
HOUSE BILL 2051

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By Representatives Chandler, Linville, Regala, Mastin, D. Schmidt, Grant, Veloria, Clements, Cody and Parlette

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1 AN ACT Relating to exempting from taxation remedies and remedial
2 actions regarding hazardous waste; reenacting and amending RCW
3 82.04.050 and 82.04.190; and adding a new section to chapter 82.04 RCW.

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

5 **Sec. 1.** RCW 82.04.050 and 1996 c 148 s 1 and 1996 c 112 s 1 are
6 each reenacted and amended to read as follows:

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

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

17 (b) Installs, repairs, cleans, alters, imprints, improves,
18 constructs, or decorates real or personal property of or for consumers,
19 if such tangible personal property becomes an ingredient or component

1 of such real or personal property without intervening use by such
2 person; or

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

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

14 (e) Purchases for the purpose of providing the property to
15 consumers as part of competitive telephone service, as defined in RCW
16 82.04.065. The term shall include every sale of tangible personal
17 property which is used or consumed or to be used or consumed in the
18 performance of any activity classified as a "sale at retail" or "retail
19 sale" even though such property is resold or utilized as provided in
20 (a), (b), (c), (d), or (e) of this subsection following such use. The
21 term also means every sale of tangible personal property to persons
22 engaged in any business which is taxable under RCW 82.04.280 (2) and
23 (7) and 82.04.290.

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

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

33 (b) The constructing, repairing, decorating, or improving of new or
34 existing buildings or other structures under, upon, or above real
35 property of or for consumers, including the installing or attaching of
36 any article of tangible personal property therein or thereto, whether
37 or not such personal property becomes a part of the realty by virtue of
38 installation, and shall also include the sale of services or charges

1 made for the clearing of land and the moving of earth excepting the
2 mere leveling of land used in commercial farming or agriculture;

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

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

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

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

33 (g) The sale of or charge made for tangible personal property,
34 labor and services to persons taxable under (a), (b), (c), (d), (e),
35 and (f) of this subsection when such sales or charges are for property,
36 labor and services which are used or consumed in whole or in part by
37 such persons in the performance of any activity defined as a "sale at
38 retail" or "retail sale" even though such property, labor and services
39 may be resold after such use or consumption. Nothing contained in this

1 subsection shall be construed to modify subsection (1) of this section
2 and nothing contained in subsection (1) of this section shall be
3 construed to modify this subsection.

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

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

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

13 (c) Credit bureau services;

14 (d) Automobile parking and storage garage services;

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

20 (f) Service charges associated with tickets to professional
21 sporting events; and

22 (g) The following personal services: Physical fitness services,
23 tanning salon services, tattoo parlor services, steam bath services,
24 turkish bath services, escort services, and dating services.

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

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

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

38 (7) The term shall also not include sales of feed, seed, seedlings,
39 fertilizer, agents for enhanced pollination including insects such as

1 bees, and spray materials to persons who participate in the federal
2 conservation reserve program or its successor administered by the
3 United States department of agriculture, or to farmers for the purpose
4 of producing for sale any agricultural product, nor shall it include
5 sales of chemical sprays or washes to persons for the purpose of post-
6 harvest treatment of fruit for the prevention of scald, fungus, mold,
7 or decay.

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

24 (9) The term shall not include the sale of or charge made for labor
25 and services rendered for environmental remedial action.

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

28 "Consumer" means the following:

29 (1) Any person who purchases, acquires, owns, holds, or uses any
30 article of tangible personal property irrespective of the nature of the
31 person's business and including, among others, without limiting the
32 scope hereof, persons who install, repair, clean, alter, improve,
33 construct, or decorate real or personal property of or for consumers
34 other than for the purpose (a) of resale as tangible personal property
35 in the regular course of business or (b) of incorporating such property
36 as an ingredient or component of real or personal property when
37 installing, repairing, cleaning, altering, imprinting, improving,
38 constructing, or decorating such real or personal property of or for

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

11 (2)(a) Any person engaged in any business activity taxable under
12 RCW 82.04.290; (b) any person who purchases, acquires, or uses any
13 telephone service as defined in RCW 82.04.065, other than for resale in
14 the regular course of business; and (c) any person who purchases,
15 acquires, or uses any amusement and recreation service defined in RCW
16 82.04.050(3)(a), other than for resale in the regular course of
17 business;

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

33 (4) Any person who is an owner, lessee or has the right of
34 possession to or an easement in real property which is being
35 constructed, repaired, decorated, improved, or otherwise altered by a
36 person engaged in business, excluding only (a) municipal corporations
37 or political subdivisions of the state in respect to labor and services
38 rendered to their real property which is used or held for public road
39 purposes, and (b) the United States, instrumentalities thereof, and

1 county and city housing authorities created pursuant to chapter 35.82
2 RCW in respect to labor and services rendered to their real property.
3 Nothing contained in this or any other subsection of this definition
4 shall be construed to modify any other definition of "consumer";

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

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

23 (7) Any person who is a lessor of machinery and equipment, the
24 rental of which is exempt from the tax imposed by RCW 82.08.020 under
25 RCW 82.08.02565, with respect to the sale of or charge made for
26 tangible personal property consumed in respect to repairing the
27 machinery and equipment, if the tangible personal property has a useful
28 life of less than one year; ((and))

29 (8) Any person engaged in the business of cleaning up for the
30 United States, or its instrumentalities, radioactive waste and other
31 byproducts of weapons production and nuclear research and development;
32 and

33 (9) Any person engaged in the business of conducting environmental
34 remedial action.

35 Nothing contained in this or any other subsection of this
36 definition shall be construed to modify any other definition of
37 "consumer."

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.04 RCW
2 to read as follows:

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

7 (2) For purposes of this chapter, "environmental remedial action"
8 means those services related to the identification, investigation, or
9 cleanup arising out of the release or threatened release of hazardous
10 substances when the services are remedial or response actions performed
11 under federal or state law, or when the services are performed to
12 determine if a release of hazardous substances has occurred or is
13 likely to occur. Such services shall be consistent with standards and
14 procedures set forth in the model toxics control act, chapter 70.105D
15 RCW, or other applicable law governing environmental remedial action.
16 "Environmental remedial action" does not include excavation and grading
17 of uncontaminated soil, landscaping, paving, building construction or
18 remodel, utility installation, or other actions undertaken for purposes
19 of site development. The term also does not mean actions taken to
20 comply with requirements of state laws other than the model toxics
21 control act, chapter 70.105D RCW, or the removal of asbestos unless
22 such removal is undertaken solely for purposes of compliance with the
23 model toxics control act, chapter 70.105D RCW.

24 (3) Each person who owns real property upon which persons engaged
25 in the business of environmental remedial action will render services
26 shall file with the department of revenue an affidavit certifying that
27 the subject site is contaminated, the nature of the contamination, the
28 location of the site, the proposed remedial action to be taken, and
29 other information that may be required by the department of revenue.
30 The owner shall provide a copy of the affidavit to each person who
31 renders environmental remedial action services and to the department of
32 ecology. Any person who falsely certifies to the department of revenue
33 that the subject site qualifies for this tax treatment shall be
34 assessed a penalty of fifty percent of the tax due, in addition to
35 other taxes, penalties, and interest due, on the tax benefit derived
36 from false certification. The department of revenue may waive the

1 penalty imposed under this section if it finds that the certification
2 was due to circumstances beyond the control of the owner.

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