

ESHB 2314 - S AMD 662
By Senator Zarelli

NOT ADOPTED 04/22/2005

1 Beginning on page 1, line 16, strike all of Part I and insert the
2 following:

3 "PART I
4 SELF-SERVICE LAUNDRY
5 AND DIRECT MAIL DELIVERY CHARGES

6 **Sec. 101.** RCW 82.04.050 and 2004 c 174 s 3 and 2004 c 153 s 407
7 are each reenacted and amended to read as follows:

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

19 (b) Installs, repairs, cleans, alters, imprints, improves,
20 constructs, or decorates real or personal property of or for consumers,
21 if such tangible personal property becomes an ingredient or component
22 of such real or personal property without intervening use by such
23 person; or

24 (c) Purchases for the purpose of consuming the property purchased
25 in producing for sale a new article of tangible personal property or
26 substance, of which such property becomes an ingredient or component or
27 is a chemical used in processing, when the primary purpose of such
28 chemical is to create a chemical reaction directly through contact with
29 an ingredient of a new article being produced for sale; or

1 (d) Purchases for the purpose of consuming the property purchased
2 in producing ferrosilicon which is subsequently used in producing
3 magnesium for sale, if the primary purpose of such property is to
4 create a chemical reaction directly through contact with an ingredient
5 of ferrosilicon; or

6 (e) Purchases for the purpose of providing the property to
7 consumers as part of competitive telephone service, as defined in RCW
8 82.04.065. The term shall include every sale of tangible personal
9 property which is used or consumed or to be used or consumed in the
10 performance of any activity classified as a "sale at retail" or "retail
11 sale" even though such property is resold or utilized as provided in
12 (a), (b), (c), (d), or (e) of this subsection following such use. The
13 term also means every sale of tangible personal property to persons
14 engaged in any business which is taxable under RCW 82.04.280 (2) and
15 (7), 82.04.290, and 82.04.2908.

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

19 (a) The installing, repairing, cleaning, altering, imprinting, or
20 improving of tangible personal property of or for consumers, including
21 charges made for the mere use of facilities in respect thereto, but
22 excluding charges made for the use of ~~((coin-operated))~~ self-service
23 ~~laundry facilities ((when such facilities are situated in an apartment
24 house, rooming house, or mobile home park for the exclusive use of the
25 tenants thereof))~~, and also excluding sales of laundry service to
26 nonprofit health care facilities, and excluding services rendered in
27 respect to live animals, birds and insects;

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

36 (c) The charge for labor and services rendered in respect to
37 constructing, repairing, or improving any structure upon, above, or
38 under any real property owned by an owner who conveys the property by

1 title, possession, or any other means to the person performing such
2 construction, repair, or improvement for the purpose of performing such
3 construction, repair, or improvement and the property is then
4 reconveyed by title, possession, or any other means to the original
5 owner;

6 (d) The sale of or charge made for labor and services rendered in
7 respect to the cleaning, fumigating, razing or moving of existing
8 buildings or structures, but shall not include the charge made for
9 janitorial services; and for purposes of this section the term
10 "janitorial services" shall mean those cleaning and caretaking services
11 ordinarily performed by commercial janitor service businesses
12 including, but not limited to, wall and window washing, floor cleaning
13 and waxing, and the cleaning in place of rugs, drapes and upholstery.
14 The term "janitorial services" does not include painting, papering,
15 repairing, furnace or septic tank cleaning, snow removal or
16 sandblasting;

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

21 (f) The sale of and charge made for the furnishing of lodging and
22 all other services by a hotel, rooming house, tourist court, motel,
23 trailer camp, and the granting of any similar license to use real
24 property, as distinguished from the renting or leasing of real
25 property, and it shall be presumed that the occupancy of real property
26 for a continuous period of one month or more constitutes a rental or
27 lease of real property and not a mere license to use or enjoy the same.
28 For the purposes of this subsection, it shall be presumed that the sale
29 of and charge made for the furnishing of lodging for a continuous
30 period of one month or more to a person is a rental or lease of real
31 property and not a mere license to enjoy the same;

32 (g) The sale of or charge made for tangible personal property,
33 labor and services to persons taxable under (a), (b), (c), (d), (e),
34 and (f) of this subsection when such sales or charges are for property,
35 labor and services which are used or consumed in whole or in part by
36 such persons in the performance of any activity defined as a "sale at
37 retail" or "retail sale" even though such property, labor and services
38 may be resold after such use or consumption. Nothing contained in this

1 subsection shall be construed to modify subsection (1) of this section
2 and nothing contained in subsection (1) of this section shall be
3 construed to modify this subsection.

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

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

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

13 (c) Credit bureau services;

14 (d) Automobile parking and storage garage services;

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

20 (f) Service charges associated with tickets to professional
21 sporting events; and

22 (g) The following personal services: Physical fitness services,
23 tanning salon services, tattoo parlor services, steam bath services,
24 turkish bath services, escort services, and dating services.

25 (4)(a) The term shall also include:

26 (i) The renting or leasing of tangible personal property to
27 consumers; and

28 (ii) Providing tangible personal property along with an operator
29 for a fixed or indeterminate period of time. A consideration of this
30 is that the operator is necessary for the tangible personal property to
31 perform as designed. For the purpose of this subsection (4)(a)(ii), an
32 operator must do more than maintain, inspect, or set up the tangible
33 personal property.

34 (b) The term shall not include the renting or leasing of tangible
35 personal property where the lease or rental is for the purpose of
36 sublease or subrent.

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

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

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

14 (8) The term shall also not include sales of chemical sprays or
15 washes to persons for the purpose of postharvest treatment of fruit for
16 the prevention of scald, fungus, mold, or decay, nor shall it include
17 sales of feed, seed, seedlings, fertilizer, agents for enhanced
18 pollination including insects such as bees, and spray materials to:

19 (a) Persons who participate in the federal conservation reserve
20 program, the environmental quality incentives program, the wetlands
21 reserve program, and the wildlife habitat incentives program, or their
22 successors administered by the United States department of agriculture;

23 (b) farmers for the purpose of producing for sale any agricultural
24 product; and (c) farmers acting under cooperative habitat development
25 or access contracts with an organization exempt from federal income tax
26 under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of
27 fish and wildlife to produce or improve wildlife habitat on land that
28 the farmer owns or leases.

29 (9) The term shall not include the sale of or charge made for labor
30 and services rendered in respect to the constructing, repairing,
31 decorating, or improving of new or existing buildings or other
32 structures under, upon, or above real property of or for the United
33 States, any instrumentality thereof, or a county or city housing
34 authority created pursuant to chapter 35.82 RCW, including the
35 installing, or attaching of any article of tangible personal property
36 therein or thereto, whether or not such personal property becomes a
37 part of the realty by virtue of installation. Nor shall the term
38 include the sale of services or charges made for the clearing of land

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

7 **Sec. 102.** RCW 82.08.010 and 2004 c 153 s 406 are each amended to
8 read as follows:

9 For the purposes of this chapter:

10 (1) "Selling price" includes "sales price." "Sales price" means
11 the total amount of consideration, except separately stated trade-in
12 property of like kind, including cash, credit, property, and services,
13 for which tangible personal property or services defined as a "retail
14 sale" under RCW 82.04.050 are sold, leased, or rented, valued in money,
15 whether received in money or otherwise. No deduction from the total
16 amount of consideration is allowed for the following: (a) The seller's
17 cost of the property sold; (b) the cost of materials used, labor or
18 service cost, interest, losses, all costs of transportation to the
19 seller, all taxes imposed on the seller, and any other expense of the
20 seller; (c) charges by the seller for any services necessary to
21 complete the sale, other than delivery and installation charges; (d)
22 delivery charges; (e) installation charges; and (f) the value of exempt
23 tangible personal property given to the purchaser where taxable and
24 exempt tangible personal property have been bundled together and sold
25 by the seller as a single product or piece of merchandise.

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

32 "Selling price" or "sales price" does not include: Discounts,
33 including cash, term, or coupons that are not reimbursed by a third
34 party that are allowed by a seller and taken by a purchaser on a sale;
35 interest, financing, and carrying charges from credit extended on the
36 sale of tangible personal property or services, if the amount is
37 separately stated on the invoice, bill of sale, or similar document

1 given to the purchaser; and any taxes legally imposed directly on the
2 consumer that are separately stated on the invoice, bill of sale, or
3 similar document given to the purchaser;

4 (2) "Seller" means every person, including the state and its
5 departments and institutions, making sales at retail or retail sales to
6 a buyer, purchaser, or consumer, whether as agent, broker, or
7 principal, except "seller" does not mean the state and its departments
8 and institutions when making sales to the state and its departments and
9 institutions;

10 (3) "Buyer," "purchaser," and "consumer" include, without limiting
11 the scope hereof, every individual, receiver, assignee, trustee in
12 bankruptcy, trust, estate, firm, copartnership, joint venture, club,
13 company, joint stock company, business trust, corporation, association,
14 society, or any group of individuals acting as a unit, whether mutual,
15 cooperative, fraternal, nonprofit, or otherwise, municipal corporation,
16 quasi municipal corporation, and also the state, its departments and
17 institutions and all political subdivisions thereof, irrespective of
18 the nature of the activities engaged in or functions performed, and
19 also the United States or any instrumentality thereof;

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

25 (5) "Direct mail" means printed material delivered or distributed
26 by United States mail or other delivery service to a mass audience or
27 to addressees on a mailing list provided by the purchaser or at the
28 direction of the purchaser when the cost of the items are not billed
29 directly to the recipients. "Direct mail" includes tangible personal
30 property supplied directly or indirectly by the purchaser to the direct
31 mail seller for inclusion in the package containing the printed
32 material. "Direct mail" does not include multiple items of printed
33 material delivered to a single address;

34 (6) The meaning attributed in chapter 82.04 RCW to the terms "tax
35 year," "taxable year," "person," "company," "sale," "sale at retail,"
36 "retail sale," "sale at wholesale," "wholesale," "business," "engaging
37 in business," "cash discount," "successor," "consumer," "in this state"

1 and "within this state" shall apply equally to the provisions of this
2 chapter;

3 ((+6+)) (7) For the purposes of the taxes imposed under this
4 chapter and under chapter 82.12 RCW, "tangible personal property" means
5 personal property that can be seen, weighed, measured, felt, or
6 touched, or that is in any other manner perceptible to the senses.
7 Tangible personal property includes electricity, water, gas, steam, and
8 prewritten computer software.

9 NEW SECTION. **Sec. 103.** A new section is added to chapter 82.04
10 RCW to read as follows:

11 (1) In computing tax there may be deducted from the measure of tax,
12 amounts derived from delivery charges made for the delivery of direct
13 mail if the charges are separately stated on an invoice or similar
14 billing document given to the purchaser.

15 (2) "Delivery charges" and "direct mail" have the same meanings as
16 in RCW 82.08.010.

17 NEW SECTION. **Sec. 104.** A new section is added to chapter 82.08
18 RCW to read as follows:

19 The tax levied by RCW 82.08.020 does not apply to delivery charges
20 made for the delivery of direct mail if the charges are separately
21 stated on an invoice or similar billing document given to the
22 purchaser.

23 NEW SECTION. **Sec. 105.** A new section is added to chapter 82.12
24 RCW to read as follows:

25 (1) The tax levied by this chapter does not apply to the value of
26 delivery charges made for the delivery of direct mail if the charges
27 are separately stated on an invoice or similar billing document given
28 to the purchaser.

29 (2) "Delivery charges" and "direct mail" have the same meanings as
30 in RCW 82.08.010."

31 Beginning on page 66, line 31, strike all of Part XIII and insert
32 the following:

33 "PART XIII

MISCELLANEOUS

NEW SECTION. **Sec. 1301.** Part headings used in this act are not any part of the law.

NEW SECTION. **Sec. 1302.** Except as otherwise specifically provided in this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005.

NEW SECTION. **Sec. 1303.** Sections 102 through 105, 1001, 1003, 1004, 1201, 1311, and 1312 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately.

NEW SECTION. **Sec. 1304.** Sections 401 through 403 of this act take effect July 1, 2006.

NEW SECTION. **Sec. 1305.** Sections 501 and 1002 of this act take effect January 1, 2006.

NEW SECTION. **Sec. 1306.** Section 701 of this act takes effect July 1, 2007.

NEW SECTION. **Sec. 1307.** Sections 901 and 908 through 912 of this act constitute a new chapter in Title 43 RCW.

NEW SECTION. **Sec. 1308.** Sections 902 through 907 of this act constitute a new chapter in Title 82 RCW.

NEW SECTION. **Sec. 1309.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 1310.** Sections 901 through 912 of this act may be known and cited as the Washington main street act.

1 NEW SECTION. **Sec. 1311.** Section 1003 of this act applies
2 retroactively to June 10, 2004.

3 NEW SECTION. **Sec. 1312.** Section 1001 of this act applies
4 retroactively to annual surveys required under RCW 82.04.4452 that are
5 due after December 31, 2004.

6 NEW SECTION. **Sec. 1313.** Section 1107 of this act takes effect
7 July 1, 2006.

8 NEW SECTION. **Sec. 1314.** Section 1106 of this act expires July 1,
9 2006."

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10 On page 1, line 1 of the title, after "taxation;" strike the
11 remainder of the title and insert "amending RCW 82.08.010, 82.08.150,
12 69.50.520, 82.04.2908, 82.04.4463, 82.29A.130, 82.71.020, 82.04.4452,
13 84.52.068, 43.84.092, 43.84.092, 69.50.520, 70.146.030, and 83.100.---;
14 amending 2003 1st sp.s. c 16 s 6 (uncodified); reenacting and amending
15 RCW 82.04.050; adding new sections to chapter 82.04 RCW; adding new
16 sections to chapter 82.08 RCW; adding new sections to chapter 82.12
17 RCW; adding new sections to chapter 82.32 RCW; adding a new section to
18 chapter 83.100 RCW; adding a new section to chapter 82.24 RCW; adding
19 a new section to chapter 28A.505 RCW; adding a new chapter to Title 43
20 RCW; adding a new chapter to Title 82 RCW; creating new sections;
21 providing effective dates; providing expiration dates; and declaring an
22 emergency."

EFFECT: Removes provisions imposing sales and use taxes on sales

of warranties.

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