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MOBILE CATERER EXEMPTION

House Bill 4579 as introduced
First Analysis (4-29-93)

Sponsor: Rep. Willis Bullard, Jr.
Committee: Taxation

THE APPARENT PROBLEM:

Generally speaking, food is exempt from the sales tax unless it is prepared food intended for immediate consumption, in which case it is taxable. The General Sales Tax Act contains a definition of "prepared food intended for immediate consumption." It includes food or drink sold from a vending machine or by a vendor from a mobile facility, but excludes milk, juices, fresh fruit, candy, nuts, chewing gum, cookies, crackers, and chips <u>when sold from a vending machine</u>. This means those products are exempt from the sales tax when purchased from a vending machine but not when purchased from a lunch van or similar mobile caterer. The owners of mobile catering businesses believe they should be treated equally, particularly since they are often in direct competition with vending machines for customers (as well as with nearby convenience or grocery stores, which would not collect sales tax on these items).

THE CONTENT OF THE BILL:

The bill would amend the General Sales Tax Act to exempt from taxation milk, juices, fresh fruit, candy, nuts, chewing gum, cookies, crackers, and chips when sold from a vending machine <u>or from a mobile facility</u>.

MCL 205.54g

FISCAL IMPLICATIONS:

A spokesperson for the mobile catering operators, testifying before the House Taxation Committee, estimated the loss to the state at $250,000 to $300,000. A treasury department spokesperson said the loss would be "under $1 million" and that the department could not disagree with the industry figure. (4-28-93)

ARGUMENTS:

For:

When workers on a break purchase cookies, chips, candy, and some other items from a vending machine or from a nearby convenience store, they need not pay sales tax on them. Yet when they purchase the same items from a mobile caterer parked at the curbside they do pay sales tax. This is because food purchased from a grocery store or gas station is not considered to be "for immediate consumption," and because the sales tax law provides a specific exemption for vending machines. Mobile caterers complain that this is unfair to them and argue that the law should be changed to provide them equal treatment. Besides, they point out that many customers buy food from them not for immediate consumption but for eating or drinking later, perhaps even the next day. It should also be noted that with this bill caterers would continue to pay sales tax on much that they sell; they would simply be given parity with vending machines for certain specified products.

Proponents of the bill point out that mobile caterers are small businesspeople serving a clientele that includes many factory workers and other blue-collar employees, notably those in small shops without cafeterias. The caterers can use this sales tax exemption to help maintain their customer base and keep their employees working.

Against:

Another way to provide equality in this case without costing the state money would be to eliminate the special treatment for vending machines. Vending machine owners already pay sales tax on some items. If they were to pay sales tax on the items currently exempt, the mobile caterers would have no case for an exemption. There is already too much special treatment in the state's tax laws. The items in question, it should be understood, would be taxable in a restaurant or cafeteria. Perhaps, they too will soon ask for an exemption.

Response:
Vending machine industry representatives note that they are forced to increase prices in five-cent increments, which is difficult to do for certain inexpensive, yet price-sensitive items, such as those exempt from the sales tax. Further, these items are often purchased for later consumption. Moreover, as mobile caterers point out, these items would continue to escape taxation in gas stations, grocery stores, and convenience stores. So it would not make competitors equal.

POSITIONS:

Representatives of mobile caterers testified in support of the bill. (4-28-93)

The Department of Treasury opposes the bill. (4-28-93)