

**EHB 1287** - S COMM AMD

By Committee on Ways & Means

ADOPTED AS AMENDED 04/28/2013

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 82.29A.010 and 2010 c 281 s 2 are each amended to  
4 read as follows:

5 (1)(a) The legislature hereby recognizes that properties of the  
6 state of Washington, counties, school districts, and other municipal  
7 corporations are exempted by Article 7, section 1 of the state  
8 Constitution from property tax obligations, but that private lessees of  
9 such public properties receive substantial benefits from governmental  
10 services provided by units of government.

11 (b) The legislature further recognizes that a uniform method of  
12 taxation should apply to such leasehold interests in publicly owned  
13 property.

14 (c) The legislature finds that lessees of publicly owned property  
15 or community centers are entitled to those same governmental services  
16 and does hereby provide for a leasehold excise tax to fairly compensate  
17 governmental units for services rendered to such lessees of publicly  
18 owned property or community centers. For the purposes of this  
19 subsection, "community center" has the same meaning as provided in RCW  
20 84.36.010.

21 (d) The legislature also finds that eliminating the property tax on  
22 property owned exclusively by federally recognized Indian tribes within  
23 the state requires that the leasehold excise tax also be applied to  
24 leasehold interests on tribally owned property.

25 (2) The legislature further finds that experience gained by  
26 lessors, lessees, and the department of revenue since enactment of the  
27 leasehold excise tax under this chapter has shed light on areas in the  
28 leasehold excise statutes that need explanation and clarification. The  
29 purpose of chapter 220, Laws of 1999 is to make those changes.

1       **Sec. 2.** RCW 82.29A.020 and 2012 2nd sp.s. c 6 s 501 are each  
2 amended to read as follows:

3       The definitions in this section apply throughout this chapter  
4 unless the context requires otherwise.

5       (1)(a) "Leasehold interest" means an interest in publicly owned  
6 real or personal property which exists by virtue of any lease, permit,  
7 license, or any other agreement, written or verbal, between the public  
8 owner of the property and a person who would not be exempt from  
9 property taxes if that person owned the property in fee, granting  
10 possession and use, to a degree less than fee simple ownership.  
11 However, no interest in personal property (excluding land or buildings)  
12 which is owned by the United States, whether or not as trustee, or by  
13 any foreign government may constitute a leasehold interest hereunder  
14 when the right to use such property is granted pursuant to a contract  
15 solely for the manufacture or production of articles for sale to the  
16 United States or any foreign government. The term "leasehold interest"  
17 includes the rights of use or occupancy by others of property which is  
18 owned in fee or held in trust by a public corporation, commission, or  
19 authority created under RCW 35.21.730 or 35.21.660 if the property is  
20 listed on or is within a district listed on any federal or state  
21 register of historical sites.

22       (b) The term "leasehold interest" does not include:

23       (i) Road or utility easements, rights of access, occupancy, or use  
24 granted solely for the purpose of removing materials or products  
25 purchased from a public owner or the lessee of a public owner, or  
26 rights of access, occupancy, or use granted solely for the purpose of  
27 natural energy resource exploration(~~(.—"Leasehold interest" does not~~  
28 ~~include)); or~~

29       (ii) The preferential use of publicly owned cargo cranes and docks  
30 and associated areas used in the loading and discharging of cargo  
31 located at a port district marine facility. "Preferential use" means  
32 that publicly owned real or personal property is used by a private  
33 party under a written agreement with the public owner, but the public  
34 owner or any third party maintains a right to use the property when not  
35 being used by the private party.

36       (c) "Publicly owned real or personal property" includes real or  
37 personal property owned by a federally recognized Indian tribe in the  
38 state and exempt from tax under RCW 84.36.010.

1           (2)(a) "Taxable rent" means contract rent as defined in (c) of this  
2 subsection in all cases where the lease or agreement has been  
3 established or renegotiated through competitive bidding, or negotiated  
4 or renegotiated in accordance with statutory requirements regarding the  
5 rent payable, or negotiated or renegotiated under circumstances,  
6 established by public record, clearly showing that the contract rent  
7 was the maximum attainable by the lessor. However, after January 1,  
8 1986, with respect to any lease which has been in effect for ten years  
9 or more without renegotiation, taxable rent may be established by  
10 procedures set forth in (g) of this subsection. All other leasehold  
11 interests are subject to the determination of taxable rent under the  
12 terms of (g) of this subsection.

13           (b) For purposes of determining leasehold excise tax on any lands  
14 on the Hanford reservation subleased to a private or public entity by  
15 the department of ecology, taxable rent includes only the annual cash  
16 rental payment made by such entity to the department of ecology as  
17 specifically referred to as rent in the sublease agreement between the  
18 parties and does not include any other fees, assessments, or charges  
19 imposed on or collected by such entity irrespective of whether the  
20 private or public entity pays or collects such other fees, assessments,  
21 or charges as specified in the sublease agreement.

22           (c) "Contract rent" means the amount of consideration due as  
23 payment for a leasehold interest, including: The total of cash  
24 payments made to the lessor or to another party for the benefit of the  
25 lessor according to the requirements of the lease or agreement,  
26 including any rents paid by a sublessee; expenditures for the  
27 protection of the lessor's interest when required by the terms of the  
28 lease or agreement; and expenditures for improvements to the property  
29 to the extent that such improvements become the property of the lessor.  
30 Where the consideration conveyed for the leasehold interest is made in  
31 combination with payment for concession or other rights granted by the  
32 lessor, only that portion of such payment which represents  
33 consideration for the leasehold interest is part of contract rent.

34           (d) "Contract rent" does not include: (i) Expenditures made by the  
35 lessee, which under the terms of the lease or agreement, are to be  
36 reimbursed by the lessor to the lessee or expenditures for improvements  
37 and protection made pursuant to a lease or an agreement which requires  
38 that the use of the improved property be open to the general public and

1 that no profit will inure to the lessee from the lease; (ii)  
2 expenditures made by the lessee for the replacement or repair of  
3 facilities due to fire or other casualty including payments for  
4 insurance to provide reimbursement for losses or payments to a public  
5 or private entity for protection of such property from damage or loss  
6 or for alterations or additions made necessary by an action of  
7 government taken after the date of the execution of the lease or  
8 agreement; (iii) improvements added to publicly owned property by a  
9 sublessee under an agreement executed prior to January 1, 1976, which  
10 have been taxed as personal property of the sublessee prior to January  
11 1, 1976, or improvements made by a sublessee of the same lessee under  
12 a similar agreement executed prior to January 1, 1976, and such  
13 improvements are taxable to the sublessee as personal property; (iv)  
14 improvements added to publicly owned property if such improvements are  
15 being taxed as personal property to any person.

16 (e) Any prepaid contract rent is considered to have been paid in  
17 the year due and not in the year actually paid with respect to  
18 prepayment for a period of more than one year. Expenditures for  
19 improvements with a useful life of more than one year which are  
20 included as part of contract rent must be treated as prepaid contract  
21 rent and prorated over the useful life of the improvement or the  
22 remaining term of the lease or agreement if the useful life is in  
23 excess of the remaining term of the lease or agreement. Rent prepaid  
24 prior to January 1, 1976, must be prorated from the date of prepayment.

25 (f) With respect to a "product lease", the value is that value  
26 determined at the time of sale under terms of the lease.

27 (g) If it is determined by the department of revenue, upon  
28 examination of a lessee's accounts or those of a lessor of publicly  
29 owned property, that a lessee is occupying or using publicly owned  
30 property in such a manner as to create a leasehold interest and that  
31 such leasehold interest has not been established through competitive  
32 bidding, or negotiated in accordance with statutory requirements  
33 regarding the rent payable, or negotiated under circumstances,  
34 established by public record, clearly showing that the contract rent  
35 was the maximum attainable by the lessor, the department may establish  
36 a taxable rent computation for use in determining the tax payable under  
37 authority granted in this chapter based upon the following criteria:

38 (i) Consideration must be given to rental being paid to other lessors

1 by lessees of similar property for similar purposes over similar  
2 periods of time; (ii) consideration must be given to what would be  
3 considered a fair rate of return on the market value of the property  
4 leased less reasonable deductions for any restrictions on use, special  
5 operating requirements or provisions for concurrent use by the lessor,  
6 another person or the general public.

7 (3) "Product lease" as used in this chapter means a lease of  
8 property for use in the production of agricultural or marine products  
9 to the extent that such lease provides for the contract rent to be paid  
10 by the delivery of a stated percentage of the production of such  
11 agricultural or marine products to the credit of the lessor or the  
12 payment to the lessor of a stated percentage of the proceeds from the  
13 sale of such products.

14 (4) "Renegotiated" means a change in the lease agreement which  
15 changes the agreed time of possession, restrictions on use, the rate of  
16 the cash rental or of any other consideration payable by the lessee to  
17 or for the benefit of the lessor, other than any such change required  
18 by the terms of the lease or agreement. In addition "renegotiated"  
19 means a continuation of possession by the lessee beyond the date when,  
20 under the terms of the lease agreement, the lessee had the right to  
21 vacate the premises without any further liability to the lessor.

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

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

27 **Sec. 3.** RCW 84.36.010 and 2010 c 281 s 1 are each amended to read  
28 as follows:

29 (1) All property belonging exclusively to the United States, the  
30 state, or any county or municipal corporation; all property belonging  
31 exclusively to any federally recognized Indian tribe that has  
32 reservation or trust lands located in the state, if that property is  
33 used exclusively for essential government services; all property, and  
34 contiguous property, belonging to a federally recognized Indian tribe  
35 in which a portion is used by the tribe or by a lessee for the purposes  
36 of conducting for-profit horse racing meets; all deep water port  
37 property, and related-port property, belonging to a federally

1 recognized Indian tribe used to service the maritime industry in a  
2 county with a population greater than seven hundred fifty thousand but  
3 less than one million five hundred thousand that contains a national  
4 park; all state route number 16 corridor transportation systems and  
5 facilities constructed under chapter 47.46 RCW; all property under a  
6 financing contract pursuant to chapter 39.94 RCW or recorded agreement  
7 granting immediate possession and use to the public bodies listed in  
8 this section or under an order of immediate possession and use pursuant  
9 to RCW 8.04.090; and, for a period of forty years from acquisition, all  
10 property of a community center; is exempt from taxation. All property  
11 belonging exclusively to a foreign national government is exempt from  
12 taxation if that property is used exclusively as an office or residence  
13 for a consul or other official representative of the foreign national  
14 government, and if the consul or other official representative is a  
15 citizen of that foreign nation.

16 (2) For the purposes of this section the following definitions  
17 apply unless the context clearly requires otherwise.

18 (a) "Community center" means property, including a building or  
19 buildings, determined to be surplus to the needs of a district by a  
20 local school board, and purchased or acquired by a nonprofit  
21 organization for the purposes of converting them into community  
22 facilities for the delivery of nonresidential coordinated services for  
23 community members. The community center may make space available to  
24 businesses, individuals, or other parties through the loan or rental of  
25 space in or on the property.

26 (b) "Essential government services" means services such as tribal  
27 administration, public facilities, fire, police, public health,  
28 education, sewer, water, environmental and land use, transportation,  
29 and utility services.

30 **Sec. 4.** RCW 84.36.451 and 2001 c 26 s 2 are each amended to read  
31 as follows:

32 (1) The following property shall be exempt from taxation: Any and  
33 all rights to occupy or use any real or personal property owned in fee  
34 or held in trust by:

35 (a) The United States, the state of Washington, or any political  
36 subdivision or municipal corporation of the state of Washington, or a

1 federally recognized Indian tribe for property exempt under RCW  
2 84.36.010; or

3 (b) A public corporation, commission, or authority created under  
4 RCW 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 and

7 (c) (~~Including~~) Any leasehold interest arising from the property  
8 identified in (a) and (b) of this subsection as defined in RCW  
9 82.29A.020.

10 (2) The exemption under this section (~~shall~~) does not apply to:

11 (a) Any such leasehold interests which are a part of operating  
12 properties of public utilities subject to assessment under chapter  
13 84.12 RCW; or

14 (b) Any such leasehold interest consisting of three thousand or  
15 more residential and recreational lots that are or may be subleased for  
16 residential and recreational purposes.

17 (3) The exemption under this section (~~shall~~) may not be construed  
18 to modify the provisions of RCW 84.40.230.

19 **Sec. 5.** RCW 84.40.230 and 1994 c 124 s 25 are each amended to read  
20 as follows:

21 When any real property is sold on contract by the United States of  
22 America, the state, (~~or~~) any county or municipality, or any federally  
23 recognized Indian tribe, and the contract expresses or implies that the  
24 vendee is entitled to the possession, use, benefits and profits thereof  
25 and therefrom so long as the vendee complies with the terms of the  
26 contract, it (~~shall be~~) is deemed that the vendor retains title  
27 merely as security for the fulfillment of the contract, and the  
28 property (~~shall~~) must be assessed and taxed in the same manner as  
29 other similar property in private ownership is taxed, and the tax roll  
30 (~~shall~~) must contain, opposite the description of the property so  
31 assessed the following notation: "Subject to title remaining in the  
32 vendor" or other notation of similar significance. No foreclosure for  
33 delinquent taxes nor any deed issued pursuant thereto (~~shall~~) may  
34 extinguish or otherwise affect the title of the vendor. In any case  
35 under former law where the contract and not the property was taxed no  
36 deed of the property described in such contract (~~shall~~) may ever be

1 executed and delivered by the state or any county or municipality until  
2 all taxes assessed against such contract and local assessments assessed  
3 against the land described thereon are fully paid.

4 NEW SECTION. **Sec. 6.** A new section is added to chapter 52.30 RCW  
5 to read as follows:

6 (1) When exempt tribal property is located within the boundaries of  
7 a fire protection district or a regional fire protection service  
8 authority, the fire protection district or authority is authorized to  
9 contract with the tribe for compensation for providing fire protection  
10 services in an amount and under such terms as are mutually agreed upon  
11 by the fire protection district or authority and the tribe.

12 (2) For the purposes of this section, the following definitions  
13 apply unless the context clearly requires otherwise:

14 (a) "Exempt tribal property" means property that is owned  
15 exclusively by a federally recognized Indian tribe and that is exempt  
16 from taxation under RCW 84.36.010;

17 (b) "Regional fire protection service authority" or "authority" has  
18 the same meaning as provided in RCW 52.26.020.

19 NEW SECTION. **Sec. 7.** This act expires July 1, 2023."

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By Committee on Ways & Means

**ADOPTED AS AMENDED 04/28/2013**

20 On page 1, line 3 of the title, after "tribe;" strike the remainder  
21 of the title and insert "amending RCW 82.29A.010, 82.29A.020,  
22 84.36.010, 84.36.451, and 84.40.230; adding a new section to chapter  
23 52.30 RCW; and providing an expiration date."

EFFECT: Clarifying that the property tax exemption for federally



recognized Indian tribes only apply to those tribes who are located in Washington.

Eliminates the provision for a property tax exemption for federally recognized Indian tribes for property used for economic development. Allows a property tax exemption for tribal property used to conduct for-profit horse racing meets and for deep water ports in Pierce county. Allows a property tax exemption for tribal property used as a deep water port in Pierce county.

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