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**SUBSTITUTE HOUSE BILL 2064**

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**State of Washington**

**55th Legislature**

**1998 Regular Session**

**By** House Committee on Finance (originally sponsored by Representative Parlette)

Read first time 02/09/98. Referred to Committee on .

1 AN ACT Relating to leasehold excise taxation of public golf  
2 courses; amending RCW 82.29A.020; and providing an effective date.

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

4 **Sec. 1.** RCW 82.29A.020 and 1991 c 272 s 23 are each amended to  
5 read as follows:

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

8 (1) "Leasehold interest" shall mean an interest in publicly owned  
9 real or personal property which exists by virtue of any lease, permit,  
10 license, or any other agreement, written or verbal, between the public  
11 owner of the property and a person who would not be exempt from  
12 property taxes if that person owned the property in fee, granting  
13 possession and use, to a degree less than fee simple ownership:  
14 PROVIDED, That no interest in personal property (excluding land or  
15 buildings) which is owned by the United States, whether or not as  
16 trustee, or by any foreign government shall constitute a leasehold  
17 interest hereunder when the right to use such property is granted  
18 pursuant to a contract solely for the manufacture or production of  
19 articles for sale to the United States or any foreign government. The

1 term "leasehold interest" shall include the rights of use or occupancy  
2 by others of property which is owned in fee or held in trust by a  
3 public corporation, commission, or authority created under RCW  
4 35.21.730 or 35.21.660 if the property is listed on or is within a  
5 district listed on any federal or state register of historical sites.  
6 The term "leasehold interest" shall not include road or utility  
7 easements or rights of access, occupancy or use granted solely for the  
8 purpose of removing materials or products purchased from a public owner  
9 or the lessee of a public owner.

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

23 For purposes of determining leasehold excise tax on any lands on  
24 the Hanford reservation subleased to a private or public entity by the  
25 department of ecology, taxable rent shall include only the annual cash  
26 rental payment made by such entity to the department of ecology as  
27 specifically referred to as rent in the sublease agreement between the  
28 parties and shall not include any other fees, assessments, or charges  
29 imposed on or collected by such entity irrespective of whether the  
30 private or public entity pays or collects such other fees, assessments,  
31 or charges as specified in the sublease agreement.

32 (a) "Contract rent" shall mean the amount of consideration due as  
33 payment for a leasehold interest, including: The total of cash  
34 payments made to the lessor or to another party for the benefit of the  
35 lessor according to the requirements of the lease or agreement,  
36 including any rents paid by a sublessee; expenditures for the  
37 protection of the lessor's interest when required by the terms of the  
38 lease or agreement; and expenditures for improvements to the property  
39 to the extent that such improvements become the property of the lessor.

1 Where the consideration conveyed for the leasehold interest is made in  
2 combination with payment for concession or other rights granted by the  
3 lessor, only that portion of such payment which represents  
4 consideration for the leasehold interest shall be part of contract  
5 rent.

6 "Contract rent" shall not include: (i) Expenditures made by the  
7 lessee, which under the terms of the lease or agreement, are to be  
8 reimbursed by the lessor to the lessee or expenditures for improvements  
9 and protection made pursuant to a lease or an agreement which requires  
10 that the use of the improved property be open to the general public and  
11 that no profit will inure to the lessee from the lease; (ii)  
12 expenditures made by the lessee for the replacement or repair of  
13 facilities due to fire or other casualty including payments for  
14 insurance to provide reimbursement for losses or payments to a public  
15 or private entity for protection of such property from damage or loss  
16 or for alterations or additions made necessary by an action of  
17 government taken after the date of the execution of the lease or  
18 agreement; (iii) improvements added to publicly owned property by a  
19 sublessee under an agreement executed prior to January 1, 1976, which  
20 have been taxed as personal property of the sublessee prior to January  
21 1, 1976, or improvements made by a sublessee of the same lessee under  
22 a similar agreement executed prior to January 1, 1976, and such  
23 improvements shall be taxable to the sublessee as personal property;  
24 (iv) improvements added to publicly owned property if such improvements  
25 are being taxed as personal property to any person.

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

36 With respect to a "product lease", the value of agricultural  
37 products received as rent shall be the value at the place of delivery  
38 as of the fifteenth day of the month of delivery; with respect to all

1 other products received as contract rent, the value shall be that value  
2 determined at the time of sale under terms of the lease.

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

14 (i) Consideration shall be given to rental being paid to other lessors  
15 by lessees of similar property for similar purposes over similar  
16 periods of time; (ii) consideration shall be given to what would be  
17 considered a fair rate of return on the market value of the property  
18 leased less reasonable deductions for any restrictions on use, special  
19 operating requirements or provisions for concurrent use by the lessor,  
20 another person or the general public. This subsection (2)(b) does not  
21 apply to a leasehold interest in property used as a public golf course  
22 if the lessee is a nonprofit organization as defined in RCW 82.04.365.

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

30 (4) "Renegotiated" means a change in the lease agreement which  
31 changes the agreed time of possession, restrictions on use, the rate of  
32 the cash rental or of any other consideration payable by the lessee to  
33 or for the benefit of the lessor, other than any such change required  
34 by the terms of the lease or agreement. In addition "renegotiated"  
35 shall mean a continuation of possession by the lessee beyond the date  
36 when, under the terms of the lease agreement, the lessee had the right  
37 to vacate the premises without any further liability to the lessor.

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

1      NEW SECTION.    **Sec. 2.**    This act takes effect July 1, 1998.

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