

ESSB 6143 - S AMD 450
By Senator Prentice

ADOPTED 03/19/2010

1 On page 92, after line 3, insert the following:

2 "Sec. 1802. RCW 82.08.0293 and 2010 c ... (E2SHB 1597) s 216 are
3 each amended to read as follows:

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

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

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

15 (2) The exemption of "food and food ingredients" provided for in
16 subsection (1) of this section does not apply to prepared food, soft
17 drinks, bottled water, or dietary supplements. For purposes of this
18 subsection, the following definitions apply:

19 (a) "Dietary supplement" means any product, other than tobacco,
20 intended to supplement the diet that:

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

22 (A) A vitamin;

23 (B) A mineral;

24 (C) An herb or other botanical;

25 (D) An amino acid;

26 (E) A dietary substance for use by humans to supplement the diet by
27 increasing the total dietary intake; or

28 (F) A concentrate, metabolite, constituent, extract, or combination
29 of any ingredient described in this subsection;

1 (ii) Is intended for ingestion in tablet, capsule, powder, softgel,
2 gelcap, or liquid form, or if not intended for ingestion in such form,
3 is not represented as conventional food and is not represented for use
4 as a sole item of a meal or of the diet; and

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

9 (b)(i) "Prepared food" means:

10 (A) Food sold in a heated state or heated by the seller;

11 (B) Food sold with eating utensils provided by the seller,
12 including plates, knives, forks, spoons, glasses, cups, napkins, or
13 straws. A plate does not include a container or packaging used to
14 transport the food; or

15 (C) Two or more food ingredients mixed or combined by the seller
16 for sale as a single item, except:

17 (I) Food that is only cut, repackaged, or pasteurized by the
18 seller; or

19 (II) Raw eggs, fish, meat, poultry, and foods containing these raw
20 animal foods requiring cooking by the consumer as recommended by the
21 federal food and drug administration in chapter 3, part 401.11 of The
22 Food Code, published by the food and drug administration, as amended or
23 renumbered as of January 1, 2003, so as to prevent foodborne illness.

24 (ii) "Prepared food" does not include the following food or food
25 ingredients, if the food or food ingredients are sold without eating
26 utensils provided by the seller:

27 (A) Food sold by a seller whose proper primary North American
28 industry classification system (NAICS) classification is manufacturing
29 in sector 311, except subsector 3118 (bakeries), as provided in the
30 "North American industry classification system--United States, 2002";

31 (B) Food sold in an unheated state by weight or volume as a single
32 item; or

33 (C) Bakery items. The term "bakery items" includes bread, rolls,
34 buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes,
35 tortes, pies, tarts, muffins, bars, cookies, or tortillas.

36 (c) "Soft drinks" means nonalcoholic beverages that contain natural
37 or artificial sweeteners. Soft drinks do not include beverages that

1 contain: Milk or milk products; soy, rice, or similar milk
2 substitutes; or greater than fifty percent of vegetable or fruit juice
3 by volume.

4 (d) "Bottled water" means water that is placed in a sealed
5 container or package for human consumption or other consumer uses.
6 Bottled water is calorie free and does not contain sweeteners or other
7 additives except that it may contain: (i) Antimicrobial agents; (ii)
8 fluoride; (iii) carbonation; (iv) vitamins, minerals, and electrolytes;
9 (v) oxygen; (vi) preservatives; and (vii) only those flavors, extracts,
10 or essences derived from a spice or fruit. "Bottled water" includes
11 water that is delivered to the buyer in a reusable container that is
12 not sold with the water.

13 (3) Notwithstanding anything in this section to the contrary, the
14 exemption of "food and food ingredients" provided in this section
15 applies to food and food ingredients that are furnished, prepared, or
16 served as meals:

17 (a) Under a state administered nutrition program for the aged as
18 provided for in the older Americans act (P.L. 95-478 Title III) and RCW
19 74.38.040(6);

20 (b) That are provided to senior citizens, individuals with
21 disabilities, or low-income persons by a not-for-profit organization
22 organized under chapter 24.03 or 24.12 RCW; or

23 (c) That are provided to residents, sixty-two years of age or
24 older, of a qualified low-income senior housing facility by the lessor
25 or operator of the facility. The sale of a meal that is billed to both
26 spouses of a marital community or both domestic partners of a domestic
27 partnership meets the age requirement in this subsection (3)(c) if at
28 least one of the spouses or domestic partners is at least sixty-two
29 years of age. For purposes of this subsection, "qualified low-income
30 senior housing facility" means a facility:

31 (i) That meets the definition of a qualified low-income housing
32 project under 26 U.S.C. Sec. 42 of the federal internal revenue code,
33 as existing on August 1, 2009;

34 (ii) That has been partially funded under 42 U.S.C. Sec. 1485 (~~of~~
35 ~~the federal internal revenue code~~)); and

36 (iii) For which the lessor or operator has at any time been
37 entitled to claim a federal income tax credit under 26 U.S.C. Sec. 42
38 of the federal internal revenue code.

1 (4)(a) Subsection (1) of this section notwithstanding, the retail
2 sale of food and food ingredients is subject to sales tax under RCW
3 82.08.020 if the food and food ingredients are sold through a vending
4 machine. Except as provided in (b) of this subsection, the selling
5 price of food and food ingredients sold through a vending machine for
6 purposes of RCW 82.08.020 is fifty-seven percent of the gross receipts.

7 (b) For soft drinks and hot prepared food and food ingredients,
8 other than food and food ingredients which are heated after they have
9 been dispensed from the vending machine, the selling price is the total
10 gross receipts of such sales divided by the sum of one plus the sales
11 tax rate expressed as a decimal.

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

15 Renumber the remaining sections consecutively and correct any
16 internal references accordingly.

17 On page 106, after line 18, insert the following:

18 "NEW SECTION. **Sec. 2116.** Sections 1801 and 1803 through 1806 of
19 this act are necessary for the immediate preservation of the public
20 peace, health, or safety, or support of the state government and its
21 existing public institutions, and take effect May 1, 2010.

22 NEW SECTION. **Sec. 2117.** Section 1801 of this act expires July 1,
23 2010.

24 NEW SECTION. **Sec. 2118.** Section 1802 of this act takes effect
25 July 1, 2010."

26 Renumber the remaining sections consecutively and correct any
27 internal references accordingly.

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ADOPTED 03/19/2010

1 On page 1, line 11 of the title, after "82.08.0293," insert
2 "82.08.0293,"

EFFECT: Provides that sections relating to repealing the sales
and use tax exemption on bottled water take effect May 1, 2010.
Updates RCW 82.08.0293 to reflect changes made in the 2010 regular
session.

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