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HOUSE BILL 2667

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State of Washington                      62nd Legislature                      2012 Regular Session

By Representatives Green, Dammeier, Jinkins, Kelley, Darneille,  
Dahlquist, Clibborn, and Seaquist

Read first time 01/23/12. Referred to Committee on Ways & Means.

1            AN ACT Relating to clarifying the definition of leasehold interest;  
2 and amending RCW 82.29A.020.

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

4            **Sec. 1.** RCW 82.29A.020 and 1999 c 220 s 2 are each amended to read  
5 as follows:

6            As used in this chapter the following terms shall be defined as  
7 follows, unless the context otherwise requires:

8            (1) "Leasehold interest" shall mean an interest in publicly owned  
9 real or personal property which exists by virtue of any lease, permit,  
10 license, or any other agreement, written or verbal, between the public  
11 owner of the property and a person who would not be exempt from  
12 property taxes if that person owned the property in fee, granting  
13 possession and use, to a degree less than fee simple ownership:  
14 PROVIDED, That no interest in personal property (excluding land or  
15 buildings) which is owned by the United States, whether or not as  
16 trustee, or by any foreign government shall constitute a leasehold  
17 interest hereunder when the right to use such property is granted  
18 pursuant to a contract solely for the manufacture or production of  
19 articles for sale to the United States or any foreign government. The

1 term "leasehold interest" shall include the rights of use or occupancy  
2 by others of property which is owned in fee or held in trust by a  
3 public corporation, commission, or authority created under RCW  
4 35.21.730 or 35.21.660 if the property is listed on or is within a  
5 district listed on any federal or state register of historical sites.  
6 The term "leasehold interest" shall not include road or utility  
7 easements, rights of access, occupancy, or use granted solely for the  
8 purpose of removing materials or products purchased from a public owner  
9 or the lessee of a public owner, or rights of access, occupancy, or use  
10 granted solely for the purpose of natural energy resource exploration.  
11 "Leasehold interest" does not include the preferential use of publicly  
12 owned cargo cranes and docks and associated areas used in the loading  
13 and discharging of cargo located at a port district marine facility.  
14 "Preferential use" means that publicly owned real or personal property  
15 is used by a private party under a written agreement with the public  
16 owner, but the public owner or any third party maintains a right to use  
17 the property when not being used by the private party.

18 (2) "Taxable rent" shall mean contract rent as defined in  
19 subsection (a) of this subsection in all cases where the lease or  
20 agreement has been established or renegotiated through competitive  
21 bidding, or negotiated or renegotiated in accordance with statutory  
22 requirements regarding the rent payable, or negotiated or renegotiated  
23 under circumstances, established by public record, clearly showing that  
24 the contract rent was the maximum attainable by the lessor: PROVIDED,  
25 That after January 1, 1986, with respect to any lease which has been in  
26 effect for ten years or more without renegotiation, taxable rent may be  
27 established by procedures set forth in subsection (b) of this  
28 subsection. All other leasehold interests shall be subject to the  
29 determination of taxable rent under the terms of subsection (b) of this  
30 subsection.

31 For purposes of determining leasehold excise tax on any lands on  
32 the Hanford reservation subleased to a private or public entity by the  
33 department of ecology, taxable rent shall include only the annual cash  
34 rental payment made by such entity to the department of ecology as  
35 specifically referred to as rent in the sublease agreement between the  
36 parties and shall not include any other fees, assessments, or charges  
37 imposed on or collected by such entity irrespective of whether the

1 private or public entity pays or collects such other fees, assessments,  
2 or charges as specified in the sublease agreement.

3 (a) "Contract rent" shall mean the amount of consideration due as  
4 payment for a leasehold interest, including: The total of cash  
5 payments made to the lessor or to another party for the benefit of the  
6 lessor according to the requirements of the lease or agreement,  
7 including any rents paid by a sublessee; expenditures for the  
8 protection of the lessor's interest when required by the terms of the  
9 lease or agreement; and expenditures for improvements to the property  
10 to the extent that such improvements become the property of the lessor.  
11 Where the consideration conveyed for the leasehold interest is made in  
12 combination with payment for concession or other rights granted by the  
13 lessor, only that portion of such payment which represents  
14 consideration for the leasehold interest shall be part of contract  
15 rent.

16 "Contract rent" shall not include: (i) Expenditures made by the  
17 lessee, which under the terms of the lease or agreement, are to be  
18 reimbursed by the lessor to the lessee or expenditures for improvements  
19 and protection made pursuant to a lease or an agreement which requires  
20 that the use of the improved property be open to the general public and  
21 that no profit will inure to the lessee from the lease; (ii)  
22 expenditures made by the lessee for the replacement or repair of  
23 facilities due to fire or other casualty including payments for  
24 insurance to provide reimbursement for losses or payments to a public  
25 or private entity for protection of such property from damage or loss  
26 or for alterations or additions made necessary by an action of  
27 government taken after the date of the execution of the lease or  
28 agreement; (iii) improvements added to publicly owned property by a  
29 sublessee under an agreement executed prior to January 1, 1976, which  
30 have been taxed as personal property of the sublessee prior to January  
31 1, 1976, or improvements made by a sublessee of the same lessee under  
32 a similar agreement executed prior to January 1, 1976, and such  
33 improvements shall be taxable to the sublessee as personal property;  
34 (iv) improvements added to publicly owned property if such improvements  
35 are being taxed as personal property to any person.

36 Any prepaid contract rent shall be considered to have been paid in  
37 the year due and not in the year actually paid with respect to  
38 prepayment for a period of more than one year. Expenditures for

1 improvements with a useful life of more than one year which are  
2 included as part of contract rent shall be treated as prepaid contract  
3 rent and prorated over the useful life of the improvement or the  
4 remaining term of the lease or agreement if the useful life is in  
5 excess of the remaining term of the lease or agreement. Rent prepaid  
6 prior to January 1, 1976, shall be prorated from the date of  
7 prepayment.

8 With respect to a "product lease", the value shall be that value  
9 determined at the time of sale under terms of the lease.

10 (b) If it shall be determined by the department of revenue, upon  
11 examination of a lessee's accounts or those of a lessor of publicly  
12 owned property, that a lessee is occupying or using publicly owned  
13 property in such a manner as to create a leasehold interest and that  
14 such leasehold interest has not been established through competitive  
15 bidding, or negotiated in accordance with statutory requirements  
16 regarding the rent payable, or negotiated under circumstances,  
17 established by public record, clearly showing that the contract rent  
18 was the maximum attainable by the lessor, the department may establish  
19 a taxable rent computation for use in determining the tax payable under  
20 authority granted in this chapter based upon the following criteria:

21 (i) Consideration shall be given to rental being paid to other lessors  
22 by lessees of similar property for similar purposes over similar  
23 periods of time; (ii) consideration shall be given to what would be  
24 considered a fair rate of return on the market value of the property  
25 leased less reasonable deductions for any restrictions on use, special  
26 operating requirements or provisions for concurrent use by the lessor,  
27 another person or the general public.

28 (3) "Product lease" as used in this chapter shall mean a lease of  
29 property for use in the production of agricultural or marine products  
30 to the extent that such lease provides for the contract rent to be paid  
31 by the delivery of a stated percentage of the production of such  
32 agricultural or marine products to the credit of the lessor or the  
33 payment to the lessor of a stated percentage of the proceeds from the  
34 sale of such products.

35 (4) "Renegotiated" means a change in the lease agreement which  
36 changes the agreed time of possession, restrictions on use, the rate of  
37 the cash rental or of any other consideration payable by the lessee to  
38 or for the benefit of the lessor, other than any such change required

1 by the terms of the lease or agreement. In addition "renegotiated"  
2 shall mean a continuation of possession by the lessee beyond the date  
3 when, under the terms of the lease agreement, the lessee had the right  
4 to vacate the premises without any further liability to the lessor.

5 (5) "City" means any city or town.

6 (6) "Products" includes natural resource products such as cut or  
7 picked evergreen foliage, Cascara bark, wild edible mushrooms, native  
8 ornamental trees and shrubs, ore and minerals, natural gas, geothermal  
9 water and steam, and forage removed through the grazing of livestock.

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