
SUBSTITUTE SENATE BILL 5748

State of Washington

68th Legislature

2023 Regular Session

By Senate Ways & Means (originally sponsored by Senators Muzzall, Mullet, and Shewmake)

1 AN ACT Relating to clarifying the excise tax treatment of meals
2 furnished to tenants of senior living communities as part of their
3 rental agreement; amending RCW 82.08.0293 and 82.12.0293; adding a
4 new section to chapter 82.04 RCW; and creating a new section.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 82.04
7 RCW to read as follows:

8 (1) This chapter does not apply to amounts received for food,
9 drink, or meals furnished by a senior living community to tenants as
10 part of a rental or residency agreement for which no separate charge
11 is made, if the rental or residency agreement constitutes a lease or
12 rental of real estate exempt from taxation under this chapter.

13 (2) For purposes of this section, "senior living community" means
14 any facility or campus operated under a license or registration
15 issued under chapter 18.20 or 18.390 RCW.

16 **Sec. 2.** RCW 82.08.0293 and 2022 c 16 s 152 are each amended to
17 read as follows:

18 (1) The tax levied by RCW 82.08.020 does not apply to sales of
19 food and food ingredients. "Food and food ingredients" means
20 substances, whether in liquid, concentrated, solid, frozen, dried, or

1 dehydrated form, that are sold for ingestion or chewing by humans and
2 are consumed for their taste or nutritional value. "Food and food
3 ingredients" does not include:

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

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

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

10 (2) The exemption of "food and food ingredients" provided for in
11 subsection (1) of this section does not apply to prepared food, soft
12 drinks, bottled water, or dietary supplements. The definitions in
13 this subsection apply throughout this section unless the context
14 clearly requires otherwise.

15 (a) "Bottled water" means water that is placed in a safety sealed
16 container or package for human consumption. Bottled water is calorie
17 free and does not contain sweeteners or other additives except that
18 it may contain: (i) Antimicrobial agents; (ii) fluoride; (iii)
19 carbonation; (iv) vitamins, minerals, and electrolytes; (v) oxygen;
20 (vi) preservatives; and (vii) only those flavors, extracts, or
21 essences derived from a spice or fruit. "Bottled water" includes
22 water that is delivered to the buyer in a reusable container that is
23 not sold with the water.

24 (b) "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:

27 (A) A vitamin;

28 (B) A mineral;

29 (C) An herb or other botanical;

30 (D) An amino acid;

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

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

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

39 (iii) Is required to be labeled as a dietary supplement,
40 identifiable by the "supplement facts" box found on the label as

1 required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered
2 as of January 1, 2003.

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

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

5 (B) 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; or

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

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

13 (II) Raw eggs, fish, meat, poultry, and foods containing these
14 raw animal foods requiring cooking by the consumer as recommended by
15 the federal food and drug administration in chapter 3, part 401.11 of
16 The Food Code, published by the food and drug administration, as
17 amended or renumbered as of January 1, 2003, so as to prevent
18 foodborne illness.

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

21 (A) The seller's customary practice for that item is to
22 physically deliver or hand a utensil to the customer with the food or
23 food ingredient as part of the sales transaction. If the food or food
24 ingredient is prepackaged with a utensil, the seller is considered to
25 have physically delivered a utensil to the customer unless the food
26 and utensil are prepackaged together by a food manufacturer
27 classified under sector 311 of the North American industry
28 classification system (NAICS);

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

32 (C) (I) The seller makes utensils available to its customers, and
33 the seller has more than seventy-five percent prepared food sales.
34 For purposes of this subsection (2) (c) (ii) (C), a seller has more than
35 seventy-five percent prepared food sales if the seller's gross retail
36 sales of prepared food under (c) (i) (A), (c) (i) (C), and (c) (ii) (B) of
37 this subsection equal more than seventy-five percent of the seller's
38 gross retail sales of all food and food ingredients, including
39 prepared food, soft drinks, and dietary supplements.

1 (II) However, even if a seller has more than seventy-five percent
2 prepared food sales, four servings or more of food or food
3 ingredients packaged for sale as a single item and sold for a single
4 price are not "sold with utensils provided by the seller" unless the
5 seller's customary practice for the package is to physically hand or
6 otherwise deliver a utensil to the customer as part of the sales
7 transaction. Whenever available, the number of servings included in a
8 package of food or food ingredients must be determined based on the
9 manufacturer's product label. If no label is available, the seller
10 must reasonably determine the number of servings.

11 (III) The seller must determine a single prepared food sales
12 percentage annually for all the seller's establishments in the state
13 based on the prior year of sales. The seller may elect to determine
14 its prepared food sales percentage based either on the prior calendar
15 year or on the prior fiscal year. A seller may not change its elected
16 method for determining its prepared food percentage without the
17 written consent of the department. The seller must determine its
18 annual prepared food sales percentage as soon as possible after
19 accounting records are available, but in no event later than ninety
20 days after the beginning of the seller's calendar or fiscal year. A
21 seller may make a good faith estimate of its first annual prepared
22 food sales percentage if the seller's records for the prior year are
23 not sufficient to allow the seller to calculate the prepared food
24 sales percentage. The seller must adjust its good faith estimate
25 prospectively if its relative sales of prepared foods in the first
26 ninety days of operation materially depart from the seller's
27 estimate.

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

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

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

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

39 (d) "Soft drinks" means nonalcoholic beverages that contain
40 natural or artificial sweeteners. Soft drinks do not include

1 beverages that contain: Milk or milk products; soy, rice, or similar
2 milk substitutes; or greater than fifty percent of vegetable or fruit
3 juice by volume.

4 (3) Notwithstanding anything in this section to the contrary, the
5 exemption of "food and food ingredients" provided in this section
6 applies to food and food ingredients that are furnished, prepared, or
7 served as meals:

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

11 (b) ~~((That are provided to))~~ To senior citizens, individuals with
12 disabilities, or low-income persons by a nonprofit organization
13 organized under chapter 24.03A or 24.12 RCW; ~~((or))~~

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

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

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

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

30 (d) By a senior living community to tenants as part of a rental
31 or residency agreement for which no separate charge is made,
32 regardless of whether the tenant is a resident for purposes of
33 chapter 18.20 or 18.390 RCW. For purposes of this subsection (3)(d),
34 "senior living community" has the same meaning as provided in section
35 1 of this act.

36 (4)(a) Subsection (1) of this section notwithstanding, the retail
37 sale of food and food ingredients is subject to sales tax under RCW
38 82.08.020 if the food and food ingredients are sold through a vending
39 machine. Except as provided in (b) of this subsection, the selling
40 price of food and food ingredients sold through a vending machine for

1 purposes of RCW 82.08.020 is fifty-seven percent of the gross
2 receipts.

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

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

11 **Sec. 3.** RCW 82.12.0293 and 2021 c 176 s 5250 are each amended to
12 read as follows:

13 (1) The provisions of this chapter do not apply in respect to the
14 use of food and food ingredients for human consumption. "Food and
15 food ingredients" has the same meaning as in RCW 82.08.0293.

16 (2) The exemption of "food and food ingredients" provided for in
17 subsection (1) of this section does not apply to prepared food, soft
18 drinks, bottled water, or dietary supplements. "Prepared food," "soft
19 drinks," "bottled water," and "dietary supplements" have the same
20 meanings as in RCW 82.08.0293.

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

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

28 (b) (~~Which are provided to~~) To senior citizens, individuals
29 with disabilities, or low-income persons by a nonprofit organization
30 organized under chapter 24.03A or 24.12 RCW; (~~or~~)

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

1 (d) By a senior living community to tenants as part of a rental
2 or residency agreement for which no separate charge is made,
3 regardless of whether the tenant is a resident for purposes of
4 chapter 18.20 or 18.390 RCW. For purposes of this subsection (3)(d),
5 "senior living community" has the same meaning as in section 1 of
6 this act.

7 NEW SECTION. **Sec. 4.** RCW 82.32.805 and 82.32.808 do not apply
8 to this act.

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