
SENATE BILL 5571

State of Washington 59th Legislature 2005 Regular Session

By Senators Benson, Schoesler, Carrell, Keiser, Kastama and Mulliken

Read first time 01/28/2005. Referred to Committee on Ways & Means.

1 AN ACT Relating to the boarding home business and occupation tax;
2 amending RCW 82.04.290 and 82.04.460; reenacting and amending RCW
3 82.04.050 and 82.04.190; creating a new section; repealing RCW
4 82.04.4337 and 82.04.2908; providing an effective date; and declaring
5 an emergency.

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

7 NEW SECTION. **Sec. 1.** The following acts or parts of acts are each
8 repealed:

9 (1) RCW 82.04.4337 (Deductions--Certain amounts received by
10 boarding homes) and 2004 c 174 s 7; and

11 (2) RCW 82.04.2908 (Tax on provision of room and domiciliary care
12 to boarding home residents) and 2004 c 174 s 1.

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

15 (1) "Sale at retail" or "retail sale" means every sale of tangible
16 personal property (including articles produced, fabricated, or
17 imprinted) to all persons irrespective of the nature of their business
18 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)((7)) and 82.04.290(~~(7) 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 services,
4 tanning salon services, tattoo parlor services, steam bath services,
5 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 82.04.190 and 2004 c 174 s 4 and 2004 c 2 s 8 are each
27 reenacted and amended to read as follows:

28 "Consumer" means the following:

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

1 constructing, or decorating such real or personal property of or for
2 consumers or (c) of consuming such property in producing for sale a new
3 article of tangible personal property or a new substance, of which such
4 property becomes an ingredient or component or as a chemical used in
5 processing, when the primary purpose of such chemical is to create a
6 chemical reaction directly through contact with an ingredient of a new
7 article being produced for sale or (d) purchases for the purpose of
8 consuming the property purchased in producing ferrosilicon which is
9 subsequently used in producing magnesium for sale, if the primary
10 purpose of such property is to create a chemical reaction directly
11 through contact with an ingredient of ferrosilicon;

12 (2)(a) Any person engaged in any business activity taxable under
13 RCW 82.04.290 (~~or 82.04.2908~~); (b) any person who purchases,
14 acquires, or uses any telephone service as defined in RCW 82.04.065,
15 other than for resale in the regular course of business; (c) any person
16 who purchases, acquires, or uses any service defined in RCW
17 82.04.050(2)(a) or any amusement and recreation service defined in RCW
18 82.04.050(3)(a), other than for resale in the regular course of
19 business; and (d) any person who is an end user of software;

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

35 (4) Any person who is an owner, lessee or has the right of
36 possession to or an easement in real property which is being
37 constructed, repaired, decorated, improved, or otherwise altered by a
38 person engaged in business, excluding only (a) municipal corporations

1 or political subdivisions of the state in respect to labor and services
2 rendered to their real property which is used or held for public road
3 purposes, and (b) the United States, instrumentalities thereof, and
4 county and city housing authorities created pursuant to chapter 35.82
5 RCW in respect to labor and services rendered to their real property.
6 Nothing contained in this or any other subsection of this definition
7 shall be construed to modify any other definition of "consumer";

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

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

32 (7) Any person who is a lessor of machinery and equipment, the
33 rental of which is exempt from the tax imposed by RCW 82.08.020 under
34 RCW 82.08.02565, with respect to the sale of or charge made for
35 tangible personal property consumed in respect to repairing the
36 machinery and equipment, if the tangible personal property has a useful
37 life of less than one year. Nothing contained in this or any other

1 subsection of this section shall be construed to modify any other
2 definition of "consumer"; and

3 (8) Any person engaged in the business of cleaning up for the
4 United States, or its instrumentalities, radioactive waste and other
5 byproducts of weapons production and nuclear research and development.

6 **Sec. 4.** RCW 82.04.290 and 2004 c 174 s 2 are each amended to read
7 as follows:

8 (1) Upon every person engaging within this state in the business of
9 providing international investment management services, as to such
10 persons, the amount of tax with respect to such business shall be equal
11 to the gross income or gross proceeds of sales of the business
12 multiplied by a rate of 0.275 percent.

13 (2) Upon every person engaging within this state in any business
14 activity other than or in addition to those enumerated in RCW
15 82.04.230, 82.04.240, 82.04.250, 82.04.255, 82.04.260, 82.04.270,
16 82.04.298, 82.04.2905, 82.04.280, 82.04.2907, 82.04.272, and
17 82.04.2906(~~(, and 82.04.2908)~~), and subsection (1) of this section; as
18 to such persons the amount of tax on account of such activities shall
19 be equal to the gross income of the business multiplied by the rate of
20 1.5 percent.

21 (3) Subsection (2) of this section includes, among others, and
22 without limiting the scope hereof (whether or not title to materials
23 used in the performance of such business passes to another by
24 accession, confusion or other than by outright sale), persons engaged
25 in the business of rendering any type of service which does not
26 constitute a "sale at retail" or a "sale at wholesale." The value of
27 advertising, demonstration, and promotional supplies and materials
28 furnished to an agent by his principal or supplier to be used for
29 informational, educational and promotional purposes shall not be
30 considered a part of the agent's remuneration or commission and shall
31 not be subject to taxation under this section.

32 **Sec. 5.** RCW 82.04.460 and 2004 c 174 s 6 are each amended to read
33 as follows:

34 (1) Any person rendering services taxable under RCW 82.04.290 (~~(or~~
35 ~~82.04.2908)~~) and maintaining places of business both within and without
36 this state which contribute to the rendition of such services shall,

1 for the purpose of computing tax liability under RCW 82.04.290 (~~or~~
2 ~~82.04.2908~~)), apportion to this state that portion of the person's
3 gross income which is derived from services rendered within this state.
4 Where such apportionment cannot be accurately made by separate
5 accounting methods, the taxpayer shall apportion to this state that
6 proportion of the taxpayer's total income which the cost of doing
7 business within the state bears to the total cost of doing business
8 both within and without the state.

9 (2) Notwithstanding the provision of subsection (1) of this
10 section, persons doing business both within and without the state who
11 receive gross income from service charges, as defined in RCW 63.14.010
12 (relating to amounts charged for granting the right or privilege to
13 make deferred or installment payments) or who receive gross income from
14 engaging in business as financial institutions within the scope of
15 chapter 82.14A RCW (relating to city taxes on financial institutions)
16 shall apportion or allocate gross income taxable under RCW 82.04.290 to
17 this state pursuant to rules promulgated by the department consistent
18 with uniform rules for apportionment or allocation developed by the
19 states.

20 (3) The department shall by rule provide a method or methods of
21 apportioning or allocating gross income derived from sales of telephone
22 services taxed under this chapter, if the gross proceeds of sales
23 subject to tax under this chapter do not fairly represent the extent of
24 the taxpayer's income attributable to this state. The rules shall be,
25 so far as feasible, consistent with the methods of apportionment
26 contained in this section and shall require the consideration of those
27 facts, circumstances, and apportionment factors as will result in an
28 equitable and constitutionally permissible division of the services.

29 NEW SECTION. **Sec. 6.** This act is necessary for the immediate
30 preservation of the public peace, health, or safety, or support of the
31 state government and its existing public institutions, and takes effect
32 July 1, 2005.

33 NEW SECTION. **Sec. 7.** This act does not affect any existing right
34 acquired or liability or obligation incurred under the sections amended
35 or repealed in this act or under any rule or order adopted under those

1 sections, nor does it affect any proceeding instituted under those
2 sections.

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