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HOUSE BILL 1622

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State of Washington

56th Legislature

1999 Regular Session

By Representatives Reardon, Cairnes and Hurst; by request of Department of Revenue

Read first time . Referred to Committee on .

1 AN ACT Relating to the meaning of the phrase "services rendered in  
2 respect to constructing" for purposes of the business and occupation  
3 and sales and use taxes; adding a new section to chapter 82.04 RCW; and  
4 creating a new section.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that the taxation  
7 of "services rendered in respect to constructing buildings or other  
8 structures" has generally included the entire transaction for  
9 construction, including certain services provided directly to the  
10 consumer or owner rather than the person engaged in the performance of  
11 the constructing activity. Changes in business practices and recent  
12 administrative and court decisions have confused the issue. It is the  
13 intent of the legislature to clarify which services, if standing alone  
14 and not part of the transaction, are considered to be retail or  
15 wholesale services, and which services will continue to be treated as  
16 taxable under RCW 82.04.290(2).

17 (2) It is further the intent of the legislature to confirm that the  
18 entire price for the constructing of the building or other structure  
19 for a consumer or owner continues to be a retail sale, even though some

1 of the individual services reflected in the price if provided alone are  
2 taxed as services and not as separate retail or wholesale transactions.

3 (3) Therefore, this act is intended to maintain the application of  
4 the law and not to extend retail treatment to activities not previously  
5 treated as retail activities. Services that are otherwise subject to  
6 tax under RCW 82.04.290(2), including but not limited to architectural,  
7 engineering, surveying, flagging, accounting, and legal services,  
8 remain subject to RCW 82.04.290(2), if the person responsible for the  
9 performance of those services is not also responsible for the  
10 performance of constructing, building, repairing, improving, or  
11 decorating activities. Additionally, unless otherwise provided by law,  
12 a person entering into an agreement to be responsible for the  
13 performance of services otherwise subject to tax under RCW  
14 82.04.290(2), and subsequently entering into a separate agreement to be  
15 responsible for the performance of constructing, building, repairing,  
16 improving, or decorating activities, is subject to tax under RCW  
17 82.04.290(2) with respect to the first agreement, and is subject to tax  
18 under the appropriate section of chapter 82.04 RCW with respect to the  
19 second agreement, if at the time of the first agreement there was no  
20 contemplation that the agreements would be awarded to the same person.

21 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.04 RCW  
22 to read as follows:

23 (1) The term "services rendered in respect to" as used in RCW  
24 82.04.050 (2)(b) and (c), (7), and (9) means those services that are  
25 directly related to the constructing, building, repairing, improving,  
26 and decorating of buildings or other structures, by a person who is  
27 responsible for the performance of the constructing, building,  
28 repairing, improving, or decorating activity.

29 (2) The term does not include services such as engineering,  
30 architectural, survey, flagging, accounting, legal, consulting,  
31 management, or administrative provided to the consumer of or person  
32 responsible for performing the constructing, building, repairing,  
33 improving, or decorating services. However, a contract or agreement  
34 that requires a person to be responsible for services that would  
35 otherwise be subject to the tax classification provided by RCW  
36 82.04.290(2), and also constructing, building, repairing, improving, or  
37 decorating activities that would otherwise be subject to a tax

1 classification provided by any other one section of chapter 82.04 RCW,  
2 is subject to the tax rate that applies to the predominant activity.

3 (3) Unless otherwise provided by law, a contract or agreement that  
4 requires a person to be responsible for activities that are subject to  
5 the tax rate provided by RCW 82.04.290(2), and a subsequent contract or  
6 agreement that requires the same person to be responsible for  
7 constructing, building, repairing, improving, or decorating activities  
8 subject to a tax rate provided in another section of chapter 82.04 RCW,  
9 shall not be combined and subject to a single tax rate if at the time  
10 of the first contract or agreement it was not contemplated that the  
11 same person would be awarded both contracts.

12 (4) As used in this section "responsible for the performance" means  
13 that the person is obligated to perform, either personally or through  
14 a third party, the activities. A person who reviews work for the  
15 consumer or for the retailer or wholesaler but does not supervise or  
16 direct the work is not responsible for the performance of the work nor  
17 is a person who is financially obligated for the work, such as a bank,  
18 but who does not have control over the work itself.

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