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**HOUSE BILL 2520**

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**State of Washington****55th Legislature****1998 Regular Session**

**By** Representatives Koster, Buck, Dunshee, Dickerson and O'Brien; by request of Superintendent of Public Instruction and Governor Locke

Read first time . Referred to Committee on .

1 AN ACT Relating to a tax exemption from the state share of labor  
2 and services on K-12 facility construction; amending RCW 81.104.170 and  
3 82.14.820; reenacting and amending RCW 82.04.190; adding new sections  
4 to chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; adding  
5 a new section to chapter 82.14 RCW; adding a new section to chapter  
6 82.32 RCW; creating a new section; and providing an effective date.

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

8 NEW SECTION. **Sec. 1.** It is the intent of the legislature to  
9 relieve public schools from the burden of the state share of the sales  
10 tax related to construction of school improvements. Furthermore, in  
11 order to maintain the current distribution of tax revenue to the local  
12 jurisdictions, the schools shall continue to pay the local sales tax on  
13 the entire construction contract amount, which represents construction  
14 services, and includes the value of materials, labor, and services. To  
15 achieve this end it is necessary to: (1) Maintain the existing law,  
16 which imposes a tax on construction services, but provide an exemption  
17 from the state share of this tax; (2) revise existing law so that the  
18 contractor is the consumer of materials incorporated into a project.  
19 State use tax will be imposed on the contractor as the consumer, but an

1 exemption will be provided for local use tax, as this value is already  
2 contained in the total contract amount, and will continue to be taxed  
3 at the local level; and (3) exempt the contractor from the sales tax on  
4 materials, and impose a use tax, which the contractor will remit and  
5 report, therefore relieving the burden on the seller of having to  
6 collect and remit two different tax rates.

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

9       "Consumer" means the following:

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

30       (2)(a) Any person engaged in any business activity taxable under  
31 RCW 82.04.290; (b) any person who purchases, acquires, or uses any  
32 telephone service as defined in RCW 82.04.065, other than for resale in  
33 the regular course of business; and (c) any person who purchases,  
34 acquires, or uses any amusement and recreation service defined in RCW  
35 82.04.050(3)(a), other than for resale in the regular course of  
36 business;

37       (3) Any person engaged in the business of contracting for the  
38 building, repairing or improving of any street, place, road, highway,

1 easement, right of way, mass public transportation terminal or parking  
2 facility, bridge, tunnel, or trestle which is owned by a municipal  
3 corporation or political subdivision of the state of Washington or by  
4 the United States and which is used or to be used primarily for foot or  
5 vehicular traffic including mass transportation vehicles of any kind as  
6 defined in RCW 82.04.280, in respect to tangible personal property when  
7 such person incorporates such property as an ingredient or component of  
8 such publicly owned street, place, road, highway, easement, right of  
9 way, mass public transportation terminal or parking facility, bridge,  
10 tunnel, or trestle by installing, placing or spreading the property in  
11 or upon the right of way of such street, place, road, highway,  
12 easement, bridge, tunnel, or trestle or in or upon the site of such  
13 mass public transportation terminal or parking facility;

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

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

29 (6) Any person engaged in the business of constructing, repairing,  
30 decorating, or improving new or existing buildings or other structures  
31 under, upon, or above real property of or for the United States, any  
32 instrumentality thereof, or a county or city housing authority created  
33 pursuant to chapter 35.82 RCW, including the installing or attaching of  
34 any article of tangible personal property therein or thereto, whether  
35 or not such personal property becomes a part of the realty by virtue of  
36 installation; also, any person engaged in the business of clearing land  
37 and moving earth of or for the United States, any instrumentality  
38 thereof, or a county or city housing authority created pursuant to  
39 chapter 35.82 RCW; also any person engaged in the business of clearing

1 land, moving earth, site preparation, constructing, repairing,  
2 decorating, renovating, expanding, or improving of new or existing  
3 buildings, structures, facilities, or any other school ground  
4 improvement under, upon, or above real property of and for a school  
5 district, as defined in chapter 28A.315 RCW, or an educational service  
6 district under chapter 28A.310 RCW. Any such person shall be a  
7 consumer within the meaning of this subsection in respect to tangible  
8 personal property incorporated into, installed in, or attached to such  
9 building or other structure by such person;

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

16 (8) Any person engaged in the business of cleaning up for the  
17 United States, or its instrumentalities, radioactive waste and other  
18 byproducts of weapons production and nuclear research and development.

19 Nothing contained in this or any other subsection of this  
20 definition shall be construed to modify any other definition of  
21 "consumer."

22 NEW SECTION. Sec. 3. A new section is added to chapter 82.08 RCW  
23 to read as follows:

24 The tax levied by RCW 82.08.020 does not apply to sales of tangible  
25 personal property to persons engaged in the business of clearing land,  
26 moving earth, site preparation, constructing, repairing, decorating,  
27 renovating, expanding, or improving of new or existing buildings,  
28 structures, facilities, or any other school ground improvement under,  
29 upon, or above real property of and for a school district, as defined  
30 in chapter 28A.315 RCW, or an educational service district under  
31 chapter 28A.310 RCW, when such property will be incorporated as an  
32 ingredient or component of real or personal property pursuant to such  
33 activity. However, use of such property in this state is subject to  
34 the tax imposed by chapter 82.12 RCW. The exemption under this section  
35 is not for tools, machinery, equipment, consumable supplies, and other  
36 such items acquired by the person for his or her own use as a consumer,  
37 as defined in RCW 82.04.190.

1        NEW SECTION.    **Sec. 4.**    A new section is added to chapter 82.12 RCW  
2 to read as follows:

3        Tangible personal property exempt from sales tax under section 3 of  
4 this act is not exempt from and is subject to the state share of the  
5 use tax.

6        NEW SECTION.    **Sec. 5.**    A new section is added to chapter 82.14 RCW  
7 to read as follows:

8        Tangible personal property that is described as subject to the use  
9 tax under section 4 of this act is exempt from use tax under this  
10 chapter.

11        **Sec. 6.**    RCW 81.104.170 and 1997 c 450 s 5 are each amended to read  
12 as follows:

13        Cities that operate transit systems, county transportation  
14 authorities, metropolitan municipal corporations, public transportation  
15 benefit areas, and regional transit authorities may submit an  
16 authorizing proposition to the voters and if approved by a majority of  
17 persons voting, fix and impose a sales and use tax in accordance with  
18 the terms of this chapter, solely for the purpose of providing high  
19 capacity transportation service.

20        The tax authorized pursuant to this section shall be in addition to  
21 the tax authorized by RCW 82.14.030 and shall be collected from those  
22 persons who are taxable by the state pursuant to chapters 82.08 and  
23 82.12 RCW upon the occurrence of any taxable event within the taxing  
24 district. The maximum rate of such tax shall be approved by the voters  
25 and shall not exceed one percent of the selling price (in the case of  
26 a sales tax) or value of the article used (in the case of a use tax).  
27 The maximum rate of such tax that may be imposed shall not exceed  
28 nine-tenths of one percent in any county that imposes a tax under RCW  
29 82.14.340, or within a regional transit authority if any county within  
30 the authority imposes a tax under RCW 82.14.340. The exemptions in RCW  
31 82.08.820 (~~and~~), 82.12.820, and section 7 of this act, are for the  
32 state portion of the sales and use tax and do not extend to the tax  
33 authorized in this section.

34        Tangible personal property that is described as subject to the use  
35 tax under section 4 of this act is exempt from use tax under this  
36 chapter.

1        NEW SECTION.    **Sec. 7.**    A new section is added to chapter 82.08 RCW  
2 to read as follows:

3        The tax imposed by RCW 82.08.020 does not apply to the sale of or  
4 charge made for labor and services rendered in respect to clearing  
5 land, moving earth, site preparation, constructing, repairing,  
6 decorating, renovating, expanding, or improving of new or existing  
7 buildings, structures, facilities, or any other school ground  
8 improvement under, upon, or above real property of or for a school  
9 district, as defined in chapter 28A.315 RCW, or an educational service  
10 district under chapter 28A.310 RCW. This exemption from sales tax is  
11 limited to the state share of the sales tax and under RCW 82.14.820 and  
12 81.104.170 does not apply to the local sales tax.

13        **Sec. 8.**    RCW 82.14.820 and 1997 c 450 s 4 are each amended to read  
14 as follows:

15        The exemptions in RCW 82.08.820 (~~and~~), 82.12.820, and section 7  
16 of this act, are for the state portion of the sales and use tax and do  
17 not extend to the tax imposed in this chapter.

18        NEW SECTION.    **Sec. 9.**    A new section is added to chapter 82.32 RCW  
19 to read as follows:

20        The department may develop and institute a tax reporting method  
21 whereby the taxpayer uses deductions, credits, or other accounting  
22 techniques, as directed by the department, to allow the department to  
23 administer, and the taxpayer to report, tax as affected by chapter  
24 . . . , Laws of 1998 (this act) simply and efficiently. Taxpayers and  
25 sellers affected by chapter . . . , Laws of 1998 (this act) shall keep  
26 their records in a form and manner as directed by the department so  
27 that the department can distinguish between taxable and exempt  
28 transactions. The department may develop an exemption certificate to  
29 be used by the contractor in making sales tax-exempt purchases of  
30 materials.

31        NEW SECTION.    **Sec. 10.**    This act takes effect July 1, 1998.

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