
SENATE BILL 6713

State of Washington

61st Legislature

2010 Regular Session

By Senators Tom, Prentice, Murray, Kline, Kohl-Welles, and Fraser; by request of Department of Revenue

Read first time 01/22/10. Referred to Committee on Ways & Means.

1 AN ACT Relating to increasing revenues by eliminating and narrowing
2 preferential tax treatment; amending RCW 82.08.890 and 82.12.890;
3 reenacting and amending RCW 82.04.360; adding a new section to chapter
4 82.32 RCW; creating new sections; repealing RCW 82.04.062; providing an
5 effective date; and providing an expiration date.

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

7 **PART I**

8 **ELIMINATING TAX PREFERENCES FOR BULLION**

9 NEW SECTION. **Sec. 101.** RCW 82.04.062 ("Sale at wholesale," "sale
10 at retail" excludes sale of precious metal bullion and monetized
11 bullion--Computation of tax) and 1985 c 471 s 5 are each repealed.

12 NEW SECTION. **Sec. 102.** The repeal in section 101 of this act does
13 not affect any existing right acquired or liability or obligation
14 incurred under the statute repealed or under any rule or order adopted
15 under that statute nor does it affect any proceeding instituted under
16 the repealed statute.

1 PART II

2 TEMPORARILY NARROWING THE SALES AND USE TAX EXEMPTION FOR LIVESTOCK
3 NUTRIENT EQUIPMENT AND FACILITIES

4 **Sec. 201.** RCW 82.08.890 and 2009 c 469 s 601 are each amended to
5 read as follows:

6 (1) The tax levied by RCW 82.08.020 does not apply to sales to
7 eligible persons of:

8 (a) Qualifying livestock nutrient management equipment;

9 (b) Labor and services rendered in respect to installing,
10 repairing, cleaning, altering, or improving qualifying livestock
11 nutrient management equipment; and

12 (c)(i) Labor and services rendered in respect to repairing,
13 cleaning, altering, or improving of qualifying livestock nutrient
14 management facilities, or to tangible personal property that becomes an
15 ingredient or component of qualifying livestock nutrient management
16 facilities in the course of repairing, cleaning, altering, or improving
17 of such facilities.

18 (ii) The exemption provided in this subsection (1)(c) does not
19 apply to the sale of or charge made for: (A) Labor and services
20 rendered in respect to the constructing of new, or replacing previously
21 existing, qualifying livestock nutrient management facilities; or (B)
22 tangible personal property that becomes an ingredient or component of
23 qualifying livestock nutrient management facilities during the course
24 of constructing new, or replacing previously existing, qualifying
25 livestock nutrient management facilities.

26 (2) The exemption provided in subsection (1) of this section
27 applies to sales made after the livestock nutrient management plan is:

28 (a) Certified under chapter 90.64 RCW; (b) approved as part of the
29 permit issued under chapter 90.48 RCW; or (c) approved as required
30 under subsection (4)((+e+)) (d)(iii) of this section.

31 (3)(a) The department of revenue must provide an exemption
32 certificate to an eligible person upon application by that person.

33 (b) The department of agriculture must provide a list of eligible
34 persons, as defined in subsection (4)((+e+)) (d)(i) and (ii) of this
35 section, to the department of revenue. Conservation districts must
36 maintain lists of eligible persons as defined in subsection (4)((+e+))
37 (d)(iii) of this section to allow the department of revenue to verify
38 eligibility. The application must be in a form and manner prescribed

1 by the department and must contain information regarding the location
2 of the dairy or animal feeding operation and other information the
3 department may require.

4 ~~((b))~~ (c) A person claiming an exemption under this section must
5 keep records necessary for the department to verify eligibility under
6 this section. The exemption is available only when the buyer provides
7 the seller with an exemption certificate in a form and manner
8 prescribed by the department. The seller must retain a copy of the
9 certificate for the seller's files.

10 (4) The definitions in this subsection apply to this section and
11 RCW 82.12.890 unless the context clearly requires otherwise:

12 (a) "Animal feeding operation" means a lot or facility, other than
13 an aquatic animal production facility, where the following conditions
14 are met:

15 (i) Animals, other than aquatic animals, have been, are, or will be
16 stabled or confined and fed or maintained for a total of forty-five
17 days or more in any twelve-month period; and

18 (ii) Crops, vegetation, forage growth, or postharvest residues are
19 not sustained in the normal growing season over any portion of the lot
20 or facility.

21 (b) "Beef cattle feeding operation" means an animal feeding
22 operation primarily engaged in the feeding of beef cattle.

23 (c) "Conservation district" means a subdivision of state government
24 organized under chapter 89.08 RCW.

25 ~~((e))~~ (d) "Eligible person" means a person who:

26 (i) Is licensed to produce milk under chapter 15.36 RCW and who has
27 a certified dairy nutrient management plan, as required by chapter
28 90.64 RCW;

29 (ii) ~~((who))~~ Owns an animal feeding operation, other than a beef
30 cattle feeding operation, and has a permit issued under chapter 90.48
31 RCW; or

32 (iii) ~~((who))~~ Owns an animal feeding operation, other than a beef
33 cattle feeding operation, and has a nutrient management plan approved
34 by a conservation district as meeting natural resource conservation
35 service field office technical guide standards and who possesses an
36 exemption certificate under RCW 82.08.855.

37 ~~((d))~~ (e) "Handling and treatment of livestock manure" means the
38 activities of collecting, storing, moving, or transporting livestock

1 manure, separating livestock manure solids from liquids, or applying
2 livestock manure to the agricultural lands of an eligible person other
3 than through the use of pivot or linear type traveling irrigation
4 systems.

5 ~~((e))~~ (f) "Permit" means either a state waste discharge permit or
6 a national pollutant discharge elimination system permit, or both.

7 ~~((f))~~ (g)(i) "Qualifying livestock nutrient management equipment"
8 means the following tangible personal property for exclusive use in the
9 handling and treatment of livestock manure, including repair and
10 replacement parts for such equipment: ~~((i))~~ (A) Aerators; ~~((ii))~~
11 (B) agitators; ~~((iii))~~ (C) augers; ~~((iv))~~ (D) conveyers; ~~((v))~~
12 (E) gutter cleaners; ~~((vi))~~ (F) hard-hose reel traveler irrigation
13 systems; ~~((vii))~~ (G) lagoon and pond liners and floating covers;
14 ~~((viii))~~ (H) loaders; ~~((ix))~~ (I) manure composting devices; ~~((x))~~
15 (J) manure spreaders; ~~((xi))~~ (K) manure tank wagons; ~~((xii))~~ (L)
16 manure vacuum tanks; ~~((xiii))~~ (M) poultry house cleaners; ~~((xiv))~~
17 (N) poultry house flame sterilizers; ~~((xv))~~ (O) poultry house
18 washers; ~~((xvi))~~ (P) poultry litter saver machines; ~~((xvii))~~ (Q)
19 pipes; ~~((xviii))~~ (R) pumps; ~~((xix))~~ (S) scrapers; ~~((xx))~~ (T)
20 separators; ~~((xxi))~~ (U) slurry injectors and hoses; and ~~((xxii))~~
21 (V) wheelbarrows, shovels, and pitchforks.

22 ~~((g))~~ (ii) "Qualifying livestock nutrient management equipment"
23 does not include tangible personal property used in the handling and
24 treatment of livestock manure originating from a beef cattle feeding
25 operation.

26 (h) "Qualifying livestock nutrient management facilities" means the
27 following structures and facilities for exclusive use in the handling
28 and treatment of livestock manure except for livestock manure
29 originating from a beef cattle feeding operation: (i) Flush systems;
30 (ii) lagoons; (iii) liquid livestock manure storage structures, such as
31 concrete tanks or glass-lined steel tanks; and (iv) structures used
32 solely for the dry storage of manure, including roofed stacking
33 facilities.

34 **Sec. 202.** RCW 82.12.890 and 2009 c 469 s 602 are each amended to
35 read as follows:

36 (1) The provisions of this chapter do not apply with respect to the
37 use by an eligible person of:

1 (a) Qualifying livestock nutrient management equipment;
2 (b) Labor and services rendered in respect to installing,
3 repairing, cleaning, altering, or improving qualifying livestock
4 nutrient management equipment; and

5 (c)(i) Tangible personal property that becomes an ingredient or
6 component of qualifying livestock nutrient management facilities in the
7 course of repairing, cleaning, altering, or improving of such
8 facilities.

9 (ii) The exemption provided in this subsection (1)(c) does not
10 apply to the use of tangible personal property that becomes an
11 ingredient or component of qualifying livestock nutrient management
12 facilities during the course of constructing new, or replacing
13 previously existing, qualifying livestock nutrient management
14 facilities.

15 (2)(a) To be eligible, the equipment and facilities must be used
16 exclusively for activities necessary to maintain a livestock nutrient
17 management plan.

18 (b) The exemption applies to the use of tangible personal property
19 and labor and services made after the livestock nutrient management
20 plan is: (i) Certified under chapter 90.64 RCW; (ii) approved as part
21 of the permit issued under chapter 90.48 RCW; or (iii) approved as
22 required under RCW 82.08.890(4)(~~(c)~~) (d)(iii).

23 (3) The exemption certificate and recordkeeping requirements of RCW
24 82.08.890 apply to this section. The definitions in RCW 82.08.890
25 apply to this section.

26 NEW SECTION. **Sec. 203.** A new section is added to chapter 82.32
27 RCW to read as follows:

28 (1)(a) The department must make a reasonable effort to notify any
29 person who operates a beef cattle feeding operation as defined in RCW
30 82.08.890 and who was issued an exemption certificate under RCW
31 82.08.890 before July 1, 2010, that the person is no longer an eligible
32 person for purposes of the exemptions provided in RCW 82.08.890 and
33 82.12.890 and that the person's exemption certificate is void.

34 (b) The notice required in this subsection must also advise the
35 person that:

36 (i) Continued use of the exemption certificate to claim exemption

1 under RCW 82.08.890 will subject the person to the penalty imposed in
2 subsection (2) of this section; and

3 (ii) The person must reapply for an exemption certificate under RCW
4 82.08.890 to claim an exemption under RCW 82.08.890 after June 30,
5 2013. Such applications may be made no earlier than April 30, 2013.

6 (2) If any person who, after receiving notice as provided in
7 subsection (1) of this section, uses the person's exemption
8 certificate, including the exemption certificate number, issued by the
9 department to claim an exemption under RCW 82.08.890, the department
10 must assess against that person a penalty of fifty percent of the tax
11 due, in addition to all other taxes, penalties, and interest due, on
12 the item or service purchased.

13 **PART III**

14 **ENDING THE PREFERENTIAL BUSINESS AND OCCUPATION TAX TREATMENT RECEIVED**
15 **BY DIRECTORS OF CORPORATIONS**

16 NEW SECTION. **Sec. 301.** (1) In adopting the state's business and
17 occupation tax, the legislature intended to tax virtually all business
18 activities carried on within the state. See *Simpson Inv. Co. v. Dep't*
19 *of Revenue*, 141 Wn.2d 139, 149 (2000). The legislature recognizes that
20 the business and occupation tax applies to all activities engaged in
21 with the object of gain, benefit, or advantage to the taxpayer or to
22 another person or class, directly or indirectly, unless a specific
23 exemption applies.

24 (2) One of the major business and occupation tax exemptions is
25 provided in RCW 82.04.360 for income earned as an employee or servant
26 as distinguished from income earned as an independent contractor. The
27 legislature's intent in providing this exemption was to exempt employee
28 wages from the business and occupation tax but not to exempt income
29 earned as an independent contractor.

30 (3) The legislature finds that corporate directors are not
31 employees or servants of the corporation whose board they serve on and
32 therefore are not entitled to a business and occupation tax exemption
33 under RCW 82.04.360. The legislature further finds that there are no
34 business and occupation tax exemptions for compensation received for
35 serving as a member of a corporation's board of directors.

1 (4) The legislature also finds that there is a widespread
2 misunderstanding among corporate directors that the business and
3 occupation tax does not apply to the compensation they receive for
4 serving as a director of a corporation. It is the legislature's
5 expectation that the department of revenue will take appropriate
6 measures to ensure that corporate directors understand and comply with
7 their business and occupation tax obligations with respect to their
8 director compensation. However, because of the widespread
9 misunderstanding by corporate directors of their liability for business
10 and occupation tax on director compensation, the legislature finds that
11 it is appropriate in this unique situation to provide limited relief
12 against the retroactive assessment of business and occupation taxes on
13 corporate director compensation.

14 (5) The legislature also reaffirms its intent that all income of
15 all independent contractors is subject to business and occupation tax
16 unless specifically exempt under the Constitution or laws of this state
17 or the United States.

18 **Sec. 302.** RCW 82.04.360 and 1991 c 324 s 19 and 1991 c 275 s 2 are
19 each reenacted and amended to read as follows:

20 (1) This chapter (~~(shall)~~) does not apply to any person in respect
21 to his or her employment in the capacity of an employee or servant as
22 distinguished from that of an independent contractor. For the purposes
23 of this section, the definition of employee shall include those persons
24 that are defined in section 3121(d)(3)(B) of the federal internal
25 revenue code of 1986, as amended through January 1, 1991.

26 (2) (~~(A booth renter, as defined by RCW 18.16.020, is an~~
27 ~~independent contractor for purposes of this chapter.)) Until July 1,
28 2010, this chapter does not apply to amounts received by an individual
29 from a corporation as compensation for serving as a member of that
30 corporation's board of directors. Beginning July 1, 2010, such amounts
31 are taxable under RCW 82.04.290(2).~~

32 NEW SECTION. **Sec. 303.** The sole reason for deleting the language
33 in RCW 82.04.360(2) is because RCW 18.16.020 no longer defines the term
34 "booth renter." This should not be construed as a substantive change
35 in the law.

