
HOUSE BILL 2128

State of Washington 62nd Legislature 2011 2nd Special Session

By Representative Hunter; by request of Department of Revenue

Prefiled 11/23/11. Read first time 11/28/11. Referred to Committee on Ways & Means.

1 AN ACT Relating to clarifying the sales tax exemption for local
2 telephone service; reenacting and amending RCW 82.08.0289; creating new
3 sections; and declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** (1) In 1983 retail sales tax was extended to
6 telephone services. However, an exemption was provided for certain
7 residential telephone service. That exemption, codified in RCW
8 82.08.0289, applies to individuals "subscribing to a residential class
9 of telephone service."

10 (2) The legislature finds that the department of revenue has
11 consistently interpreted the phrase "a residential class of telephone
12 service" as it would have been understood when the residential
13 telephone service exemption was enacted in 1983. The legislature
14 further finds that in 1983, all telephone service was divided into
15 "residential" and "business" classifications, as defined by regulatory
16 tariffs filed with the utilities and transportation commission. As a
17 result, the department of revenue has consistently restricted the
18 residential telephone service exemption to local telephone service
19 provided under a regulatory tariff. This includes traditional landline

1 telephone service but excludes cellular telephone service and voice
2 over internet protocol telephone service, which are not subject to
3 regulatory tariffs.

4 (3) The legislature further finds that the department of revenue's
5 interpretation of the residential telephone service exemption has been
6 upheld by the board of tax appeals but was recently rejected by the
7 Thurston county superior court. In *Sprint Spectrum LP v. State of*
8 *Washington Department of Revenue*, Cause No. 10-2-02276-4, the Thurston
9 county superior court ruled that the taxpayer's sales of cellular
10 telephone services to nonbusiness customers qualify for the residential
11 telephone service exemption in RCW 82.08.0289. The legislature
12 recognizes that this decision, if upheld on appeal, would very likely
13 require the department of revenue to grant the residential telephone
14 service exemption to all other telecommunications services a carrier
15 treats as residential, such as voice over internet protocol telephone
16 service. The legislature also finds that if the superior court's
17 decision is sustained on appeal, the unexpected state and local revenue
18 impacts would be extremely large.

19 (4) The legislature intends by this act to prevent the adverse
20 fiscal impacts that would result if the Thurston county superior
21 court's *Sprint Spectrum LP* decision were to be upheld on appeal.
22 Therefore, this act clarifies that the residential telephone service
23 exemption in RCW 82.08.0289 has always applied only to residential
24 telephone service offered under a tariff filed with the utilities and
25 transportation commission, consistent with the department of revenue's
26 long-standing interpretation of the exemption. As a clarification of
27 the law, this act is intended to apply both prospectively and
28 retroactively.

29 **Sec. 2.** RCW 82.08.0289 and 2007 c 6 s 1006 and 2007 c 6 s 1005 are
30 each reenacted and amended to read as follows:

31 (1) The tax levied by RCW 82.08.020 (~~shall~~) does not apply to
32 sales of:

- 33 (a) Local service;
- 34 (b) Coin-operated telephone service; and
- 35 (c) Mobile telecommunications services, including any toll service,
36 provided to a customer whose place of primary use is outside this
37 state.

1 (2) The definitions in RCW 82.04.065, as well as the definitions in
2 this subsection, apply to this section.

3 (a) "Local service" means ancillary services and telecommunications
4 service, as those terms are defined in RCW 82.04.065, other than toll
5 service, provided to an individual subscribing to a residential class
6 of telephone service offered under a tariff required to be filed with
7 the Washington utilities and transportation commission under Title 80
8 RCW.

9 (b) "Toll service" does not include customer access line charges
10 for access to a toll calling network.

11 (c) "Coin-operated telephone service" means a telecommunications
12 service paid for by inserting money into a telephone accepting direct
13 deposits of money to operate.

14 NEW SECTION. **Sec. 3.** If any provision of this act or its
15 application to any person or circumstance is held invalid, the
16 remainder of the act or the application of the provision to other
17 persons or circumstances is not affected.

18 NEW SECTION. **Sec. 4.** This act applies prospectively as well as
19 retroactively to tax periods open for assessment or refund of taxes
20 under RCW 82.32.050 or 82.32.060, including any refund claims or
21 disputed assessments pending before the department of revenue, board of
22 tax appeals, or any court of law.

23 NEW SECTION. **Sec. 5.** This act is necessary for the immediate
24 preservation of the public peace, health, or safety, or support of the
25 state government and its existing public institutions, and takes effect
26 immediately.

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