

Committee Substitute for Senate Bill No. 1694

An act relating to taxation (RAB); amending s. 212.08, F.S., relating to the tax on sales, use, and other transactions; revising the sales tax exemption provided for food and drinks; providing definitions; exempting additional medical supplies and equipment; defining the term “prescriptions”; revising the exemption for school books and school lunches; providing exemptions with respect to parent-teacher organizations and associations, to schools with grades K through 12, to mobile home lot improvements, and to sales of certain personal property supported through the Veterans Administration; providing a partial exemption for certain commercial fishing vessels; providing guidelines for determining applicability of sales surtaxes to certain transactions; providing an exemption for certain foods, drinks, and other items provided to customers on a complimentary basis by a dealer who sells food products at retail; providing an exemption for foods and beverages donated by such dealers to certain organizations; revising provisions relating to the technical assistance advisory committee established to provide advice in determining the taxability of specific products; providing membership requirements; amending s. 213.22, F.S.; providing for the issuance of technical assistance advisements; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (1), (2), and (14), paragraph (q) of subsection (7), and paragraph (a) of subsection (8) of section 212.08, Florida Statutes, are amended, and paragraphs (qq), (rr), (ss), (tt), and (uu) are added to subsection (7) of that section, to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(1) EXEMPTIONS; GENERAL GROCERIES.—

(a) Food products for human consumption are exempt from the tax imposed by this chapter.

(b) As used in this subsection, the term “food products” means edible commodities, whether processed, cooked, raw, canned, or in any other form, which are generally regarded as food. This includes, but is not limited to:

1. Cereals and cereal products, baked goods, oleomargarine, meat and meat products, fish and seafood products, frozen foods and dinners, poultry, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices, salt, sugar and sugar products, milk and dairy products, and products intended to be mixed with milk.

2. Natural fruit or vegetable juices or their concentrates or reconstituted natural concentrated fruit or vegetable juices, whether frozen or unfrozen, dehydrated, powdered, granulated, sweetened or unsweetened, seasoned with salt or spice, or unseasoned; coffee, coffee substitutes, or cocoa; and tea, unless it is sold in a liquid form.

3. Bakery products sold by bakeries, pastry shops, or like establishments that do not have eating facilities.

(c) The exemption provided by this subsection does not apply:

1. When the food products are sold as meals for consumption on or off the premises of the dealer.

2. When the food products are furnished, prepared, or served for consumption at tables, chairs, or counters or from trays, glasses, dishes, or other tableware, whether provided by the dealer or by a person with whom the dealer contracts to furnish, prepare, or serve food products to others.

3. When the food products are ordinarily sold for immediate consumption on the premises or near a location at which parking facilities are provided primarily for the use of patrons in consuming the products purchased at the location, even though such products are sold on a "take out" or "to go" order and are actually packaged or wrapped and taken from the premises of the dealer.

4. To sandwiches sold ready for immediate consumption on or off the premises.

5. When the food products are sold ready for immediate consumption within a place, the entrance to which is subject to an admission charge.

6. When the food products are sold as hot prepared food products.

7. To soft drinks, which include, but are not limited to, any nonalcoholic beverage, any preparation or beverage commonly referred to as a "soft drink," or any noncarbonated drink made from milk derivatives or tea, when sold in cans or similar containers.

8. To ice cream, frozen yogurt, and similar frozen dairy or nondairy products in cones, small cups, or pints, popsicles, frozen fruit bars, or other novelty items, whether or not sold separately.

9. To food prepared, whether on or off the premises, and sold for immediate consumption. This does not apply to food prepared off the premises and sold in the original sealed container, or the slicing of products into smaller portions.

10. When the food products are sold through a vending machine, pushcart, motor vehicle, or any other form of vehicle.

11. To candy and any similar product regarded as candy or confection, based on its normal use, as indicated on the label or advertising thereof.

12. To bakery products sold by bakeries, pastry shops, or like establishments that have eating facilities, except when sold for consumption off the premises.

13. When food products are served, prepared, or sold in or by restaurants, lunch counters, cafeterias, hotels, taverns, or other like places of business.

(d) As used in this subsection, the term:

1. "For consumption off the premises" means that the food or drink is intended by the customer to be consumed at a place away from the dealer's premises.

2. "For consumption on the premises" means that the food or drink sold may be immediately consumed on the premises where the dealer conducts his or her business. In determining whether an item of food is sold for immediate consumption, there shall be considered the customary consumption practices prevailing at the selling facility.

3. "Premises" shall be construed broadly, and means, but is not limited to, the lobby, aisle, or auditorium of a theater; the seating, aisle, or parking area of an arena, rink, or stadium; or the parking area of a drive-in or outdoor theater. The premises of a caterer with respect to catered meals or beverages shall be the place where such meals or beverages are served.

4. "Hot prepared food products" means those products, items, or components which have been prepared for sale in a heated condition and which are sold at any temperature that is higher than the air temperature of the room or place where they are sold. "Hot prepared food products," for the purposes of this subsection, includes a combination of hot and cold food items or components where a single price has been established for the combination and the food products are sold in such combination, such as a hot meal, a hot specialty dish or serving, or a hot sandwich or hot pizza, including cold components or side items.

~~(a) There are exempt from the tax imposed by this chapter food and drinks for human consumption except candy. Unless the exemption provided by paragraph (7)(q) for school lunches, paragraph (7)(i) for meals to certain patients or inmates, paragraph (7)(k) for meals provided by certain non-profit organizations, or paragraph (7)(z) for food or drinks sold through vending machines pertains, none of such items of food or drinks means:~~

~~1. Food or drinks served, prepared, or sold in or by restaurants; drug-stores; lunch counters; cafeterias; hotels; amusement parks; racetracks; taverns; concession stands at arenas, auditoriums, carnivals, fairs, stadiums, theaters, or other like places of business; or by any business or place required by law to be licensed by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation, except bakery products sold in or by pastry shops, doughnut shops, or like establishments for consumption off the premises;~~

~~2. Foods and drinks sold ready for immediate consumption from vending machines, pushcarts, motor vehicles, or any other form of vehicle;~~

3. ~~Soft drinks, which include, but are not limited to, any nonalcoholic beverage, any preparation or beverage commonly referred to as a "soft drink," or any noncarbonated drink made from milk derivatives or tea, when sold in cans or similar containers. The term "soft drink" does not include: natural fruit or vegetable juices or their concentrates or reconstituted natural concentrated fruit or vegetable juices, whether frozen or unfrozen, dehydrated, powdered, granulated, sweetened or unsweetened, seasoned with salt or spice, or unseasoned; coffee or coffee substitutes; tea except when sold in containers as provided herein; cocoa; products intended to be mixed with milk; or natural fluid milk;~~

4. ~~Foods or drinks cooked or prepared on the seller's premises and sold ready for immediate consumption either on or off the premises, excluding bakery products for off-premises consumption unless such foods are taxed under subparagraph 1. or subparagraph 2.; or~~

5. ~~Sandwiches sold ready for immediate consumption.~~

~~For the purposes of this paragraph, "seller's premises" shall be construed broadly, and means, but is not limited to, the lobby, aisle, or auditorium of a theater; the seating, aisle, or parking area of an arena, rink, or stadium; or the parking area of a drive-in or outdoor theater. The premises of a caterer with respect to catered meals or beverages shall be the place where such meals or beverages are served.~~

(e)(b)1. ~~Food or drinks not exempt under paragraphs (a), (b), (c), and (d) paragraph (a) shall be exempt, notwithstanding those paragraphs that paragraph,~~ when purchased with food coupons or Special Supplemental Food Program for Women, Infants, and Children vouchers issued under authority of federal law.

2. This paragraph is effective only while federal law prohibits a state's participation in the federal food coupon program or Special Supplemental Food Program for Women, Infants, and Children if there is an official determination that state or local sales taxes are collected within that state on purchases of food or drinks with such coupons.

3. This paragraph shall not apply to any food or drinks on which federal law shall permit sales taxes without penalty, such as termination of the state's participation.

4. ~~Notwithstanding any other provision of law, the department shall make refunds or allow credits to a distributor equal to the fee imposed and paid under s. 403.7197 on containers purchased by consumers with food coupons or Special Supplemental Food Program for Women, Infants, and Children vouchers issued under authority of federal law.~~

(2) EXEMPTIONS; MEDICAL.—

(a) There shall be exempt from the tax imposed by this chapter any medical products and supplies ~~product, supply,~~ or medicine dispensed in a retail establishment by a pharmacist licensed by the state, according to an individual prescription or prescriptions written by a prescriber authorized

by law to prescribe medicinal drugs; hypodermic needles; hypodermic syringes; chemical compounds and test kits used for the diagnosis or treatment of human disease, illness, or injury; and common household remedies recommended and generally sold for internal or external use in the cure, mitigation, treatment, or prevention of illness or disease in human beings, but not including cosmetics or toilet articles, notwithstanding the presence of medicinal ingredients therein, according to a list prescribed and approved by the Department of Health and ~~Rehabilitative Services~~, which list shall be certified to the Department of Revenue from time to time and included in the rules promulgated by the Department of Revenue. There shall also be exempt from the tax imposed by this chapter artificial eyes and limbs; orthopedic shoes; prescription eyeglasses and items incidental thereto or which become a part thereof; dentures; hearing aids; crutches; prosthetic and orthopedic appliances; and funerals. In addition, any items intended for one-time use which transfer essential optical characteristics to contact lenses shall be exempt from the tax imposed by this chapter; however, this exemption shall apply only after \$100,000 of the tax imposed by this chapter on such items has been paid in any calendar year by a taxpayer who claims the exemption in such year. Funeral directors shall pay tax on all tangible personal property used by them in their business.

(b) For the purposes of this subsection:

1. "Prosthetic and orthopedic appliances" means any apparatus, instrument, device, or equipment used to replace or substitute for any missing part of the body, to alleviate the malfunction of any part of the body, or to assist any disabled person in leading a normal life by facilitating such person's mobility. Such apparatus, instrument, device, or equipment shall be exempt according to an individual prescription or prescriptions written by a physician licensed under chapter 458, chapter 459, chapter 460, chapter 461, or chapter 466, or according to a list prescribed and approved by the Department of Health and ~~Rehabilitative Services~~, which list shall be certified to the Department of Revenue from time to time and included in the rules promulgated by the Department of Revenue.

2. "Cosmetics" means articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance and also means articles intended for use as a compound of any such articles, including, but not limited to, cold creams, suntan lotions, makeup, and body lotions.

3. "Toilet articles" means any article advertised or held out for sale for grooming purposes and those articles that are customarily used for grooming purposes, regardless of the name by which they may be known, including, but not limited to, soap, toothpaste, hair spray, shaving products, colognes, perfumes, shampoo, deodorant, and mouthwash.

4. "Prescription" includes any order for drugs or medicinal supplies written or transmitted by any means of communication by a duly licensed practitioner authorized by the laws of the state to prescribe such drugs or medicinal supplies and intended to be dispensed by a pharmacist. The term also

includes an orally transmitted order by the lawfully designated agent of such practitioner. The term also includes an order written or transmitted by a practitioner licensed to practice in a jurisdiction other than this state, but only if the pharmacist called upon to dispense such order determines, in the exercise of his or her professional judgment, that the order is valid and necessary for the treatment of a chronic or recurrent illness. The term also includes a pharmacist's order for a product selected from the formulary created pursuant to s. 465.186. A prescription may be retained in written form, or the pharmacist may cause it to be recorded in a data-processing system, provided that such order can be produced in printed form upon lawful request.

(c) Chlorine shall not be exempt from the tax imposed by this chapter when used for the treatment of water in swimming pools.

(d) Lithotripters are exempt.

(e) Human organs are exempt.

(f) Sales of drugs to or by physicians, dentists, veterinarians, and hospitals in connection with medical treatment are exempt.

(g) Medical products and supplies used in the cure, mitigation, alleviation, prevention, or treatment of injury, disease, or incapacity which are temporarily or permanently incorporated into a patient or client by a practitioner of the healing arts licensed in the state are exempt.

(h) The purchase by a veterinarian of commonly recognized substances possessing curative or remedial properties which are ordered and dispensed as treatment for a diagnosed health disorder by or on the prescription of a duly licensed veterinarian, and which are applied to or consumed by animals for alleviation of pain or the cure or prevention of sickness, disease, or suffering are exempt. Also exempt are the purchase by a veterinarian of antiseptics, absorbent cotton, gauze for bandages, lotions, vitamins, and worm remedies.

(i) X-ray opaques, also known as opaque drugs and radiopaque, such as the various opaque dyes and barium sulphate, when used in connection with medical x-rays for treatment of bodies of humans and animals, are exempt.

(j) Parts, special attachments, special lettering, and other like items that are added to or attached to tangible personal property so that a handicapped person can use them are exempt when such items are purchased by a person pursuant to an individual prescription.

(k)(d) This subsection shall be strictly construed and enforced.

(7) MISCELLANEOUS EXEMPTIONS.—

(q) School books and school lunches.—This exemption applies to school books used in regularly prescribed courses of study, and to school lunches served to students, in public, parochial, or nonprofit schools operated for and attended by pupils of grades K through 1 through 12. Yearbooks, magazines,

newspapers, directories, bulletins, and similar publications distributed by such educational institutions to their students are also exempt. School books and food sold or served at community colleges and other institutions of higher learning are taxable.

(qq) Parent-teacher organizations, parent-teacher associations, and schools having grades K through 12.—Parent-teacher organizations and associations qualified as educational institutions under paragraph (o) associated with schools having grades K through 12, and schools having grades K through 12, may pay tax to their suppliers on the cost price of school materials and supplies purchased, rented, or leased for resale or rental to students in grades K through 12, of items sold for fund-raising purpose, and of items sold through vending machines located on the school premises, in lieu of collecting the tax imposed by this chapter from the purchaser. This paragraph also applies to food or beverages sold through vending machines located in the student lunchroom or dining room of a school having kindergarten through grade 12.

(rr) Mobile home lot improvements.—Items purchased by developers for use in making improvements to a mobile home lot owned by the developer may be purchased tax-exempt as a sale for resale if made pursuant to a contract that requires the developer to sell a mobile home to a purchaser, place the mobile home on the lot, and make the improvements to the lot for a single lump-sum price. The developer must collect and remit sales tax on the entire lump-sum price.

(ss) Veterans Administration.—When a veteran of the armed forces purchases an aircraft, boat, mobile home, motor vehicle, or other vehicle from a dealer pursuant to the provisions of s. 3902(a), Title 38, United States Code, or any successor provision of the United States Code, the amount that is paid directly to the dealer by the Veterans Administration is not taxable. However, any portion of the purchase price which is paid directly to the dealer by the veteran is taxable.

(tt) Complimentary items.—There is exempt from the tax imposed by this chapter:

1. Any food or drink, whether or not cooked or prepared on the premises, provided without charge as a sample or for the convenience of customers by a dealer that primarily sells food product items at retail.

2. Any item given to a customer as part of a price guarantee plan related to point-of-sale errors by a dealer that primarily sells food products at retail.

The exemptions in this paragraph do not apply to businesses with the primary activity of serving prepared meals or alcoholic beverages for immediate consumption.

(uu) Donated foods or beverages.—Any food or beverage donated by a dealer that sells food products at retail to a food bank or an organization that holds a current exemption from federal corporate income tax pursuant to s. 501(c) of the Internal Revenue Code of 1986, as amended, is exempt from the tax imposed by this chapter.

(8) PARTIAL EXEMPTIONS; VESSELS ENGAGED IN INTERSTATE OR FOREIGN COMMERCE.—

(a) The sale or use of vessels and parts thereof used to transport persons or property in interstate or foreign commerce, including commercial fishing vessels, is subject to the taxes imposed in this chapter only to the extent provided herein. The basis of the tax shall be the ratio of intrastate mileage to interstate or foreign mileage traveled by the carrier's vessels which were used in interstate or foreign commerce and which had at least some Florida mileage during the previous fiscal year. The ratio would be determined at the close of the carrier's fiscal year. This ratio shall be applied each month to the total Florida purchases of such vessels and parts thereof which are used in Florida to establish that portion of the total used and consumed in intrastate movement and subject to the tax at the applicable rate. The basis for imposition of any discretionary surtax shall be as set forth in s. 212.054. Items, appropriate to carry out the purposes for which a vessel is designed or equipped and used, purchased by the owner, operator, or agent of a vessel for use on board such vessel shall be deemed to be parts of the vessel upon which the same are used or consumed. Vessels and parts thereof used to transport persons or property in interstate and foreign commerce are hereby determined to be susceptible to a distinct and separate classification for taxation under the provisions of this chapter. Vessels and parts thereof used exclusively in intrastate commerce do not qualify for the proration of tax.

(14) TECHNICAL ASSISTANCE ADVISORY COMMITTEE.—The department shall establish a technical assistance advisory committee with public and private sector members, including representatives of both manufacturers and retailers, to advise the Department of Revenue and the Department of Health and ~~Rehabilitative Services~~ in determining the taxability of specific products and product lines pursuant to subsection (1) and paragraph (2)(a). In determining taxability and in preparing a list of specific products and product lines ~~that which~~ are or are not taxable, the committee shall not be subject to the provisions of chapter 120. Private sector members shall not be compensated for serving on the committee.

Section 2. Subsection (1) of section 213.22, Florida Statutes, is amended to read:

213.22 Technical assistance advisements.—

(1) The department may issue informal technical assistance advisements to persons, upon written request, as to the position of the department on the tax consequences of a stated transaction or event, under existing statutes, rules, or policies. After the issuance of an assessment, a technical assistance advisement may not be issued to a taxpayer who requests an advisement relating to the tax or liability for tax in respect to which the assessment has been made, except that a technical assistance advisement may be issued to a taxpayer who requests an advisement relating to the exemptions in s. 212.08(1) or (2) at any time. Technical assistance advisements shall have no precedential value except to the taxpayer who requests the advisement and then only for the specific transaction addressed in the technical assistance advisement, unless specifically stated otherwise in the advisement. Any

modification of an advisement shall be prospective only. A technical assistance advisement is not an order issued pursuant to s. 120.565 or s. 120.569 or a rule or policy of general applicability under s. 120.54. The provisions of s. 120.53(1) are not applicable to technical assistance advisements.

Section 3. This act shall take effect July 1, 1998.

Became a law without the Governor's approval May 22, 1998.

Filed in Office Secretary of State May 21, 1998.