
SUBSTITUTE HOUSE BILL 2826

State of Washington

58th Legislature

2004 Regular Session

By House Committee on Finance (originally sponsored by Representative Morris)

READ FIRST TIME 02/06/04.

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 for purposes of RCW
15 82.08.020 is (~~(fifty-seven percent of the gross receipts)~~) calculated
16 according to the following formula:

17 (i) The gross receipts multiplied by fifty-seven percent;
18 (ii) Divided by an amount equal to one plus the rates of tax
19 imposed under this chapter and chapter 82.14 RCW.

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

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

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

28 (1) The department of revenue may authorize a seller to pay the tax
29 levied under this chapter upon sales made under conditions of business
30 such as to render impracticable the collection of the tax as a separate
31 item and waive collection of the tax from the customer. Where sales
32 are made by (~~receipt of a coin or coins dropped into a receptacle~~) a
33 vending machine that results in delivery of the merchandise in single
34 purchases of smaller value than the minimum sale upon which a one cent
35 tax may be collected from the purchaser, according to the schedule
36 provided by the department under authority of RCW 82.08.060, and where
37 the design of the sales device is such that multiple sales of items are

1 not possible or cannot be detected so as practically to assess a tax,
2 in such a case the selling price for the purposes of the tax imposed
3 under RCW 82.08.020 shall be sixty percent of the gross receipts of the
4 vending machine through which such sales are made.

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

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

14 (a) Dispenses tangible personal property;

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

17 (c) Provides a service to the buyer.

--- END ---