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ENGROSSED SUBSTITUTE HOUSE BILL 2750

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State of Washington

57th Legislature

2002 Regular Session

By House Committee on Finance (originally sponsored by Representatives Gombosky, Nixon, Wood, Ballasiotes, Conway, Veloria, Ogden, Chase, Berkey, Skinner and Edwards)

Read first time 02/11/2002. Referred to Committee on .

1 AN ACT Relating to the property taxation of organizations operated  
2 exclusively for art, scientific, or historical purposes or engaged in  
3 the production and performance of musical, dance, artistic, dramatic,  
4 or literary works; amending RCW 84.36.060, 84.36.805, 84.36.840, and  
5 82.29A.130; adding a new section to chapter 84.36 RCW; creating new  
6 sections; and declaring an emergency.

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

8 NEW SECTION. **Sec. 1.** The legislature finds that artistic,  
9 scientific, and historical organizations and associations engaged in  
10 the production and performance of musical, dance, artistic, dramatic,  
11 or literary works provide many public benefits to the people of the  
12 state of Washington. Therefore, the legislature finds that it is in  
13 the best interest of the state of Washington to provide a limited  
14 property tax and leasehold excise tax exemption for the incidental use  
15 of these facilities by certain organizations to better raise additional  
16 revenues from the public in order to be self-sustaining for their  
17 exempt purposes.

1        NEW SECTION.    **Sec. 2.**    A new section is added to chapter 84.36 RCW  
2 to read as follows:

3        (1) The exemption for properties described in RCW 84.36.060(1) that  
4 are loaned or rented to any person, for-profit organization, or  
5 business enterprise not eligible for a tax exemption shall be  
6 determined by one or more of the methods in this section as  
7 appropriate.

8        (a) The portion of the property used for the nonexempt purpose may  
9 be segregated and taxed at one hundred percent of assessed value.

10       (b) If income from loans or rentals to nonexempt users does not  
11 exceed ten percent of gross income from all sources in a calendar year  
12 the property is exempt on one hundred percent of the assessed value.

13       (c) If income from loans or rentals to nonexempt users exceeds ten  
14 percent of gross income from all sources in a calendar year, the  
15 property is subject to taxation in an amount equal to the assessed  
16 value multiplied by the proportion of income from such loans or rentals  
17 to the gross income for all sources in any calendar year.

18       (2) As used in this section, "gross income from all sources" means  
19 all revenue received from any source including entrance or admittance  
20 fees, user fees, fund-raising events, sales or tickets to performing  
21 arts events, and rents or donation received as a result of the loan or  
22 rental of the property. Gross income from all sources does not include  
23 income from property that has been segregated under subsection (1)(a)  
24 of this section.

25       **Sec. 3.**    RCW 84.36.060 and 1995 c 306 s 1 are each amended to read  
26 as follows:

27       The following property shall be exempt from taxation:

28       (1) All art, scientific, or historical collections of associations  
29 maintaining and exhibiting such collections for the benefit of the  
30 general public and not for profit, together with all real and personal  
31 property of such associations used exclusively for the safekeeping,  
32 maintaining and exhibiting of such collections; and all the real and  
33 personal property owned by or leased to associations engaged in the  
34 production and performance of musical, dance, artistic, dramatic, or  
35 literary works for the benefit of the general public and not for  
36 profit, which real and personal property is used exclusively for this  
37 production or performance.

1 (a) To receive this exemption an organization must be organized and  
2 operated exclusively for artistic, scientific, historical, literary,  
3 musical, dance, dramatic, or educational purposes and receive a  
4 substantial part of its support (exclusive of income received in the  
5 exercise or performance by such organization of its purpose or  
6 function) from the United States or any state or any political  
7 subdivision thereof or from direct or indirect contributions from the  
8 general public.

9 (b) If the property is not currently being used for an exempt  
10 purpose but will be used for an exempt purpose within a reasonable  
11 period of time, the nonprofit organization, association, or corporation  
12 claiming the exemption must submit proof that a reasonably specific and  
13 active program is being carried out to construct, remodel, or otherwise  
14 enable the property to be used for an exempt purpose. Except as  
15 provided in section 2 of this act, the property does not qualify for an  
16 exemption during this interim period if the property is used by, loaned  
17 to, or rented to a for-profit organization or business enterprise.  
18 Proof of a specific and active program to build or remodel the property  
19 so it may be used for an exempt purpose may include, but is not limited  
20 to:

21 (i) Affirmative action by the board of directors, trustees, or  
22 governing body of the nonprofit organization, association, or  
23 corporation toward an active program of construction or remodeling;

24 (ii) Itemized reasons for the proposed construction or remodeling;

25 (iii) Clearly established plans for financing the construction or  
26 remodeling; or

27 (iv) Building permits.

28 ~~((c) Notwithstanding (b) of this subsection, a for-profit limited~~  
29 ~~partnership created to provide facilities for the use of nonprofit art,~~  
30 ~~scientific, or historical organizations qualifies for the exemption~~  
31 ~~under (b) of this subsection through 1997 if the for-profit limited~~  
32 ~~partnership otherwise qualifies under (b) of this subsection.))~~

33 (2) All fire engines and other implements used for the  
34 extinguishment of fire, with the buildings used exclusively for the  
35 safekeeping thereof, and for meetings of fire companies, provided such  
36 properties belong to any city or town or to a fire company therein.

37 (3) Property owned by humane societies in this state in actual use  
38 by such societies.

1       **Sec. 4.** RCW 84.36.805 and 2001 1st sp.s. c 7 s 2 are each amended  
2 to read as follows:

3       (1) In order to qualify for an exemption under this chapter and RCW  
4 84.36.560, the nonprofit organizations, associations, or corporations  
5 must satisfy the conditions in this section.

6       (2) The property must be used exclusively for the actual operation  
7 of the activity for which exemption is granted, unless otherwise  
8 provided, and does not exceed an amount reasonably necessary for that  
9 purpose, except:

10       (a) The loan or rental of the property does not subject the  
11 property to tax if:

12       (i) The rents and donations received for the use of the portion of  
13 the property are reasonable and do not exceed the maintenance and  
14 operation expenses attributable to the portion of the property loaned  
15 or rented; and

16       (ii) Except for the exemptions under RCW 84.36.030(4) (~~and~~),  
17 84.36.037, and 84.36.060(1)(c), the property would be exempt from tax  
18 if owned by the organization to which it is loaned or rented;

19       (b) The use of the property for fund-raising activities does not  
20 subject the property to tax if the fund-raising activities are  
21 consistent with the purposes for which the exemption is granted.

22       (3) The property must be irrevocably dedicated to the purpose for  
23 which exemption has been granted, and on the liquidation, dissolution,  
24 or abandonment by said organization, association, or corporation, said  
25 property will not inure directly or indirectly to the benefit of any  
26 shareholder or individual, except a nonprofit organization,  
27 association, or corporation which too would be entitled to property tax  
28 exemption. This property need not be irrevocably dedicated if it is  
29 leased or rented to those qualified for exemption under this chapter or  
30 RCW 84.36.560 for leased property, but only if under the terms of the  
31 lease or rental agreement the nonprofit organization, association, or  
32 corporation receives the benefit of the exemption.

33       (4) The facilities and services must be available to all regardless  
34 of race, color, national origin or ancestry.

35       (5) The organization, association, or corporation must be duly  
36 licensed or certified where such licensing or certification is required  
37 by law or regulation.

38       (6) Property sold to organizations, associations, or corporations  
39 with an option to be repurchased by the seller shall not qualify for

1 exempt status. This subsection does not apply to property sold to a  
2 nonprofit entity, as defined in RCW 84.36.560(7), by:

3 (a) A nonprofit as defined in RCW 84.36.800 that is exempt from  
4 income tax under section 501(c) of the federal internal revenue code;

5 (b) A governmental entity established under RCW 35.21.660,  
6 35.21.670, or 35.21.730;

7 (c) A housing authority created under RCW 35.82.030;

8 (d) A housing authority meeting the definition in RCW  
9 35.82.210(2)(a); or

10 (e) A housing authority established under RCW 35.82.300.

11 (7) The department shall have access to its books in order to  
12 determine whether the nonprofit organization, association, or  
13 corporation is exempt from taxes under this chapter and RCW 84.36.560.

14 (8) This section does not apply to exemptions granted under RCW  
15 84.36.020, 84.36.032, 84.36.250, and 84.36.260.

16 **Sec. 5.** RCW 84.36.840 and 1973 2nd ex.s. c 40 s 14 are each  
17 amended to read as follows:

18 (1) In order to determine whether organizations, associations,  
19 corporations or institutions except those exempted under RCW 84.36.020  
20 and 84.36.030 are exempt from taxes within the intent of this chapter,  
21 and before the exemption shall be allowed for any year, the  
22 superintendent or manager or other proper officer of the organization,  
23 association, corporation or institution claiming exemption from  
24 taxation shall file, with the department of revenue on forms furnished  
25 by the director, a signed statement made under oath that the income and  
26 the receipts thereof, including donations to it, have been applied to  
27 the actual expenses of operating and maintaining it, or for its capital  
28 expenditures, and to no other purpose. Such forms shall also include  
29 a statement of the receipts and disbursements of said organization(~~(+~~  
30 ~~PROVIDED, That))~~).

31 (a) Institutions claiming exemption under RCW 84.36.050 shall also  
32 file (~~(in addition)~~) a list of all property claimed to be exempt, the  
33 purpose for which it is used, the revenue derived from it for the  
34 preceding year, the use to which (~~(such)~~) the revenue was applied, the  
35 number of students in attendance at the school or college, the total  
36 revenues of the institution with the source from which they were  
37 derived, and the purposes to which (~~(such)~~) the revenues were applied,  
38 giving the items of such revenues and expenditures in detail.

1        ~~((Such))~~ (b) Any organization or association claiming exemption  
2 under section 2 of this act shall also file a report listing the source  
3 of its gross income received by the organization or association in the  
4 preceding calendar year. This report will include all income received  
5 through entrance or admittance fees, user fees, fund-raising events,  
6 sales of tickets to performing arts events, and rents or donations  
7 received as a result of the loan or rental of the exempt property. The  
8 organization shall also provide the amount of income received from the  
9 rental to any person, for-profit organization, or business enterprise.

10        (2) The report shall be submitted on or before April 1st following  
11 the close of the accounting period for the fiscal year ended during the  
12 previous calendar year. The department of revenue shall remove the tax  
13 exemption from the property and assets of any organization,  
14 association, corporation, or institution which does not file such  
15 report with the department of revenue on or before the due date(~~(+~~  
16 PROVIDED, That)). The department of revenue shall allow a reasonable  
17 extension of time for filing upon written request filed on or before  
18 the required filing date and for good cause shown therein.

19        **Sec. 6.** RCW 82.29A.130 and 1999 c 165 s 21 are each amended to  
20 read as follows:

21        The following leasehold interests shall be exempt from taxes  
22 imposed pursuant to RCW 82.29A.030 and 82.29A.040:

23        (1) All leasehold interests constituting a part of the operating  
24 properties of any public utility which is assessed and taxed as a  
25 public utility pursuant to chapter 84.12 RCW.

26        (2) All leasehold interests in facilities owned or used by a  
27 school, college or university which leasehold provides housing for  
28 students and which is otherwise exempt from taxation under provisions  
29 of RCW 84.36.010 and 84.36.050.

30        (3) All leasehold interests of subsidized housing where the fee  
31 ownership of such property is vested in the government of the United  
32 States, or the state of Washington or any political subdivision thereof  
33 but only if income qualification exists for such housing.

34        (4) All leasehold interests used for fair purposes of a nonprofit  
35 fair association that sponsors or conducts a fair or fairs which  
36 receive support from revenues collected pursuant to RCW 67.16.100 and  
37 allocated by the director of the department of agriculture where the  
38 fee ownership of such property is vested in the government of the

1 United States, the state of Washington or any of its political  
2 subdivisions: PROVIDED, That this exemption shall not apply to the  
3 leasehold interest of any sublessee of such nonprofit fair association  
4 if such leasehold interest would be taxable if it were the primary  
5 lease.

6 (5) All leasehold interests in any property of any public entity  
7 used as a residence by an employee of that public entity who is  
8 required as a condition of employment to live in the publicly owned  
9 property.

10 (6) All leasehold interests held by enrolled Indians of lands owned  
11 or held by any Indian or Indian tribe where the fee ownership of such  
12 property is vested in or held in trust by the United States and which  
13 are not subleased to other than to a lessee which would qualify  
14 pursuant to this chapter, RCW 84.36.451 and 84.40.175.

15 (7) All leasehold interests in any real property of any Indian or  
16 Indian tribe, band, or community that is held in trust by the United  
17 States or is subject to a restriction against alienation imposed by the  
18 United States: PROVIDED, That this exemption shall apply only where it  
19 is determined that contract rent paid is greater than or equal to  
20 ninety percent of fair market rental, to be determined by the  
21 department of revenue using the same criteria used to establish taxable  
22 rent in RCW 82.29A.020(2)(b).

23 (8) All leasehold interests for which annual taxable rent is less  
24 than two hundred fifty dollars per year. For purposes of this  
25 subsection leasehold interests held by the same lessee in contiguous  
26 properties owned by the same lessor shall be deemed a single leasehold  
27 interest.

28 (9) All leasehold interests which give use or possession of the  
29 leased property for a continuous period of less than thirty days:  
30 PROVIDED, That for purposes of this subsection, successive leases or  
31 lease renewals giving substantially continuous use of possession of the  
32 same property to the same lessee shall be deemed a single leasehold  
33 interest: PROVIDED FURTHER, That no leasehold interest shall be deemed  
34 to give use or possession for a period of less than thirty days solely  
35 by virtue of the reservation by the public lessor of the right to use  
36 the property or to allow third parties to use the property on an  
37 occasional, temporary basis.

38 (10) All leasehold interests under month-to-month leases in  
39 residential units rented for residential purposes of the lessee pending

1 destruction or removal for the purpose of constructing a public highway  
2 or building.

3 (11) All leasehold interests in any publicly owned real or personal  
4 property to the extent such leasehold interests arises solely by virtue  
5 of a contract for public improvements or work executed under the public  
6 works statutes of this state or of the United States between the public  
7 owner of the property and a contractor.

8 (12) All leasehold interests that give use or possession of state  
9 adult correctional facilities for the purposes of operating  
10 correctional industries under RCW 72.09.100.

11 (13) All leasehold interests used to provide organized and  
12 supervised recreational activities for disabled persons of all ages in  
13 a camp facility and for public recreational purposes by a nonprofit  
14 organization, association, or corporation that would be exempt from  
15 property tax under RCW 84.36.030(1) if it owned the property. If the  
16 publicly owned property is used for any taxable purpose, the leasehold  
17 excise taxes set forth in RCW 82.29A.030 and 82.29A.040 shall be  
18 imposed and shall be apportioned accordingly.

19 (14) All leasehold interests in the public or entertainment areas  
20 of a baseball stadium with natural turf and a retractable roof or  
21 canopy that is in a county with a population of over one million, that  
22 has a seating capacity of over forty thousand, and that is constructed  
23 on or after January 1, 1995. "Public or entertainment areas" include  
24 ticket sales areas, ramps and stairs, lobbies and concourses, parking  
25 areas, concession areas, restaurants, hospitality and stadium club  
26 areas, kitchens or other work areas primarily servicing other public or  
27 entertainment areas, public rest room areas, press and media areas,  
28 control booths, broadcast and production areas, retail sales areas,  
29 museum and exhibit areas, scoreboards or other public displays, storage  
30 areas, loading, staging, and servicing areas, seating areas and suites,  
31 the playing field, and any other areas to which the public has access  
32 or which are used for the production of the entertainment event or  
33 other public usage, and any other personal property used for these  
34 purposes. "Public or entertainment areas" does not include locker  
35 rooms or private offices exclusively used by the lessee.

36 (15) All leasehold interests in the public or entertainment areas  
37 of a stadium and exhibition center, as defined in RCW 36.102.010, that  
38 is constructed on or after January 1, 1998. For the purposes of this



1 subsection, "public or entertainment areas" has the same meaning as in  
2 subsection (14) of this section, and includes exhibition areas.

3 (16) All leasehold interests in public facilities districts, as  
4 provided in chapter 36.100 or 35.57 RCW.

5 (17) All leasehold interests created in publicly owned real  
6 property used by nonprofit artistic, scientific, and historical  
7 organizations and nonprofit associations engaged in the production and  
8 performance of musical, dance, artistic, dramatic, or literary works  
9 that would be exempt from property tax under RCW 84.36.060(1) if they  
10 owned the property. If the publicly owned property is used for any  
11 taxable purpose, the leasehold excise taxes set forth in RCW 82.29A.030  
12 and 82.29A.040 shall be imposed and apportioned consistent with the  
13 procedures in section 2 of this act.

14 NEW SECTION. Sec. 7. Any person as defined by RCW 82.04.030 that  
15 qualifies for the exemption set forth in RCW 82.29A.130(17) is entitled  
16 to a waiver of any tax liability accrued, but unpaid, under chapter  
17 82.29A RCW during the four years immediately preceding the effective  
18 date of this act.

19 NEW SECTION. Sec. 8. This act is necessary for the immediate  
20 preservation of the public peace, health, or safety, or support of the  
21 state government and its existing public institutions, and takes effect  
22 immediately.

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