

Senate Fiscal Agency
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SFA



BILL ANALYSIS

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Senate Bill 734 (Substitute S-2 as passed by the Senate)
Senate Bill 773 (Substitute S-2 as passed by the Senate)
Sponsor: Senator Bill Schuette (S.B. 734)
Senator Dale L. Shugars (S.B. 773)
Committee: Finance

Date Completed: 1-13-00

RATIONALE

In Michigan, the sales and use taxes do not apply to food for human consumption, except prepared food intended for immediate consumption. "Prepared food intended for immediate consumption", as defined under the General Sales Tax Act, essentially refers to all food and drink sold in restaurants or other food service establishments where food is prepared and served for immediate consumption either on or off the premises. The application of the sales tax to prepared food intended for immediate consumption extends to free or minimal-cost meals provided by employers to restaurant employees. Under the Michigan Administrative Code, meals provided to employees are taxable (R 205.116). When meals are provided without charge, restaurant (or other food service establishment) owners are required to pay sales tax based upon the actual cost of the meals. (For example, if an employee is given a meal that lists for \$5 on the menu but actually costs \$2, the 6% tax is supposed to be applied to the \$2 cost.)

It has been pointed out that it is a common custom for restaurants to provide employees with meals for free or a minimal cost while on the job, and that many restaurant owners are unaware that this benefit is subject to the sales tax. Recently, there have been reports of restaurants that, after routine audits by the Department, have been presented with substantial tax bills for having failed to pay sales tax on employee meals. Some people feel that, to encourage restaurants to continue to provide meals to employees, free or low-cost meals should be exempt from both the sales and the use taxes.

CONTENT

Senate Bill 734 (S-2) would amend the Use Tax Act to provide that the tax would not apply to food and nonalcoholic beverages provided during work hours by an employer to employees who were primarily employed in the business of preparing or selling prepared food intended for immediate consumption.

Senate Bill 773 (S-2) would amend the General Sales Tax Act to provide that the tax would not apply to food and nonalcoholic beverages provided during work hours for free or at a reduced rate by an employer to employees who were primarily employed in the business of preparing or selling prepared food intended for immediate consumption.

MCL 205.94d (S.B. 734)
205.54g (S.B. 773)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Many restaurant employees work long hours, often at unpopular times of the day and/or the week, for relatively low wages. It is common for restaurants, fast-food establishments, lodging establishments, and other establishments where food is prepared for immediate consumption to provide meals to employees, at no cost or at a minimal cost, as a fringe benefit. Providing meals to employees can have several positive benefits. It can reduce waste, boost morale, engender loyalty among employees, and help employees to be more knowledgeable about the foods they prepare and serve, and thus improve customer service.

The current tax treatment of free or reduced-cost employee meals is counterproductive; in effect punishing restaurant employers for providing a benefit to employees whom they may wish to help and retain. By removing this disincentive, the bills would encourage restaurant employers to continue the long-standing custom of providing meals to employees.

Opposing Argument

Article 9, Section 8 of the State Constitution states that no sales or use tax shall be levied on the sale or

use of food for human consumption, except in the case of prepared food intended for immediate consumption. Clearly, prepared food intended for immediate consumption, whether distributed to customers or employees, is taxable. The bills would attempt to reverse this constitutional provision.

Response: Article 9, Section 8 allows the sales or use tax to be applied to "prepared food intended for immediate consumption *as defined by law*" (emphasis added). The General Sales Tax Act contains an extensive definition of prepared food intended for immediate consumption; however, it also specifically exempts certain foods sold under certain conditions, such as juice or milk sold from vending machines. Thus, specifically exempting from the taxes food provided to employees engaged in preparing or selling food would not violate the State Constitution, and would not be without precedent.

Legislative Analyst: G. Towne

FISCAL IMPACT

Senate Bills 734 (S-2) and 773 (S-2) would reduce sales and use tax revenue by approximately \$6.6 million.

Fiscal Analyst: R. Ross

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.