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SENATE BILL 5255

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State of Washington

59th Legislature

2005 Regular Session

By Senators Oke and Franklin

Read first time 01/19/2005. Referred to Committee on Ways & Means.

1 AN ACT Relating to the sales and use taxation of dietary  
2 supplements; amending RCW 82.08.0293 and 82.12.0293; and repealing RCW  
3 82.08.925 and 82.12.925.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 82.08.0293 and 2004 c 153 s 201 are each amended to  
6 read as follows:

7 (1) The tax levied by RCW 82.08.020 shall not apply to sales of  
8 food and food ingredients. "Food and food ingredients" means  
9 substances, whether in liquid, concentrated, solid, frozen, dried, or  
10 dehydrated form, that are sold for ingestion or chewing by humans and  
11 are consumed for their taste or nutritional value. "Food and food  
12 ingredients" does not include:

13 (a) "Alcoholic beverages," which means beverages that are suitable  
14 for human consumption and contain one-half of one percent or more of  
15 alcohol by volume; and

16 (b) "Tobacco," which means cigarettes, cigars, chewing or pipe  
17 tobacco, or any other item that contains tobacco.

18 (2) The exemption of "food and food ingredients" provided for in

1 subsection (1) of this section shall not apply to prepared food((~~τ~~)) or  
2 soft drinks(~~(, or dietary supplements)~~).

3 (a) "Prepared food" means:

4 (i) Food sold in a heated state or heated by the seller;

5 (ii) Food sold with eating utensils provided by the seller,  
6 including plates, knives, forks, spoons, glasses, cups, napkins, or  
7 straws. A plate does not include a container or packaging used to  
8 transport the food; or

9 (iii) Two or more food ingredients mixed or combined by the seller  
10 for sale as a single item, except:

11 (A) Food that is only cut, repackaged, or pasteurized by the  
12 seller; or

13 (B) Raw eggs, fish, meat, poultry, and foods containing these raw  
14 animal foods requiring cooking by the consumer as recommended by the  
15 federal food and drug administration in chapter 3, part 401.11 of The  
16 Food Code, published by the food and drug administration, as amended or  
17 renumbered as of January 1, 2003, so as to prevent foodborne illness.

18 (b) "Prepared food" does not include the following food or food  
19 ingredients, if the food or food ingredients are sold without eating  
20 utensils provided by the seller:

21 (i) Food sold by a seller whose proper primary North American  
22 industry classification system (NAICS) classification is manufacturing  
23 in sector 311, except subsector 3118 (bakeries), as provided in the  
24 "North American industry classification system--United States, 2002";

25 (ii) Food sold in an unheated state by weight or volume as a single  
26 item; or

27 (iii) Bakery items. The term "bakery items" includes bread, rolls,  
28 buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes,  
29 tortes, pies, tarts, muffins, bars, cookies, or tortillas.

30 (c) "Soft drinks" means nonalcoholic beverages that contain natural  
31 or artificial sweeteners. Soft drinks do not include beverages that  
32 contain: Milk or milk products; soy, rice, or similar milk  
33 substitutes; or greater than fifty percent of vegetable or fruit juice  
34 by volume.

35 ~~((d) "Dietary supplement" means any product, other than tobacco,  
36 intended to supplement the diet that:~~

37 ~~(i) Contains one or more of the following dietary ingredients:~~

38 ~~(A) A vitamin;~~

1 ~~(B) A mineral;~~

2 ~~(C) An herb or other botanical;~~

3 ~~(D) An amino acid;~~

4 ~~(E) A dietary substance for use by humans to supplement the diet by~~  
5 ~~increasing the total dietary intake; or~~

6 ~~(F) A concentrate, metabolite, constituent, extract, or combination~~  
7 ~~of any ingredient described in this subsection;~~

8 ~~(ii) Is intended for ingestion in tablet, capsule, powder, softgel,~~  
9 ~~gelcap, or liquid form, or if not intended for ingestion in such form,~~  
10 ~~is not represented as conventional food and is not represented for use~~  
11 ~~as a sole item of a meal or of the diet; and~~

12 ~~(iii) Is required to be labeled as a dietary supplement,~~  
13 ~~identifiable by the "supplement facts" box found on the label as~~  
14 ~~required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered as~~  
15 ~~of January 1, 2003.)~~

16 (3) Notwithstanding anything in this section to the contrary, the  
17 exemption of "food and food ingredients" provided in this section shall  
18 apply to food and food ingredients that are furnished, prepared, or  
19 served as meals:

20 (a) Under a state administered nutrition program for the aged as  
21 provided for in the Older Americans Act (P.L. 95-478 Title III) and RCW  
22 74.38.040(6); or

23 (b) That are provided to senior citizens, disabled persons, or low-  
24 income persons by a not-for-profit organization organized under chapter  
25 24.03 or 24.12 RCW.

26 (4)(a) Subsection (1) of this section notwithstanding, the retail  
27 sale of food and food ingredients is subject to sales tax under RCW  
28 82.08.020 if the food and food ingredients are sold through a vending  
29 machine, and in this case the selling price for purposes of RCW  
30 82.08.020 is fifty-seven percent of the gross receipts.

31 (b) This subsection (4) does not apply to hot prepared food and  
32 food ingredients, other than food and food ingredients which are heated  
33 after they have been dispensed from the vending machine.

34 (c) For tax collected under this subsection (4), the requirements  
35 that the tax be collected from the buyer and that the amount of tax be  
36 stated as a separate item are waived.

1       **Sec. 2.** RCW 82.12.0293 and 2003 c 168 s 303 are each amended to  
2 read as follows:

3       (1) The provisions of this chapter shall not apply in respect to  
4 the use of food and food ingredients for human consumption. "Food and  
5 food ingredients" has the same meaning as in RCW 82.08.0293.

6       (2) The exemption of "food and food ingredients" provided for in  
7 subsection (1) of this section shall not apply to prepared food((~~τ~~)) or  
8 soft drinks(~~(, or dietary supplements)~~). "Prepared food((~~τ~~))" and  
9 "soft drinks((~~τ~~))" (~~(and "dietary supplements")~~) have the same meanings  
10 as in RCW 82.08.0293.

11       (3) Notwithstanding anything in this section to the contrary, the  
12 exemption of "food and food ingredients" provided in this section shall  
13 apply to food and food ingredients which are furnished, prepared, or  
14 served as meals:

15       (a) Under a state administered nutrition program for the aged as  
16 provided for in the Older Americans Act (P.L. 95-478 Title III) and RCW  
17 74.38.040(6); or

18       (b) Which are provided to senior citizens, disabled persons, or  
19 low-income persons by a not-for-profit organization organized under  
20 chapter 24.03 or 24.12 RCW.

21       NEW SECTION. **Sec. 3.** The following acts or parts of acts are each  
22 repealed:

23       (1) RCW 82.08.925 (Exemptions--Dietary supplements) and 2003 c 168  
24 s 302; and

25       (2) RCW 82.12.925 (Exemptions--Dietary supplements) and 2003 c 168  
26 s 304.

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