

Assembly Bill No. 1666

CHAPTER 647

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

[Approved by Governor October 5, 1995. Filed
with Secretary of State October 6, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1666, Takasugi. Sales and use taxes: exemption: 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 sold are furnished in a form suitable for consumption on the seller's premises, and over 80% of the seller's gross receipts are from the sale of food products, and over 80% of the seller's retail sales of food products are sales subject to tax.

This bill would provide that, notwithstanding this provision, if a seller elects to separately account for sales of food products that are otherwise exempt, then the gross receipts from the sales of those food products shall be exempt, provided that the separate accounting is fully documented in the seller's records.

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 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.

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

SECTION 1. Section 6359 of the Revenue and Taxation Code is amended to read:

6359. (a) There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use, or other consumption in this state of, food products for human consumption.

(b) For the purposes of this section, “food products” include all of the following:

(1) Cereals and cereal products, oleomargarine, meat and meat products, fish and fish products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices and salt, sugar and sugar products, candy, gum, confectionery, coffee and coffee substitutes, tea, and cocoa and cocoa products.

(2) Milk and milk products, milkshakes, malted milks, and any other similar type beverages that are composed at least in part of milk or a milk product and that require the use of milk or a milk product in their preparation.

(3) All fruit juices, vegetable juices, and other beverages, whether liquid or frozen, including bottled water, but excluding spirituous, malt, or vinous liquors or carbonated beverages.

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

(d) None of the exemptions provided for in this section apply to any of the following:

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

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

(3) When the food products are ordinarily sold for immediate consumption on 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 retailer.

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

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

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

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



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

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

(e) "Hot prepared food products," for the purposes of paragraph (7) of subdivision (d), include 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 combination, such as a hot meal, a hot specialty dish or serving, a hot sandwich, or a hot pizza, including any cold components or side items. Paragraph (7) of subdivision (d) shall not apply to a sale for a separate price of bakery goods or beverages (other than bouillon, consommé, or soup), or where the food product is purchased cold or frozen; "hot prepared food products" means those products, items, or components that have been prepared for sale in a heated condition and that are sold at any temperature that is higher than the air temperature of the room or place where they are sold.

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

SEC. 2. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any sales and use tax revenues lost by it under this act.

SEC. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, the provisions of this act shall become operative on the first day of the first calendar quarter commencing more than 90 days after the effective date of this act.

