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**SUBSTITUTE HOUSE BILL 1431**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** House Finance (originally sponsored by Representatives Timmons, Stokesbary, Springer, Corry, Stonier, Abbarno, Rule, Schmick, Street, Fitzgibbon, Jacobsen, Harris, Hutchins, Riccelli, McEntire, Maycumber, Bronoske, Ramel, Robertson, Taylor, Simmons, Tharinger, Berry, Caldier, Reeves, Ortiz-Self, Thai, Christian, Kloba, Bateman, Gregerson, Barnard, Pollet, Reed, Ormsby, Doglio, and Cheney)

READ FIRST TIME 02/17/23.

1 AN ACT Relating to clarifying that meals furnished to tenants of  
2 senior living communities as part of their rental agreement are not  
3 subject to sales and use tax; amending RCW 82.04.040 and 82.04.040;  
4 adding a new section to chapter 82.12 RCW; creating a new section;  
5 providing an effective date; and providing an expiration date.

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

7 **Sec. 1.** RCW 82.04.040 and 2019 c 357 s 2 are each amended to  
8 read as follows:

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

20 (a) An animal by an animal rescue organization in exchange for  
21 the payment of an adoption fee; ((~~or~~))

1 (b) An abandoned vehicle sold by a registered tow truck operator  
2 to a successful bidder at public auction or, if there is no  
3 successful bidder, to a licensed vehicle wrecker, hulk hauler, or  
4 scrap processor, as provided in RCW 46.55.130. Nothing in this  
5 subsection (1)(b) may be construed as providing an exemption from:

6 (i) The tax imposed by chapter 82.12 RCW on the use of an  
7 abandoned vehicle by any consumer; or

8 (ii) Taxes imposed under this chapter and chapter 82.08 RCW on  
9 automobile towing and automobile storage services provided by a  
10 registered tow truck operator; or

11 (c) Food, drink, or meals furnished by a senior living community  
12 to tenants as part of a rental or residency agreement for which no  
13 separate charge is made, regardless of whether the tenant is a  
14 resident for purposes of chapter 18.20 or 18.390 RCW.

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

18 (3)(a) "Lease or rental" means any transfer of possession or  
19 control of tangible personal property for a fixed or indeterminate  
20 term for consideration. A lease or rental may include future options  
21 to purchase or extend. "Lease or rental" includes agreements covering  
22 motor vehicles and trailers where the amount of consideration may be  
23 increased or decreased by reference to the amount realized upon sale  
24 or disposition of the property as defined in 26 U.S.C. Sec.  
25 7701(h)(1), as amended or renumbered as of January 1, 2003. The  
26 definition in this subsection (3) must be used for sales and use tax  
27 purposes regardless if a transaction is characterized as a lease or  
28 rental under generally accepted accounting principles, the United  
29 States internal revenue code, Washington state's commercial code, or  
30 other provisions of federal, state, or local law.

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

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

35 (ii) A transfer of possession or control of property under an  
36 agreement that requires the transfer of title upon completion of  
37 required payments, and payment of an option price does not exceed the  
38 greater of (~~one hundred dollars~~) \$100 or one percent of the total  
39 required payments; or

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

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

12 (b) "Animal care and control agency" means the same as in RCW  
13 16.52.011 and also includes any similar entity operating outside of  
14 this state.

15 (c) "Animal rescue group" means a nonprofit organization that:

16 (i)(A) Is exempt from federal income taxation under 26 U.S.C.  
17 Sec. 501(c) of the federal internal revenue code as it exists on July  
18 23, 2017; or

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

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

24 (iii) Exclusively obtains dogs, cats, or other animals for  
25 placement that are:

26 (A) Stray or abandoned;

27 (B) Surrendered or relinquished by animal owners or caretakers;

28 (C) Transferred from other animal rescue organizations; or

29 (D) Born in the care of such nonprofit organization other than  
30 through intentional breeding by the nonprofit organization.

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

33 (e) "Senior living community" means any facility or campus  
34 operated by a person licensed or registered under chapter 18.20 or  
35 18.390 RCW.

36 **Sec. 2.** RCW 82.04.040 and 2017 c 323 s 201 are each amended to  
37 read as follows:

38 (1) Except as otherwise provided in this subsection, "sale" means  
39 any transfer of the ownership of, title to, or possession of property

1 for a valuable consideration and includes any activity classified as  
2 a "sale at retail" or "retail sale" under RCW 82.04.050. It includes  
3 lease or rental, conditional sale contracts, and any contract under  
4 which possession of the property is given to the purchaser but title  
5 is retained by the vendor as security for the payment of the purchase  
6 price. It also includes the furnishing of food, drink, or meals for  
7 compensation whether consumed upon the premises or not. The term  
8 "sale" does not include the transfer of the ownership of, title to,  
9 or possession of ~~((an))~~;

10 (a) An animal by an animal rescue organization in exchange for  
11 the payment of an adoption fee; or

12 (b) Food, drink, or meals furnished by a senior living community  
13 to tenants as part of a rental or residency agreement for which no  
14 separate charge is made, regardless of whether the tenant is a  
15 resident for purposes of chapter 18.20 or 18.390 RCW.

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

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

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

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

36 (ii) A transfer of possession or control of property under an  
37 agreement that requires the transfer of title upon completion of  
38 required payments, and payment of an option price does not exceed the  
39 greater of ~~((one hundred dollars))~~ \$100 or one percent of the total  
40 required payments; or

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

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

12 (b) "Animal care and control agency" means the same as in RCW  
13 16.52.011 and also includes any similar entity operating outside of  
14 this state.

15 (c) "Animal rescue group" means a nonprofit organization that:

16 (i)(A) Is exempt from federal income taxation under 26 U.S.C.  
17 Sec. 501(c) of the federal internal revenue code as it exists on July  
18 23, 2017; or

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

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

24 (iii) Exclusively obtains dogs, cats, or other animals for  
25 placement that are:

26 (A) Stray or abandoned;

27 (B) Surrendered or relinquished by animal owners or caretakers;

28 (C) Transferred from other animal rescue organizations; or

29 (D) Born in the care of such nonprofit organization other than  
30 through intentional breeding by the nonprofit organization.

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

33 (e) "Senior living community" means any facility or campus  
34 operated by a person licensed or registered under chapter 18.20 or  
35 18.390 RCW.

36 NEW SECTION. Sec. 3. A new section is added to chapter 82.12  
37 RCW to read as follows:

38 This chapter does not apply to food, drinks, or meals furnished  
39 by a senior living community to tenants as part of a rental or

1 residency agreement for which no separate charge is made, regardless  
2 of whether the tenant is a resident for purposes of chapter 18.20 or  
3 18.390 RCW.

4 NEW SECTION. **Sec. 4.** RCW 82.32.805 and 82.32.808 do not apply  
5 to this act.

6 NEW SECTION. **Sec. 5.** Section 1 of this act expires January 1,  
7 2030.

8 NEW SECTION. **Sec. 6.** Section 2 of this act takes effect January  
9 1, 2030.

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