

THIS DRAFT IS NOT TO BE CONSIDERED A PROPOSED RULE AND IS ONLY PROVIDED FOR DISCUSSION PURPOSES TO DETERMINE WHAT TOPICS A LATER PROPOSED RULE MIGHT ADDRESS. UNDER NO CIRCUMSTANCES IS THIS DISCUSSION DRAFT TO BE USED TO DETERMINE TAX LIABILITY AND OR EXEMPTIONS.

WAC 458-20-244 ~~Food products~~ Food and food ingredients. (1)

~~Introduction.~~ Effective on June 1, 1988, the law is changed regarding the exemption of retail sales tax and use tax on food products. Formerly, sales of food products were sometimes taxable depending upon how and where the products were sold. Under the changes in the law the intent is to tax such product sales or exempt them from tax in a uniform and consistent manner so that the tax either applies or not equally for all sellers and buyers. Generally, it is the intent of the law, as amended, to provide the exemption for groceries and other unprepared food products with some specific exclusions. It is the intent of the law to tax the sales of meals and food prepared by the seller regardless of where it is served or delivered to the buyer. Again, there are some specific exclusions. This section provides the guidelines for determining if food product sales are taxable or exempt of tax under the changed law. It also explains special tax exemption provisions for food purchased with food stamps.

~~(2) Definitions.~~ As used herein and for purposes of the sales tax and use tax exemptions, the following definitions apply:

~~(a) "Food products" means only substances, products, and byproducts sold for use as food or drink by humans. The term includes, but is not limited to, the following items:~~

Baby foods, formulas	Baking soda and powder
Bakery products	Bouillon cubes
Candy	Meat, meat products,
Cereal products	including livestock sold
Chewing gum	for human consumption
Chocolate	Milk, milk products
Cocoa	Mustard
Coffee and coffee	Noncarbonated soft drinks
substitutes	Nuts
Condiments	Oleomargarine
Crackers	Olives, olive oil
Diet food, not including	Peanut butter
dietary supplements	Popcorn
or adjuncts	Popsicles
Eggs, egg products	Potato chips
Extracts and flavoring	Powdered drink mixes
for food	Salt and salt substitutes
Fish, fish products	Sandwich spreads
Flour	Sauces

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~~Food coloring~~ ~~Sherbet~~
~~Frozen foods~~ ~~Shortening~~
~~Fruit, fruit products~~ ~~Soup~~
~~Gelatin~~ ~~Spices and herbs~~
~~Honey~~ ~~Sugar, sugar products,~~
~~Ice cream, toppings~~ ~~sugar substitutes~~
~~Jam, jelly, jello~~ ~~Syrups~~
~~Marshmallows~~ ~~Tea~~
~~Mayonnaise~~ ~~Vegetables, vegetable~~
~~Yeast products~~

~~(b) "Nonfood products" means certain substances which may be sold at food and grocery stores and which may be ingested by humans but which are not treated as food for purposes of the tax exemptions. Tax exempt food products do not include any of the following nonfood products:~~

~~Alcoholic beverages~~ ~~Ice, bottled water (mineral~~
~~Aspirin~~ ~~or otherwise)~~
~~Beer or wine making~~ ~~Mouthwashes~~
~~—supplies~~ ~~Nonedible cake decorations~~
~~Breeding stock~~ ~~Nonprescription medicines~~
~~Calcium tablets~~ ~~Patent medicines~~
~~Carbonated beverages~~ ~~Pet food and supplies~~
~~Chewing tobacco~~ ~~Seeds and growing plants~~
~~Cod liver oil~~ ~~including edible plants~~
~~Cough medicines (liquid~~ ~~Tobacco products~~
~~or lozenge)~~ ~~Tonics, vitamins~~
~~Dietary supplements or~~ ~~Toothpaste~~
~~—adjuncts as defined~~
~~—below~~
~~First-aid products~~

~~(c) "Dietary supplements or adjuncts" are medicines or preparations in liquid, powdered, granular, tablet, capsule, lozenge, or pill form taken in addition to natural or processed foods in order to meet special vitamin or mineral needs. Dietary supplements or adjuncts are not food products entitled to tax exemption. However, the term "dietary supplements or adjuncts" does not include products whose primary purpose is to provide the complete nutritional needs of persons who cannot ingest natural or processed foods. Also, this term does not include food in its raw or natural state which has been merely dried, frozen, liquified, fortified, or otherwise merely changed in form rather than content.~~

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~~Such substances as dried milk, powdered spices and herbs, brewers yeast, desiccated liver, powdered kelp, herbal extracts, and the like are not dietary supplements or adjuncts subject to tax.~~

~~(d) "Eligible foods," as used in subsection (10) of this section, means any food which can be purchased with food stamps under the Federal Food Stamp Act of 1977. "Eligible foods" include any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods or hot food products prepared for immediate consumption. The term also includes seeds and plants used to grow foods for personal consumption (7 U.S.C.A. U 2012). Thus some substances are "eligible foods" which are defined above as "nonfood products."~~

~~(3) Business and occupation tax. There is no general tax exemption for sales of food or food products for B&O tax purposes. The gross proceeds of sales of food are subject to the wholesaling or retailing classification of B&O tax, as the case may be.~~

~~(4) Retail sales tax - Taxable sales. Sales of food products are subject to retail sales tax under any of the following circumstances:~~

~~(a) Effective June 1, 1988, sales by any retail vendor of any food handled on the vendor's premises which by law requires the vendor to have a food and beverage service worker's permit under RCW 69.06.010 (handling unwrapped or unpackaged food) are subject to sales tax. Such sales include, but are not limited to, sandwiches prepared or chicken cooked on the premises, deli trays, home delivered pizzas or meals, and salad bars. However, certain sales of foods which require a permit are expressly excluded from taxation. See subsection (5)(a) of this section.~~

~~(b) Food products sold for consumption within a place, the entrance to which is subject to an admission charge, except for national or state parks or monuments, are subject to sales tax.~~

~~(i) Example. Food of any kind sold at a snack bar, food stand, restaurant, or by individual roving food vendors inside a sports arena, theater, or similar place of amusement or recreation which charges admission is subject to sales tax.~~

~~(ii) Even sales of food products within national or state parks where admission is charged are subject to retail sales tax upon any food the preparation of which requires the retail vendor to have a permit specified in (a) of this subsection.~~

~~(c) Sales of baked goods as a part of meals or with beverages in unsealed containers are subject to sales tax. (However, see the provision for combination businesses in subsection (6) of this section.)~~

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~~—— (d) Vending machine sales. Sales of any food products dispensed by vending machines are subject to sales tax under a formula which requires the tax to be reported and paid by the vending machine owner or operator upon fifty seven percent of the gross receipts from such machines. However, sales tax must be reported and paid upon one hundred percent of the gross receipts of vending machines which dispense hot prepared food products, e.g., hot coffee, soups, tea, chocolate, etc.~~

~~—— (i) It is not required that food vending machines be posted with prices separately showing the sales tax amount or rate charged.~~

~~—— (ii) The retail sales tax may be factored out of the gross receipts of such vending machines to derive the measure for reporting B&O tax.~~

~~—— (5) Retail sales tax - Exempt sales. RCW 82.08.0293 exempts sales of food products for human consumption from the retail sales tax except for the taxable sales described in subsection (4) of this section.~~

~~—— (a) Sales of the following food products are exempt of sales tax even though sold by a person required to have a food handler's permit (i.e., handling unwrapped or unpackaged foods):~~

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

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

~~—— (iii) Baked goods sold by bakeries which sell no food products other than baked goods, including bakeries located in grocery stores. (See the provision for combination businesses in subsection (6) of this section);~~

~~—— (iv) Bulk food products sold from bins or barrels, including but not limited to, flour, fruits, vegetables, sugar, salt, candy, chips, and cocoa;~~

~~—— (v) Prepared meals sold under a state-administered nutrition program for the aged as provided for in the Older Americans Act (Public Law 95 478 Title III) and RCW 74.38.040(6);~~

~~—— (vi) Prepared meals sold to or for senior citizens, disabled persons, or low income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW.~~

~~—— (b) Retailers of food products must keep adequate records to demonstrate that any sales claimed to be tax exempt qualify for exemption as explained above.~~

~~—— (6) Combination businesses. Persons operating a combination of two kinds of food sales businesses at one location are~~

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~~required to keep their accounting records and sales receipts segregated between taxable and tax exempt sales.~~

~~—— (a) Examples of combination businesses are:~~

~~—— (i) A grocery store with a lunch counter or salad deli bar.~~

~~—— (ii) A bakery which sells baked goods "to go" and also sells baked goods with meals or beverages in unsealed containers.~~

~~—— (b) Combination businesses must collect and report retail sales tax upon their charges for meals and servings of food which require such businesses to have a food handler's permit.~~

~~—— (c) It is sufficient segregation for accounting purposes if cash registers or electronic checking machines are programmed to identify and separately tax food products which are not tax exempt.~~

~~—— (d) If the combined food businesses are commingled in accounting, all sales of food products will be deemed subject to sales tax.~~

~~—— (7) Combination and specialty packages. When a package consists of both food and nonfood products, such as a holiday or picnic basket containing beer and pretzels, cups or glasses containing food items, or carbonated beverages along with cheese and crackers, the food portion may be tax exempt if its price is stated separately; if the price is a lump sum, the sales tax applies to the entire price.~~

~~—— (8) Promotional items. Nonfood items given to buyers to promote food product sales such as coffee sold in a decorative apothecary container or cheese sold in a serving dish are not taxable and are not deemed combination packages where it is clear that the container or dish is simply a gift furnished as a sales inducement for the food. In the same way, promotional give-aways of food items as an inducement for sales of nonfood items are not exempt (e.g., the sale of crystal ware containing candy or nuts is fully subject to sales tax).~~

~~—— (9) Food vending vans. Food products sales from vehicular vending vans are taxable or exempt of retail sales tax in the same manner as food sales at grocery stores. Thus, sales of candy bars, gum, or any prewrapped food products which are prepackaged by a manufacturer other than the retail vendor operating the van are exempt of retail sales tax. Sales of any unwrapped or unpackaged food items, including but not limited to, hotdogs, sandwiches, bakery items, soups, and hot or cold beverages as well as sales of hot food cooked or heated by the retail vendor are subject to sales tax.~~

~~—— (10) Food stamps. Sales of "eligible foods," as defined earlier, which are purchased with food stamps are exempt of retail sales tax.~~

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~~—— (a) When both food stamps and cash (or check) are used to make purchases, the food stamps must be applied first to "eligible foods" which are not otherwise tax exempt "food products," for example, dietary supplements, carbonated beverages, garden seeds, bottled water, and ice. The cash or check portion of the purchase price must then be applied to items listed above which qualify as tax exempt food products. The intent is to always apply the stamps and cash in such a way as to provide the greatest possible amount of sales tax exemption under the law.~~

~~—— (b) The obligation rests with the seller to determine which items are eligible for purchase with food stamps.~~

~~—— (c) The following examples show how the tax exemptions apply in cases where a purchase of ten dollars each is made for meat (a food product), dietary supplements (an eligible food), and soap (a nonfood item) using both food stamps and cash. A tax rate of 7.8% is used for these examples.~~

~~—— (i) A customer pays the thirty dollar selling price with ten dollars worth of food stamps and twenty dollars cash. The stamps are applied to the dietary supplements, making them tax exempt. The cash is used for the meat and soap. The result is that sales tax is due only on the soap, in the amount of .78 (7.8% x \$10.00 worth of soap).~~

~~—— (ii) The customer pays with five dollars in stamps and twenty five dollars in cash. Again, the stamps are applied against the dietary supplements, leaving five dollars of their value to be purchased with cash. The meat is tax exempt and the soap and the rest of the dietary supplements are taxable. Tax is due in the amount of \$1.78 (7.8% x \$15.00 worth of soap and supplements).~~

~~—— (iii) The customer pays with fifteen dollars in stamps and fifteen dollars in cash. The stamps are applied first to the supplements (ten dollars worth) and then to the meat (five dollars worth). The cash applies to the rest of the meat and the soap. The tax due is .78 (7.8% x \$10.00 worth of soap).~~

~~—— (11) Use tax on food. The provisions of the use tax of chapter 82.12 RCW apply for taxation or tax exemption under the same circumstances outlined above regarding retail sales tax. (See RCW 82.12.0293.) The use tax applies under any circumstance where the retail sales tax is due upon food sales in this state but the sales tax has not been paid for any reason.~~

~~—— (12) Other food and meals vendors. Specific provisions govern certain persons who sell food and prepared meals. See the following referenced sections for provisions regarding:~~

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~~— (a) Restaurants and transportation companies (e.g., air, rail, water) and other businesses or groups furnishing meals to employees, guests, patients, students, etc., see WAC 458-20-119.~~

~~— (b) Hotels, motels, boarding or rooming houses, resorts, and trailer camps, see WAC 458-20-166.~~

~~— (c) Religious, charitable benevolent, and nonprofit service organizations, see WAC 458-20-169.~~

RCW 82.08.0293 and 82.12.0293 provide retail sales tax and use tax exemptions for certain foods sold for human consumption. In 2003, the Legislature adopted the food definitions set forth in the national Streamlined Sales and Use Tax Agreement. The 2003 amendments to these statutes significantly change how sales of food and food ingredients are taxed on and after January 1, 2004. This rule provides guidelines for determining if the sale of a food or food ingredient is subject to retail sales tax.

There is no general business and occupation (B&O) tax exemption for sales of food and food ingredients. Therefore, even if a sale of food is exempt from retail sales tax, the income from that sale is included in gross proceeds when calculating the business's retailing B&O tax.

(2) **Related rules.** The department has adopted other rules that provide important tax reporting information to persons who sell food and prepared meals:

(a) WAC 458-20-119 (Sales of meals);

(b) WAC 458-20-124 (Restaurants, cocktail bars, taverns and similar businesses);

(c) WAC 458-20-12401 (Special stadium sales and use tax);

(d) WAC 458-20-166 (Hotels, motels, boarding houses, rooming houses, resorts, trailer camps, etc);

(e) WAC 458-20-167 (Education institutions, school districts, student organizations, and private schools);

(f) WAC 458-20-168 (Hospitals, medical care facilities, and adult family homes); and

(g) WAC 458-20-169 (Nonprofit organizations).

(3) **"Food and food ingredients" defined.** "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 items that contain tobacco.

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(4) **Taxability of prepared food.** The exemption for "food and food ingredients" provided in RCW 82.08.0293 does not apply to prepared food, soft drinks, or dietary supplements. The sale of prepared food, soft drinks, and dietary supplements is subject to retail sales tax, unless otherwise exempt by law.

(a) **Prepared food.** "Prepared food" means:

(i) 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;

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

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

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

(B) 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; or

(C) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.

(b) **Food sold with eating utensils.** Food sold with eating utensils provided by the seller is prepared food and thus subject to tax, even if the seller does not otherwise prepare the food.

(i) **Eating establishments that sell food with eating utensils.** Food sold by an eating establishment is subject to sales tax. An eating establishment may be mobile or in a fixed location and may or may not provide seating accommodations for its customers. Eating establishments include restaurants, caterers, pizzerias, bars, taverns, night clubs, yogurt or ice cream stores/stands, coffee or donut shops, diners, refreshment stands, drive-ins, fast food restaurants, bagel shops, lunch counters, cafeterias, private and social clubs, sandwich shops, snack bars, hot dog carts, concession stands at a fair or a mall, sidewalk vendors or like places of business where food is served to individuals and is customarily sold for consumption shortly after it is sold.

(A) All food served at eating establishments is subject to tax unless the seller maintains adequate records for sale of food items that are generally not sold with eating utensils and do not otherwise qualify as prepared food, such as gallons of

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milk, loaves of bread, whole pies, wedding or birthday cakes, and packages of rolls or muffins. The information shown on invoices, cash register receipts, or sales tickets must provide an adequate description of the food items sold to show that the sale was not of food items that are generally served with eating utensils or do not otherwise qualify as prepared food.

(B) Food sold by grocery stores, convenience stores, and department stores is generally not considered to be sold with eating utensils provided by the seller, even though eating utensils may be available to customers (e.g., napkins on the counter). For example, the sale of canned goods is not subject to retail sales tax even if napkins are available for the customer's use at the checkout stand. The food may be taxable if it is generally served with eating utensils (see part (ii) below). A grocery store is a business primarily engaged in the retail sale of a wide variety of food products. They generally contain the following departments: dairy, baked goods, canned and dry goods, frozen foods, meats, fresh fruits and vegetables and household supplies.

Grocery stores, department stores, and convenience stores that have a separately identifiable eating establishment, such as a salad bar, sushi bar, or deli, are required to collect the tax on food items sold at that establishment unless the store maintains adequate records for sale of food items that are generally not sold with eating utensils or do not otherwise qualify as prepared food.

(ii) Food that is generally sold with eating utensils. Food that is generally sold with eating utensils, including plates, knives, forks, spoons, glasses, cups, napkins, or straws, is subject to tax, even if the seller does not *in all cases* actually provide the utensils. For example, sales from salad bars or "make your own sandwich" bars at a grocery store are taxable since salads and sandwiches are generally eaten with eating utensils (a fork for the salad and a napkin for the sandwich). "Make your own ice cream sundae" bars are taxable for the same reason. These items are taxable regardless of where they are sold. Cold cut platters, cheese platters, vegetable and fruit platters are taxable since the platter is an eating utensil.

(A) Box lunches are taxable since they are generally sold with eating utensils provided by the seller.

(B) If the eating utensil is provided by the manufacturer rather than by the seller, the sale of the food is not subject to retail sales tax. For example, a box of crackers and cheese that includes a spreader, is not subject to tax since the seller does not provide the spreader.

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(c) "Prepared food" examples. The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(i) If a carton of milk is purchased from a grocery store, the sale is exempt from retail sales tax because the milk, in this case, is an exempt food item. If an individual purchases a glass of milk from a restaurant, however, it is subject to retail sales tax because the seller provided an eating utensil, a glass.

(ii) A grocery store deli sells pasta salad that it prepares itself and potato salad that it purchases in bulk. The deli packages the pasta salad for sale, and repackages the potato salad the deli purchased in bulk into smaller containers. Sales of the potato salad are exempt from retail sales tax because "prepared food" does not include food that is merely repackaged. Sales of the pasta salad are subject to retail sales tax because the deli mixed or combined two or more food ingredients, doing something more than cutting or repackaging the food ingredients.

(iii) A grocery store meat department prepares ready-to-bake stuffed pork chops. The stuffed pork chops are not "prepared foods" and are not subject to tax even though the seller combined two or more ingredients because "prepared foods" does not include raw meat, or foods containing raw animal foods that require cooking by the consumer, to prevent foodborne illness.

(iv) **Pizza.** The taxability of pizza depends on who prepares it and in what form it is sold. The following examples explain the taxability of pizza in its various forms:

(A) Pizza prepared by the seller and sold in a heated state. Pizza sold by the slice and whole hot pizzas ready to eat, including delivered pizzas, are taxable because they are sold in a heated state. Additionally, the sale of the pizza is a taxable sale of a "prepared food" because the seller mixed or combined two or more food ingredients.

(B) Ready-to-bake pizzas prepared by the seller. Fresh or frozen ready-to-bake pizza prepared by the seller is taxable as a "prepared food" because the seller mixed or combined two or more food ingredients.

(C) Ready-to-bake pizzas prepared by a third party. Fresh or frozen ready-to-bake pizza procured by the seller from a third party or wholesaler is exempt from sales tax because it does not fall under the definition of "prepared food" as the seller did not mix or combine two or more food ingredients.

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(d) Exemption from taxation for meals (prepared food) sold under a state-administered nutrition program; meals sold to or for senior citizens, disabled, or low-income persons; and prepared food fund-raising sales by non-profit organizations. Notwithstanding subsection (4)(b), above, meals sold under a state-administered nutrition program for the aged as provided for in the Older Americans Act (Public Law 95-478 Title III) and RCW 74.38.040, and meals sold to or for senior citizens, disabled persons, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW are exempt from retail sales and use tax. There is a sales tax exemption for meal sales for certain fund-raising by non-profit organizations. See WAC 458-20-169.

(5) **Taxability of soft drinks.** The exemption for "food and food ingredients" provided in RCW 82.08.0293 does not apply to "soft drinks."

(a) **"Soft drinks" defined.** "Soft drinks" are nonalcoholic beverages that contain natural or artificial sweeteners. Soft drinks do not include:

(i) Beverages that contain milk or milk products, soy, rice, or similar milk substitutes; or

(ii) Beverages that contain greater than fifty-percent vegetable or fruit juice by volume.

(b) "Soft drink" examples. The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(i) The sale of bottled water, carbonated water, and flavored water, without natural or artificial sweeteners, is exempt from tax because they are defined as food in RCW 82.08.0293 and do not fall within the definition of "soft drinks." If these products are sold in a cup or glass, however, the sale is a sale of a "prepared food" and is subject to sales tax. See subsection (4)(a)(i) above. Bottled water, carbonated water, and flavored water that contain natural or artificial sweeteners are subject to sales tax because they are "soft drinks."

(ii) Sports drinks that contain natural or artificial sweeteners are subject to sales tax because they fall within the definition of "soft drinks."

(iii) Fruit or vegetable juice in frozen concentrate, powdered, or liquid form that contains 50% or less by volume of fruit or vegetable juice is subject to sales tax because it falls within the definition of "soft drinks."

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(iv) Bottled coffee drinks with natural or artificial sweeteners, but without milk or milk products, are "soft drinks" and are subject to retail sales tax. Bottled coffee drinks, with or without sweeteners that contain milk or milk products are not subject to sales tax because they do not fall within the definition of "soft drinks."

(6) **Taxability of dietary supplements.** The exemption for "food and food ingredients" provided in RCW 82.08.0293 does not apply to "dietary supplements."

(a) **"Dietary supplements" defined.** "Dietary supplement" means any product, other than tobacco, intended to supplement the diet and 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, soft gel, gelcap, or liquid form, or if not intended for ingestion in such a 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 and as required under 21 Code of Federal Regulations (CFR) § 101.36, as amended or renumbered as of January 1, 2003.

(b) **"Dietary supplements" examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(i) Nutrition products in bar or liquid form formulated to provide balanced nutrition as a sole source of nourishment are considered a food and not a dietary supplement and are therefore exempt from taxation.

(ii) A product sold for human consumption may have one or more of the following federal Food and Drug Administration labels, a "Nutrition Facts", a "Dietary Supplements Facts", or a "Drug Facts" label. If a product label contains a "Supplement Facts" and "Nutrition Facts" box, the product is a food and not

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subject to tax if it does not otherwise qualify as prepared food.

(7) **Is ice sold for human consumption taxed?** Ice sold for human consumption is considered a food or food ingredient and is therefore exempt from retail sales. "Ice sold for human consumption" means ice sold in cube, shaved, or crushed form and in quantities of ten pounds or less in weight per bag or container. Blocks of ice of any weight are not considered a food or food ingredient and are therefore taxable. See WAC 458-20-120 (Sales of ice) for additional guidance on the sale of ice.

(8) **Combination businesses.** The sale of "food and food ingredients" or "prepared food" sold in the same manner should receive the same tax treatment regardless of the establishment in which the item is sold. Persons operating a combination of two kinds of food sales businesses at one location must keep their accounting records and sales receipts segregated between taxable and tax exempt sales. Examples of combination businesses are a grocery store with a lunch counter or salad-deli bar, a bakery that sells tax-exempt baked goods and also sells baked goods with eating utensils or as part of a meal, and a gas station/convenience store.

(a) **Tax collecting responsibility.** Combination businesses must collect and report retail sales tax upon their charges for prepared foods. It is sufficient segregation for accounting purposes if cash registers or electronic checking machines are programmed to identify and separately tax food that is not tax exempt. If the combined food business' sales are commingled in their accounting records, all sales of food and food ingredients are subject to retail sales tax.

(b) **Combination business examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(i) A consumer purchases his wedding cake, a donut, and a cup of coffee from Bakery. The sale of the wedding cake is not taxable if Bakery maintains adequate records for sale of food items that are generally not sold with eating utensils and do not otherwise qualify as prepared food. The sale of the donut is taxable because it is a food that is generally sold with eating utensils, a napkin. The sale of the coffee is taxable because it is served with an eating utensil, the cup, and because it is sold in a heated state by the seller.

(ii) Grocery Store has a deli section that prepares and sells deli foods and provides a salad bar where the customer can

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make a salad. A customer purchases a salad that he made from the salad bar and a bottle of apple juice that is 100% fruit juice. The sale of a salad from the salad bar is taxable because it is generally sold with eating utensils (e.g., a plate, fork, knife, spoon, or napkin). The sale of the apple juice is exempt because it is food and not a "soft drink" because it is more than 50% fruit juice.

(iii) Gas station has a convenience store that sells "food and food ingredients," "prepared food," and non-food products. The sale of "food and food ingredients" are not taxable if Gas Station maintains adequate records for sale of food items that are generally not sold with eating utensils and do not otherwise qualify as prepared food.

(9) **How are packages of food items that contain taxable and nontaxable items taxed?** When a package consists of both food and nonfood products, such as a holiday or picnic basket containing beer and pretzels, cups or glasses containing food items, or soft drinks along with cheese and crackers, the food portion may be tax exempt if its price is stated separately. If the price is a lump sum, the sales tax applies to the entire price.

Nonfood items given to buyers to promote food or food ingredient sales such as coffee sold in a decorative apothecary container or cheese sold in a serving dish are not taxable and are not deemed combination packages where it is clear that the nonfood item is simply a gift furnished as a sales inducement for the food. In the same way, promotional give-aways of food items as an inducement for sales of nonfood items are not exempt (e.g., the sale of crystal ware containing candy or nuts is fully subject to sales tax).

(10) **Purchases made under the Food Stamp Act of 1977.** RCW 82.08.0297 provides a retail sales tax exemption for the sale of eligible foods that are purchased with coupons issued only under the federal food stamp act of 1977. The term "food coupon" does not include manufacturers' coupons, grocers' coupons, or other coupons issued by private parties. "Eligible foods" has the same meaning as established under federal law for the purposes of the Food Stamp Act of 1977. The term includes any food or food ingredient intended for human consumption except alcoholic beverages, tobacco, and hot foods or hot food ingredients prepared for immediate consumption. 7 U.S.C. § 2012(g), as amended or renumbered as of January 1, 2003. The term "coupon," as used in this subsection, means any coupon, stamp, type of certificate, authorization card, cash or check issued in lieu of a coupon, or access device, including an electronic benefit transfer card or personal identification number issued pursuant

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to the provisions of the Food Stamp Act of 1977. 7 C.F.R. § 271.2, as amended or renumbered as of January 1, 2003.

(a) **Purchasing nonfood products with food coupons.** Some nonfood products may be exempt if purchased with food coupons. For example, seeds and growing plants are considered "nonfood products," even though they may be sold at grocery stores and can be ingested by humans. However, seeds and plants to grow foods for the personal consumption of eligible households are "eligible foods" under the Food Stamp Act of 1977. 7 C.F.R. § 271.2, as amended or renumbered as of January 1, 2003. Therefore, in this limited circumstance, the sale of seeds and plants is tax exempt.

When both coupons and cash (or check) are used to make purchases, the coupons must be applied first to "eligible foods" which are not otherwise tax exempt "food or food ingredients." For example, soft drinks and garden seeds are "eligible foods" under the food stamp program but are not tax exempt under RCW 82.08.0293. The intent is always to apply the coupons and cash in such a way as to provide the greatest possible amount of retail sales tax exemption under the law.

(b) **Food coupon examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances. The following examples demonstrate how the tax exemption applies in cases where a purchase of ten dollars each is made for meat (a food ingredient), soda pop (an eligible food), and soap (a nonfood item) using both coupons and cash.

(i) The customer pays with fifteen dollars in coupons and fifteen dollars in cash. The coupons are applied first to the soda pop (ten dollars worth) and then to the meat (five dollars worth). The cash applies to the rest of the meat and the soap. Retail sales tax is due on the ten-dollar purchase of soap because soap is not an "eligible food" under the food stamp program.

(ii) A customer pays the thirty-dollar selling price with ten dollars worth of coupons and twenty dollars cash. The coupons are applied to the soda pop, making the soda pop exempt. The cash is applied towards the purchase of the meat and soap. The result is that retail sales tax is due only on the ten-dollar purchase of soap.

(iii) The customer pays with five dollars worth of coupons and twenty-five dollars in cash. Again, the coupons are first applied towards the soda pop, leaving five dollars of the value to be purchased with cash. Retail sales tax is due on fifteen

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dollars, the ten-dollar purchase of soap and five dollars worth of soda pop.

(11) **How are food vending van sales taxed?** Food and food ingredient sales from vehicular vending vans are taxable or exempt of retail sales tax in the same manner as food sales at grocery stores. Thus, sales of candy bars, gum, or any pre-wrapped food and food ingredients which are prepackaged by a manufacturer or preparer other than the person operating the van are exempt from retail sales tax. Sales of any prepared food items or soft drinks, including but not limited to, hotdogs, sandwiches, soups, and hot or cold beverages are subject to retail sales tax. See definition of "prepared food" in subsection (4)(a), above.

(12) **How are vending machines taxed?** Sales of food or food ingredients dispensed by vending machines are subject to retail sales tax under a statutory formula provided by RCW 82.08.0293. This formula requires that retail sales tax be reported and paid by the vending machine owner or operator upon fifty-seven percent of the gross receipts from such machines. Retail sales tax must, however, be reported and paid upon one hundred percent of the gross receipts of vending machines which dispense hot prepared food or food ingredients (e.g., hot coffee, soups, tea, and chocolate). Honor box sales to employees are not considered vending machine sales.

(a) **Calculating tax liability.** It is not required that food vending machines be posted with prices separately showing the retail sales tax amount or rate charged. RCW 82.08.050 and RCW 82.08.0293. The retail sales tax should be factored out of the gross receipts of vending machines when calculating tax liability. Subsections (10)(b) and (c), below, demonstrate how to calculate retailing B&O and retail sales tax liabilities for vending machine sales. Assume \$100 in gross vending machine receipts and an 8% retail sales tax rate for each example. These examples do not address any small business B&O tax credit implications under RCW 82.04.4451 and WAC 458-20-104 (Small business tax relief based on volume of business).

Persons making sales through vending machines placed at various locations should remember that the retail sales tax rates vary because of different local retail sales tax rates imposed by various taxing jurisdictions. Local taxes must be coded to the location at which the machine is located. Local retail sales tax rates and location codes can be found on the department's Internet website at "<http://dor.wa.gov/>" under the Geographic Information System (GIS) section, or by calling the department's Telephone Information Center at 1-800-647-7706.

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(b) Food or food ingredient vending machine (except hot prepared food or food ingredients). Jane operates a vending machine selling candy bars and other snack foods. These sample calculations use a combined state and local sales tax amount. On the Combined Excise Tax Return, the state and local retail sales tax due to the state are calculated separately.

(i) Jane calculates the receipts subject to retail sales tax and the amount of retail sales tax included in her vending machine receipts using the following formulas:

(Vending machine receipts x 57%) = proceeds of sales subject to retail sales tax

$$(\$100.00 \times 0.57) = \$57.00$$

(Proceeds of sales subject to retail sales tax) x sales tax rate = sales tax owed

$$\$57.00 \times .08 = \$4.56$$

(ii) Jane should report \$95.44 under the retailing B&O and retail sales tax classifications of her Combined Excise Tax Return, as calculated using the following formula:

Vending machine receipts - collected retail sales tax = proceeds of sales subject to B&O tax

$$\$100.00 - \$4.56 = \$95.44$$

(iii) Jane should take an exempt food deduction of \$38.44 on the retail sales line (but not the retailing B&O line) of her Combined Excise Tax Return, as calculated using the following formula:

Proceeds of sales - sales subject to retail sales tax = exempt food sales

$$\$95.44 - \$57.00 = \$38.44$$

(c) Hot prepared food or food ingredient vending machines. Sam operates a vending machine selling hot coffee and hot chocolate. Sam should report \$92.59 under both the retailing B&O and retail sales tax classifications on his excise tax return.

Vending machine receipts/(1 + retail sales tax rate) = proceeds of sales

$$\$100.00 / 1.08 = \$92.59$$