

1 2965-S AMH NELS H5082.1

2 SHB 2965 - H AMD 0349

3 By Representatives Nelson and H. Sommers

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5 On page 2, after line 10, insert the following:

6 "NEW SECTION. Sec. 3. The purpose of sections 3 through 9 of
7 this act is to facilitate actual collection of retail sales tax by
8 requiring registered contractors to pay sales tax on all materials at
9 time of purchase. When the contractor is required to collect sales tax
10 on materials and labor at the time of sale to the final consumer, a
11 deduction is allowed for sales tax previously paid on materials and
12 materials that are resold. This act is not intended to increase the
13 total tax liability of registered contractors beyond that due under the
14 law before the effective date of this act."

15 "NEW SECTION. Sec. 4. A new section is added to chapter 82.04 RCW
16 to read as follows:

17 "Registered contractor" means contractors registered under chapter
18 18.27 RCW."

19 "Sec. 5. RCW 82.04.050 and 1988 c 253 s 1 are each amended to read
20 as follows:

21 (1) "Sale at retail" or "retail sale" means every sale of tangible
22 personal property (including articles produced, fabricated, or
23 imprinted) to all persons irrespective of the nature of their business
24 and including, among others, without limiting the scope hereof, persons
25 who install, repair, clean, alter, improve, construct, or decorate real
26 or personal property of or for consumers other than a sale to a person

1 who (a) purchases for the purpose of resale as tangible personal
2 property in the regular course of business without intervening use by
3 such person, or (b) installs, repairs, cleans, alters, imprints,
4 improves, constructs, or decorates real or personal property of or for
5 consumers, if such tangible personal property becomes an ingredient or
6 component of such real or personal property without intervening use by
7 such person, or (c) purchases for the purpose of consuming the property
8 purchased in producing for sale a new article of tangible personal
9 property or substance, of which such property becomes an ingredient or
10 component or is a chemical used in processing, when the primary purpose
11 of such chemical is to create a chemical reaction directly through
12 contact with an ingredient of a new article being produced for sale, or
13 (d) purchases for the purpose of consuming the property purchased in
14 producing ferrosilicon which is subsequently used in producing
15 magnesium for sale, if the primary purpose of such property is to
16 create a chemical reaction directly through contact with an ingredient
17 of ferrosilicon, or (e) purchases for the purpose of providing the
18 property to consumers as part of competitive telephone service, as
19 defined in RCW 82.04.065. The term shall include every sale of
20 tangible personal property which is used or consumed or to be used or
21 consumed in the performance of any activity classified as a "sale at
22 retail" or "retail sale" even though such property is resold or
23 utilized as provided in (a), (b), (c), (d), or (e) (~~above~~) of this
24 subsection following such use. The term also includes every sale of
25 tangible personal property to a registered contractor, even though such
26 property is resold or utilized as provided in (a), (b), (c), (d), or
27 (e) of this subsection. The term also means every sale of tangible
28 personal property to persons engaged in any business which is taxable
29 under RCW 82.04.280, subsections (2) and (7) and RCW 82.04.290.

1 (2) The term "sale at retail" or "retail sale" shall include the
2 sale of or charge made for tangible personal property consumed and/or
3 for labor and services rendered in respect to the following: (a) The
4 installing, repairing, cleaning, altering, imprinting, or improving of
5 tangible personal property of or for consumers, including charges made
6 for the mere use of facilities in respect thereto, but excluding
7 charges made for the use of coin operated laundry facilities when such
8 facilities are situated in an apartment house, hotel, motel, rooming
9 house, trailer camp or tourist camp for the exclusive use of the
10 tenants thereof, and also excluding sales of laundry service to members
11 by nonprofit associations composed exclusively of nonprofit hospitals,
12 and excluding services rendered in respect to live animals, birds and
13 insects; (b) the constructing, repairing, decorating, or improving of
14 new or existing buildings or other structures under, upon, or above
15 real property of or for consumers or registered contractors, including
16 the installing or attaching of any article of tangible personal
17 property therein or thereto, whether or not such personal property
18 becomes a part of the realty by virtue of installation, and shall also
19 include the sale of services or charges made for the clearing of land
20 and the moving of earth excepting the mere leveling of land used in
21 commercial farming or agriculture; (c) the charge for labor and
22 services rendered in respect to constructing, repairing, or improving
23 any structure upon, above, or under any real property owned by an owner
24 who conveys the property by title, possession, or any other means to
25 the person performing such construction, repair, or improvement for the
26 purpose of performing such construction, repair, or improvement and the
27 property is then reconveyed by title, possession, or any other means to
28 the original owner; (d) the sale of or charge made for labor and
29 services rendered in respect to the cleaning, fumigating, razing or
30 moving of existing buildings or structures, but shall not include the

1 charge made for janitorial services; and for purposes of this section
2 the term "janitorial services" shall mean those cleaning and caretaking
3 services ordinarily performed by commercial janitor service businesses
4 including, but not limited to, wall and window washing, floor cleaning
5 and waxing, and the cleaning in place of rugs, drapes and upholstery.
6 The term "janitorial services" does not include painting, papering,
7 repairing, furnace or septic tank cleaning, snow removal or
8 sandblasting; (e) the sale of or charge made for labor and services
9 rendered in respect to automobile towing and similar automotive
10 transportation services, but not in respect to those required to report
11 and pay taxes under chapter 82.16 RCW; (f) the sale of and charge made
12 for the furnishing of lodging and all other services by a hotel,
13 rooming house, tourist court, motel, trailer camp, and the granting of
14 any similar license to use real property, as distinguished from the
15 renting or leasing of real property, and it shall be presumed that the
16 occupancy of real property for a continuous period of one month or more
17 constitutes a rental or lease of real property and not a mere license
18 to use or enjoy the same; (g) the sale of or charge made for tangible
19 personal property, labor and services to persons taxable under (a),
20 (b), (c), (d), (e), and (f) (~~above~~) of this subsection when such
21 sales or charges are for property, labor and services which are used or
22 consumed in whole or in part by such persons in the performance of any
23 activity defined as a "sale at retail" or "retail sale" even though
24 such property, labor and services may be resold after such use or
25 consumption. Nothing contained in this (~~paragraph~~) subsection (2)
26 shall be construed to modify (~~the first paragraph~~) subsection (1) of
27 this section and nothing contained in (~~the first paragraph~~)
28 subsection (1) of this section shall be construed to modify this
29 (~~paragraph~~) subsection (2).

1 (3) The term "sale at retail" or "retail sale" shall include the
2 sale of or charge made for personal business or professional services
3 including amounts designated as interest, rents, fees, admission, and
4 other service emoluments however designated, received by persons
5 engaging in the following business activities: (a) Amusement and
6 recreation businesses including but not limited to golf, pool,
7 billiards, skating, bowling, ski lifts and tows and others; (b)
8 abstract, title insurance and escrow businesses; (c) credit bureau
9 businesses; (d) automobile parking and storage garage businesses.

10 (4) The term shall also include the renting or leasing of tangible
11 personal property to consumers.

12 (5) The term shall also include the providing of telephone service,
13 as defined in RCW 82.04.065, to consumers.

14 (6) The term shall not include the sale of or charge made for labor
15 and services rendered in respect to the building, repairing, or
16 improving of any street, place, road, highway, easement, right of way,
17 mass public transportation terminal or parking facility, bridge,
18 tunnel, or trestle which is owned by a municipal corporation or
19 political subdivision of the state or by the United States and which is
20 used or to be used primarily for foot or vehicular traffic including
21 mass transportation vehicles of any kind. The term shall also not
22 include sales of feed, seed, seedlings, fertilizer, and spray materials
23 to persons who participate in the federal conservation reserve program
24 or its successor administered by the United States department of
25 agriculture, or to persons for the purpose of producing for sale any
26 agricultural product whatsoever, including plantation Christmas trees
27 and milk, eggs, wool, fur, meat, honey, or other substances obtained
28 from animals, birds, or insects but only when such production and
29 subsequent sale are exempt from tax under RCW 82.04.330, nor shall it
30 include sales of chemical sprays or washes to persons for the purpose

1 of post-harvest treatment of fruit for the prevention of scald, fungus,
2 mold, or decay.

3 (7) The term shall not include the sale of or charge made for labor
4 and services rendered in respect to the constructing, repairing,
5 decorating, or improving of new or existing buildings or other
6 structures under, upon, or above real property of or for the United
7 States, any instrumentality thereof, or a county or city housing
8 authority created pursuant to chapter 35.82 RCW, including the
9 installing, or attaching of any article of tangible personal property
10 therein or thereto, whether or not such personal property becomes a
11 part of the realty by virtue of installation. Nor shall the term
12 include the sale of services or charges made for the clearing of land
13 and the moving of earth of or for the United States, any
14 instrumentality thereof, or a county or city housing authority."

15 "Sec. 6. RCW 82.04.190 and 1986 c 231 s 2 are each amended to read
16 as follows:

17 "Consumer" means the following:

18 (1) Any person who purchases, acquires, owns, holds, or uses any
19 article of tangible personal property irrespective of the nature of the
20 person's business and including, among others, without limiting the
21 scope hereof, persons who install, repair, clean, alter, improve,
22 construct, or decorate real or personal property of or for consumers
23 other than for the purpose (a) of resale as tangible personal property
24 in the regular course of business or (b) of incorporating such property
25 as an ingredient or component of real or personal property when
26 installing, repairing, cleaning, altering, imprinting, improving,
27 constructing, or decorating such real or personal property of or for
28 consumers or (c) of consuming such property in producing for sale a new
29 article of tangible personal property or a new substance, of which such

1 property becomes an ingredient or component or as a chemical used in
2 processing, when the primary purpose of such chemical is to create a
3 chemical reaction directly through contact with an ingredient of a new
4 article being produced for sale or (d) purchases for the purpose of
5 consuming the property purchased in producing ferrosilicon which is
6 subsequently used in producing magnesium for sale, if the primary
7 purpose of such property is to create a chemical reaction directly
8 through contact with an ingredient of ferrosilicon;

9 (2) Any person engaged in any business activity taxable under RCW
10 82.04.290 and any person who purchases, acquires, or uses any telephone
11 service as defined in RCW 82.04.065, other than for resale in the
12 regular course of business;

13 (3) Any person engaged in the business of contracting for the
14 building, repairing or improving of any street, place, road, highway,
15 easement, right of way, mass public transportation terminal or parking
16 facility, bridge, tunnel, or trestle which is owned by a municipal
17 corporation or political subdivision of the state of Washington or by
18 the United States and which is used or to be used primarily for foot or
19 vehicular traffic including mass transportation vehicles of any kind as
20 defined in RCW 82.04.280, in respect to tangible personal property when
21 such person incorporates such property as an ingredient or component of
22 such publicly owned street, place, road, highway, easement, right of
23 way, mass public transportation terminal or parking facility, bridge,
24 tunnel, or trestle by installing, placing or spreading the property in
25 or upon the right of way of such street, place, road, highway,
26 easement, bridge, tunnel, or trestle or in or upon the site of such
27 mass public transportation terminal or parking facility;

28 (4) Any person who is an owner, lessee or has the right of
29 possession to or an easement in real property which is being
30 constructed, repaired, decorated, improved, or otherwise altered by a

1 person engaged in business, excluding only (a) municipal corporations
2 or political subdivisions of the state in respect to labor and services
3 rendered to their real property which is used or held for public road
4 purposes, and (b) the United States, instrumentalities thereof, and
5 county and city housing authorities created pursuant to chapter 35.82
6 RCW in respect to labor and services rendered to their real property.
7 Nothing contained in this or any other subsection of this definition
8 shall be construed to modify any other definition of "consumer";

9 (5) Any person who is an owner, lessee, or has the right of
10 possession to personal property which is being constructed, repaired,
11 improved, cleaned, imprinted, or otherwise altered by a person engaged
12 in business;

13 (6) Any person engaged in the business of constructing, repairing,
14 decorating, or improving new or existing buildings or other structures
15 under, upon, or above real property of or for the United States, any
16 instrumentality thereof, or a county or city housing authority created
17 pursuant to chapter 35.82 RCW, including the installing or attaching of
18 any article of tangible personal property therein or thereto, whether
19 or not such personal property becomes a part of the realty by virtue of
20 installation; also, any person engaged in the business of clearing land
21 and moving earth of or for the United States, any instrumentality
22 thereof, or a county or city housing authority created pursuant to
23 chapter 35.82 RCW. Any such person shall be a consumer within the
24 meaning of this subsection in respect to tangible personal property
25 incorporated into, installed in, or attached to such building or other
26 structure by such person;

27 (7) Any registered contractor."

28 "Sec. 7. RCW 82.04.470 and 1983 2nd ex.s. c 3 s 29 are each
29 amended to read as follows:

1 (1) Unless a seller has taken from the purchaser a resale
2 certificate signed by, and bearing the name and address and
3 registration number of the purchaser to the effect that the property or
4 service was purchased for resale, or unless the nature of the
5 transaction is clearly shown as a sale at wholesale by the books and
6 records of the taxpayer in such other manner as the department of
7 revenue shall by regulation provide, the burden of proving that a sale
8 of tangible personal property, or of telephone service as defined in
9 RCW 82.04.065, was not a sale at retail shall be upon the person who
10 made it.

11 (2) A seller shall not accept resale certificates from, nor make
12 sales without collection of retail sales tax to, registered
13 contractors."

14 **"Sec. 8.** RCW 82.08.020 and 1985 c 32 s 1 are each amended to read
15 as follows:

16 (1) There is levied and there shall be collected a tax on each
17 retail sale in this state equal to six and five-tenths percent of the
18 selling price.

19 (2) The tax imposed under this chapter shall apply to successive
20 retail sales of the same property or service, without regard to any tax
21 previously paid on the property or service or component or ingredient
22 thereof.

23 (3) The rate provided in this section applies to taxes imposed
24 under chapter 82.12 RCW as provided in RCW 82.12.020."

25 "NEW SECTION. **Sec. 9.** A new section is added to chapter 82.08 RCW
26 to read as follows:

27 (1) A deduction is allowed against the taxes imposed under this
28 chapter in an amount equal to taxes previously paid under this chapter

1 or chapter 82.12 RCW by a registered contractor in respect to tangible
2 personal property or services that are resold, in the same form or as
3 an ingredient or component, without intervening use or consumption by
4 the contractor.

5 (2) This section is intended to clarify existing law as to resales
6 by registered contractors, and is not intended to expand or restrict
7 the availability of tax deductions or credits for resales by other
8 persons."

9 Renumber the remaining sections consecutively and correct internal
10 references accordingly.

11 **SHB 2965** - H AMD
12 By Representative Nelson

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14 On page 1, line 1 of the title, after "requirements;" strike the
15 remainder of the title and insert "amending RCW 82.04.050, 82.04.190,
16 82.04.470, and 82.08.020; adding a new section to chapter 18.27 RCW;
17 adding a new section to chapter 82.32 RCW; adding a new section to
18 chapter 82.04 RCW; adding a new section to chapter 82.08 RCW; creating
19 new sections; and providing an effective date."