
SENATE BILL 5688

State of Washington 56th Legislature 1999 Regular Session

By Senators B. Sheldon, Swecker, Kohl-Welles, Johnson and Oke

Read first time 02/03/1999. Referred to Committee on Ways & Means.

1 AN ACT Relating to the taxation of physical fitness services;
2 reenacting and amending RCW 82.04.050; creating a new section;
3 providing an effective date; and declaring an emergency.

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

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

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

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

18 (b) Installs, repairs, cleans, alters, imprints, improves,
19 constructs, or decorates real or personal property of or for consumers,

1 if such tangible personal property becomes an ingredient or component
2 of such real or personal property without intervening use by such
3 person; or

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

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

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

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

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

37 (b) The constructing, repairing, decorating, or improving of new or
38 existing buildings or other structures under, upon, or above real
39 property of or for consumers, including the installing or attaching of

1 any article of tangible personal property therein or thereto, whether
2 or not such personal property becomes a part of the realty by virtue of
3 installation, and shall also include the sale of services or charges
4 made for the clearing of land and the moving of earth excepting the
5 mere leveling of land used in commercial farming or agriculture;

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

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

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

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

36 (g) The sale of or charge made for tangible personal property,
37 labor and services to persons taxable under (a), (b), (c), (d), (e),
38 and (f) of this subsection when such sales or charges are for property,
39 labor and services which are used or consumed in whole or in part by

1 such persons in the performance of any activity defined as a "sale at
2 retail" or "retail sale" even though such property, labor and services
3 may be resold after such use or consumption. Nothing contained in this
4 subsection shall be construed to modify subsection (1) of this section
5 and nothing contained in subsection (1) of this section shall be
6 construed to modify this subsection.

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

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

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

16 (c) Credit bureau services;

17 (d) Automobile parking and storage garage services;

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

23 (f) Service charges associated with tickets to professional
24 sporting events; and

25 (g) The following personal services: ((Physical—fitness
26 services,)) Tanning salon services, tattoo parlor services, steam bath
27 services, turkish bath services, escort services, and dating services.

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

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

33 (6) The term shall also include the sale of canned software other
34 than a sale to a person who presents a resale certificate under RCW
35 82.04.470, regardless of the method of delivery to the end user, but
36 shall not include custom software or the customization of canned
37 software.

38 (7) The term shall not include the sale of or charge made for labor
39 and services rendered in respect to the building, repairing, or

1 improving of any street, place, road, highway, easement, right of way,
2 mass public transportation terminal or parking facility, bridge,
3 tunnel, or trestle which is owned by a municipal corporation or
4 political subdivision of the state or by the United States and which is
5 used or to be used primarily for foot or vehicular traffic including
6 mass transportation vehicles of any kind.

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

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

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

4 NEW SECTION. **Sec. 2.** This act applies to physical fitness
5 services rendered on and after July 1, 1999.

6 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
7 preservation of the public peace, health, or safety, or support of the
8 state government and its existing public institutions, and takes effect
9 July 1, 1999.

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