
SENATE BILL 5937

State of Washington 65th Legislature 2017 1st Special Session

By Senator Baumgartner

Read first time 05/05/17. Referred to Committee on Ways & Means.

1 AN ACT Relating to the taxation of crossfit facilities with less
2 than three hundred members; amending RCW 82.04.050; and providing an
3 effective date.

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

5 **Sec. 1.** RCW 82.04.050 and 2015 3rd sp.s. c 6 s 1105 are each
6 amended to read as follows:

7 (1)(a) "Sale at retail" or "retail sale" means every sale of
8 tangible personal property (including articles produced, fabricated,
9 or imprinted) to all persons irrespective of the nature of their
10 business and including, among others, without limiting the scope
11 hereof, persons who install, repair, clean, alter, improve,
12 construct, or decorate real or personal property of or for consumers
13 other than a sale to a person who:

14 (i) Purchases for the purpose of resale as tangible personal
15 property in the regular course of business without intervening use by
16 such person, but a purchase for the purpose of resale by a regional
17 transit authority under RCW 81.112.300 is not a sale for resale; or

18 (ii) Installs, repairs, cleans, alters, imprints, improves,
19 constructs, or decorates real or personal property of or for
20 consumers, if such tangible personal property becomes an ingredient

1 or component of such real or personal property without intervening
2 use by such person; or

3 (iii) Purchases for the purpose of consuming the property
4 purchased in producing for sale as a new article of tangible personal
5 property or substance, of which such property becomes an ingredient
6 or component or is a chemical used in processing, when the primary
7 purpose of such chemical is to create a chemical reaction directly
8 through contact with an ingredient of a new article being produced
9 for sale; or

10 (iv) Purchases for the purpose of consuming the property
11 purchased in producing ferrosilicon which is subsequently used in
12 producing magnesium for sale, if the primary purpose of such property
13 is to create a chemical reaction directly through contact with an
14 ingredient of ferrosilicon; or

15 (v) Purchases for the purpose of providing the property to
16 consumers as part of competitive telephone service, as defined in RCW
17 82.04.065; or

18 (vi) Purchases for the purpose of satisfying the person's
19 obligations under an extended warranty as defined in subsection (7)
20 of this section, if such tangible personal property replaces or
21 becomes an ingredient or component of property covered by the
22 extended warranty without intervening use by such person.

23 (b) The term includes every sale of tangible personal property
24 that is used or consumed or to be used or consumed in the performance
25 of any activity defined as a "sale at retail" or "retail sale" even
26 though such property is resold or used as provided in (a)(i) through
27 (vi) of this subsection following such use.

28 (c) The term also means every sale of tangible personal property
29 to persons engaged in any business that is taxable under RCW
30 82.04.280(1) (a), (b), and (g), 82.04.290, and 82.04.2908.

31 (2) The term "sale at retail" or "retail sale" includes the sale
32 of or charge made for tangible personal property consumed and/or for
33 labor and services rendered in respect to the following:

34 (a) The installing, repairing, cleaning, altering, imprinting, or
35 improving of tangible personal property of or for consumers,
36 including charges made for the mere use of facilities in respect
37 thereto, but excluding charges made for the use of self-service
38 laundry facilities, and also excluding sales of laundry service to
39 nonprofit health care facilities, and excluding services rendered in
40 respect to live animals, birds and insects;

1 (b) The constructing, repairing, decorating, or improving of new
2 or existing buildings or other structures under, upon, or above real
3 property of or for consumers, including the installing or attaching
4 of any article of tangible personal property therein or thereto,
5 whether or not such personal property becomes a part of the realty by
6 virtue of installation, and also includes the sale of services or
7 charges made for the clearing of land and the moving of earth
8 excepting the mere leveling of land used in commercial farming or
9 agriculture;

10 (c) The constructing, repairing, or improving of any structure
11 upon, above, or under any real property owned by an owner who conveys
12 the property by title, possession, or any other means to the person
13 performing such construction, repair, or improvement for the purpose
14 of performing such construction, repair, or improvement and the
15 property is then reconveyed by title, possession, or any other means
16 to the original owner;

17 (d) The cleaning, fumigating, razing, or moving of existing
18 buildings or structures, but does not include the charge made for
19 janitorial services; and for purposes of this section the term
20 "janitorial services" means those cleaning and caretaking services
21 ordinarily performed by commercial janitor service businesses
22 including, but not limited to, wall and window washing, floor
23 cleaning and waxing, and the cleaning in place of rugs, drapes and
24 upholstery. The term "janitorial services" does not include painting,
25 papering, repairing, furnace or septic tank cleaning, snow removal or
26 sandblasting;

27 (e) Automobile towing and similar automotive transportation
28 services, but not in respect to those required to report and pay
29 taxes under chapter 82.16 RCW;

30 (f) The furnishing of lodging and all other services by a hotel,
31 rooming house, tourist court, motel, trailer camp, and the granting
32 of any similar license to use real property, as distinguished from
33 the renting or leasing of real property, and it is presumed that the
34 occupancy of real property for a continuous period of one month or
35 more constitutes a rental or lease of real property and not a mere
36 license to use or enjoy the same. For the purposes of this
37 subsection, it is presumed that the sale of and charge made for the
38 furnishing of lodging for a continuous period of one month or more to
39 a person is a rental or lease of real property and not a mere license
40 to enjoy the same;

1 (g) The installing, repairing, altering, or improving of digital
2 goods for consumers;

3 (h) Persons taxable under (a), (b), (c), (d), (e), (f), and (g)
4 of this subsection when such sales or charges are for property, labor
5 and services which are used or consumed in whole or in part by such
6 persons in the performance of any activity defined as a "sale at
7 retail" or "retail sale" even though such property, labor and
8 services may be resold after such use or consumption. Nothing
9 contained in this subsection may be construed to modify subsection
10 (1) of this section and nothing contained in subsection (1) of this
11 section may be construed to modify this subsection.

12 (3) The term "sale at retail" or "retail sale" includes the sale
13 of or charge made for personal, business, or professional services
14 including amounts designated as interest, rents, fees, admission, and
15 other service emoluments however designated, received by persons
16 engaging in the following business activities:

17 (a) Abstract, title insurance, and escrow services;

18 (b) Credit bureau services;

19 (c) Automobile parking and storage garage services;

20 (d) Landscape maintenance and horticultural services but
21 excluding (i) horticultural services provided to farmers and (ii)
22 pruning, trimming, repairing, removing, and clearing of trees and
23 brush near electric transmission or distribution lines or equipment,
24 if performed by or at the direction of an electric utility;

25 (e) Service charges associated with tickets to professional
26 sporting events;

27 (f) The following personal services: Tanning salon services,
28 tattoo parlor services, steam bath services, turkish bath services,
29 escort services, and dating services; and

30 (g)(i) Operating an athletic or fitness facility, including all
31 charges for the use of such a facility or for any associated services
32 and amenities, except as provided in (g)(ii) of this subsection.

33 (ii) Notwithstanding anything to the contrary in (g)(i) of this
34 subsection (3), the term "sale at retail" and "retail sale" under
35 this subsection does not include:

36 (A) Separately stated charges for the use of an athletic or
37 fitness facility where such use is primarily for a purpose other than
38 engaging in or receiving instruction in a physical fitness activity;

39 (B) Separately stated charges for the use of a discrete portion
40 of an athletic or fitness facility, other than a pool, where such

1 discrete portion of the facility does not by itself meet the
2 definition of "athletic or fitness facility" in this subsection;

3 (C) Separately stated charges for services, such as advertising,
4 massage, nutritional consulting, and body composition testing, that
5 do not require the customer to engage in physical fitness activities
6 to receive the service. The exclusion in this subsection
7 (3)(g)(ii)(C) does not apply to personal training services and
8 instruction in a physical fitness activity;

9 (D) Separately stated charges for physical therapy provided by a
10 physical therapist, as those terms are defined in RCW 18.74.010, or
11 occupational therapy provided by an occupational therapy
12 practitioner, as those terms are defined in RCW 18.59.020, when
13 performed pursuant to a referral from an authorized health care
14 practitioner or in consultation with an authorized health care
15 practitioner. For the purposes of this subsection (3)(g)(ii)(D), an
16 authorized health care practitioner means a health care practitioner
17 licensed under chapter 18.83, 18.25, 18.36A, 18.57, 18.57A, 18.71, or
18 18.71A RCW;

19 (E) Rent or association fees charged by a landlord or residential
20 association to a tenant or residential owner with access to an
21 athletic or fitness facility maintained by the landlord or
22 residential association, unless the rent or fee varies depending on
23 whether the tenant or owner has access to the facility;

24 (F) Services provided in the regular course of employment by an
25 employee with access to an athletic or fitness facility maintained by
26 the employer for use without charge by its employees or their family
27 members;

28 (G) The provision of access to an athletic or fitness facility by
29 an educational institution to its students and staff. However,
30 charges made by an educational institution to its alumni or other
31 members of the public for the use of any of the educational
32 institution's athletic or fitness facilities are a retail sale under
33 this subsection (3)(g). For purposes of this subsection
34 (3)(g)(ii)(G), "educational institution" has the same meaning as in
35 RCW 82.04.170; (~~and~~))

36 (H) Charges for the use of a crossfit center or for crossfit
37 classes, held at a crossfit center with less than three hundred
38 members; and

39 (I) Yoga, tai chi, or chi gong classes held at a community
40 center, park, gymnasium, college or university, hospital or other

1 medical facility, private residence, or any facility that is not
2 primarily used for physical fitness activities other than yoga, tai
3 chi, or chi gong classes.

4 (iii) Nothing in (g)(ii) of this subsection (3) may be construed
5 to affect the taxation of sales made by the operator of an athletic
6 or fitness facility, where such sales are defined as a retail sale
7 under any provision of this section other than this subsection (3).

8 (iv) For the purposes of this subsection (3)(g), the following
9 definitions apply:

10 (A) "Athletic or fitness facility" means an indoor or outdoor
11 facility or portion of a facility that is primarily used for:
12 Exercise classes; strength and conditioning programs; personal
13 training services; tennis, racquetball, handball, squash, or
14 pickleball; yoga; boxing, kickboxing, wrestling, martial arts, or
15 mixed martial arts training; or other activities requiring the use of
16 exercise or strength training equipment, such as treadmills,
17 elliptical machines, stair climbers, stationary cycles, rowing
18 machines, pilates equipment, balls, climbing ropes, jump ropes, and
19 weightlifting equipment.

20 (B) "Physical fitness activities" means activities that involve
21 physical exertion for the purpose of improving or maintaining the
22 general fitness, strength, flexibility, conditioning, or health of
23 the participant.

24 (4)(a) The term also includes the renting or leasing of tangible
25 personal property to consumers.

26 (b) The term does not include the renting or leasing of tangible
27 personal property where the lease or rental is for the purpose of
28 sublease or subrent.

29 (5) The term also includes the providing of "competitive
30 telephone service," "telecommunications service," or "ancillary
31 services," as those terms are defined in RCW 82.04.065, to consumers.

32 (6)(a) The term also includes the sale of prewritten computer
33 software to a consumer, regardless of the method of delivery to the
34 end user. For purposes of (a) and (b) of this subsection, the sale of
35 prewritten computer software includes the sale of or charge made for
36 a key or an enabling or activation code, where the key or code is
37 required to activate prewritten computer software and put the
38 software into use. There is no separate sale of the key or code from
39 the prewritten computer software, regardless of how the sale may be
40 characterized by the vendor or by the purchaser.

1 (b) The term "retail sale" does not include the sale of or charge
2 made for:

3 (i) Custom software; or

4 (ii) The customization of prewritten computer software.

5 (c)(i) The term also includes the charge made to consumers for
6 the right to access and use prewritten computer software, where
7 possession of the software is maintained by the seller or a third
8 party, regardless of whether the charge for the service is on a per
9 use, per user, per license, subscription, or some other basis.

10 (ii)(A) The service described in (c)(i) of this subsection (6)
11 includes the right to access and use prewritten computer software to
12 perform data processing.

13 (B) For purposes of this subsection (6)(c)(ii), "data processing"
14 means the systematic performance of operations on data to extract the
15 required information in an appropriate form or to convert the data to
16 usable information. Data processing includes check processing, image
17 processing, form processing, survey processing, payroll processing,
18 claim processing, and similar activities.

19 (7) The term also includes the sale of or charge made for an
20 extended warranty to a consumer. For purposes of this subsection,
21 "extended warranty" means an agreement for a specified duration to
22 perform the replacement or repair of tangible personal property at no
23 additional charge or a reduced charge for tangible personal property,
24 labor, or both, or to provide indemnification for the replacement or
25 repair of tangible personal property, based on the occurrence of
26 specified events. The term "extended warranty" does not include an
27 agreement, otherwise meeting the definition of extended warranty in
28 this subsection, if no separate charge is made for the agreement and
29 the value of the agreement is included in the sales price of the
30 tangible personal property covered by the agreement. For purposes of
31 this subsection, "sales price" has the same meaning as in RCW
32 82.08.010.

33 (8)(a) The term also includes the following sales to consumers of
34 digital goods, digital codes, and digital automated services:

35 (i) Sales in which the seller has granted the purchaser the right
36 of permanent use;

37 (ii) Sales in which the seller has granted the purchaser a right
38 of use that is less than permanent;

39 (iii) Sales in which the purchaser is not obligated to make
40 continued payment as a condition of the sale; and

1 (iv) Sales in which the purchaser is obligated to make continued
2 payment as a condition of the sale.

3 (b) A retail sale of digital goods, digital codes, or digital
4 automated services under this subsection (8) includes any services
5 provided by the seller exclusively in connection with the digital
6 goods, digital codes, or digital automated services, whether or not a
7 separate charge is made for such services.

8 (c) For purposes of this subsection, "permanent" means perpetual
9 or for an indefinite or unspecified length of time. A right of
10 permanent use is presumed to have been granted unless the agreement
11 between the seller and the purchaser specifies or the circumstances
12 surrounding the transaction suggest or indicate that the right to use
13 terminates on the occurrence of a condition subsequent.

14 (9) The term also includes the charge made for providing tangible
15 personal property along with an operator for a fixed or indeterminate
16 period of time. A consideration of this is that the operator is
17 necessary for the tangible personal property to perform as designed.
18 For the purpose of this subsection (9), an operator must do more than
19 maintain, inspect, or set up the tangible personal property.

20 (10) The term does not include the sale of or charge made for
21 labor and services rendered in respect to the building, repairing, or
22 improving of any street, place, road, highway, easement, right-of-
23 way, mass public transportation terminal or parking facility, bridge,
24 tunnel, or trestle which is owned by a municipal corporation or
25 political subdivision of the state or by the United States and which
26 is used or to be used primarily for foot or vehicular traffic
27 including mass transportation vehicles of any kind.

28 (11) The term also does not include sales of chemical sprays or
29 washes to persons for the purpose of postharvest treatment of fruit
30 for the prevention of scald, fungus, mold, or decay, nor does it
31 include sales of feed, seed, seedlings, fertilizer, agents for
32 enhanced pollination including insects such as bees, and spray
33 materials to: (a) Persons who participate in the federal conservation
34 reserve program, the environmental quality incentives program, the
35 wetlands reserve program, and the wildlife habitat incentives
36 program, or their successors administered by the United States
37 department of agriculture; (b) farmers for the purpose of producing
38 for sale any agricultural product; (c) farmers for the purpose of
39 providing bee pollination services; and (d) farmers 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 to produce or improve wildlife
4 habitat on land that the farmer owns or leases.

5 (12) The term does not include the sale of or charge made for
6 labor and services rendered in respect to the constructing,
7 repairing, decorating, or improving of new or existing buildings or
8 other structures under, upon, or above real property of or for the
9 United States, any instrumentality thereof, or a county or city
10 housing authority created pursuant to chapter 35.82 RCW, including
11 the installing, or attaching of any article of tangible personal
12 property therein or thereto, whether or not such personal property
13 becomes a part of the realty by virtue of installation. Nor does the
14 term include the sale of services or charges made for the clearing of
15 land and the moving of earth of or for the United States, any
16 instrumentality thereof, or a county or city housing authority. Nor
17 does the term include the sale of services or charges made for
18 cleaning up for the United States, or its instrumentalities,
19 radioactive waste and other by-products of weapons production and
20 nuclear research and development.

21 (13) The term does not include the sale of or charge made for
22 labor, services, or tangible personal property pursuant to agreements
23 providing maintenance services for bus, rail, or rail fixed guideway
24 equipment when a regional transit authority is the recipient of the
25 labor, services, or tangible personal property, and a transit agency,
26 as defined in RCW 81.104.015, performs the labor or services.

27 (14) The term does not include the sale for resale of any service
28 described in this section if the sale would otherwise constitute a
29 "sale at retail" and "retail sale" under this section.

30 (15)(a) The term "sale at retail" or "retail sale" includes
31 amounts charged, however labeled, to consumers to engage in any of
32 the activities listed in this subsection (15)(a), including the
33 furnishing of any associated equipment or, except as otherwise
34 provided in this subsection, providing instruction in such
35 activities, where such charges are not otherwise defined as a "sale
36 at retail" or "retail sale" in this section:

37 (i)(A) Golf, including any variant in which either golf balls or
38 golf clubs are used, such as miniature golf, hitting golf balls at a
39 driving range, and golf simulators, and including fees charged by a
40 golf course to a player for using his or her own cart. However,

1 charges for golf instruction are not a retail sale, provided that if
2 the instruction involves the use of a golfing facility that would
3 otherwise require the payment of a fee, such as green fees or driving
4 range fees, such fees, including the applicable retail sales tax,
5 must be separately identified and charged by the golfing facility
6 operator to the instructor or the person receiving the instruction.

7 (B) Notwithstanding (a)(i)(A) of this subsection (15) and except
8 as otherwise provided in this subsection (15)(a)(i)(B), the term
9 "sale at retail" or "retail sale" does not include amounts charged to
10 participate in, or conduct, a golf tournament or other competitive
11 event. However, amounts paid by event participants to the golf
12 facility operator are retail sales under this subsection (15)(a)(i).
13 Likewise, amounts paid by the event organizer to the golf facility
14 are retail sales under this subsection (15)(a)(i), if such amounts
15 vary based on the number of event participants;

16 (ii) Ballooning, hang gliding, indoor or outdoor sky diving,
17 paragliding, parasailing, and similar activities;

18 (iii) Air hockey, billiards, pool, foosball, darts, shuffleboard,
19 ping pong, and similar games;

20 (iv) Access to amusement park, theme park, and water park
21 facilities, including but not limited to charges for admission and
22 locker or cabana rentals. Discrete charges for rides or other
23 attractions or entertainment that are in addition to the charge for
24 admission are not a retail sale under this subsection (15)(a)(iv).
25 For the purposes of this subsection, an amusement park or theme park
26 is a location that provides permanently affixed amusement rides,
27 games, and other entertainment, but does not include parks or zoos
28 for which the primary purpose is the exhibition of wildlife, or
29 fairs, carnivals, and festivals as defined in (b)(i) of this
30 subsection;

31 (v) Batting cage activities;

32 (vi) Bowling, but not including competitive events, except that
33 amounts paid by the event participants to the bowling alley operator
34 are retail sales under this subsection (15)(a)(vi). Likewise, amounts
35 paid by the event organizer to the operator of the bowling alley are
36 retail sales under this subsection (15)(a)(vi), if such amounts vary
37 based on the number of event participants;

38 (vii) Climbing on artificial climbing structures, whether indoors
39 or outdoors;

40 (viii) Day trips for sightseeing purposes;

1 (ix) Bungee jumping, zip lining, and riding inside a ball,
2 whether inflatable or otherwise;

3 (x) Horseback riding offered to the public, where the seller
4 furnishes the horse to the buyer and providing instruction is not the
5 primary focus of the activity, including guided rides, but not
6 including therapeutic horseback riding provided by an instructor
7 certified by a nonprofit organization that offers national or
8 international certification for therapeutic riding instructors;

9 (xi) Fishing, including providing access to private fishing areas
10 and charter or guided fishing, except that fishing contests and
11 license fees imposed by a government entity are not a retail sale
12 under this subsection;

13 (xii) Guided hunting and hunting at game farms and shooting
14 preserves, except that hunting contests and license fees imposed by a
15 government entity are not a retail sale under this subsection;

16 (xiii) Swimming, but only in respect to (A) recreational or
17 fitness swimming that is open to the public, such as open swim, lap
18 swimming, and special events like kids night out and pool parties
19 during open swim time, and (B) pool parties for private events, such
20 as birthdays, family gatherings, and employee outings. Fees for
21 swimming lessons, to participate in swim meets and other
22 competitions, or to join a swim team, club, or aquatic facility are
23 not retail sales under this subsection (15)(a)(xiii);

24 (xiv) Go-karting, bumper cars, and other motorized activities
25 where the seller provides the vehicle and the premises where the
26 buyer will operate the vehicle;

27 (xv) Indoor or outdoor playground activities, such as inflatable
28 bounce structures and other inflatables; mazes; trampolines; slides;
29 ball pits; games of tag, including laser tag and soft-dart tag; and
30 human gyroscope rides, regardless of whether such activities occur at
31 the seller's place of business, but not including playground
32 activities provided for children by a licensed child day care center
33 or licensed family day care provider as those terms are defined in
34 RCW 43.215.010;

35 (xvi) Shooting sports and activities, such as target shooting,
36 skeet, trap, sporting clays, "5" stand, and archery, but only in
37 respect to discrete charges to members of the public to engage in
38 these activities, but not including fees to enter a competitive
39 event, instruction that is entirely or predominately classroom based,
40 or to join or renew a membership at a club, range, or other facility;

1 (xvii) Paintball and airsoft activities;

2 (xviii) Skating, including ice skating, roller skating, and
3 inline skating, but only in respect to discrete charges to members of
4 the public to engage in skating activities, but not including skating
5 lessons, competitive events, team activities, or fees to join or
6 renew a membership at a skating facility, club, or other
7 organization;

8 (xix) Nonmotorized snow sports and activities, such as downhill
9 and cross-country skiing, snowboarding, ski jumping, sledding, snow
10 tubing, snowshoeing, and similar snow sports and activities, whether
11 engaged in outdoors or in an indoor facility with or without snow,
12 but only in respect to discrete charges to the public for the use of
13 land or facilities to engage in nonmotorized snow sports and
14 activities, such as fees, however labeled, for the use of ski lifts
15 and tows and daily or season passes for access to trails or other
16 areas where nonmotorized snow sports and activities are conducted.
17 However, fees for the following are not retail sales under this
18 subsection (15)(a)(xix): (A) Instructional lessons; (B) permits
19 issued by a governmental entity to park a vehicle on or access public
20 lands; and (C) permits or leases granted by an owner of private
21 timberland for recreational access to areas used primarily for
22 growing and harvesting timber; and

23 (xx) Scuba diving; snorkeling; river rafting; surfing;
24 kiteboarding; flyboarding; water slides; inflatables, such as water
25 pillows, water trampolines, and water rollers; and similar water
26 sports and activities.

27 (b) Notwithstanding anything to the contrary in this subsection
28 (15), the term "sale at retail" or "retail sale" does not include
29 charges:

30 (i) Made for admission to, and rides or attractions at, fairs,
31 carnivals, and festivals. For the purposes of this subsection, fairs,
32 carnivals, and festivals are events that do not exceed twenty-one
33 days and a majority of the amusement rides, if any, are not affixed
34 to real property;

35 (ii) Made by an educational institution to its students and staff
36 for activities defined as retail sales by (a)(i) through (xx) of this
37 subsection. However, charges made by an educational institution to
38 its alumni or other members of the general public for these
39 activities are a retail sale under this subsection (15). For purposes

1 of this subsection (15)(b)(ii), "educational institution" has the
2 same meaning as in RCW 82.04.170;

3 (iii) Made by a vocational school for commercial diver training
4 that is licensed by the workforce training and education coordinating
5 board under chapter 28C.10 RCW; or

6 (iv) Made for day camps offered by a nonprofit organization or
7 state or local governmental entity that provide youth not older than
8 age eighteen, or that are focused on providing individuals with
9 disabilities or mental illness, the opportunity to participate in a
10 variety of supervised activities.

11 NEW SECTION. **Sec. 2.** This act takes effect October 1, 2017.

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