

**ASSEMBLY BILL**

**No. 155**

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**Introduced by Assembly Member Dababneh**

January 16, 2015

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An act to amend Sections 6359 and 6359.45 of, to repeal Section 6359.4 of, and to repeal and add Section 6359.2, of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 155, as introduced, Dababneh. Sales tax: exemption: food products: vending machines.

Existing sales and use tax laws impose a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. 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, on and after January 1, 2016, exempt from that tax the gross receipts of any retailer from the sale at retail of food products actually sold through a vending machine, and would make other conforming changes.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and existing law authorizes districts,

as specified, to impose transactions and use taxes in accordance with the Transactions and Use Tax Law, which conforms to the Sales and Use Tax Law. Amendments to state sales and use taxes are incorporated into these laws.

The amendments made by this bill would be incorporated into these laws.

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, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse any 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.

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

*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 of, and the storage, use, or
- 5 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.

1 (c) For purposes of this section, “food products” do not include  
2 medicines and preparations in liquid, powdered, granular, tablet,  
3 capsule, lozenge, and pill form sold as dietary supplements or  
4 adjuncts.

5 (d) None of the exemptions in this section apply to any of the  
6 following:

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

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

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

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

24 ~~(5) When the food products are sold through a vending machine.~~

25 ~~(6)~~

26 (5) When the food products sold are furnished in a form suitable  
27 for consumption on the seller’s premises, and both of the following  
28 apply:

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

31 (B) Over 80 percent of the seller’s retail sales of food products  
32 are sales subject to tax pursuant to paragraph (1), (2), (3), or ~~(7)~~  
33 (6).

34 ~~(7)~~

35 (6) When the food products are sold as hot prepared food  
36 products.

37 (e) “Hot prepared food products,” for the purposes of paragraph  
38 ~~(7)~~ (6) of subdivision (d), include a combination of hot and cold  
39 food items or components where a single price has been established  
40 for the combination and the food products are sold in combination,

1 such as a hot meal, a hot specialty dish or serving, a hot sandwich,  
2 or a hot pizza, including any cold components or side items.  
3 Paragraph ~~(7)~~ (6) of subdivision (d) does not apply to a sale for a  
4 separate price of bakery goods or beverages (other than bouillon,  
5 consommé, or soup), or where the food product is purchased cold  
6 or frozen; “hot prepared food products” means those products,  
7 items, or components that have been prepared for sale in a heated  
8 condition and that are sold at any temperature that is higher than  
9 the air temperature of the room or place where they are sold.

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

19 SEC. 2. Section 6359.2 of the Revenue and Taxation Code is  
20 repealed.

21 ~~6359.2. (a) Except as otherwise provided in Sections 6359.4,~~  
22 ~~6359.45, 6363, and 6370, for the year beginning on January 1,~~  
23 ~~1988, and ending on December 31, 1988, 77 percent of the gross~~  
24 ~~receipts of any retailer from the sale at retail of food products shall~~  
25 ~~be subject to the tax imposed by Section 6051, when those food~~  
26 ~~products are actually sold through a vending machine.~~

27 ~~(b) Except as otherwise provided in Sections 6359.4, 6359.45,~~  
28 ~~6363, and 6370, for the year beginning on January 1, 1989, and~~  
29 ~~ending on December 31, 1989, 55 percent of the gross receipts of~~  
30 ~~any retailer from the sale at retail of food products shall be subject~~  
31 ~~to the tax imposed by Section 6051, when those food products are~~  
32 ~~actually sold through a vending machine.~~

33 ~~(c) Except as otherwise provided in Sections 6359.4, 6359.45,~~  
34 ~~6363, and 6370, for the year beginning on January 1, 1990, and~~  
35 ~~thereafter, 33 percent of the gross receipts of any retailer from the~~  
36 ~~sale at retail of food products shall be subject to the tax imposed~~  
37 ~~by Section 6051, when those food products are actually sold~~  
38 ~~through a vending machine.~~

39 ~~(d) (1) The Legislature finds that 33 percent represents the~~  
40 ~~statewide average of food products sold through vending machines~~

1 which are subject to the tax imposed under this part. Therefore,  
2 the Legislature establishes this average as the measure of the tax  
3 with respect to vending machine sales to simplify tax auditing  
4 procedures and to provide for uniformity in the taxation of gross  
5 receipts derived from the sale of food products through vending  
6 machines.

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

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

15 SEC. 3. Section 6359.2 is added to the Revenue and Taxation  
16 Code, to read:

17 6359.2. (a) On and after January 1, 2016, there are exempted  
18 from the taxes imposed by this part, the gross receipts of any  
19 retailer from the sale at retail of food products actually sold through  
20 a vending machine.

21 (b) For purposes of this section, “food products” means food  
22 products as defined in Section 6359, and includes hot coffee, hot  
23 tea, and hot chocolate, when those hot beverages are actually sold  
24 through a vending machine for a separate price. “Food products”  
25 does not include other hot prepared food products, as defined in  
26 Section 6359.

27 SEC. 4. Section 6359.4 of the Revenue and Taxation Code is  
28 repealed.

29 ~~6359.4. (a) Any vending machine operator is a consumer of,  
30 and shall not be considered a retailer of, food products which sell  
31 at retail for fifteen cents (\$0.15) or less and which are actually sold  
32 through a vending machine.~~

33 ~~(b) Notwithstanding subdivision (a), any vending machine  
34 operator is a consumer of, and shall not be considered a retailer  
35 of, food products, other than beverages or hot prepared food  
36 products, which are sold through a coin-operated bulk vending  
37 machine if the amount of each sale is twenty-five cents (\$0.25) or  
38 less. For purposes of this subdivision, “bulk vending machine”  
39 means a vending machine containing unsorted food products, other  
40 than beverages or hot prepared food products which, upon insertion~~

1 of a coin, dispenses those food products, including candy and  
2 confectionery, in approximately equal portions, at random, and  
3 without selection by the customer.

4 SEC. 5. Section 6359.45 of the Revenue and Taxation Code  
5 is amended to read:

6 6359.45. (a) Any vending machine operator which is a  
7 nonprofit, charitable, or educational organization is a consumer  
8 of, and shall not be considered a retailer of, tangible personal  
9 property which sells at retail for fifteen cents (\$0.15) or less and  
10 which is actually sold through a vending machine.

11 (b) Any library district, municipal library, or county library and  
12 any vendor making sales pursuant to a contract with a library  
13 district, municipal library, or county library is a consumer of, and  
14 shall not be considered a retailer of, photocopies which it sells at  
15 retail and which are actually sold through a coin-operated copy  
16 machine located at a library facility.

17 (c) *This section shall not apply to any vending machine operator*  
18 *which is a nonprofit, charitable, or educational organization that*  
19 *is a retailer of tangible personal property that is a food product*  
20 *as defined in subdivision (b) of Section 6359.4, and which is*  
21 *actually sold through a vending machine.*

22 SEC. 6. 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. 7. This act provides for a tax levy within the meaning of  
27 Article IV of the Constitution and shall go into immediate effect.