
HOUSE BILL 1412

State of Washington

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By Representatives Hunt, B. Sullivan, Hinkle, Linville, Holmquist,
Buck and Williams

Read first time 01/24/2005. Referred to Committee on Finance.

1 AN ACT Relating to environmental remediation; reenacting and
2 amending RCW 82.04.050 and 82.04.190; adding a new section to chapter
3 82.04 RCW; providing an effective date; providing an expiration date;
4 and declaring an emergency.

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

6 **Sec. 1.** RCW 82.04.050 and 2004 c 174 s 3 and 2004 c 153 s 407 are
7 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

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), 82.04.290, and 82.04.2908.

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 services,
34 tanning salon services, tattoo parlor services, steam bath services,
35 turkish bath services, escort services, and dating services.

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

37 (i) The renting or leasing of tangible personal property to
38 consumers; and

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

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

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

12 (6) The term shall also include the sale of prewritten computer
13 software other than a sale to a person who presents a resale
14 certificate under RCW 82.04.470, regardless of the method of delivery
15 to the end user, but shall not include custom software or the
16 customization of prewritten computer software.

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

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

30 (a) Persons who participate in the federal conservation reserve
31 program, the environmental quality incentives program, the wetlands
32 reserve program, and the wildlife habitat incentives program, or their
33 successors administered by the United States department of agriculture;

34 (b) farmers for the purpose of producing for sale any agricultural
35 product; and (c) farmers acting under cooperative habitat development
36 or access contracts with an organization exempt from federal income tax
37 under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of

1 fish and wildlife to produce or improve wildlife habitat on land that
2 the farmer owns or leases.

3 (9) The term shall not include the sale of or charge made for labor
4 and services rendered in respect to the constructing, repairing,
5 decorating, or improving of new or existing buildings or other
6 structures under, upon, or above real property of or for the United
7 States, any instrumentality thereof, or a county or city housing
8 authority created pursuant to chapter 35.82 RCW, including the
9 installing, or attaching of any article of tangible personal property
10 therein or thereto, whether or not such personal property becomes a
11 part of the realty by virtue of installation. Nor shall the term
12 include the sale of services or charges made for the clearing of land
13 and the moving of earth of or for the United States, any
14 instrumentality thereof, or a county or city housing authority. Nor
15 shall the term include the sale of services or charges made for
16 cleaning up for the United States, or its instrumentalities,
17 radioactive waste and other byproducts of weapons production and
18 nuclear research and development.

19 (10) Until July 1, 2008, the term shall not include the sale of or
20 charge made for labor and services rendered for environmental remedial
21 action as defined in section 3(2) of this act.

22 **Sec. 2.** RCW 82.04.190 and 2004 c 174 s 4 and 2004 c 2 s 8 are each
23 reenacted and amended to read as follows:

24 "Consumer" means the following:

25 (1) Any person who purchases, acquires, owns, holds, or uses any
26 article of tangible personal property irrespective of the nature of the
27 person's business and including, among others, without limiting the
28 scope hereof, persons who install, repair, clean, alter, improve,
29 construct, or decorate real or personal property of or for consumers
30 other than for the purpose (a) of resale as tangible personal property
31 in the regular course of business or (b) of incorporating such property
32 as an ingredient or component of real or personal property when
33 installing, repairing, cleaning, altering, imprinting, improving,
34 constructing, or decorating such real or personal property of or for
35 consumers or (c) of consuming such property in producing for sale a new
36 article of tangible personal property or a new substance, of which such
37 property becomes an ingredient or component or as a chemical used in

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

8 (2)(a) Any person engaged in any business activity taxable under
9 RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or
10 uses any telephone service as defined in RCW 82.04.065, other than for
11 resale in the regular course of business; (c) any person who purchases,
12 acquires, or uses any service defined in RCW 82.04.050(2)(a) or any
13 amusement and recreation service defined in RCW 82.04.050(3)(a), other
14 than for resale in the regular course of business; and (d) any person
15 who is an end user of software;

16 (3) Any person engaged in the business of contracting for the
17 building, repairing or improving of any street, place, road, highway,
18 easement, right of way, mass public transportation terminal or parking
19 facility, bridge, tunnel, or trestle which is owned by a municipal
20 corporation or political subdivision of the state of Washington or by
21 the United States and which is used or to be used primarily for foot or
22 vehicular traffic including mass transportation vehicles of any kind as
23 defined in RCW 82.04.280, in respect to tangible personal property when
24 such person incorporates such property as an ingredient or component of
25 such publicly owned street, place, road, highway, easement, right of
26 way, mass public transportation terminal or parking facility, bridge,
27 tunnel, or trestle by installing, placing or spreading the property in
28 or upon the right of way of such street, place, road, highway,
29 easement, bridge, tunnel, or trestle or in or upon the site of such
30 mass public transportation terminal or parking facility;

31 (4) Any person who is an owner, lessee or has the right of
32 possession to or an easement in real property which is being
33 constructed, repaired, decorated, improved, or otherwise altered by a
34 person engaged in business, excluding only (a) municipal corporations
35 or political subdivisions of the state in respect to labor and services
36 rendered to their real property which is used or held for public road
37 purposes, and (b) the United States, instrumentalities thereof, and
38 county and city housing authorities created pursuant to chapter 35.82

1 RCW in respect to labor and services rendered to their real property.
2 Nothing contained in this or any other subsection of this definition
3 shall be construed to modify any other definition of "consumer";

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

8 (6) Any person engaged in the business of constructing, repairing,
9 decorating, or improving new or existing buildings or other structures
10 under, upon, or above real property of or for the United States, any
11 instrumentality thereof, or a county or city housing authority created
12 pursuant to chapter 35.82 RCW, including the installing or attaching of
13 any article of tangible personal property therein or thereto, whether
14 or not such personal property becomes a part of the realty by virtue of
15 installation; also, any person engaged in the business of clearing land
16 and moving earth of or for the United States, any instrumentality
17 thereof, or a county or city housing authority created pursuant to
18 chapter 35.82 RCW. Any such person shall be a consumer within the
19 meaning of this subsection in respect to tangible personal property
20 incorporated into, installed in, or attached to such building or other
21 structure by such person, except that consumer does not include any
22 person engaged in the business of constructing, repairing, decorating,
23 or improving new or existing buildings or other structures under, upon,
24 or above real property of or for the United States, or any
25 instrumentality thereof, if the investment project would qualify for
26 sales and use tax deferral under chapter 82.63 RCW if undertaken by a
27 private entity;

28 (7) Any person who is a lessor of machinery and equipment, the
29 rental of which is exempt from the tax imposed by RCW 82.08.020 under
30 RCW 82.08.02565, with respect to the sale of or charge made for
31 tangible personal property consumed in respect to repairing the
32 machinery and equipment, if the tangible personal property has a useful
33 life of less than one year. Nothing contained in this or any other
34 subsection of this section shall be construed to modify any other
35 definition of "consumer"; (~~and~~)

36 (8) Any person engaged in the business of cleaning up for the
37 United States, or its instrumentalities, radioactive waste and other

1 byproducts of weapons production and nuclear research and development;
2 and

3 (9) Until July 1, 2008, any person engaged in the business of
4 conducting environmental remedial action as defined in section 3(2) of
5 this act.

6 NEW SECTION. Sec. 3. A new section is added to chapter 82.04 RCW
7 to read as follows:

8 (1) Upon every person engaging within this state in the business of
9 environmental remedial action, the amount of tax with respect to such
10 business shall be equal to the value of the gross income of the
11 business multiplied by the rate 0.471 percent.

12 (2) For purposes of this chapter, "environmental remedial action"
13 means:

14 (a) Those services related to the identification, investigation, or
15 cleanup arising out of the release or threatened release of hazardous
16 substances that are conducted under contract with the department of
17 ecology or under an enforcement order, agreed order, or consent decree
18 executed by the department of ecology, or those services, when
19 evaluated as a whole, that are the substantial equivalent of a
20 department of ecology-conducted or supervised remedial action under the
21 model toxics control act, chapter 70.105D RCW; or

22 (b) Those services related to the identification, investigation, or
23 cleanup of a facility that are conducted under contract with the United
24 States environmental protection agency or under an order or consent
25 decree executed by the United States environmental protection agency,
26 or that are consistent with the national contingency plan adopted under
27 the comprehensive environmental response compensation and liability
28 act, 42 U.S.C. Sec. 9605 as it exists on July 1, 1998, and those
29 services are conducted at facilities that are included on the national
30 priorities list adopted under 42 U.S.C. Sec. 9605 as it exists on July
31 1, 1998, or at facilities subject to a removal action authorized under
32 42 U.S.C. Sec. 9604 as it exists on July 1, 1998.

33 (3) A site is eligible for environmental remedial action upon
34 submittal, via certified mail to the department of ecology and the
35 department of revenue, of the following:

36 (a) A certification from the owner, the department of ecology, or

1 the United States environmental protection agency, containing the
2 following information:

3 (i) The location of the site, shown on a map and identified by
4 parcel number or numbers and street address;

5 (ii) The name and address and daytime phone number of a contact
6 person;

7 (iii) A statement that the proposed environmental remedial actions
8 will be conducted by the department of ecology or its authorized
9 contractor under chapter 70.105D RCW or will be substantially
10 equivalent to a department of ecology-conducted or supervised remedial
11 action under the model toxics control act, chapter 70.105D RCW, or will
12 be conducted by the United States environmental protection agency or
13 its authorized contractor or will be consistent with the national
14 contingency plan under 42 U.S.C. Sec. 9605 as it exists on July 1,
15 1998; and

16 (iv) A description of the proposed environmental remedial actions
17 to be taken; and

18 (b)(i) A certification from a certified underground storage tank
19 service supervisor as authorized in chapter 90.76 RCW, from a
20 professional engineer licensed in the state of Washington, or from an
21 environmental professional who subscribes to a code of professional
22 responsibility administered by a recognized organization representing
23 such professions containing the following information:

24 (A) Confirmation that an environmental remedial action as defined
25 in this section is to be conducted at the site;

26 (B) The location of the site, shown on a map and identified by
27 parcel number or numbers and street address, and the approximate
28 location of the proposed environmental remedial action; and

29 (C) The name, address, telephone number, and uniform business
30 identifier of the person providing the certification; or

31 (ii) If applicable to the site, a copy of an enforcement order,
32 agreed order, or consent decree executed by the department of ecology
33 or the United States environmental protection agency.

34 (4) The department of revenue shall respond in writing to the owner
35 within thirty days confirming receipt of the certification, or
36 certifications, of eligibility. Under RCW 82.32.330(3)(m),
37 certification is subject to disclosure and copies may be obtained from

1 the department upon request. The request shall be in writing and shall
2 identify the site by county and parcel number or numbers.

3 (5) The owner shall provide a copy of the confirmation from the
4 department of revenue to each person who renders environmental remedial
5 action at the site. Each person who renders such action shall
6 separately state the charges for labor and services associated with the
7 environmental remedial action.

8 (6) Upon completion of the environmental remedial action, the owner
9 shall submit to the department of ecology a report documenting the
10 environmental remedial actions conducted at the site and documenting
11 compliance with the requirements of chapter 70.105D RCW.

12 (7) In addition to any other penalties, a person who files a
13 certificate with the department of ecology or the department of revenue
14 that contains falsehoods or misrepresentations are subject to penalties
15 authorized under chapter 18.43 or 90.76 RCW or RCW 9A.76.175. Also, a
16 person who improperly reports the person's tax class shall be assessed
17 a penalty of fifty percent of the tax due, in addition to other taxes
18 or penalties, together with interest. The department of revenue shall
19 waive the penalty imposed under this section if it finds that the
20 falsehoods or misrepresentations or improper reporting of the tax
21 classification was due to circumstances beyond the control of the
22 person.

23 (8) This section expires July 1, 2008.

24 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
25 preservation of the public peace, health, or safety, or support of the
26 state government and its existing public institutions, and takes effect
27 July 1, 2005.

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