

54:32 B-3

LEGISLATIVE HISTORY CHECKLIST

WJSA 54:32B-3 (Sales Tax--Applicable to sales of food and drink through vending machines)

LAWS OF 1979 CHAPTER 274

Bill No. A3422

Sponsor(s) Van Wagner

Date Introduced June 14, 1979

Committee: Assembly Taxation

Senate Revenue, Finance and Appropriations

Amended during passage Yes  Amendments during passage denoted by asterisks

Date of Passage: Assembly Nov. 26, 1979

Senate Dec. 17, 1979

Date of approval Jan. 3, 1980

Following statements are attached if available:

Sponsor statement Yes

Committee Statement: Assembly Yes

Senate ~~Yes~~ No

Fiscal Note ~~Yes~~ No

Veto message ~~Yes~~ No

Message on signing ~~Yes~~ No

Following were printed:

Reports ~~Yes~~ No

Hearings ~~Yes~~ No

EJ1/78

274 J. 1979  
1-3-80

[OFFICIAL COPY REPRINT]  
**ASSEMBLY, No. 3422**

**STATE OF NEW JERSEY**

INTRODUCED JUNE 14, 1979

By Assemblyman VAN WAGNER

Referred to Committee on Taxation

AN ACT to amend the "Sales and Use Tax Act," (P. L. 1966, c. 30),  
approved April 27, 1966.

1 BE IT ENACTED by the Senate and General Assembly of the State  
2 of New Jersey:

1 1. Section 3 of P. L. 1966, c. 30 (C. 54:32B-3) is amended to read  
2 as follows:

3 3. Imposition of sales tax. On and after July 1, 1966 and con-  
4 tinuing through February 28, 1970 there is hereby imposed and  
5 there shall be paid a tax of 3%, and on and after March 1, 1970  
6 there is hereby imposed and there shall be paid a tax of 5% upon:

7 (a) The receipts from every retail sale of tangible personal  
8 property, except as otherwise provided in this act.

9 (b) The receipts from every sale, except for resale, of the follow-  
10 ing services:

11 (1) Producing, fabricating, processing, printing or imprinting  
12 tangible personal property, performed for a person who directly  
13 or indirectly furnishes the tangible personal property, not pur-  
14 chased by him for resale, upon which such services are performed.

15 (2) Installing tangible personal property, or maintaining, ser-  
16 vicing, repairing tangible personal property not held for sale in  
17 the regular course of business, whether or not the services are  
18 performed directly or by means of coin-operated equipment or by  
19 any other means, and whether or not any tangible personal prop-  
20 erty is transferred in conjunction therewith, except (i) such ser-  
21 vices rendered by an individual who is engaged directly by a  
22 private homeowner or lessee in or about his residence and who is  
23 not in a regular trade or business offering his services to the public,

24 (ii) such services rendered with respect to personal property  
25 exempt from taxation hereunder pursuant to subsection (a) of  
26 section 8, (iii) services rendered with respect to trucks, tractors,  
27 trailers or semitrailers by a person who is not engaged, directly  
28 or indirectly through subsidiaries, parents, affiliates or otherwise,

**EXPLANATION**—Matter enclosed in bold-faced brackets [thus] in the above bill  
is not enacted and is intended to be omitted in the law.

29 in a regular trade or business offering such services to the public,  
 30 (iv) any receipts from laundering, dry cleaning, tailoring, weaving,  
 31 pressing, shoe repairing and shoeshining, and (v) services rendered  
 32 in installing property which, when installed, will constitute an  
 33 addition or capital improvement to real property, property or land.

34 (3) Storing all tangible personal property not held for sale in  
 35 the regular course of business and the rental of safe deposit boxes  
 36 or similar space.

37 (4) Maintaining, servicing or repairing real property, other than  
 38 a residential heating system unit serving not more than three  
 39 families living independently of each other and doing their cooking  
 40 on the premises, whether the services are performed in or outside  
 41 of a building, as distinguished from adding to or improving such  
 42 real property, by a capital improvement, but excluding services  
 43 rendered by an individual who is not in a regular trade or business  
 44 offering his services to the public, and excluding interior cleaning  
 45 and maintenance services, garbage removal and sewer services per-  
 46 formed on a regular contractual basis for a term not less than  
 47 30 days, other than window cleaning, and rodent and pest control.

48 (5) Advertising services except advertising services for use  
 49 directly and primarily for publication in newspapers and maga-  
 50 zines.

51 Wages, salaries and other compensation paid by an employer  
 52 to an employee for performing as an employee the services  
 53 described in this subsection are not receipts subject to the taxes  
 54 imposed under this subsection (b).

55 Services otherwise taxable under paragraph (1) or (2) of this  
 56 subsection (b) are not subject to the taxes imposed under this  
 57 subsection where the tangible personal property upon which the  
 58 services were performed is delivered to the purchaser outside this  
 59 State for use outside this State.

60 (c) Receipts from the sale of food and drink except alcoholic  
 61 beverages as defined in the Alcoholic Beverage Tax Law, in or by  
 62 restaurants, taverns, *vending machines* or other establishments in  
 63 this State, or by caterers, including in the amount of such receipts  
 64 any cover, minimum, entertainment or other charge made to  
 65 patrons or customers:

66 (1) In all instances where the sale is for consumption on the prem-  
 67 ises where sold\***■**; or where the sale is through or by means of *vend-*  
 68 *ing machines*, except with respect to milk sold therefrom and except  
 69 with respect to receipts from vending machine sales under section  
 70 8(i) of the act of which this act is amendatory (C. 54:32B-8(i))**■**.\*

71 (2) In those instances where the vendor or any person whose  
 72 services are arranged for by the vendor, after the delivery of the

73 food or drink by or on behalf of the vendor for consumption off  
 74 the premises of the vendor, serves or assists in serving, cooks, heats  
 75 or provides other services with respect to the food or drink, except  
 76 for meals especially prepared for and delivered to homebound  
 77 elderly, age 60 or older, and to disabled persons, or meals pre-  
 78 pared and served at a group-sitting at a location outside of the  
 79 home to otherwise homebound elderly persons, age 60 or older,  
 80 and otherwise homebound disabled persons, as all or part of any  
 81 food service project funded in whole or in part by government or  
 82 as part of a private nonprofit food service project available to all  
 83 such elderly or disabled persons residing within an area of service  
 84 designated by the private nonprofit organization; and

85 (3) In those instances where the sale is for consumption off  
 86 the premises of the vendor, and consists of a meal, or food prepared  
 87 and ready to be eaten, of a kind obtainable in restaurants as the  
 88 main course of a meal, including a sandwich, except where food  
 89 other than sandwiches is sold in an unheated state and is of a type  
 90 commonly sold in the same form and condition in food stores other  
 91 than those which are principally engaged in selling prepared foods.

91A *\*(4) Sales of food and beverage sold through coin-operated vend-*  
 91B *ing machines, at the wholesale price of such sale, which shall be*  
 91C *defined as 70% of the retail vending machine selling price, except*  
 91D *sales of milk which shall not be taxed. Nothing herein contained*  
 91E *shall effect other sales through coin-operated vending machines*  
 91F *taxable pursuant to subsection (a) above or the exemption thereto*  
 91G *provided by subsection (i) of section 8.\**

92 The tax imposed by this subsection (c) shall not apply to food or  
 93 drink which is sold to an air line for consumption while in flight.

94 (d) The rent for every occupancy of a room or rooms in a hotel  
 95 in this State, except that the tax shall not be imposed upon (1) a  
 96 permanent resident, or (2) where the rent is not more than at the  
 97 rate of \$2.00 per day.

98 (e) (1) Any admission charge where such admission charge is  
 99 in excess of \$0.75 to or for the use of any place of amusement in  
 100 the State, including charges for admission to race tracks, baseball,  
 101 football, basketball or exhibitions, dramatic or musical arts per-  
 102 formances, motion picture theatres, except charges to a patron  
 103 for admission to, or use of, facilities for sporting activities in which  
 104 such patron is to be a participant, such as bowling alleys and  
 105 swimming pools. For any person having the permanent use or  
 106 possession of a box or seat or a lease or a license, other than a  
 107 season ticket, for the use of a box or seat at a place of amusement,

108 the tax shall be upon the amount for which a similar box or seat  
109 is sold for each performance or exhibition at which the box or seat  
110 is used or reserved by the holder, licensee or lessee, and shall be  
111 paid by the holder, licensee or lessee.

112 (2) The amount paid as charge of a roof garden, cabaret or  
113 other similar place in this State, to the extent that a tax upon such  
114 charges has not been paid pursuant to subsection (c) hereof.

1 2. This act shall take effect immediately.

---

## STATEMENT

This bill would amend the Sales and Use Tax Act by providing that all sales of food or drink purchased through vending machines are subject to tax. The tax would not, however, apply to the sale of milk purchased in a vending machine, nor would the tax apply to tangible personal property sold through a coin operated vending machine at \$.10 or less.

This legislation has become necessary as a result of the recent court decision which was handed down in *Automatic Merchandising Council of New Jersey v. Sidney Glaser, Director of Taxation* 166 *N. J. Super.* 411 (1979). Permission to appeal was denied by the Supreme Court.

The court found that the current statute does not apply to prepared foods which are purchased through a coin operated vending machine for on premises consumption. The same prepared food item, however, is subject to tax if purchased other than through a coin operated vending machine. The fact that a coin operated vending machine is used as the mode for purchasing the prepared food item should not constitute a basis for authorizing an exemption of the prepared food from the sales tax. Accordingly, this legislation would rectify that inequity so that the sales tax is imposed similarly on all prepared food items.

This legislation is also vitally important because of the substantial revenue loss that the State will incur as a result of the above decision. It is estimated that refunds totaling between \$5-\$7 million will be required to be returned to taxpayers. The future annual loss is estimated to be \$1.3 million. This bill will enable the State to eventually recoup the revenue loss.

A. 3422 (1979)

ASSEMBLY TAXATION COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 3422**

with committee amendments

**STATE OF NEW JERSEY**

DATED: JULY 31, 1979

This bill would amend the Sales and Use Tax Act by providing that all sales of food or drink purchased through vending machines are subject to tax. The tax would not, however, apply to the sale of milk purchased in a vending machine, nor would the tax apply to tangible personal property sold through a coin-operated vending machine at \$0.10 or less.

This legislation has become necessary as a result of the recent court decision which was handed down in *Automatic Merchandising Council of New Jersey v. Sidney Glaser, Director of Taxation*, 166 N. J. Super. 411 (1979). Permission to appeal was denied by the Supreme Court.

The court found that the current statute does not apply to prepared foods which are purchased through a coin-operated vending machine for on premises consumption. The same prepared food item, however, is subject to tax if purchased other than through a coin-operated vending machine. The fact that a coin-operated vending machine is used as the mode for purchasing the prepared food item should not constitute a basis for authorizing an exemption of the prepared food from the sales tax. Accordingly, this legislation would rectify that inequity so that the sales tax is imposed similarly on all prepared food items.

This legislation is also vitally important because of the substantial revenue loss that the State will incur as a result of the above decision. It is estimated that refunds totaling between \$5 - \$7 million will be required to be returned to taxpayers. The future annual loss is estimated to be \$1.3 million. This bill will enable the State to eventually recoup the revenue loss.

COMMITTEE AMENDMENTS

Committee amendments do not affect the taxability of food and beverages sold through vending machines as accomplished in the bill as introduced. The amendments do, however, establish a presumption of value of food sold through vending machines to be 70% of the retail vending machine selling price.

The committee takes the position that these sales through vending machines are not now taxable as determined by the court, and that

puts the State in the untenable position of not only foregoing prospective revenue but also having to refund an estimated \$5 - \$7 million of already collected revenue. Further, the committee—and subsequently the Senate and Assembly—took the initiative, before the court rendered its opinion, to explicitly provide for the taxation of sales through vending machines, establishing a presumption of value, as contained in Assembly Bill No. 578. That bill was vetoed. The committee finds this expression of legislative intent as to the taxability of sales of food and beverages through vending machines to be a reasonable one, and reendorses that approach through amendments to Assembly Bill No. 3422.

It is noted for the record that the Director of the Division of Taxation takes exception to the committee amendments arguing that to tax sales of food and beverage through vending machines at less than retail value is to depart from the general taxing scheme of the statute.

---