

ASSEMBLY BILL

No. 2824

Introduced by Assembly Member Cardoza
(Coauthor: Senator Johnson)

February 28, 2000

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 2824, as introduced, Cardoza. 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 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
 2 Taxation Code is amended to read:
 3 6359. (a) There are exempted from the taxes
 4 imposed by this part the gross receipts from the sale of,
 5 and the storage, use, or other consumption in this state of,
 6 food products for human consumption.
 7 (b) For ~~the~~ purposes of this section, “food products”
 8 include all of the following:
 9 (1) Cereals and cereal products, oleomargarine, meat
 10 and meat products, fish and fish products, eggs and egg
 11 products, vegetables and vegetable products, fruit and
 12 fruit products, spices and salt, sugar and sugar products,
 13 candy, gum, confectionery, coffee and coffee substitutes,
 14 tea, and cocoa and cocoa products.
 15 (2) Milk and milk products, milkshakes, malted milks,
 16 and any other similar type beverages that are composed
 17 at least in part of milk or a milk product and that require
 18 the use of milk or a milk product in their preparation.
 19 (3) All fruit juices, vegetable juices, and other
 20 beverages, whether liquid or frozen, including bottled
 21 water, but excluding spirituous, malt, or vinous liquors or
 22 carbonated beverages.
 23 (c) For purposes of this section, “food products” do not
 24 include medicines and preparations in liquid, powdered,



1 granular, tablet, capsule, lozenge, and pill form sold as
2 dietary supplements or adjuncts.

3 (d) None of the exemptions in this section apply to any
4 of the following:

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

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

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

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

25 (5) When the food products are sold through a
26 vending machine, *except as provided in this code,*
27 *including, but limited to, Section 6359.2.*

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

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

33 (B) Over 80 percent of the seller’s retail sales of food
34 products are sales subject to tax pursuant to paragraph
35 (1), (2), (3), or (7).

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

38 (e) “Hot prepared food products,” for ~~the~~ purposes of
39 paragraph (7) of subdivision (d), include a combination
40 of hot and cold food items or components where a single



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

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

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

27 6359.2. (a) Except as otherwise provided in Sections
28 6359.4, 6359.45, 6363, and 6370, for the year beginning on
29 January 1, 1988, and ending on December 31, 1988, 77
30 percent of the gross receipts of any retailer from the sale
31 at retail of food products shall be subject to the tax
32 imposed by Section 6051, when those food products are
33 actually sold through a vending machine.

34 (b) Except as otherwise provided in Sections 6359.4,
35 6359.45, 6363, and 6370, for the year beginning on January
36 1, 1989, and ending on December 31, 1989, 55 percent of
37 the gross receipts of any retailer from the sale at retail of
38 food products shall be subject to the tax imposed by
39 Section 6051, when those food products are actually sold
40 through a vending machine.



1 (c) Except as otherwise provided in Sections 6359.4,
2 6359.45, 6363, and 6370, for the year beginning on January
3 1, 1990, and thereafter, 33 percent of the gross receipts of
4 any retailer from the sale at retail of food products shall
5 be subject to the tax imposed by Section 6051, when those
6 food products are actually sold through a vending
7 machine.

8 (d) (1) The Legislature finds that 33 percent
9 represents the statewide average of food products sold
10 through vending machines which are subject to the tax
11 imposed under this part. Therefore, the Legislature
12 establishes this average as the measure of the tax with
13 respect to vending machine sales to simplify tax auditing
14 procedures and to provide for uniformity in the taxation
15 of gross receipts derived from the sale of food products
16 through vending machines.

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

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

27 (f) (1) *Notwithstanding any provision in this section*
28 *or Section 6359, packaged candy, gum, and confectionery,*
29 *snack foods, and bottled water shall be exempt from the*
30 *tax imposed by this part, when those products are actually*
31 *sold through a vending machine.*

32 (2) *For purposes of this section, “snack foods” means*
33 *cookies, crackers, chips, snack cakes and pies, pastries,*
34 *pretzels, granola snacks, popcorn, fabricated chips and*
35 *snacks, trail mix, nuts, edible seeds, dried fruit snacks,*
36 *meat snacks, and snack mixtures. Except for popcorn,*
37 *snack foods only include items that are sold in a condition*
38 *suitable for consumption without further processing,*
39 *including, but not limited to, cooking, heating, or*
40 *thawing.*



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

5 SEC. 4. This act provides for a tax levy within the
6 meaning of Article IV of the Constitution and shall go into
7 immediate effect. However, the provisions of this act shall
8 become operative on the first day of the first calendar
9 quarter commencing more than 90 days after the
10 effective date of this act.

