
HOUSE BILL 2095

State of Washington 62nd Legislature 2011 Regular Session

By Representatives Probst, Hinkle, Sells, Miloscia, and Fagan

Read first time 04/14/11. Referred to Committee on Ways & Means.

1 AN ACT Relating to clarifying that meals sold by schools, colleges,
2 and universities to certain students and faculty are exempt from sales
3 and use tax; and amending RCW 82.08.0293 and 82.12.0293.

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

5 **Sec. 1.** RCW 82.08.0293 and 2011 c 2 s 301 (Initiative Measure No.
6 1107) are each amended to read as follows:

7 (1) The tax levied by RCW 82.08.020 does not apply to sales of food
8 and food ingredients. "Food and food ingredients" means substances,
9 whether in liquid, concentrated, solid, frozen, dried, or dehydrated
10 form, that are sold for ingestion or chewing by humans and are consumed
11 for their taste or nutritional value. "Food and food ingredients" does
12 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 does not apply to prepared food, soft
2 drinks, or dietary supplements. For purposes of this subsection, the
3 following definitions apply:

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

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

7 (A) A vitamin;

8 (B) A mineral;

9 (C) An herb or other botanical;

10 (D) An amino acid;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (c) "Soft drinks" means nonalcoholic beverages that contain natural
14 or artificial sweeteners. Soft drinks do not include beverages that
15 contain: Milk or milk products; soy, rice, or similar milk
16 substitutes; or greater than fifty percent of vegetable or fruit juice
17 by volume.

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

22 (a) Under a state administered nutrition program for the aged as
23 provided for in the older Americans act (P.L. 95-478 Title III) and RCW
24 74.38.040(6);

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

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

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

1 (ii) That has been partially funded under 42 U.S.C. Sec. 1485; and
2 (iii) For which the lessor or operator has at any time been
3 entitled to claim a federal income tax credit under 26 U.S.C. Sec. 42
4 of the federal internal revenue code; or

5 (d)(i) That are sold by a school, college, or university to a
6 nonprofit entity, if:

7 (A) The meals are for students or faculty members of the nonprofit
8 entity; and

9 (B) The students of the nonprofit entity are eligible to earn
10 academic credit from any school, college, or university.

11 (ii) There is no requirement for a student to be enrolled in the
12 school, college, or university selling the meal for a meal to be
13 eligible for the exemption under this subsection (3)(d).

14 (4)(a) Subsection (1) of this section notwithstanding, the retail
15 sale of food and food ingredients is subject to sales tax under RCW
16 82.08.020 if the food and food ingredients are sold through a vending
17 machine. Except as provided in (b) of this subsection, the selling
18 price of food and food ingredients sold through a vending machine for
19 purposes of RCW 82.08.020 is fifty-seven percent of the gross receipts.

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

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

28 **Sec. 2.** RCW 82.12.0293 and 2011 c 2 s 303 (Initiative Measure No.
29 1107) are each amended to read as follows:

30 (1) The provisions of this chapter do not apply in respect to the
31 use of food and food ingredients for human consumption. "Food and food
32 ingredients" has the same meaning as in RCW 82.08.0293.

33 (2) The exemption of "food and food ingredients" provided for in
34 subsection (1) of this section does not apply to prepared food, soft
35 drinks, or dietary supplements. "Prepared food," "soft drinks," and
36 "dietary supplements" have the same meanings as in RCW 82.08.0293.

1 (3) Notwithstanding anything in this section to the contrary, the
2 exemption of "food and food ingredients" provided in this section
3 applies to food and food ingredients which are furnished, prepared, or
4 served as meals:

5 (a) Under a state administered nutrition program for the aged as
6 provided for in the older Americans act (P.L. 95-478 Title III) and RCW
7 74.38.040(6);

8 (b) Which are provided to senior citizens, individuals with
9 disabilities, or low-income persons by a not-for-profit organization
10 organized under chapter 24.03 or 24.12 RCW; (~~or~~)

11 (c) That are provided to residents, sixty-two years of age or
12 older, of a qualified low-income senior housing facility by the lessor
13 or operator of the facility. The sale of a meal that is billed to both
14 spouses of a marital community or both domestic partners of a domestic
15 partnership meets the age requirement in this subsection (3)(c) if at
16 least one of the spouses or domestic partners is at least sixty-two
17 years of age. For purposes of this subsection, "qualified low-income
18 senior housing facility" has the same meaning as in RCW 82.08.0293; or

19 (d)(i) That are sold by a school, college, or university to a
20 nonprofit entity, if:

21 (A) The meals are for students or faculty members of the nonprofit
22 entity; and

23 (B) The students of the nonprofit entity are eligible to earn
24 academic credit from any school, college, or university.

25 (ii) There is no requirement for a student to be enrolled in the
26 school, college, or university selling the meal for a meal to be
27 eligible for the exemption under this subsection (3)(d).

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