
SENATE BILL 6741

State of Washington

58th Legislature

2004 Regular Session

By Senators Stevens, Hargrove, Swecker, Fairley, Honeyford, Mulliken, Sheahan, Rasmussen and Oke

Read first time 02/11/2004. Referred to Committee on Ways & Means.

1 AN ACT Relating to the taxation of adult entertainment materials
2 and services; amending RCW 82.08.020, 82.08.010, and 82.12.035;
3 reenacting and amending RCW 82.12.010 and 82.12.020; adding a new
4 section to chapter 82.32 RCW; creating a new section; and providing an
5 effective date.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that the sale and use
8 of adult entertainment materials and services result in increased costs
9 to the state through the provision of increased governmental services,
10 including human services and criminal justice services. It is the
11 legislature's intention that the activities that result in these
12 increased services bear more of the costs of these services. The
13 legislature intends to dedicate the revenues from a tax on the sale and
14 use of adult entertainment materials and services to crime victims'
15 compensation, with an emphasis towards providing services, support, or
16 therapy to those children who are victims of sexual abuse.

17 **Sec. 2.** RCW 82.08.020 and 2003 c 361 s 301 are each amended to
18 read as follows:

1 (1) There is levied and there shall be collected a tax on each
2 retail sale in this state equal to six and five-tenths percent of the
3 selling price.

4 (2) There is levied and there shall be collected an additional tax
5 on each retail car rental, regardless of whether the vehicle is
6 licensed in this state, equal to five and nine-tenths percent of the
7 selling price. The revenue collected under this subsection shall be
8 deposited in the multimodal transportation account created in RCW
9 47.66.070.

10 (3) Beginning July 1, 2003, there is levied and collected an
11 additional tax of three-tenths of one percent of the selling price on
12 each retail sale of a motor vehicle in this state, other than retail
13 car rentals taxed under subsection (2) of this section. The revenue
14 collected under this subsection shall be deposited in the multimodal
15 transportation account created in RCW 47.66.070.

16 (4) In addition to any tax imposed under subsection (1) of this
17 section there is levied and there shall be collected a tax on each
18 retail sale of adult entertainment materials and services equal to
19 eighteen and one-half percent of the selling price.

20 (5) For purposes of subsection (3) of this section, "motor vehicle"
21 has the meaning provided in RCW 46.04.320, but does not include farm
22 tractors or farm vehicles as defined in RCW 46.04.180 and 46.04.181,
23 off-road and nonhighway vehicles as defined in RCW 46.09.020, and
24 snowmobiles as defined in RCW 46.10.010.

25 ((+5)) (6) The taxes imposed under this chapter shall apply to
26 successive retail sales of the same property.

27 ((+6)) (7) The rates provided in this section apply to taxes
28 imposed under chapter 82.12 RCW as provided in RCW 82.12.020.

29 **Sec. 3.** RCW 82.08.010 and 2003 c 168 s 101 are each amended to
30 read as follows:

31 For the purposes of this chapter:

32 (1) "Selling price" includes "sales price." "Sales price" means
33 the total amount of consideration, except trade-in property of like
34 kind, including cash, credit, property, and services, for which
35 tangible personal property or services defined as a "retail sale" under
36 RCW 82.04.050 are sold, leased, or rented, valued in money, whether
37 received in money or otherwise. No deduction from the total amount of

1 consideration is allowed for the following: (a) The seller's cost of
2 the property sold; (b) the cost of materials used, labor or service
3 cost, interest, losses, all costs of transportation to the seller, all
4 taxes imposed on the seller, and any other expense of the seller; (c)
5 charges by the seller for any services necessary to complete the sale,
6 other than delivery and installation charges; (d) delivery charges; (e)
7 installation charges; and (f) the value of exempt tangible personal
8 property given to the purchaser where taxable and exempt tangible
9 personal property have been bundled together and sold by the seller as
10 a single product or piece of merchandise.

11 When tangible personal property is rented or leased under
12 circumstances that the consideration paid does not represent a
13 reasonable rental for the use of the articles so rented or leased, the
14 "selling price" shall be determined as nearly as possible according to
15 the value of such use at the places of use of similar products of like
16 quality and character under such rules as the department may prescribe.

17 "Selling price" or "sales price" does not include: Discounts,
18 including cash, term, or coupons that are not reimbursed by a third
19 party that are allowed by a seller and taken by a purchaser on a sale;
20 interest, financing, and carrying charges from credit extended on the
21 sale of tangible personal property or services, if the amount is
22 separately stated on the invoice, bill of sale, or similar document
23 given to the purchaser; and any taxes legally imposed directly on the
24 consumer that are separately stated on the invoice, bill of sale, or
25 similar document given to the purchaser;

26 (2) "Seller" means every person, including the state and its
27 departments and institutions, making sales at retail or retail sales to
28 a buyer, purchaser, or consumer, whether as agent, broker, or
29 principal, except "seller" does not mean the state and its departments
30 and institutions when making sales to the state and its departments and
31 institutions;

32 (3) "Buyer," "purchaser," and "consumer" include, without limiting
33 the scope hereof, every individual, receiver, assignee, trustee in
34 bankruptcy, trust, estate, firm, copartnership, joint venture, club,
35 company, joint stock company, business trust, corporation, association,
36 society, or any group of individuals acting as a unit, whether mutual,
37 cooperative, fraternal, nonprofit, or otherwise, municipal corporation,
38 quasi municipal corporation, and also the state, its departments and

1 institutions and all political subdivisions thereof, irrespective of
2 the nature of the activities engaged in or functions performed, and
3 also the United States or any instrumentality thereof;

4 (4) "Delivery charges" means charges by the seller of personal
5 property or services for preparation and delivery to a location
6 designated by the purchaser of personal property or services including,
7 but not limited to, transportation, shipping, postage, handling,
8 crating, and packing;

9 (5) "Adult entertainment materials and services" means those
10 entertainment materials and services that are primarily oriented to an
11 interest in sex, including but not limited to magazines, photographs,
12 motion pictures, videotapes, videodiscs, cable television services,
13 telephone services, audiotapes, computer programs, and paraphernalia.
14 "Adult entertainment materials and services" does not include (a) books
15 or magazines that contain no photographs or other graphics; or (b)
16 motion pictures, videotapes, videodiscs, or cable television services
17 that do not contain any explicit sex of the type that would be rated
18 "X" using the standards existing on January 1, 2004, of the Motion
19 Picture Association of America, Inc. Any motion picture, videotape,
20 videodisc, cable television service, or other visual medium that
21 contains any explicit sex of the type that would be rated "X" using
22 these standards shall be considered to be primarily oriented to an
23 interest in sex. Notwithstanding subsection (6) of this section, adult
24 entertainment services are a sale at retail for the purposes of this
25 chapter and chapter 82.12 RCW.

26 (6) The meaning attributed in chapter 82.04 RCW to the terms "tax
27 year," "taxable year," "person," "company," "sale," "sale at retail,"
28 "retail sale," "sale at wholesale," "wholesale," "business," "engaging
29 in business," "cash discount," "successor," "consumer," "in this state"
30 and "within this state" shall apply equally to the provisions of this
31 chapter;

32 ((+6+)) (7) For the purposes of the taxes imposed under this
33 chapter and under chapter 82.12 RCW, "tangible personal property" means
34 personal property that can be seen, weighed, measured, felt, or
35 touched, or that is in any other manner perceptible to the senses.
36 Tangible personal property includes electricity, water, gas, steam, and
37 prewritten computer software.

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.32 RCW
2 to read as follows:

3 All revenues collected on sales and use of adult entertainment
4 materials and services under chapter 82.08 or 82.12 RCW shall be
5 deposited in the public safety and education account under RCW
6 43.08.250 and shall only be used for the purposes of crime victims'
7 compensation, with an emphasis towards providing services, support, or
8 therapy to those children who are victims of sexual abuse.

9 **Sec. 5.** RCW 82.12.010 and 2003 c 168 s 102 and 2003 c 5 s 1 are
10 each reenacted and amended to read as follows:

11 For the purposes of this chapter:

12 (1) "Purchase price" means the same as sales price as defined in
13 RCW 82.08.010.

14 (2)(a) "Value of the article used" shall be the purchase price for
15 the article of tangible personal property, the use of which is taxable
16 under this chapter. The term also includes, in addition to the
17 purchase price, the amount of any tariff or duty paid with respect to
18 the importation of the article used. In case the article used is
19 acquired by lease or by gift or is extracted, produced, or manufactured
20 by the person using the same or is sold under conditions wherein the
21 purchase price does not represent the true value thereof, the value of
22 the article used shall be determined as nearly as possible according to
23 the retail selling price at place of use of similar products of like
24 quality and character under such rules as the department may prescribe.

25 (b) In case the articles used are acquired by bailment, the value
26 of the use of the articles so used shall be in an amount representing
27 a reasonable rental for the use of the articles so bailed, determined
28 as nearly as possible according to the value of such use at the places
29 of use of similar products of like quality and character under such
30 rules as the department of revenue may prescribe. In case any such
31 articles of tangible personal property are used in respect to the
32 construction, repairing, decorating, or improving of, and which become
33 or are to become an ingredient or component of, new or existing
34 buildings or other structures under, upon, or above real property of or
35 for the United States, any instrumentality thereof, or a county or city
36 housing authority created pursuant to chapter 35.82 RCW, including the
37 installing or attaching of any such articles therein or thereto,

1 whether or not such personal property becomes a part of the realty by
2 virtue of installation, then the value of the use of such articles so
3 used shall be determined according to the retail selling price of such
4 articles, or in the absence of such a selling price, as nearly as
5 possible according to the retail selling price at place of use of
6 similar products of like quality and character or, in the absence of
7 either of these selling price measures, such value may be determined
8 upon a cost basis, in any event under such rules as the department of
9 revenue may prescribe.

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

19 (d) In the case of articles manufactured or produced by the user
20 and used in the manufacture or production of products sold or to be
21 sold to the department of defense of the United States, the value of
22 the articles used shall be determined according to the value of the
23 ingredients of such articles.

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

31 (f) In the case of an article purchased with a direct pay permit
32 under RCW 82.32.087, the value of the article used shall be determined
33 by the purchase price of such article if, but for the use of the direct
34 pay permit, the transaction would have been subject to sales tax;

35 (3) "Value of the service used" means the purchase price for the
36 service, the use of which is taxable under this chapter. If the
37 service is received by gift or under conditions wherein the purchase
38 price does not represent the true value thereof, the value of the

1 service used shall be determined as nearly as possible according to the
2 retail selling price at place of use of similar services of like
3 quality and character under rules the department may prescribe;

4 (4) "Use," "used," "using," or "put to use" shall have their
5 ordinary meaning, and shall mean:

6 (a) With respect to tangible personal property, the first act
7 within this state by which the taxpayer takes or assumes dominion or
8 control over the article of tangible personal property (as a consumer),
9 and include installation, storage, withdrawal from storage,
10 distribution, or any other act preparatory to subsequent actual use or
11 consumption within this state; (~~and~~)

12 (b) With respect to a service defined in RCW 82.04.050(2)(a), the
13 first act within this state after the service has been performed by
14 which the taxpayer takes or assumes dominion or control over the
15 article of tangible personal property upon which the service was
16 performed (as a consumer), and include installation, storage,
17 withdrawal from storage, distribution, or any other act preparatory to
18 subsequent actual use or consumption of the article within this state;
19 and

20 (c) With respect to an adult entertainment service which affords a
21 benefit or is otherwise capable of use within this state, the use
22 within this state of the service, regardless of the place of
23 performance;

24 (5) "Taxpayer" and "purchaser" include all persons included within
25 the meaning of the word "buyer" and the word "consumer" as defined in
26 chapters 82.04 and 82.08 RCW;

27 (6) "Retailer" means every seller as defined in RCW 82.08.010 and
28 every person engaged in the business of selling tangible personal
29 property or adult entertainment services at retail and every person
30 required to collect from purchasers the tax imposed under this chapter;

31 (7) The meaning ascribed to words and phrases in chapters 82.04 and
32 82.08 RCW, insofar as applicable, shall have full force and effect with
33 respect to taxes imposed under the provisions of this chapter.
34 "Consumer," in addition to the meaning ascribed to it in chapters 82.04
35 and 82.08 RCW insofar as applicable, shall also mean any person who
36 distributes or displays, or causes to be distributed or displayed, any
37 article of tangible personal property, except newspapers, the primary
38 purpose of which is to promote the sale of products or services. With

1 respect to property distributed to persons within this state by a
2 consumer as defined in this subsection (7), the use of the property
3 shall be deemed to be by such consumer. In addition, "consumer"
4 includes any person who purchases, acquires, or uses any adult
5 entertainment service other than for resale in the regular course of
6 business. Resale of a service means a separately stated charge to
7 another person for the service by a person who has paid or is obligated
8 to pay an identical charge to one who has originally rendered the
9 identical service.

10 **Sec. 6.** RCW 82.12.020 and 2003 c 361 s 302 and 2003 c 168 s 214
11 are each reenacted and amended to read as follows:

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

22 (2) This tax shall apply to the use of every service defined as a
23 retail sale in RCW 82.04.050 (2)(a) or (3)(a) and 82.08.010 and the use
24 of every article of tangible personal property, including property
25 acquired at a casual or isolated sale, and including byproducts used by
26 the manufacturer thereof, except as hereinafter provided, irrespective
27 of whether the article or similar articles are manufactured or are
28 available for purchase within this state.

29 (3) The provisions of this chapter do not apply in respect to the
30 use of any article of tangible personal property or service taxable
31 under RCW 82.04.050 (2)(a) or (3)(a) purchased at retail or acquired by
32 lease, gift, or bailment if the sale to, or the use by, the present
33 user or his bailor or donor has already been subjected to the tax under
34 chapter 82.08 RCW or this chapter and the tax has been paid by the
35 present user or by his bailor or donor.

36 (4) Except as provided in this section, payment by one purchaser or
37 user of tangible personal property or service of the tax imposed by

1 chapter 82.08 or 82.12 RCW shall not have the effect of exempting any
2 other purchaser or user of the same property or service from the taxes
3 imposed by such chapters. If the sale to, or the use by, the present
4 user or his or her bailor or donor has already been subjected to the
5 tax under chapter 82.08 RCW or this chapter and the tax has been paid
6 by the present user or by his or her bailor or donor; or in respect to
7 the use of property acquired by bailment and the tax has once been paid
8 based on reasonable rental as determined by RCW 82.12.060 measured by
9 the value of the article at time of first use multiplied by the tax
10 rate imposed by chapter 82.08 RCW or this chapter as of the time of
11 first use; or in respect to the use of any article of tangible personal
12 property acquired by bailment, if the property was acquired by a
13 previous bailee from the same bailor for use in the same general
14 activity and the original bailment was prior to June 9, 1961, the tax
15 imposed by this chapter does not apply.

16 (5) The tax shall be levied and collected in an amount equal to the
17 value of the article used or value of the service used by the taxpayer
18 multiplied by the rates in effect for the retail sales tax under RCW
19 82.08.020, except in the case of a seller required to collect use tax
20 from the purchaser, the tax shall be collected in an amount equal to
21 the purchase price multiplied by the rate in effect for the retail
22 sales tax under RCW 82.08.020.

23 **Sec. 7.** RCW 82.12.035 and 2002 c 367 s 5 are each amended to read
24 as follows:

25 A credit shall be allowed against the taxes imposed by this chapter
26 upon the use of tangible personal property, or services taxable under
27 RCW 82.04.050 (2)(a) or (3)(a) or defined as a retail sale under RCW
28 82.08.010, in the state of Washington in the amount that the present
29 user thereof or his or her bailor or donor has paid a retail sales or
30 use tax with respect to such property to any other state of the United
31 States, any political subdivision thereof, the District of Columbia,
32 and any foreign country or political subdivision thereof, prior to the
33 use of such property in Washington.

34 NEW SECTION. **Sec. 8.** This act takes effect July 1, 2004.

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