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HOUSE BILL 1340

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State of Washington

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2025 Regular Session

By Representatives Manjarrez, Connors, Jacobsen, Couture, Klicker, Shavers, Marshall, Barkis, Barnard, and Schmidt

Read first time 01/16/25. Referred to Committee on Finance.

1 AN ACT Relating to exempting prepared food from sales tax;  
2 amending RCW 82.08.0293; and creating a new section.

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

4 **Sec. 1.** RCW 82.08.0293 and 2022 c 16 s 152 are each amended to  
5 read as follows:

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

13 (a) "Alcoholic beverages," which means beverages that are  
14 suitable for human consumption and contain (~~one-half of one~~) 0.5  
15 percent or more of alcohol by volume;

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

18 (c) Cannabis, useable cannabis, or cannabis-infused products.

19 (2) The exemption of "food and food ingredients" provided for in  
20 subsection (1) of this section does not apply to (~~prepared food,~~)  
21 soft drinks, bottled water, or dietary supplements. The definitions

1 in this subsection apply throughout this section unless the context  
2 clearly requires otherwise.

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

12 (b) "Dietary supplement" means any product, other than tobacco,  
13 intended to supplement the diet that:

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

15 (A) A vitamin;

16 (B) A mineral;

17 (C) An herb or other botanical;

18 (D) An amino acid;

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

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

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

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

31 (c) (i) "Prepared food" means:

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

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

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

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

1 (II) Raw eggs, fish, meat, poultry, and foods containing these  
2 raw animal foods requiring cooking by the consumer as recommended by  
3 the federal food and drug administration in chapter 3, part 401.11 of  
4 the food code, published by the food and drug administration, as  
5 amended or renumbered as of January 1, 2003, so as to prevent  
6 foodborne illness.

7 (ii) Food is "sold with eating utensils provided by the seller"  
8 if:

9 (A) The seller's customary practice for that item is to  
10 physically deliver or hand a utensil to the customer with the food or  
11 food ingredient as part of the sales transaction. If the food or food  
12 ingredient is prepackaged with a utensil, the seller is considered to  
13 have physically delivered a utensil to the customer unless the food  
14 and utensil are prepackaged together by a food manufacturer  
15 classified under sector 311 of the North American industry  
16 classification system (NAICS);

17 (B) A plate, glass, cup, or bowl is necessary to receive the food  
18 or food ingredient, and the seller makes those utensils available to  
19 its customers; or

20 (C) (I) The seller makes utensils available to its customers, and  
21 the seller has more than (~~seventy-five~~) 75 percent prepared food  
22 sales. For purposes of this subsection (2)(c)(ii)(C), a seller has  
23 more than (~~seventy-five~~) 75 percent prepared food sales if the  
24 seller's gross retail sales of prepared food under (c)(i)(A),  
25 (c)(i)(C), and (c)(ii)(B) of this subsection equal more than  
26 (~~seventy-five~~) 75 percent of the seller's gross retail sales of all  
27 food and food ingredients, including prepared food, soft drinks, and  
28 dietary supplements.

29 (II) However, even if a seller has more than (~~seventy-five~~) 75  
30 percent prepared food sales, four servings or more of food or food  
31 ingredients packaged for sale as a single item and sold for a single  
32 price are not "sold with utensils provided by the seller" unless the  
33 seller's customary practice for the package is to physically hand or  
34 otherwise deliver a utensil to the customer as part of the sales  
35 transaction. Whenever available, the number of servings included in a  
36 package of food or food ingredients must be determined based on the  
37 manufacturer's product label. If no label is available, the seller  
38 must reasonably determine the number of servings.

39 (III) The seller must determine a single prepared food sales  
40 percentage annually for all the seller's establishments in the state

1 based on the prior year of sales. The seller may elect to determine  
2 its prepared food sales percentage based either on the prior calendar  
3 year or on the prior fiscal year. A seller may not change its elected  
4 method for determining its prepared food percentage without the  
5 written consent of the department. The seller must determine its  
6 annual prepared food sales percentage as soon as possible after  
7 accounting records are available, but in no event later than  
8 ~~((ninety))~~ 90 days after the beginning of the seller's calendar or  
9 fiscal year. A seller may make a good faith estimate of its first  
10 annual prepared food sales percentage if the seller's records for the  
11 prior year are not sufficient to allow the seller to calculate the  
12 prepared food sales percentage. The seller must adjust its good faith  
13 estimate prospectively if its relative sales of prepared foods in the  
14 first ~~((ninety))~~ 90 days of operation materially depart from the  
15 seller's estimate.

16 (iii) "Prepared food" ~~((does not))~~ includes the following  
17 items ~~((, if sold without eating utensils provided by the seller))~~:

18 (A) Food sold by a seller whose proper primary NAICS  
19 classification is manufacturing in sector 311, except subsector 3118  
20 (bakeries), as provided in the "North American industry  
21 classification system—United States, 2002";

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

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

27 (d) "Soft drinks" means nonalcoholic beverages that contain  
28 natural or artificial sweeteners. Soft drinks do not include  
29 beverages that contain: Milk or milk products; soy, rice, or similar  
30 milk substitutes; or greater than ~~((fifty))~~ 50 percent of vegetable  
31 or fruit juice by volume.

32 (3) Notwithstanding anything in this section to the contrary, the  
33 exemption of "food and food ingredients" provided in this section  
34 applies to food and food ingredients that are furnished, prepared, or  
35 served as meals:

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

1 (b) That are provided to senior citizens, individuals with  
2 disabilities, or low-income persons by a nonprofit organization  
3 organized under chapter 24.03A or 24.12 RCW; or

4 (c) That are provided to residents, (~~sixty-two~~) 62 years of age  
5 or older, of a qualified low-income senior housing facility by the  
6 lessor or operator of the facility. The sale of a meal that is billed  
7 to both spouses of a marital community or both domestic partners of a  
8 domestic partnership meets the age requirement in this subsection  
9 (3)(c) if at least one of the spouses or domestic partners is at  
10 least (~~sixty-two~~) 62 years of age. For purposes of this subsection,  
11 "qualified low-income senior housing facility" means a facility:

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

15 (ii) That has been partially funded under 42 U.S.C. Sec. 1485;  
16 and

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

20 (4)(a) Subsection (1) of this section notwithstanding, the retail  
21 sale of food and food ingredients is subject to sales tax under RCW  
22 82.08.020 if the food and food ingredients are sold through a vending  
23 machine. Except as provided in (b) of this subsection, the selling  
24 price of food and food ingredients sold through a vending machine for  
25 purposes of RCW 82.08.020 is (~~fifty-seven~~) 57 percent of the gross  
26 receipts.

27 (b) For soft drinks, bottled water, and hot prepared food and  
28 food ingredients, other than food and food ingredients which are  
29 heated after they have been dispensed from the vending machine, the  
30 selling price is the total gross receipts of such sales divided by  
31 the sum of one plus the sales tax rate expressed as a decimal.

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

35 NEW SECTION. **Sec. 2.** RCW 82.32.805 and 82.32.808 do not apply  
36 to this act.

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