

HOUSE BILL REPORT

HB 1550

As Amended by the Senate

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, Reykdal and Wylie; by request of Department of Revenue.

Brief History:

Committee Activity:

Finance: 1/27/15, 2/10/15 [DP].

Floor Activity:

Passed House: 3/3/15, 70-27.

Senate Amended.

Passed Senate: 4/15/15, 43-4.

<p>Brief Summary of Bill</p> <ul style="list-style-type: none">• Clarifies the taxation of amusement, recreation, and physical fitness services.

HOUSE COMMITTEE ON FINANCE

Majority Report: Do pass. Signed by 15 members: Representatives Carlyle, Chair; Tharinger, Vice Chair; Orcutt, Assistant Ranking Minority Member; Condotta, Fitzgibbon, Manweller, Pollet, Reykdal, Robinson, Ryu, Springer, Stokesbary, Vick, Wilcox and Wylie.

Staff: Dominique Meyers (786-7150).

Background:

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

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the property, digital product, or service. If retail sales taxes were not collected when the user 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.

Summary of Bill:

The term "amusement and recreation service" is replaced in the definition of "retail sale" with a specific list of retailing activities of an amusement or 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 definition of "retail sale" removes the term "physical fitness services" and instead includes the operation of an "athletic or fitness facility." 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.

EFFECT OF SENATE AMENDMENT(S):

Eliminates ballooning, sky diving, and related activities from the definition of retail sales, therefore exempting these activities from retail sales tax. The B&O rate for these activities changes from the retailing rate of 0.471 percent to the service rate of 1.5 percent.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on January 1, 2016.

Staff Summary of Public Testimony:

(In support) The Department of Revenue has been looking at this issue for a number of years, looking to clarify and fine tune this section of the tax code. This bill provides an easy to follow list of things that qualify as physical fitness that are subject to sales tax; the rest of the items are classified as service and are not subject to sales tax. This bill does not provide an exemption, it simply clarifies what is and is not subject to sales tax. Under this bill, activities that have always been subject to sales tax, for example bowling or billiards, remain subject to sales tax. The controversial activities are community events, such as marathons, that would now be exempt. This bill will be good for many. To foster a thriving recreational activity economy, clear cut rules and regulations that are easily administered and followed are needed. This legislation is supported on behalf of those who administer these taxes. This is a rational way to address many of the questions regarding how to tax these types of activities. There are collections that are not occurring right now; the Department of Revenue has better things to do with their time than try to tax non-profits all around the state. There has been inconsistent interpretation of this tax law for a long time. The amount of money spent by the state clarifying the bill is probably greater than the amount collected. This language will add clarity and consistency to a very confusing law.

(With concerns) This bill would make taxing of similar activities inconsistent and is in violation of the Federal law 49 U.S.C. 40116, the federal anti-head tax. The Legislature should exempt ballooning and outdoor skydiving from sales tax since indoor skydiving is exempt from sales tax. This is illegal taxation, because these activities qualify as air commerce. However, there is support for the overall bill for simplifying the tax, but skydiving and ballooning need to be removed from the bill.

(Opposed) None.

Persons Testifying: (In support) Drew Shirk, Department of Revenue; Andy Cole, Greater Seattle Hockey League; Doug Levy, Washington Recreation and Parks Association; Paul Simmons, City of Olympia Parks and Recreation; and Heather Hansen, Washington Golf Alliance.

(With concerns) Jessie Farrington, Kapowsin Air Sports.

Persons Signed In To Testify But Not Testifying: None.