
ENGROSSED HOUSE BILL 1287

State of Washington

63rd Legislature

2013 Regular Session

By Representatives Appleton, Dahlquist, Hurst, McCoy, Ryu, Santos, and Pollet

Read first time 01/22/13. Referred to Committee on Community Development, Housing & Tribal Affairs.

1 AN ACT Relating to subjecting federally recognized Indian tribes to
2 the same conditions as state and local governments for property owned
3 exclusively by the tribe; amending RCW 82.29A.010, 82.29A.020,
4 84.36.010, 84.36.451, and 84.40.230; adding a new section to chapter
5 52.30 RCW; and providing an expiration date.

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

7 **Sec. 1.** RCW 82.29A.010 and 2010 c 281 s 2 are each amended to read
8 as follows:

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

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

18 (c) The legislature finds that lessees of publicly owned property
19 or community centers are entitled to those same governmental services

1 and does hereby provide for a leasehold excise tax to fairly compensate
2 governmental units for services rendered to such lessees of publicly
3 owned property or community centers. For the purposes of this
4 subsection, "community center" has the same meaning as provided in RCW
5 84.36.010.

6 (d) The legislature also finds that eliminating the property tax on
7 property owned exclusively by federally recognized Indian tribes within
8 the state requires that the leasehold excise tax also be applied to
9 leasehold interests on tribally owned property.

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

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

17 The definitions in this section apply throughout this chapter
18 unless the context requires otherwise.

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

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

1 (i) Road or utility easements, rights of access, occupancy, or use
2 granted solely for the purpose of removing materials or products
3 purchased from a public owner or the lessee of a public owner, or
4 rights of access, occupancy, or use granted solely for the purpose of
5 natural energy resource exploration(~~(.—"Leasehold interest" does not~~
6 ~~include)); or~~

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

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

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

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

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

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

33 (e) Any prepaid contract rent is considered to have been paid in
34 the year due and not in the year actually paid with respect to
35 prepayment for a period of more than one year. Expenditures for
36 improvements with a useful life of more than one year which are
37 included as part of contract rent must be treated as prepaid contract
38 rent and prorated over the useful life of the improvement or the

1 remaining term of the lease or agreement if the useful life is in
2 excess of the remaining term of the lease or agreement. Rent prepaid
3 prior to January 1, 1976, must be prorated from the date of prepayment.

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

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

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

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

31 (4) "Renegotiated" means a change in the lease agreement which
32 changes the agreed time of possession, restrictions on use, the rate of
33 the cash rental or of any other consideration payable by the lessee to
34 or for the benefit of the lessor, other than any such change required
35 by the terms of the lease or agreement. In addition "renegotiated"
36 means a continuation of possession by the lessee beyond the date when,
37 under the terms of the lease agreement, the lessee had the right to
38 vacate the premises without any further liability to the lessor.

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

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

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

8 (1) All property belonging exclusively to the United States, the
9 state, or any county or municipal corporation; all property belonging
10 exclusively to any federally recognized Indian tribe located in the
11 state, if that property is used exclusively for essential government
12 services; all state route number 16 corridor transportation systems and
13 facilities constructed under chapter 47.46 RCW; all property under a
14 financing contract pursuant to chapter 39.94 RCW or recorded agreement
15 granting immediate possession and use to the public bodies listed in
16 this section or under an order of immediate possession and use pursuant
17 to RCW 8.04.090; and, for a period of forty years from acquisition, all
18 property of a community center; is exempt from taxation. All property
19 belonging exclusively to a foreign national government is exempt from
20 taxation if that property is used exclusively as an office or residence
21 for a consul or other official representative of the foreign national
22 government, and if the consul or other official representative is a
23 citizen of that foreign nation.

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

26 (a) "Community center" means property, including a building or
27 buildings, determined to be surplus to the needs of a district by a
28 local school board, and purchased or acquired by a nonprofit
29 organization for the purposes of converting them into community
30 facilities for the delivery of nonresidential coordinated services for
31 community members. The community center may make space available to
32 businesses, individuals, or other parties through the loan or rental of
33 space in or on the property.

34 (b) "Essential government services" means services such as tribal
35 administration, public facilities, fire, police, public health,
36 education, sewer, water, environmental and land use, transportation,
37 (~~and~~) utility services, and economic development.

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

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

6 (a) The United States, the state of Washington, or any political
7 subdivision or municipal corporation of the state of Washington, or a
8 federally recognized Indian tribe for property exempt under RCW
9 84.36.010; or

10 (b) A public corporation, commission, or authority created under
11 RCW 35.21.730 or 35.21.660 if the property is listed on or is within a
12 district listed on any federal or state register of historical sites;
13 and

14 (c) ~~((Including))~~ Any leasehold interest arising from the property
15 identified in (a) and (b) of this subsection as defined in RCW
16 82.29A.020.

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

18 (a) Any such leasehold interests which are a part of operating
19 properties of public utilities subject to assessment under chapter
20 84.12 RCW; or

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

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

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

28 When any real property is sold on contract by the United States of
29 America, the state, ~~((or))~~ any county or municipality, or any federally
30 recognized Indian tribe, and the contract expresses or implies that the
31 vendee is entitled to the possession, use, benefits and profits thereof
32 and therefrom so long as the vendee complies with the terms of the
33 contract, it ~~((shall-be))~~ is deemed that the vendor retains title
34 merely as security for the fulfillment of the contract, and the
35 property ~~((shall))~~ must be assessed and taxed in the same manner as
36 other similar property in private ownership is taxed, and the tax roll
37 ~~((shall))~~ must contain, opposite the description of the property so

1 assessed the following notation: "Subject to title remaining in the
2 vendor" or other notation of similar significance. No foreclosure for
3 delinquent taxes nor any deed issued pursuant thereto (~~shall~~) may
4 extinguish or otherwise affect the title of the vendor. In any case
5 under former law where the contract and not the property was taxed no
6 deed of the property described in such contract (~~shall~~) may ever be
7 executed and delivered by the state or any county or municipality until
8 all taxes assessed against such contract and local assessments assessed
9 against the land described thereon are fully paid.

10 NEW SECTION. Sec. 6. A new section is added to chapter 52.30 RCW
11 to read as follows:

12 (1) When exempt tribal property is located within the boundaries of
13 a fire protection district or a regional fire protection service
14 authority, the fire protection district or authority is authorized to
15 contract with the tribe for compensation for providing fire protection
16 services in an amount and under such terms as are mutually agreed upon
17 by the fire protection district or authority and the tribe.

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

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

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

25 NEW SECTION. Sec. 7. This act expires on July 1, 2023.

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