
SENATE BILL 5422

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By Senators Regala, Honeyford, Kastama, Becker, Parlette, Ericksen, Hatfield, Nelson, Harper, Tom, White, McAuliffe, Prentice, and Shin

Read first time 01/25/11. Referred to Committee on Ways & Means.

1 AN ACT Relating to the taxation of amusement and recreation
2 services involving amateur sports; reenacting and amending RCW
3 82.04.050; adding a new section to chapter 82.04 RCW; adding a new
4 section to chapter 82.08 RCW; adding a new section to chapter 82.12
5 RCW; and providing an effective date.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 82.04 RCW
8 to read as follows:

9 (1) The tax imposed in this chapter does not apply to amounts
10 received by a nonprofit organization or governmental entity for the
11 privilege of joining a competitive team sport league or for the right
12 to participate in the competitive team sport activities conducted under
13 the auspices of such a league, including amounts paid solely for the
14 privilege of entering a tournament or other type of competition.

15 (2) For the purposes of this section, the following definitions
16 apply:

17 (a) "Competitive team sport" means a sport in which teams of two or
18 more players compete against one another, where the collective effort

1 of the teams' members determines the final score and the outcome of the
2 competition.

3 (b) "Governmental entity" means any county, city, town, or other
4 municipal corporation.

5 (c) "League" means a group of teams that compete chiefly against
6 each other in a specific competitive team sport on a set schedule for
7 a specified duration of time.

8 (d) "Nonprofit organization" means:

9 (i) An organization described in 26 U.S.C. Sec. 501(c) of the
10 federal internal revenue code, as existing on the effective date of
11 this act; or

12 (ii) An organization that is organized and operated exclusively for
13 charitable, civic, or fraternal purposes and in which no part of its
14 net earnings inure to the benefit of any member, founder, contributor,
15 employee, shareholder, or trustee of the organization.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.08 RCW
17 to read as follows:

18 (1) The tax imposed by RCW 82.08.020 does not apply to the sale of
19 amusement and recreation services by a nonprofit organization or
20 governmental entity, but only if the gross proceeds received from such
21 sale are exempt from business and occupation tax under section 1 of
22 this act or would be exempt from business and occupation tax under
23 section 1 of this act if the seller were subject to business and
24 occupation tax.

25 (2) For purposes of this section, the definitions in section 1 of
26 this act apply, except that "governmental entity" also includes a state
27 and any of its departments and institutions.

28 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.12 RCW
29 to read as follows:

30 The tax imposed by RCW 82.12.020 does not apply to the use of
31 amusement and recreation services if the sale of such services to the
32 user thereof was exempt from retail sales tax under section 2 of this
33 act.

34 **Sec. 4.** RCW 82.04.050 and 2010 c 112 s 14, 2010 c 111 s 201, and
35 2010 c 106 s 202 are each reenacted and amended to read as follows:

1 (1)(a) "Sale at retail" or "retail sale" means every sale of
2 tangible personal property (including articles produced, fabricated, or
3 imprinted) to all persons irrespective of the nature of their business
4 and including, among others, without limiting the scope hereof, persons
5 who install, repair, clean, alter, improve, construct, or decorate real
6 or personal property of or for consumers other than a sale to a person
7 who:

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

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

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

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

28 (v) Purchases for the purpose of providing the property to
29 consumers as part of competitive telephone service, as defined in RCW
30 82.04.065; or

31 (vi) Purchases for the purpose of satisfying the person's
32 obligations under an extended warranty as defined in subsection (7) of
33 this section, if such tangible personal property replaces or becomes an
34 ingredient or component of property covered by the extended warranty
35 without intervening use by such person.

36 (b) The term includes every sale of tangible personal property that
37 is used or consumed or to be used or consumed in the performance of any

1 activity defined as a "sale at retail" or "retail sale" even though
2 such property is resold or used as provided in (a)(i) through (vi) of
3 this subsection following such use.

4 (c) The term also means every sale of tangible personal property to
5 persons engaged in any business that is taxable under RCW 82.04.280
6 (1), (2), and (7), 82.04.290, and 82.04.2908.

7 (2) The term "sale at retail" or "retail sale" includes the sale of
8 or charge made for tangible personal property consumed and/or for labor
9 and services rendered in respect to the following:

10 (a) The installing, repairing, cleaning, altering, imprinting, or
11 improving of tangible personal property of or for consumers, including
12 charges made for the mere use of facilities in respect thereto, but
13 excluding charges made for the use of self-service laundry facilities,
14 and also excluding sales of laundry service to nonprofit health care
15 facilities, and excluding services rendered in respect to live animals,
16 birds and insects;

17 (b) The constructing, repairing, decorating, or improving of new or
18 existing buildings or other structures under, upon, or above real
19 property of or for consumers, including the installing or attaching of
20 any article of tangible personal property therein or thereto, whether
21 or not such personal property becomes a part of the realty by virtue of
22 installation, and also includes the sale of services or charges made
23 for the clearing of land and the moving of earth excepting the mere
24 leveling of land used in commercial farming or agriculture;

25 (c) The constructing, repairing, or improving of any structure
26 upon, above, or under any real property owned by an owner who conveys
27 the property by title, possession, or any other means to the person
28 performing such construction, repair, or improvement for the purpose of
29 performing such construction, repair, or improvement and the property
30 is then reconveyed by title, possession, or any other means to the
31 original owner;

32 (d) The cleaning, fumigating, razing, or moving of existing
33 buildings or structures, but does not include the charge made for
34 janitorial services; and for purposes of this section the term
35 "janitorial services" means those cleaning and caretaking services
36 ordinarily performed by commercial janitor service businesses
37 including, but not limited to, wall and window washing, floor cleaning
38 and waxing, and the cleaning in place of rugs, drapes and upholstery.

1 The term "janitorial services" does not include painting, papering,
2 repairing, furnace or septic tank cleaning, snow removal or
3 sandblasting;

4 (e) Automobile towing and similar automotive transportation
5 services, but not in respect to those required to report and pay taxes
6 under chapter 82.16 RCW;

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

17 (g) The installing, repairing, altering, or improving of digital
18 goods for consumers;

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

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

33 (a) Amusement and recreation services including but not limited to
34 golf, pool, billiards, skating, bowling, ski lifts and tows, day trips
35 for sightseeing purposes, and others, when provided to consumers. For
36 purposes of this subsection (3)(a), the sale of or charge made for
37 amusement and recreation services includes but is not limited to: (i)
38 Charges to participate in a sport or other amusement and recreation

1 activity, including fees to join a team or club, but not including
2 charges for admission to facilities where the consumer is merely a
3 spectator; (ii) fees charged for the privilege of entering a tournament
4 or other type of competition or event involving an amusement and
5 recreation activity; (iii) charges for the privilege of allowing an
6 individual, team, or club to join an association of teams or clubs that
7 compete chiefly among themselves; and (iv) charges for the use of
8 facilities for amusement and recreation activities, such as fields,
9 courts, rinks, gymnasiums, and swimming pools;

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

11 (c) Credit bureau services;

12 (d) Automobile parking and storage garage services;

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

18 (f) Service charges associated with tickets to professional
19 sporting events; and

20 (g) The following personal services: Physical fitness services,
21 tanning salon services, tattoo parlor services, steam bath services,
22 turkish bath services, escort services, and dating services.

23 (4)(a) The term also includes the renting or leasing of tangible
24 personal property to consumers.

25 (b) The term does not include the renting or leasing of tangible
26 personal property where the lease or rental is for the purpose of
27 sublease or subrent.

28 (5) The term also includes the providing of "competitive telephone
29 service," "telecommunications service," or "ancillary services," as
30 those terms are defined in RCW 82.04.065, to consumers.

31 (6)(a) The term also includes the sale of prewritten computer
32 software to a consumer, regardless of the method of delivery to the end
33 user. For purposes of this subsection (6)(a), the sale of prewritten
34 computer software includes the sale of or charge made for a key or an
35 enabling or activation code, where the key or code is required to
36 activate prewritten computer software and put the software into use.
37 There is no separate sale of the key or code from the prewritten

1 computer software, regardless of how the sale may be characterized by
2 the vendor or by the purchaser.

3 The term "retail sale" does not include the sale of or charge made
4 for:

5 (i) Custom software; or

6 (ii) The customization of prewritten computer software.

7 (b)(i) The term also includes the charge made to consumers for the
8 right to access and use prewritten computer software, where possession
9 of the software is maintained by the seller or a third party,
10 regardless of whether the charge for the service is on a per use, per
11 user, per license, subscription, or some other basis.

12 (ii)(A) The service described in (b)(i) of this subsection (6)
13 includes the right to access and use prewritten computer software to
14 perform data processing.

15 (B) For purposes of this subsection (6)(b)(ii), "data processing"
16 means the systematic performance of operations on data to extract the
17 required information in an appropriate form or to convert the data to
18 usable information. Data processing includes check processing, image
19 processing, form processing, survey processing, payroll processing,
20 claim processing, and similar activities.

21 (7) The term also includes the sale of or charge made for an
22 extended warranty to a consumer. For purposes of this subsection,
23 "extended warranty" means an agreement for a specified duration to
24 perform the replacement or repair of tangible personal property at no
25 additional charge or a reduced charge for tangible personal property,
26 labor, or both, or to provide indemnification for the replacement or
27 repair of tangible personal property, based on the occurrence of
28 specified events. The term "extended warranty" does not include an
29 agreement, otherwise meeting the definition of extended warranty in
30 this subsection, if no separate charge is made for the agreement and
31 the value of the agreement is included in the sales price of the
32 tangible personal property covered by the agreement. For purposes of
33 this subsection, "sales price" has the same meaning as in RCW
34 82.08.010.

35 (8)(a) The term also includes the following sales to consumers of
36 digital goods, digital codes, and digital automated services:

37 (i) Sales in which the seller has granted the purchaser the right
38 of permanent use;

1 (ii) Sales in which the seller has granted the purchaser a right of
2 use that is less than permanent;

3 (iii) Sales in which the purchaser is not obligated to make
4 continued payment as a condition of the sale; and

5 (iv) Sales in which the purchaser is obligated to make continued
6 payment as a condition of the sale.

7 (b) A retail sale of digital goods, digital codes, or digital
8 automated services under this subsection (8) includes any services
9 provided by the seller exclusively in connection with the digital
10 goods, digital codes, or digital automated services, whether or not a
11 separate charge is made for such services.

12 (c) For purposes of this subsection, "permanent" means perpetual or
13 for an indefinite or unspecified length of time. A right of permanent
14 use is presumed to have been granted unless the agreement between the
15 seller and the purchaser specifies or the circumstances surrounding the
16 transaction suggest or indicate that the right to use terminates on the
17 occurrence of a condition subsequent.

18 (9) The term also includes the charge made for providing tangible
19 personal property along with an operator for a fixed or indeterminate
20 period of time. A consideration of this is that the operator is
21 necessary for the tangible personal property to perform as designed.
22 For the purpose of this subsection (9), an operator must do more than
23 maintain, inspect, or set up the tangible personal property.

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

32 (11) The term also does not include sales of chemical sprays or
33 washes to persons for the purpose of postharvest treatment of fruit for
34 the prevention of scald, fungus, mold, or decay, nor does it include
35 sales of feed, seed, seedlings, fertilizer, agents for enhanced
36 pollination including insects such as bees, and spray materials to:

37 (a) Persons who participate in the federal conservation reserve
38 program, the environmental quality incentives program, the wetlands

1 reserve program, and the wildlife habitat incentives program, or their
2 successors administered by the United States department of agriculture;
3 (b) farmers for the purpose of producing for sale any agricultural
4 product; and (c) farmers acting under cooperative habitat development
5 or access contracts with an organization exempt from federal income tax
6 under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code or
7 the Washington state department of fish and wildlife to produce or
8 improve wildlife habitat on land that the farmer owns or leases.

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

25 (13) The term does not include the sale of or charge made for
26 labor, services, or tangible personal property pursuant to agreements
27 providing maintenance services for bus, rail, or rail fixed guideway
28 equipment when a regional transit authority is the recipient of the
29 labor, services, or tangible personal property, and a transit agency,
30 as defined in RCW 81.104.015, performs the labor or services.

31 (14) The term does not include the sale for resale of any service
32 described in this section if the sale would otherwise constitute a
33 "sale at retail" and "retail sale" under this section.

34 NEW SECTION. **Sec. 5.** This act takes effect August 1, 2011.

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