

SENATE BILL REPORT

HB 1550

As Reported by Senate Committee On:
Ways & Means, April 7, 2015

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: Passed House: 3/03/15, 70-27.

Committee Activity: Ways & Means: 3/25/15, 4/07/15 [DPA].

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators Hill, Chair; Braun, Vice Chair; Dammeier, Vice Chair; Honeyford, Vice Chair, Capital Budget Chair; Hargrove, Ranking Member; Keiser, Assistant Ranking Member on the Capital Budget; Ranker, Ranking Minority Member, Operating; Bailey, Becker, Billig, Brown, Conway, Fraser, Hasegawa, Hatfield, Hewitt, Kohl-Welles, O'Ban, Padden, Parlette, Rolfes, Schoesler and Warnick.

Staff: Juliana Roe (786-7438)

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 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.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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 defines 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 (Recommended Amendments): 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 the following: (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 the following: (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 CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Amendments): Ballooning, sky diving, and related activities are removed from the definition of retailing.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on House Bill: PRO: This bill is solely about clarifying what is and what is not an amusement and recreation activity and what is and what is not subject to sales tax and what should be subject to service. This is not creating exemptions, but merely clarifying which activities are taxed which way. The bill contains a specified list of activities. Those not on the list are "service and other" activities.

This bill represents the best, bright line way with which to deal with something very confusing. We'd rather be in the parks and recreation business than the tax or accounting business. In Redmond we have 3500 recreational programs and 350 teams in sports leagues in the community. In order to determine which of our programs were subject to sales tax, we sent our entire guide to our attorneys. They had a difficult time making these determinations. For example is basketball for ten year olds educational or amusement? And, when comparing notes with other cities we found there to be no commonality in who was charging sales tax for day camps or swimming lessons. Every city was different in its interpretation. All we want is clarity.

When the Department of Revenue announced its new interpretation of amusement and recreation, it caused chaos. Not only that, but it required a large amount of staff time and money to try to determine what was what.

OTHER: Please remove skydiving and ballooning from the list of activities to be taxed because federal law exempts air transportation and air commerce from taxation.

Persons Testifying: PRO: Doug Levy, WA Recreation and Park Assn.; Mark Hickok, Recreation Division Manager, city of Redmond; Paul Simmons, Director, Olympia Parks, Arts, and Recreation Dept.; Drew Shirk, Dept. of Revenue; Glenn Glover, Evergreen Mountain Bike Alliance.

OTHER: Jessie Farrington, Kapowsin Air Sports; Pat Chapman, citizen.

Persons Signed in to Testify But Not Testifying: No one.