

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 27, 1998 Revised: \_\_\_\_\_

Subject: Sales Tax Exemptions for Food and Beverages

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Keating</u>	<u>Beggs</u>	<u>WME</u>	<u>Favorable</u>
2.	<u>                    </u>	<u>                    </u>	<u>WM</u>	<u>Withdrawn</u>
3.	<u>                    </u>	<u>                    </u>	<u>CM</u>	<u>Withdrawn</u>
4.	<u>Keating</u>	<u>Smith</u>	<u>WM</u>	<u>Favorable/CS</u>
5.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>

**I. Summary:**

The bill revises language relating to the sales tax exemption for food products sold for human consumption in order 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 provides that a technical assistance advisement may be issued at any time to a taxpayer who requests an advisement relating to grocery or medical exemptions pursuant to s. 212.08(1) and (2), F.S. The bill also provides a sales tax exemption for complimentary food or drinks provided as samples to customers and certain donated foods or beverages.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 212.08 and 213.22.

**II. 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. However, food or drinks served, prepared, or sold in or by hotels or by any other place licensed by the Division of Hotels and Restaurants, Department of Business and Professional Regulation, are not tax exempt. Current rules and law identify items that are exempt or taxable. The list of items that are currently exempt includes:

- Food for human consumption.
- Tea, unless sold in liquid form.
- Coffee or coffee substitutes, even if sold in liquid form.

- Bakery products cooked or prepared for consumption off the premises.
- Ice cream or frozen yogurt sold in quarts or larger containers for consumption off the premises.
- Food or drinks cooked or prepared in a grocery store and given to customers as samples.

The list of items that are taxable includes:

- 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.
- Food and drinks sold ready for immediate consumption from vending machines, pushcarts, motor vehicles, or any other form of vehicle.
- Tea sold in liquid form.
- Bakery products sold ready for immediate consumption on the premises.
- Soft drinks when sold in cans or similar containers.
- Food or drinks cooked or prepared on the seller's premises and sold ready for immediate consumption either on or off the premises.
- Sandwiches sold ready for immediate consumption.
- Candy.
- Ice cream and frozen yogurt in cones, small cups or pints, popsicles, frozen fruit bars or other novelty items.
- Gum and breath mints.
- Water to which carbonation or minerals have been added.
- 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.

Section 212.08(14), F.S., requires the Department of Revenue to establish a technical assistance advisory committee with public and private sector members to advise the department and the Department of Children and Family Services in determining the taxability of food and drink products. With the advice of the technical assistance advisory committee, the department develops administrative rules.

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.

### **III. Effect of Proposed Changes:**

Section 212.08(1), F.S., is amended to revise and clarify the sales tax exemption for food and drinks sold for human consumption. The bill provides specific definitions for terms used in s. 212.08(1), F.S. The net effect of the 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 will now be taxable.

Specific items that are currently considered taxable, but would now be tax exempt are:

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

Items that are currently considered exempt, but would now be taxable are:

- Food products prepared off the premises and sold for immediate consumption, unless prepared and sold in the original sealed container.

The bill provides definitions for the terms “food products,” “for consumption off the premises,” “for consumption on the premises,” “premises,” and “hot prepared food products.”

The bill also amends s. 212.08(7), F.S., by adding the following paragraphs:

- Paragraph (qq) exempts complimentary items, which are defined as any food or drink that is provided without charge as a sample or for the convenience of customers, and any item given to a customer as part of a price guarantee plan by a dealer that primarily sells food products at retail. The exemption does not apply to businesses with the primary activity of serving prepared meals or alcoholic beverages for immediate consumption.
- Paragraph (rr) exempts donated foods or beverages, which are defined as food or drinks donated, by a dealer that sells food products at retail, to a food bank or an organization exempt from federal corporate income tax under s. 501(c) of the Internal Revenue Code.

Section 212.08 (14), F.S., is amended to include representatives of manufacturers and retailers within the makeup of the technical assistance advisory committee that advises the Department of Revenue and the Department of Health in determining the taxability of certain products. The bill also amends s. 213.22, F.S., providing that a technical assistance advisement may be issued at any time to a taxpayer who requests an advisement relating to grocery or medical exemptions pursuant to s. 212.08(1) and (2), F.S.

The bill takes effect July 1, 1998.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

This bill initially falls under subsection (b) of section 18 of Article VII, Florida Constitution. Subsection (b) requires a two-thirds vote of the membership of each house in order to enact a general law reducing the authority that municipalities and counties had on February 1, 1989

to raise revenues in the aggregate. By adding an exemption to the state sales tax, the bill has the effect of adding an exemption to the local option county sales surtax. Since the annual local revenue loss is estimated to be less than \$1.4 million, the bill will be exempt from the requirements of subsection (b) due to the insignificant negative fiscal impact as permitted under subsection (d) of section 18 of Article VII. (See subsection (d) of s. 18, Art. VII, Florida Constitution, for various types of general laws, including those with insignificant fiscal impact.)

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

The provisions of this bill are estimated to have a negative insignificant fiscal impact on both state and local revenues.

Issue/Fund	<u>General Revenue</u>		<u>Trust</u>		<u>Local</u>		<u>Total</u>	
	1st Year	Recurring	1st Year	Recurring	1st Year	Recurring	1st Year	Recurring
Grocery Rewrite	\$ (*)	\$ (*)	\$ (*)	\$ (*)	\$ (*)	\$ (*)	\$ (*)	\$ (*)

\* Insignificant

**B. Private Sector Impact:**

This bill makes substantial revisions to provisions governing sales tax exemptions for grocery items. 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. Dealers currently collecting and remitting sales and use tax on certain items or transactions made exempt under those provisions will no longer have to collect and remit such tax. This bill may also help clarify which food products are taxable or exempt.

**C. Government Sector Impact:**

The Department of Revenue does not anticipate the need for additional resources to administer the provisions of this bill. The department will have primary responsibility for developing and implementing guidelines for determining taxability or nontaxability of a specific general grocery or medical products.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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