
HOUSE BILL 2826

State of Washington

58th Legislature

2004 Regular Session

By Representative Morris

Read first time 01/21/2004. Referred to Committee on Finance.

1 AN ACT Relating to taxation of products from vending machines; and
2 amending RCW 82.08.0293 and 82.08.080.

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

4 **Sec. 1.** RCW 82.08.0293 and 2003 c 168 s 301 are each amended to
5 read as follows:

6 (1) The tax levied by RCW 82.08.020 shall 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" does not include:

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

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

17 (2) The exemption of "food and food ingredients" provided for in
18 subsection (1) of this section shall not apply to prepared food, soft
19 drinks, or dietary supplements.

1 (a) "Prepared food" means:

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

3 (ii) Two or more food ingredients mixed or combined by the seller
4 for sale as a single item; or

5 (iii) 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.

9 "Prepared food" in (a)(ii) of this subsection, does not include
10 food that is only cut, repackaged, or pasteurized by the seller and raw
11 eggs, fish, meat, poultry, and foods containing these raw animal foods
12 requiring cooking by the consumer as recommended by the federal food
13 and drug administration in chapter 3, part 401.11 of The Food Code,
14 published by the food and drug administration, as amended or renumbered
15 as of January 1, 2003, so as to prevent foodborne illness; or bakery
16 items, including bread, rolls, buns, biscuits, bagels, croissants,
17 pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars,
18 cookies, or tortillas.

19 (b) "Soft drinks" means nonalcoholic beverages that contain natural
20 or artificial sweeteners. Soft drinks do not include beverages that
21 contain: Milk or milk products; soy, rice, or similar milk
22 substitutes; or greater than fifty percent of vegetable or fruit juice
23 by volume.

24 (c) "Dietary supplement" means any product, other than tobacco,
25 intended to supplement the diet that:

26 (i) Contains one or more of the following dietary ingredients: A
27 vitamin; a mineral; an herb or other botanical; an amino acid; a
28 dietary substance for use by humans to supplement the diet by
29 increasing the total dietary intake; or a concentrate, metabolite,
30 constituent, extract, or combination of any ingredient described in
31 this subsection; and is intended for ingestion in tablet, capsule,
32 powder, softgel, gelcap, or liquid form, or if not intended for
33 ingestion in such form, is not represented as conventional food and is
34 not represented for use as a sole item of a meal or of the diet; and

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

1 (3) Notwithstanding anything in this section to the contrary, the
2 exemption of "food and food ingredients" provided in this section shall
3 apply 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); or

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

11 (4)(a) Subsection (1) of this section notwithstanding, the retail
12 sale of food and food ingredients is subject to sales tax under RCW
13 82.08.020 if the food and food ingredients are sold through a vending
14 machine, and in this case the selling price and tax thereon for
15 purposes of RCW 82.08.020 is fifty-seven percent of the gross receipts.

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

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

22 **Sec. 2.** RCW 82.08.080 and 1986 c 36 s 2 are each amended to read
23 as follows:

24 (1) The department of revenue may authorize a seller to pay the tax
25 levied under this chapter upon sales made under conditions of business
26 such as to render impracticable the collection of the tax as a separate
27 item and waive collection of the tax from the customer. Where sales
28 are made by (~~receipt of a coin or coins dropped into a receptacle~~) a
29 vending machine that results in delivery of the merchandise in single
30 purchases of smaller value than the minimum sale upon which a one cent
31 tax may be collected from the purchaser, according to the schedule
32 provided by the department under authority of RCW 82.08.060, and where
33 the design of the sales device is such that multiple sales of items are
34 not possible or cannot be detected so as practically to assess a tax,
35 in such a case the selling price for the purposes of the tax imposed
36 under RCW 82.08.020 shall be sixty percent of the gross receipts of the
37 vending machine through which such sales are made.

1 (2) No such authority shall be granted except upon application to
2 the department and unless the department, after hearing, finds that the
3 conditions of the applicant's business are such as to render
4 impracticable the collection of the tax in the manner otherwise
5 provided. The department, by (~~regulation~~) rule, may provide that the
6 applicant, under this section, furnish a proper bond sufficient to
7 secure the payment of the tax.

8 (3) "Vending machine" means a machine or other mechanical device
9 that accepts payment and:

10 (a) Dispenses tangible personal property;

11 (b) Provides facilities for installing, repairing, cleaning,
12 altering, imprinting, or improving tangible personal property; or

13 (c) Provides a service to the buyer.

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