
Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA**BILL ANALYSIS**

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 717 (as introduced 9-30-97)
Sponsor: Senator Bill Bullard, Jr.
Committee: Finance

Date Completed: 10-3-97

RATIONALE

Under Article 9, Section 8 of the State Constitution, the sales tax may not be charged on "the sale or use of food for human consumption except in the case of prepared food intended for immediate consumption as defined by law". The General Sales Tax Act contains a definition of "prepared food intended for immediate consumption", which includes items sold from a vending machine or a mobile facility, with certain exceptions. This provision has been the subject of various amendments in recent years. The latest changes were made by Public Act 576 of 1996, which took effect on January 16, 1997. Before that date, the sales tax had applied to food or drink sold from a vending machine or a mobile facility, "except for milk, juices, fresh fruit, candy, nuts, chewing gum, bakery products, cookies, crackers, and chips", which meant that those specific items were tax-exempt. Apparently, the Michigan Department of Treasury and vending machine operators disputed the application of the tax to juice that did not contain 100% fruit or vegetable liquid. As a result, Public Act 576 amended the definition to exempt from the tax "noncarbonated beverages having 10% or more juice content". Under another change made by Public Act 576, the sales tax applies to vended food or drink that is heated or cooled to a certain temperature before sale.

Since Public Act 576 was enacted, Department of Treasury audits evidently have disclosed several cases in which vending machine operators and mobile vendors did not pay the sales taxes that they were subject to, based on the previous language of the General Sales Tax Act. Although Public Act 576 went into effect on January 16, 1997, the Act did not contain a specific effective date. As a result, there appears to be some disagreement about whether Public Act 576 should be applied retroactively; that is, whether the vendors' tax liability should be determined according to the present language or according to the Department

of Treasury's interpretation of the previous language. To resolve this situation, it has been suggested that vendors should be neither liable for taxes owed, nor entitled to refunds for taxes they might have overpaid, under the earlier version of the law.

CONTENT

The bill would amend the General Sales Tax Act to specify that the provision governing the application of the sales tax to food sold from a mobile facility or vending machine, would apply after December 31, 1992. The bill also states that a refund could not be made for any taxes paid after that date and before January 16, 1997, for food or drink otherwise exempt under this provision. In addition, the bill specifies that the current method for calculating the tax due from vending machines selling both taxable and tax-exempt items, would apply after December 31, 1992.

Under the Act, "prepared food intended for immediate consumption" includes, among other things, "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, except milk, noncarbonated beverages containing 10% or more juice content, and fresh fruit".

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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

By applying the changes in Public Act 576 retroactively, the bill would resolve a long-lasting dispute between the Department of Treasury and businesses that operate vending machines or mobile facilities. While vendors would not be liable for taxes that they might owe under the former law, they also would not be able to recover refunds for overpayments they might have made during the same time period. This compromise represents a reasonable solution to an ongoing disagreement.

Opposing Argument

Businesses should not be relieved of liability for sales taxes that they owe. Earlier this year, Governor Engler vetoed a similar proposal (Senate Bill 526) that also would have made the present exemption retroactive. The Governor's veto message stated the following:

"Prior to 1978, all items sold from vending machines and mobile facilities were defined as prepared food intended for immediate consumption and therefore taxable. However, over the past 20 years, a number of vended items have been legislatively exempted... All of these exceptions were the result of legislative initiatives by groups who argued that inequities existed or their products were not purchased for immediate consumption.

"In the 1995-96 legislative session, vendors were quite active in advocating a resolution to the vended 'juice' issue which existed for vending machine and mobile facility operators. At the same time, the Department of Treasury advocated an overall permanent resolution to the problems arising from the taxability of all vended items. Therefore, I signed Enrolled House Bill 5567, which became Public Act 576 of 1996...

"Because of the retroactivity of Enrolled Senate Bill 526, vending machine and mobile facility operators would be eligible for significant sales tax refunds. Unfortunately, these taxes would not be refunded to individual taxpayers who purchased vended items and paid the sales tax as part of the sales price of the vended items. Therefore, Enrolled Senate Bill 526 would constitute an unjustified enrichment to vendors."

Response: Unlike Senate Bill 526, Senate Bill 717 specifies that refunds could not be made for taxes paid after 1992 and before January 16, 1997, for food or drink otherwise exempt under the vended food provision.

Legislative Analyst: S. Lowe

FISCAL IMPACT

This bill would prevent the State from collecting the sales tax owed by a few mobile vendor and vending machine businesses from 1993 through January 16, 1997, that have been discovered through audits. It is estimated that this bill would eliminate unpaid sales tax liabilities for about six businesses by a total of approximately \$700,000. This elimination of these unpaid tax liabilities would reduce School Aid Fund revenue by about \$500,000 from what it otherwise would be.

Fiscal Analyst: J. Wortley

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.