

MEMBERS PRESENT:

CHAIRMAN PRICE
VICE CHAIRMAN CRADDOCK
ASSEMBLYMAN CHANEY
ASSEMBLYMAN COULTER
ASSEMBLYMAN DINI
ASSEMBLYMAN MANN

ASSEMBLYMAN BERGEVIN
ASSEMBLYMAN MARVEL
ASSEMBLYMAN RUSK
ASSEMBLYMAN TANNER
ASSEMBLYMAN WEISE

MEMBERS ABSENT:

NONE

Chairman Price called the meeting to order at 2:30 p.m. for the purpose of going through AB 616, making any technical changes that might be necessary.

Mr. Price called upon Frank Daykin, Legislative Counsel, to answer some questions that have been raised. Mr. Price stated that the first question was in regards to page 5, line 4, which states the population in 1974 and line 16 of the same page which states 1975. Should these two dates be the same. Mr. Daykin stated that both figures should be the same and should read 1974.

Mr. Daykin went on to explain that this came from a suggestions from Howard Barrett because he has to use the figures in calculating budgets. He has to use the population of July 1 of the even number year preceding the biennium.

Mr. Daykin also stated that the Senate had decided that instead of the Provisional Estimate, they would use the certification by the Governor, which is gotten from the State Planning Coordinator.

Mr. Price stated that he thought this is what this committee wanted to do. Mr. Bergevin stated that the committee had not really ever talked about this or the state budget in general.

Mr. Daykin explained that the Provisional Estimate, if it is gotten from the Census Department is, in this state, going to be based on what the Planning Coordinator is guessing. The Census Department is going to ask the Planning Coordinator for the figure so they might as well get this figure from there to begin with.

Mr. Dini stated that he thought that the Department of Commerce gives the Governor the figures and then the Planning Coordinator breaks it down by county and city. Mr. Daykin stated that that was the way that he thought it worked, but as he was told the Coordinator's office is where the Department of Commerce gets the Provisional and even the Revised Estimate in between census. This is done in any state that has an agency that undertakes to prepare these figures instead of making any attempt to make their own estimate.

Mr. Mann pointed out that if that is where the figures come from then it really didn't matter which agency they used. Mr. Daykin stated that this was true except that it could take longer to get it from the Department of Commerce and thus it would be less up to date.

Mr. Mann suggested that perhaps this was the type of technical amendment that should be made in a conference committee. Mr. Price stated that he would rather catch everything possible and keep the bill as clean as possible.

Mr. Mann further stated that he would like to have the amendments put into two categories, one which deals with purely technical amendments and all the others in another amendment.

Mr. Daykin stated that he could prepare two separate amendments to accomodate this type of thing so that they could be handled easier on the floor.

It was decided that the change to the Governor's figures would be a technical amendment. The committee agreed to change this to go with Governor's figures rather than the Department of Commerce since they both come from the same source.

Mr. Price moved on to the bottom of page 9, lines 48 & 49 which deals with figuring of average % of inflation. Mr. Price stated that he had been advised that there were several ways to figure this % and wondered if it should be tied down more tightly in the bill.

Mr. Daykin stated that he felt that this had been corrected when they inserted the term "multiplied" on page 6, line 2. Mr. Miles explained to the committee how the percentage figure had been obtained.

Ex:	1978	202.0			
	1973	-137.6			
		<u>64.4</u>	÷	137.6	= 46.8 ÷ 5 = 9.36 x 80% = 7.48%

Mr. Daykin stated that he felt that this was clearly spelled out as to how this should be worked. Mr. Miles also stated that it was the Tax Department that had to be convinced on how it should work. He added that as long as they were dealing with the index itself and what you can't do is compute the percentage increase of each individual each, add then up, and then divide by 5 (if there were 5 years). This way you would obtain a different figure which actually would be lower percent.

Mr. Nickson stated that there was no question in his mind as to how this should be calculated.

Mr. Weise questioned whether this really read the way they wanted it to. He questioned the term "average annual percentage". Mr. Daykin explained that the annual percentage was for 60 months. Mr. Weise stated that annual denotes a 12 month period. Mr. Daykin stated that this was true; what this connotes is taking the percentage



for each month and annualizing it by multiplying by 12. If in fact you take the annual figures for the year - not taking percentages - but taking difference in the index each time and dividing it out properly you have to come up with the same answer. Mr. Miles stated that this was correct as long as you deal through the index.

Mr. Price asked if line 3 of this page refers to the calendar year or the fiscal year. Mr. Daykin stated that it had to be the calendar year.

Mr. Price stated that he had received a number of letters that dealt with voter registration. This part of the bill is found on page 15 at the top of page. The letters bring out a conflict with 3rd Saturday and 5th Saturday. Copies of these letters explaining the problem are attached to these minutes as Exhibits A and B. Mr. Daykin stated that this problem could be solved by getting the bill passed quickly. He stated that if anyone can assure that this bill could be passed quick enough there is no reason not to have the 5th Saturday left in it. This date would have to be April 25. However, if they cannot get the bill passed by this date, Mr. Daykin stated that they should give the people the additional two weeks to get registered.

To Mr. Price's question regarding eligibility, Mr. Daykin explained that the people that register after the 5th Saturday before the election (April 28) would only be eligible to vote on this question. He stated that there was no reason why one cannot be eligible to vote upon one question and not upon another.

In reply to Mr. Mann's question, Mr. Daykin stated that it would be possible in the extreme to have this out only 30 days before the election and that even this is self imposed and that a question can be placed on the ballot less than 30 days before an election. The constitution doesn't govern this particular thing.

Mr. Price inquired how line 5 regarding sample ballot would effect the unincorporated areas. Mr. Daykin explained that they would not receive a sample ballot and this was carried forward from similar provisions to save money.

To Mr. Mann's question, Mr. Daykin replied that there was no law that required that they have sample ballots and that they would not be violating any statute. There is no constitutional provision or statute otherwise applicable and what they are doing is shutting off to save money and they are appropriating special for this election.

Mr. Mann stated that he felt that they were setting a lot of precedents with this package and that it may be necessary to violate some of these traditions.

In answer to Mr. Price's question regarding costs, Mr. Nickson stated that he would have no figures that would give them an estimate as to how much it would cost to get sample ballots to the unincorporated areas.



Ed Greer, Clark County School District, stated that he had a question on the cap calculations and they wanted to make sure that Mr. Nickson would agree to this as he would be certifying this.

Mr. Greer stated that it dealt with language on page 5, line 31. The question was that fund referred to includes everything but the ending fund balance, which is the way that it was calculated and they were anxious that Mr. Nickson would accept that because they would hate to see him just accepting the accounts 100-900 as the expenditures. This does include contingency reserve and also the NRS conversion account that necessary for paying off because of their accrual accounting techniques. Mr. Nickson stated that providing the ending balance is within the limitations set for in the regulations, they would get credit for the contingency reserve.

Mr. Price stated that he had a question on the personal property tax removal which was covered in AB 58 and when it would be effective. Mr. Daykin stated that as this is written it is a direction for assessment and this puts it out of the assessment. Personal property which is on the unsecured rolls would be exempt in 1979-80 and other personal property that was on the secured rolls would still be taxed because you are really paying the tax for the last year.

Mr. Mann stated that this is what has got to be clear, because come July 1 the people will still have to pay the bill. He added that the committee had wanted to have immediate tax relief on this; but had forgotten that taxes are always paid on the year behind. The intent of the committee had been to get the tax relief and to have the relief by July 1 of this year.

Mr. Daykin stated that since this bill has been passed by the Assembly it would be necessary to persuade the Senate to put an amendment on for this purpose. There is no legal obstacle to doing this, it is simply that this bill does not yet do it.

Mr. Mann inquired whether this was clarified in AB 616, that the property tax relief should be July 1. Mr. Daykin stated that there was no question in AB 616, but what the rate is reduced effective July 1 for everyone. AB 616 deals with the rate and reducing them for the year 1979-80 and following. Mr. Daykin stated that 1978-79 assessment which will be paid July 1 will be paid at the rate prescribed in AB 616.

Mr. Nickson asked Mr. Daykin since the Tax Department is to certify the tax rates on May 1 by statute; should there be inclusion in the bill for the certification to be delayed this year and be certified after the bill is passed. Mr. Daykin stated that this might be appropriate language. In AB 616 there is provision that the Tax Department shall adjust any of the budgets. If there is a risk that this will not be passed by May 1, then the section proposed by Mr. Nickson should be included.

Mr. Price stated that he felt that this should be put along with the 5th Saturday and held in abeyance until they can see how everything is moving.

Mr. Dini turned to page 6, line 45, and asked if this was the escape clause for new schools being built. Mr. Daykin stated that it was an escape clause for whatever they want to do in the local district, if they are willing to vote for it.

Mr. Dini went on to say that if their public bond issue on May 8 were to pass, the school would not be ready for occupancy for several years, would they be able to get the money for staffing through this clause. Mr. Bergevin stated that the bond issue would be outside of the cap and that some of the staffing patterns would grow with the projected enrollment. If that is not enough then this escape clause could be used if they could obtain a 2/3 vote on the issue.

Mr. Mann stated that in Lyon County's case where there is a new school coming and they do not have double sessions, that you are not going to be able to resolve that problem other than if the class size is higher and the teachers can be transferred. This will not wholly solve the problem based on population increases. He also stated that he felt it might not be that severe of a problem because they would have a two year lag time.

Craig Blackham, Lyon County School District, stated that they have plans of new schools coming on in probably 1980 and 1981 for the Lyon County School District. For them to operate 4 new additional facilities in the area it would cost them approximately 3/4 of a million dollars or about 17% over and above the existing operating general fund money. In the event that they took this to the voters to extend that allowable increase and it was defeated, he wondered what would happen. Do the school buildings sit empty. He stated that he did understand that staffing patterns are going to pick up with their double sessions but they think that to open the 4 new facilities will cost about 17% more than they have available under the cap.

Mr. Craddock stated that it seems to him like the current staffing and projected enrollment will cover that. Mr. Blackham stated that it would not.

Mr. Mann stated that he felt that if they could get the bond passed then the people would also be willing to go along with the staffing of it. He would suggest that perhaps they should request the override at the same time that they have the bond on the ballot. This would let them know if the people would be willing to go along with it down the road.

Mr. Bergevin asked that if there was no spending cap would they have sufficient increase in their assessed valuation to get this 17% that they are projecting. Mr. Blackham replied that they would expect that with the building going on in the area, along with some business that there might be the available revenue to do it.

Mr. Bergevin went on to say that if they did not do something to offset Question 6 in this manner, what would the district do when Question 6 passed and they were cut back even further. Mr. Blackham stated that they did not have the answer; but right now by statute they must provide facilities for youngsters. This is what their trustees are attempting to do. Mr. Mann pointed out that they are required to provide an education but it says nothing about facilities.

Mr. Mann stated that if they could sell the worthiness of their project then the people are going to override the cap. Mr. Dini stated that it was very difficult to get 2/3 majority on a bond issue that only requires 51% to pass.

Mr. Tanner then presented the committee with a memorandum from Dan Miles regarding Exempting Food from Sales Tax. A copy of this is found attached to these minutes as Exhibit C. The portion of the information on Iowa can be found on pages 2 and 3 of the memo and also on the last two pages of it. Mr. Tanner stated that perhaps the food stamp method might be the route to go from an administrative standpoint. However, the point should be made they should tie it to the 1974 federal food stamp list and then let the Tax Department make any additional changes as needed.

Mr. Mann stated that future legislatures could also make changes if they wished.

Mr. Dan Miles, Deputy Fiscal Analyst, stated that there had been no significant changes in the food stamp list since 1974, the year of its conception.

Mr. Tanner pointed out that the last two sheets of the memo covers the Iowa regulations. Mr. Tanner also pointed out that Mr. Nickson had brought over the federal regulations dealing with food stamp list. This is attached to these minutes as Exhibit D.

Mr. Tanner stated that there were some problems with the Iowa definitions and that he would hate to see the committee get involved in these. This would be found on the last page dealing with meals.

Mr. Nickson stated that this would give him the guidelines that he needs to develop the regulations that will be needed.

Mr. Tanner then asked Frank Daykin if the committee should prepare a letter of intent for the Tax Department. Mr. Daykin stated that it would better, if the committee wanted to give a declaration of legislative intent, to attach it as a transitory section to the bill and then let the two houses enact it. Then it really would be legislative intent. According to Mr. Daykin, a letter of intent would not have any weight in court.

The committee decided to have Mr. Daykin draft a transitory section for the bill declaring legislative intent. This also would be

considered a technical amendment, because they are not actually departing from what there already is in the bill but merely spelling it out more clearly for the Tax Department's benefit.

Mr. Mann moved that the committee adopt this and Mr. Tanner seconded the motion. The motion carried unanimously.

Ed Greer, Clark County School District, stated that he would like to present some figures to the committee which would better demonstrate impact than the figure being used. He added that he would get these figures to the committee in written form for their information.

Mr. Greer stated that the figures would be budget since 1977-78, weighted enrollment, cost per student and the percent of increase from previous year. The reason that he was doing this is that it immediately sets out enrollment growth and just gives the impact which would relate to the cost of living.

Budget for Clark County School District for 1977-78, \$115,914,050. Weighted enrollment 82,120 and the cost per student \$1,412. Budget for 1978-79, \$133,434,900, Weighted enrollment 84,000, cost per student \$1,589. This is a 12.5% increase. Budget for projected 1979-80, with 8% increase and their operating budget is \$148,534,568. Mr. Price inquired if this was their tentative budget. Mr. Greer stated that this was where the confusion has been. This is their projection of actual budget. Weighted enrollment is projected at 84,878 and that is per student cost of \$1.750. This percent increase will be 10.1%, if the Governor's budget took place and there was no cap.

Mr. Greer pointed out that the Assembly cap would place the budget at \$142,032,360, with a weighted enrollment of 84,878 and the cost per student would be \$1,673. The percent increase from the previous year would be 5.2%. The Senate cap on the 80¢ would create a cost per student of \$1,714 and this would be a 7.9% increase.

Mr. Greer stated that he would submit this information to Mr. Miles with the appropriate backup calculations.

Mr. Mann moved for adoption of the proposed amendments which had been discussed this day. Mr. Marvel seconded the motion. The motion passed unanimously.

Mr. Mann moved that the committee "amend and do pass" AB 616 and Mr. Tanner seconded the motion. The motion passed 10-1 with Mr. Dini voting against the motion.

A discussion was held regarding how the bill would be handled and what would happen down the road when conferences would have to be held. It was decided that they would try to have any conference committee consist of the committee as a whole. It was also decided that it really was too early to project how this would be handled. It was also decided that the Assembly and Senate Taxation Committees would sit down and discuss the two packages Tuesday, April 10.

The next point of discussion was whether the bill should be re-referred to Ways and Means or handled by a committee of whole on the floor. It was decided that the committee would rather see it handled by a committee of the whole, if Ways and Means would agree.

Mr. Mann stated they had discussed drafting a bill that set up a fund of perhaps \$1,500,000 to go to Interim Finance to give them the funds and ability to handle any problems that this bill may create. This would be strictly on an emergency basis and the entity having problems would really have to present a good case. He added that the money may not be needed but he felt it should be available.

Mr. Mann moved that the committee request a bill be drafted to set up this special fund which Interim Finance would handle. Mr. Bergevin seconded the motion.

Mr. Dini questioned whether this was beyond the scope of Interim Finance to handle as it was just to deal with state agencies.

Mr. Mann stated that they could also get this authority for this special situation.

Mr. Craddock stated that he felt it was necessary for the protection of the special districts such as 318 which may find themselves in real trouble under the cap.

Mr. Rusk stated that he felt that fiscal design of the plan was such that he did not feel that there was going to be that much of a problem and questioned the definition of emergency.

The motion passed with Mr. Weise voting against it.

As there was no further business to conduct, Chairman Price adjourned the meeting.

Respectfully submitted,

Sandra Gagnier
Sandra Gagnier
Assembly Attache

Also attached to these minutes:

Exhibit E, Fiscal Note on AB 616

Exhibit F, Letter from Tax Department regarding proposed Declaration of Intent on exemption of food tax

60TH NEVADA LEGISLATURE

ASSEMBLY TAXATION COMMITTEE
LEGISLATIVE ACTION

Date: April 3, 1979

SUBJECT: AB 616, Fixes statutory limits on state budget, on expenditures by local governments and on general tax rate.

MOTION:

AMEND AND Do Pass XX Amend _____ Indefinitely Postpone _____ Reconsider _____

Moved By: Mr. Mann Seconded by: Mr. Tanner

AMENDMENT: As set forth in the minutes, basically technical amendments

Moved by: Mr. Mann Seconded by: Mr. Marvel

AMENDMENT: _____

Moved by: _____ Seconded by: _____

VOTE:	MOTION		AMEND		AMEND	
	Yes	No	Yes	No	Yes	No
Price	X	_____	X	_____	_____	_____
Bergevin	X	_____	X	_____	_____	_____
Chaney	X	_____	X	_____	_____	_____
Coulter	X	_____	X	_____	_____	_____
Craddock	X	_____	X	_____	_____	_____
Dini	_____	X	X	_____	_____	_____
Mann	X	_____	X	_____	_____	_____
Marvel	X	_____	X	_____	_____	_____
Rusk	X	_____	X	_____	_____	_____
Tanner	X	_____	X	_____	_____	_____
Weise	X	_____	X	_____	_____	_____
TALLY:	10		11			

ORIGINAL MOTION: Passed XX Defeated _____ Withdrawn _____

AMENDED & PASSED _____ AMENDED & DEFEATED _____

AMENDED & PASSED _____ AMENDED & DEFEATED _____

Attached to Minutes April 3, 1979

CITY OF RENO

OFFICE OF THE CITY CLERK

GILBERT F. MANDAGARAN
CITY CLERK
(702) 785-2030

POST OFFICE BOX 7 RENO, NEVADA 89504

March 7, 1979

DONALD J. COOK
CHIEF DEPUTY CITY CLERK
(702) 785-2032

Honorable Robert Price
Chairman, Committee on Taxation
Legislative Building
Capitol Complex
Carson City, Nevada 89710

Subject: Assembly Bills Nos. 2 and 59 - Provides for
Submission at a Special Election of Amendments
to Sales and Use Tax Law

Dear Mr. Price:

Currently before the Committee on Taxation are Assembly Bills Nos. 2 and 59 which provide for submitting amendments to the Sales and Use Tax Law at a special election scheduled for June 5, 1979, which date coincides with our general municipal election.

Upon review of both Bills, it became apparent that some complications may arise in attempting to consolidate both the special election and municipal election unless certain wording contained therein is amended prior to their final passage.

Of specific concern is Section 4, Subsection 3 of both Bills which provide for close of voter registration on the third (3rd) Saturday preceding the election. As our municipal elections are governed by the provisions of the election laws of the State of Nevada, Section 293.560 Nevada Revised Statutes (NRS) provides that registration shall close on the fifth (5th) Saturday preceding the election. As a result, close of registration for the municipal elections will precede close of registration for the special election by two weeks.

Those individuals registering to vote during this added two week period will only be allowed to vote on the sales tax question and not for the municipal ballot.

Honorable Robert Price
Page 2
March 7, 1979

Confusion on the part of the voter may well result believing they are qualified to vote the full ballot. Of particular concern would be the elderly who may well wish to register for both the municipal and special elections and to find they may only vote on the sales tax question.

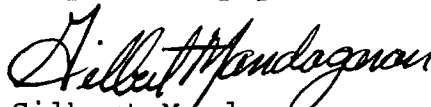
Added election costs will also be incurred as separate ballots must be purchased in order to accomodate those qualified to vote only the one ballot; added board workers will be required, and separate voting machines to contain the sales tax ballot will be needed.

On the basis of the information provided, it is respectfully requested that consideration be given to amending Section 4, Subsection 3 to read "Registration must close at 9 p.m. on the fifth Saturday preceding the special election."

Any consideration to providing the sales tax question to the County Clerk on or before May 1, 1979, would be greatly appreciated, as this would allow us to incorporate such wording in our Sample Ballots scheduled for printing on May 9, and mailing on or before May 21, 1979.

If I can be of any further assistance to you, please do not hesitate to contact me.

Respectfully yours,


Gilbert Mandagaran
City Clerk

GM/11

xc: Assemblyman Steve Coulter
Assemblyman Bob Rusk
Mayor Bruno Menicucci
Henry Etchemendy, City Manager

WASHOE COUNTY*"To Protect and To Serve"*

OFFICE OF
REGISTRAR OF VOTERS
ANN ROLLINS, Registrar

WASHOE COUNTY COURTHOUSE
POST OFFICE BOX 11130
RENO, NEVADA 89520
PHONE: (702) 785-4194

March 9, 1979

Assemblyman Bob Price, Chairman
Assembly Committee on Taxation
Legislative Building
Carson City, Nevada 89710

Re: A.B. 2, A.B. 59, S.B. 32, S.B. 204

Dear Mr. Price:

I wish to call to your attention a serious deficiency in the subject bills, all of which contain language concerning the holding of a special election on June 5, 1979, wherein the voters will express themselves concerning amendment of the Sales and Use Tax Act of 1955, particularly with relation to food.

All four bills require that registration for the special election close at 9:00 p.m. on the third Saturday preceding the special election. The bills also imply that the special election be consolidated with any other elections being held on the same date. Reno and Sparks elections will be held on June 5, and the general election statute mandates that close of registration for these elections be at 9:00 p.m. on the fifth Saturday preceding the election. If the language of the subject bills is not changed to conform to this statutory requirement, I foresee an irreconcilable conflict in that persons registering for the city elections will be cut off two weeks before those who wish, at the last minute, to register to vote on the statewide question. This would preclude inclusion of the statewide question on the city ballots and would have the effect of causing a separate election to be held simultaneously with the city elections.

It is possible that this could be remedied by a provision in whichever of the subject bills passes that registration time is extended for all citizens, regardless of existing law, to the close of registration time designated for the statewide question. If this is not possible, then every effort should be made to assure the passage of the chosen bill in time for the regular city registration deadline to apply to both city elections and the special election to vote on the state question.

Assemblyman Bob Price
March 9, 1979
Page 2

The second alternative is most undesirable in view of the pure volume of work required to process and prepare final election rolls including rosters and other materials in time for election day.

Sincerely yours,

Ann Rollins
(Mrs.) Ann Rollins
Registrar of Voters

AR:rp
cc:

Committee Members of
Assembly Committee on Taxation
R. W. McDonald, Esq.
Commissioner Bill Farr
Mr. John A. MacIntyre

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU

LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710



EXHIBIT C
LEGISLATIVE COMMISSION (702) 885-5627
DONALD R. MELLO, *Assemblyman, Chairman*
Arthur J. Palmer, *Director, Secretary*
INTERIM FINANCE COMMITTEE (702) 885-564
FLOYD R. LAMB, *Senator, Chairman*
Ronald W. Sparks, *Senate Fiscal Analyst*
William A. Bible, *Assembly Fiscal Analyst*

ARTHUR J. PALMER, *Director*
(702) 885-5627

FRANK W. DAYKIN, *Legislative Counsel* (702) 885-5627
JOHN R. CROSSLEY, *Legislative Auditor* (702) 885-5620
ANDREW P. GROSE, *Research Director* (702) 885-5637

February 26, 1979

MEMORANDUM

TO: Assembly Taxation Committee
FROM: Dan Miles, Deputy Fiscal Analyst
SUBJECT: Exempting Food From Sales Tax

We have obtained food exemption regulations from California, Washington and Iowa. The exemption provisions of California and Washington are very similar, however, Iowa's is different. California and Washington exempt "food products" and then through regulation provide a "shopping list" to guide retailers. Iowa, on the other hand, exempts all foods eligible for food stamps. Below is a brief explanation of each state and attached are materials received from each.

California

Law: Exempts "food products" and lists general categories of foods and food products.

Excludes food products served as meals on or off the premises.

Excludes food products prepared or served for consumption at tables, chairs, or counters and from trays, glasses or dishes.

Excludes food products sold for immediate consumption when parking facilities are provided for patrons for consuming food.

Excludes food sold where admissions are charged.

Excludes food products served hot.

Excludes medicines or dietary supplements.

Regulations:

Regulations reiterate the California law in addition to providing extensive lists of taxable items.

Assembly Taxation Committee
February 26, 1979
Page 2

Vending Machines:

33% of vending machine sales of cold items are considered taxable. Hot products are taxable. Carbonated beverages are taxable.

Washington

Law: Exempts "food products" and lists general categories of foods and food products. Washington's exemption was the result of an initiative petition and, therefore, neither the Executive nor Legislative branches had a hand in its drafting.

Excludes food products prepared or served for consumption at tables, chairs, or counters or from trays, glasses or dishes.

Excludes food products ordinarily sold for immediate consumption where parking facilities are provided for patrons for consuming foods.

Excludes food products sold where admissions are charged.

Regulation:

Regulations explain the law as well as provide detailed lists of normally exempt and non-exempt items.

Vending Machines:

Food products exempt in the store are also exempt in vending machines unless sold hot, in open containers, with tableware or where premises for consumption are provided. Carbonated beverages are taxable.

Iowa

Law: Exempts food for human consumption which may be purchased with food stamps regardless of whether the retailer accepts food stamps.

Regulation:

Regulations reiterate the general law and provide detailed lists of exempt foods and non-exempt items.

Assembly Taxation Committee
February 26, 1979
Page 3

Excludes lunch counter or prepared foods for human consumption on the premises of the retailer.

Excludes foods normally exempt, but which have added ingredients or preparation that no longer meets food stamp qualifications.

Excludes meals prepared for immediate consumption on or off the premises. Meals consists of foods which cannot be consumed without some article of tableware.

Excludes meals which may be eligible for food stamps.

Excludes alcoholic beverages, tobacco and hot foods or hot food products ready for immediate consumption.

Vending Machines:

All vending machine sales are taxable.

Administration:

Administration of the exemption provisions in these three states presents similar problems at the State Tax Department level. In each state the Department must enforce the law by auditing tax returns and providing regulation. In each case the retailer is actually administering the law and the Department's responsibility is to determine how well that's being done. It would appear that administering the exemption at the grocery store would be easier in Iowa since food stamp regulations are used. Iowa, however, uses those food stamp regulations in effect on 7/1/74 and if significant changes should occur in foods eligible for stamps, significant administrative problems could arise at the check-out counter. Conversely, to allow food exemptions to automatically change with food stamp changes would remove control over the exemption from the state and place it with the United States Department of Agriculture.

It seems impractical to try and include all possible exemption conditions in the text of the Sales Tax Law. It would appear then, that it is most important for the Legislature to express its intent in the exemption language and provide sufficient authority for the Department of Taxation to interpret and enforce the law as intended. Section 111 of A.B. 2 and A.B. 59 seems to provide that authority.

DM:ca

STATE OF CALIFORNIA—BOARD OF EQUALIZATION
SALES AND USE TAX REGULATIONS

BUSINESS TAXES GENERAL BULLETIN 69-7 (Contd.)

(1) Candy, confectionery and nonmedicated chewing gum are included within the definition of a food product for human consumption. Included within the definition of food products are breath mints and nonmedicated lozenges. Items such as antacid mints, cough drops and medicated lozenges are not a food product and will continue to be subject to tax. Any chewing gum containing aspirin, laxative or other medication is not a food product and is therefore subject to the tax.

(2) Retail sales of "hot prepared food products" are subject to tax when sold for consumption on or off the premises of the retailer. The tax is applicable not only to sales of hot prepared food products by restaurant type operations but also to such sales by grocery stores, delicatessens, department stores, caterers and specialty shops selling chicken, pizza, barbecued spare ribs or other hot prepared foods.

"Hot prepared food products" means those products, items or components which have been prepared for sale in a heated condition and which are sold at any temperature which is higher than the air temperature of the room or place where they are sold. Hot prepared food products include but are not limited to such items as hot meals, hot specialty dishes, hot sandwiches, hot pizza, hot popcorn and nuts, and hot bouillon, consommé and soup.

Hot prepared food products also include any combination of hot and cold food items or components for which a single price has been established, and which are sold in combination for a single price. For example, a combination of coleslaw and a hamburger sold for a single price is subject to tax.

Hot bakery goods and hot beverages such as coffee, tea, cocoa, etc., also are "hot prepared food products" but are exempt from tax when sold for a separate price, unless sold within a place, the entrance to which is subject to an admission charge, or sold for consumption at facilities furnished by the retailer or sold by a drive-in operator.

(f) Whenever a grocer is in doubt as to the proper sales tax application to a particular item, he should make an inquiry by letter addressed to the Tax Counsel, Board of Equalization, P. O. Box 1799, Sacramento, 95808.

(g) This bulletin supersedes Business Taxes General Bulletin 64-6.

TAXABLE NONGROCERY ITEMS

accessories—auto	glassware
adhesive tape	gloves
ammunition	hair dye
appliances—household, auto	hair oil
auto cleaner, polish, waxes	hardware
baby oil	notebooks
batteries—auto	nursery stock
batteries—flashlight	pencils, pens and ink
books	pet supplies and equipment (not food)
bubble bath	pots and pans
cameras	powder (face or body)
chinaware	razors
cigarette lighters	razor blades
clothing	rubber bands

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cosmetics
deodorizers (body)
cashes
distilled spirits
drug sundries
electrical supplies
farm and garden implements
fertilizers
film
firearms
flashlights
flower and garden seeds
flowers
fuel and lubricants
furniture
garden tools and supplies

school supplies
scotch tape
seed (except vegetable)
shaving cream and lotion
shampoo and rinse
shoe laces and polish
silverware
stationery
sun glasses
sun tan lotion
thread
three-in-one oil
tools
toothpaste
toys

TAXABLE GROCERY ITEMS

aluminum foil
ammonia
ant poison
antacid mints
asphalt tile cleaner
bags—lunch
bird seed
bleach—laundry
blueing
bottle brushes
brooms
candles
canning jars and lids
carbonated beverages
cat food
charcoal briquettes lighter fluid
cigarette fluid, wicks, flints
cigarettes
cigars
cleaners and polishes (household)
clothes cleaning fluid
clothes pins
coloring extracts
cough drops
deodorizers (air fresheners)
dietary supplements or adjuncts
dishcloths
dog food
drain cleaners (Drano, etc.)
"Drizit"
dye—clothes

gum (medicated)
insect spray, poison, bombs
kleenex
kotex, tampax, coets, fems
light bulbs and fuses
lighter fluid,
lozenges (medicated)
lye
matches
mops, mop handles
moth protection—all kinds
muffin papers
paper cups, plates, napkins,
table covers
paper towels, drinking straws
parawax
powder (cleaning)
rolaids
rust stain remover
salt—ice cream
sandwich bags
"Saran" wrap
scouring pads
silver polish
soap and detergent
soft drinks (carbonated)
sponges
starch—laundry
table covers—paper
tile cleaner
toilet tissue

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facial tissues	toothpicks
"Flex" drinking tube (straws)	upholstery cleaner
floor wax and applicators	"Vanish"
fly swatters	water softener (laundry)
tork—wooden	water softener salt
freezer tape	wax paper
fuel—cooking, heating	wax remover
furniture polish	whisk brooms
garbage bags	"windex" sprayers
glass cleaner, glass wax	wood and plastic spoons, forks

Regulation 1603. TAXABLE SALES OF FOOD PRODUCTS.

References Sections 6006, 6010.2, 6012, 6359, 6359.1, 6363, 6363.5, 6363.6, 6374, Revenue and Taxation Code.
Food Products Generally, see Regulation 1602.
Alcoholic Beverages, tax reimbursement when served with, see Regulation 1700.
"Free" meals with purchased meals, see Regulation 1670.
Meals served to patients and inmates of an institution, see Regulation 1503.
Vending Machines, when considered selling meals, see Regulation 1574.
Meals at summer camp, see Regulation 1506(e).

New

(a) RESTAURANTS, HOTELS, BOARDING HOUSES, SODA FOUNTAINS, AND SIMILAR ESTABLISHMENTS. The term "boarding house" as used in this regulation means any establishment regularly serving meals on the average to five or more paying guests. The term includes a "guest home," "residential care home," "halfway house," and any other establishment providing room and board or board only, which is not an institution as defined in Regulation 1503 and Section 6363.6 of the Revenue and Taxation Code. The fact that guests may be recipients of welfare funds does not affect the application of tax. A person or establishment furnishing meals on the average to fewer than five paying guests during the calendar quarter is not considered to be engaged in the business of selling meals at retail.

Tax applies to sales of meals or hot prepared food products (see (d) below) furnished by restaurants, concessionaires, hotels, boarding houses, soda fountains, and similar establishments whether served on or off the premises. In the case of American Plan hotels and boarding houses, a reasonable segregation must be made between the charges for rooms and the charges for meals or hot prepared food products. Effective January 1, 1974, charges by hotels or boarding houses for delivering meals or hot prepared food products to, or serving them in, the rooms of guests are includable in the measure of tax on the sales of the meals or hot prepared food products whether or not the charges are separately stated. (Caterers, see (g) below.)

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Soufflé cups, straws, paper napkins, toothpicks and like items that are not of a reusable character which are furnished with meals or hot prepared food products are sold with the meals or hot prepared food products. Sales of such items for such

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C

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purpose to persons engaged in the business of selling meals or hot prepared food products are, accordingly, sales for resale.

(b) "DRIVE-INS." Tax applies to sales of drinks or foods 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 "drive-in" establishment, 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. Food products when sold in bulk, i.e., in quantities or in a form not suitable for consumption on the retailer's premises, are not regarded as ordinarily sold for immediate consumption on or near the location at which parking facilities are provided by the retailer. Accordingly, with the exception of hot prepared food products (see (d) below), sales of ice cream in bulk containers (pints, quarts, etc.), doughnuts, and other individual food items in quantities obviously not intended for consumption on the retailer's premises, sold without eating utensils, trays or dishes and not consumed on the retailer's premises, are exempt from tax. Any retailer claiming a deduction on account of food sales of this type must support the deduction by complete and detailed records.¹

(c) PLACES WHERE ADMISSION IS CHARGED.

(1) GENERAL Tax applies to sales of food products when sold within, and for consumption within, a place the entrance to which is subject to an admission charge, during the period when the sales are made except for national and state parks and monuments.

(2) DEFINITIONS.

(A) "Place" means an area the exterior boundaries of which are defined by walls, fences or otherwise in such a manner that the area readily can be recognized and distinguished from adjoining or surrounding property. Examples include buildings, fenced enclosures and areas delimited by post signs.

(B) "Within a place" means inside the door, gate, turnstile, or other point at which the customer must pay an admission charge or present evidence, such as a ticket, that an admission charge has been paid. Adjacent to, or in close proximity to, a place is not within a place.

(C) "Admission charge" means any consideration required to be paid in money or otherwise for admittance to a place.

"Admission charge" does not include:

New 1. Membership dues in a club or other organization entitling the member to, among other things, entrance to a place maintained by the club or

The records acceptable in support of such a deduction are:

- (a) A sales ticket prepared for each transaction claimed as being tax exempt showing:
 - (1) Date of the sale,
 - (2) The kind of merchandise sold,
 - (3) The quantity of each kind of merchandise sold,
 - (4) The price of each kind of merchandise sold,
 - (5) The total price of merchandise sold,
 - (6) A statement to the effect that the merchandise purchased is not to be consumed on or near the location at which parking facilities are provided by the retailer, and
- (b) A daily sales record kept in sufficient detail to permit verification by audit that all gross receipts from sales have been accounted for and that all sales claimed as being tax exempt are included therein.

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organization, such as a fenced area containing a club house, tennis courts, and a swimming pool. Where a guest is admitted to such a place only when accompanied by or vouched for by a member of the club or organization, any charge made to the guest for use of facilities in the place is not an admission charge.

2. A charge for a student body card entitling the student to, among other things, entrance to a place, such as entrance to a school auditorium at which a dance is held.

3. A charge for the use of facilities within a place to which no entrance charge is made to spectators. For example, green fees paid for the privilege of playing a golf course, a charge made to swimmers for the use of a pool within a place, or a charge made for the use of lanes in a public bowling place.

(D) "National and state parks and monuments" means those which are part of the National Park System or the State Park System. The phrase does not include parks and monuments not within either of those systems, such as city, county, regional, district or private parks.

(3) PRESUMPTION THAT FOOD IS SOLD FOR CONSUMPTION WITHIN A PLACE. When food products are sold within a place the entrance to which is subject to an admission charge, it will be presumed, in the absence of evidence to the contrary, that the food products are sold for consumption within the place. Obtaining and retaining evidence in support of the claimed tax exemption is the responsibility of the retailer. Such evidence may consist, for example, of proof that the sales were of canned jams, cake mixes, spices, cooking chocolate, or other items in a form in which it is unlikely that such items would be consumed within the place where sold.

(4) FOOD SOLD TO STUDENTS. The exemption otherwise granted by Section 6363 does not apply to sales of food products to students when sold within, and for consumption within, a place the entrance to which is subject to an admission charge, and such sales are subject to tax. For example, when food products are sold by a student organization to students or to both students and nonstudents within a place the entrance to which is subject to an admission charge, such as a place where school athletic events are held, the sales to both students and nonstudents are taxable.

(d) HOT PREPARED FOOD PRODUCTS

(1) GENERAL. On and after January 1, 1972, tax applies to all sales of hot prepared food products unless otherwise exempt. "Hot prepared food products" means those products, items, or components which have been prepared for sale in a heated condition and which are sold at any temperature which is higher than the air temperature of the room or place where they are sold. The mere heating of a food product constitutes preparation of a hot prepared food product, e.g., grilling a sandwich, dipping a sandwich bun in hot gravy, using infra-red lights, steam tables, etc. If the sale is intended to be of a hot food product, such sale is of a hot food product regardless of cooling which incidentally occurs. For example, the sale of a toasted sandwich intended to be in a heated condition when sold, such as a fried ham sandwich on toast, is a sale of a hot prepared food product even though it may have cooled due to delay. On the other hand, the sale of a toasted sandwich which is not intended to be in a heated condition when sold, such as a cold tuna sandwich on toast, is not a sale of a hot prepared food product. When

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single price has been established for a combination of hot and cold food items, such as a meal or dinner which includes cold components or side items, tax applies to the entire established price regardless of itemization on the sales check. The inclusion of any hot food product in an otherwise cold combination of food products sold for a single established price, results in the tax applying to the entire established price, e.g., hot coffee served with a meal consisting of cold food products, when the coffee is included in the established price of the meal. If a single price for the combination of hot and cold food items is listed on a menu, wall sign or is otherwise advertised, a single price has been established. Except as otherwise provided in (b), (c), or (e) of this regulation, or in regulation 1574, tax does not apply to the sale for a separate price of bakery goods, beverages classed as food products, or cold or frozen food products. Hot bakery goods and hot beverages such as coffee are hot prepared food products but their sale for a separate price is exempt unless taxable as provided in (b), (c), or (e) of this regulation. Tax does apply if a hot beverage and a bakery product or cold food product are sold as a combination for a single price. Hot soup, bouillon, or consommé is considered a hot prepared food product, not a beverage.

(2) AIR CARRIERS ENGAGED IN INTERSTATE OR FOREIGN COMMERCE. Effective as of January 1, 1972, tax does not apply to the sale, storage, use, or other consumption of hot prepared food products sold by caterers or other vendors to air carriers engaged in interstate or foreign commerce for consumption by passengers on such air carriers, nor to the sale, storage, use, or other consumption of hot prepared food products sold or served to passengers by air carriers engaged in interstate or foreign commerce for consumption by passengers on such air carriers. "Air carriers" are persons or firms in the business of transporting persons or property for hire or compensation, and include both common and contract carriers. "Passengers" do not include crew members. Any caterer or other vendor claiming the exemption must support it with an exemption certificate from the air carrier substantially in the form prescribed in Appendix A of this regulation.

(e) FOOD FOR CONSUMPTION AT FACILITIES PROVIDED BY THE RETAILER. Tax applies to sales of sandwiches, ice cream, and other foods sold in a form for consumption at tables, chairs, or counters or from trays, glasses, dishes, or other tableware provided by the retailer or by a person with whom the retailer contracts to furnish, prepare, or serve food products to others.

With the exception food as provided in (b), (c), and above, tax does not apply to sales of food in boxes, cartons or otherwise in a form for consumption other than at tables, chairs, or counters or from trays, glasses, dishes or other tableware provided by the retailer or by a person with whom the retailer contracts to furnish, prepare, or serve food products.

If a retailer of cold sandwiches, ice cream, or other foods sold for immediate consumption, claims exemption from tax of any sales of food products on the grounds that they were sold for consumption other than at facilities of this kind, either he must show that no such facilities were provided or he must keep a careful segregation of his receipts from such sales on separate cash register listings, on copies of sales slips, or in some similar record which can be verified by audit. This paragraph does not apply to sales of hot prepared food products or sales which are taxable under (b), (c), or (d) above.

WAC 458-20-244 (Rule 244) FOOD PRODUCTS

Initiative Measure No. 345, approved November 8, 1977, added new subsections to RCW 82-.08.030 and RCW 82.12.030 exempting certain food products for human consumption away from the retailer's premises from retail sales tax and use tax. There is no food products exemption for business and occupation tax. The effective date of these exemptions is July 1, 1978. The word "tax" as used hereafter in this rule means retail sales tax. "Food products" include generally those products normally ingested by humans for nourishment; but the term excludes seeds, seedlings, trees, and the like, for home gardens, as well as breeding stock of animals, birds, insects, and other animate creatures.

The law exempts most, but not all, food products from tax, but even the food products qualified for exemption are made subject to tax by the law if any one of the following circumstances is present:

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

OR,

b. 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. Where such facilities are provided the tax applies even if the food products are sold on a "take out" or "to go" order and it is immaterial that the products are actually packaged or wrapped and that they are in fact taken from the premises of the retailer;

OR,

c. The food products are sold for consumption within a place (except national or state parks or monuments), the entrance to which is subject to an admission charge. But, even if the admission-charged place is a national or state park or monument such that the admission charge does not negate the exemption, the tax will apply if either circumstances a or b above are present.

VENDORS WHO ARE REQUIRED TO COLLECT TAX

1. Sales of food products are subject to tax when sold by cafes, caterers, restaurants, pizza parlors, food drive-ins, vending machine operators, and businesses which are operated in such a way as to invite or permit consumption of the food at or near the premises where the food is sold. This circumstance is presumed to occur where customers are provided facilities for immediate consumption of food sold, such as tables, chairs, or counters; trays, glasses, dishes, or tableware (whether reusable or not); or a nearby parking area available for immediate use of customers in consuming the food. It is the intent of the law that tax be charged by retailers who sell food products ready for consumption at or near the premises of the vendor by furnishing cups, spoons, straws, or the like to facilitate immediate consumption. If such facilities are provided the tax applies even though the food is sold, packaged, or wrapped "to go" and even if the food is in fact removed from the premises of the retailer and is consumed elsewhere. The test is not where the food is actually consumed but whether the customer is provided any of the described facilities for consumption of the food.

2. Sales by theaters, fair grounds concessions, athletic arena concessions, and any other businesses selling food products within a place to which an admission price is charged are taxable. The only exceptions as to admission-charged areas are national or state parks or monuments, but even sales of food products within such state or national areas are taxable if customers are provided facilities for consumption as described in paragraph #1.

EXEMPT AND TAXABLE SALES BY GROCERS

The following are lists of exempt and taxable items normally sold by grocery stores, supermarkets, and similar businesses. The examples are meant to be illustrative and are not all inclusive.

The exempt products listed are exempt when sold for off premises consumption but are taxable if sold for immediate consumption as described in paragraph #1 above.

Exempt If Consumption Facilities Not Provided

Baby foods	Marshmallows
Bakery products	Mayonnaise
Baking soda	Meat, meat products
Bouillon cubes	Milk, milk products
Candy	Mustard
Cereal products	Noncarbonated soft drinks
Chocolate	Nuts
Cocoa	Oleomargarine
Coffee and coffee substitutes	Olives, olive oil
Condiments	Peanut butter
Crackers	Popcorn
*Diet food	Popsicles
Eggs, egg products	Potato chips
Extracts and flavoring for food	Powdered drink mixes
Fish, fish products	Sandwich spreads
Flour	Sauces
Food coloring	Sherbet
Frozen foods	Shortening
Fruit, fruit products	Soup
Gelatin	Sugar, sugar products, sugar substitutes
*Health foods	Syrups
Honey	Tea
Ice cream, toppings	Vegetables, vegetable products
Jam, jelly, jello	Yeast

The products listed as taxable are subject to tax however sold or prepared.

Specific Classes Of Items Taxable In All Cases

Alcoholic beverages	First aid products
Aspirin	Ice, bottled water (mineral or otherwise)
Beer or wine making supplies	Mouthwashes
Calcium tablets	Nonedible cake decorations
Carbonated beverages	Nonprescription medicines
Chewing tobacco	Patent medicines
Cod liver oil	Pet food and supplies
Cough medicines (liquid or lozenge)	Seeds and plants for gardens
*Dietary supplements or adjuncts	Tonics, vitamins
	Toothpaste

EXHIBIT C

*NOTE: Sales of dietary supplements which are subject to regulation by the U.S. Federal Drug Administration are subject to tax. Regulated dietary supplements are those preparations which provide 50 percent or more of the U.S. Recommended Daily Allowance (U.S. RDA) of essential vitamins and minerals per serving.

Health foods or dietary preparations containing less than 50 percent of U.S. RDAs per serving may be sold tax exempt as food and FDA regulations (21 CFR, chapter I, Part 80) adopted October 12, 1976, effective January 1, 1978, prohibit any claim that such preparations are "dietary supplements." Dietary supplements do not include any food in its raw or natural state, which means that nothing has been done to the product, other than superficial treatment (such as washing its surface), to change the product physically or chemically before marketing.

Dietary adjuncts are vitamin/mineral preparations taken to meet special vitamin or mineral needs occasioned by drug therapy. Dietary adjuncts are not tax exempt food products.

Retailers of food products are required to keep adequate records to demonstrate that any sales claimed tax exempt in fact qualify for exemption under this rule and the law.

COMBINATION BUSINESS

Persons operating a combination of two businesses at one location, one of which provides facilities for consumption on the premises (see paragraph #1, "Vendors Who Are Required to Collect Tax"), such as a lunch counter along with a grocery store or a cafe along with a bakery, are required to keep their inventories, accounting records, and sales receipts segregated between the two businesses. If the two businesses are commingled in operation and accounting, all sales will be deemed subject to tax.

COMBINATION PACKAGES

When a package consists of both food and nonfood products, such as a holiday or picnic basket containing beer and pretzels, cups or glasses containing food items, or carbonated beverages along with cheese and crackers, the food portion may be tax exempt if its price is stated separately; if the price is a lump sum, the tax applies to the entire price.

However, promotional give-aways of nonfood items to enhance food sales, such as coffee sold in a decorative apothecary container or cheese sold in a serving dish are not taxable and are not deemed combination packages where it is clear that the container or dish is simply a gift furnished as a sales inducement for the food. In the same way, promotional give-aways of food items as an inducement for sales of non food items are not exempt (e.g., the sale of fancy crystal ware containing candy or nuts is fully subject to sales tax).

COMMISSARIES OR GROCERY SHOPS IN INSTITUTIONS OR OTHER RESTRICTED (NOT OPEN TO THE PUBLIC) AREAS

Food products sold by commissaries which restrict sales generally to residents, inmates, or a similarly limited group of customers are tax exempt if the food products are for consumption away from the general area reserved for merchandizing such products.

OTHER FOOD VENDORS

1. Restaurants and transportation companies (e.g., air, rail, water), and businesses furnishing meals to employees, see Rule 119.

2. Hotels, motels, boarding or rooming houses, resorts, and trailer camps, see Rule 166.
3. Religious, charitable, benevolent, and nonprofit service organizations, see Rule 169.
4. Certain persons, groups, or institutions purchase food products for purposes of serving meals to individuals and historically have been required to pay sales tax as consumers on such purchases because of a unique relationship between the food purchases and the nature of the services rendered by such groups. Food sales taxed in this way were the following:
 - (a) Furnishing of meals by hospitals, rest homes, sanitariums, and similar institutions to patients as a part of the service rendered in the conduct of such institutions.
 - (b) Serving of meals to members by fraternities, sororities, and other similar groups who reside in one place and jointly share the expenses of the household including expenses of meals provided by them.
 - (c) Providing of meals by public schools, high schools, colleges, universities, or private schools operating lunch rooms, cafeterias, or dining rooms for the exclusive purpose of providing students and faculty with meals as a part of the educational program.
 - (d) Providing of meals by guest ranches or summer camps which, in addition to supplying meals and lodging, offer special recreation facilities and instruction in sports, boating, riding, outdoor living, etc., and which make an unsegregated charge for meals, lodging, and services, and report such charges under the service classification as provided by Rule 166.

Since purchase of food products in any of these four situations has been subject to sales tax in the past, the food products exemption applies to these purchases of food products for human consumption. However, sales of meals by such groups in circumstances other than furnishing them in connection with services in the four situations described above are governed by Rule 119. Further, when such groups do not provide their own meals, but the meals are purchased from caterers or concessionaires, the caterers or concessionaires are making retail sales subject to the tax.

USE TAX

All of the foregoing provisions of this rule dealing with sales tax are equally applicable with respect to the use tax of Ch. 82.12 RCW.

Adopted April 21, 1978

Rules for sales tax exemption on Foods For Human Consumption, Prescription Drugs, Insulin, Hypodermic Syringes, Diabetic Testing Materials, Prosthetic, Orthotic Or Orthopedic Devices.

20.1(422,423) Foods for human consumption. Foods for human consumption which may be purchased with food coupons shall be exempt from sales tax regardless of whether the retailer from whom the foods are purchased is participating in the food coupon program.

20.1(1) Foods eligible for food coupons. These foods shall include all foods which may be purchased with food coupons issued by the United States Department of Agriculture. These include but are not limited to the following general classification of food products:

- a. Seeds and plants for use in gardens to produce food for personal consumption.
- b. Bread and flour products.
- c. Candy and confectionery (includes gum and mints).
- d. Cereal and cereal products.
- e. Cocoa and cocoa products.
- f. Coffee and coffee substitutes.
- g. Dietary substitutes.
- h. Eggs and egg products.
- i. Fish and fish products.
- j. Frozen foods.
- k. Fruits and fruit products including fruit juices.
- l. Ice cubes and bottled carbonated water.
- m. Meat and meat products.
- n. Milk and milk products (including packaged ice cream products).
- o. Oleomargarine, butter and shortening.
- p. Soft drinks and sodas.
- q. Spices, condiments, extracts and artificial food coloring.
- r. Sugar and sugar products and substitutes.
- s. Tea.
- t. Vegetable and vegetable products.

20.1(2) Products not eligible for purchase by food coupons. Various products may not be purchased with food coupons issued by the United States Department of Agriculture and therefore, are not exempt from sales tax. These include but are not limited to the following general classification of products:

- a. Alcoholic beverages.
- b. Pet foods and supplies.
- c. Household supplies.
- d. Paper products.
- e. Soaps and detergents, etc.
- f. Tobacco products.
- g. Cosmetics.
- h. Toiletry articles.
- i. Tonics and vitamins.
- j. Lunch counter or prepared foods for consumption on the premises of the retailer.

20.2(422,423) Food coupon regulations. Food coupon regulations used in determining whether certain foods are eligible for purchase by food coupons and therefore exempt from sales tax shall be those United States Department of Agriculture regulations in effect on July 1, 1974.

20.3(422,423) Non-participating retailer in the food coupon program. A non-participating retailer in the food coupon program is a retailer who may sell foods that are eligible for purchase with food coupons but by his own choice or at the discretion of the United States Department of Agriculture, is not participating in the food coupon program.

20.4(422,423) Determination of eligible foods. Pursuant to rules 20.1, 20.2 and 20.3 in order to be eligible for the sales tax exemption, foods must be the same foods eligible for purchase by food coupons and shall not include foods that in their original state may have been purchased by food coupons but due to changes to the foods such as additional ingredients, preparation, or any other change of state, they are no longer foods eligible for purchase by food coupons.

20.5(422,423) Meals. Meals prepared for immediate consumption on or off the premises of the retailer are not eligible for the sales tax exemption. A meal shall consist of a diversified selection of foods which would not be able to be consumed without at least some articles of tableware being present and which could not be conveniently consumed while one is standing or walking about. A meal would usually consist of a larger quantity of food than that which ordinarily comprises a single sandwich.

20.5(1) Retailers who are considered serving meals shall include those who serve meals off the premises of the retailer such as caterers.

20.5(2) Meals that may be eligible for purchase with food coupons shall not be exempt from sales tax. This shall include carryout plate lunches that are served with articles of tableware. Tableware shall include dishes, glasses and silverware and includes tableware the substance of which shall be paper or plastic.

20.6(422,423) Vending machines. Any food item which is sold through a vending machine shall not be exempt from sales tax.

20.7(422,423) Prescription drugs. Sales of prescription drugs as defined in rule 20.7(1) and dispensed for human use or consumption in accordance with rules 20.7(2) and 20.7(3) shall be exempt from sales tax.

20.7(1) A prescription drug means:

a. any drug or medicine the label of which is required by federal law to bear the statement: "Caution: federal law prohibits dispensing without a prescription", or

b. any drug or medicine which, because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not

Income (SSI) recipients, and their spouses. It also includes senior citizens' centers, apartment buildings occupied primarily by elderly persons or SSI recipients, and their spouses, public or private nonprofit establishments (eating or otherwise) that feed elderly persons or SSI recipients, and their spouses, and federally subsidized housing for the elderly at which meals are prepared for and served to the residents. It also includes private establishments that contract with an appropriate State or local agency to offer meals at concessional prices to elderly persons or SSI recipients, and their spouses.

"Coupon" means any coupon, stamp, or type of certificate provided pursuant to the provisions of this subchapter for the purchase of eligible food.

"Drug addition or alcoholic treatment and rehabilitation program" means any drug addition or alcoholic treatment and rehabilitation program conducted by a private nonprofit organization or institution which is certified by the State agency or agencies designated by the Governor as responsible for the administration of the State's programs for alcoholics and drug addicts pursuant to Pub. L. 91-616 "Comprehensive Alcohol Abuse and Alcoholism Prevention Treatment and Rehabilitation Act of 1970" and Pub. L. 92-255, "Drug Abuse Office and Treatment Act of 1972," as providing treatment that can lead to the rehabilitation of drug addicts or alcoholics.

"Elderly person" means a person 60 years of age or older.

"Eligible food" means: (1) Any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods and hot food products prepared for immediate consumption; (2) seeds and plants to grow foods for the personal consumption of eligible households; (3) meals prepared and delivered by an authorized meal delivery service, or served by a communal dining facility for the elderly or SSI households, to household; eligible to use coupons for delivered meals or communal dining; (4) meals prepared and served by an authorized drug addition or alcoholic treatment and rehabilitation center to households eligible to use coupons for those meals; and (5) in the case of certain eligible households living in areas of Alaska where access to food stores is extremely difficult and the households rely on hunting and fishing for subsistence, equipment for the purpose of procuring food for eligible households, including nets, lines, hooks, fishing rods, harpoons, knives, and other equipment necessary for subsistence hunting and fishing but not equipment for the purpose of

transportation, clothing, or shelter nor firearms, ammunition, or other explosives.

"Meal delivery service" means a political subdivision, a private nonprofit organization, or a private establishment with which a State or local agency has contracted for the preparation and delivery of meals at concessional prices to elderly persons, and their spouses, and to the physically or mentally handicapped and persons otherwise disabled, and their spouses, such that they are unable to adequately prepare all of their meals.

"Nonprofit cooperative food purchasing venture" means any private nonprofit association of consumers whose members pool their resources to buy food.

"Retail foodstore" means: (1) An establishment or recognized department of an establishment, or a house-to-house trade route, whose eligible food sales volume is more than 50 percent staple food items for home preparation and consumption; (2) public or private communal dining facilities and meal delivery services and drug addict or alcoholic treatment and rehabilitation programs; (3) any store selling equipment for procuring food by hunting and fishing to eligible households in Alaska, as specified in the definition of eligible food; (4) any private nonprofit cooperative food purchasing venture, including those whose members pay for food prior to receipt of the food; and (5) a farmers' market.

"Staple food" means those food items intended for home preparation and consumption, which include meat, poultry, fish, bread and breadstuffs, cereals, vegetables, fruits, and vegetable juices, and dairy products. Accessory food items, such as coffee, tea, cocoa, carbonated and uncarbonated drinks, candy, condiments, and spices are not staple foods for the purpose of qualifying a firm to participate in the program as a retail foodstore.

"Wholesale food concern" means an establishment which sells eligible food to retail food stores or to meal services for resale to households.

PART 272—[REDESIGNATED]

Part 272 is redesignated as part 278 as set forth below.
Part 272 is redesignated as part 278 and is revised to read as follows:

PART 278—PARTICIPATION OR RETAIL FOOD STORES, WHOLESALER FOOD CONCERNS AND BANKS

Sec. 278.1 Approval of retail foodstores and wholesale food concerns.
278.2 Participation of retail food stores.

278.3 Participation of wholesale food concerns.
278.4 Procedures for redeeming coupons.
278.5 Participation of banks.
278.6 Disqualification of retail foodstores and wholesale food concerns, and imposition of civil money penalties in lieu of disqualifications.
278.7 Determination and disposition of claims—retail foodstores and wholesale food concerns.
278.8 Administrative review—Retail foodstores and wholesale food concerns.
AUTHORITY: 91 Stat. 958 (7 U.S.C. 2011-2027).

§ 278.1 Approval of retail food stores and wholesale food concerns.

(a) Application. Any firm desiring to participate in the program shall file an application as prescribed by FNS. The FNS officer in charge shall deny or approve authorization, or request more information, within 30 days of receipt of the application.

(b) Determination of authorization. An applicant shall provide sufficient data on the nature and scope of the firm's business for the FNS officer in charge to determine whether the applicant's participation will further the purposes of the program. In making this determination the FNS officer in charge shall consider all of the following:

(1) The nature and extent of the food business conducted by the applicant.

(i) Retail food stores which sell primarily food for home preparation and consumption and in which one or more staple food items, as defined in § 271.2, make up more than 50 percent of eligible food sales shall normally be considered to have food business of a nature and extent which will further the purposes of the program. These stores shall include: Full-line grocery stores; convenience stores; stores which sell meat, poultry, or fish; stands which sell agricultural commodities; farmers markets; milk routes; bread routes; day-old bread stores; bakeries which sell bread; and nonprofit cooperative food-purchasing ventures which are properly licensed to sell food in the state and locality in which they are operating.

(ii) Firms whose primary business is not the sale of food for home preparation and consumption, but who have recognized grocery departments in which staple foods make up more than 50 percent of eligible food sales, shall normally be considered to have food business of a nature and extent which will qualify the store for participation in the program. In determining whether a store's staple food business is sufficient for the store to qualify for participation in the program, the FNS officer in charge shall also consider:

(A) The volume of staple food business the store does;

(B) The amount of sales of staple foods compared to other business conducted by the firm; and

(C) The availability of other authorized food stores in the area.

(iii) Wholesale food concerns whose primary business is the sale of eligible food at wholesale, and in which one or more staple food items, as defined in § 271.2, make up more than 50 percent of eligible food sales, shall normally be considered to have adequate food business for the purposes of the program.

(2) The volume of coupon business which FNS may reasonably expect the firm to do. The FNS officer in charge may consider such factors as the location of a store and previous food sales volumes in evaluating the ability of an applicant firm to attract food stamp business.

(3) The business integrity and reputation of the applicant. The FNS officer in charge may consider:

(i) Criminal conviction records reflecting on the honesty or integrity of officers or managers of the applicant firm;

(ii) Official records of removal from other Federal, State, or local programs;

(iii) Judicial determinations in civil litigation adversely reflecting on the integrity of officers or managers of the applicant firm;

(iv) Evidence of an attempt to circumvent a period of disqualification from the food stamp program or a civil money penalty imposed for violations of the Food Stamp Act and this part;

(v) Evidence of prior fraudulent behavior of officers, managers or employees of the applicant firm; and

(vi) Any other evidence reflecting on the business integrity and reputation of the applicant.

(4) Other factors. Any other factors which the FNS officer in charge considers pertinent to the application under consideration.

(c) Wholesalers. A wholesale food concern may be authorized if it meets the requirements of paragraphs (a) and (b) of this section and the FNS officer in charge determines that the firm is needed as a redemption outlet for authorized retail food stores. In addition, no firm may be authorized to accept and redeem coupons both as a retail food store and a wholesale food concern at the same time.

(d) Meal services. A meal delivery service or communal dining facility desiring to prepare and serve meals to households eligible to use coupons for those meals in addition to meeting the requirements of paragraphs (a) and (b) of this section, must establish that:

(1) It is recognized as a tax exempt organization by the Internal Revenue Service; or

(2) It is a senior citizens' center or apartment building occupied primarily

by elderly persons and SSI recipients, and their spouses; or

(3) It is a private establishment operating under a contract with a State or local agency to prepare and serve (or deliver) low-cost meals to elderly persons and SSI recipients (and, in the case of meal delivery services, to elderly persons or handicapped persons) and their spouses. The contracts of private establishments must specify the approximate prices which will be charged.

(e) Treatment programs. Drug addict or alcoholic treatment and rehabilitation programs wishing to prepare and serve meals to households eligible to use coupons for those meals must, in addition to meeting requirements of paragraphs (a), (b), and (d)(1) of this section, be certified by the State agency or agencies designated by the Governor as responsible for the State's programs for alcoholics and drug addicts under Pub. L. 91-616, "Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970" and Pub. L. 92-255, "Drug Abuse Office and Treatment Act of 1972," as providing treatment that can lead to the rehabilitation of drug addicts or alcoholics. In addition, the certification must show that the treatment program meets the standards required of treatment programs under the supervision of the State agency or agencies designated by the Governor as responsible for the State's programs for alcoholics and drug addicts. Approval to participate is automatically canceled at any time that a program loses its certification from the State agency or agencies.

(f) Authorization card. Upon approval, FNS shall issue a nontransferable authorization card to the firm. The authorization card shall be retained by the firm until superseded, surrendered, or revoked as provided in this part.

(g) Denying authorization. FNS shall deny the application of any firm if it determines that:

(1) The firm does not qualify for participation in the program as specified in paragraphs (b), (c), (d), and (e) of this section; or

(2) The firm has failed to pay in full any fiscal claim assessed against the firm under § 278.7. The FNS officer in charge shall issue a notice to the firm by certified mail or personal service of any authorization denial and shall advise the firm that it may request review of that determination.

(h) Withdrawing authorization. FNS shall withdraw the authorization of any firm authorized to participate in the program if it determines that the firm's continued participation will not further the purposes of the program. The FNS officer in charge shall issue a

notice to the firm by certified mail or personal service to inform the firm of the determination and of the review procedure. FNS shall remove the firm from the program if the firm does not request review within the period specified in § 279.5.

(i) Updating information. FNS may require, from time to time, but not more than once each Federal fiscal year, a firm to update any or all of the information on the firm's application form. Failure to provide this information may result in the withdrawal of the firm's approval to participate in the program.

(j) Applications containing false information. The filing of any application containing false or misleading information may result in the denial or withdrawal of approval to participate in the program, and may subject the firm and persons responsible to civil or criminal action.

(k) Administrative review. Any withdrawal or denial of authorization to participate in the program shall be subject to administrative review under § 278.8.

(l) Safeguarding privacy. The contents of applications or other information furnished by firms, including information on their gross sales and food sales volumes and their redemptions of coupons, may not be used or disclosed to anyone except for purposes directly connected with the administration and enforcement of the Food Stamp Act and these regulations.

§ 278.2 Participation of retail food stores.

(a) Use of coupons. Coupons shall be accepted by an authorized retail food store only in exchange for eligible food. Coupons may not be accepted in exchange for cash, except when cash is returned as change in a transaction in which coupons were accepted in payment for eligible food, under paragraph (d) of this section. Coupons may not be accepted in payment of interest on loans, or for any other nonfood use.

(b) Equal treatment for coupon consumers. Coupons shall be accepted for eligible foods at the same prices and on the same terms and conditions applicable to cash purchases of the same foods at the same store. However, nothing in this part may be construed as authorizing FNS to specify the prices at which retail food stores may sell food. No retail food store may single out coupon users for special treatment in any way.

(c) Accepting coupons. No authorized retail food store may accept coupons marked "paid," "canceled," or "specimen." Nor may a retail food store accept coupons bearing any cancellation or endorsement, or coupons of other than the 1-dollar denomination which have been detached from the coupon books prior to the time of

Features:

- . Maximum tax rate reduced from \$5.00 to \$3.64
- . State would fund the entire \$1.36 reduction as follows:
 - 11 Cent Medicaid would be state funded
 - 25 Cent State Tax would not be levied
 - 70 Cent Mandatory school levy would be state funded
 - 30 Cent School levy (part of current 80 cent) would be state funded
 - \$1.36
- . Limits Local Government expenditures
- . Limits State General Fund budget requests
- . Trigger additional relief in FY 1980-81 if state revenues exceed expectations
- . Self-destruct if Question 6 passes in November 1980
- . Removes Sales Tax on Food

Fiscal Impacts:

<u>State:</u>		<u>1979-80</u>	<u>1980-81</u>
Tax Relief (State Funded)	11 Cent	\$ 6,207,000	\$ 7,137,000
	25 Cent	14,307,000	16,453,000
	70 Cent	40,471,000	47,412,000
	30 Cent	17,345,000	20,319,000
	Food Tax	20,500,000	24,000,000
		<u>\$98,830,000</u>	<u>\$115,321,000</u>

Trigger:
(Additional 2 Cent to 18 Cent)

18 Cent	<u>\$ 12,200,000</u>
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Local:

Sales Tax on Food	<u>\$ 3,400,000</u>	<u>\$ 4,000,000</u>
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Impact on Taxpayers:

Assuming \$50,000 Residence:	<u>Current Method</u>	<u>Proposed</u>	<u>% Relief</u>
Value	\$50,000	\$50,000	
	35%	35%	
Assessed Value	<u>\$17,500</u>	<u>\$17,500</u>	
Rate	5.00	3.64	
Tax	<u>\$ 875</u>	<u>\$ 637</u>	<u>27.2%</u>

Examples of Local Tax Rates:

	<u>Current Rate</u>	<u>Proposed Rate</u>
Carson City Urban	\$4.83	\$3.47
Clark County	3.58	2.22
Las Vegas	5.00	3.64
City of Elko	4.40	3.04
Lyon County	3.91	2.55
Washoe County	3.87	2.51
Reno	5.00	3.64

The above proposed rates are the existing rates less the \$1.36 that the state would fund. The expenditure limitations on local governments in the bill could result in further decreases in the proposed rate in many areas of the state.



FISCAL NOTE

EXHIBIT E BDR 32-2043
A.B. 616
S.B.

• STATE AGENCY ESTIMATES Date Prepared March 27, 1979

Agency Submitting DEPARTMENT OF TAXATION

Revenue and/or Expense Items	Fiscal Year 1978-79	Fiscal Year 1979-80	Fiscal Year 1980-81	Continuing
	NONE			
State				
Total	NONE	\$74,400,706	\$96,708,118	YES

Explanation (Use Continuation Sheets If Required)

1980/81 computed at maximum if sales and gaming tax receipts meet formula requirements.

Local Government Impact YES NO

(Attach Explanation)

Signature [Signature]
Title [Title]

• DEPARTMENT OF ADMINISTRATION COMMENTS Date March 27, 1979

The above amounts are the maximum combination of general fund appropriation and tax reduction that would decrease State income.

Signature [Signature]
Title Howard E. Barrett
Director of Administration

• LOCAL GOVERNMENT FISCAL IMPACT Date April 2, 1979
(Legislative Counsel Bureau Use Only)

Note: Fiscal Impacts above were prepared before final drafting of the bill and do not include the food tax exemption.

TOTAL TAX RELIEF:

	1979-1980	1980-1981
State: Property Tax Relief	\$78,330,000	\$ 91,321,000
"Triggered" Relief		12,200,000
Food Tax	20,500,000	24,000,000
	<u>\$98,830,000</u>	<u>\$127,521,000</u>

Local: Food Tax \$ 3,400,000 \$ 4,000,000

(See continuation on page 3 for Fiscal Note and bill explanation.)

Signature [Signature]
Title Deputy Fiscal Analyst

Department of Taxation

Capital Plaza, 1100 E. William
CARSON CITY, NEVADA 89710
Telephone (702) 885-4892
In-State Toll Free 800-992-0900



ROBERT LIST, *Governor*

ROY E. NICKSON, *Executive Director*

April 4, 1979

The Honorable Daniel Tanner and
Members of the Assembly Taxation Committee
Legislative Building
Carson City, Nevada 89701

Dear Assemblyman:

As requested, a proposed Declaration of Intent as regards the exemption of food from the sales and use taxes is forwarded. If this declaration, as modified by the Legislative Counsel or your honorable body, is satisfactory, I would also request that it be included as an amendment to S.B. 204 when that bill is considered by the Assembly Taxation Committee.

If I can provide any additional information, please contact me.

Highest personal regards.

Very respectfully,

A handwritten signature in cursive script that reads "Roy".

Roy E. Nickson
Executive Director

REN:rms
Enclosure

DECLARATION OF INTENT

1. The exemption of food for human consumption as provided for in this act and as to be voted upon by the people is intended to include only those foods which may be purchased with food coupons as defined in the United States Department of Agriculture regulations in effect on July 1, 1974 and which are purchased from food stores which sell, primarily, food for preparation and consumption in the home or from those firms whose primary business is not the sale of food for home preparation and consumption, but who have recognized grocery departments in which staple foods, eligible for purchase with food coupons, make up more than 50% of the food sales.

2. Not exempted from the tax are foods or beverages furnished, prepared or served by any establishment for immediate consumption at or near its premises. Included in this category are sales from vending machines, catering services, mobile vendors and "take out" or "to go" prepared foods.

3. The exemption is to be strictly construed and is to apply only to those food and beverage items commonly understood by the average citizen as purchased for home preparation and consumption.