

2 EHB 2680 - S AMD TO WM COMM AMD (S-4317.1/92)

3 By Senator Owen

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5 On page 7, after line 5 of the amendment, insert the following:

6 "Sec. 6. RCW 82.29A.020 and 1986 c 285 s 1 are each amended to
7 read as follows:

8 As used in this chapter the following terms shall be defined as
9 follows, unless the context otherwise requires:

10 (1) "Leasehold interest" shall mean an interest in publicly owned
11 real or personal property which exists by virtue of any lease, permit,
12 license, or any other agreement, written or verbal, between the public
13 owner of the property and a person who would not be exempt from
14 property taxes if that person owned the property in fee, granting
15 possession and use, to a degree less than fee simple ownership:
16 PROVIDED, That no interest in personal property (excluding land or
17 buildings) which is owned by the United States, whether or not as
18 trustee, or by any foreign government shall constitute a leasehold
19 interest hereunder when the right to use such property is granted
20 pursuant to a contract solely for the manufacture or production of
21 articles for sale to the United States or any foreign government. The
22 term "leasehold interest" shall include the rights of use or occupancy
23 by others of property which is owned in fee or held in trust by a
24 public corporation, commission, or authority created under RCW
25 35.21.730 or 35.21.660 if the property is listed on or is within a
26 district listed on any federal or state register of historical sites.
27 The term "leasehold interest" shall not include road or utility
28 easements or rights of access, occupancy or use granted solely for the

1 purpose of removing materials or products purchased from a public owner
2 or the lessee of a public owner.

3 (2) "Taxable rent" shall mean contract rent as defined in
4 subsection (a) of this subsection in all cases where the lease or
5 agreement has been established or renegotiated through competitive
6 bidding, or negotiated or renegotiated in accordance with statutory
7 requirements regarding the rent payable, or negotiated or renegotiated
8 under circumstances, established by public record, clearly showing that
9 the contract rent was the maximum attainable by the lessor: PROVIDED,
10 That after January 1, 1986, with respect to any lease which has been in
11 effect for ten years or more without renegotiation, taxable rent may be
12 established by procedures set forth in subsection (b) of this
13 subsection. All other leasehold interests shall be subject to the
14 determination of taxable rent under the terms of subsection (b) of this
15 subsection.

16 (a) "Contract rent" shall mean the amount of consideration due as
17 payment for a leasehold interest, including: The total of cash
18 payments made to the lessor or to another party for the benefit of the
19 lessor according to the requirements of the lease or agreement,
20 including any rents paid by a sublessee; expenditures for the
21 protection of the lessor's interest when required by the terms of the
22 lease or agreement; and expenditures for improvements to the property
23 to the extent that such improvements become the property of the lessor.
24 Where the consideration conveyed for the leasehold interest is made in
25 combination with payment for concession or other rights granted by the
26 lessor, only that portion of such payment which represents
27 consideration for the leasehold interest shall be part of contract
28 rent.

29 "Contract rent" shall not include: (i) Expenditures made by the
30 lessee, which under the terms of the lease or agreement, are to be

1 reimbursed by the lessor to the lessee or expenditures for improvements
2 and protection made pursuant to a lease or an agreement which requires
3 that the use of the improved property be open to the general public and
4 that no profit will inure to the lessee from the lease; (ii)
5 expenditures made by the lessee for the replacement or repair of
6 facilities due to fire or other casualty including payments for
7 insurance to provide reimbursement for losses or payments to a public
8 or private entity for protection of such property from damage or loss
9 or for alterations or additions made necessary by an action of
10 government taken after the date of the execution of the lease or
11 agreement; (iii) improvements added to publicly owned property by a
12 sublessee under an agreement executed prior to January 1, 1976, which
13 have been taxed as personal property of the sublessee prior to January
14 1, 1976, or improvements made by a sublessee of the same lessee under
15 a similar agreement executed prior to January 1, 1976, and such
16 improvements shall be taxable to the sublessee as personal property;
17 (iv) improvements added to publicly owned property if such improvements
18 are being taxed as personal property to any person.

19 Any prepaid contract rent shall be considered to have been paid in
20 the year due and not in the year actually paid with respect to
21 prepayment for a period of more than one year. Expenditures for
22 improvements with a useful life of more than one year which are
23 included as part of contract rent shall be treated as prepaid contract
24 rent and prorated over the useful life of the improvement or the
25 remaining term of the lease or agreement if the useful life is in
26 excess of the remaining term of the lease or agreement. Rent prepaid
27 prior to January 1, 1976, shall be prorated from the date of
28 prepayment.

29 With respect to a "product lease", the value of agricultural
30 products received as rent shall be the value at the place of delivery

1 as of the fifteenth day of the month of delivery; with respect to all
2 other products received as contract rent, the value shall be that value
3 determined at the time of sale under terms of the lease.

4 (b) If it shall be determined by the department of revenue, upon
5 examination of a lessee's accounts or those of a lessor of publicly
6 owned property, that a lessee is occupying or using publicly owned
7 property in such a manner as to create a leasehold interest and that
8 such leasehold interest has not been established through competitive
9 bidding, or negotiated in accordance with statutory requirements
10 regarding the rent payable, or negotiated under circumstances,
11 established by public record, clearly showing that the contract rent
12 was the maximum attainable by the lessor, the department may establish
13 a taxable rent computation for use in determining the tax payable under
14 authority granted in this chapter based upon the following criteria:

15 (i) Consideration shall be given to rental being paid to other lessors
16 by lessees of similar property for similar purposes over similar
17 periods of time; (ii) consideration shall be given to what would be
18 considered a fair rate of return on the market value of the property
19 leased less reasonable deductions for any restrictions on use, special
20 operating requirements or provisions for concurrent use by the lessor,
21 another person or the general public.

22 (3) "Product lease" as used in this chapter shall mean a lease of
23 property for use in the production of agricultural or marine products
24 to the extent that such lease provides for the contract rent to be paid
25 by the delivery of a stated percentage of the production of such
26 agricultural or marine products to the credit of the lessor or the
27 payment to the lessor of a stated percentage of the proceeds from the
28 sale of such products.

29 (4) "Renegotiated" means a change in the lease agreement which
30 changes the agreed time of possession, restrictions on use, the rate of

1 the cash rental or of any other consideration payable by the lessee to
2 or for the benefit of the lessor, other than any such change required
3 by the terms of the lease or agreement, except that a lease for ten
4 years or longer that calls for changes in rent on a set schedule of at
5 least every five years shall be considered a renegotiated lease, if the
6 change in rent is based on a standard state or federal index such as
7 the consumer price index. In addition "renegotiated" shall mean a
8 continuation of possession by the lessee beyond the date when, under
9 the terms of the lease agreement, the lessee had the right to vacate
10 the premises without any further liability to the lessor.

11 (5) "City" means any city or town."

12 "**Sec. 7.** RCW 82.29A.130 and 1975-'76 2nd ex.s. c 61 s 13 are each
13 amended to read as follows:

14 The following leasehold interests shall be exempt from taxes
15 imposed pursuant to RCW 82.29A.030 and 82.29A.040:

16 (1) All leasehold interests constituting a part of the operating
17 properties of any public utility which is assessed and taxed as a
18 public utility pursuant to chapter 84.12 RCW.

19 (2) All leasehold interests in facilities owned or used by a
20 school, college or university which leasehold provides housing for
21 students and which is otherwise exempt from taxation under provisions
22 of RCW 84.36.010 and 84.36.050.

23 (3) All leasehold interests of subsidized housing where the fee
24 ownership of such property is vested in the government of the United
25 States, or the state of Washington or any political subdivision thereof
26 but only if income qualification exists for such housing.

27 (4) All leasehold interests used for fair purposes of a nonprofit
28 fair association that sponsors or conducts a fair or fairs which
29 receive support from revenues collected pursuant to RCW 67.16.100 and

1 allocated by the director of the department of agriculture where the
2 fee ownership of such property is vested in the government of the
3 United States, the state of Washington or any of its political
4 subdivisions: PROVIDED, That this exemption shall not apply to the
5 leasehold interest of any sublessee of such nonprofit fair association
6 if such leasehold interest would be taxable if it were the primary
7 lease.

8 (5) All leasehold interests in any property of any public entity
9 used as a residence by an employee of that public entity who is
10 required as a condition of employment to live in the publicly owned
11 property.

12 (6) All leasehold interests held by enrolled Indians of lands owned
13 or held by any Indian or Indian tribe where the fee ownership of such
14 property is vested in or held in trust by the United States and which
15 are not subleased to other than to a lessee which would qualify
16 pursuant to this chapter, RCW 84.36.451 and 84.40.175.

17 (7) All leasehold interests in any real property of any Indian or
18 Indian tribe, band, or community that is held in trust by the United
19 States or is subject to a restriction against alienation imposed by the
20 United States: PROVIDED, That this exemption shall apply only where it
21 is determined that contract rent paid is greater than or equal to
22 ninety percent of fair market rental, to be determined by the
23 department of revenue using the same criteria used to establish taxable
24 rent in RCW 82.29A.020(2)(b).

25 (8) All leasehold interests for which annual taxable rent is less
26 than two hundred fifty dollars per year. For purposes of this
27 subsection leasehold interests held by the same lessee in contiguous
28 properties owned by the same lessor shall be deemed a single leasehold
29 interest.

1 (9) All leasehold interests which give use or possession of the
2 leased property for a continuous period of less than thirty days:
3 PROVIDED, That for purposes of this subsection, successive leases or
4 lease renewals giving substantially continuous use of possession of the
5 same property to the same lessee shall be deemed a single leasehold
6 interest: PROVIDED FURTHER, That no leasehold interest shall be deemed
7 to give use or possession for a period of less than thirty days solely
8 by virtue of the reservation by the public lessor of the right to use
9 the property or to allow third parties to use the property on an
10 occasional, temporary basis.

11 (10) All leasehold interests under month-to-month leases in
12 residential units rented for residential purposes of the lessee pending
13 destruction or removal for the purpose of constructing a public highway
14 or building.

15 (11) All leasehold interests in any publicly owned real or personal
16 property to the extent such leasehold interests arises solely by virtue
17 of a contract for public improvements or work executed under the public
18 works statutes of this state or of the United States between the public
19 owner of the property and a contractor.

20 (12) All leasehold interests held by a lessee who would qualify for
21 a senior citizen property tax exemption, if the leasehold property was
22 held in fee simple ownership: PROVIDED, That a lessee who qualifies
23 for a partial senior citizen property tax exemption shall receive a
24 leasehold excise tax reduction of an equal percentage."

25 "Sec. 8. RCW 82.29A.060 and 1975-'76 2nd ex.s. c 61 s 6 are each
26 amended to read as follows:

27 All administrative provisions and appeal procedures in chapters
28 82.02 and 82.32 RCW, as now or hereafter amended shall be applicable to
29 taxes imposed pursuant to this chapter: PROVIDED, That this section

1 shall not authorize the issuance of any levy upon any property owned by
2 the public lessor.

3 In selecting leasehold excise tax returns for audit the department
4 of revenue shall give priority to any return an audit of which is
5 specifically requested in writing by the county assessor or treasurer
6 or other chief financial officer of any city or county affected by such
7 return. Notwithstanding the provisions of RCW 82.32.330, findings of
8 fact and determinations of the amount of taxable rent made pursuant to
9 the provisions of this chapter shall be open to public inspection at
10 all reasonable times."

11 Renumber the remaining sections consecutively and correct any
12 internal references accordingly.

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16 On page 9, line 6 of the title amendment, after "67.28.183," insert
17 "82.29A.020, 82.29A.130, 82.29A.060,"