

HOUSE BILL REPORT

SHB 1357

As Passed House:

February 17, 2004

Title: An act relating to the taxation of physical fitness services.

Brief Description: Modifying the taxation of physical fitness services.

Sponsors: By House Committee on Finance (originally sponsored by Representatives Quall, Cairnes, Miloscia, Orcutt, Gombosky, Ahern, Grant, Roach, Hatfield, Kessler, O'Brien, Morris, Linville, Haigh, Lovick, Rockefeller, Lantz, Wood, Eickmeyer, G. Simpson, Boldt and Pflug).

Brief History:

Committee Activity:

Finance: 2/5/04 [DPS].

Floor Activity:

Passed House: 2/17/04, 61-35.

Brief Summary of Substitute Bill

- Exempts physical fitness services from retail sales and use taxes, and reclassifies them under the Business and Occupation tax as service activities.

HOUSE COMMITTEE ON FINANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Hunter, Vice Chair; Cairnes, Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Ahern, Morris and Roach.

Minority Report: Do not pass. Signed by 3 members: Representatives McIntire, Chair; Conway and Santos.

Staff: Mark Matteson (786-7145).

Background:

The retail sales tax applies to the selling price of tangible personal property and of certain

services purchased at retail. The tax base includes goods and certain services, including physical fitness services. The tax is levied at a 6.5 percent rate by the state. Cities and counties may levy a local tax at a rate up to a maximum of 3.4 percent. As of December 2003, local rates levied range from 0.5 percent to 2.4 percent. Sales tax is paid by the purchaser and collected by the seller.

The use tax is imposed on items used in the state that were not subject to the retail sales tax, and includes purchases made in other states and purchases from sellers who do not collect Washington sales tax. The state and local rates are the same as those imposed under the retail sales tax. Use tax is paid directly to the Department of Revenue.

The Business and Occupation (B&O) tax is imposed on the gross receipts of business activities conducted within the state without any deduction for the costs of doing business. Different tax rates apply for various classifications of business activities and firms may be subject to one or more rate, depending upon the sources of income. The tax rate is 0.471 percent for the activities of firms defined as retailing, which includes physical fitness services. Firms engaged in service activities generally are subject to a 1.5 percent B&O rate.

All retail goods and services are included in the tax base for the retail B&O classification and for retail sales and use taxes, unless specifically exempted. In 1981 the Legislature provided several tax incentives to nonprofit youth organizations, including a B&O deduction for membership fees and dues paid for the use of organizations' recreational facilities, as well as a sales tax exemption for amusement and recreation services. In 1993 the Legislature broadened the state and local retail sales tax base to include certain services, including physical fitness services. The 1993 change imposed state and local retail sales and use taxes on charges made for such services, and reduced the B&O tax rate for businesses providing physical fitness services from 1.5 percent to 0.471 percent. In 1994 certain personal services, including physical fitness services provided by nonprofit youth organizations and governmental agencies, were exempted from retail sales taxes.

The effect of the various legislative changes since 1981 means that nonprofit youth organizations that provide physical fitness services pay no B&O taxes and are not required to collect sales taxes on their services. However, other organizations that provide physical fitness services must collect retail sales taxes and must pay retail B&O taxes on the provision of those services.

Physical fitness services are defined as activities where the primary focus is exercise and include exercise classes, provision of exercise equipment, and provision of personal trainers. Physical fitness services do not include instructional lessons, such as those for tennis, golf, martial arts, and other activities where the primary focus is instruction. Physical fitness services are also different than amusement and recreation services, which include activities like golf, basketball, racquet ball, and swimming as well as the

provision of associated facilities.

Summary of Substitute Bill:

The definition of "retail sale" is modified to exclude physical fitness services. The change exempts physical fitness services from the retail sales and use taxes, and reclassifies these services under the B&O tax as service activities with a rate of 1.5 percent.

The bill is effective on July 1, 2006, and applies to physical fitness services rendered after that date.

Appropriation: None.

Fiscal Note: Available. Requested on substitute February 7, 2004.

Effective Date: The bill takes effect on July 1, 2006.

Testimony For: A promise was made in 1993 that the application of this tax to physical fitness services would be temporary. As a historical reminder, part of the tax package that passed was done so after midnight that year. In the floor debate, Senator Rinehart said that this tax was designed for a four year period.

The importance of physical fitness and preventative health should not be understated. This would provide a state policy of promoting such activities. This bill would also counter health care costs, which have increased dramatically in recent years. The tax is a current disincentive to people who would otherwise join.

We're asking you to return to the pre-1993 level of taxation.

Testimony Against: None.

Persons Testifying: (In support) Representative Quall, prime sponsor; and Scott Gilreath, Washington Health and Fitness Club Association.

Persons Signed In To Testify But Not Testifying: None.