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SENATE BILL 5623

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State of Washington                      59th Legislature                      2005 Regular Session

By Senators Haugen and Esser

Read first time 01/31/2005. Referred to Committee on Transportation.

1            AN ACT Relating to sales and use taxes paid by regional transit  
2 authorities for combined operations and maintenance agreements;  
3 reenacting and amending RCW 82.04.050; and creating a new section.

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

5            NEW SECTION.    **Sec. 1.** The legislature finds that:

6            (1) Public entities that receive tax dollars must continuously  
7 improve the way they operate and deliver service so citizens receive  
8 maximum value for their tax dollars; and

9            (2) An explicit statement clarifying that no sales or use tax shall  
10 apply to the entire charge paid by regional transit authorities for bus  
11 or rail combined operations and maintenance agreements that are  
12 provided to such authorities in support of their provision of urban  
13 transportation or transportation services is necessary to improve  
14 efficient service.

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

17            (1) "Sale at retail" or "retail sale" means every sale of tangible  
18 personal property (including articles produced, fabricated, or

1 imprinted) to all persons irrespective of the nature of their business  
2 and including, among others, without limiting the scope hereof, persons  
3 who install, repair, clean, alter, improve, construct, or decorate real  
4 or personal property of or for consumers other than a sale to a person  
5 who presents a resale certificate under RCW 82.04.470 and who:

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

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

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

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

26 (e) Purchases for the purpose of providing the property to  
27 consumers as part of competitive telephone service, as defined in RCW  
28 82.04.065. The term shall include every sale of tangible personal  
29 property which is used or consumed or to be used or consumed in the  
30 performance of any activity classified as a "sale at retail" or "retail  
31 sale" even though such property is resold or utilized as provided in  
32 (a), (b), (c), (d), or (e) of this subsection following such use. The  
33 term also means every sale of tangible personal property to persons  
34 engaged in any business which is taxable under RCW 82.04.280 (2) and  
35 (7), 82.04.290, and 82.04.2908.

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

1 (a) The installing, repairing, cleaning, altering, imprinting, or  
2 improving of tangible personal property of or for consumers, including  
3 charges made for the mere use of facilities in respect thereto, but  
4 excluding charges made for the use of coin-operated laundry facilities  
5 when such facilities are situated in an apartment house, rooming house,  
6 or mobile home park for the exclusive use of the tenants thereof, and  
7 also excluding sales of laundry service to nonprofit health care  
8 facilities, and excluding services rendered in respect to live animals,  
9 birds and insects;

10 (b) The constructing, repairing, decorating, or improving of new or  
11 existing buildings or other structures under, upon, or above real  
12 property of or for consumers, 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, and shall also include the sale of services or charges  
16 made for the clearing of land and the moving of earth excepting the  
17 mere leveling of land used in commercial farming or agriculture;

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

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

37 (e) The sale of or charge made for labor and services rendered in

1 respect to automobile towing and similar automotive transportation  
2 services, but not in respect to those required to report and pay taxes  
3 under chapter 82.16 RCW;

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

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

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

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

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

34 (c) Credit bureau services;

35 (d) Automobile parking and storage garage services;

36 (e) Landscape maintenance and horticultural services but excluding

37 (i) horticultural services provided to farmers and (ii) pruning,

1 trimming, repairing, removing, and clearing of trees and brush near  
2 electric transmission or distribution lines or equipment, if performed  
3 by or at the direction of an electric utility;

4 (f) Service charges associated with tickets to professional  
5 sporting events; and

6 (g) The following personal services: Physical fitness services,  
7 tanning salon services, tattoo parlor services, steam bath services,  
8 turkish bath services, escort services, and dating services.

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

10 (i) The renting or leasing of tangible personal property to  
11 consumers; and

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

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

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

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

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

36 (8) The term shall also not include sales of chemical sprays or  
37 washes to persons for the purpose of postharvest treatment of fruit for  
38 the prevention of scald, fungus, mold, or decay, nor shall it include

1 sales of feed, seed, seedlings, fertilizer, agents for enhanced  
2 pollination including insects such as bees, and spray materials to:  
3 (a) Persons who participate in the federal conservation reserve  
4 program, the environmental quality incentives program, the wetlands  
5 reserve program, and the wildlife habitat incentives program, or their  
6 successors administered by the United States department of agriculture;  
7 (b) farmers for the purpose of producing for sale any agricultural  
8 product; and (c) farmers acting under cooperative habitat development  
9 or access contracts with an organization exempt from federal income tax  
10 under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of  
11 fish and wildlife to produce or improve wildlife habitat on land that  
12 the farmer owns or leases.

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

29 (10) The term shall not include the sale of or charge made pursuant  
30 to a bus or rail combined operations agreement or maintenance agreement  
31 when a regional transit authority is the recipient of the services  
32 under the agreement.

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