Initiative Measure No. 1090

FILED

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SECRETARY OF STATE
STATE OF WASHINGTON

STOP THE BEVERAGE TAX INCREASE

COMPLETE TEXT

AN ACT Relating to repealing the recent tax increases on beverages; amending RCW 82.--.---, 82.08.0293, and 82.12.0293; and creating new sections.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

INTENT

NEW SECTION. **Sec. 1.** This initiative would eliminate the recent tax increases on beverages (pop and water) imposed by the 2010 legislature. Here's why voters should support this tax repeal effort:

(1) DON'T REWARD OLYMPIA FOR FAILING TO REFORM: Taxpayers shouldn't be forced to bail out Olympia for being fiscally irresponsible. Higher taxes will only reward them for their lack of fiscal discipline and discourage them from doing what the voters have repeatedly demanded: prioritize spending and reform government. Olympia needs to live within its means just like families are doing.

(2) NONE OF THESE TAX HIKES RECEIVED A TWO-THIRDS VOTE: During the 2010 legislative session, politicians overturned the will of the people by suspending the two-thirds vote requirement for raising taxes, the threshold voters have repeatedly demanded. They then imposed over twenty tax hikes totaling $800 million. Since none of these tax increases received a two-thirds vote, none of them should be allowed to stand.

(3) DOESN'T REPEAL ALL OF IT: Nonetheless, this initiative only repeals a very small fraction - $33 million - of the $800 million tax package.

(4) THE TAX SURPLUS WILL COVER IT: The state's $500 million tax surplus is more than enough to cover the repeal of these few tax hikes, which, again, did not receive a two-thirds vote.

(5) BEVERAGES ARE ALREADY TAXED: Beverages are already heavily taxed and should not be subjected to extra taxes, especially during these tough economic times.

Olympia shouldn't balance the budget on the backs of the working class - STOP THE BEVERAGE TAX INCREASE.

PROTECTING TAXPAYERS BY ELIMINATING THE RECENT SODA POP TAX INCREASE

Sec. 2. RCW 82.--.--- and 2010 1st sp.s. c ... (2ESSB 6143) s 1402 are each amended to read as follows:

(1) From the effective date of this section through ((~~June 30, 2013~~)) the effective date of this act, a tax is imposed on every person for the privilege of selling, at wholesale or retail, carbonated beverages in this state. The rate of the tax is equal to two cents per twelve ounces of carbonated beverages sold in this state.

(2)(a) In calculating the amount of tax due under this section, if the total amount of carbonated beverages sold in this state during the reporting period is not a whole number, the taxable quantity must be rounded as provided in (b) of this subsection.

(b) For a fraction of an ounce that is equal to or greater than one-half ounce, the taxable quantity must be rounded up to the nearest ounce. For a fraction of an ounce that is less than one-half ounce, the taxable quantity must be rounded down to the nearest ounce.

(3) Chapter 82.32 RCW applies to the tax imposed in this section. The tax reporting frequency for the tax imposed in this section must coincide with the taxpayer's reporting frequency for the tax imposed in chapter 82.04 RCW.

(4) The department may require taxpayers to report the taxable quantity of carbonated beverages in units of measure other than ounces.

(5) The tax imposed in this section is in addition to all other taxes imposed in this title on the same taxable event.

PROTECTING TAXPAYERS BY ELIMINATING THE RECENT BOTTLED WATER TAX INCREASE

Sec. 3. RCW 82.08.0293 and 2010 1st sp.s. c ... (2ESSB 6143) s 902 are each amended to read as follows:

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

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

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

(2) ((~~Until July 1, 2013,~~)) The exemption of "food and food ingredients" provided for in subsection (1) of this section does not apply to prepared food, soft drinks, ((~~bottled water,~~)) candy, or dietary supplements. ((~~Beginning July 1, 2013, the exemption of "food and food ingredients" provided for in subsection (1) of this section does not apply to prepared food, soft drinks, candy, or dietary supplements.~~)) For purposes of this subsection, the following definitions apply:

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

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

(A) A vitamin;

(B) A mineral;

(C) An herb or other botanical;

(D) An amino acid;

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

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

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

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

(b)(i) "Prepared food" means:

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

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

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

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

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

(ii) "Prepared food" does not include the following food or food ingredients, if the food or food ingredients are sold without eating utensils provided by the seller:

(A) Food sold by a seller whose proper primary North American industry classification system (NAICS) classification is manufacturing

in sector 311, except subsector 3118 (bakeries), as provided in the "North American industry classification system--United States, 2002";

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

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

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

(d) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. "Candy" does not include any preparation containing flour and does not require refrigeration.

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

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

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

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

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

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

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

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

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

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

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

Sec. 4. RCW 82.12.0293 and 2010 1st sp.s. c ... (2ESSB 6143) s 903 are each amended to read as follows:

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

(2) ((~~Until July 1, 2013,~~)) The exemption of "food and food ingredients" provided for in subsection (1) of this section does not apply to prepared food, soft drinks, ((~~bottled water,~~)) candy, or dietary supplements. ((~~Beginning July 1, 2013, the exemption of "food and food ingredients" provided for in subsection (1) of this section does not apply to prepared food, soft drinks, candy, or dietary supplements.~~)) "Prepared food," "soft drinks," "dietary supplements," and "candy((~~," and "bottled water~~))" have the same meanings as in RCW 82.08.0293.

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

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

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

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

CONSTRUCTION CLAUSE

NEW SECTION. **Sec. 5.** The provisions of this act are to be liberally construed to effectuate the intent, policies, and purposes of this act.

SEVERABILITY CLAUSE

NEW SECTION. **Sec. 6.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

STOP THE BEVERAGE TAX INCREASE ACT OF 2010

NEW SECTION. **Sec. 7.** This act shall be known and cited as Stop the Beverage Tax Increase Act of 2010.

-- **END** --