
SENATE BILL 5063

State of Washington

65th Legislature

2017 Regular Session

By Senators Fain and Palumbo

Read first time 01/11/17. Referred to Committee on Ways & Means.

1 AN ACT Relating to clarifying the taxation of pet adoption fees;
2 amending RCW 82.04.040 and 82.04.190; and creating new sections.

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

4 **Sec. 1.** RCW 82.04.040 and 2004 c 153 s 402 are each amended to
5 read as follows:

6 (1) Except as otherwise provided in this subsection, "sale" means
7 any transfer of the ownership of, title to, or possession of property
8 for a valuable consideration and includes any activity classified as
9 a "sale at retail" or "retail sale" under RCW 82.04.050. It includes
10 lease or rental, conditional sale contracts, and any contract under
11 which possession of the property is given to the purchaser but title
12 is retained by the vendor as security for the payment of the purchase
13 price. It also includes the furnishing of food, drink, or meals for
14 compensation whether consumed upon the premises or not. The term
15 "sale" does not include the transfer of the ownership of, title to,
16 or possession of an animal by an animal rescue organization in
17 exchange for the payment of an adoption fee.

18 (2) "Casual or isolated sale" means a sale made by a person who
19 is not engaged in the business of selling the type of property
20 involved.

1 (3)(a) "Lease or rental" means any transfer of possession or
2 control of tangible personal property for a fixed or indeterminate
3 term for consideration. A lease or rental may include future options
4 to purchase or extend. "Lease or rental" includes agreements covering
5 motor vehicles and trailers where the amount of consideration may be
6 increased or decreased by reference to the amount realized upon sale
7 or disposition of the property as defined in 26 U.S.C. Sec.
8 7701(h)(1), as amended or renumbered as of January 1, 2003. The
9 definition in this subsection (3) shall be used for sales and use tax
10 purposes regardless if a transaction is characterized as a lease or
11 rental under generally accepted accounting principles, the United
12 States internal revenue code, Washington state's commercial code, or
13 other provisions of federal, state, or local law.

14 (b) "Lease or rental" does not include:

15 (i) A transfer of possession or control of property under a
16 security agreement or deferred payment plan that requires the
17 transfer of title upon completion of the required payments;

18 (ii) A transfer of possession or control of property under an
19 agreement that requires the transfer of title upon completion of
20 required payments, and payment of an option price does not exceed the
21 greater of one hundred dollars or one percent of the total required
22 payments; or

23 (iii) Providing tangible personal property along with an operator
24 for a fixed or indeterminate period of time. A condition of this
25 exclusion is that the operator is necessary for the tangible personal
26 property to perform as designed. For the purpose of this subsection
27 (3)(b)(iii), an operator must do more than maintain, inspect, or set
28 up the tangible personal property.

29 (4)(a) "Adoption fee" means an amount charged by an animal rescue
30 organization to adopt an animal, except that "adoption fee" does not
31 include any separately itemized charge for any incidental inanimate
32 items provided to persons adopting an animal, including food,
33 identification tags, collars, and leashes.

34 (b) "Animal care and control agency" means the same as in RCW
35 16.52.011 and also includes any similar entity operating outside of
36 this state.

37 (c) "Animal rescue group" means a group that:

38 (i)(A) Is exempt from federal income taxation under Title 26
39 U.S.C. Sec. 501(c) of the federal internal revenue code as it exists
40 on the effective date of this section; or

1 (B) Is registered as a charity with the Washington secretary of
2 state under chapter 19.09 RCW, whether such registration is required
3 by law or voluntary;

4 (ii) Has as its primary purpose the prevention of abuse, neglect,
5 cruelty, exploitation, or homelessness of animals; and

6 (iii) Exclusively obtains dogs, cats, or other animals for
7 placement that are stray or abandoned; surrendered or relinquished by
8 animal owners or caretakers; transferred from other animal rescue
9 organizations; or born in the care of such animal rescue group other
10 than through intentional breeding by the animal rescue group.

11 (d) "Animal rescue organization" means an animal care and control
12 agency or an animal rescue group.

13 **Sec. 2.** RCW 82.04.190 and 2015 c 169 s 3 are each amended to
14 read as follows:

15 "Consumer" means the following:

16 (1) Except as provided otherwise in this section, any person who
17 purchases, acquires, owns, holds, or uses any article of tangible
18 personal property irrespective of the nature of the person's business
19 and including, among others, without limiting the scope hereof,
20 persons who install, repair, clean, alter, improve, construct, or
21 decorate real or personal property of or for consumers other than for
22 the purpose of:

23 (a) Resale as tangible personal property in the regular course of
24 business;

25 (b) Incorporating such property as an ingredient or component of
26 real or personal property when installing, repairing, cleaning,
27 altering, imprinting, improving, constructing, or decorating such
28 real or personal property of or for consumers;

29 (c) Consuming such property in producing for sale as a new
30 article of tangible personal property or a new substance, of which
31 such property becomes an ingredient or component or as a chemical
32 used in processing, when the primary purpose of such chemical is to
33 create a chemical reaction directly through contact with an
34 ingredient of a new article being produced for sale;

35 (d) Consuming the property purchased in producing ferrosilicon
36 which is subsequently used in producing magnesium for sale, if the
37 primary purpose of such property is to create a chemical reaction
38 directly through contact with an ingredient of ferrosilicon; or

1 (e) Satisfying the person's obligations under an extended
2 warranty as defined in RCW 82.04.050(7), if such tangible personal
3 property replaces or becomes an ingredient or component of property
4 covered by the extended warranty without intervening use by such
5 person;

6 (2)(a) Any person engaged in any business activity taxable under
7 RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires,
8 or uses any competitive telephone service, ancillary services, or
9 telecommunications service as those terms are defined in RCW
10 82.04.065, other than for resale in the regular course of business;
11 (c) any person who purchases, acquires, or uses any service defined
12 in RCW 82.04.050(2) (a) or (g), other than for resale in the regular
13 course of business or for the purpose of satisfying the person's
14 obligations under an extended warranty as defined in RCW
15 82.04.050(7); (d) any person who makes a purchase meeting the
16 definition of "sale at retail" and "retail sale" under RCW
17 82.04.050(15), other than for resale in the regular course of
18 business; (e) any person who purchases or acquires an extended
19 warranty as defined in RCW 82.04.050(7) other than for resale in the
20 regular course of business; and (f) any person who is an end user of
21 software. For purposes of this subsection (2)(f) and RCW
22 82.04.050(6), a person who purchases or otherwise acquires prewritten
23 computer software, who provides services described in RCW
24 82.04.050(6)((~~b~~)) (c) and who will charge consumers for the right
25 to access and use the prewritten computer software, is not an end
26 user of the prewritten computer software;

27 (3) Any person engaged in the business of contracting for the
28 building, repairing or improving of any street, place, road, highway,
29 easement, right-of-way, mass public transportation terminal or
30 parking facility, bridge, tunnel, or trestle which is owned by a
31 municipal corporation or political subdivision of the state of
32 Washington or by the United States and which is used or to be used
33 primarily for foot or vehicular traffic including mass transportation
34 vehicles of any kind as defined in RCW 82.04.280, in respect to
35 tangible personal property when such person incorporates such
36 property as an ingredient or component of such publicly owned street,
37 place, road, highway, easement, right-of-way, mass public
38 transportation terminal or parking facility, bridge, tunnel, or
39 trestle by installing, placing or spreading the property in or upon
40 the right-of-way of such street, place, road, highway, easement,

1 bridge, tunnel, or trestle or in or upon the site of such mass public
2 transportation terminal or parking facility;

3 (4) Any person who is an owner, lessee or has the right of
4 possession to or an easement in real property which is being
5 constructed, repaired, decorated, improved, or otherwise altered by a
6 person engaged in business, excluding only (a) municipal corporations
7 or political subdivisions of the state in respect to labor and
8 services rendered to their real property which is used or held for
9 public road purposes, and (b) the United States, instrumentalities
10 thereof, and county and city housing authorities created pursuant to
11 chapter 35.82 RCW in respect to labor and services rendered to their
12 real property. Nothing contained in this or any other subsection of
13 this definition may be construed to modify any other definition of
14 "consumer";

15 (5) Any person who is an owner, lessee, or has the right of
16 possession to personal property which is being constructed, repaired,
17 improved, cleaned, imprinted, or otherwise altered by a person
18 engaged in business;

19 (6) Any person engaged in the business of constructing,
20 repairing, decorating, or improving new or existing buildings or
21 other structures under, upon, or above real property of or for the
22 United States, any instrumentality thereof, or a county or city
23 housing authority created pursuant to chapter 35.82 RCW, including
24 the installing or attaching of any article of tangible personal
25 property therein or thereto, whether or not such personal property
26 becomes a part of the realty by virtue of installation; also, any
27 person engaged in the business of clearing land and moving earth of
28 or for the United States, any instrumentality thereof, or a county or
29 city housing authority created pursuant to chapter 35.82 RCW. Any
30 such person is a consumer within the meaning of this subsection in
31 respect to tangible personal property incorporated into, installed
32 in, or attached to such building or other structure by such person,
33 except that consumer does not include any person engaged in the
34 business of constructing, repairing, decorating, or improving new or
35 existing buildings or other structures under, upon, or above real
36 property of or for the United States, or any instrumentality thereof,
37 if the investment project would qualify for sales and use tax
38 deferral under chapter 82.63 RCW if undertaken by a private entity;

39 (7) Any person who is a lessor of machinery and equipment, the
40 rental of which is exempt from the tax imposed by RCW 82.08.020 under

1 RCW 82.08.02565, with respect to the sale of or charge made for
2 tangible personal property consumed in respect to repairing the
3 machinery and equipment, if the tangible personal property has a
4 useful life of less than one year. Nothing contained in this or any
5 other subsection of this section may be construed to modify any other
6 definition of "consumer";

7 (8) Any person engaged in the business of cleaning up for the
8 United States, or its instrumentalities, radioactive waste and other
9 by-products of weapons production and nuclear research and
10 development;

11 (9) Any person who is an owner, lessee, or has the right of
12 possession of tangible personal property that, under the terms of an
13 extended warranty as defined in RCW 82.04.050(7), has been repaired
14 or is replacement property, but only with respect to the sale of or
15 charge made for the repairing of the tangible personal property or
16 the replacement property;

17 (10) Any person who purchases, acquires, or uses services
18 described in RCW 82.04.050(6)((~~b~~)) (c) other than:

19 (a) For resale in the regular course of business; or

20 (b) For purposes of consuming the service described in RCW
21 82.04.050(6)((~~b~~)) (c) in producing for sale a new product, but only
22 if such service becomes a component of the new product. For purposes
23 of this subsection (10), "product" means a digital product, an
24 article of tangible personal property, or the service described in
25 RCW 82.04.050(6)((~~b~~)) (c);

26 (11)(a) Any end user of a digital product or digital code.
27 "Consumer" does not include any person who is not an end user of a
28 digital product or a digital code and purchases, acquires, owns,
29 holds, or uses any digital product or digital code for purposes of
30 consuming the digital product or digital code in producing for sale a
31 new product, but only if the digital product or digital code becomes
32 a component of the new product. A digital code becomes a component of
33 a new product if the digital good or digital automated service
34 acquired through the use of the digital code becomes incorporated
35 into a new product. For purposes of this subsection, "product" has
36 the same meaning as in subsection (10) of this section.

37 (b)(i) For purposes of this subsection, "end user" means any
38 taxpayer as defined in RCW 82.12.010 other than a taxpayer who
39 receives by contract a digital product for further commercial
40 broadcast, rebroadcast, transmission, retransmission, licensing,

1 relicensing, distribution, redistribution or exhibition of the
2 product, in whole or in part, to others. A person that purchases
3 digital products or digital codes for the purpose of giving away such
4 products or codes will not be considered to have engaged in the
5 distribution or redistribution of such products or codes and will be
6 treated as an end user;

7 (ii) If a purchaser of a digital code does not receive the
8 contractual right to further redistribute, after the digital code is
9 redeemed, the underlying digital product to which the digital code
10 relates, then the purchaser of the digital code is an end user. If
11 the purchaser of the digital code receives the contractual right to
12 further redistribute, after the digital code is redeemed, the
13 underlying digital product to which the digital code relates, then
14 the purchaser of the digital code is not an end user. A purchaser of
15 a digital code who has the contractual right to further redistribute
16 the digital code is an end user if that purchaser does not have the
17 right to further redistribute, after the digital code is redeemed,
18 the underlying digital product to which the digital code relates;

19 (12) Any person who provides services described in RCW
20 82.04.050(9). Any such person is a consumer with respect to the
21 purchase, acquisition, or use of the tangible personal property that
22 the person provides along with an operator in rendering services
23 defined as a retail sale in RCW 82.04.050(9). Any such person may
24 also be a consumer under other provisions of this section;

25 (13) Any person who purchases, acquires, owns, holds, or uses
26 chemical sprays or washes for the purpose of postharvest treatment of
27 fruit for the prevention of scald, fungus, mold, or decay, or who
28 purchases feed, seed, seedlings, fertilizer, agents for enhanced
29 pollination including insects such as bees, and spray materials, is
30 not a consumer of such items, but only to the extent that the items:

31 (a) Are used in relation to the person's participation in the
32 federal conservation reserve program, the environmental quality
33 incentives program, the wetlands reserve program, the wildlife
34 habitat incentives program, or their successors administered by the
35 United States department of agriculture;

36 (b) Are for use by a farmer for the purpose of producing for sale
37 any agricultural product; or

38 (c) Are for use by a farmer to produce or improve wildlife
39 habitat on land the farmer owns or leases while acting under
40 cooperative habitat development or access contracts with an

1 organization exempt from federal income tax under 26 U.S.C. Sec.
2 501(c)(3) of the federal internal revenue code or the Washington
3 state department of fish and wildlife; (~~and~~)

4 (14) A regional transit authority is not a consumer with respect
5 to labor, services, or tangible personal property purchased pursuant
6 to agreements providing maintenance services for bus, rail, or rail
7 fixed guideway equipment when a transit agency, as defined in RCW
8 81.104.015, performs the labor or services; and

9 (15) The term "consumer" does not include:

10 (a) An animal rescue organization with respect to animals under
11 its care and control; and

12 (b) Any person with respect to an animal adopted by that person
13 from an animal rescue organization.

14 NEW SECTION. Sec. 3. Sections 201 and 202 of this act apply
15 both prospectively and retroactively to July 1, 2016.

16 NEW SECTION. Sec. 4. RCW 82.32.805 and 82.32.808 do not apply
17 to any provisions of this act.

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