

## CHAPTER 98-408

### Committee Substitute for Committee Substitute for House Bill No. 315

An act relating to tax on sales, use, and other transactions; amending s. 212.08, F.S.; revising the exemption for food and drinks; providing definitions; 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 taxability of foods and medicines; 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) and (14) of section 212.08, Florida Statutes, are amended, and paragraphs (qq) and (rr) are added to subsection (7) of said 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) There are exempted from the tax imposed by this chapter food products for human consumption.

(b) For the purpose of this chapter, “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, all of the following:

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 sold in a liquid form.

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

(c) None of the exemptions provided in paragraph (b) applies to any of the following:

1. When the food products are sold as meals for consumption on or off the seller's premises.

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 seller or by a person with whom the seller contracts to furnish, prepare, or serve food products to others.

3. When the food products are ordinarily sold for immediate consumption on the seller's 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 seller's premises.

4. Sandwiches sold ready for immediate consumption on or off the seller's 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. 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 a liquid form.

7. 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.

8. 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.

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

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

11. Bakery products sold by bakeries, pastry shops, or like establishments which have eating facilities, except when sold for consumption off the seller's premises.

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

13. Food products sold as hot prepared food products.

(d) For purposes of this subsection:

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

2. "For consumption on the seller's premises" means that the food or drink sold may be immediately consumed on the premises where the seller 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 which 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.

(7) MISCELLANEOUS EXEMPTIONS.—

(qq) 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 products 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.

(rr) 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 which holds current exemption from federal corporate income tax pursuant to s. 501(c) of the Internal Revenue Code, 1986, as amended, is exempt from the tax imposed by this chapter.

(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 of the year in which enacted.

Became a law without the Governor's approval June 17, 1998.

Filed in Office Secretary of State June 11, 1998.