

2 SHB 2051 - S COMM AMD
3 By Committee on Ways & Means

4 ADOPTED 3/12/98

5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 82.04.050 and 1997 c 127 s 1 are each amended to read
8 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

19 (b) Installs, repairs, cleans, alters, imprints, improves,
20 constructs, or decorates real or personal property of or for consumers,
21 if such tangible personal property becomes an ingredient or component
22 of such real or personal property without intervening use by such
23 person; or

24 (c) Purchases for the purpose of consuming the property purchased
25 in producing for sale a new article of tangible personal property or
26 substance, of which such property becomes an ingredient or component or
27 is a chemical used in processing, when the primary purpose of such
28 chemical is to create a chemical reaction directly through contact with
29 an ingredient of a new article being produced for sale; or

30 (d) Purchases for the purpose of consuming the property purchased
31 in producing ferrosilicon which is subsequently used in producing
32 magnesium for sale, if the primary purpose of such property is to
33 create a chemical reaction directly through contact with an ingredient
34 of ferrosilicon; or

35 (e) Purchases for the purpose of providing the property to
36 consumers as part of competitive telephone service, as defined in RCW

1 82.04.065. The term shall include every sale of tangible personal
2 property which is used or consumed or to be used or consumed in the
3 performance of any activity classified as a "sale at retail" or "retail
4 sale" even though such property is resold or utilized as provided in
5 (a), (b), (c), (d), or (e) of this subsection following such use. The
6 term also means every sale of tangible personal property to persons
7 engaged in any business which is taxable under RCW 82.04.280 (2) and
8 (7) and 82.04.290.

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

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

18 (b) The constructing, repairing, decorating, or improving of new or
19 existing buildings or other structures under, upon, or above real
20 property of or for consumers, including the installing or attaching of
21 any article of tangible personal property therein or thereto, whether
22 or not such personal property becomes a part of the realty by virtue of
23 installation, and shall also include the sale of services or charges
24 made for the clearing of land and the moving of earth excepting the
25 mere leveling of land used in commercial farming or agriculture;

26 (c) The charge for labor and services rendered in respect to
27 constructing, repairing, or improving any structure upon, above, or
28 under any real property owned by an owner who conveys the property by
29 title, possession, or any other means to the person performing such
30 construction, repair, or improvement for the purpose of performing such
31 construction, repair, or improvement and the property is then
32 reconveyed by title, possession, or any other means to the original
33 owner;

34 (d) The sale of or charge made for labor and services rendered in
35 respect to the cleaning, fumigating, razing or moving of existing
36 buildings or structures, but shall not include the charge made for
37 janitorial services; and for purposes of this section the term
38 "janitorial services" shall mean those cleaning and caretaking services
39 ordinarily performed by commercial janitor service businesses

1 including, but not limited to, wall and window washing, floor cleaning
2 and waxing, and the cleaning in place of rugs, drapes and upholstery.
3 The term "janitorial services" does not include painting, papering,
4 repairing, furnace or septic tank cleaning, snow removal or
5 sandblasting;

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

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

17 (g) The sale of or charge made for tangible personal property,
18 labor and services to persons taxable under (a), (b), (c), (d), (e),
19 and (f) of this subsection when such sales or charges are for property,
20 labor and services which are used or consumed in whole or in part by
21 such persons in the performance of any activity defined as a "sale at
22 retail" or "retail sale" even though such property, labor and services
23 may be resold after such use or consumption. Nothing contained in this
24 subsection shall be construed to modify subsection (1) of this section
25 and nothing contained in subsection (1) of this section shall be
26 construed to modify this subsection.

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

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

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

36 (c) Credit bureau services;

37 (d) Automobile parking and storage garage services;

38 (e) Landscape maintenance and horticultural services but excluding

39 (i) horticultural services provided to farmers and (ii) pruning,

1 trimming, repairing, removing, and clearing of trees and brush near
2 electric transmission or distribution lines or equipment, if performed
3 by or at the direction of an electric utility;

4 (f) Service charges associated with tickets to professional
5 sporting events; and

6 (g) The following personal services: Physical fitness services,
7 tanning salon services, tattoo parlor services, steam bath services,
8 turkish bath services, escort services, and dating services.

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

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.

22 (7) The term shall also not include sales of chemical sprays or
23 washes to persons for the purpose of postharvest treatment of fruit for
24 the prevention of scald, fungus, mold, or decay, nor shall it include
25 sales of feed, seed, seedlings, fertilizer, agents for enhanced
26 pollination including insects such as bees, and spray materials to:

27 (a) Persons who participate in the federal conservation reserve
28 program, the environmental quality incentives program, the wetlands
29 reserve program, and the wildlife habitat incentives program, or their
30 successors administered by the United States department of agriculture;

31 (b) farmers for the purpose of producing for sale any agricultural
32 product; and (c) farmers acting under cooperative habitat development
33 or access contracts with an organization exempt from federal income tax
34 under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of
35 fish and wildlife to produce or improve wildlife habitat on land that
36 the farmer owns or leases.

37 (8) The term shall not include the sale of or charge made for labor
38 and services rendered in respect to the constructing, repairing,
39 decorating, or improving of new or existing buildings or other

1 structures under, upon, or above real property of or for the United
2 States, any instrumentality thereof, or a county or city housing
3 authority created pursuant to chapter 35.82 RCW, including the
4 installing, or attaching of any article of tangible personal property
5 therein or thereto, whether or not such personal property becomes a
6 part of the realty by virtue of installation. Nor shall the term
7 include the sale of services or charges made for the clearing of land
8 and the moving of earth of or for the United States, any
9 instrumentality thereof, or a county or city housing authority. Nor
10 shall the term include the sale of services or charges made for
11 cleaning up for the United States, or its instrumentalities,
12 radioactive waste and other byproducts of weapons production and
13 nuclear research and development.

14 (9) Until July 1, 2003, the term shall not include the sale of or
15 charge made for labor and services rendered for environmental remedial
16 action as defined in section 3(2) of this act.

17 **Sec. 2.** RCW 82.04.190 and 1996 c 173 s 2, 1996 c 148 s 4, and 1996
18 c 112 s 2 are each reenacted and amended to read as follows:

19 "Consumer" means the following:

20 (1) Any person who purchases, acquires, owns, holds, or uses any
21 article of tangible personal property irrespective of the nature of the
22 person's business and including, among others, without limiting the
23 scope hereof, persons who install, repair, clean, alter, improve,
24 construct, or decorate real or personal property of or for consumers
25 other than for the purpose (a) of resale as tangible personal property
26 in the regular course of business or (b) of incorporating such property
27 as an ingredient or component of real or personal property when
28 installing, repairing, cleaning, altering, imprinting, improving,
29 constructing, or decorating such real or personal property of or for
30 consumers or (c) of consuming such property in producing for sale a new
31 article of tangible personal property or a new substance, of which such
32 property becomes an ingredient or component or as a chemical used in
33 processing, when the primary purpose of such chemical is to create a
34 chemical reaction directly through contact with an ingredient of a new
35 article being produced for sale or (d) purchases for the purpose of
36 consuming the property purchased in producing ferrosilicon which is
37 subsequently used in producing magnesium for sale, if the primary

1 purpose of such property is to create a chemical reaction directly
2 through contact with an ingredient of ferrosilicon;

3 (2)(a) Any person engaged in any business activity taxable under
4 RCW 82.04.290; (b) any person who purchases, acquires, or uses any
5 telephone service as defined in RCW 82.04.065, other than for resale in
6 the regular course of business; and (c) any person who purchases,
7 acquires, or uses any amusement and recreation service defined in RCW
8 82.04.050(3)(a), other than for resale in the regular course of
9 business;

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

25 (4) Any person who is an owner, lessee or has the right of
26 possession to or an easement in real property which is being
27 constructed, repaired, decorated, improved, or otherwise altered by a
28 person engaged in business, excluding only (a) municipal corporations
29 or political subdivisions of the state in respect to labor and services
30 rendered to their real property which is used or held for public road
31 purposes, and (b) the United States, instrumentalities thereof, and
32 county and city housing authorities created pursuant to chapter 35.82
33 RCW in respect to labor and services rendered to their real property.
34 Nothing contained in this or any other subsection of this definition
35 shall be construed to modify any other definition of "consumer";

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

1 (6) Any person engaged in the business of constructing, repairing,
2 decorating, or improving new or existing buildings or other structures
3 under, upon, or above real property of or for the United States, any
4 instrumentality thereof, or a county or city housing authority created
5 pursuant to chapter 35.82 RCW, including the installing or attaching of
6 any article of tangible personal property therein or thereto, whether
7 or not such personal property becomes a part of the realty by virtue of
8 installation; also, any person engaged in the business of clearing land
9 and moving earth of or for the United States, any instrumentality
10 thereof, or a county or city housing authority created pursuant to
11 chapter 35.82 RCW. Any such person shall be a consumer within the
12 meaning of this subsection in respect to tangible personal property
13 incorporated into, installed in, or attached to such building or other
14 structure by such person;

15 (7) Any person who is a lessor of machinery and equipment, the
16 rental of which is exempt from the tax imposed by RCW 82.08.020 under
17 RCW 82.08.02565, with respect to the sale of or charge made for
18 tangible personal property consumed in respect to repairing the
19 machinery and equipment, if the tangible personal property has a useful
20 life of less than one year. Nothing contained in this or any other
21 subsection of this section shall be construed to modify any other
22 definition of "consumer"; ((and))

23 (8) Any person engaged in the business of cleaning up for the
24 United States, or its instrumentalities, radioactive waste and other
25 byproducts of weapons production and nuclear research and
26 development((-

27 ~~Nothing contained in this or any other subsection of this~~
28 ~~definition shall be construed to modify any other definition of~~
29 ~~"consumer.")~~); and

30 (9) Until July 1, 2003, any person engaged in the business of
31 conducting environmental remedial action as defined in section 3(2) of
32 this act.

33 NEW SECTION. Sec. 3. A new section is added to chapter 82.04 RCW
34 to read as follows:

35 (1) Upon every person engaging within this state in the business of
36 environmental remedial action, the amount of tax with respect to such
37 business shall be equal to the value of the gross income of the
38 business multiplied by the rate 0.471 percent.

1 (2) For purposes of this chapter, "environmental remedial action"
2 means:

3 (a) Those services related to the identification, investigation, or
4 cleanup arising out of the release or threatened release of hazardous
5 substances that are conducted under contract with the department of
6 ecology or under an enforcement order, agreed order, or consent decree
7 executed by the department of ecology, or those services, when
8 evaluated as a whole, that are the substantial equivalent of a
9 department of ecology-conducted or supervised remedial action under the
10 model toxics control act, chapter 70.105D RCW; or

11 (b) Those services related to the identification, investigation, or
12 cleanup of a facility that are conducted under contract with the United
13 States environmental protection agency or under an order or consent
14 decree executed by the United States environmental protection agency,
15 or that are consistent with the national contingency plan adopted under
16 the comprehensive environmental response compensation and liability
17 act, 42 U.S.C. Sec. 9605 as it exists on the effective date of this
18 section, and those services are conducted at facilities that are
19 included on the national priorities list adopted under 42 U.S.C. Sec.
20 9605 as it exists on the effective date of this section or at
21 facilities subject to a removal action authorized under 42 U.S.C. Sec.
22 9604 as it exists on the effective date of this section.

23 (3) A site is eligible for environmental remedial action upon
24 submittal, via certified mail to the department of ecology and the
25 department of revenue, of the following:

26 (a) A certification from the owner, the department of ecology, or
27 the United States environmental protection agency, containing the
28 following information:

29 (i) The location of the site, shown on a map and identified by
30 parcel number or numbers and street address;

31 (ii) The name and address and daytime phone number of a contact
32 person;

33 (iii) A statement that the proposed environmental remedial actions
34 will be conducted by the department of ecology or its authorized
35 contractor under chapter 70.105D RCW or will be substantially
36 equivalent to a department of ecology-conducted or supervised remedial
37 action under the model toxics control act, chapter 70.105D RCW, or will
38 be conducted by the United States environmental protection agency or
39 its authorized contractor or will be consistent with the national

1 contingency plan under 42 U.S.C. Sec. 9605 as it exists on the
2 effective date of this section; and

3 (iv) A description of the proposed environmental remedial actions
4 to be taken; and

5 (b)(i) A certification from a certified underground storage tank
6 service supervisor as authorized in chapter 90.76 RCW, from a
7 professional engineer licensed in the state of Washington, or from an
8 environmental professional who subscribes to a code of professional
9 responsibility administered by a recognized organization representing
10 such professions containing the following information:

11 (A) Confirmation that an environmental remedial action as defined
12 in this section is to be conducted at the site;

13 (B) The location of the site, shown on a map and identified by
14 parcel number or numbers and street address, and the approximate
15 location of the proposed environmental remedial action; and

16 (C) The name, address, telephone number, and uniform business
17 identifier of the person providing the certification; or

18 (ii) If applicable to the site, a copy of an enforcement order,
19 agreed order, or consent decree executed by the department of ecology
20 or the United States environmental protection agency.

21 (4) The department of revenue shall respond in writing to the owner
22 within thirty days confirming receipt of the certification, or
23 certifications, of eligibility.

24 (5) The owner shall provide a copy of the confirmation from the
25 department of revenue to each person who renders environmental remedial
26 action at the site. Each person who renders such action shall
27 separately state the charges for labor and services associated with the
28 environmental remedial action.

29 (6) Upon completion of the environmental remedial action, the owner
30 shall submit to the department of ecology a report documenting the
31 environmental remedial actions conducted at the site and documenting
32 compliance with the requirements of chapter 70.105D RCW.

33 (7) In addition to any other penalties, a person who files a
34 certificate with the department of ecology or the department of revenue
35 that contains falsehoods or misrepresentations are subject to penalties
36 authorized under chapter 18.43 or 90.76 RCW or RCW 9A.76.175. Also, a
37 person who improperly reports the person's tax class shall be assessed
38 a penalty of fifty percent of the tax due, in addition to other taxes
39 or penalties, together with interest. The department of revenue shall

1 waive the penalty imposed under this section if it finds that the
2 falsehoods or misrepresentations or improper reporting of the tax
3 classification was due to circumstances beyond the control of the
4 person.

5 (8) This section expires July 1, 2003.

6 **Sec. 4.** RCW 82.04.290 and 1997 c 7 s 2 are each amended to read as
7 follows:

8 (1) Upon every person engaging within this state in the business of
9 providing international investment management services, as to such
10 persons, the amount of tax with respect to such business shall be equal
11 to the gross income or gross proceeds of sales of the business
12 multiplied by a rate of 0.275 percent.

13 (2) Upon every person engaging within this state in any business
14 activity other than or in addition to those enumerated in RCW
15 82.04.230, 82.04.240, 82.04.250, 82.04.255, 82.04.260, 82.04.270,
16 (~~and~~) 82.04.280, and section 3 of this act, and subsection (1) of
17 this section; as to such persons the amount of tax on account of such
18 activities shall be equal to the gross income of the business
19 multiplied by the rate of 1.5 percent.

20 This section includes, among others, and without limiting the scope
21 hereof (whether or not title to materials used in the performance of
22 such business passes to another by accession, confusion or other than
23 by outright sale), persons engaged in the business of rendering any
24 type of service which does not constitute a "sale at retail" or a "sale
25 at wholesale." The value of advertising, demonstration, and
26 promotional supplies and materials furnished to an agent by his
27 principal or supplier to be used for informational, educational and
28 promotional purposes shall not be considered a part of the agent's
29 remuneration or commission and shall not be subject to taxation under
30 this section.

31 **Sec. 5.** RCW 82.04.290 and 1998 c ... s 4 (section 4 of this act)
32 are each amended to read as follows:

33 (1) Upon every person engaging within this state in the business of
34 providing international investment management services, as to such
35 persons, the amount of tax with respect to such business shall be equal
36 to the gross income or gross proceeds of sales of the business
37 multiplied by a rate of 0.275 percent.

1 (2) Upon every person engaging within this state in any business
2 activity other than or in addition to those enumerated in RCW
3 82.04.230, 82.04.240, 82.04.250, 82.04.255, 82.04.260, 82.04.270, and
4 82.04.280, (~~and section 3 of this act,~~) and subsection (1) of this
5 section; as to such persons the amount of tax on account of such
6 activities shall be equal to the gross income of the business
7 multiplied by the rate of 1.5 percent.

8 This section includes, among others, and without limiting the scope
9 hereof (whether or not title to materials used in the performance of
10 such business passes to another by accession, confusion or other than
11 by outright sale), persons engaged in the business of rendering any
12 type of service which does not constitute a "sale at retail" or a "sale
13 at wholesale." The value of advertising, demonstration, and
14 promotional supplies and materials furnished to an agent by his
15 principal or supplier to be used for informational, educational and
16 promotional purposes shall not be considered a part of the agent's
17 remuneration or commission and shall not be subject to taxation under
18 this section.

19 NEW SECTION. **Sec. 6.** (1) Sections 1 through 4 of this act take
20 effect July 1, 1998.

21 (2) Section 5 of this act takes effect July 1, 2003."

22 **SHB 2051** - S COMM AMD
23 By Committee on Ways & Means

24 March 12, 1998

25 On page 1, line 2 of the title, after "waste;" strike the remainder
26 of the title and insert "amending RCW 82.04.050, 82.04.290, and
27 82.04.290; reenacting and amending RCW 82.04.190; adding a new section
28 to chapter 82.04 RCW; providing effective dates; and providing an
29 expiration date."

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