
SENATE BILL 6834

State of Washington 57th Legislature

2002 Regular Session

By Senator Poulsen

Read first time 03/04/2002. Referred to Committee on Ways & Means.

1 AN ACT Relating to use taxation; amending RCW 82.04.060, 82.12.010,
2 82.12.020, 82.12.035, and 82.14.020; reenacting and amending RCW
3 82.04.190; providing an effective date; and declaring an emergency.

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

5 **Sec. 1.** RCW 82.04.060 and 1998 c 332 s 5 are each amended to read
6 as follows:

7 "Sale at wholesale" or "wholesale sale" means: (1) Any sale of
8 tangible personal property(~~(+2)~~), any sale of services defined as a
9 retail sale in RCW 82.04.050(2)(a), any sale of amusement or recreation
10 services as defined in RCW 82.04.050(3)(a)(~~(+3)~~), any sale of canned
11 software(~~(+)~~), or (~~(+4)~~) any sale of telephone service as defined in
12 RCW 82.04.065, which is not a sale at retail; and (~~means~~) (2) Any
13 charge made for labor and services rendered for persons who are not
14 consumers, in respect to real or personal property, if such charge is
15 expressly defined as a retail sale by RCW 82.04.050 when rendered to or
16 for consumers: PROVIDED, That the term "real or personal property" as
17 used in this (~~section~~) subsection shall not include any natural
18 products named in RCW 82.04.100.

1 **Sec. 2.** RCW 82.04.190 and 1998 c 332 s 6 and 1998 c 308 s 2 are
2 each reenacted and amended to read as follows:

3 "Consumer" means the following:

4 (1) Any person who purchases, acquires, owns, holds, or uses any
5 article of tangible personal property irrespective of the nature of the
6 person's business and including, among others, without limiting the
7 scope hereof, persons who install, repair, clean, alter, improve,
8 construct, or decorate real or personal property of or for consumers
9 other than for the purpose (a) of resale as tangible personal property
10 in the regular course of business or (b) of incorporating such property
11 as an ingredient or component of real or personal property when
12 installing, repairing, cleaning, altering, imprinting, improving,
13 constructing, or decorating such real or personal property of or for
14 consumers or (c) of consuming such property in producing for sale a new
15 article of tangible personal property or a new substance, of which such
16 property becomes an ingredient or component or as a chemical used in
17 processing, when the primary purpose of such chemical is to create a
18 chemical reaction directly through contact with an ingredient of a new
19 article being produced for sale or (d) purchases for the purpose of
20 consuming the property purchased in producing ferrosilicon which is
21 subsequently used in producing magnesium for sale, if the primary
22 purpose of such property is to create a chemical reaction directly
23 through contact with an ingredient of ferrosilicon;

24 (2)(a) Any person engaged in any business activity taxable under
25 RCW 82.04.290; (b) any person who purchases, acquires, or uses any
26 telephone service as defined in RCW 82.04.065, other than for resale in
27 the regular course of business; (c) any person who purchases, acquires,
28 or uses any service defined in RCW 82.04.050(2)(a) or any amusement and
29 recreation service defined in RCW 82.04.050(3)(a), other than for
30 resale in the regular course of business; and (d) any person who is an
31 end user of software;

32 (3) Any person engaged in the business of contracting for the
33 building, repairing or improving of any street, place, road, highway,
34 easement, right of way, mass public transportation terminal or parking
35 facility, bridge, tunnel, or trestle which is owned by a municipal
36 corporation or political subdivision of the state of Washington or by
37 the United States and which is used or to be used primarily for foot or
38 vehicular traffic including mass transportation vehicles of any kind as
39 defined in RCW 82.04.280, in respect to tangible personal property when

1 such person incorporates such property as an ingredient or component of
2 such publicly owned street, place, road, highway, easement, right of
3 way, mass public transportation terminal or parking facility, bridge,
4 tunnel, or trestle by installing, placing or spreading the property in
5 or upon the right of way of such street, place, road, highway,
6 easement, bridge, tunnel, or trestle or in or upon the site of such
7 mass public transportation terminal or parking facility;

8 (4) Any person who is an owner, lessee or has the right of
9 possession to or an easement in real property which is being
10 constructed, repaired, decorated, improved, or otherwise altered by a
11 person engaged in business, excluding only (a) municipal corporations
12 or political subdivisions of the state in respect to labor and services
13 rendered to their real property which is used or held for public road
14 purposes, and (b) the United States, instrumentalities thereof, and
15 county and city housing authorities created pursuant to chapter 35.82
16 RCW in respect to labor and services rendered to their real property.
17 Nothing contained in this or any other subsection of this definition
18 shall be construed to modify any other definition of "consumer";

19 (5) Any person who is an owner, lessee, or has the right of
20 possession to personal property which is being constructed, repaired,
21 improved, cleaned, imprinted, or otherwise altered by a person engaged
22 in business;

23 (6) Any person engaged in the business of constructing, repairing,
24 decorating, or improving new or existing buildings or other structures
25 under, upon, or above real property of or for the United States, any
26 instrumentality thereof, or a county or city housing authority created
27 pursuant to chapter 35.82 RCW, including the installing or attaching of
28 any article of tangible personal property therein or thereto, whether
29 or not such personal property becomes a part of the realty by virtue of
30 installation; also, any person engaged in the business of clearing land
31 and moving earth of or for the United States, any instrumentality
32 thereof, or a county or city housing authority created pursuant to
33 chapter 35.82 RCW. Any such person shall be a consumer within the
34 meaning of this subsection in respect to tangible personal property
35 incorporated into, installed in, or attached to such building or other
36 structure by such person;

37 (7) Any person who is a lessor of machinery and equipment, the
38 rental of which is exempt from the tax imposed by RCW 82.08.020 under
39 RCW 82.08.02565, with respect to the sale of or charge made for

1 tangible personal property consumed in respect to repairing the
2 machinery and equipment, if the tangible personal property has a useful
3 life of less than one year. Nothing contained in this or any other
4 subsection of this section shall be construed to modify any other
5 definition of "consumer";

6 (8) Any person engaged in the business of cleaning up for the
7 United States, or its instrumentalities, radioactive waste and other
8 byproducts of weapons production and nuclear research and development;
9 and

10 (9) Until July 1, 2003, any person engaged in the business of
11 conducting environmental remedial action as defined in RCW
12 82.04.2635(2).

13 **Sec. 3.** RCW 82.12.010 and 2001 c 188 s 3 are each amended to read
14 as follows:

15 For the purposes of this chapter:

16 (1)(a) "Value of the article used" shall mean the consideration,
17 whether money, credit, rights, or other property except trade-in
18 property of like kind, expressed in terms of money, paid or given or
19 contracted to be paid or given by the purchaser to the seller for the
20 article of tangible personal property, the use of which is taxable
21 under this chapter. The term includes, in addition to the
22 consideration paid or given or contracted to be paid or given, the
23 amount of any tariff or duty paid with respect to the importation of
24 the article used. In case the article used is acquired by lease or by
25 gift or is extracted, produced, or manufactured by the person using the
26 same or is sold under conditions wherein the purchase price does not
27 represent the true value thereof, the value of the article used shall
28 be determined as nearly as possible according to the retail selling
29 price at place of use of similar products of like quality and character
30 under such rules as the department of revenue may prescribe.

31 (b) In case the articles used are acquired by bailment, the value
32 of the use of the articles so used shall be in an amount representing
33 a reasonable rental for the use of the articles so bailed, determined
34 as nearly as possible according to the value of such use at the places
35 of use of similar products of like quality and character under such
36 rules as the department of revenue may prescribe. In case any such
37 articles of tangible personal property are used in respect to the
38 construction, repairing, decorating, or improving of, and which become

1 or are to become an ingredient or component of, new or existing
2 buildings or other structures under, upon, or above real property of or
3 for the United States, any instrumentality thereof, or a county or city
4 housing authority created pursuant to chapter 35.82 RCW, including the
5 installing or attaching of any such articles therein or thereto,
6 whether or not such personal property becomes a part of the realty by
7 virtue of installation, then the value of the use of such articles so
8 used shall be determined according to the retail selling price of such
9 articles, or in the absence of such a selling price, as nearly as
10 possible according to the retail selling price at place of use of
11 similar products of like quality and character or, in the absence of
12 either of these selling price measures, such value may be determined
13 upon a cost basis, in any event under such rules as the department of
14 revenue may prescribe.

15 (c) In the case of articles owned by a user engaged in business
16 outside the state which are brought into the state for no more than one
17 hundred eighty days in any period of three hundred sixty-five
18 consecutive days and which are temporarily used for business purposes
19 by the person in this state, the value of the article used shall be an
20 amount representing a reasonable rental for the use of the articles,
21 unless the person has paid tax under this chapter or chapter 82.08 RCW
22 upon the full value of the article used, as defined in (a) of this
23 subsection.

24 (d) In the case of articles manufactured or produced by the user
25 and used in the manufacture or production of products sold or to be
26 sold to the department of defense of the United States, the value of
27 the articles used shall be determined according to the value of the
28 ingredients of such articles.

29 (e) In the case of an article manufactured or produced for purposes
30 of serving as a prototype for the development of a new or improved
31 product, the value of the article used shall be determined by: (i) The
32 retail selling price of such new or improved product when first offered
33 for sale; or (ii) the value of materials incorporated into the
34 prototype in cases in which the new or improved product is not offered
35 for sale.

36 (f) In the case of an article purchased with a direct pay permit
37 under RCW 82.32.087, the value of the article used shall be determined
38 by the retail selling price, as defined in RCW 82.08.010, of such

1 article if but for the use of the direct pay permit the transaction
2 would have been subject to sales tax;

3 (2) "Value of the service used" means the consideration, whether
4 money, credit, rights, or other property, expressed in terms of money,
5 paid or given or contracted to be paid or given by the purchaser to the
6 seller for the service, the use of which is taxable under this chapter.
7 If the service is received by gift or under conditions wherein the
8 purchase price does not represent the true value thereof, the value of
9 the service used shall be determined as nearly as possible according to
10 the retail selling price at place of use of similar services of like
11 quality and character under rules the department of revenue may
12 prescribe.

13 (3) "Use," "used," "using," or "put to use" shall have their
14 ordinary meaning, and shall mean:

15 (a) With respect to tangible personal property, the first act
16 within this state by which the taxpayer takes or assumes dominion or
17 control over the article of tangible personal property (as a consumer),
18 and include installation, storage, withdrawal from storage, or any
19 other act preparatory to subsequent actual use or consumption within
20 this state; and

21 ~~((3))~~ (b) With respect to a service defined in RCW
22 82.04.050(2)(a), the first act within this state by which the taxpayer
23 takes or assumes dominion or control over the article of tangible
24 personal property upon which the service was performed (as a consumer),
25 and include installation, storage, withdrawal from storage, or any
26 other act preparatory to subsequent actual use or consumption of the
27 article within this state;

28 (4) "Taxpayer" and "purchaser" include all persons included within
29 the meaning of the word "buyer" and the word "consumer" as defined in
30 chapters 82.04 and 82.08 RCW;

31 ~~((4))~~ (5) "Retailer" means every seller as defined in RCW
32 82.08.010 and every person engaged in the business of selling tangible
33 personal property at retail and every person required to collect from
34 purchasers the tax imposed under this chapter;

35 ~~((5))~~ (6) The meaning ascribed to words and phrases in chapters
36 82.04 and 82.08 RCW, insofar as applicable, shall have full force and
37 effect with respect to taxes imposed under the provisions of this
38 chapter. "Consumer," in addition to the meaning ascribed to it in
39 chapters 82.04 and 82.08 RCW insofar as applicable, shall also mean any

1 person who distributes or displays, or causes to be distributed or
2 displayed, any article of tangible personal property, except
3 newspapers, the primary purpose of which is to promote the sale of
4 products or services.

5 **Sec. 4.** RCW 82.12.020 and 1999 c 358 s 9 are each amended to read
6 as follows:

7 (1) There is hereby levied and there shall be collected from every
8 person in this state a tax or excise for the privilege of using within
9 this state as a consumer: (a) Any article of tangible personal
10 property purchased at retail, or acquired by lease, gift, repossession,
11 or bailment, or extracted or produced or manufactured by the person so
12 using the same, or otherwise furnished to a person engaged in any
13 business taxable under RCW 82.04.280 (2) or (7); or (b) any canned
14 software, regardless of the method of delivery, but excluding canned
15 software that is either provided free of charge or is provided for
16 temporary use in viewing information, or both.

17 (2) This tax shall apply to the use of every service defined as a
18 retail sale in RCW 82.04.050 (2)(a) or (3)(a) and the use of every
19 article of tangible personal property, including property acquired at
20 a casual or isolated sale, and including byproducts used by the
21 manufacturer thereof, except as hereinafter provided, irrespective of
22 whether the article or similar articles are manufactured or are
23 available for purchase within this state.

24 (3) Except as provided in RCW 82.12.0252, payment by one purchaser
25 or user of tangible personal property or service of the tax imposed by
26 chapter 82.08 or 82.12 RCW shall not have the effect of exempting any
27 other purchaser or user of the same property or service from the taxes
28 imposed by such chapters.

29 (4) The tax shall be levied and collected in an amount equal to the
30 value of the article used or value of the service used by the taxpayer
31 multiplied by the rate in effect for the retail sales tax under RCW
32 82.08.020.

33 **Sec. 5.** RCW 82.12.035 and 1996 c 148 s 6 are each amended to read
34 as follows:

35 A credit shall be allowed against the taxes imposed by this chapter
36 upon the use of tangible personal property, or services taxable under
37 RCW 82.04.050 (2)(a) or (3)(a), in the state of Washington in the

1 amount that the present user thereof or his or her bailor or donor has
2 paid a retail sales or use tax with respect to such property to any
3 other state of the United States, any political subdivision thereof,
4 the District of Columbia, and any foreign country or political
5 subdivision thereof, prior to the use of such property in Washington.

6 **Sec. 6.** RCW 82.14.020 and 2001 c 186 s 3 are each amended to read
7 as follows:

8 For purposes of this chapter:

9 (1) A retail sale consisting solely of the sale of tangible
10 personal property shall be deemed to have occurred at the retail outlet
11 at or from which delivery is made to the consumer;

12 (2) A retail sale consisting essentially of the performance of
13 personal, business, or professional services shall be deemed to have
14 occurred at the place at which such services were primarily performed,
15 except that for the performance of a tow truck service, as defined in
16 RCW 46.55.010, the retail sale shall be deemed to have occurred at the
17 place of business of the operator of the tow truck service;

18 (3) A retail sale consisting of the rental of tangible personal
19 property shall be deemed to have occurred (a) in the case of a rental
20 involving periodic rental payments, at the primary place of use by the
21 lessee during the period covered by each payment, or (b) in all other
22 cases, at the place of first use by the lessee;

23 (4) A retail sale within the scope of RCW 82.04.050(2), and a
24 retail sale of taxable personal property to be installed by the seller
25 shall be deemed to have occurred at the place where the labor and
26 services involved were primarily performed;

27 (5) A retail sale consisting of the providing to a consumer of
28 telephone service, as defined in RCW 82.04.065, other than a sale of
29 tangible personal property under subsection (1) of this section or a
30 rental of tangible personal property under subsection (3) of this
31 section, shall be deemed to have occurred at the situs of the telephone
32 or other instrument through which the telephone service is rendered;

33 (6) A retail sale of linen and uniform supply services is deemed to
34 occur as provided in RCW 82.08.0202;

35 (7) "City" means a city or town;

36 (8) The meaning ascribed to words and phrases in chapters 82.04,
37 82.08 and 82.12 RCW, as now or hereafter amended, insofar as

1 applicable, shall have full force and effect with respect to taxes
2 imposed under authority of this chapter;

3 (9) "Taxable event" shall mean any retail sale, or any use (~~of an~~
4 ~~article of tangible personal property~~), upon which a state tax is
5 imposed pursuant to chapter 82.08 or 82.12 RCW, as they now exist or
6 may hereafter be amended: PROVIDED, HOWEVER, That the term shall not
7 include a retail sale taxable pursuant to RCW 82.08.150, as now or
8 hereafter amended;

9 (10) "Treasurer or other legal depository" shall mean the treasurer
10 or legal depository of a county or city.

11 NEW SECTION. **Sec. 7.** If any provision of this act or its
12 application to any person or circumstance is held invalid, the
13 remainder of the act or the application of the provision to other
14 persons or circumstances is not affected.

15 NEW SECTION. **Sec. 8.** This act is necessary for the immediate
16 preservation of the public peace, health, or safety, or support of the
17 state government and its existing public institutions, and takes effect
18 June 1, 2002.

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