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SFA**BILL ANALYSIS**

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Senate Bill 717 (as enrolled)
Sponsor: Senator Bill Bullard, Jr.
Senate Committee: Finance
House Committee: Tax Policy

PUBLIC ACT 60 of 1998

Date Completed: 2-25-99

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, including 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 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 have been 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 was 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 amended 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, applies after December 31, 1994. The bill also states that a refund may 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, applies after December 31, 1994.

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".

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

By applying the changes in Public Act 576 retroactively, the bill resolves a long-lasting dispute between the Department of Treasury and businesses that operate vending machines or mobile facilities. While vendors will not be liable for taxes that they might owe under the former law, they also will 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.

Legislative Analyst: S. Lowe

FISCAL IMPACT

Fiscal information is not available.

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.