

ASSEMBLY BILL

No. 728

Introduced by Assembly Member Plescia

February 22, 2007

An act to amend Sections 6359 and 6359.2 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 728, as introduced, Plescia. Sales and use taxes: exemptions: food products.

The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. That law provides various exemptions from that tax, including an exemption for food products, as specified. Existing law excludes food products from this exemption when certain conditions are met, including when the food products are sold through a vending machine. Existing law, however, provides a partial exemption from that tax for certain food products actually sold through a vending machine.

This bill would exempt from that tax packaged candy, gum, and confectionery, snack foods, and bottled water when those products are actually sold through a vending machine. The bill would define the term "snack foods" for these purposes.

Counties and cities are authorized to impose local sales and use taxes in conformity with state sales and use taxes. Exemptions from state sales and use taxes enacted by the Legislature are automatically incorporated into the local taxes.

Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that no appropriation is made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.

This bill would take effect immediately as a tax levy, but its operative date would depend on its effective date.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6359 of the Revenue and Taxation Code
- 2 is amended to read:
- 3 6359. (a) There are exempted from the taxes imposed by this
- 4 part the gross receipts from the sale *in this state* of, and the storage,
- 5 use, or other consumption in this state of, food products for human
- 6 consumption.
- 7 (b) For the purposes of this section, “food products” include all
- 8 of the following:
- 9 (1) Cereals and cereal products, oleomargarine, meat and meat
- 10 products, fish and fish products, eggs and egg products, vegetables
- 11 and vegetable products, fruit and fruit products, spices and salt,
- 12 sugar and sugar products, candy, gum, confectionery, coffee and
- 13 coffee substitutes, tea, and cocoa and cocoa products.
- 14 (2) Milk and milk products, milkshakes, malted milks, and any
- 15 other similar type beverages that are composed at least in part of
- 16 milk or a milk product and that require the use of milk or a milk
- 17 product in their preparation.
- 18 (3) All fruit juices, vegetable juices, and other beverages,
- 19 whether liquid or frozen, including bottled water, but excluding
- 20 spirituous, malt, or vinous liquors or carbonated beverages.
- 21 (c) For purposes of this section, “food products” do not include
- 22 medicines and preparations in liquid, powdered, granular, tablet,
- 23 capsule, lozenge, and pill form sold as dietary supplements or
- 24 adjuncts.
- 25 (d) None of the exemptions in this section apply to any of the
- 26 following:

1 (1) When the food products are served as meals on or off the
2 premises of the retailer.

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

8 (3) When the food products are ordinarily sold for immediate
9 consumption on or near a location at which parking facilities are
10 provided primarily for the use of patrons in consuming the products
11 purchased at the location, even though those products are sold on
12 a “take out” or “to go” order and are actually packaged or wrapped
13 and taken from the premises of the retailer.

14 (4) When the food products are sold for consumption within a
15 place, the entrance to which is subject to an admission charge,
16 except for national and state parks and monuments, marinas,
17 campgrounds, and recreational vehicle parks.

18 (5) When the food products are sold through a vending machine,
19 *except as provided in this code, including, but not limited to,*
20 *Section 6359.2.*

21 (6) When the food products sold are furnished in a form suitable
22 for consumption on the seller’s premises, and both of the following
23 apply:

24 (A) Over 80 percent of the seller’s gross receipts are from the
25 sale of food products.

26 (B) Over 80 percent of the seller’s retail sales of food products
27 are sales subject to tax pursuant to paragraph (1), (2), (3), or (7).

28 (7) When the food products are sold as hot prepared food
29 products.

30 (e) “Hot prepared food products,” for the purposes of paragraph
31 (7) of subdivision (d), include a combination of hot and cold food
32 items or components where a single price has been established for
33 the combination and the food products are sold in combination,
34 such as a hot meal, a hot specialty dish or serving, a hot sandwich,
35 or a hot pizza, including any cold components or side items.
36 Paragraph (7) of subdivision (d) does not apply to a sale for a
37 separate price of bakery goods or beverages (other than bouillon,
38 consommé, or soup), or where the food product is purchased cold
39 or frozen; ~~“hot frozen.”~~ *“Hot prepared food products” products,*
40 *for purposes of paragraph (7) of subdivision (d), means those*

1 products, items, or components that have been prepared for sale
2 in a heated condition and that are sold at any temperature that is
3 higher than the air temperature of the room or place where they
4 are sold.

5 (f) Notwithstanding paragraph (6) of subdivision (d), if the seller
6 elects to separately account for sales of food products specified in
7 subdivision (b), then the gross receipts from the sale of those food
8 products shall be exempt under subdivision (a), provided that the
9 separate accounting is fully documented in the seller's records.
10 However, if the seller's records do not reflect the separate
11 accounting of the gross receipts from sales of nontaxable food
12 products, the seller's election under this subdivision shall be
13 revoked.

14 SEC. 2. Section 6359.2 of the Revenue and Taxation Code is
15 amended to read:

16 6359.2. (a) Except as otherwise provided in Sections 6359.4,
17 6359.45, 6363, and 6370, for the year beginning on January 1,
18 1988, and ending on December 31, 1988, 77 percent of the gross
19 receipts of any retailer from the sale at retail of food products shall
20 be subject to the tax imposed by Section 6051, when those food
21 products are actually sold through a vending machine.

22 (b) Except as otherwise provided in Sections 6359.4, 6359.45,
23 6363, and 6370, for the year beginning on January 1, 1989, and
24 ending on December 31, 1989, 55 percent of the gross receipts of
25 any retailer from the sale at retail of food products ~~shall be~~ *are*
26 subject to the tax imposed by Section 6051, when those food
27 products are actually sold through a vending machine.

28 (c) Except as otherwise provided in Sections 6359.4, 6359.45,
29 6363, and 6370, for the year beginning on January 1, 1990, and
30 thereafter, 33 percent of the gross receipts of any retailer from the
31 sale at retail of food products shall be subject to the tax imposed
32 by Section 6051, when those food products are actually sold
33 through a vending machine.

34 (d) (1) The Legislature finds that 33 percent represents the
35 statewide average of food products sold through vending machines
36 which are subject to the tax imposed under this part. Therefore,
37 the Legislature establishes this average as the measure of the tax
38 with respect to vending machine sales to simplify tax auditing
39 procedures and to provide for uniformity in the taxation of gross

1 receipts derived from the sale of food products through vending
2 machines.

3 (2) The Legislature also finds that due to fiscal constraints, it
4 is necessary to phase in the partial exemption for sales made
5 through vending machines in the 1988 and 1989 calendar years.

6 (e) For purposes of this section, “food products” includes hot
7 coffee, hot tea, and hot chocolate, when those hot beverages are
8 actually sold through a vending machine for a separate price. “Food
9 products” does not include other hot prepared food products, as
10 defined in Section 6359.

11 (f) (1) *Notwithstanding any provision in this section or Section*
12 *6359, packaged candy, gum, and confectionery, snack foods, and*
13 *bottled water are exempt from the tax imposed by this part, when*
14 *those products are actually sold through a vending machine.*

15 (2) *For purposes of this section, “snack foods” means cookies,*
16 *crackers, chips, snack cakes and pies, pastries, pretzels, granola*
17 *snacks, popcorn, fabricated chips and snacks, trail mix, nuts, edible*
18 *seeds, dried fruit snacks, meat snacks, and snack mixtures. Except*
19 *for popcorn, snack foods only include items that are sold in a*
20 *condition suitable for consumption without further processing,*
21 *including, but not limited to, cooking, heating, or thawing.*

22 SEC. 3. Notwithstanding Section 2230 of the Revenue and
23 Taxation Code, no appropriation is made by this act and the state
24 shall not reimburse any local agency for any sales and use tax
25 revenues lost by it under this act.

26 SEC. 4. This act provides for a tax levy within the meaning of
27 Article IV of the Constitution and shall go into immediate effect.
28 However, the provisions of this act shall become operative on the
29 first day of the first calendar quarter commencing more than 90
30 days after the effective date of this act.