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HOUSE BILL 2261

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State of Washington

56th Legislature

1999 Regular Session

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

Read first time 03/04/1999. Referred to Committee on Finance.

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 construction agreement, are taxed as retail or  
15 wholesale sales, and which services will continue to be taxed as a  
16 service.

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

1 the individual services reflected in the price, if provided alone,  
2 would be taxed as services and not as separate retail or wholesale  
3 sales.

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

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

27 (1) As used in RCW 82.04.050, the term "services rendered in  
28 respect to" means those services that are directly related to the  
29 constructing, building, repairing, improving, and decorating of  
30 buildings or other structures and that are performed by a person who is  
31 responsible for the performance of the constructing, building,  
32 repairing, improving, or decorating activity. The term does not  
33 include services such as engineering, architectural, surveying,  
34 flagging, accounting, legal, consulting, or administrative services  
35 provided to the consumer of, or person responsible for performing, the  
36 constructing, building, repairing, improving, or decorating services.

37 (2) A contract or agreement under which a person is responsible for  
38 both services that would otherwise be subject to tax as a service under

1 RCW 82.04.290(2) and also constructing, building, repairing, improving,  
2 or decorating activities that would otherwise be subject to tax under  
3 another section of this chapter is subject to the tax that applies to  
4 the predominant activity under the contract or agreement.

5 (3) Unless otherwise provided by law, a contract or agreement under  
6 which a person is responsible for activities that are subject to tax as  
7 a service under RCW 82.04.290(2), and a subsequent contract or  
8 agreement under which the same person is responsible for constructing,  
9 building, repairing, improving, or decorating activities subject to tax  
10 under another section of this chapter, shall not be combined and taxed  
11 as a single activity if at the time of the first contract or agreement  
12 it was not contemplated by the parties, as evidenced by the facts, that  
13 the same person would be awarded both contracts.

14 (4) As used in this section "responsible for the performance" means  
15 that the person is obligated to perform the activities, either  
16 personally or through a third party. A person who reviews work for a  
17 consumer, retailer, or wholesaler but does not supervise or direct the  
18 work is not responsible for the performance of the work. A person who  
19 is financially obligated for the work, such as a bank, but who does not  
20 have control over the work itself is not responsible for the  
21 performance of the work.

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