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SENATE BILL 5427

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State of Washington

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By Senators Swecker, Fraser, Deccio, Morton, Hale, Jacobsen, Hochstatter, McAuliffe, Finkbeiner, Rasmussen, Kohl, Kline, Oke and Roach

Read first time 01/27/97. Referred to Committee on Agriculture & Environment.

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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