
SUBSTITUTE HOUSE BILL 2590

State of Washington

54th Legislature

1996 Regular Session

By House Committee on Finance (originally sponsored by Representatives Van Luven, Dickerson and B. Thomas; by request of Department of Revenue)

Read first time 02/06/96.

1 AN ACT Relating to excise tax changes needed as a result of the
2 United States supreme court in *Jefferson Lines v. Oklahoma*; amending
3 RCW 82.04.050, 82.04.060, 82.04.190, 82.12.020, and 82.04.050; adding
4 a new section to chapter 82.04 RCW; adding a new section to chapter
5 82.08 RCW; creating a new section; providing an effective date; and
6 declaring an emergency.

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

8 **Sec. 1.** RCW 82.04.050 and 1995 1st sp.s. c 12 s 2 are each amended
9 to read as follows:

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

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

1 (b) Installs, repairs, cleans, alters, imprints, improves,
2 constructs, or decorates real or personal property of or for consumers,
3 if such tangible personal property becomes an ingredient or component
4 of such real or personal property without intervening use by such
5 person; or

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

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

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

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

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

36 (b) The constructing, repairing, decorating, or improving of new or
37 existing buildings or other structures under, upon, or above real
38 property of or for consumers, including the installing or attaching of
39 any article of tangible personal property therein or thereto, whether

1 or not such personal property becomes a part of the realty by virtue of
2 installation, and shall also include the sale of services or charges
3 made for the clearing of land and the moving of earth excepting the
4 mere leveling of land used in commercial farming or agriculture;

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

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

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

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

35 (g) The sale of or charge made for tangible personal property,
36 labor and services to persons taxable under (a), (b), (c), (d), (e),
37 and (f) of this subsection when such sales or charges are for property,
38 labor and services which are used or consumed in whole or in part by
39 such persons in the performance of any activity defined as a "sale at

1 retail" or "retail sale" even though such property, labor and services
2 may be resold after such use or consumption. Nothing contained in this
3 subsection shall be construed to modify subsection (1) of this section
4 and nothing contained in subsection (1) of this section shall be
5 construed to modify this subsection.

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

11 (a) Amusement and recreation services including but not limited to
12 golf, pool, billiards, skating, bowling, ski lifts and tows, day trips
13 for sightseeing purposes, and others, when provided to consumers;

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

15 (c) Credit bureau services;

16 (d) Automobile parking and storage garage services;

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

22 (f) Service charges associated with tickets to professional
23 sporting events; and

24 (g) (~~Guided tours and guided charters; and~~

25 ~~(h))~~) The following personal services: Physical fitness services,
26 tanning salon services, tattoo parlor services, steam bath services,
27 turkish bath services, escort services, and dating services.

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

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

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

1 used or to be used primarily for foot or vehicular traffic including
2 mass transportation vehicles of any kind.

3 (7) The term shall also not include sales of feed, seed, seedlings,
4 fertilizer, agents for enhanced pollination including insects such as
5 bees, and spray materials to persons who participate in the federal
6 conservation reserve program or its successor administered by the
7 United States department of agriculture, or to farmers for the purpose
8 of producing for sale any agricultural product, nor shall it include
9 sales of chemical sprays or washes to persons for the purpose of post-
10 harvest treatment of fruit for the prevention of scald, fungus, mold,
11 or decay.

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

24 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.04 RCW
25 to read as follows:

26 For the purposes of this chapter, unless the context requires
27 otherwise, "travel agent" has the same meaning as a "seller of travel"
28 in RCW 19.138.021.

29 **Sec. 3.** RCW 82.04.060 and 1983 2nd ex.s. c 3 s 26 are each amended
30 to read as follows:

31 "Sale at wholesale" or "wholesale sale" means any sale of tangible
32 personal property, any sale of amusement or recreation services as
33 defined in RCW 82.04.050(3)(a), or any sale of telephone service as
34 defined in RCW 82.04.065, which is not a sale at retail and means any
35 charge made for labor and services rendered for persons who are not
36 consumers, in respect to real or personal property, if such charge is
37 expressly defined as a retail sale by RCW 82.04.050 when rendered to or

1 for consumers: PROVIDED, That the term "real or personal property" as
2 used in this section shall not include any natural products named in
3 RCW 82.04.100.

4 **Sec. 4.** RCW 82.04.190 and 1995 1st sp.s. c 3 s 4 are each amended
5 to read as follows:

6 "Consumer" means the following:

7 (1) Any person who purchases, acquires, owns, holds, or uses any
8 article of tangible personal property irrespective of the nature of the
9 person's business and including, among others, without limiting the
10 scope hereof, persons who install, repair, clean, alter, improve,
11 construct, or decorate real or personal property of or for consumers
12 other than for the purpose (a) of resale as tangible personal property
13 in the regular course of business or (b) of incorporating such property
14 as an ingredient or component of real or personal property when
15 installing, repairing, cleaning, altering, imprinting, improving,
16 constructing, or decorating such real or personal property of or for
17 consumers or (c) of consuming such property in producing for sale a new
18 article of tangible personal property or a new substance, of which such
19 property becomes an ingredient or component or as a chemical used in
20 processing, when the primary purpose of such chemical is to create a
21 chemical reaction directly through contact with an ingredient of a new
22 article being produced for sale or (d) purchases for the purpose of
23 consuming the property purchased in producing ferrosilicon which is
24 subsequently used in producing magnesium for sale, if the primary
25 purpose of such property is to create a chemical reaction directly
26 through contact with an ingredient of ferrosilicon;

27 (2)(a) Any person engaged in any business activity taxable under
28 RCW 82.04.290 (~~and~~); (b) any person who purchases, acquires, or uses
29 any telephone service as defined in RCW 82.04.065, other than for
30 resale in the regular course of business; and (c) any person who
31 purchases, acquires, or uses any amusement and recreation service
32 defined in RCW 82.04.050(3)(a), other than for resale in the regular
33 course of business;

34 (3) Any person engaged in the business of contracting for the
35 building, repairing or improving of any street, place, road, highway,
36 easement, right of way, mass public transportation terminal or parking
37 facility, bridge, tunnel, or trestle which is owned by a municipal
38 corporation or political subdivision of the state of Washington or by

1 the United States and which is used or to be used primarily for foot or
2 vehicular traffic including mass transportation vehicles of any kind as
3 defined in RCW 82.04.280, in respect to tangible personal property when
4 such person incorporates such property as an ingredient or component of
5 such publicly owned street, place, road, highway, easement, right of
6 way, mass public transportation terminal or parking facility, bridge,
7 tunnel, or trestle by installing, placing or spreading the property in
8 or upon the right of way of such street, place, road, highway,
9 easement, bridge, tunnel, or trestle or in or upon the site of such
10 mass public transportation terminal or parking facility;

11 (4) Any person who is an owner, lessee or has the right of
12 possession to or an easement in real property which is being
13 constructed, repaired, decorated, improved, or otherwise altered by a
14 person engaged in business, excluding only (a) municipal corporations
15 or political subdivisions of the state in respect to labor and services
16 rendered to their real property which is used or held for public road
17 purposes, and (b) the United States, instrumentalities thereof, and
18 county and city housing authorities created pursuant to chapter 35.82
19 RCW in respect to labor and services rendered to their real property.
20 Nothing contained in this or any other subsection of this definition
21 shall be construed to modify any other definition of "consumer";

22 (5) Any person who is an owner, lessee, or has the right of
23 possession to personal property which is being constructed, repaired,
24 improved, cleaned, imprinted, or otherwise altered by a person engaged
25 in business;

26 (6) Any person engaged in the business of constructing, repairing,
27 decorating, or improving new or existing buildings or other structures
28 under, upon, or above real property of or for the United States, any
29 instrumentality thereof, or a county or city housing authority created
30 pursuant to chapter 35.82 RCW, including the installing or attaching of
31 any article of tangible personal property therein or thereto, whether
32 or not such personal property becomes a part of the realty by virtue of
33 installation; also, any person engaged in the business of clearing land
34 and moving earth of or for the United States, any instrumentality
35 thereof, or a county or city housing authority created pursuant to
36 chapter 35.82 RCW. Any such person shall be a consumer within the
37 meaning of this subsection in respect to tangible personal property
38 incorporated into, installed in, or attached to such building or other
39 structure by such person; and

1 (7) Any person who is a lessor of machinery and equipment, the
2 rental of which is exempt from the tax imposed by RCW 82.08.020 under
3 RCW 82.08.02565, with respect to the sale of or charge made for
4 tangible personal property consumed and for labor and services rendered
5 in respect to repairing the machinery and equipment.

6 Nothing contained in this or any other subsection of this
7 definition shall be construed to modify any other definition of
8 "consumer."

9 **Sec. 5.** RCW 82.12.020 and 1994 c 93 s 2 are each amended to read
10 as follows:

11 (1) There is hereby levied and there shall be collected from every
12 person in this state a tax or excise for the privilege of using within
13 this state as a consumer any article of tangible personal property
14 purchased at retail, or acquired by lease, gift, repossession, or
15 bailment, or extracted or produced or manufactured by the person so
16 using the same, or otherwise furnished to a person engaged in any
17 business taxable under RCW 82.04.280 (2) or (7), or any amusement or
18 recreation service defined as a retail sale in RCW 82.04.050(3)(a).

19 (2) This tax shall apply to the use of every service defined as a
20 retail sale in RCW 82.04.050(3)(a) and the use of every article of
21 tangible personal property, including property acquired at a casual or
22 isolated sale, and including byproducts used by the manufacturer
23 thereof, except as hereinafter provided, irrespective of whether the
24 article or similar articles are manufactured or are available for
25 purchase within this state.

26 (3) Except as provided in RCW 82.12.0252, payment by one purchaser
27 or user of tangible personal property or service of the tax imposed by
28 chapter 82.08 or 82.12 RCW shall not have the effect of exempting any
29 other purchaser or user of the same property or service from the taxes
30 imposed by such chapters.

31 (4) The tax shall be levied and collected in an amount equal to the
32 value of the article used by the taxpayer multiplied by the rate in
33 effect for the retail sales tax under RCW 82.08.020.

34 **Sec. 6.** RCW 82.04.050 and 1996 c ... (HB 2212) s 1 are each
35 amended to read as follows:

36 (1) "Sale at retail" or "retail sale" means every sale of tangible
37 personal property (including articles produced, fabricated, or

1 imprinted) to all persons irrespective of the nature of their business
2 and including, among others, without limiting the scope hereof, persons
3 who install, repair, clean, alter, improve, construct, or decorate real
4 or personal property of or for consumers other than a sale to a person
5 who presents a resale certificate under RCW 82.04.470 and who:

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

9 (b) Installs, repairs, cleans, alters, imprints, improves,
10 constructs, or decorates real or personal property of or for consumers,
11 if such tangible personal property becomes an ingredient or component
12 of such real or personal property without intervening use by such
13 person; or

14 (c) Purchases for the purpose of consuming the property purchased
15 in producing for sale a new article of tangible personal property or
16 substance, of which such property becomes an ingredient or component or
17 is a chemical used in processing, when the primary purpose of such
18 chemical is to create a chemical reaction directly through contact with
19 an ingredient of a new article being produced for sale; or

20 (d) Purchases for the purpose of consuming the property purchased
21 in producing ferrosilicon which is subsequently used in producing
22 magnesium for sale, if the primary purpose of such property is to
23 create a chemical reaction directly through contact with an ingredient
24 of ferrosilicon; or

25 (e) Purchases for the purpose of providing the property to
26 consumers as part of competitive telephone service, as defined in RCW
27 82.04.065. The term shall include every sale of tangible personal
28 property which is used or consumed or to be used or consumed in the
29 performance of any activity classified as a "sale at retail" or "retail
30 sale" even though such property is resold or utilized as provided in
31 (a), (b), (c), (d), or (e) of this subsection following such use. The
32 term also means every sale of tangible personal property to persons
33 engaged in any business which is taxable under RCW 82.04.280 (2) and
34 (7) and 82.04.290.

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

38 (a) The installing, repairing, cleaning, altering, imprinting, or
39 improving of tangible personal property of or for consumers, including

1 charges made for the mere use of facilities in respect thereto, but
2 excluding charges made for the use of coin-operated laundry facilities
3 when such facilities are situated in an apartment house, hotel, motel,
4 rooming house, trailer camp, or tourist camp for the exclusive use of
5 the tenants thereof, and also excluding sales of laundry service to
6 members by nonprofit associations composed exclusively of nonprofit
7 hospitals, and excluding services rendered in respect to live animals,
8 birds and insects;

9 (b) The constructing, repairing, decorating, or improving of new or
10 existing buildings or other structures under, upon, or above real
11 property of or for consumers, including the installing or attaching of
12 any article of tangible personal property therein or thereto, whether
13 or not such personal property becomes a part of the realty by virtue of
14 installation, and shall also include the sale of services or charges
15 made for the clearing of land and the moving of earth excepting the
16 mere leveling of land used in commercial farming or agriculture;

17 (c) The charge for labor and services rendered in respect to
18 constructing, repairing, or improving any structure upon, above, or
19 under any real property owned by an owner who conveys the property by
20 title, possession, or any other means to the person performing such
21 construction, repair, or improvement for the purpose of performing such
22 construction, repair, or improvement and the property is then
23 reconveyed by title, possession, or any other means to the original
24 owner;

25 (d) The sale of or charge made for labor and services rendered in
26 respect to the cleaning, fumigating, razing or moving of existing
27 buildings or structures, but shall not include the charge made for
28 janitorial services; and for purposes of this section the term
29 "janitorial services" shall mean those cleaning and caretaking services
30 ordinarily performed by commercial janitor service businesses
31 including, but not limited to, wall and window washing, floor cleaning
32 and waxing, and the cleaning in place of rugs, drapes and upholstery.
33 The term "janitorial services" does not include painting, papering,
34 repairing, furnace or septic tank cleaning, snow removal or
35 sandblasting;

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

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

8 (g) The sale of or charge made for tangible personal property,
9 labor and services to persons taxable under (a), (b), (c), (d), (e),
10 and (f) of this subsection when such sales or charges are for property,
11 labor and services which are used or consumed in whole or in part by
12 such persons in the performance of any activity defined as a "sale at
13 retail" or "retail sale" even though such property, labor and services
14 may be resold after such use or consumption. Nothing contained in this
15 subsection shall be construed to modify subsection (1) of this section
16 and nothing contained in subsection (1) of this section shall be
17 construed to modify this subsection.

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

23 (a) Amusement and recreation services including but not limited to
24 golf, pool, billiards, skating, bowling, ski lifts and tows, and
25 others, when provided to consumers;

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

27 (c) Credit bureau services; and

28 (d) Automobile parking and storage garage services.

29 (4) The term shall also include the renting or leasing of tangible
30 personal property to consumers.

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

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

1 used or to be used primarily for foot or vehicular traffic including
2 mass transportation vehicles of any kind.

3 (7) The term shall also not include sales of feed, seed, seedlings,
4 fertilizer, agents for enhanced pollination including insects such as
5 bees, and spray materials to persons who participate in the federal
6 conservation reserve program or its successor administered by the
7 United States department of agriculture, or to farmers for the purpose
8 of producing for sale any agricultural product, nor shall it include
9 sales of chemical sprays or washes to persons for the purpose of post-
10 harvest treatment of fruit for the prevention of scald, fungus, mold,
11 or decay.

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

24 NEW SECTION. **Sec. 7.** If section 1 of House Bill No. 2212 becomes
25 law on or before July 1, 1996, section 1 of this act shall be null and
26 void. If section 1 of House Bill No. 2212 does not become law on or
27 before July 1, 1996, section 6 of this act shall be null and void.

28 NEW SECTION. **Sec. 8.** A new section is added to chapter 82.08 RCW
29 to read as follows:

30 A credit shall be allowed against the taxes imposed by this chapter
31 upon the sale of tangible personal property or services in the state of
32 Washington in the amount that the buyer has paid a retail sales or use
33 tax with respect to such property or services to any other state of the
34 United States and any political subdivision thereof, the District of
35 Columbia, and any foreign country or political subdivision thereof.

1 NEW SECTION. **Sec. 9.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 10.** This act is necessary for the immediate
6 preservation of the public peace, health, or safety, or support of the
7 state government and its existing public institutions, and shall take
8 effect April 1, 1996.

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