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HOUSE BILL 1954

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State of Washington

54th Legislature

1995 Regular Session

By Representatives Huff and L. Thomas

Read first time 02/17/95. Referred to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to imposition of the business and occupation tax on  
2 tenant screening services; and amending RCW 82.04.050 and 82.04.055.

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

4 **Sec. 1.** RCW 82.04.050 and 1993 sp.s. c 25 s 301 are each amended  
5 to read as follows:

6 (1) "Sale at retail" or "retail sale" means every sale of tangible  
7 personal property (including articles produced, fabricated, or  
8 imprinted) to all persons irrespective of the nature of their business  
9 and including, among others, without limiting the scope hereof, persons  
10 who install, repair, clean, alter, improve, construct, or decorate real  
11 or personal property of or for consumers other than a sale to a person  
12 who presents a resale certificate under RCW 82.04.470 and who:

13 (a) Purchases for the purpose of resale as tangible personal  
14 property in the regular course of business without intervening use by  
15 such person; or

16 (b) Installs, repairs, cleans, alters, imprints, improves,  
17 constructs, or decorates real or personal property of or for consumers,  
18 if such tangible personal property becomes an ingredient or component

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

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

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

14 (e) Purchases for the purpose of providing the property to  
15 consumers as part of competitive telephone service, as defined in RCW  
16 82.04.065. The term shall include every sale of tangible personal  
17 property which is used or consumed or to be used or consumed in the  
18 performance of any activity classified as a "sale at retail" or "retail  
19 sale" even though such property is resold or utilized as provided in  
20 (a), (b), (c), (d), or (e) of this subsection following such use. The  
21 term also means every sale of tangible personal property to persons  
22 engaged in any business which is taxable under RCW 82.04.280 (2) and  
23 (7) and 82.04.290.

24 (2) The term "sale at retail" or "retail sale" shall include the  
25 sale of or charge made for tangible personal property consumed and/or  
26 for labor and services rendered in respect to the following:

27 (a) The installing, repairing, cleaning, altering, imprinting, or  
28 improving of tangible personal property of or for consumers, including  
29 charges made for the mere use of facilities in respect thereto, but  
30 excluding sales of laundry service to members by nonprofit associations  
31 composed exclusively of nonprofit hospitals, and excluding services  
32 rendered in respect to live animals, birds and insects;

33 (b) The constructing, repairing, decorating, or improving of new or  
34 existing buildings or other structures under, upon, or above real  
35 property of or for consumers, including the installing or attaching of  
36 any article of tangible personal property therein or thereto, whether  
37 or not such personal property becomes a part of the realty by virtue of  
38 installation, and shall also include the sale of services or charges

1 made for the clearing of land and the moving of earth excepting the  
2 mere leveling of land used in commercial farming or agriculture;

3 (c) The charge for labor and services rendered in respect to  
4 constructing, repairing, or improving any structure upon, above, or  
5 under any real property owned by an owner who conveys the property by  
6 title, possession, or any other means to the person performing such  
7 construction, repair, or improvement for the purpose of performing such  
8 construction, repair, or improvement and the property is then  
9 reconveyed by title, possession, or any other means to the original  
10 owner;

11 (d) The sale of or charge made for labor and services rendered in  
12 respect to the cleaning, fumigating, razing or moving of existing  
13 buildings or structures, but shall not include the charge made for  
14 janitorial services; and for purposes of this section the term  
15 "janitorial services" shall mean those cleaning and caretaking services  
16 ordinarily performed by commercial janitor service businesses  
17 including, but not limited to, wall and window washing, floor cleaning  
18 and waxing, and the cleaning in place of rugs, drapes and upholstery.  
19 The term "janitorial services" does not include painting, papering,  
20 repairing, furnace or septic tank cleaning, snow removal or  
21 sandblasting;

22 (e) The sale of or charge made for labor and services rendered in  
23 respect to automobile towing and similar automotive transportation  
24 services, but not in respect to those required to report and pay taxes  
25 under chapter 82.16 RCW;

26 (f) The sale of and charge made for the furnishing of lodging and  
27 all other services by a hotel, rooming house, tourist court, motel,  
28 trailer camp, and the granting of any similar license to use real  
29 property, as distinguished from the renting or leasing of real  
30 property, and it shall be presumed that the occupancy of real property  
31 for a continuous period of one month or more constitutes a rental or  
32 lease of real property and not a mere license to use or enjoy the same;

33 (g) The sale of or charge made for tangible personal property,  
34 labor and services to persons taxable under (a), (b), (c), (d), (e),  
35 and (f) of this subsection when such sales or charges are for property,  
36 labor and services which are used or consumed in whole or in part by  
37 such persons in the performance of any activity defined as a "sale at  
38 retail" or "retail sale" even though such property, labor and services  
39 may be resold after such use or consumption. Nothing contained in this

1 subsection shall be construed to modify subsection (1) of this section  
2 and nothing contained in subsection (1) of this section shall be  
3 construed to modify this subsection.

4 (3) The term "sale at retail" or "retail sale" shall include the  
5 sale of or charge made for personal, business, or professional services  
6 including amounts designated as interest, rents, fees, admission, and  
7 other service emoluments however designated, received by persons  
8 engaging in the following business activities:

9 (a) Amusement and recreation services including but not limited to  
10 golf, pool, billiards, skating, bowling, ski lifts and tows, and  
11 others;

12 (b) Abstract, title insurance, and escrow services;

13 (c) Credit bureau services except those services performed by  
14 tenant screening companies;

15 (d) Automobile parking and storage garage services;

16 (e) Landscape maintenance and horticultural services but excluding  
17 horticultural services provided to farmers;

18 (f) Service charges associated with tickets to professional  
19 sporting events;

20 (g) Guided tours and guided charters; and

21 (h) The following personal services: Physical fitness services,  
22 tanning salon services, tattoo parlor services, massage services, steam  
23 bath services, turkish bath services, escort services, and dating  
24 services.

25 (4) The term shall also include the renting or leasing of tangible  
26 personal property to consumers and the rental of equipment with an  
27 operator.

28 (5) The term shall also include the providing of telephone service,  
29 as defined in RCW 82.04.065, to consumers.

30 (6) The term shall not include the sale of or charge made for labor  
31 and services rendered in respect to the building, repairing, or  
32 improving of any street, place, road, highway, easement, right of way,  
33 mass public transportation terminal or parking facility, bridge,  
34 tunnel, or trestle which is owned by a municipal corporation or  
35 political subdivision of the state or by the United States and which is  
36 used or to be used primarily for foot or vehicular traffic including  
37 mass transportation vehicles of any kind.

38 (7) The term shall also not include sales of feed, seed, seedlings,  
39 fertilizer, agents for enhanced pollination including insects such as

1 bees, and spray materials to persons who participate in the federal  
2 conservation reserve program or its successor administered by the  
3 United States department of agriculture, or to farmers for the purpose  
4 of producing for sale any agricultural product, nor shall it include  
5 sales of chemical sprays or washes to persons for the purpose of post-  
6 harvest treatment of fruit for the prevention of scald, fungus, mold,  
7 or decay.

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

20 **Sec. 2.** RCW 82.04.055 and 1993 sp.s. c 25 s 201 are each amended  
21 to read as follows:

22 (1) "Selected business services" means:

23 (a) Stenographic, secretarial, and clerical services.

24 (b) Computer services, including but not limited to computer  
25 programming, custom software modification, custom software  
26 installation, custom software maintenance, custom software repair,  
27 training in the use of custom software, computer systems design, and  
28 custom software update services.

29 (c) Data processing services, including but not limited to word  
30 processing, data entry, data retrieval, data search, information  
31 compilation, payroll processing, business accounts processing, data  
32 production, and other computerized data and information storage or  
33 manipulation. Data processing services also includes the use of a  
34 computer or computer time for data processing whether the processing is  
35 performed by the provider of the computer or by the purchaser or other  
36 beneficiary of the service.

37 (d) Information services, including but not limited to tenant  
38 screening services, electronic data retrieval or research that entails

1 furnishing financial or legal information, data or research, general or  
2 specialized news, or current information unless such news or current  
3 information is furnished to a newspaper publisher or to a radio or  
4 television station licensed by the federal communications commission.

5 (e) Legal, arbitration, and mediation services, including but not  
6 limited to paralegal services, legal research services, and court  
7 reporting services.

8 (f) Accounting, auditing, actuarial, bookkeeping, tax preparation,  
9 and similar services.

10 (g) Design services whether or not performed by persons licensed or  
11 certified, including but not limited to the following:

12 (i) Engineering services, including civil, electrical, mechanical,  
13 petroleum, marine, nuclear, and design engineering, machine designing,  
14 machine tool designing, and sewage disposal system designing;

15 (ii) Architectural services, including but not limited to:  
16 Structural or landscape design or architecture, interior design,  
17 building design, building program management, and space planning.

18 (h) Business consulting services. Business consulting services are  
19 those primarily providing operating counsel, advice, or assistance to  
20 the management or owner of any business, private, nonprofit, or public  
21 organization, including but not limited to those in the following  
22 areas: Administrative management consulting, general management  
23 consulting, human resource consulting or training, management  
24 engineering consulting, management information systems consulting,  
25 manufacturing management consulting, marketing consulting, operations  
26 research consulting, personnel management consulting, physical  
27 distribution consulting, site location consulting, economic consulting,  
28 motel, hotel, and resort consulting, restaurant consulting, government  
29 affairs consulting, and lobbying.

30 (i) Business management services, including but not limited to  
31 administrative management, business management, and office management,  
32 but not including property management or property leasing, motel,  
33 hotel, and resort management, or automobile parking management.

34 (j) Protective services, including but not limited to detective  
35 agency services and private investigating services, armored car  
36 services, guard or protective services, lie detection or polygraph  
37 services, and security system, burglar, or fire alarm monitoring and  
38 maintenance services.

1 (k) Public relations or advertising services, including but not  
2 limited to layout, art direction, graphic design, copy writing,  
3 mechanical preparation, opinion research, marketing research,  
4 marketing, or production supervision, but excluding services provided  
5 as part of broadcast or print advertising.

6 (l) Aerial and land surveying, geological consulting, and real  
7 estate appraising.

8 (2) Subsection (1) of this section notwithstanding, the term  
9 "selected business services" does not include:

10 (a) The provision of either permanent or temporary employees.

11 (b) Services provided by a public benefit nonprofit organization,  
12 as defined in RCW 82.04.366, to the state of Washington, its political  
13 subdivisions, municipal corporations, or quasi-municipal corporations.

14 (c) Services related to the identification, investigation, or  
15 cleanup arising out of the release or threatened release of hazardous  
16 substances when the services are remedial or response actions performed  
17 under federal or state law, or when the services are performed to  
18 determine if a release of hazardous substances has occurred or is  
19 likely to occur.

20 (d) Services provided to or performed for, on behalf of, or for the  
21 benefit of a collective investment fund such as: (i) A mutual fund or  
22 other regulated investment company as defined in section 851(a) of the  
23 Internal Revenue Code of 1986, as amended; (ii) an "investment company"  
24 as that term is used in section 3(a) of the Investment Company Act of  
25 1940 as well as an entity that would be an investment company under  
26 section 3(a) of the Investment Company Act of 1940 except for the  
27 section 3(c)(1) or (11) exemptions, or except that it is a foreign  
28 investment company organized under laws of a foreign country; (iii) an  
29 "employee benefit plan," which includes any plan, trust, commingled  
30 employee benefit trusts, or custodial arrangement that is subject to  
31 the Employee Retirement Income Security Act of 1974, as amended, 29  
32 U.S.C. Sec. 1001 et seq., or that is described in sections 125, 401,  
33 403, 408, 457, and 501(c)(9) and (17) through (23) of the Internal  
34 Revenue Code of 1986, as amended, or similar plan maintained by state  
35 or local governments, or plans, trusts, or custodial arrangements  
36 established to self-insure benefits required by federal, state, or  
37 local law; (iv) a fund maintained by a tax exempt organization as  
38 defined in section 501(c)(3) or 509(a) of the Internal Revenue Code of  
39 1986, as amended, for operating, quasi-endowment, or endowment

1 purposes; or (v) funds that are established for the benefit of such tax  
2 exempt organization such as charitable remainder trusts, charitable  
3 lead trusts, charitable annuity trusts, or other similar trusts.

4 (e) Research or experimental services eligible for expense  
5 treatment under section 174 of the Internal Revenue Code of 1986, as  
6 amended.

7 (f) Financial services provided by a financial institution. The  
8 term "financial institution" means a corporation, partnership, or other  
9 business organization chartered under Title 30, 31, 32, or 33 RCW, or  
10 under the National Bank Act, as amended, the Homeowners Loan Act, as  
11 amended, or the Federal Credit Union Act, as amended, or a holding  
12 company of any such business organization that is subject to the Bank  
13 Holding Company Act, as amended, or the Homeowners Loan Act, as  
14 amended, or a subsidiary or affiliate wholly owned or controlled by one  
15 or more financial institutions, as well as a lender approved by the  
16 United States secretary of housing and urban development for  
17 participation in any mortgage insurance program under the National  
18 Housing Act, as amended. The term "financial services" means those  
19 activities authorized by the laws cited in this subsection (2)(f) and  
20 includes services such as mortgage servicing, contract collection  
21 servicing, finance leasing, and services provided in a fiduciary  
22 capacity to a trust or estate.

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