

INITIATIVE 865

I, Sam Reed, Secretary of State of the State of Washington and custodian of its seal, hereby certify that, according to the records on file in my office, the attached copy of Initiative Measure No. 865 to the People is a true and correct copy as it was received by this office.

1 AN ACT Relating to revenue and taxation; and amending RCW
2 82.08.0293.

3 BE IT ENACTED BY THE PEOPLE 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) Subsection (1) of this section notwithstanding, the retail sale~~
12 ~~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.~~

16 ~~This subsection does not apply to hot prepared food and food~~
17 ~~ingredients, other than food and food ingredients which are heated~~
18 ~~after they have been dispensed from the vending machine.~~

19 ~~For tax collected under this subsection, the requirements that the~~
20 ~~tax be collected from the buyer and that the amount of tax be stated as~~
21 ~~a separate item are waived.)) The tax levied by RCW 82.08.020 shall not~~
22 ~~apply to sales of food products for human consumption.~~

23 ~~"Food products" include cereals and cereal products, oleomargarine,~~
24 ~~meat and meat products including livestock sold for personal~~
25 ~~consumption, fish and fish products, eggs and egg products, vegetables~~
26 ~~and vegetable products, fruit and fruit products, spices and salt,~~
27 ~~sugar and sugar products, coffee and coffee substitutes, tea, and cocoa~~
28 ~~and cocoa products.~~

29 ~~"Food products" include milk and milk products, milk shakes, malted~~
30 ~~milks, and any other similar type beverages which are composed at least~~
31 ~~in part of milk or a milk product and which requires the use of milk or~~
32 ~~a milk product in their preparation.~~

33 ~~"Food products" include all fruit juices, vegetable juices, and~~
34 ~~other beverages except spirituous, malt or vinous liquors, whether~~
35 ~~liquid or frozen.~~

36 ~~"Food products" include medicines and preparations in liquid,~~
37 ~~powdered, granular, tablet, capsule, lozenge, and pill form sold as~~
38 ~~dietary supplements or adjuncts.~~

1 (2) The exemption of "food products" provided for in subsection (1)
2 of this section shall not apply: (a) When the food products are
3 ordinarily sold for immediate consumption on or near a location at
4 which parking facilities are provided primarily for the use of patrons
5 in consuming the products purchased at the location, even though such
6 products are sold on a "takeout" or "to go" order and are actually
7 packaged or wrapped and taken from the premises of the retailer, or (b)
8 when the food products are sold for consumption within a place, the
9 entrance to which is subject to an admission charge, except for
10 national and state parks and monuments, or (c) to a food product, when
11 sold by the retail vendor, which by law must be handled on the vendor's
12 premises by a person with a food and beverage service worker's permit
13 under RCW 69.06.010, including but not limited to sandwiches prepared
14 or chicken cooked on the premises, deli trays, home-delivered pizzas or
15 meals, and salad bars but excluding:

16 (i) Raw meat prepared by persons who slaughter animals, including
17 fish and fowl, or dress or wrap slaughtered raw meat such as fish
18 mongers, butchers, or meat wrappers;

19 (ii) Meat and cheese sliced and/or wrapped, in any quantity
20 determined by the buyer, sold by vendors such as meat markets,
21 delicatessens, and grocery stores;

22 (iii) Bakeries which only sell baked goods;

23 (iv) Combination bakery businesses, as prescribed by rule of the
24 department, to the extent that sales of baked goods are separately
25 accounted for and the baked goods claimed for exemption are not sold as
26 part of meals or with beverages in unsealed containers; or

27 (v) Bulk food products sold from bins or barrels, including but not
28 limited to flour, fruits, vegetables, sugar, salt, candy, chips, and
29 cocoa.

30 (3) Notwithstanding anything in this section to the contrary, the
31 exemption of "food products" provided in this section shall apply to
32 food products which are furnished, prepared, or served as meals:

33 (a) Under a state administered nutrition program for the aged as
34 provided for in the Older Americans Act (P.L. 95-478 Title III) and RCW
35 74.38.040(6); or

36 (b) Which are provided to senior citizens, disabled persons, or
37 low-income persons by a not-for-profit organization organized under
38 chapter 24.03 or 24.12 RCW.

1 (4) Subsection (1) of this section notwithstanding, the retail sale
2 of food products is subject to sales tax under RCW 82.08.020 if the
3 food products are sold through a vending machine, and in this case the
4 selling price for purposes of RCW 82.08.020 is fifty-seven percent of
5 the gross receipts.

6 This subsection does not apply to hot prepared food products, other
7 than food products which are heated after they have been dispensed from
8 the vending machine.

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

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