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ENGROSSED SUBSTITUTE HOUSE BILL 1512

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State of Washington                      67th Legislature                      2021 Regular Session

By House Finance (originally sponsored by Representative Ryu)

READ FIRST TIME 02/22/21.

1            AN ACT Relating to lodging-related assessments under chapter  
2 35.87A RCW; amending RCW 35.87A.010, 35.87A.020, and 82.08.010;  
3 creating a new section; and declaring an emergency.

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

5            **Sec. 1.** RCW 35.87A.010 and 2005 c 178 s 1 are each amended to  
6 read as follows:

7            To aid general economic development and neighborhood  
8 revitalization, and to facilitate the cooperation of merchants,  
9 businesses, and residential property owners which assists trade,  
10 economic viability, and liveability, the legislature hereby  
11 authorizes all counties and all incorporated cities and towns,  
12 including unclassified cities and towns operating under special  
13 charters:

14            (1) To establish, after a petition submitted by the operators  
15 responsible for sixty percent of the assessments by businesses and  
16 multifamily residential or mixed-use projects within the area,  
17 parking and business improvement areas, hereafter referred to as area  
18 or areas, for the following purposes:

19            (a) The acquisition, construction or maintenance of parking  
20 facilities for the benefit of the area;

21            (b) Decoration of any public place in the area;

1 (c) Sponsorship or promotion of public events which are to take  
2 place on or in public places in the area;

3 (d) Furnishing of music in any public place in the area;

4 (e) Providing professional management, planning, and promotion  
5 for the area, including the management and promotion of retail trade  
6 activities in the area;

7 (f) Providing maintenance and security for common, public areas;  
8 or

9 (g) Providing transportation services for the benefit of the  
10 area.

11 (2)(a) To levy special assessments on all businesses and  
12 multifamily residential or mixed-use projects within the area and  
13 specially benefited by a parking and business improvement area to pay  
14 in whole or in part the damages or costs incurred therein as provided  
15 in this chapter.

16 (b) A lodging business may, but is not required to, collect any  
17 special assessment amount from its guests in the form of a separately  
18 stated charge per night on the sale of lodging taxable by the state  
19 under chapter 82.08 RCW. Such charges must be separately stated from  
20 the room rate on the invoice, bill of sale, or similar document  
21 provided by the lodging business to the guest. A lodging business  
22 that collects a special assessment from its guests as authorized  
23 under this subsection (2)(b) is deemed to be collecting the  
24 assessment amount from its guests as agent for the jurisdiction  
25 levying the special assessment. Such per night charges are not part  
26 of the selling price under RCW 82.08.010 for state and local sales  
27 tax purposes, nor are they part of the gross proceeds of sales of the  
28 lodging business for purposes of state business and occupation taxes  
29 imposed under chapter 82.04 RCW.

30 **Sec. 2.** RCW 35.87A.020 and 1993 c 429 s 2 are each amended to  
31 read as follows:

32 Unless the context clearly requires otherwise, the definitions in  
33 this section apply throughout this chapter.

34 (1) "Business" means all types of business, including  
35 professions.

36 (2) "Legislative authority" means the legislative authority of  
37 any city or town including unclassified cities or towns operating  
38 under special charters or the legislative authority of any county.

1 (3) "Lodging business" means a person that furnishes lodging  
2 taxable by the state under chapter 82.08 RCW.

3 (4) "Multifamily residential or mixed-use project" means any  
4 building or buildings containing four or more residential units or a  
5 combination of residential and commercial units, whether title to the  
6 entire property is held in single or undivided ownership or title to  
7 individual units is held by owners who also, directly or indirectly  
8 through an association, own real property in common with the other  
9 unit owners.

10 ((4)) (5) "Residential operator" means the owner or operator of  
11 a multifamily residential or mixed-use project if title is held in  
12 single or undivided ownership, or, if title is held in a form of  
13 common interest ownership, the association of unit owners,  
14 condominium association, homeowners' association, property owners'  
15 association, or residential cooperative corporation.

16 **Sec. 3.** RCW 82.08.010 and 2019 c 8 s 105 are each amended to  
17 read as follows:

18 For the purposes of this chapter:

19 (1)(a)(i) "Selling price" includes "sales price." "Sales price"  
20 means the total amount of consideration, except separately stated  
21 trade-in property of like kind, including cash, credit, property, and  
22 services, for which tangible personal property, extended warranties,  
23 digital goods, digital codes, digital automated services, or other  
24 services or anything else defined as a "retail sale" under RCW  
25 82.04.050 are sold, leased, or rented, valued in money, whether  
26 received in money or otherwise. ((No)) Except as otherwise provided  
27 in this subsection (1), no deduction from the total amount of  
28 consideration is allowed for the following: (A) The seller's cost of  
29 the property sold; (B) the cost of materials used, labor or service  
30 cost, interest, losses, all costs of transportation to the seller,  
31 all taxes imposed on the seller, and any other expense of the seller;  
32 (C) charges by the seller for any services necessary to complete the  
33 sale, other than delivery and installation charges; (D) delivery  
34 charges; and (E) installation charges.

35 (ii) When tangible personal property is rented or leased under  
36 circumstances that the consideration paid does not represent a  
37 reasonable rental for the use of the articles so rented or leased,  
38 the "selling price" must be determined as nearly as possible  
39 according to the value of such use at the places of use of similar

1 products of like quality and character under such rules as the  
2 department may prescribe;

3 (b) "Selling price" or "sales price" does not include: Discounts,  
4 including cash, term, or coupons that are not reimbursed by a third  
5 party that are allowed by a seller and taken by a purchaser on a  
6 sale; interest, financing, and carrying charges from credit extended  
7 on the sale of tangible personal property, extended warranties,  
8 digital goods, digital codes, digital automated services, or other  
9 services or anything else defined as a retail sale in RCW 82.04.050,  
10 if the amount is separately stated on the invoice, bill of sale, or  
11 similar document given to the purchaser; and any taxes legally  
12 imposed directly on the consumer, or collected from the consumer  
13 pursuant to RCW 35.87A.010(2)(b), that are separately stated on the  
14 invoice, bill of sale, or similar document given to the purchaser;

15 (c) "Selling price" or "sales price" includes consideration  
16 received by the seller from a third party if:

17 (i) The seller actually receives consideration from a party other  
18 than the purchaser, and the consideration is directly related to a  
19 price reduction or discount on the sale;

20 (ii) The seller has an obligation to pass the price reduction or  
21 discount through to the purchaser;

22 (iii) The amount of the consideration attributable to the sale is  
23 fixed and determinable by the seller at the time of the sale of the  
24 item to the purchaser; and

25 (iv) One of the criteria in this subsection (1)(c)(iv) is met:

26 (A) The purchaser presents a coupon, certificate, or other  
27 documentation to the seller to claim a price reduction or discount  
28 where the coupon, certificate, or documentation is authorized,  
29 distributed, or granted by a third party with the understanding that  
30 the third party will reimburse any seller to whom the coupon,  
31 certificate, or documentation is presented;

32 (B) The purchaser identifies himself or herself to the seller as  
33 a member of a group or organization entitled to a price reduction or  
34 discount, however a "preferred customer" card that is available to  
35 any patron does not constitute membership in such a group; or

36 (C) The price reduction or discount is identified as a third  
37 party price reduction or discount on the invoice received by the  
38 purchaser or on a coupon, certificate, or other documentation  
39 presented by the purchaser;

1 (2) (a) (i) "Seller" means every person, including the state and  
2 its departments and institutions, making sales at retail or retail  
3 sales to a buyer, purchaser, or consumer, whether as agent, broker,  
4 or principal, except as otherwise provided in this subsection (2).

5 (ii) "Seller" includes marketplace facilitators, whether making  
6 sales in their own right or facilitating sales on behalf of  
7 marketplace sellers.

8 (b) (i) "Seller" does not include:

9 (A) The state and its departments and institutions when making  
10 sales to the state and its departments and institutions; or

11 (B) A professional employer organization when a covered employee  
12 coemployed with the client under the terms of a professional employer  
13 agreement engages in activities that constitute a sale at retail that  
14 is subject to the tax imposed by this chapter. In such cases, the  
15 client, and not the professional employer organization, is deemed to  
16 be the seller and is responsible for collecting and remitting the tax  
17 imposed by this chapter.

18 (ii) For the purposes of this subsection (2) (b), the terms  
19 "client," "covered employee," "professional employer agreement," and  
20 "professional employer organization" have the same meanings as in RCW  
21 82.04.540;

22 (3) "Buyer," "purchaser," and "consumer" include, without  
23 limiting the scope hereof, every individual, receiver, assignee,  
24 trustee in bankruptcy, trust, estate, firm, copartnership, joint  
25 venture, club, company, joint stock company, business trust,  
26 corporation, association, society, or any group of individuals acting  
27 as a unit, whether mutual, cooperative, fraternal, nonprofit, or  
28 otherwise, municipal corporation, quasi municipal corporation, and  
29 also the state, its departments and institutions and all political  
30 subdivisions thereof, irrespective of the nature of the activities  
31 engaged in or functions performed, and also the United States or any  
32 instrumentality thereof;

33 (4) "Delivery charges" means charges by the seller of personal  
34 property or services for preparation and delivery to a location  
35 designated by the purchaser of personal property or services  
36 including, but not limited to, transportation, shipping, postage,  
37 handling, crating, and packing;

38 (5) "Direct mail" means printed material delivered or distributed  
39 by United States mail or other delivery service to a mass audience or  
40 to addressees on a mailing list provided by the purchaser or at the

1 direction of the purchaser when the cost of the items are not billed  
2 directly to the recipients. "Direct mail" includes tangible personal  
3 property supplied directly or indirectly by the purchaser to the  
4 direct mail seller for inclusion in the package containing the  
5 printed material. "Direct mail" does not include multiple items of  
6 printed material delivered to a single address;

7 (6) The meaning attributed in chapter 82.04 RCW to the terms "tax  
8 year," "taxable year," "person," "company," "sale," "sale at  
9 wholesale," "wholesale," "business," "engaging in business," "cash  
10 discount," "successor," "consumer," "in this state," "within this  
11 state," "marijuana," "useable marijuana," and "marijuana-infused  
12 products" applies equally to the provisions of this chapter;

13 (7) For the purposes of the taxes imposed under this chapter and  
14 under chapter 82.12 RCW, "tangible personal property" means personal  
15 property that can be seen, weighed, measured, felt, or touched, or  
16 that is in any other manner perceptible to the senses. Tangible  
17 personal property includes electricity, water, gas, steam, and  
18 prewritten computer software;

19 (8) "Extended warranty" has the same meaning as in RCW  
20 82.04.050(7);

21 (9) The definitions in RCW 82.04.192 apply to this chapter;

22 (10) For the purposes of the taxes imposed under this chapter and  
23 chapter 82.12 RCW, whenever the terms "property" or "personal  
24 property" are used, those terms must be construed to include digital  
25 goods and digital codes unless:

26 (a) It is clear from the context that the term "personal  
27 property" is intended only to refer to tangible personal property;

28 (b) It is clear from the context that the term "property" is  
29 intended only to refer to tangible personal property, real property,  
30 or both; or

31 (c) To construe the term "property" or "personal property" as  
32 including digital goods and digital codes would yield unlikely,  
33 absurd, or strained consequences; and

34 (11) "Retail sale" or "sale at retail" means any sale, lease, or  
35 rental for any purpose other than for resale, sublease, or subrent.

36 (12) The terms "agriculture," "farming," "horticulture,"  
37 "horticultural," and "horticultural product" may not be construed to  
38 include or relate to marijuana, useable marijuana, or marijuana-  
39 infused products unless the applicable term is explicitly defined to  
40 include marijuana, useable marijuana, or marijuana-infused products.

1 (13) (a) "Affiliated person" means a person that, with respect to  
2 another person:

3 (i) Has an ownership interest of more than five percent, whether  
4 direct or indirect, in the other person; or

5 (ii) Is related to the other person because a third person, or  
6 group of third persons who are affiliated persons with respect to  
7 each other, holds an ownership interest of more than five percent,  
8 whether direct or indirect, in the related persons.

9 (b) For purposes of this subsection (13):

10 (i) "Ownership interest" means the possession of equity in the  
11 capital, the stock, or the profits of the other person; and

12 (ii) An indirect ownership interest in a person is an ownership  
13 interest in an entity that has an ownership interest in the person or  
14 in an entity that has an indirect ownership interest in the person.

15 (14) "Marketplace" means a physical or electronic place,  
16 including, but not limited to, a store, a booth, an internet web  
17 site, a catalog or a dedicated sales software application, where  
18 tangible personal property, digital codes and digital products, or  
19 services are offered for sale.

20 (15) (a) "Marketplace facilitator" means a person that:

21 (i) Contracts with sellers to facilitate for consideration,  
22 regardless of whether deducted as fees from the transaction, the sale  
23 of the seller's products through a marketplace owned or operated by  
24 the person;

25 (ii) Engages directly or indirectly, through one or more  
26 affiliated persons, in transmitting or otherwise communicating the  
27 offer or acceptance between the buyer and seller. For purposes of  
28 this subsection, mere advertising does not constitute transmitting or  
29 otherwise communicating the offer or acceptance between the buyer and  
30 seller; and

31 (iii) Engages directly or indirectly, through one or more  
32 affiliated persons, in any of the following activities with respect  
33 to the seller's products:

34 (A) Payment processing services;

35 (B) Fulfillment or storage services;

36 (C) Listing products for sale;

37 (D) Setting prices;

38 (E) Branding sales as those of the marketplace facilitator;

39 (F) Taking orders; or

1 (G) Providing customer service or accepting or assisting with  
2 returns or exchanges.

3 (b) (i) "Marketplace facilitator" does not include:

4 (A) A person who provides internet advertising services,  
5 including listing products for sale, so long as the person does not  
6 also engage in the activity described in (a) (ii) of this subsection  
7 (15) in addition to any of the activities described in (a) (iii) of  
8 this subsection (15); or

9 (B) A person with respect to the provision of travel agency  
10 services or the operation of a marketplace or that portion of a  
11 marketplace that enables consumers to purchase transient lodging  
12 accommodations in a hotel or other commercial transient lodging  
13 facility.

14 (ii) The exclusion in this subsection (15) (b) does not apply to a  
15 marketplace or that portion of a marketplace that facilitates the  
16 retail sale of transient lodging accommodations in homes, apartments,  
17 cabins, or other residential dwelling units.

18 (iii) For purposes of this subsection (15) (b), the following  
19 definitions apply:

20 (A) "Hotel" has the same meaning as in RCW 19.48.010.

21 (B) "Travel agency services" means arranging or booking, for a  
22 commission, fee or other consideration, vacation or travel packages,  
23 rental car or other travel reservations or accommodations, tickets  
24 for domestic or foreign travel by air, rail, ship, bus, or other  
25 medium of transportation, or hotel or other lodging accommodations.

26 (16) "Marketplace seller" means a seller that makes retail sales  
27 through any marketplace operated by a marketplace facilitator,  
28 regardless of whether the seller is required to be registered with  
29 the department under RCW 82.32.030.

30 (17) "Remote seller" means any seller, including a marketplace  
31 facilitator, who does not have a physical presence in this state and  
32 makes retail sales to purchasers or facilitates retail sales on  
33 behalf of marketplace sellers.

34 NEW SECTION. **Sec. 4.** This act applies prospectively to any  
35 special assessment amounts collected by a lodging business as  
36 provided in section 1 of this act that are collected on or after the  
37 effective date of this section, as well as retroactively for any  
38 taxpayer who has been assessed taxes by the department of revenue  
39 prior to the effective date of this section, on any special



1 assessment amounts collected by a lodging business as provided in  
2 section 1 of this act. Nothing in this act is intended to be  
3 construed to require or otherwise authorize a refund of taxes  
4 lawfully paid prior to the effective date of this section.

5 NEW SECTION. **Sec. 5.** This act is necessary for the immediate  
6 preservation of the public peace, health, or safety, or support of  
7 the state government and its existing public institutions, and takes  
8 effect immediately.

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