



**House
Legislative
Analysis
Section**

Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

SALES TAX: JUICE DRINKS

**House Bill 5567 as introduced
First Analysis (3-5-96)**

**Sponsor: Rep. James Ryan
Committee: Tax Policy**

THE APPARENT PROBLEM:

What is juice? Or, to put it another way, what is the meaning of the word "juices" as contained the General Sales Tax Act? This question is the subject of a dispute between the Department of Treasury and representatives of vending machine operators. Generally speaking, the state constitution prohibits levying a sales tax on food for human consumption unless it is "prepared food intended for immediate consumption." The General Sales Tax Act contains a definition of "prepared food intended for immediate consumption" and includes within that definition food or drink intended for immediate consumption sold from a vending machine or by a vendor from a mobile facility (e.g., a lunch wagon). However, the act specifically exempts certain products sold from a vending machine or mobile facility from the tax. It exempts milk, juices, fresh fruit, candy, nuts, chewing gum, bakery products, cookies, crackers, and chips. (Emphasis added.)

A January 23, 1996, letter to the Michigan Distributors and Vendors Association on this subject from an official within the Department of Treasury says that it is the department's determination that the term "juice" refers to a beverage containing 100 percent fruit or vegetable liquid and that a juice beverage or juice drink not containing 100 percent fruit or vegetable liquid is taxable when sold through a vending machine or by a mobile vendor. The department letter cites a United States Food and Drug Administration requirement that a beverage called "juice" must contain 100 percent juice and that otherwise it must be called "juice beverage", "juice drink", etc., and not "juice." The department letter also cites Webster's New World Dictionary, Third College Edition, as defining "juice" as the liquid part of a fruit or vegetable plant. Representatives of distributors and vendors say this letter represents a change in state policy and, in essence, a tax increase by administrative fiat. The Department of Treasury says the letter does not represent a new policy (and has made available copies of similar letters sent in previous years to others who have inquired about how the sales tax treats various juice-based drinks). Legislation has been introduced addressing this issue.

THE CONTENT OF THE BILL:

The bill would amend the General Sales Tax Act to specifically exempt juice beverages and juice drinks from the sales tax when sold from a vending machine or by a vendor from a mobile facility.

MCL 205.4g

BACKGROUND INFORMATION:

Under the General Sales Tax Act, the term "prepared food intended for immediate consumption" applies, in addition to the vending machine and mobile facility provisions already discussed, to the following:

- food or drink prepared and served for immediate consumption at or near the premises or ordinarily sold on a takeout basis for immediate consumption either on or off the premises.
- food or drink furnished, prepared, or served for immediate consumption at a table, chair, or counter or from a tray, glass, dish, container, or other tableware.
- food or drink arranged on a plate or platter, whether intended for individual or multiple servings and whether sold by the pound or by the serving; a sandwich, either hot or cold; or a combination of taxable and nontaxable items when sold as a plate or packaged as a meal, even though intended for more than one serving.
- food that is cooked to the order of the purchaser, or that is cooked and maintained at a temperature higher than the surrounding air temperature before the sale, or prepared food that is sold by the piece rather than by weight or measure.

FISCAL IMPLICATIONS:

The Department of Treasury has said the bill will amount to an annual loss of revenue of \$800,000. About 74 percent of these lost revenues would be lost to the School Aid Fund and 15 percent would be lost to local governments through reduced revenue sharing

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payments. The Michigan Distributors and Vendors Association claims the bill maintains the status quo and so would have no revenue impact. (See the House Fiscal Agency Fiscal Note dated 2-26-96)

ARGUMENTS:

For:

This bill will maintain the status quo as regards the taxable status of various juice drinks when sold in vending machines (and by mobile facilities, such as lunch wagons), according to the vending machine trade association. The association says the Department of Treasury has instituted a new policy of taxing juice drinks if they are not 100 percent fruit or vegetable juice. These drinks would not be subject to tax if purchased in a convenience store or grocery store. Why should they be taxed if sold through a vending machine? Currently, the General Sales Tax Act says "juices" when sold through a vending machine or mobile facility are not taxable. This bill just makes it clear that the exemption applies to "juice drinks" and "juice beverages." It does not attempt to expand the sales tax exemption to additional products.

Against:

This issue is in need of clarification, but this bill will not do the job. By using general language, the sales tax act requires the Department of Treasury to make determinations about which items are taxable and which items are tax-exempt. The world of packaged food and drink changes constantly. Under this bill, instead of deciding which products are "juices", the department will have to decide which products are "juice drinks" and "juice beverages." Is this much of an improvement? (It should be noted that, according to the Department of Treasury, the recent letter on this subject to the vending machine trade association did not represent new policy but just restated existing departmental policy.) Further, the problem exists with other kinds of exempted products. The act exempts "chips." What is a chip? It exempts "crackers." (It does not, it should be noted, explicitly exempt pretzels.) It exempts bakery products. Does it exempt rice cakes? The point is that the act needs to provide clear language on which products are subject to the sales tax and which are not and under what circumstances, or else provide some alternative method whereby some percentage of sales in vending machines can be imputed to correspond to sales of taxable products.

Against:

Some people have suggested that it would make more sense to exempt all food and drink products sold by vending machine and thus level the playing field

between vending machines and convenient stores. Others have proposed that the language "prepared food intended for immediate consumption" should perhaps apply to food prepared for a customer and served to them (for example, in restaurants and at take-out windows).

Response:

Food products intended for human consumption are supposed to be subject to the sales tax, and the presumption is that food purchased from a vending machine is purchased for immediate consumption. All food and drink from a vending machine was originally considered taxable; the list of exceptions was added in 1978 for vending machines only, and the exceptions were extended in 1993 to apply to mobile facilities. Legislation in 1995 exempted bakery products (e.g., doughnuts and Twinkies). Opponents of the 1995 legislation argued that as the list of exempted products grows, the sales tax on food becomes more arbitrary and less defensible.

POSITIONS:

The Michigan Distributors and Vendors Association supports the bill. (3-4-96)

The Department of Treasury is opposed to the bill. (2-29-96)

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.