

---

SENATE BILL 5858

---

State of Washington

57th Legislature

2001 Regular Session

By Senators B. Sheldon, Swecker, Kohl-Welles, Oke, T. Sheldon, Carlson, Rasmussen, Horn, Sheahan, Stevens, Honeyford, Hale and Johnson

Read first time 02/06/2001. Referred to Committee on Ways & Means.

1 AN ACT Relating to the taxation of physical fitness services;  
2 amending RCW 82.04.050; creating a new section; providing an  
3 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 2000 2nd sp.s. c 4 s 23 are each amended  
6 to read as follows:

7 (1) "Sale at retail" or "retail sale" means every sale of  
8 tangible personal property (including articles produced,  
9 fabricated, or imprinted) to all persons irrespective of the  
10 nature of their business and including, among others, without  
11 limiting the scope hereof, persons who install, repair, clean,  
12 alter, improve, construct, or decorate real or personal property  
13 of or for consumers other than a sale to a person who presents a  
14 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  
17 by such person, but a purchase for the purpose of resale by a  
18 regional transit authority under RCW 81.112.300 is not a sale for

1 resale; or

2 (b) Installs, repairs, cleans, alters, imprints, improves,  
3 constructs, or decorates real or personal property of or for  
4 consumers, if such tangible personal property becomes an  
5 ingredient or component of such real or personal property without  
6 intervening use by such person; or

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

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

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

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

33 (a) The installing, repairing, cleaning, altering, imprinting,  
34 or improving of tangible personal property of or for consumers,  
35 including charges made for the mere use of facilities in respect  
36 thereto, but excluding charges made for the use of coin-operated  
37 laundry facilities when such facilities are situated in an  
38 apartment house, rooming house, or mobile home park for the

1 exclusive use of the tenants thereof, and also excluding sales of  
2 laundry service to nonprofit health care facilities, and excluding  
3 services rendered in respect to live animals, birds and insects;

4 (b) The constructing, repairing, decorating, or improving of  
5 new or existing buildings or other structures under, upon, or  
6 above real property of or for consumers, including the installing  
7 or attaching of any article of tangible personal property therein  
8 or thereto, whether or not such personal property becomes a part  
9 of the realty by virtue of installation, and shall also include  
10 the sale of services or charges made for the clearing of land and  
11 the moving of earth excepting the mere leveling of land used in  
12 commercial farming or agriculture;

13 (c) The charge for labor and services rendered in respect to  
14 constructing, repairing, or improving any structure upon, above,  
15 or under any real property owned by an owner who conveys the  
16 property by title, possession, or any other means to the person  
17 performing such construction, repair, or improvement for the  
18 purpose of performing such construction, repair, or improvement  
19 and the property is then reconveyed by title, possession, or any  
20 other means to the original owner;

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

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

36 (f) The sale of and charge made for the furnishing of lodging  
37 and all other services by a hotel, rooming house, tourist court,  
38 motel, trailer camp, and the granting of any similar license to

1 use real property, as distinguished from the renting or leasing of  
2 real property, and it shall be presumed that the occupancy of real  
3 property for a continuous period of one month or more constitutes  
4 a rental or lease of real property and not a mere license to use  
5 or enjoy the same;

6 (g) The sale of or charge made for tangible personal property,  
7 labor and services to persons taxable under (a), (b), (c), (d),  
8 (e), and (f) of this subsection when such sales or charges are for  
9 property, labor and services which are used or consumed in whole  
10 or in part by such persons in the performance of any activity  
11 defined as a "sale at retail" or "retail sale" even though such  
12 property, labor and services may be resold after such use or  
13 consumption. Nothing contained in this subsection shall be  
14 construed to modify subsection (1) of this section and nothing  
15 contained in subsection (1) of this section shall be construed to  
16 modify this subsection.

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

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

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

27 (c) Credit bureau services;

28 (d) Automobile parking and storage garage services;

29 (e) Landscape maintenance and horticultural services but  
30 excluding (i) horticultural services provided to farmers and (ii)  
31 pruning, trimming, repairing, removing, and clearing of trees and  
32 brush near electric transmission or distribution lines or  
33 equipment, if performed by or at the direction of an electric  
34 utility;

35 (f) Service charges associated with tickets to professional  
36 sporting events; and

37 (g) The following personal services: (~~Physical fitness~~

1 services,)) Tanning salon services, tattoo parlor services, steam  
2 bath services, turkish bath services, escort services, and dating  
3 services.

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

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

9 (6) The term shall also include the sale of canned software  
10 other than a sale to a person who presents a resale certificate  
11 under RCW 82.04.470, regardless of the method of delivery to the  
12 end user, but shall not include custom software or the  
13 customization of canned software.

14 (7) The term shall not include the sale of or charge made for  
15 labor and services rendered in respect to the building, repairing,  
16 or improving of any street, place, road, highway, easement, right  
17 of way, mass public transportation terminal or parking facility,  
18 bridge, tunnel, or trestle which is owned by a municipal  
19 corporation or political subdivision of the state or by the United  
20 States and which is used or to be used primarily for foot or  
21 vehicular traffic including mass transportation vehicles of any  
22 kind.

23 (8) The term shall also not include sales of chemical sprays or  
24 washes to persons for the purpose of postharvest treatment of  
25 fruit for the prevention of scald, fungus, mold, or decay, nor  
26 shall it include sales of feed, seed, seedlings, fertilizer,  
27 agents for enhanced pollination including insects such as bees,  
28 and spray materials to: (a) Persons who participate in the  
29 federal conservation reserve program, the environmental quality  
30 incentives program, the wetlands reserve program, and the wildlife  
31 habitat incentives program, or their successors administered by  
32 the United States department of agriculture; (b) farmers for the  
33 purpose of producing for sale any agricultural product; and (c)  
34 farmers acting under cooperative habitat development or access  
35 contracts with an organization exempt from federal income tax  
36 under 26 U.S.C. Sec. 501(c)(3) or the Washington state department  
37 of fish and wildlife to produce or improve wildlife habitat on  
38 land that the farmer owns or leases.

1 (9) The term shall not include the sale of or charge made for  
2 labor and services rendered in respect to the constructing,  
3 repairing, decorating, or improving of new or existing buildings  
4 or other structures under, upon, or above real property of or for  
5 the United States, any instrumentality thereof, or a county or  
6 city housing authority created pursuant to chapter 35.82 RCW,  
7 including the installing, or attaching of any article of tangible  
8 personal property therein or thereto, whether or not such personal  
9 property becomes a part of the realty by virtue of installation.  
10 Nor shall the term include the sale of services or charges made  
11 for the clearing of land and the moving of earth of or for the  
12 United States, any instrumentality thereof, or a county or city  
13 housing authority. Nor shall the term include the sale of services  
14 or charges made for cleaning up for the United States, or its  
15 instrumentalities, radioactive waste and other byproducts of  
16 weapons production and nuclear research and development.

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

20 NEW SECTION. **Sec. 2.** This act applies to physical fitness  
21 services rendered on and after July 1, 2001.

22 NEW SECTION. **Sec. 3.** This act is necessary for the immediate  
23 preservation of the public peace, health, or safety, or support of  
24 the state government and its existing public institutions, and  
25 takes effect July 1, 2001.

--- END ---

