Senate Fiscal Agency
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BILL ANALYSIS

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House Bill 4222 (Substitute H-1 as reported without amendment)
Sponsor: Representative Kirk A. Profit
House Committee: Tax Policy
Senate Committee: Finance

Date Completed: 5-8-95

RATIONALE

Under the General Sales Tax Act, "food for human consumption" is exempt from the sales tax. Prepared food intended for immediate consumption, however, is subject to the tax, although various exceptions apply. "Prepared food intended for immediate consumption" includes food or drink prepared and served for immediate consumption at or near the premises, and food or drink sold from a vending machine or a mobile facility, but does *not* include milk, juice, fresh fruit, candy, nuts, chewing gum, cookies, or crackers sold from a vending machine or mobile facility. The Act also specifies that prepared food for immediate consumption does not include bakery products for off-premises consumption, such as doughnuts, pastry, bread, and cakes, which therefore are not taxable.

These statutory provisions, as well as various administrative and judicial rulings, have led to some confusion and dispute over the tax treatment of baked goods sold from vending machines. Reportedly, from 1974 to 1980, vending machine operators paid sales tax on bakery products sold from vending machines. In 1980, however, the Attorney General held that, "As to bakery products for off-premises consumption, such as doughnuts, pastry, bread and cakes, the sales tax exemption applies whether these products are sold by means of vending machines or a mobile facility" (Opinion No. 5710). Then, in 1991, the Treasury Department issued a Revenue Administrative Bulletin stating that, "Bakery items sold through vending machines or from mobile facilities are taxable unless purchased for off-premises consumption. The burden of establishing off-premises consumption is upon the person claiming the exemption" (RAB 91-19). More recently, a January 1993 opinion of the Court of Claims addressed this issue and discussed what constitutes "premises" in the case of vending machine locations (*Variety Foodservices, Inc.* v *State of Michigan*, File No. 92-14202-CM). Essentially, the Court upheld the Treasury Department's view that bakery products sold from vending machines are taxable unless the vendor demonstrates that the food is intended for off-premises consumption.

In order to clarify this issue and make the taxation of baked goods consistent, it has been suggested that all bakery products sold from vending machines should be exempt from the sales tax.

CONTENT

The bill would amend the General Sales Tax Act to exempt from taxation bakery products that were sold for immediate consumption from a vending machine or by a vendor from a mobile facility.

MCL 205.54g

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

It is neither fair nor rational that the same product (such as a Twinkie or a doughnut) is taxable when purchased from a vending machine but not when purchased from a convenience store, grocery store, or bakery. It also does not make sense that cookies sold from vending machines are not taxable, but other baked goods, such as brownies, are. This bill would level the playing field as far as baked goods are concerned and, according to industry representatives, would restore the sales tax treatment of baked goods bought from vending machines to that which existed throughout the 1980s. The bill would clear up an unnecessarily confusing application of the sales tax law, and potentially could save vendors hundreds of thousands of dollars each year.

Response: The tax treatment of all food products under the law is extremely confusing and inconsistent. Perhaps this entire section of the law, rather than simply the baked goods provisions, should be addressed.

Legislative Analyst: S. Margules

FISCAL IMPACT

It is estimated that this bill would reduce sales tax collections by less than $500,000 a year. This would result in reductions of less than $366,000 in School Aid Fund revenue, $50,000 in revenue sharing, and $83,000 in General Fund/General Purpose revenue.

Fiscal Analyst: J. Wortley

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