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PACKAGING FOR PROMOTIONS

House Bills 6068 and 6069
(Substitutes H-3)
First Analysis (12-3-96)

Sponsor: Rep. Eric Bush
Committee: Tax Policy

THE APPARENT PROBLEM:

Public Act 34 of 1994 (Senate Bill 599) amended the Use Tax Act to exempt promotional merchandise sent to a person outside the state as part of a redemption offer. The bill arose out of a controversy between the Department of Treasury and two companies in Battle Creek, Kellogg and EPI. According to an analysis of that bill performed at the time by the Senate Fiscal Agency, the debate was over the tax treatment of promotional items brought into the state by Kellogg and turned over to the other company for packaging and distribution. These items typically are those that a customer of a Kellogg product can receive by sending in certain coupons or proof of purchase. The dispute over the taxable nature of the products led to legislation specifically exempting them from the use tax retroactive for tax years after 1987. One argument made at the time was that Kellogg could avoid the tax liability by using a company based over the border in Indiana, where the materials reportedly would not be taxable, rather than the other Battle Creek area company. A related dispute has occurred, this time over the tax treatment of packaging or shipping materials used in connection with the promotional merchandise. These materials are not specifically exempt. Legislation has been introduced to address this.

THE CONTENT OF THE BILLS:

House Bill 6068 would amend the Use Tax Act (MCL 205.94) to exempt for tax years beginning after December 31, 1996, shipping materials transferred and delivered with promotional merchandise transferred to a person outside of this state who redeems a promotional offer. Such materials would qualify under the act as "property purchased for resale." The Use Tax Act already exempts promotional merchandise acquired for transfer pursuant to a redemption offer to a person outside of the state. House Bill 6069 would amend the General Sales Tax Act (MCL 205.51) to exempt for tax years beginning after December 31, 1996, the same promotional merchandise and shipping materials.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bills would result in a cost to the state of less than $100,000. (12-3-96)

ARGUMENTS:

For:

The bill would extend the current exemption in the Use Tax Act on promotional merchandise sent to people outside the state as part of redemption programs (such as those employed by Kellogg) to cover the shipping materials that are transferred and delivered with the promotional merchandise. The tax exemptions would also be included in the General Sales Tax Act so as to provide equal treatment to merchandise bought out-of-state and in-state.

POSITIONS:

The Department of Treasury does not oppose the substitute bills. (11-26-96)

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.