
SENATE BILL 6326

State of Washington

54th Legislature

1996 Regular Session

By Senator Smith

Read first time 01/11/96. Referred to Committee on Ways & Means.

1 AN ACT Relating to sales and use taxation of persons repairing,
2 decorating, or improving new or existing buildings or other structures
3 for the United States; amending RCW 82.04.190 and 82.12.010; creating
4 a new section; and providing an effective date.

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

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

8 "Consumer" means the following:

9 (1) Any person who purchases, acquires, owns, holds, or uses any
10 article of tangible personal property irrespective of the nature of the
11 person's business and including, among others, without limiting the
12 scope hereof, persons who install, repair, clean, alter, improve,
13 construct, or decorate real or personal property of or for consumers
14 other than for the purpose (a) of resale as tangible personal property
15 in the regular course of business or (b) of incorporating such property
16 as an ingredient or component of real or personal property when
17 installing, repairing, cleaning, altering, imprinting, improving,
18 constructing, or decorating such real or personal property of or for
19 consumers or (c) of consuming such property in producing for sale a new

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

10 (2) Any person engaged in any business activity taxable under RCW
11 82.04.290 and any person who purchases, acquires, or uses any telephone
12 service as defined in RCW 82.04.065, other than for resale in the
13 regular course of business;

14 (3) Any person engaged in the business of contracting for the
15 building, repairing or improving of any street, place, road, highway,
16 easement, right of way, mass public transportation terminal or parking
17 facility, bridge, tunnel, or trestle which is owned by a municipal
18 corporation or political subdivision of the state of Washington or by
19 the United States and which is used or to be used primarily for foot or
20 vehicular traffic including mass transportation vehicles of any kind as
21 defined in RCW 82.04.280, in respect to tangible personal property when
22 such person incorporates such property as an ingredient or component of
23 such publicly owned street, place, road, highway, easement, right of
24 way, mass public transportation terminal or parking facility, bridge,
25 tunnel, or trestle by installing, placing or spreading the property in
26 or upon the right of way of such street, place, road, highway,
27 easement, bridge, tunnel, or trestle or in or upon the site of such
28 mass public transportation terminal or parking facility;

29 (4) Any person who is an owner, lessee or has the right of
30 possession to or an easement in real property which is being
31 constructed, repaired, decorated, improved, or otherwise altered by a
32 person engaged in business, excluding only (a) municipal corporations
33 or political subdivisions of the state in respect to labor and services
34 rendered to their real property which is used or held for public road
35 purposes, and (b) the United States, instrumentalities thereof, and
36 county and city housing authorities created pursuant to chapter 35.82
37 RCW in respect to labor and services rendered to their real property.
38 Nothing contained in this or any other subsection of this definition
39 shall be construed to modify any other definition of "consumer";

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

5 (6) Any person engaged in the business of constructing, repairing,
6 decorating, or improving new or existing buildings or other structures
7 under, upon, or above real property of or for the United States, any
8 instrumentality thereof, or a county or city housing authority created
9 pursuant to chapter 35.82 RCW, (~~including~~) with respect to the
10 (~~installing or~~) attaching of any article of tangible personal
11 property (~~therein or~~) thereto(~~, whether or not~~) if such personal
12 property becomes a part of the realty (~~by virtue of installation~~);
13 also, any person engaged in the business of clearing land and moving
14 earth of or for the United States, any instrumentality thereof, or a
15 county or city housing authority created pursuant to chapter 35.82 RCW.
16 Any such person shall be a consumer within the meaning of this
17 subsection in respect to tangible personal property incorporated
18 into(~~, installed in,~~) or attached to such building or other structure
19 by such person; and

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

25 Nothing contained in this or any other subsection of this
26 definition shall be construed to modify any other definition of
27 "consumer."

28 **Sec. 2.** RCW 82.12.010 and 1994 c 93 s 1 are each amended to read
29 as follows:

30 For the purposes of this chapter:

31 (1)(a) "Value of the article used" shall mean the consideration,
32 whether money, credit, rights, or other property except trade-in
33 property of like kind, expressed in terms of money, paid or given or
34 contracted to be paid or given by the purchaser to the seller for the
35 article of tangible personal property, the use of which is taxable
36 under this chapter. The term includes, in addition to the
37 consideration paid or given or contracted to be paid or given, the
38 amount of any tariff or duty paid with respect to the importation of

1 the article used. In case the article used is acquired by lease or by
2 gift or is extracted, produced, or manufactured by the person using the
3 same or is sold under conditions wherein the purchase price does not
4 represent the true value thereof, the value of the article used shall
5 be determined as nearly as possible according to the retail selling
6 price at place of use of similar products of like quality and character
7 under such rules as the department of revenue may prescribe.

8 (b) In case the articles used are acquired by bailment, the value
9 of the use of the articles so used shall be in an amount representing
10 a reasonable rental for the use of the articles so bailed, determined
11 as nearly as possible according to the value of such use at the places
12 of use of similar products of like quality and character under such
13 rules as the department of revenue may prescribe. In case any such
14 articles of tangible personal property are used in respect to the
15 construction, repairing, decorating, or improving of, and which become
16 or are to become an ingredient or component of, new or existing
17 buildings or other structures under, upon, or above real property of or
18 for the United States, any instrumentality thereof, or a county or city
19 housing authority created pursuant to chapter 35.82 RCW, ~~((including))~~
20 with respect to the ~~((installing or))~~ attaching of any such articles
21 ~~((therein or))~~ thereto~~((, whether or not))~~ if such personal property
22 becomes a part of the realty ~~((by virtue of installation))~~, then the
23 value of the use of such articles so used shall be determined according
24 to the retail selling price of such articles, or in the absence of such
25 a selling price, as nearly as possible according to the retail selling
26 price at place of use of similar products of like quality and character
27 or, in the absence of either of these selling price measures, such
28 value may be determined upon a cost basis, in any event under such
29 rules as the department of revenue may prescribe.

30 (c) In the case of articles owned by a user engaged in business
31 outside the state which are brought into the state for no more than one
32 hundred eighty days in any period of three hundred sixty-five
33 consecutive days and which are temporarily used for business purposes
34 by the person in this state, the value of the article used shall be an
35 amount representing a reasonable rental for the use of the articles,
36 unless the person has paid tax under this chapter or chapter 82.08 RCW
37 upon the full value of the article used, as defined in (a) of this
38 subsection.

1 (d) In the case of articles manufactured or produced by the user
2 and used in the manufacture or production of products sold or to be
3 sold to the department of defense of the United States, the value of
4 the articles used shall be determined according to the value of the
5 ingredients of such articles.

6 (e) In the case of an article manufactured or produced for purposes
7 of serving as a prototype for the development of a new or improved
8 product, the value of the article used shall be determined by: (i) The
9 retail selling price of such new or improved product when first offered
10 for sale; or (ii) the value of materials incorporated into the
11 prototype in cases in which the new or improved product is not offered
12 for sale;

13 (2) "Use," "used," "using," or "put to use" shall have their
14 ordinary meaning, and shall mean the first act within this state by
15 which the taxpayer takes or assumes dominion or control over the
16 article of tangible personal property (as a consumer), and include
17 installation, storage, withdrawal from storage, or any other act
18 preparatory to subsequent actual use or consumption within this state;

19 (3) "Taxpayer" and "purchaser" include all persons included within
20 the meaning of the word "buyer" and the word "consumer" as defined in
21 chapters 82.04 and 82.08 RCW;

22 (4) "Retailer" means every seller as defined in RCW 82.08.010 and
23 every person engaged in the business of selling tangible personal
24 property at retail and every person required to collect from purchasers
25 the tax imposed under this chapter;

26 (5) The meaning ascribed to words and phrases in chapters 82.04 and
27 82.08 RCW, insofar as applicable, shall have full force and effect with
28 respect to taxes imposed under the provisions of this chapter.
29 "Consumer," in addition to the meaning ascribed to it in chapters 82.04
30 and 82.08 RCW insofar as applicable, shall also mean any person who
31 distributes or displays, or causes to be distributed or displayed, any
32 article of tangible personal property, except newspapers, the primary
33 purpose of which is to promote the sale of products or services.

34 NEW SECTION. **Sec. 3.** This act shall not be construed as affecting
35 any existing right acquired or liability or obligation incurred under
36 the sections amended or under any rule of order adopted under those
37 sections, nor as affecting any proceeding instituted under those
38 sections.

1 NEW SECTION. **Sec. 4.** This act shall take effect July 1, 1996.

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