
SENATE BILL 5066

State of Washington 59th Legislature 2005 Regular Session

By Senators Benton, Kohl-Welles and Oke

Read first time 01/12/2005. Referred to Committee on Ways & Means.

1 AN ACT Relating to the taxation of physical fitness services;
2 amending RCW 82.08.0291; reenacting and amending RCW 82.04.050; and
3 creating a new section.

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

5 NEW SECTION. **Sec. 1.** It is the intent of the legislature to
6 promote a healthy lifestyle for Washington citizens. The legislature
7 recognizes that better health outcomes improve not only citizens' well-
8 being but also lessen the fiscal burden on the state. The legislature
9 further recognizes that lowering the cost of joining fitness clubs and
10 organizations will provide an incentive for individuals to partake in
11 beneficial physical exercise.

12 **Sec. 2.** RCW 82.04.050 and 2004 c 174 s 3 and 2004 c 153 s 407 are
13 each reenacted and amended to read as follows:

14 (1) "Sale at retail" or "retail sale" means every sale of tangible
15 personal property (including articles produced, fabricated, or
16 imprinted) to all persons irrespective of the nature of their business
17 and including, among others, without limiting the scope hereof, persons

1 who install, repair, clean, alter, improve, construct, or decorate real
2 or personal property of or for consumers other than a sale to a person
3 who presents a resale certificate under RCW 82.04.470 and who:

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

8 (b) Installs, repairs, cleans, alters, imprints, improves,
9 constructs, or decorates real or personal property of or for consumers,
10 if such tangible personal property becomes an ingredient or component
11 of such real or personal property without intervening use by such
12 person; or

13 (c) Purchases for the purpose of consuming the property purchased
14 in producing for sale a new article of tangible personal property or
15 substance, of which such property becomes an ingredient or component or
16 is a chemical used in processing, when the primary purpose of such
17 chemical is to create a chemical reaction directly through contact with
18 an ingredient of a new article being produced for sale; or

19 (d) Purchases for the purpose of consuming the property purchased
20 in producing ferrosilicon which is subsequently used in producing
21 magnesium for sale, if the primary purpose of such property is to
22 create a chemical reaction directly through contact with an ingredient
23 of ferrosilicon; or

24 (e) Purchases for the purpose of providing the property to
25 consumers as part of competitive telephone service, as defined in RCW
26 82.04.065. The term shall include every sale of tangible personal
27 property which is used or consumed or to be used or consumed in the
28 performance of any activity classified as a "sale at retail" or "retail
29 sale" even though such property is resold or utilized as provided in
30 (a), (b), (c), (d), or (e) of this subsection following such use. The
31 term also means every sale of tangible personal property to persons
32 engaged in any business which is taxable under RCW 82.04.280 (2) and
33 (7), 82.04.290, and 82.04.2908.

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

37 (a) The installing, repairing, cleaning, altering, imprinting, or
38 improving of tangible personal property of or for consumers, including

1 charges made for the mere use of facilities in respect thereto, but
2 excluding charges made for the use of coin-operated laundry facilities
3 when such facilities are situated in an apartment house, rooming house,
4 or mobile home park for the exclusive use of the tenants thereof, and
5 also excluding sales of laundry service to nonprofit health care
6 facilities, and excluding services rendered in respect to live animals,
7 birds and insects;

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

16 (c) The charge for labor and services rendered in respect to
17 constructing, repairing, or improving any structure upon, above, or
18 under any real property owned by an owner who conveys the property by
19 title, possession, or any other means to the person performing such
20 construction, repair, or improvement for the purpose of performing such
21 construction, repair, or improvement and the property is then
22 reconveyed by title, possession, or any other means to the original
23 owner;

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

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

1 (f) The sale of and charge made for the furnishing of lodging and
2 all other services by a hotel, rooming house, tourist court, motel,
3 trailer camp, and the granting of any similar license to use real
4 property, as distinguished from the renting or leasing of real
5 property, and it shall be presumed that the occupancy of real property
6 for a continuous period of one month or more constitutes a rental or
7 lease of real property and not a mere license to use or enjoy the same.
8 For the purposes of this subsection, it shall be presumed that the sale
9 of and charge made for the furnishing of lodging for a continuous
10 period of one month or more to a person is a rental or lease of real
11 property and not a mere license to enjoy the same;

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

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

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

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

31 (c) Credit bureau services;

32 (d) Automobile parking and storage garage services;

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

1 (f) Service charges associated with tickets to professional
2 sporting events; and

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

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

7 (i) The renting or leasing of tangible personal property to
8 consumers; and

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

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

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

20 (6) The term shall also include the sale of prewritten computer
21 software other than a sale to a person who presents a resale
22 certificate under RCW 82.04.470, regardless of the method of delivery
23 to the end user, but shall not include custom software or the
24 customization of prewritten computer software.

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

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

38 (a) Persons who participate in the federal conservation reserve

1 program, the environmental quality incentives program, the wetlands
2 reserve program, and the wildlife habitat incentives program, or their
3 successors administered by the United States department of agriculture;
4 (b) farmers for the purpose of producing for sale any agricultural
5 product; and (c) farmers acting under cooperative habitat development
6 or access contracts with an organization exempt from federal income tax
7 under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of
8 fish and wildlife to produce or improve wildlife habitat on land that
9 the farmer owns or leases.

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

26 **Sec. 3.** RCW 82.08.0291 and 2000 c 103 s 8 are each amended to read
27 as follows:

28 The tax imposed by RCW 82.08.020 shall not apply to the sale of
29 amusement and recreation services(~~(, or personal services specified in~~
30 ~~RCW 82.04.050(3)(g),)~~) by a nonprofit youth organization, as defined in
31 RCW 82.04.4271, to members of the organization(~~(; nor shall the tax~~
32 ~~apply to physical fitness classes provided by a local government))~~).

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