
HOUSE BILL 2651

State of Washington

55th Legislature

1998 Regular Session

By Representatives Ogden, Mason, Dunshee, O'Brien, Chopp, Kessler, Conway, Anderson, Butler, Costa, Gardner and Thompson; by request of Governor Locke

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

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

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

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

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

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

10 "Consumer" means the following:

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

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

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

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

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

31 (6) Any person engaged in the business of constructing, repairing,
32 decorating, or improving new or existing buildings or other structures
33 under, upon, or above real property of or for the United States, any
34 instrumentality thereof, or a county or city housing authority created
35 pursuant to chapter 35.82 RCW, 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; also, any person engaged in the business of clearing land
39 and moving earth of or for the United States, any instrumentality

1 thereof, or a county or city housing authority created pursuant to
2 chapter 35.82 RCW; also any person engaged in the business of clearing
3 land, moving earth, site preparation, constructing, repairing,
4 decorating, renovating, expanding, or improving new or existing
5 buildings, structures, facilities, or any other institution of higher
6 education improvement under, upon, or above real property of or for an
7 institution of higher education, as defined in RCW 28B.10.016. Any
8 such person shall be a consumer within the meaning of this subsection
9 in respect to tangible personal property incorporated into, installed
10 in, or attached to such building or other structure by such person;

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

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

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

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

25 The tax levied by RCW 82.08.020 does not apply to sales of tangible
26 personal property to persons engaged in the business of clearing land,
27 moving earth, site preparation, constructing, repairing, decorating,
28 renovating, expanding, or improving of new or existing buildings,
29 structures, facilities, or any other institution of higher education
30 improvement under, upon, or above real property of and for an
31 institution of higher education, as defined in RCW 28B.10.016, when
32 such property will be incorporated as an ingredient or component of
33 real or personal property pursuant to such activity. However, use of
34 such property in this state is subject to the tax imposed by chapter
35 82.12 RCW. The exemption under this section is not for tools,
36 machinery, equipment, consumable supplies, and other such items
37 acquired by the person for his or her own use as a consumer, as defined
38 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 institution of higher
8 education improvement under, upon, or above real property of or for an
9 institution of higher education, as defined in RCW 28B.10.016. This
10 exemption from sales tax is limited to the state share of the sales tax
11 and, under RCW 82.14.820 and 81.104.170, does not apply to the local
12 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
24 chapter . . . , Laws of 1998 (this act) simply and efficiently.
25 Taxpayers and sellers affected by chapter . . . , Laws of 1998 (this
26 act) shall keep their records in a form and manner as directed by the
27 department so that the department can distinguish between taxable and
28 exempt transactions. The department may develop an exemption
29 certificate to be used by the contractor in making sales tax-exempt
30 purchases of materials.

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

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