
HOUSE BILL 1618

State of Washington

56th Legislature

1999 Regular Session

By Representatives Quall, Carrell, Miloscia, Reardon, Dunshee, Thomas, DeBolt, Morris, Schindler, Esser and Ruderman

Read first time 02/01/1999. Referred to Committee on Finance.

1 AN ACT Relating to the taxation of physical fitness services;
2 reenacting and amending RCW 82.04.050, 82.04.290, 82.04.290, and
3 82.04.290; creating new sections; providing effective dates; providing
4 expiration dates; and declaring an emergency.

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

6 **Sec. 1.** RCW 82.04.050 and 1998 c 332 s 2, 1998 c 315 s 1, 1998 c
7 308 s 1, and 1998 c 275 s 1 are each reenacted and amended to read as
8 follows:

9 (1) "Sale at retail" or "retail sale" means every sale of tangible
10 personal property (including articles produced, fabricated, or
11 imprinted) to all persons irrespective of the nature of their business
12 and including, among others, without limiting the scope hereof, persons
13 who install, repair, clean, alter, improve, construct, or decorate real
14 or personal property of or for consumers other than a sale to a person
15 who presents a resale certificate under RCW 82.04.470 and who:

16 (a) Purchases for the purpose of resale as tangible personal
17 property in the regular course of business without intervening use by
18 such person; or

1 (b) Installs, repairs, cleans, alters, imprints, improves,
2 constructs, or decorates real or personal property of or for consumers,
3 if such tangible personal property becomes an ingredient or component
4 of such real or personal property without intervening use by such
5 person; or

6 (c) Purchases for the purpose of consuming the property purchased
7 in producing for sale a new article of tangible personal property or
8 substance, of which such property becomes an ingredient or component or
9 is a chemical used in processing, when the primary purpose of such
10 chemical is to create a chemical reaction directly through contact with
11 an ingredient of a new article being produced for sale; or

12 (d) Purchases for the purpose of consuming the property purchased
13 in producing ferrosilicon which is subsequently used in producing
14 magnesium for sale, if the primary purpose of such property is to
15 create a chemical reaction directly through contact with an ingredient
16 of ferrosilicon; or

17 (e) Purchases for the purpose of providing the property to
18 consumers as part of competitive telephone service, as defined in RCW
19 82.04.065. The term shall include every sale of tangible personal
20 property which is used or consumed or to be used or consumed in the
21 performance of any activity classified as a "sale at retail" or "retail
22 sale" even though such property is resold or utilized as provided in
23 (a), (b), (c), (d), or (e) of this subsection following such use. The
24 term also means every sale of tangible personal property to persons
25 engaged in any business which is taxable under RCW 82.04.280 (2) and
26 (7) and 82.04.290.

27 (2) The term "sale at retail" or "retail sale" shall include the
28 sale of or charge made for tangible personal property consumed and/or
29 for labor and services rendered in respect to the following:

30 (a) The installing, repairing, cleaning, altering, imprinting, or
31 improving of tangible personal property of or for consumers, including
32 charges made for the mere use of facilities in respect thereto, but
33 excluding charges made for the use of coin-operated laundry facilities
34 when such facilities are situated in an apartment house, rooming house,
35 or mobile home park for the exclusive use of the tenants thereof, and
36 also excluding sales of laundry service to nonprofit health care
37 facilities, and excluding services rendered in respect to live animals,
38 birds and insects;

1 (b) The constructing, repairing, decorating, or improving of new or
2 existing buildings or other structures under, upon, or above real
3 property of or for consumers, including the installing or attaching of
4 any article of tangible personal property therein or thereto, whether
5 or not such personal property becomes a part of the realty by virtue of
6 installation, and shall also include the sale of services or charges
7 made for the clearing of land and the moving of earth excepting the
8 mere leveling of land used in commercial farming or agriculture;

9 (c) The charge for labor and services rendered in respect to
10 constructing, repairing, or improving any structure upon, above, or
11 under any real property owned by an owner who conveys the property by
12 title, possession, or any other means to the person performing such
13 construction, repair, or improvement for the purpose of performing such
14 construction, repair, or improvement and the property is then
15 reconveyed by title, possession, or any other means to the original
16 owner;

17 (d) The sale of or charge made for labor and services rendered in
18 respect to the cleaning, fumigating, razing or moving of existing
19 buildings or structures, but shall not include the charge made for
20 janitorial services; and for purposes of this section the term
21 "janitorial services" shall mean those cleaning and caretaking services
22 ordinarily performed by commercial janitor service businesses
23 including, but not limited to, wall and window washing, floor cleaning
24 and waxing, and the cleaning in place of rugs, drapes and upholstery.
25 The term "janitorial services" does not include painting, papering,
26 repairing, furnace or septic tank cleaning, snow removal or
27 sandblasting;

28 (e) The sale of or charge made for labor and services rendered in
29 respect to automobile towing and similar automotive transportation
30 services, but not in respect to those required to report and pay taxes
31 under chapter 82.16 RCW;

32 (f) The sale of and charge made for the furnishing of lodging and
33 all other services by a hotel, rooming house, tourist court, motel,
34 trailer camp, and the granting of any similar license to use real
35 property, as distinguished from the renting or leasing of real
36 property, and it shall be presumed that the occupancy of real property
37 for a continuous period of one month or more constitutes a rental or
38 lease of real property and not a mere license to use or enjoy the same;

1 (g) The sale of or charge made for tangible personal property,
2 labor and services to persons taxable under (a), (b), (c), (d), (e),
3 and (f) of this subsection when such sales or charges are for property,
4 labor and services which are used or consumed in whole or in part by
5 such persons in the performance of any activity defined as a "sale at
6 retail" or "retail sale" even though such property, labor and services
7 may be resold after such use or consumption. Nothing contained in this
8 subsection shall be construed to modify subsection (1) of this section
9 and nothing contained in subsection (1) of this section shall be
10 construed to modify this subsection.

11 (3) The term "sale at retail" or "retail sale" shall include the
12 sale of or charge made for personal, business, or professional services
13 including amounts designated as interest, rents, fees, admission, and
14 other service emoluments however designated, received by persons
15 engaging in the following business activities:

16 (a) Amusement and recreation services including but not limited to
17 golf, pool, billiards, skating, bowling, ski lifts and tows, day trips
18 for sightseeing purposes, and others, when provided to consumers;

19 (b) Abstract, title insurance, and escrow services;

20 (c) Credit bureau services;

21 (d) Automobile parking and storage garage services;

22 (e) Landscape maintenance and horticultural services but excluding
23 (i) horticultural services provided to farmers and (ii) pruning,
24 trimming, repairing, removing, and clearing of trees and brush near
25 electric transmission or distribution lines or equipment, if performed
26 by or at the direction of an electric utility;

27 (f) Service charges associated with tickets to professional
28 sporting events; and

29 (g) The following personal services: ((Physical—fitness
30 services,)) Tanning salon services, tattoo parlor services, steam bath
31 services, turkish bath services, escort services, and dating services.

32 (4) The term shall also include the renting or leasing of tangible
33 personal property to consumers and the rental of equipment with an
34 operator.

35 (5) The term shall also include the providing of telephone service,
36 as defined in RCW 82.04.065, to consumers.

37 (6) The term shall also include the sale of canned software other
38 than a sale to a person who presents a resale certificate under RCW
39 82.04.470, regardless of the method of delivery to the end user, but

1 shall not include custom software or the customization of canned
2 software.

3 (7) The term shall not include the sale of or charge made for labor
4 and services rendered in respect to the building, repairing, or
5 improving of any street, place, road, highway, easement, right of way,
6 mass public transportation terminal or parking facility, bridge,
7 tunnel, or trestle which is owned by a municipal corporation or
8 political subdivision of the state or by the United States and which is
9 used or to be used primarily for foot or vehicular traffic including
10 mass transportation vehicles of any kind.

11 (8) The term shall also not include sales of chemical sprays or
12 washes to persons for the purpose of postharvest treatment of fruit for
13 the prevention of scald, fungus, mold, or decay, nor shall it include
14 sales of feed, seed, seedlings, fertilizer, agents for enhanced
15 pollination including insects such as bees, and spray materials to:
16 (a) Persons who participate in the federal conservation reserve
17 program, the environmental quality incentives program, the wetlands
18 reserve program, and the wildlife habitat incentives program, or their
19 successors administered by the United States department of agriculture;
20 (b) farmers for the purpose of producing for sale any agricultural
21 product; and (c) farmers acting under cooperative habitat development
22 or access contracts with an organization exempt from federal income tax
23 under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of
24 fish and wildlife to produce or improve wildlife habitat on land that
25 the farmer owns or leases.

26 (9) The term shall not include the sale of or charge made for labor
27 and services rendered in respect to the constructing, repairing,
28 decorating, or improving of new or existing buildings or other
29 structures under, upon, or above real property of or for the United
30 States, any instrumentality thereof, or a county or city housing
31 authority created pursuant to chapter 35.82 RCW, including the
32 installing, or attaching of any article of tangible personal property
33 therein or thereto, whether or not such personal property becomes a
34 part of the realty by virtue of installation. Nor shall the term
35 include the sale of services or charges made for the clearing of land
36 and the moving of earth of or for the United States, any
37 instrumentality thereof, or a county or city housing authority. Nor
38 shall the term include the sale of services or charges made for
39 cleaning up for the United States, or its instrumentalities,

1 radioactive waste and other byproducts of weapons production and
2 nuclear research and development.

3 (10) Until July 1, 2003, the term shall not include the sale of or
4 charge made for labor and services rendered for environmental remedial
5 action as defined in RCW 82.04.2635(2).

6 **Sec. 2.** RCW 82.04.290 and 1998 c 331 s 2, 1998 c 312 s 8, and 1998
7 c 308 s 4 are each reenacted and amended to read as follows:

8 EFFECTIVE UNTIL JULY 1, 2001. (1) Upon every person engaging
9 within this state in the business of providing international investment
10 management services, as to such persons, the amount of tax with respect
11 to such business shall be equal to the gross income or gross proceeds
12 of sales of the business multiplied by a rate of 0.275 percent.

13 (2) Upon every person engaging within this state in the business of
14 providing physical fitness services not otherwise classified as a sale
15 of retail; as to such persons, the amount of the tax with respect to
16 such business shall be equal to the gross income of the business,
17 multiplied by the rate of 0.471 percent.

18 (3) Upon every person engaging within this state in any business
19 activity other than or in addition to those enumerated in RCW
20 82.04.230, 82.04.240, 82.04.250, 82.04.255, 82.04.260, 82.04.270,
21 82.04.2905, 82.04.280, 82.04.2635, and 82.04.2907, and subsections (1)
22 and (2) of this section; as to such persons the amount of tax on
23 account of such activities shall be equal to the gross income of the
24 business multiplied by the rate of 1.5 percent.

25 This section includes, among others, and without limiting the scope
26 hereof (whether or not title to materials used in the performance of
27 such business passes to another by accession, confusion or other than
28 by outright sale), persons engaged in the business of rendering any
29 type of service which does not constitute a "sale at retail" or a "sale
30 at wholesale." The value of advertising, demonstration, and
31 promotional supplies and materials furnished to an agent by his or her
32 principal or supplier to be used for informational, educational and
33 promotional purposes shall not be considered a part of the agent's
34 remuneration or commission and shall not be subject to taxation under
35 this section.

1 **Sec. 3.** RCW 82.04.290 and 1998 c 343 s 4, 1998 c 331 s 2, 1998 c
2 312 s 8, and 1998 c 308 s 4 are each reenacted and amended to read as
3 follows:

4 EFFECTIVE JULY 1, 2001, UNTIL JULY 1, 2003. (1) Upon every person
5 engaging within this state in the business of providing international
6 investment management services, as to such persons, the amount of tax
7 with respect to such business shall be equal to the gross income or
8 gross proceeds of sales of the business multiplied by a rate of 0.275
9 percent.

10 (2) Upon every person engaging within this state in the business of
11 providing physical fitness services not otherwise classified as a sale
12 of retail; as to such persons, the amount of the tax with respect to
13 such business shall be equal to the gross income of the business,
14 multiplied by the rate of 0.471 percent.

15 (3) Upon every person engaging within this state in any business
16 activity other than or in addition to those enumerated in RCW
17 82.04.230, 82.04.240, 82.04.250, 82.04.255, 82.04.260, 82.04.270,
18 82.04.2905, 82.04.280, 82.04.2635, 82.04.2907, and 82.04.272, and
19 subsections (1) and (2) of this section; as to such persons the amount
20 of tax on account of such activities shall be equal to the gross income
21 of the business multiplied by the rate of 1.5 percent.

22 This section includes, among others, and without limiting the scope
23 hereof (whether or not title to materials used in the performance of
24 such business passes to another by accession, confusion or other than
25 by outright sale), persons engaged in the business of rendering any
26 type of service which does not constitute a "sale at retail" or a "sale
27 at wholesale." The value of advertising, demonstration, and
28 promotional supplies and materials furnished to an agent by his or her
29 principal or supplier to be used for informational, educational and
30 promotional purposes shall not be considered a part of the agent's
31 remuneration or commission and shall not be subject to taxation under
32 this section.

33 **Sec. 4.** RCW 82.04.290 and 1998 c 343 s 4, 1998 c 331 s 2, 1998 c
34 312 s 8, and 1998 c 308 s 5 are each reenacted and amended to read as
35 follows:

36 EFFECTIVE JULY 1, 2003. (1) Upon every person engaging within this
37 state in the business of providing international investment management
38 services, as to such persons, the amount of tax with respect to such

1 business shall be equal to the gross income or gross proceeds of sales
2 of the business multiplied by a rate of 0.275 percent.

3 (2) Upon every person engaging within this state in the business of
4 providing physical fitness services not otherwise classified as a sale
5 of retail; as to such persons, the amount of the tax with respect to
6 such business shall be equal to the gross income of the business,
7 multiplied by the rate of 0.471 percent.

8 (3) Upon every person engaging within this state in any business
9 activity other than or in addition to those enumerated in RCW
10 82.04.230, 82.04.240, 82.04.250, 82.04.255, 82.04.260, 82.04.270,
11 82.04.2905, 82.04.280, 82.04.2907, and 82.04.272, and subsections (1)
12 and (2) of this section; as to such persons the amount of tax on
13 account of such activities shall be equal to the gross income of the
14 business multiplied by the rate of 1.5 percent.

15 This section includes, among others, and without limiting the scope
16 hereof (whether or not title to materials used in the performance of
17 such business passes to another by accession, confusion or other than
18 by outright sale), persons engaged in the business of rendering any
19 type of service which does not constitute a "sale at retail" or a "sale
20 at wholesale." The value of advertising, demonstration, and
21 promotional supplies and materials furnished to an agent by his or her
22 principal or supplier to be used for informational, educational and
23 promotional purposes shall not be considered a part of the agent's
24 remuneration or commission and shall not be subject to taxation under
25 this section.

26 NEW SECTION. **Sec. 5.** This act applies to physical fitness
27 services rendered on and after July 1, 1999.

28 NEW SECTION. **Sec. 6.** Captions used in this act are not any part
29 of the law.

30 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
31 preservation of the public peace, health, or safety, or support of the
32 state government and its existing public institutions, and takes effect
33 July 1, 1999, except section 4 of this act takes effect July 1, 2003.

34 NEW SECTION. **Sec. 8.** (1) Section 2 of this act expires July 1,
35 2001.

1 (2) Section 3 of this act expires July 1, 2003.

--- END ---