
SENATE BILL 5423

State of Washington

58th Legislature

2003 Regular Session

By Senators Swecker, Kohl-Welles, Roach, Rasmussen, Mulliken, T. Sheldon and Oke

Read first time 01/24/2003. 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; and providing an
3 effective date.

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

5 **Sec. 1.** RCW 82.04.050 and 2002 c 178 s 1 are each amended to read
6 as follows:

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

14 (a) Purchases for the purpose of resale as tangible personal
15 property in the regular course of business without intervening use by
16 such person, but a purchase for the purpose of resale by a regional
17 transit authority under RCW 81.112.300 is not a sale for resale; or

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

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

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

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

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

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

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

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

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

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

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

1 For the purposes of this subsection, it shall be presumed that the sale
2 of and charge made for the furnishing of lodging for a continuous
3 period of one month or more to a person is a rental or lease of real
4 property and not a mere license to enjoy the same;

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

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

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

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

24 (c) Credit bureau services;

25 (d) Automobile parking and storage garage services;

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

31 (f) Service charges associated with tickets to professional
32 sporting events; and

33 (g) The following personal services: (~~Physical—fitness~~
34 ~~services,~~) Tanning salon services, tattoo parlor services, steam bath
35 services, turkish bath services, escort services, and dating services.

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

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

3 (6) The term shall also include the sale of canned software other
4 than a sale to a person who presents a resale certificate under RCW
5 82.04.470, regardless of the method of delivery to the end user, but
6 shall not include custom software or the customization of canned
7 software.

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

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

31 (9) The term shall not include the sale of or charge made for labor
32 and services rendered in respect to the constructing, repairing,
33 decorating, or improving of new or existing buildings or other
34 structures under, upon, or above real property of or for the United
35 States, any instrumentality thereof, or a county or city housing
36 authority created pursuant to chapter 35.82 RCW, including the
37 installing, or attaching of any article of tangible personal property
38 therein or thereto, whether or not such personal property becomes a

1 part of the realty by virtue of installation. Nor shall the term
2 include the sale of services or charges made for the clearing of land
3 and the moving of earth of or for the United States, any
4 instrumentality thereof, or a county or city housing authority. Nor
5 shall the term include the sale of services or charges made for
6 cleaning up for the United States, or its instrumentalities,
7 radioactive waste and other byproducts of weapons production and
8 nuclear research and development.

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

12 NEW SECTION. **Sec. 2.** This act applies to physical fitness
13 services rendered on and after July 1, 2005.

14 NEW SECTION. **Sec. 3.** This act takes effect July 1, 2005.

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