

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2590

54th Legislature
1996 Regular Session

Passed by the House March 7, 1996
Yeas 80 Nays 18

**Speaker of the
House of Representatives**

Passed by the Senate March 7, 1996
Yeas 49 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2590** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2590

AS AMENDED BY THE SENATE

Passed Legislature - 1996 Regular Session

State of Washington

54th Legislature

1996 Regular Session

By House Committee on Finance (originally sponsored by Representatives Van Luvan, Dickerson and B. Thomas; by request of Department of Revenue)

Read first time 02/06/96.

1 AN ACT Relating to excise tax changes needed as a result of the
2 United States supreme court in *Jefferson Lines v. Oklahoma*; amending
3 RCW 82.04.050, 82.04.060, 82.04.190, 82.12.020, and 82.12.035;
4 reenacting and amending RCW 82.04.260; providing an effective date; and
5 declaring an emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 82.04.050 and 1995 1st sp.s. c 12 s 2 are each amended
8 to read as follows:

9 (1) "Sale at retail" or "retail sale" means every sale of tangible
10 personal property (including articles produced, fabricated, or
11 imprinted) to all persons irrespective of the nature of their business
12 and including, among others, without limiting the scope hereof, persons
13 who install, repair, clean, alter, improve, construct, or decorate real
14 or personal property of or for consumers other than a sale to a person
15 who presents a resale certificate under RCW 82.04.470 and who:

16 (a) Purchases for the purpose of resale as tangible personal
17 property in the regular course of business without intervening use by
18 such person; or

1 (b) Installs, repairs, cleans, alters, imprints, improves,
2 constructs, or decorates real or personal property of or for consumers,
3 if such tangible personal property becomes an ingredient or component
4 of such real or personal property without intervening use by such
5 person; or

6 (c) Purchases for the purpose of consuming the property purchased
7 in producing for sale a new article of tangible personal property or
8 substance, of which such property becomes an ingredient or component or
9 is a chemical used in processing, when the primary purpose of such
10 chemical is to create a chemical reaction directly through contact with
11 an ingredient of a new article being produced for sale; or

12 (d) Purchases for the purpose of consuming the property purchased
13 in producing ferrosilicon which is subsequently used in producing
14 magnesium for sale, if the primary purpose of such property is to
15 create a chemical reaction directly through contact with an ingredient
16 of ferrosilicon; or

17 (e) Purchases for the purpose of providing the property to
18 consumers as part of competitive telephone service, as defined in RCW
19 82.04.065. The term shall include every sale of tangible personal
20 property which is used or consumed or to be used or consumed in the
21 performance of any activity classified as a "sale at retail" or "retail
22 sale" even though such property is resold or utilized as provided in
23 (a), (b), (c), (d), or (e) of this subsection following such use. The
24 term also means every sale of tangible personal property to persons
25 engaged in any business which is taxable under RCW 82.04.280 (2) and
26 (7) and 82.04.290.

27 (2) The term "sale at retail" or "retail sale" shall include the
28 sale of or charge made for tangible personal property consumed and/or
29 for labor and services rendered in respect to the following:

30 (a) The installing, repairing, cleaning, altering, imprinting, or
31 improving of tangible personal property of or for consumers, including
32 charges made for the mere use of facilities in respect thereto, but
33 excluding sales of laundry service to members by nonprofit associations
34 composed exclusively of nonprofit hospitals, and excluding services
35 rendered in respect to live animals, birds and insects;

36 (b) The constructing, repairing, decorating, or improving of new or
37 existing buildings or other structures under, upon, or above real
38 property of or for consumers, including the installing or attaching of
39 any article of tangible personal property therein or thereto, whether

1 or not such personal property becomes a part of the realty by virtue of
2 installation, and shall also include the sale of services or charges
3 made for the clearing of land and the moving of earth excepting the
4 mere leveling of land used in commercial farming or agriculture;

5 (c) The charge for labor and services rendered in respect to
6 constructing, repairing, or improving any structure upon, above, or
7 under any real property owned by an owner who conveys the property by
8 title, possession, or any other means to the person performing such
9 construction, repair, or improvement for the purpose of performing such
10 construction, repair, or improvement and the property is then
11 reconveyed by title, possession, or any other means to the original
12 owner;

13 (d) The sale of or charge made for labor and services rendered in
14 respect to the cleaning, fumigating, razing or moving of existing
15 buildings or structures, but shall not include the charge made for
16 janitorial services; and for purposes of this section the term
17 "janitorial services" shall mean those cleaning and caretaking services
18 ordinarily performed by commercial janitor service businesses
19 including, but not limited to, wall and window washing, floor cleaning
20 and waxing, and the cleaning in place of rugs, drapes and upholstery.
21 The term "janitorial services" does not include painting, papering,
22 repairing, furnace or septic tank cleaning, snow removal or
23 sandblasting;

24 (e) The sale of or charge made for labor and services rendered in
25 respect to automobile towing and similar automotive transportation
26 services, but not in respect to those required to report and pay taxes
27 under chapter 82.16 RCW;

28 (f) The sale of and charge made for the furnishing of lodging and
29 all other services by a hotel, rooming house, tourist court, motel,
30 trailer camp, and the granting of any similar license to use real
31 property, as distinguished from the renting or leasing of real
32 property, and it shall be presumed that the occupancy of real property
33 for a continuous period of one month or more constitutes a rental or
34 lease of real property and not a mere license to use or enjoy the same;

35 (g) The sale of or charge made for tangible personal property,
36 labor and services to persons taxable under (a), (b), (c), (d), (e),
37 and (f) of this subsection when such sales or charges are for property,
38 labor and services which are used or consumed in whole or in part by
39 such persons in the performance of any activity defined as a "sale at

1 retail" or "retail sale" even though such property, labor and services
2 may be resold after such use or consumption. Nothing contained in this
3 subsection shall be construed to modify subsection (1) of this section
4 and nothing contained in subsection (1) of this section shall be
5 construed to modify this subsection.

6 (3) The term "sale at retail" or "retail sale" shall include the
7 sale of or charge made for personal, business, or professional services
8 including amounts designated as interest, rents, fees, admission, and
9 other service emoluments however designated, received by persons
10 engaging in the following business activities:

11 (a) Amusement and recreation services including but not limited to
12 golf, pool, billiards, skating, bowling, ski lifts and tows, day trips
13 for sightseeing purposes, and others, when provided to consumers;

14 (b) Abstract, title insurance, and escrow services;

15 (c) Credit bureau services;

16 (d) Automobile parking and storage garage services;

17 (e) Landscape maintenance and horticultural services but excluding
18 (i) horticultural services provided to farmers and (ii) pruning,
19 trimming, repairing, removing, and clearing of trees and brush near
20 electric transmission or distribution lines or equipment, if performed
21 by or at the direction of an electric utility;

22 (f) Service charges associated with tickets to professional
23 sporting events; and

24 (g) (~~Guided tours and guided charters; and~~

25 ~~(h))~~) The following personal services: Physical fitness services,
26 tanning salon services, tattoo parlor services, steam bath services,
27 turkish bath services, escort services, and dating services.

28 (4) The term shall also include the renting or leasing of tangible
29 personal property to consumers and the rental of equipment with an
30 operator.

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

33 (6) The term shall not include the sale of or charge made for labor
34 and services rendered in respect to the building, repairing, or
35 improving of any street, place, road, highway, easement, right of way,
36 mass public transportation terminal or parking facility, bridge,
37 tunnel, or trestle which is owned by a municipal corporation or
38 political subdivision of the state or by the United States and which is

1 used or to be used primarily for foot or vehicular traffic including
2 mass transportation vehicles of any kind.

3 (7) The term shall also not include sales of feed, seed, seedlings,
4 fertilizer, agents for enhanced pollination including insects such as
5 bees, and spray materials to persons who participate in the federal
6 conservation reserve program or its successor administered by the
7 United States department of agriculture, or to farmers for the purpose
8 of producing for sale any agricultural product, nor shall it include
9 sales of chemical sprays or washes to persons for the purpose of post-
10 harvest treatment of fruit for the prevention of scald, fungus, mold,
11 or decay.

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

24 **Sec. 2.** RCW 82.04.260 and 1995 2nd sp.s. c 12 s 1 and 1995 2nd
25 sp.s. c 6 s 1 are each reenacted and amended to read as follows:

26 (1) Upon every person engaging within this state in the business of
27 buying wheat, oats, dry peas, dry beans, lentils, triticale, canola,
28 corn, rye and barley, but not including any manufactured or processed
29 products thereof, and selling the same at wholesale; the tax imposed
30 shall be equal to the gross proceeds derived from such sales multiplied
31 by the rate of 0.011 percent.

32 (2) Upon every person engaging within this state in the business of
33 manufacturing wheat into flour, barley into pearl barley, soybeans into
34 soybean oil, canola into canola oil, canola meal, or canola byproducts,
35 or sunflower seeds into sunflower oil; as to such persons the amount of
36 tax with respect to such business shall be equal to the value of the
37 flour, pearl barley, oil, canola meal, or canola byproduct
38 manufactured, multiplied by the rate of 0.138 percent.

1 (3) Upon every person engaging within this state in the business of
2 splitting or processing dried peas; as to such persons the amount of
3 tax with respect to such business shall be equal to the value of the
4 peas split or processed, multiplied by the rate of 0.275 percent.

5 (4) Upon every person engaging within this state in the business of
6 manufacturing seafood products which remain in a raw, raw frozen, or
7 raw salted state at the completion of the manufacturing by that person;
8 as to such persons the amount of tax with respect to such business
9 shall be equal to the value of the products manufactured, multiplied by
10 the rate of 0.138 percent.

11 (5) Upon every person engaging within this state in the business of
12 manufacturing by canning, preserving, freezing or dehydrating fresh
13 fruits and vegetables; as to such persons the amount of tax with
14 respect to such business shall be equal to the value of the products
15 canned, preserved, frozen or dehydrated multiplied by the rate of 0.33
16 percent.

17 (6) Upon every nonprofit corporation and nonprofit association
18 engaging within this state in research and development, as to such
19 corporations and associations, the amount of tax with respect to such
20 activities shall be equal to the gross income derived from such
21 activities multiplied by the rate of 0.484 percent.

22 (7) Upon every person engaging within this state in the business of
23 slaughtering, breaking and/or processing perishable meat products and/
24 or selling the same at wholesale only and not at retail; as to such
25 persons the tax imposed shall be equal to the gross proceeds derived
26 from such sales multiplied by the rate of 0.138 percent.

27 (8) Upon every person engaging within this state in the business of
28 making sales, at retail or wholesale, of nuclear fuel assemblies
29 manufactured by that person, as to such persons the amount of tax with
30 respect to such business shall be equal to the gross proceeds of sales
31 of the assemblies multiplied by the rate of 0.275 percent.

32 (9) Upon every person engaging within this state in the business of
33 manufacturing nuclear fuel assemblies, as to such persons the amount of
34 tax with respect to such business shall be equal to the value of the
35 products manufactured multiplied by the rate of 0.275 percent.

36 (10) Upon every person engaging within this state in the business
37 of acting as a travel agent or tour operator; as to such persons the
38 amount of the tax with respect to such activities shall be equal to the

1 gross income derived from such activities multiplied by the rate of
2 0.275 percent.

3 (11) Upon every person engaging within this state in business as an
4 international steamship agent, international customs house broker,
5 international freight forwarder, vessel and/or cargo charter broker in
6 foreign commerce, and/or international air cargo agent; as to such
7 persons the amount of the tax with respect to only international
8 activities shall be equal to the gross income derived from such
9 activities multiplied by the rate of 0.363 percent.

10 (12) Upon every person engaging within this state in the business
11 of stevedoring and associated activities pertinent to the movement of
12 goods and commodities in waterborne interstate or foreign commerce; as
13 to such persons the amount of tax with respect to such business shall
14 be equal to the gross proceeds derived from such activities multiplied
15 by the rate of 0.363 percent. Persons subject to taxation under this
16 subsection shall be exempt from payment of taxes imposed by chapter
17 82.16 RCW for that portion of their business subject to taxation under
18 this subsection. Stevedoring and associated activities pertinent to
19 the conduct of goods and commodities in waterborne interstate or
20 foreign commerce are defined as all activities of a labor, service or
21 transportation nature whereby cargo may be loaded or unloaded to or
22 from vessels or barges, passing over, onto or under a wharf, pier, or
23 similar structure; cargo may be moved to a warehouse or similar holding
24 or storage yard or area to await further movement in import or export
25 or may move to a consolidation freight station and be stuffed,
26 unstuffed, containerized, separated or otherwise segregated or
27 aggregated for delivery or loaded on any mode of transportation for
28 delivery to its consignee. Specific activities included in this
29 definition are: Wharfage, handling, loading, unloading, moving of
30 cargo to a convenient place of delivery to the consignee or a
31 convenient place for further movement to export mode; documentation
32 services in connection with the receipt, delivery, checking, care,
33 custody and control of cargo required in the transfer of cargo;
34 imported automobile handling prior to delivery to consignee; terminal
35 stevedoring and incidental vessel services, including but not limited
36 to plugging and unplugging refrigerator service to containers,
37 trailers, and other refrigerated cargo receptacles, and securing ship
38 hatch covers.

1 (13) Upon every person engaging within this state in the business
2 of disposing of low-level waste, as defined in RCW 43.145.010; as to
3 such persons the amount of the tax with respect to such business shall
4 be equal to the gross income of the business, excluding any fees
5 imposed under chapter 43.200 RCW, multiplied by the rate of 3.3
6 percent.

7 If the gross income of the taxpayer is attributable to activities
8 both within and without this state, the gross income attributable to
9 this state shall be determined in accordance with the methods of
10 apportionment required under RCW 82.04.460.

11 (14) Upon every person engaging within this state as an insurance
12 agent, insurance broker, or insurance solicitor licensed under chapter
13 48.17 RCW; as to such persons, the amount of the tax with respect to
14 such licensed activities shall be equal to the gross income of such
15 business multiplied by the rate of 0.55 percent.

16 (15) Upon every person engaging within this state in business as a
17 hospital, as defined in chapter 70.41 RCW, that is operated as a
18 nonprofit corporation or by the state or any of its political
19 subdivisions, as to such persons, the amount of tax with respect to
20 such activities shall be equal to the gross income of the business
21 multiplied by the rate of 0.75 percent through June 30, 1995, and 1.5
22 percent thereafter. The moneys collected under this subsection shall
23 be deposited in the health services account created under RCW
24 43.72.900.

25 **Sec. 3.** RCW 82.04.060 and 1983 2nd ex.s. c 3 s 26 are each amended
26 to read as follows:

27 "Sale at wholesale" or "wholesale sale" means any sale of tangible
28 personal property, any sale of amusement or recreation services as
29 defined in RCW 82.04.050(3)(a), or any sale of telephone service as
30 defined in RCW 82.04.065, which is not a sale at retail and means any
31 charge made for labor and services rendered for persons who are not
32 consumers, in respect to real or personal property, if such charge is
33 expressly defined as a retail sale by RCW 82.04.050 when rendered to or
34 for consumers: PROVIDED, That the term "real or personal property" as
35 used in this section shall not include any natural products named in
36 RCW 82.04.100.

1 **Sec. 4.** RCW 82.04.190 and 1995 1st sp.s. c 3 s 4 are each amended
2 to read as follows:

3 "Consumer" means the following:

4 (1) Any person who purchases, acquires, owns, holds, or uses any
5 article of tangible personal property irrespective of the nature of the
6 person's business and including, among others, without limiting the
7 scope hereof, persons who install, repair, clean, alter, improve,
8 construct, or decorate real or personal property of or for consumers
9 other than for the purpose (a) of resale as tangible personal property
10 in the regular course of business or (b) of incorporating such property
11 as an ingredient or component of real or personal property when
12 installing, repairing, cleaning, altering, imprinting, improving,
13 constructing, or decorating such real or personal property of or for
14 consumers or (c) of consuming such property in producing for sale a new
15 article of tangible personal property or a new substance, of which such
16 property becomes an ingredient or component or as a chemical used in
17 processing, when the primary purpose of such chemical is to create a
18 chemical reaction directly through contact with an ingredient of a new
19 article being produced for sale or (d) purchases for the purpose of
20 consuming the property purchased in producing ferrosilicon which is
21 subsequently used in producing magnesium for sale, if the primary
22 purpose of such property is to create a chemical reaction directly
23 through contact with an ingredient of ferrosilicon;

24 (2)(a) Any person engaged in any business activity taxable under
25 RCW 82.04.290 (~~and~~); (b) any person who purchases, acquires, or uses
26 any telephone service as defined in RCW 82.04.065, other than for
27 resale in the regular course of business; and (c) any person who
28 purchases, acquires, or uses any amusement and recreation service
29 defined in RCW 82.04.050(3)(a), other than for resale in the regular
30 course of business;

31 (3) Any person engaged in the business of contracting for the
32 building, repairing or improving of any street, place, road, highway,
33 easement, right of way, mass public transportation terminal or parking
34 facility, bridge, tunnel, or trestle which is owned by a municipal
35 corporation or political subdivision of the state of Washington or by
36 the United States and which is used or to be used primarily for foot or
37 vehicular traffic including mass transportation vehicles of any kind as
38 defined in RCW 82.04.280, in respect to tangible personal property when
39 such person incorporates such property as an ingredient or component of

1 such publicly owned street, place, road, highway, easement, right of
2 way, mass public transportation terminal or parking facility, bridge,
3 tunnel, or trestle by installing, placing or spreading the property in
4 or upon the right of way of such street, place, road, highway,
5 easement, bridge, tunnel, or trestle or in or upon the site of such
6 mass public transportation terminal or parking facility;

7 (4) Any person who is an owner, lessee or has the right of
8 possession to or an easement in real property which is being
9 constructed, repaired, decorated, improved, or otherwise altered by a
10 person engaged in business, excluding only (a) municipal corporations
11 or political subdivisions of the state in respect to labor and services
12 rendered to their real property which is used or held for public road
13 purposes, and (b) the United States, instrumentalities thereof, and
14 county and city housing authorities created pursuant to chapter 35.82
15 RCW in respect to labor and services rendered to their real property.
16 Nothing contained in this or any other subsection of this definition
17 shall be construed to modify any other definition of "consumer";

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

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

36 (7) Any person who is a lessor of machinery and equipment, the
37 rental of which is exempt from the tax imposed by RCW 82.08.020 under
38 RCW 82.08.02565, with respect to the sale of or charge made for

1 tangible personal property consumed and for labor and services rendered
2 in respect to repairing the machinery and equipment.

3 Nothing contained in this or any other subsection of this
4 definition shall be construed to modify any other definition of
5 "consumer."

6 **Sec. 5.** RCW 82.12.020 and 1994 c 93 s 2 are each amended to read
7 as follows:

8 (1) There is hereby levied and there shall be collected from every
9 person in this state a tax or excise for the privilege of using within
10 this state as a consumer any article of tangible personal property
11 purchased at retail, or acquired by lease, gift, repossession, or
12 bailment, or extracted or produced or manufactured by the person so
13 using the same, or otherwise furnished to a person engaged in any
14 business taxable under RCW 82.04.280 (2) or (7), or any amusement or
15 recreation service defined as a retail sale in RCW 82.04.050(3)(a).

16 (2) This tax shall apply to the use of every service defined as a
17 retail sale in RCW 82.04.050(3)(a) and the use of every article of
18 tangible personal property, including property acquired at a casual or
19 isolated sale, and including byproducts used by the manufacturer
20 thereof, except as hereinafter provided, irrespective of whether the
21 article or similar articles are manufactured or are available for
22 purchase within this state.

23 (3) Except as provided in RCW 82.12.0252, payment by one purchaser
24 or user of tangible personal property or service of the tax imposed by
25 chapter 82.08 or 82.12 RCW shall not have the effect of exempting any
26 other purchaser or user of the same property or service from the taxes
27 imposed by such chapters.

28 (4) The tax shall be levied and collected in an amount equal to the
29 value of the article used by the taxpayer multiplied by the rate in
30 effect for the retail sales tax under RCW 82.08.020.

31 **Sec. 6.** RCW 82.12.035 and 1987 c 27 s 2 are each amended to read
32 as follows:

33 A credit shall be allowed against the taxes imposed by this chapter
34 upon the use of tangible personal property, or services taxable under
35 RCW 82.04.050(3)(a), in the state of Washington in the amount that the
36 present user thereof or his or her bailor or donor has paid a retail
37 sales or use tax with respect to such property to any other state of

1 the United States, any political subdivision thereof, the District of
2 Columbia, and any foreign country or political subdivision thereof,
3 prior to the use of such property in Washington.

4 NEW SECTION. **Sec. 7.** If any provision of this act or its
5 application to any person or circumstance is held invalid, the
6 remainder of the act or the application of the provision to other
7 persons or circumstances is not affected.

8 NEW SECTION. **Sec. 8.** This act is necessary for the immediate
9 preservation of the public peace, health, or safety, or support of the
10 state government and its existing public institutions, and shall take
11 effect April 1, 1996.

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