 (a) Food and food ingredients ~~products~~ for human
- 29 consumption are exempt from the tax imposed by this chapter.
- 30 (b) For the purpose of this chapter, as used in this
- 31 subsection, the term "food and food ingredients ~~products~~"

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1 means substances, whether in liquid, concentrated, solid,  
 2 frozen, dried, or dehydrated form, which are sold for  
 3 ingestion or chewing by humans and are consumed for their  
 4 taste or nutritional value ~~edible commodities, whether~~  
 5 ~~processed, cooked, raw, canned, or in any other form, which~~  
 6 ~~are generally regarded as food.~~ This includes, but is not  
 7 limited to, all of the 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 it is sold in a liquid form.~~

20         ~~1.3.~~ Bakery products sold by bakeries, pastry shops,  
 21 ~~or like establishments, if sold without eating utensils.~~  
 22 Bakery products for purposes of this subsection include bread,  
 23 rolls, buns, biscuits, bagels, croissants, pastries,  
 24 doughnuts, danish, cakes, tortes, pies, tarts, muffins, bars,  
 25 cookies, and tortillas that do not have eating facilities.

26         2. Dietary supplements. The term "dietary supplements"  
 27 means any product, other than tobacco, intended to supplement  
 28 the diet that contains one or more of the following dietary  
 29 ingredients: a vitamin; a mineral; an herb or other botanical;  
 30 an amino acid; a dietary substance for use by humans to  
 31 supplement the diet by increasing the total dietary intake; or

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1 a concentrate, metabolite, constituent, extract, or  
2 combination of any ingredient described in this subparagraph  
3 which is intended for ingestion in tablet, capsule, powder,  
4 softgel, gelcap, or liquid form or, if not intended for  
5 ingestion in such a form, is not represented as conventional  
6 food and is not represented for use as a sole item of a meal  
7 or of the diet; and which is required to be labeled as a  
8 dietary supplement, identifiable by the "supplemental facts"  
9 box found on the label and as required pursuant to 21 C.F.R.  
10 s. 101.36.

11 (c) The exemption provided by this subsection does not  
12 apply:

13 ~~1. When the food products are sold as meals for~~  
14 ~~consumption on or off the premises of the dealer.~~

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

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

27 ~~4. To sandwiches sold ready for immediate consumption~~  
28 ~~on or off the seller's premises.~~

29 ~~5. When the food products are sold ready for immediate~~  
30 ~~consumption within a place, the entrance to which is subject~~  
31 ~~to an admission charge.~~

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1           ~~1.6.~~ When the food and food ingredients products are  
2 sold as ~~hot prepared food products~~.

3           ~~2.7.~~ To soft drinks, ~~which include, but are not~~  
4 ~~limited to, any nonalcoholic beverage, any preparation or~~  
5 ~~beverage commonly referred to as a "soft drink," or any~~  
6 ~~noncarbonated drink made from milk derivatives or tea, when~~  
7 ~~sold in cans or similar containers. The term "soft drinks"~~  
8 ~~means nonalcoholic beverages that contain natural or~~  
9 ~~artificial sweeteners. Soft drinks do not include beverages~~  
10 ~~that contain milk or milk products, soy, rice, or similar milk~~  
11 ~~substitutes, or greater than 50 percent of vegetable or fruit~~  
12 ~~juice by volume.~~

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

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

21           ~~3.10.~~ When the food and food ingredients products are  
22 sold through a vending machine, ~~pushcart, motor vehicle, or~~  
23 ~~any other form of vehicle.~~

24           ~~4.11.~~ To candy and any similar product regarded as  
25 ~~candy or confection, based on its normal use, as indicated on~~  
26 ~~the label or advertising thereof. The term "candy" means a~~  
27 ~~preparation of sugar, honey, or other natural or artificial~~  
28 ~~sweeteners in combination with chocolate, fruits, nuts, or~~  
29 ~~other ingredients or flavorings in the form of bars, drops, or~~  
30 ~~pieces. Candy does not include any preparation that contains~~  
31 ~~flour and requires no refrigeration.~~

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1           ~~12. To bakery products sold by bakeries, pastry shops,~~  
2 ~~or like establishments that have eating facilities, except~~  
3 ~~when sold for consumption off the seller's premises.~~

4           ~~13. 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           5. To tobacco.

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

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 dealer'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 dealer 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           1.4. "Hot Prepared food products" means food sold in a  
26 heated state or heated by the seller; two or more food  
27 ingredients mixed or combined by the seller for sale as a  
28 single item; or food sold with eating utensils provided by the  
29 seller, including plates, knives, forks, spoons, glasses,  
30 cups, napkins, or straws. A plate does not include a container  
31 or packaging used to transport the food. Prepared food does

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1 not include food that is only cut, repackaged, or pasteurized  
 2 by the seller and eggs, fish, meat, poultry, and foods  
 3 containing these raw animal foods requiring cooking by the  
 4 consumer as recommended by the Food and Drug Administration in  
 5 chapter 3, part 401.11 of its food code so as to prevent food  
 6 borne illnesses. "Prepared food" for purposes of this  
 7 subsection includes sandwiches sold for immediate consumption,  
 8 and those products, items, or components which have been  
 9 prepared for sale in a heated condition and which are sold at  
 10 any temperature that is higher than the air temperature of the  
 11 room or place where they are sold. "Hot prepared food  
 12 products," for the purposes of this subsection, includes a  
 13 combination of hot and cold food items or components where a  
 14 single price has been established for the combination and the  
 15 food products are sold in such combination, such as a hot  
 16 meal, a hot specialty dish or serving, or a hot sandwich or  
 17 hot pizza, or ice cream cones or sundaes, or food sold in an  
 18 unheated state by weight or volume as a single item, including  
 19 cold components or side items.

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

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

31 3. This paragraph shall not apply to any food or

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1 drinks on which federal law shall permit sales taxes without  
2 penalty, such as termination of the state's participation.

3 (f) "Dietary supplements" that are sold as prepared  
4 food are not exempt.

5 (2) EXEMPTIONS; MEDICAL.--

6 (a) There shall be exempt from the tax imposed by this  
7 chapter:

8 1. Any drug;

9 2. Durable medical equipment, mobility enhancing  
10 equipment, or prosthetic device ~~any medical products and~~  
11 ~~supplies or medicine~~ dispensed according to an individual  
12 prescription or prescriptions ~~written by a prescriber~~  
13 ~~authorized by law to prescribe medicinal drugs;~~

14 3. Hypodermic needles; hypodermic syringes;

15 4. Chemical compounds and test kits used for the  
16 diagnosis or treatment of human disease, illness, or injury  
17 intended for one-time use;

18 5. Over-the-counter drugs ~~and common household~~  
19 ~~remedies recommended and generally sold for internal or~~  
20 ~~external use in the cure, mitigation, treatment, or prevention~~  
21 ~~of illness or disease in human beings, but not including~~  
22 grooming and hygiene products;

23 6. Band-aids, gauze, bandages, adhesive tape;

24 7. Hearing aids;

25 8. Dental prosthesis; or

26 9. Funerals.

27

28 Funeral directors shall pay tax on all tangible personal  
29 property used by them in their business. ~~cosmetics or toilet~~  
30 ~~articles, notwithstanding the presence of medicinal~~  
31 ~~ingredients therein, according to a list prescribed and~~

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1 ~~approved by the Department of Health, which list shall be~~  
 2 ~~certified to the Department of Revenue from time to time and~~  
 3 ~~included in the rules promulgated by the Department of~~  
 4 ~~Revenue. There shall also be exempt from the tax imposed by~~  
 5 ~~this chapter artificial eyes and limbs; orthopedic shoes;~~  
 6 ~~prescription eyeglasses and items incidental thereto or which~~  
 7 ~~become a part thereof; dentures; hearing aids; crutches;~~  
 8 ~~prosthetic and orthopedic appliances; and funerals. In~~  
 9 addition, any items intended for one-time use which transfer  
 10 essential optical characteristics to contact lenses shall be  
 11 exempt from the tax imposed by this chapter; however, this  
 12 exemption shall apply only after \$100,000 of the tax imposed  
 13 by this chapter on such items has been paid in any calendar  
 14 year by a taxpayer who claims the exemption in such year.  
 15 ~~Funeral directors shall pay tax on all tangible personal~~  
 16 ~~property used by them in their business.~~

17 (b) For the purposes of this subsection, the term:

18 1. "Drug" means a compound, substance, or preparation,  
 19 and any component of a compound, substance, or preparation,  
 20 other than food and food ingredients, dietary supplements, and  
 21 alcoholic beverages, which is:

22 a. Recognized in the official United States  
 23 Pharmacopoeia, official Homeopathic Pharmacopoeia of the  
 24 United States, or official National Formulary, or the  
 25 supplement to any of them;

26 b. Intended for use in the diagnosis, cure,  
 27 mitigation, treatment, or prevention of disease; or

28 c. Intended to affect the structure or any function of  
 29 the body.

30 2. "Durable medical equipment" means equipment,  
 31 including repair and replacement parts to such equipment, but

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1 the term does not include mobility-enhancing equipment, which  
2 can withstand repeated use, is primarily and customarily used  
3 to serve a medical purpose, generally is not useful to a  
4 person in the absence of illness or injury, and is not worn on  
5 or in the body.

6 3. "Mobility-enhancing equipment" means equipment,  
7 including repair and replacement parts to such equipment, but  
8 the term does not include durable medical equipment, which:

9 a. Is primarily and customarily used to provide or  
10 increase the ability to move from one place to another and  
11 which is appropriate for use either in a home or a motor  
12 vehicle;

13 b. Is not generally used by persons with normal  
14 mobility; and

15 c. Does not include any motor vehicle or any equipment  
16 on a motor vehicle normally provided by a motor vehicle  
17 manufacturer.

18 4. "Prosthetic device" means a replacement,  
19 corrective, or supportive device, including repair or  
20 replacement parts to such equipment, other than a hearing aid  
21 or a dental prosthesis, that is worn on or in the body to:

22 a. Artificially replace a missing portion of the body;

23 b. Prevent or correct physical deformity or  
24 malfunction; or

25 c. Support a weak or deformed portion of the body.

26 5. "Grooming and hygiene products" are soaps and  
27 cleaning solutions, shampoo, toothpaste, mouthwash,  
28 antiperspirants, and suntan lotions and screens, regardless of  
29 whether the items meet the definition of over-the-counter  
30 drugs.

31 6. "Over-the-counter drug" means a drug the packaging

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1 for which contains a label that identifies the product as a  
2 drug as required by 21 C.F.R. s. 201.66. The over-the-counter  
3 drug label includes a "drug facts" panel or a statement of the  
4 active ingredients with a list of those ingredients contained  
5 in the compound, substance, or preparation.~~"Prosthetic and~~  
6 ~~orthopedic appliances" means any apparatus, instrument,~~  
7 ~~device, or equipment used to replace or substitute for any~~  
8 ~~missing part of the body, to alleviate the malfunction of any~~  
9 ~~part of the body, or to assist any disabled person in leading~~  
10 ~~a normal life by facilitating such person's mobility. Such~~  
11 ~~apparatus, instrument, device, or equipment shall be exempted~~  
12 ~~according to an individual prescription or prescriptions~~  
13 ~~written by a physician licensed under chapter 458, chapter~~  
14 ~~459, chapter 460, chapter 461, or chapter 466, or according to~~  
15 ~~a list prescribed and approved by the Department of Health,~~  
16 ~~which list shall be certified to the Department of Revenue~~  
17 ~~from time to time and included in the rules promulgated by the~~  
18 ~~Department of 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.~~

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1            7.4. "Prescription" means an order, formula, or recipe  
 2 issued in any form of oral, written, electronic, or other  
 3 means of transmission by a duly licensed practitioner  
 4 authorized by chapter 458, chapter 459, chapter 460, chapter  
 5 461, or chapter 466. The term also includes an orally  
 6 transmitted order by the lawfully designated agent of such  
 7 practitioner. The term also includes an order written or  
 8 transmitted by a practitioner licensed to practice in a  
 9 jurisdiction other than this state, but only if the pharmacist  
 10 called upon to dispense such order determines, in the exercise  
 11 of his or her professional judgment, that the order is valid  
 12 and necessary for the treatment of a chronic or recurrent  
 13 illness. includes any order for drugs or medicinal supplies  
 14 written or transmitted by any means of communication by a duly  
 15 licensed practitioner authorized by the laws of the state to  
 16 prescribe such drugs or medicinal supplies and intended to be  
 17 dispensed by a pharmacist. The term also includes an orally  
 18 transmitted order by the lawfully designated agent of such  
 19 practitioner. The term also includes an order written or  
 20 transmitted by a practitioner licensed to practice in a  
 21 jurisdiction other than this state, but only if the pharmacist  
 22 called upon to dispense such order determines, in the exercise  
 23 of his or her professional judgment, that the order is valid  
 24 and necessary for the treatment of a chronic or recurrent  
 25 illness. The term also includes a pharmacist's order for a  
 26 product selected from the formulary created pursuant to s.  
 27 465.186. A prescription may be retained in written form, or  
 28 the pharmacist may cause it to be recorded in a data  
 29 processing system, provided that such order can be produced in  
 30 printed form upon lawful request.

31            (c) Chlorine shall not be exempt from the tax imposed

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1 by this chapter when used for the treatment of water in  
2 swimming pools.

3 ~~(d) Lithotripters are exempt.~~

4 ~~(d)(e)~~ Human organs are exempt.

5 ~~(f) Sales of drugs to or by physicians, dentists,~~  
6 ~~veterinarians, and hospitals in connection with medical~~  
7 ~~treatment are exempt.~~

8 ~~(g) Medical products and supplies used in the cure,~~  
9 ~~mitigation, alleviation, prevention, or treatment of injury,~~  
10 ~~disease, or incapacity which are temporarily or permanently~~  
11 ~~incorporated into a patient or client by a practitioner of the~~  
12 ~~healing arts licensed in the state are exempt.~~

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

23 ~~(i) X-ray opaques, also known as opaque drugs and~~  
24 ~~radiopaque, such as the various opaque dyes and barium~~  
25 ~~sulphate, when used in connection with medical X rays for~~  
26 ~~treatment of bodies of humans and animals, are exempt.~~

27 ~~(e)(j)~~ Parts, special attachments, special lettering,  
28 and other like items that are added to or attached to tangible  
29 personal property so that a handicapped person can use them  
30 are exempt when such items are purchased by a person pursuant  
31 to an individual prescription.

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1           ~~(f)(k)~~ This subsection shall be strictly construed and  
2 enforced.

3           (7) MISCELLANEOUS EXEMPTIONS.--Exemptions provided to  
4 any entity by this chapter do not inure to any transaction  
5 that is otherwise taxable under this chapter when payment is  
6 made by a representative or employee of the entity by any  
7 means, including, but not limited to, cash, check, or credit  
8 card, even when that representative or employee is  
9 subsequently reimbursed by the entity. In addition, exemptions  
10 provided to any entity by this subsection do not inure to any  
11 transaction that is otherwise taxable under this chapter  
12 unless the entity has obtained a sales tax exemption  
13 certificate from the department or the entity obtains or  
14 provides other documentation as required by the department.  
15 Eligible purchases or leases made with such a certificate must  
16 be in strict compliance with this subsection and departmental  
17 rules, and any person who makes an exempt purchase with a  
18 certificate that is not in strict compliance with this  
19 subsection and the rules is liable for and shall pay the tax.  
20 The department may adopt rules to administer this subsection.

21           ~~(ccc) Recreational vehicle-type unit private motor~~  
22 ~~coach.--Also exempt from the tax imposed by this chapter on~~  
23 ~~those certain private motor coaches as defined in s.~~  
24 ~~320.01(1)(b)5., is any sale of new motor coaches with a~~  
25 ~~selling price in excess of \$700,000, and used motor coaches~~  
26 ~~with a selling price of \$200,000 or higher, which will be~~  
27 ~~taxed at a flat rate of \$3,000. A motor coach that qualifies~~  
28 ~~as a second home as defined under rules of the Internal~~  
29 ~~Revenue Service are exempt from the tax imposed by this~~  
30 ~~chapter.~~

31

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1 ===== T I T L E    A M E N D M E N T =====

2 And the title is amended as follows:

3            On page 2, line 11, after the semicolon,

4

5 insert:

6            providing an exemption for the sale of certain

7            new and used recreational vehicle-type unit

8            private motor coaches;

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