

# HOUSE BILL REPORT

## HB 2539

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### As Reported by House Committee On: Finance

**Title:** An act relating to simplifying the taxation of amusement, recreation, and physical fitness services.

**Brief Description:** Simplifying the taxation of amusement, recreation, and physical fitness services.

**Sponsors:** Representatives Carlyle, Nealey and Tharinger; by request of Department of Revenue.

#### **Brief History:**

##### **Committee Activity:**

Finance: 1/30/14, 2/6/14 [DP].

#### **Brief Summary of Bill**

- Clarifies the taxation of amusement, recreation, and physical fitness services.

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### HOUSE COMMITTEE ON FINANCE

**Majority Report:** Do pass. Signed by 12 members: Representatives Carlyle, Chair; Tharinger, Vice Chair; Nealey, Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Condotta, Fitzgibbon, Hansen, Lytton, Reykdal, Springer, Vick and Wilcox.

**Minority Report:** Do not pass. Signed by 1 member: Representative Pollet.

**Staff:** Richelle Geiger (786-7175).

#### **Background:**

##### Retail Sales and Use Tax.

Retail sales taxes are imposed on retail sales of most articles of tangible personal property, digital products, and some services. A retail sale is a sale to the final consumer or end user of the property, digital product, or service. If retail sales taxes were not collected when the user

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acquired the property, digital products, or services, then use taxes apply to the value of property, digital product, or service when used in this state. The state, most cities, and all counties levy retail sales and use taxes. The state sales and use tax rate is 6.5 percent; local sales and use tax rates vary from 0.5 percent to 3.1 percent, depending on the location.

#### Amusement and Recreational Services.

"Amusement and recreational services" are included in the definition of retail sale for business and occupation (B&O) and retail sales tax purposes. A specific definition of "amusement and recreational services" is not provided in the statute. Current law does include a list of activities that are classified as "amusement and recreation services" including golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others when provided to consumers. Sales of these retail services are subject to retail sales or use tax.

#### Physical fitness services.

"Physical fitness services" are also included in the definition of retail sale for B&O and retail sales tax purposes. The term "physical fitness services" is not defined in statute but is referred to as a personal service. The Department of Revenue by rule has defined "physical fitness services" to include all exercise classes, use of exercise equipment, and personal training and does not include instructional lessons. Instructional lessons can be distinguished from exercise classes in that education is the primary focus in the former and exercise is the primary focus in the latter. Sales of these retail services are subject to retail sales tax.

#### Opportunity to Dance.

The "opportunity to dance" is defined in statute as a provision by an establishment of a designated physical space where customers are allowed to dance. In current law, charges for the "opportunity to dance" are exempt from retail sales tax. The exemption is set to expire July 1, 2017.

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#### **Summary of Bill:**

The term "amusement and recreation service" is replaced in the definition of retail sales with a specific list of retailing activities of an amusement and recreational nature. Specific exclusions are provided for: (1) admission to fairs, carnivals, and festivals, including charges for rides and attractions; (2) otherwise taxable activities provided by an educational institution to its students and staff, not applying to charges made to its alumni and other members of the public; (3) diver training provided by a licensed vocational school; and (4) day camps provided by nonprofit organizations or state or local governmental entities for persons who are under 19 years of age or that are focused on persons who have a disability or a mental illness. In instances where sales tax was not collected for the retail sale of specified amusement or recreational services, use tax is no longer due from the buyer.

The term "physical fitness services" is removed from the definition of retail sale. Instead, the operation of an "athletic or fitness facility" is included in the definition of a retail sale. An "athletic or fitness facility" is defined as an indoor or outdoor facility, or portion of a facility, that is predominantly used for physical fitness activities. "Physical fitness activities" are

activities that involve physical exertion for the purpose of improving or maintaining the general fitness, strength, flexibility, conditioning, or health of the participant. With certain exceptions, all charges for the use of an athletic or fitness facility are retail sales including any charges associated with services or amenities. Specific exclusions are provided for: (1) separately stated charges for the use of an athletic or fitness facility for purposes other than engaging in physical activity, use of a discrete portion of the facility that does not meet the definition of "athletic or fitness facility," and services that do not involve physical exertion; (2) rent or associated fees; (3) services provided without charge to employees or their family members; and (4) yoga, tai chi, and chi gong classes held in a facility not primarily used for physical fitness activities other than yoga, tai chi, and chi gong.

The sales tax exemption for charges for the "opportunity to dance" is made permanent.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect on January 1, 2015.

**Staff Summary of Public Testimony:**

(In support) The Department of Revenue requested this legislation to clarify a law that has been a source of confusion for many years. The law defines "recreation and amusement activities" and "physical fitness activities" which were previously undefined terms in statute. This is a movement from a general position of what does and does not qualify for retail sales tax to a specific list of activities that are subject retail sales tax. Decisions to define an activity as a retail sale or not were made based on the history of compliance of the given activity in remitting sales tax.

Businesses require consistency in procedures to be successful, and the nuanced nature of the current tax system for these services is detrimental. Compliance and enforcement of this law has been low due to its convoluted nature.

(Opposed) A new tax on golf lessons will negatively impact the golf industry. This new tax will discourage new players from participating in a lifelong sport.

The current law is effective and clear. This bill is creating a new law on instructional physical fitness lessons.

There is no need to change the current law as many businesses can separate taxable and nontaxable services as the law stands.

This bill provides a disincentive for kids and adults to become physically active. Although instructional classes may not be taxed at this time, business owners provide tax revenue to their local and state governments through field and school rentals to facilitate activities.

**Persons Testifying:** (In support) Andrew Cole, Greater Seattle Hockey League; Doug Levy, Washington Recreation and Park Association; Phil Christensen, Capitol Classics Soccer Association; Chris Hoppe, Spokane County Parks and Recreation; Lori Flemm, City of Lacey Parks and Recreation Department; Drew Shirk, Department of Revenue; and Shawn D. Madden, Underdog Sports Leagues.

(Opposed) Troy Andrew, Washington State Golf Association; Heather Hansen, Washington Golf Alliance; Dan Harrington, Professional Golfers Association of America; Amy Hollingsworth, CrossFit; and Bruce Morgan, Horn Rapids Golf Course Richland.

**Persons Signed In To Testify But Not Testifying:** None.