
SUBSTITUTE SENATE BILL 5328

State of Washington

56th Legislature

1999 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Morton, Hargrove, Sellar, Deccio, Swecker and Oke)

Read first time 02/16/1999. Referred to Committee on .

1 AN ACT Relating to an exemption in the leasehold tax for commercial
2 guiding and outfitting operations; and amending RCW 82.29A.020.

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

4 **Sec. 1.** RCW 82.29A.020 and 1991 c 272 s 23 are each amended to
5 read as follows:

6 As used in this chapter the following terms shall be defined as
7 follows, unless the context otherwise requires:

8 (1) "Leasehold interest" shall mean an interest in publicly owned
9 real or personal property which exists by virtue of any lease, permit,
10 license, or any other agreement, written or verbal, between the public
11 owner of the property and a person who would not be exempt from
12 property taxes if that person owned the property in fee, granting
13 possession and use, to a degree less than fee simple ownership:
14 PROVIDED, That no interest in personal property (excluding land or
15 buildings) which is owned by the United States, whether or not as
16 trustee, or by any foreign government shall constitute a leasehold
17 interest hereunder when the right to use such property is granted
18 pursuant to a contract solely for the manufacture or production of
19 articles for sale to the United States or any foreign government. The

1 term "leasehold interest" shall include the rights of use or occupancy
2 by others of property which is owned in fee or held in trust by a
3 public corporation, commission, or authority created under RCW
4 35.21.730 or 35.21.660 if the property is listed on or is within a
5 district listed on any federal or state register of historical sites.
6 The term "leasehold interest" shall not include the use of national
7 forest wilderness lands, as designated and managed pursuant to 16
8 U.S.C. Sec. 1133, by commercial packing, guiding, and outfitting
9 operations, road or utility easements or rights of access, occupancy or
10 use granted solely for the purpose of removing materials or products
11 purchased from a public owner or the lessee of a public owner.

12 (2) "Taxable rent" shall mean contract rent as defined in
13 (~~subsection~~) (a) of this subsection in all cases where the lease or
14 agreement has been established or renegotiated through competitive
15 bidding, or negotiated or renegotiated in accordance with statutory
16 requirements regarding the rent payable, or negotiated or renegotiated
17 under circumstances, established by public record, clearly showing that
18 the contract rent was the maximum attainable by the lessor: PROVIDED,
19 That after January 1, 1986, with respect to any lease which has been in
20 effect for ten years or more without renegotiation, taxable rent may be
21 established by procedures set forth in (~~subsection~~) (b) of this
22 subsection. All other leasehold interests shall be subject to the
23 determination of taxable rent under the terms of (~~subsection~~) (b) of
24 this subsection.

25 For purposes of determining leasehold excise tax on any lands on
26 the Hanford reservation subleased to a private or public entity by the
27 department of ecology, taxable rent shall include only the annual cash
28 rental payment made by such entity to the department of ecology as
29 specifically referred to as rent in the sublease agreement between the
30 parties and shall not include any other fees, assessments, or charges
31 imposed on or collected by such entity irrespective of whether the
32 private or public entity pays or collects such other fees, assessments,
33 or charges as specified in the sublease agreement.

34 (a) "Contract rent" shall mean the amount of consideration due as
35 payment for a leasehold interest, including: The total of cash
36 payments made to the lessor or to another party for the benefit of the
37 lessor according to the requirements of the lease or agreement,
38 including any rents paid by a sublessee; expenditures for the
39 protection of the lessor's interest when required by the terms of the

1 lease or agreement; and expenditures for improvements to the property
2 to the extent that such improvements become the property of the lessor.
3 Where the consideration conveyed for the leasehold interest is made in
4 combination with payment for concession or other rights granted by the
5 lessor, only that portion of such payment which represents
6 consideration for the leasehold interest shall be part of contract
7 rent.

8 "Contract rent" shall not include: (i) Expenditures made by the
9 lessee, which under the terms of the lease or agreement, are to be
10 reimbursed by the lessor to the lessee or expenditures for improvements
11 and protection made pursuant to a lease or an agreement which requires
12 that the use of the improved property be open to the general public and
13 that no profit will inure to the lessee from the lease; (ii)
14 expenditures made by the lessee for the replacement or repair of
15 facilities due to fire or other casualty including payments for
16 insurance to provide reimbursement for losses or payments to a public
17 or private entity for protection of such property from damage or loss
18 or for alterations or additions made necessary by an action of
19 government taken after the date of the execution of the lease or
20 agreement; (iii) improvements added to publicly owned property by a
21 sublessee under an agreement executed prior to January 1, 1976, which
22 have been taxed as personal property of the sublessee prior to January
23 1, 1976, or improvements made by a sublessee of the same lessee under
24 a similar agreement executed prior to January 1, 1976, and such
25 improvements shall be taxable to the sublessee as personal property;
26 (iv) improvements added to publicly owned property if such improvements
27 are being taxed as personal property to any person.

28 Any prepaid contract rent shall be considered to have been paid in
29 the year due and not in the year actually paid with respect to
30 prepayment for a period of more than one year. Expenditures for
31 improvements with a useful life of more than one year which are
32 included as part of contract rent shall be treated as prepaid contract
33 rent and prorated over the useful life of the improvement or the
34 remaining term of the lease or agreement if the useful life is in
35 excess of the remaining term of the lease or agreement. Rent prepaid
36 prior to January 1, 1976, shall be prorated from the date of
37 prepayment.

38 With respect to a "product lease", the value of agricultural
39 products received as rent shall be the value at the place of delivery

1 as of the fifteenth day of the month of delivery; with respect to all
2 other products received as contract rent, the value shall be that value
3 determined at the time of sale under terms of the lease.

4 (b) If it shall be determined by the department of revenue, upon
5 examination of a lessee's accounts or those of a lessor of publicly
6 owned property, that a lessee is occupying or using publicly owned
7 property in such a manner as to create a leasehold interest and that
8 such leasehold interest has not been established through competitive
9 bidding, or negotiated in accordance with statutory requirements
10 regarding the rent payable, or negotiated under circumstances,
11 established by public record, clearly showing that the contract rent
12 was the maximum attainable by the lessor, the department may establish
13 a taxable rent computation for use in determining the tax payable under
14 authority granted in this chapter based upon the following criteria:
15 (i) Consideration shall be given to rental being paid to other lessors
16 by lessees of similar property for similar purposes over similar
17 periods of time; (ii) consideration shall be given to what would be
18 considered a fair rate of return on the market value of the property
19 leased less reasonable deductions for any restrictions on use, special
20 operating requirements or provisions for concurrent use by the lessor,
21 another person or the general public.

22 (3) "Product lease" as used in this chapter shall mean a lease of
23 property for use in the production of agricultural or marine products
24 to the extent that such lease provides for the contract rent to be paid
25 by the delivery of a stated percentage of the production of such
26 agricultural or marine products to the credit of the lessor or the
27 payment to the lessor of a stated percentage of the proceeds from the
28 sale of such products.

29 (4) "Renegotiated" means a change in the lease agreement which
30 changes the agreed time of possession, restrictions on use, the rate of
31 the cash rental or of any other consideration payable by the lessee to
32 or for the benefit of the lessor, other than any such change required
33 by the terms of the lease or agreement. In addition "renegotiated"
34 shall mean a continuation of possession by the lessee beyond the date
35 when, under the terms of the lease agreement, the lessee had the right
36 to vacate the premises without any further liability to the lessor.

1 (5) "City" means any city or town.

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