

RESOLUTION 14-06-2017 (REVISED)

DIGEST

Taxation: Exempt Medicines and Nutritional Supplements from Sales Tax

Amends Revenue and Taxation Code section 6359 to provide that over-the-counter medicines and nutritional supplements are not subject to the sales tax.

RESOLUTIONS COMMITTEE COMMENTS

History:

No similar resolutions found.

Reasons:

This resolution Amends Revenue and Taxation Code section 6359 to provide that over-the-counter medicines and nutritional supplements are not subject to the sales tax. This resolution should be approved in principle because over-the-counter medicines and nutritional supplements are consumable necessities of life for many people, but unlike food and prescription medication, they are subject to the sales tax.

Sales taxes hit people in greater proportions the poorer they are; while we recognize and ease that burden in our exemption of food and prescription drugs found in §§ 6359 and 6369, we fail to do so with over-the-counter medicines and supplements. It is a well-known economic reality that the poor pay a significantly higher percentage of their income on sales taxes than their more well-off compatriots. That's because the poor typically spend about three-quarters of their income on items that are subject to sales tax, whereas top earners only end up spending about a sixth of their income on taxable items. This is especially problematic with over-the-counter medicine, which lower-income individuals are more reliant on due to their lack of prescription drug coverage. This currently regressive tax on medicine and supplements should be, and is corrected, by this Resolution.

In addition to supporting the principles of tax fairness, we should extend the sales tax exemption to prevent unreasonably creating an economic incentive to over-use (dangerous, harmful, and expensive) prescription medication over potentially more beneficial (and much lower cost) natural remedies.

The Resolutions Committee initially recommended disapproval of this resolution. The full Conference voted to approve.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to add Revenue and Taxation Code section 6359 to read as follows:

1 § 6359

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

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

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

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

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

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

19 ~~(d)~~ None of the exemptions in this section apply to any of the following:

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

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

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

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

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

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

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

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

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

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

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

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: Medicines and nutritional supplements are consumable necessities of life for many people, but unlike food, they are subject to the sales tax. Sales taxes hit people in greater proportions the poorer they are; while we recognize that in our exemption of food and prescription drugs, we fail to do so with over-the-counter medicines and supplements.

The Solution: By exempting over-the-counter medicines and nutritional supplements from the sales tax, we ease the burden on buying them and enable more people to consume these necessities.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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