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HOUSE BILL 2229

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State of Washington

66th Legislature

2020 Regular Session

By Representatives Sullivan, Stokesbary, Bergquist, Gildon, and Wylie

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1 AN ACT Relating to clarifying the scope of taxation on land  
2 development or management services; amending RCW 82.04.051; and  
3 amending 1999 c 212 s 1 (uncodified).

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

5 **Sec. 1.** 1999 c 212 s 1 (uncodified) is amended to read as  
6 follows:

7 (1) The legislature finds that the taxation of "services rendered  
8 in respect to constructing buildings or other structures" has  
9 generally included the entire transaction for construction, including  
10 certain services provided directly to the consumer or owner rather  
11 than the person engaged in the performance of the constructing  
12 activity. Changes in business practices and recent administrative and  
13 court decisions have confused the issue. Recognizing the need to  
14 remove barriers to the creation of affordable housing, it is the  
15 intent of the legislature to clarify which services, if standing  
16 alone and not part of the construction agreement, are taxed as retail  
17 or wholesale sales, and which services will continue to be taxed as a  
18 service.

19 (2) It is further the intent of the legislature to confirm that  
20 the entire price for the construction of a building or other  
21 structure for a consumer or owner continues to be a retail sale, even

1 though some of the individual services reflected in the price, if  
2 provided alone, would be taxed as services and not as separate retail  
3 or wholesale sales.

4 (3) Therefore, the intent of this act is to maintain the  
5 application of the law and not to extend retail treatment to  
6 activities not previously treated as retail activities. Services that  
7 are otherwise subject to tax as a service under RCW 82.04.290(2),  
8 including but not limited to engineering, architectural, surveying,  
9 flagging, accounting, legal, consulting, or administrative services,  
10 remain subject to tax as a service under RCW 82.04.290(2), if the  
11 person responsible for the performance of those services is not also  
12 responsible for the performance of the constructing, building,  
13 repairing, improving, or decorating activities. Additionally, unless  
14 otherwise provided by law, a person entering into an agreement to be  
15 responsible for the performance of services otherwise subject to tax  
16 as a service under RCW 82.04.290(2), and subsequently entering into a  
17 separate agreement to be responsible for the performance of  
18 constructing, building, repairing, improving, or decorating  
19 activities, is subject to tax as a service under RCW 82.04.290(2)  
20 with respect to the first agreement, and is subject to tax under the  
21 appropriate section of chapter 82.04 RCW with respect to the second  
22 agreement, if at the time of the first agreement there was no  
23 contemplation by the parties, as evidenced by the facts, that the  
24 agreements would be awarded to the same person.

25 **Sec. 2.** RCW 82.04.051 and 1999 c 212 s 2 are each amended to  
26 read as follows:

27 (1) As used in RCW 82.04.050, the term "services rendered in  
28 respect to" means those services that are directly related to the  
29 constructing, building, repairing, improving, and decorating of  
30 buildings or other structures and that are performed by a person who  
31 is responsible for the performance of the constructing, building,  
32 repairing, improving, or decorating activity. The term does not  
33 include services such as engineering, architectural, surveying,  
34 flagging, accounting, legal, consulting, land development or  
35 management, or administrative services provided to the consumer of,  
36 or person responsible for performing, the constructing, building,  
37 repairing, improving, or decorating services.

38 (2) A contract or agreement under which a person is responsible  
39 for both services that would otherwise be subject to tax as a service

1 under RCW 82.04.290(2) and also constructing, building, repairing,  
2 improving, or decorating activities that would otherwise be subject  
3 to tax under another section of this chapter is subject to the tax  
4 that applies to the predominant activity under the contract or  
5 agreement.

6 (3) Unless otherwise provided by law, a contract or agreement  
7 under which a person is responsible for activities that are subject  
8 to tax as a service under RCW 82.04.290(2), and a subsequent contract  
9 or agreement under which the same person is responsible for  
10 constructing, building, repairing, improving, or decorating  
11 activities subject to tax under another section of this chapter,  
12 shall not be combined and taxed as a single activity if at the time  
13 of the first contract or agreement it was not contemplated by the  
14 parties, as evidenced by the facts, that the same person would be  
15 awarded both contracts.

16 (4) ~~((As used in this section))~~ The definitions in this  
17 subsection apply throughout this section unless the context clearly  
18 requires otherwise.

19 (a) "Land development or management" means site identification,  
20 zoning, permitting, and other preconstruction regulatory services  
21 provided to the consumer of the constructing, building, repairing,  
22 improving, or decorating services. This includes, but is not limited  
23 to, acting as an owner's representative during any design or  
24 construction period, including recommending a contractor, monitoring  
25 the budget and schedule, approving invoices, and interacting on the  
26 behalf of the consumer with the person who has control over the work  
27 itself or responsible for the performance of the work.

28 (b) "Responsible for the performance" means that the person is  
29 obligated to perform the activities, either personally or through a  
30 third party. A person who reviews work for a consumer, retailer, or  
31 wholesaler but does not supervise or direct the work is not  
32 responsible for the performance of the work. A person who is  
33 financially obligated for the work, such as a bank, but who does not  
34 have control over the work itself is not responsible for the  
35 performance of the work.

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