

Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 555 (as enrolled)
Sponsor: Senator Bev Hammerstrom
Committee: Finance

Date Completed: 7-29-99

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 food or drink furnished, prepared, or served for immediate consumption at a table, chair, or counter; food or drink arranged on a plate, whether intended for individual or multiple servings; food that is cooked to the order of the purchaser; etc. Prepared food intended for immediate consumption also includes "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".

Some people contend that the provision regarding vending machines and mobile facilities places an unfair tax burden on those vendors. For instance, if a convenience store or grocery store sells canned or bottled nonalcoholic beverages, those sales are tax-exempt, but if the same beverages (except milk and noncarbonated beverages containing 10% or more juice content) are purchased from a vending machine or mobile facility, the sales are taxable. This is inconsistent with the treatment of snack foods (candy, chips, cookies, peanuts, etc.), which are exempt from the tax whether they are sold from a vending machine or mobile facility, or in a convenience store, grocery store, or gas station. Some people believe that nonalcoholic beverages in a sealed container sold from a vending machine or mobile facility also should be exempt.

CONTENT

The bill would amend the General Sales Tax Act to

exempt from the tax sales of nonalcoholic beverages in a sealed container, sold from a vending machine or mobile facility.

Under the Act, tax due on the sale of food or drink, from a vending machine that sells both taxable and tax-exempt items, must be calculated based on the actual gross proceeds from sales at retail; or the sum of the proceeds from carbonated beverage sales, plus 45% of the proceeds from the sale of taxable and tax-exempt items other than the sale of carbonated beverages. The bill would eliminate from the calculation the sum of proceeds from carbonated beverages. This means that, under the bill, tax due could be calculated by determining 45% of the proceeds from the sale of taxable and tax-exempt items other than the sale of carbonated beverages; or the tax could be based on actual gross proceeds.

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

The application of the sales tax to carbonated beverages and other nonalcoholic drinks sold from a vending machine or mobile facility is unfair. Vendors who own vending machines or mobile facilities must remit to the State taxes for the sale of soda pop, iced tea, sports drinks, and other drinks, while the same items sold in grocery stores, convenience stores, and gas stations are tax-exempt. This means that while the vendors and the stores compete for the same business, the vendors are put at a competitive disadvantage because they must pay the tax from their profits, or charge their customers more for purchases.

Further, the current requirements placed on vendors are awkward and inconsistent. While certain

beverages are taxed depending on the location of the purchase, snack foods are exempt whether purchased from a vendor or a store. A vending machine may contain both juices and soda pop, meaning that the machine contains both taxable items (soda pop) and tax-exempt items (juices). Soda pop from a vending machine in a grocery store is taxed, but the same items sitting in a tub of ice next to the machine are exempt. This causes much confusion and difficulty, both for the vendors to remit the tax properly, and for the Department of Treasury to administer it. By exempting beverages in sealed containers sold from vending machines and mobile facilities, the bill would simplify the tax and remove an unfair burden now placed on vendors.

Opposing Argument

If enacted, the bill would further narrow the once-broad interpretation of "prepared food intended for immediate consumption", and thus erode the sales tax base. Food intended for immediate consumption is supposed to be subject to the sales tax as provided in the Constitution, and it clearly can be argued that food purchased from a vending machine is purchased for immediate consumption. All food and drink purchased from a vending machine were originally considered taxable. If there is confusion today concerning what is taxable and what is exempt, it is because vendors have been successful through the years in changing the statutory definition of "prepared food intended for immediate consumption": first, by creating a list of exceptions for certain food products sold in vending machines, and then by expanding the list and extending the exceptions to those products sold from mobile facilities. As the list of exempted products has grown, the tax on food intended for immediate consumption has become more arbitrary, and thus inconsistent. The bill would worsen the situation, and further reduce sales tax revenue.

Legislative Analyst: G. Towne

FISCAL IMPACT

This bill would reduce sales tax revenue by an estimated \$6.5 million in FY 1999-2000. Of this amount, 73% or \$4.7 million would be lost to the School Aid Fund, 24% or \$1.6 million would be lost to revenue sharing, and the remaining \$0.2 million would be lost to the General Fund.

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.