
SENATE BILL 5824

State of Washington

59th Legislature

2005 Regular Session

By Senators Shin, Swecker, Benton, Honeyford, Kohl-Welles, Rasmussen, Sheldon, Carrell, Mulliken, Benson, Schmidt, Esser, Hewitt and Johnson

Read first time 02/08/2005. Referred to Committee on Ways & Means.

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

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

5 **Sec. 1.** RCW 82.04.050 and 2004 c 174 s 3 and 2004 c 153 s 407 are
6 each reenacted and amended to read as follows:

7 (1) "Sale at retail" or "retail sale" means every sale of tangible
8 personal property (including articles produced, fabricated, or
9 imprinted) to all persons irrespective of the nature of their business
10 and including, among others, without limiting the scope hereof, persons
11 who install, repair, clean, alter, improve, construct, or decorate real
12 or personal property of or for consumers other than a sale to a person
13 who presents a resale certificate under RCW 82.04.470 and who:

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

18 (b) Installs, repairs, cleans, alters, imprints, improves,
19 constructs, or decorates real or personal property of or for consumers,

1 if such tangible personal property becomes an ingredient or component
2 of such real or personal property without intervening use by such
3 person; or

4 (c) Purchases for the purpose of consuming the property purchased
5 in producing for sale a new article of tangible personal property or
6 substance, of which such property becomes an ingredient or component or
7 is a chemical used in processing, when the primary purpose of such
8 chemical is to create a chemical reaction directly through contact with
9 an ingredient of a new article being produced for sale; or

10 (d) Purchases for the purpose of consuming the property purchased
11 in producing ferrosilicon which is subsequently used in producing
12 magnesium for sale, if the primary purpose of such property is to
13 create a chemical reaction directly through contact with an ingredient
14 of ferrosilicon; or

15 (e) Purchases for the purpose of providing the property to
16 consumers as part of competitive telephone service, as defined in RCW
17 82.04.065. The term shall include every sale of tangible personal
18 property which is used or consumed or to be used or consumed in the
19 performance of any activity classified as a "sale at retail" or "retail
20 sale" even though such property is resold or utilized as provided in
21 (a), (b), (c), (d), or (e) of this subsection following such use. The
22 term also means every sale of tangible personal property to persons
23 engaged in any business which is taxable under RCW 82.04.280 (2) and
24 (7), 82.04.290, and 82.04.2908.

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

28 (a) The installing, repairing, cleaning, altering, imprinting, or
29 improving of tangible personal property of or for consumers, including
30 charges made for the mere use of facilities in respect thereto, but
31 excluding charges made for the use of coin-operated laundry facilities
32 when such facilities are situated in an apartment house, rooming house,
33 or mobile home park for the exclusive use of the tenants thereof, and
34 also excluding sales of laundry service to nonprofit health care
35 facilities, and excluding services rendered in respect to live animals,
36 birds and insects;

37 (b) The constructing, repairing, decorating, or improving of new or
38 existing buildings or other structures under, upon, or above real

1 property of or for consumers, including the installing or attaching of
2 any article of tangible personal property therein or thereto, whether
3 or not such personal property becomes a part of the realty by virtue of
4 installation, and shall also include the sale of services or charges
5 made for the clearing of land and the moving of earth excepting the
6 mere leveling of land used in commercial farming or agriculture;

7 (c) The charge for labor and services rendered in respect to
8 constructing, repairing, or improving any structure upon, above, or
9 under any real property owned by an owner who conveys the property by
10 title, possession, or any other means to the person performing such
11 construction, repair, or improvement for the purpose of performing such
12 construction, repair, or improvement and the property is then
13 reconveyed by title, possession, or any other means to the original
14 owner;

15 (d) The sale of or charge made for labor and services rendered in
16 respect to the cleaning, fumigating, razing or moving of existing
17 buildings or structures, but shall not include the charge made for
18 janitorial services; and for purposes of this section the term
19 "janitorial services" shall mean those cleaning and caretaking services
20 ordinarily performed by commercial janitor service businesses
21 including, but not limited to, wall and window washing, floor cleaning
22 and waxing, and the cleaning in place of rugs, drapes and upholstery.
23 The term "janitorial services" does not include painting, papering,
24 repairing, furnace or septic tank cleaning, snow removal or
25 sandblasting;

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

30 (f) The sale of and charge made for the furnishing of lodging and
31 all other services by a hotel, rooming house, tourist court, motel,
32 trailer camp, and the granting of any similar license to use real
33 property, as distinguished from the renting or leasing of real
34 property, and it shall be presumed that the occupancy of real property
35 for a continuous period of one month or more constitutes a rental or
36 lease of real property and not a mere license to use or enjoy the same.
37 For the purposes of this subsection, it shall be presumed that the sale

1 of and charge made for the furnishing of lodging for a continuous
2 period of one month or more to a person is a rental or lease of real
3 property and not a mere license to enjoy the same;

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

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

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

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

23 (c) Credit bureau services;

24 (d) Automobile parking and storage garage services;

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

30 (f) Service charges associated with tickets to professional
31 sporting events; and

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

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

36 (i) The renting or leasing of tangible personal property to
37 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 NEW SECTION. **Sec. 2.** This act applies to physical fitness
20 services rendered on and after July 1, 2006.

21 NEW SECTION. **Sec. 3.** This act takes effect July 1, 2006.

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