
SENATE BILL 5838

State of Washington

62nd Legislature

2011 Regular Session

By Senators Hargrove and Murray; by request of Department of Revenue and Department of Social and Health Services

Read first time 02/21/11. Referred to Committee on Ways & Means.

1 AN ACT Relating to making changes to laws administered by the
2 department of revenue that do not create any new or, except for the
3 deduction in RCW 82.04.4297, broaden any existing tax preference as
4 defined in RCW 43.136.021 or increase any person's tax burden; amending
5 RCW 82.04.220, 82.12.040, 82.04.4297, 82.04.431, and 43.06.400;
6 repealing RCW 82.16.140 and 82.32.570; and providing an effective date.

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

8 **Sec. 1.** RCW 82.04.220 and 2010 1st sp.s. c 23 s 102 are each
9 amended to read as follows:

10 (1) There is levied and collected from every person that has a
11 substantial nexus with this state a tax for the act or privilege of
12 engaging in business activities. The tax is measured by the
13 application of rates against value of products, gross proceeds of
14 sales, or gross income of the business, as the case may be.

15 (2) A person who has a substantial nexus with this state in any tax
16 year under the provisions of RCW 82.04.067 will be deemed to have a
17 substantial nexus with this state for the following tax year.

1 NEW SECTION. **Sec. 2.** The following acts or parts of acts are each
2 repealed:

3 (1) RCW 82.16.140 (Renewable energy system cost recovery--Report to
4 legislature) and 2010 c 202 s 4 & 2005 c 300 s 5; and

5 (2) RCW 82.32.570 (Smelter tax incentives--Goals--Annual report)
6 and 2010 1st sp.s. c 2 s 6, 2006 c 182 s 6, & 2004 c 24 s 14.

7 **Sec. 3.** RCW 82.12.040 and 2010 c 106 s 221 are each amended to
8 read as follows:

9 (1) Every person who maintains in this state a place of business or
10 a stock of goods, or engages in business activities within this state,
11 shall obtain from the department a certificate of registration, and
12 shall, at the time of making sales of tangible personal property,
13 digital goods, digital codes, digital automated services, extended
14 warranties, or sales of any service defined as a retail sale in RCW
15 82.04.050 (2) (a) or (g), (3)(a), or (6)(b), or making transfers of
16 either possession or title, or both, of tangible personal property for
17 use in this state, collect from the purchasers or transferees the tax
18 imposed under this chapter. The tax to be collected under this section
19 must be in an amount equal to the purchase price multiplied by the rate
20 in effect for the retail sales tax under RCW 82.08.020. For the
21 purposes of this chapter, the phrase "maintains in this state a place
22 of business" shall include the solicitation of sales and/or taking of
23 orders by sales agents or traveling representatives. For the purposes
24 of this chapter, "engages in business activity within this state"
25 includes every activity which is sufficient under the Constitution of
26 the United States for this state to require collection of tax under
27 this chapter. The department must in rules specify activities which
28 constitute engaging in business activity within this state, and must
29 keep the rules current with future court interpretations of the
30 Constitution of the United States.

31 (2) Every person who engages in this state in the business of
32 acting as an independent selling agent for persons who do not hold a
33 valid certificate of registration, and who receives compensation by
34 reason of sales of tangible personal property, digital goods, digital
35 codes, digital automated services, extended warranties, or sales of any
36 service defined as a retail sale in RCW 82.04.050 (2) (a) or (g),
37 (3)(a), or (6)(b), of his or her principals for use in this state,

1 must, at the time such sales are made, collect from the purchasers the
2 tax imposed on the purchase price under this chapter, and for that
3 purpose is deemed a retailer as defined in this chapter.

4 (3) The tax required to be collected by this chapter is deemed to
5 be held in trust by the retailer until paid to the department, and any
6 retailer who appropriates or converts the tax collected to the
7 retailer's own use or to any use other than the payment of the tax
8 provided herein to the extent that the money required to be collected
9 is not available for payment on the due date as prescribed is guilty of
10 a misdemeanor. In case any seller fails to collect the tax herein
11 imposed or having collected the tax, fails to pay the same to the
12 department in the manner prescribed, whether such failure is the result
13 of the seller's own acts or the result of acts or conditions beyond the
14 seller's control, the seller is nevertheless personally liable to the
15 state for the amount of such tax, unless the seller has taken from the
16 buyer a copy of a direct pay permit issued under RCW 82.32.087.

17 (4) Any retailer who refunds, remits, or rebates to a purchaser, or
18 transferee, either directly or indirectly, and by whatever means, all
19 or any part of the tax levied by this chapter is guilty of a
20 misdemeanor.

21 (5) Notwithstanding subsections (1) through (4) of this section,
22 any person making sales is not obligated to collect the tax imposed by
23 this chapter if:

24 (a) The person's activities in this state, whether conducted
25 directly or through another person, are limited to:

26 (i) The storage, dissemination, or display of advertising;

27 (ii) The taking of orders; or

28 (iii) The processing of payments; and

29 (b) The activities are conducted electronically via a web site on
30 a server or other computer equipment located in Washington that is not
31 owned or operated by the person making sales into this state nor owned
32 or operated by an affiliated person. "Affiliated persons" has the same
33 meaning as provided in RCW 82.04.424.

34 (6) Subsection (5) of this section expires when: (a) The United
35 States congress grants individual states the authority to impose sales
36 and use tax collection duties on remote sellers; or (b) it is
37 determined by a court of competent jurisdiction, in a judgment not

1 subject to review, that a state can impose sales and use tax collection
2 duties on remote sellers.

3 (7) Notwithstanding subsections (1) through (4) of this section,
4 any person making sales is not obligated to collect the tax imposed by
5 this chapter if the person would have been obligated to collect retail
6 sales tax on the sale absent a specific exemption provided in chapter
7 82.08 RCW, and there is no corresponding use tax exemption in this
8 chapter. Nothing in this subsection (7) may be construed as relieving
9 purchasers from liability for reporting and remitting the tax due under
10 this chapter directly to the department.

11 (8) Notwithstanding subsections (1) through (4) of this section,
12 any person making sales is not obligated to collect the tax imposed by
13 this chapter if the state is prohibited under the Constitution or laws
14 of the United States from requiring the person to collect the tax
15 imposed by this chapter.

16 **Sec. 4.** RCW 82.04.4297 and 2002 c 314 s 3 are each amended to read
17 as follows:

18 In computing tax there may be deducted from the measure of tax
19 amounts received from the United States or any instrumentality thereof
20 or from the state of Washington or any municipal corporation or
21 political subdivision thereof as compensation for, or to support,
22 health or social welfare services rendered by a health or social
23 welfare organization or by a municipal corporation or political
24 subdivision, except deductions are not allowed under this section for
25 amounts that are received under an employee benefit plan. For purposes
26 of this section, amounts received under subcontracts pursuant to
27 chapter 74.13 RCW are deemed to be received from the state of
28 Washington.

29 **Sec. 5.** RCW 82.04.431 and 2008 c 137 s 1 are each amended to read
30 as follows:

31 (1) For the purposes of RCW 82.04.4297, 82.04.4311, 82.08.02915,
32 82.12.02915, and 82.08.997, the term "health or social welfare
33 organization" means an organization, including any community action
34 council, which renders health or social welfare services as defined in
35 subsection (2) of this section, which is a not-for-profit corporation
36 under chapter 24.03 RCW and which is managed by a governing board of

1 not less than eight individuals none of whom is a paid employee of the
2 organization or which is a corporation sole under chapter 24.12 RCW.
3 Health or social welfare organization does not include a corporation
4 providing professional services as authorized in chapter 18.100 RCW.
5 In addition a corporation in order to be exempt under RCW 82.04.4297
6 shall satisfy the following conditions:

7 (a) No part of its income may be paid directly or indirectly to its
8 members, stockholders, officers, directors, or trustees except in the
9 form of services rendered by the corporation in accordance with its
10 purposes and bylaws;

11 (b) Salary or compensation paid to its officers and executives must
12 be only for actual services rendered, and at levels comparable to the
13 salary or compensation of like positions within the public service of
14 the state;

15 (c) Assets of the corporation must be irrevocably dedicated to the
16 activities for which the exemption is granted and, on the liquidation,
17 dissolution, or abandonment by the corporation, may not inure directly
18 or indirectly to the benefit of any member or individual except a
19 nonprofit organization, association, or corporation which also would be
20 entitled to the exemption;

21 (d) The corporation must be duly licensed or certified where
22 licensing or certification is required by law or regulation;

23 (e) The amounts received qualifying for exemption must be used for
24 the activities for which the exemption is granted;

25 (f) Services must be available regardless of race, color, national
26 origin, or ancestry; and

27 (g) The director of revenue shall have access to its books in order
28 to determine whether the corporation is exempt from taxes within the
29 intent of RCW 82.04.4297 and this section.

30 (2) The term "health or social welfare services" includes and is
31 limited to:

32 (a) Mental health, drug, or alcoholism counseling or treatment;

33 (b) Family counseling;

34 (c) Health care services;

35 (d) Therapeutic, diagnostic, rehabilitative, or restorative
36 services for the care of the sick, aged, or physically,
37 developmentally, or emotionally-disabled individuals;

1 (e) Activities which are for the purpose of preventing or
2 ameliorating juvenile delinquency or child abuse, including
3 recreational activities for those purposes;

4 (f) Care of orphans or foster children;

5 (g) Day care of children;

6 (h) Employment development, training, and placement;

7 (i) Legal services to the indigent;

8 (j) Weatherization assistance or minor home repair for low-income
9 homeowners or renters;

10 (k) Assistance to low-income homeowners and renters to offset the
11 cost of home heating energy, through direct benefits to eligible
12 households or to fuel vendors on behalf of eligible households;

13 (l) Community services to low-income individuals, families, and
14 groups, which are designed to have a measurable and potentially major
15 impact on causes of poverty in communities of the state; (~~and~~)

16 (m) Temporary medical housing, as defined in RCW 82.08.997, if the
17 housing is provided only:

18 (i) While the patient is receiving medical treatment at a hospital
19 required to be licensed under RCW 70.41.090 or at an outpatient clinic
20 associated with such hospital, including any period of recuperation or
21 observation immediately following such medical treatment; and

22 (ii) By a person that does not furnish lodging or related services
23 to the general public; and

24 (n) Performance contract management of child welfare services under
25 chapter 74.13 RCW.

26 **Sec. 6.** RCW 43.06.400 and 1999 c 372 s 5 are each amended to read
27 as follows:

28 (1) Beginning in January (~~(1984)~~) 2014, and in January of every
29 fourth year thereafter, the department of revenue (~~(shall)~~) must submit
30 to the legislature prior to the regular session a listing of the amount
31 of reduction for the current and next biennium in the revenues of the
32 state or the revenues of local government collected by the state as a
33 result of tax exemptions. The listing (~~(shall)~~) must include an
34 estimate of the revenue lost from the tax exemption, the purpose of the
35 tax exemption, the persons, organizations, or parts of the population
36 which benefit from the tax exemption, and whether or not the tax

1 exemption conflicts with another state program. The listing (~~shall~~)
2 must include but not be limited to the following revenue sources:

3 ~~((1))~~ (a) Real and personal property tax exemptions under Title
4 84 RCW;

5 ~~((2))~~ (b) Business and occupation tax exemptions, deductions, and
6 credits under chapter 82.04 RCW;

7 ~~((3))~~ (c) Retail sales and use tax exemptions under chapters
8 82.08, 82.12, and 82.14 RCW;

9 ~~((4))~~ (d) Public utility tax exemptions and deductions under
10 chapter 82.16 RCW;

11 ~~((5))~~ (e) Food fish and shellfish tax exemptions under chapter
12 82.27 RCW;

13 ~~((6))~~ (f) Leasehold excise tax exemptions under chapter 82.29A
14 RCW;

15 ~~((7))~~ (g) Motor vehicle and special fuel tax exemptions and
16 refunds under chapters 82.36 and 82.38 RCW;

17 ~~((8))~~ (h) Aircraft fuel tax exemptions under chapter 82.42 RCW;

18 ~~((9))~~ (i) Motor vehicle excise tax exclusions under chapter 82.44
19 RCW; and

20 ~~((10))~~ (j) Insurance premiums tax exemptions under chapter 48.14
21 RCW.

22 (2) The department of revenue (~~shall~~) must prepare the listing
23 required by this section with the assistance of any other agencies or
24 departments as may be required.

25 (3) The department of revenue (~~shall~~) must present the listing to
26 the ways and means committees of each house in public hearings.

27 (4) Beginning in January (~~1984~~) 2014, and every four years
28 thereafter the governor is requested to review the report from the
29 department of revenue and may submit recommendations to the legislature
30 with respect to the repeal or modification of any tax exemption. The
31 ways and means committees of each house and the appropriate standing
32 committee of each house (~~shall~~) must hold public hearings and take
33 appropriate action on the recommendations submitted by the governor.

34 (5) As used in this section, "tax exemption" means an exemption,
35 exclusion, or deduction from the base of a tax; a credit against a tax;
36 a deferral of a tax; or a preferential tax rate.

1 NEW SECTION. **Sec. 7.** Sections 4 and 5 of this act take effect
2 August 1, 2011.

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