

CERTIFICATION OF ENROLLMENT

SENATE BILL 5470

61st Legislature
2009 Regular Session

Passed by the Senate April 19, 2009
YEAS 46 NAYS 0

President of the Senate

Passed by the House April 23, 2009
YEAS 95 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5470** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SENATE BILL 5470

Passed Legislature - 2009 Regular Session

State of Washington 61st Legislature 2009 Regular Session

By Senators Stevens, Carrell, Parlette, Swecker, McCaslin, Hewitt, Schoesler, King, Holmquist, Pflug, Roach, Delvin, and Benton

Read first time 01/22/09. Referred to Committee on Ways & Means.

1 AN ACT Relating to providing sales and use tax exemptions for
2 senior residents of qualified low-income senior housing facilities;
3 amending RCW 82.08.0293, 82.08.195, 82.12.0293, and 82.12.195; creating
4 a new section; and providing an effective date.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that low-income senior
7 citizens are one of the most vulnerable segments of our population who
8 often find it difficult to find safe and clean housing that is also
9 affordable. The federal government has identified this population as
10 being at risk. The federal government provides income tax credits and
11 favorable financing to encourage developers and operators to provide
12 safe and clean housing for our low-income senior citizens. There are
13 only four such facilities in the state, and it is doubtful that any new
14 ones will be built in the future. These four facilities offer "service
15 packages" to their residents, which may include meals, housekeeping,
16 recreation, laundry, and transportation. Washington's sales and use
17 tax law provides generally that when multiple goods and services are
18 offered for one nonitemized price, the entire transaction is subject to
19 sales or use tax if any of the component goods or services are subject

1 to sales tax. Consequently, in order to provide tax relief to these
2 vulnerable tenants, the legislature intends to establish sales and use
3 tax exemptions for the sale of service packages and to meals sold
4 outside of a service package when provided by the lessor or operator of
5 these senior housing facilities to tenants who are at least sixty-two
6 years old.

7 **Sec. 2.** RCW 82.08.0293 and 2004 c 153 s 201 are each amended to
8 read as follows:

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

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

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

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

23 (a) "Prepared food" means:

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

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

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

33 (B) 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 (b) "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 (i) 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 (ii) Food sold in an unheated state by weight or volume as a single
9 item; or

10 (iii) 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 (d) "Dietary supplement" means any product, other than tobacco,
19 intended to supplement the diet that:

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

21 (A) A vitamin;

22 (B) A mineral;

23 (C) An herb or other botanical;

24 (D) An amino acid;

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

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

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

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

37 (3) Notwithstanding anything in this section to the contrary, the

1 exemption of "food and food ingredients" provided in this section shall
2 apply to food and food ingredients that are furnished, prepared, or
3 served as meals:

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

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

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

18 (i) That meets the definition of a qualified low-income housing
19 project under Title 26 U.S.C. Sec. 42 of the federal internal revenue
20 code, as existing on the effective date of this act;

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

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

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. 3.** RCW 82.08.195 and 2007 c 6 s 1402 are each amended to read
2 as follows:

3 (1) Except as provided in subsection (6) of this section, a bundled
4 transaction is subject to the tax imposed by RCW 82.08.020 if the
5 retail sale of any of its component products would be subject to the
6 tax imposed by RCW 82.08.020.

7 (2) The transactions described in RCW 82.08.190(4) (a) and (b) are
8 subject to the tax imposed by RCW 82.08.020 if the service that is the
9 true object of the transaction is subject to the tax imposed by RCW
10 82.08.020. If the service that is the true object of the transaction
11 is not subject to the tax imposed by RCW 82.08.020, the transaction is
12 not subject to the tax imposed by RCW 82.08.020.

13 (3) The transaction described in RCW 82.08.190(4)(c) is not subject
14 to the tax imposed by RCW 82.08.020.

15 (4) The transaction described in RCW 82.08.190(4)(d) is not subject
16 to the tax imposed by RCW 82.08.020.

17 (5) In the case of a bundled transaction that includes any of the
18 following: Telecommunications service, ancillary service, internet
19 access, or audio or video programming service:

20 (a) If the price is attributable to products that are taxable and
21 products that are not taxable, the portion of the price attributable to
22 the nontaxable products are subject to the tax imposed by RCW 82.08.020
23 unless the seller can identify by reasonable and verifiable standards
24 the portion from its books and records that are kept in the regular
25 course of business for other purposes including, but not limited to,
26 nontax purposes;

27 (b) If the price is attributable to products that are subject to
28 tax at different tax rates, the total price is attributable to the
29 products subject to the tax at the highest tax rate unless the seller
30 can identify by reasonable and verifiable standards the portion of the
31 price attributable to the products subject to the tax imposed by RCW
32 82.08.020 at the lower rate from its books and records that are kept in
33 the regular course of business for other purposes including, but not
34 limited to, nontax purposes.

35 (6) The tax imposed by RCW 82.08.020 does not apply in respect to
36 a bundled transaction consisting entirely of the sale of services or of
37 services and prepared food, if the sale is to a resident, sixty-two
38 years of age or older, of a qualified low-income senior housing

1 facility by the lessor or operator of the facility. A single bundled
2 transaction involving both spouses of a marital community or both
3 domestic partners of a domestic partnership meets the age requirement
4 in this subsection if at least one of the spouses or domestic partners
5 is at least sixty-two years of age. For purposes of this subsection,
6 "qualified low-income senior housing facility" has the same meaning as
7 in RCW 82.08.0293.

8 **Sec. 4.** RCW 82.12.0293 and 2003 c 168 s 303 are each amended to
9 read as follows:

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

13 (2) The exemption of "food and food ingredients" provided for in
14 subsection (1) of this section shall not apply to prepared food, soft
15 drinks, or dietary supplements. "Prepared food," "soft drinks," and
16 "dietary supplements" have the same meanings as in RCW 82.08.0293.

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

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

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

27 (c) That are provided to residents, sixty-two years of age or
28 older, of a qualified low-income senior housing facility by the lessor
29 or operator of the facility. The sale of a meal that is billed to both
30 spouses of a marital community or both domestic partners of a domestic
31 partnership meets the age requirement in this subsection (3)(c) if at
32 least one of the spouses or domestic partners is at least sixty-two
33 years of age. For purposes of this subsection, "qualified low-income
34 senior housing facility" has the same meaning as in RCW 82.08.0293.

35 **Sec. 5.** RCW 82.12.195 and 2007 c 6 s 1403 are each amended to read
36 as follows:

1 (1) Except as provided in subsection (5) of this section, the use
2 of each product acquired in a bundled transaction is subject to the tax
3 imposed by RCW 82.12.020 if the use of any of its component products is
4 subject to the tax imposed by RCW 82.12.020.

5 (2) The use of each product acquired in a transaction described in
6 RCW 82.08.190(4) (a) or (b) is subject to the tax imposed by RCW
7 82.12.020 if the service that is the true object of the transaction is
8 subject to the tax imposed by RCW 82.12.020. If the service that is
9 the true object of the transaction is not subject to the tax imposed by
10 RCW 82.12.020, the use of each product acquired in the transaction is
11 not subject to the tax imposed by RCW 82.12.020.

12 (3) The use of each product acquired in a transaction described in
13 RCW 82.08.190(4)(c) is not subject to the tax imposed by RCW 82.12.020.

14 (4) The use of each product in a transaction described in RCW
15 82.08.190(4)(d) is not subject to the tax imposed by RCW 82.12.020.

16 (5) The tax imposed by RCW 82.12.020 does not apply in respect to
17 the use of each product acquired in a bundled transaction consisting
18 entirely of the sale of services or of services and prepared food, if
19 the products are provided to a resident, sixty-two years of age or
20 older, of a qualified low-income senior housing facility by the lessor
21 or operator of the facility. A single bundled transaction involving
22 both spouses of a marital community or both domestic partners of a
23 domestic partnership meets the age requirement in this subsection if at
24 least one of the spouses or domestic partners is at least sixty-two
25 years of age. For purposes of this subsection, "qualified low-income
26 senior housing facility" has the same meaning as in RCW 82.08.0293.

27 (6) The definitions in RCW 82.08.190 apply to this section.

28 NEW SECTION. Sec. 6. This act takes effect August 1, 2009.

--- END ---