

2SHB 2157 - H AMD 796

By Representative Chambers

NOT CONSIDERED 12/23/2019

1 On page 33, after line 18, insert the following:

2 **"Part VII**

3 **Expanding the Retail Sales Tax Exemption on Food to Include Prepared**
4 **Food**

5 **Sec. 701.** RCW 82.08.0293 and 2019 c 8 s 401 are each amended to
6 read as follows:

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

13 (a) "Alcoholic beverages," which means beverages that are
14 suitable for human consumption and contain one-half of one percent or
15 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) Marijuana, useable marijuana, or marijuana-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
22 in this subsection apply throughout this section unless the context
23 clearly requires otherwise.

24 (a) "Bottled water" means water that is placed in a safety sealed
25 container or package for human consumption. Bottled water is calorie
26 free and does not contain sweeteners or other additives except that
27 it may contain: (i) Antimicrobial agents; (ii) fluoride; (iii)
28 carbonation; (iv) vitamins, minerals, and electrolytes; (v) oxygen;
29 (vi) preservatives; and (vii) only those flavors, extracts, or
30 essences derived from a spice or fruit. "Bottled water" includes

1 water that is delivered to the buyer in a reusable container that is
2 not sold with the water.

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

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

6 (A) A vitamin;

7 (B) A mineral;

8 (C) An herb or other botanical;

9 (D) An amino acid;

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

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

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

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

22 (c) ~~((i) "Prepared food" means:~~

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

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

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

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

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

38 ~~(ii) Food is "sold with eating utensils provided by the seller"~~
39 ~~if:~~

1 ~~(A) The seller's customary practice for that item is to~~
2 ~~physically deliver or hand a utensil to the customer with the food or~~
3 ~~food ingredient as part of the sales transaction. If the food or food~~
4 ~~ingredient is prepackaged with a utensil, the seller is considered to~~
5 ~~have physically delivered a utensil to the customer unless the food~~
6 ~~and utensil are prepackaged together by a food manufacturer~~
7 ~~classified under sector 311 of the North American industry~~
8 ~~classification system (NAICS);~~

9 ~~(B) A plate, glass, cup, or bowl is necessary to receive the food~~
10 ~~or food ingredient, and the seller makes those utensils available to~~
11 ~~its customers; or~~

12 ~~(C) (I) The seller makes utensils available to its customers, and~~
13 ~~the seller has more than seventy-five percent prepared food sales.~~
14 ~~For purposes of this subsection (2) (c) (ii) (C), a seller has more than~~
15 ~~seventy-five percent prepared food sales if the seller's gross retail~~
16 ~~sales of prepared food under (c) (i) (A), (c) (i) (C), and (c) (ii) (B) of~~
17 ~~this subsection equal more than seventy-five percent of the seller's~~
18 ~~gross retail sales of all food and food ingredients, including~~
19 ~~prepared food, soft drinks, and dietary supplements.~~

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

30 ~~(III) The seller must determine a single prepared food sales~~
31 ~~percentage annually for all the seller's establishments in the state~~
32 ~~based on the prior year of sales. The seller may elect to determine~~
33 ~~its prepared food sales percentage based either on the prior calendar~~
34 ~~year or on the prior fiscal year. A seller may not change its elected~~
35 ~~method for determining its prepared food percentage without the~~
36 ~~written consent of the department. The seller must determine its~~
37 ~~annual prepared food sales percentage as soon as possible after~~
38 ~~accounting records are available, but in no event later than ninety~~
39 ~~days after the beginning of the seller's calendar or fiscal year. A~~
40 ~~seller may make a good faith estimate of its first annual prepared~~

1 ~~food sales percentage if the seller's records for the prior year are~~
2 ~~not sufficient to allow the seller to calculate the prepared food~~
3 ~~sales percentage. The seller must adjust its good faith estimate~~
4 ~~prospectively if its relative sales of prepared foods in the first~~
5 ~~ninety days of operation materially depart from the seller's~~
6 ~~estimate.~~

7 ~~(iii) "Prepared food" does not include the following items, if~~
8 ~~sold without eating utensils provided by the seller:~~

9 ~~(A) Food sold by a seller whose proper primary NAICS~~
10 ~~classification is manufacturing in sector 311, except subsector 3118~~
11 ~~(bakeries), as provided in the "North American industry~~
12 ~~classification system United States, 2002";~~

13 ~~(B) Food sold in an unheated state by weight or volume as a~~
14 ~~single item; or~~

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

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

23 (3) Notwithstanding anything in this section to the contrary, the
24 exemption of "food and food ingredients" provided in this section
25 applies to food and food ingredients that are furnished, prepared, or
26 served as meals:

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

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

33 (c) That are provided to residents, sixty-two years of age or
34 older, of a qualified low-income senior housing facility by the
35 lessor or operator of the facility. The sale of a meal that is billed

36 to both spouses of a marital community or both domestic partners of a
37 domestic partnership meets the age requirement in this subsection
38 (3)(c) if at least one of the spouses or domestic partners is at
39 least sixty-two years of age. For purposes of this subsection,
40 "qualified low-income senior housing facility" means a facility:

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

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

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

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

16 (b) For soft drinks(~~(7)~~) and bottled water(~~(7—and hot prepared~~
17 ~~food and food ingredients, other than food and food ingredients which~~
18 ~~are heated after they have been dispensed from the vending machine)~~),
19 the selling price is the total gross receipts of such sales divided
20 by the sum of one plus the sales tax rate expressed as a decimal.

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

24 Renumber the remaining part and sections consecutively, correct
25 any internal references accordingly, and correct the title.

26 On page 33, line 24, after "IV," strike "and V" and insert "V,
27 and VII"

28 On page 33, line 25, after "IV," strike "and VI" and insert "VI,
29 and VII"

EFFECT: Expands the retail sales tax exemption on food to include prepared food.

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