



**House
Legislative
Analysis
Section**

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SALES TAX: JUICES/TRUCKING

House Bill 5567 as enrolled
Public Act 576 of 1996
Second Analysis (2-3-97)

Sponsor: Rep. James Ryan
House Committee: Tax Policy
Senate Committee: None

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.

Legislation has also been proposed to address the treatment of "rolling stock" (e.g., trucks, trailers, and repair parts) engaged in interstate commerce under both the sales and use tax acts. A 1995 state court of appeals decision (*Gainey Transportation Service, Inc. v Michigan Department of Treasury*) said there was no statutory authority for the department's treatment of trucks and trailers. The department had been relying on a position paper it had issued in 1984 under which, among other things, interstate carriers domiciled in Michigan could get refunds of sales and use taxes paid on rolling stock used in interstate commerce based on the percentage of their out-of-state mileage. The court said nothing in state tax statutes authorized this policy.

THE CONTENT OF THE BILL:

The bill would amend the General Sales Tax Act in the following ways.

** It would rewrite the provision regarding the taxation of food and drink sold from a vending machine or from a mobile facility. Currently, the sales tax applies to "food or drink intended for immediate consumption sold from a vending machine or by a vendor from a mobile facility (e.g., a lunch van), except for milk, juices, fresh fruit, candy, nuts, chewing gum, bakery products, cookies, crackers, and chips." Under the bill, the tax would apply to "carbonated beverages sold from a mobile facility or vending machine, or food or drink heated or cooled mechanically, electrically, or by other artificial means to an average temperature above 75 degrees Fahrenheit or below 65 degrees Fahrenheit before sale and sold from a mobile facility or vending machine,

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except milk, noncarbonated beverages containing ten percent or more juice content, and fresh fruit." The tax due on the sale of food and drink from a vending machine selling both taxable items and exempt items would be calculated based on one of the following, as determined by the taxpayer: a) actual gross proceeds from sale at retail; or b) the sum of proceeds from carbonated beverages and 45 percent of proceeds from the sale of items subject to tax or exempt from the tax other than the sale of carbonated beverages.

** The tax would not apply to the product of the out-of-state usage percentage and the gross proceeds otherwise taxable under the act from the sale of a qualified truck or a trailer designed to be drawn behind a qualified truck, purchased after December 31, 1996 and before May 1, 1999 by an interstate motor carrier and used in interstate commerce.

The term "qualified truck" refers to a commercial motor vehicle power unit that has two axles and a gross vehicle weight rating in excess of 10,000 pounds or a commercial motor vehicle power unit with three or more axles. The term "interstate motor carrier" means a person engaged in the business of carrying persons or property, other than themselves, their own employees, or their own property, for hire across state lines, whose fleet mileage was driven at least ten percent outside of the state in the immediately preceding tax year. The term "out-of-state usage percentage" refers to a fraction, the numerator of which is the number of miles driven outside of the state in the immediately preceding tax year by qualified trucks used by the taxpayer and the denominator of which is the total miles driven. Miles driven by qualified trucks used solely in intrastate commerce would not be included in calculating the out-of-state usage percentage.

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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 estimated the combined sales and use tax revenue loss from the new treatment of rolling stock in this bill and House Bill 5567 at \$20 million for fiscal year 1997. The change in the treatment of food and drink from vending machines and mobile facilities will reduce revenue by less than \$2 million. (1-31-97)

ARGUMENTS:

For:

This bill will clarify the taxable status of various kinds of food and drink when sold in vending machines and by mobile facilities, such as lunch wagons. It does away with the problematic listing of exempt items and the accompanying debate over whether a specific product fits into a general category. It also allows retailers an option as to how to calculate the tax.

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 convenience stores.

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 at the time that as the list of exempted products grows, the sales tax on food becomes more arbitrary and less defensible.

For:

The bill also would provide a partial exemption from the sales tax for certain trucks and trailers engaged in interstate commerce based on their percentage of use in other states. Related legislation (Public Act 477 of 1996, House Bill 5506) would exempt rolling stock from the use tax if purchased, rented or leased outside the state and would provide a partial exemption for qualified trucks and trailers purchased, rented, or leased in the state, but used in interstate commerce based on the percentage of miles driven in other states. This is more beneficial to the trucking industry than the current tax treatment of such trucks and trailers since a 1995 court decision overturned previous Department of Treasury tax policy. The provisions would expire in 1999, thus allowing their impact to be studied.

Response:

These provisions, taken together with similar provisions placed in the Use Tax Act by Public Act 477 of 1996 (House Bill 5506), are not as sweeping as the state's trucking industry requested and, moreover, could put state truckers at a disadvantage compared with out-of-state competitors. Trucking industry representatives say that no other north central state applies the sales or use tax to trucks. In the current legislation, there is no sales or use tax break for truckers who operate only in Michigan; the provisions only apply to those engaged in interstate commerce and only for trucks that are for hire. The legislation could also put in-state truck dealers at a competitive disadvantage.

Analyst: C. Couch

■ 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.