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HOUSE BILL 2607

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State of Washington

55th Legislature

1998 Regular Session

By Representatives Romero, Reams, Lantz, Cairnes, Fisher, Gardner and Thompson

Read first time 01/16/98. Referred to Committee on Finance.

1 AN ACT Relating to retail sales and use taxation; and amending RCW  
2 82.08.010 and 82.12.010.

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

4 **Sec. 1.** RCW 82.08.010 and 1985 c 38 s 3 are each amended to read  
5 as follows:

6 For the purposes of this chapter:

7 (1) "Selling price" means the consideration, whether money,  
8 credits, rights, or other property except trade-in property of like  
9 kind, expressed in the terms of money paid or delivered by a buyer to  
10 a seller without any deduction on account of the cost of tangible  
11 property sold, the cost of materials used, labor costs, interest,  
12 discount, delivery costs, taxes other than taxes imposed under this  
13 chapter if the seller advertises the price as including the tax or that  
14 the seller is paying the tax, or any other expenses whatsoever paid or  
15 accrued and without any deduction on account of losses; but shall not  
16 include the amount of cash discount actually taken by a buyer; and  
17 shall be subject to modification to the extent modification is provided  
18 for in RCW 82.08.080.

1        The term does not include amounts charged the buyer that represent  
2 amounts paid by the seller as impact fees for development activity  
3 under RCW 82.02.050 in the constructing, repairing, or improving of new  
4 or existing buildings or other structures under, upon, or above real  
5 property.

6        When tangible personal property is rented or leased under  
7 circumstances that the consideration paid does not represent a  
8 reasonable rental for the use of the articles so rented or leased, the  
9 "selling price" shall be determined as nearly as possible according to  
10 the value of such use at the places of use of similar products of like  
11 quality and character under such rules as the department of revenue may  
12 prescribe;

13        (2) "Seller" means every person, including the state and its  
14 departments and institutions, making sales at retail or retail sales to  
15 a buyer or consumer, whether as agent, broker, or principal, except  
16 "seller" does not mean the state and its departments and institutions  
17 when making sales to the state and its departments and institutions;

18        (3) "Buyer" and "consumer" include, without limiting the scope  
19 hereof, every individual, receiver, assignee, trustee in bankruptcy,  
20 trust, estate, firm, copartnership, joint venture, club, company, joint  
21 stock company, business trust, corporation, association, society, or  
22 any group of individuals acting as a unit, whether mutual, cooperative,  
23 fraternal, nonprofit, or otherwise, municipal corporation, quasi  
24 municipal corporation, and also the state, its departments and  
25 institutions and all political subdivisions thereof, irrespective of  
26 the nature of the activities engaged in or functions performed, and  
27 also the United States or any instrumentality thereof;

28        (4) The meaning attributed in chapter 82.04 RCW to the terms "tax  
29 year," "taxable year," "person," "company," "sale," "sale at retail,"  
30 "retail sale," "sale at wholesale," "wholesale," "business," "engaging  
31 in business," "cash discount," "successor," "consumer," "in this state"  
32 and "within this state" shall apply equally to the provisions of this  
33 chapter.

34        **Sec. 2.** RCW 82.12.010 and 1994 c 93 s 1 are each amended to read  
35 as follows:

36        For the purposes of this chapter:

37        (1)(a) "Value of the article used" shall mean the consideration,  
38 whether money, credit, rights, or other property except trade-in

1 property of like kind, expressed in terms of money, paid or given or  
2 contracted to be paid or given by the purchaser to the seller for the  
3 article of tangible personal property, the use of which is taxable  
4 under this chapter. The term includes, in addition to the  
5 consideration paid or given or contracted to be paid or given, the  
6 amount of any tariff or duty paid with respect to the importation of  
7 the article used. In case the article used is acquired by lease or by  
8 gift or is extracted, produced, or manufactured by the person using the  
9 same or is sold under conditions wherein the purchase price does not  
10 represent the true value thereof, the value of the article used shall  
11 be determined as nearly as possible according to the retail selling  
12 price at place of use of similar products of like quality and character  
13 under such rules as the department of revenue may prescribe.

14 The term does not include amounts charged the buyer that represent  
15 amounts paid by the seller as impact fees for development activity  
16 under RCW 82.02.050 in the constructing, repairing, or improving of new  
17 or existing buildings or other structures under, upon, or above real  
18 property.

19 (b) In case the articles used are acquired by bailment, the value  
20 of the use of the articles so used shall be in an amount representing  
21 a reasonable rental for the use of the articles so bailed, determined  
22 as nearly as possible according to the value of such use at the places  
23 of use of similar products of like quality and character under such  
24 rules as the department of revenue may prescribe. In case any such  
25 articles of tangible personal property are used in respect to the  
26 construction, repairing, decorating, or improving of, and which become  
27 or are to become an ingredient or component of, new or existing  
28 buildings or other structures under, upon, or above real property of or  
29 for the United States, any instrumentality thereof, or a county or city  
30 housing authority created pursuant to chapter 35.82 RCW, including the  
31 installing or attaching of any such articles therein or thereto,  
32 whether or not such personal property becomes a part of the realty by  
33 virtue of installation, then the value of the use of such articles so  
34 used shall be determined according to the retail selling price of such  
35 articles, or in the absence of such a selling price, as nearly as  
36 possible according to the retail selling price at place of use of  
37 similar products of like quality and character or, in the absence of  
38 either of these selling price measures, such value may be determined

1 upon a cost basis, in any event under such rules as the department of  
2 revenue may prescribe.

3 (c) In the case of articles owned by a user engaged in business  
4 outside the state which are brought into the state for no more than one  
5 hundred eighty days in any period of three hundred sixty-five  
6 consecutive days and which are temporarily used for business purposes  
7 by the person in this state, the value of the article used shall be an  
8 amount representing a reasonable rental for the use of the articles,  
9 unless the person has paid tax under this chapter or chapter 82.08 RCW  
10 upon the full value of the article used, as defined in (a) of this  
11 subsection.

12 (d) In the case of articles manufactured or produced by the user  
13 and used in the manufacture or production of products sold or to be  
14 sold to the department of defense of the United States, the value of  
15 the articles used shall be determined according to the value of the  
16 ingredients of such articles.

17 (e) In the case of an article manufactured or produced for purposes  
18 of serving as a prototype for the development of a new or improved  
19 product, the value of the article used shall be determined by: (i) The  
20 retail selling price of such new or improved product when first offered  
21 for sale; or (ii) the value of materials incorporated into the  
22 prototype in cases in which the new or improved product is not offered  
23 for sale;

24 (2) "Use," "used," "using," or "put to use" shall have their  
25 ordinary meaning, and shall mean the first act within this state by  
26 which the taxpayer takes or assumes dominion or control over the  
27 article of tangible personal property (as a consumer), and include  
28 installation, storage, withdrawal from storage, or any other act  
29 preparatory to subsequent actual use or consumption within this state;

30 (3) "Taxpayer" and "purchaser" include all persons included within  
31 the meaning of the word "buyer" and the word "consumer" as defined in  
32 chapters 82.04 and 82.08 RCW;

33 (4) "Retailer" means every seller as defined in RCW 82.08.010 and  
34 every person engaged in the business of selling tangible personal  
35 property at retail and every person required to collect from purchasers  
36 the tax imposed under this chapter;

37 (5) The meaning ascribed to words and phrases in chapters 82.04 and  
38 82.08 RCW, insofar as applicable, shall have full force and effect with  
39 respect to taxes imposed under the provisions of this chapter.

1 "Consumer," in addition to the meaning ascribed to it in chapters 82.04  
2 and 82.08 RCW insofar as applicable, shall also mean any person who  
3 distributes or displays, or causes to be distributed or displayed, any  
4 article of tangible personal property, except newspapers, the primary  
5 purpose of which is to promote the sale of products or services.

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