
HOUSE BILL 2617

State of Washington

55th Legislature

1998 Regular Session

By Representatives Chandler, Linville and Costa; by request of Governor Locke

Read first time 01/16/98. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to the taxation of hazardous waste remedial
2 actions; amending RCW 82.04.050, 82.04.290, and 82.04.290; reenacting
3 and amending RCW 82.04.190; adding a new section to chapter 82.04 RCW;
4 providing effective dates; providing expiration dates; and prescribing
5 penalties.

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

7 **Sec. 1.** RCW 82.04.050 and 1997 c 127 s 1 are each amended to read
8 as follows:

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

16 (a) Purchases for the purpose of resale as tangible personal
17 property in the regular course of business without intervening use by
18 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) The following personal services: Physical fitness services,
25 tanning salon services, tattoo parlor services, steam bath services,
26 turkish bath services, escort services, and dating services.

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

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

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

1 (7) The term shall also not include sales of chemical sprays or
2 washes to persons for the purpose of postharvest treatment of fruit for
3 the prevention of scald, fungus, mold, or decay, nor shall it include
4 sales of feed, seed, seedlings, fertilizer, agents for enhanced
5 pollination including insects such as bees, and spray materials to:
6 (a) Persons who participate in the federal conservation reserve
7 program, the environmental quality incentives program, the wetlands
8 reserve program, and the wildlife habitat incentives program, or their
9 successors administered by the United States department of agriculture;
10 (b) farmers for the purpose of producing for sale any agricultural
11 product; and (c) farmers acting under cooperative habitat development
12 or access contracts with an organization exempt from federal income tax
13 under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of
14 fish and wildlife to produce or improve wildlife habitat on land that
15 the farmer owns or leases.

16 (8) The term shall not include the sale of or charge made for labor
17 and services rendered in respect to the constructing, repairing,
18 decorating, or improving of new or existing buildings or other
19 structures under, upon, or above real property of or for the United
20 States, any instrumentality thereof, or a county or city housing
21 authority created pursuant to chapter 35.82 RCW, including the
22 installing, or attaching of any article of tangible personal property
23 therein or thereto, whether or not such personal property becomes a
24 part of the realty by virtue of installation. Nor shall the term
25 include the sale of services or charges made for the clearing of land
26 and the moving of earth of or for the United States, any
27 instrumentality thereof, or a county or city housing authority. Nor
28 shall the term include the sale of services or charges made for
29 cleaning up for the United States, or its instrumentalities,
30 radioactive waste and other byproducts of weapons production and
31 nuclear research and development.

32 (9) The term shall not include the sale of or charge made for labor
33 and services rendered for environmental remedial action as that term is
34 defined in section 3(2) of this act. This subsection expires June 30,
35 2003.

36 **Sec. 2.** RCW 82.04.190 and 1996 c 173 s 2, 1996 c 148 s 4, and 1996
37 c 112 s 2 are each reenacted and amended to read as follows:

1 "Consumer" means the following, but nothing contained in this
2 definition shall be construed to modify any other definition of
3 "consumer":

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

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

31 (3) Any person engaged in the business of contracting for the
32 building, repairing or improving of any street, place, road, highway,
33 easement, right of way, mass public transportation terminal or parking
34 facility, bridge, tunnel, or trestle which is owned by a municipal
35 corporation or political subdivision of the state of Washington or by
36 the United States and which is used or to be used primarily for foot or
37 vehicular traffic including mass transportation vehicles of any kind as
38 defined in RCW 82.04.280, in respect to tangible personal property when
39 such person incorporates such property as an ingredient or component of

1 such publicly owned street, place, road, highway, easement, right of
2 way, mass public transportation terminal or parking facility, bridge,
3 tunnel, or trestle by installing, placing or spreading the property in
4 or upon the right of way of such street, place, road, highway,
5 easement, bridge, tunnel, or trestle or in or upon the site of such
6 mass public transportation terminal or parking facility;

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

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

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

36 (7) Any person who is a lessor of machinery and equipment, the
37 rental of which is exempt from the tax imposed by RCW 82.08.020 under
38 RCW 82.08.02565, with respect to the sale of or charge made for
39 tangible personal property consumed in respect to repairing the

1 machinery and equipment, if the tangible personal property has a useful
2 life of less than one year; ((and))

3 (8) Any person engaged in the business of cleaning up for the
4 United States, or its instrumentalities, radioactive waste and other
5 byproducts of weapons production and nuclear research and
6 development((-

7 ~~Nothing contained in this or any other subsection of this~~
8 ~~definition shall be construed to modify any other definition of~~
9 ~~"consumer.")); and~~

10 (9) Any person engaged in the business of conducting environmental
11 remedial action as that term is defined in section 3(2) of this act.

12 NEW SECTION. Sec. 3. A new section is added to chapter 82.04 RCW
13 to read as follows:

14 (1) Upon every person engaging within this state in the business of
15 environmental remedial action, the amount of tax with respect to such
16 business shall be equal to the value of the gross income of the
17 business multiplied by the rate 0.471 percent.

18 (2) For purposes of this chapter, "environmental remedial action"
19 means:

20 (a) Those services related to the identification, investigation, or
21 cleanup arising out of the release or threatened release of hazardous
22 substances that are conducted under contract with the department of
23 ecology or under an enforcement order, agreed order, or consent decree
24 executed by the department of ecology, or those services, when
25 evaluated as a whole, that are the substantial equivalent of a
26 department of ecology conducted or supervised remedial action under the
27 model toxics control act, chapter 70.105D RCW; or

28 (b) Those services related to the identification, investigation, or
29 cleanup of a facility that are conducted under contract with the United
30 States environmental protection agency or under an order or consent
31 decree executed by the United States environmental protection agency,
32 or that are consistent with the national contingency plan adopted under
33 the comprehensive environmental response compensation and liability
34 act, 42 U.S.C. Sec. 9605 as it exists on the effective date of this
35 section, or those services conducted at facilities that are included on
36 the national priorities list adopted under 42 U.S.C. Sec. 9605 as it
37 exists on the effective date of this section or at facilities subject

1 to a removal action authorized under 42 U.S.C. Sec. 9604 as it exists
2 on the effective date of this section.

3 (3) A site is eligible for environmental remedial action upon
4 submittal via certified mail to the department of ecology and the
5 department of revenue the following:

6 (a) An affidavit from the owner, the department of ecology, or the
7 United States environmental protection agency, containing the following
8 information:

9 (i) The location of the site, shown on a map and identified by
10 parcel number or numbers and street address;

11 (ii) The name and address and daytime phone number of a contact
12 person;

13 (iii) A statement that the proposed environmental remedial actions
14 will be conducted by the department of ecology or its authorized
15 contractor under chapter 70.105D RCW or will be substantially
16 equivalent to a department of ecology conducted or supervised remedial
17 action under the model toxics control act, chapter 70.105D RCW, or will
18 be conducted by the United States environmental protection agency or
19 its authorized contractor or will be consistent with the national
20 contingency plan under 42 U.S.C. Sec. 9605 as it exists on the
21 effective date of this section; and

22 (iv) A description of the proposed environmental remedial actions
23 to be taken.

24 (b) An affidavit from a certified underground storage tank service
25 supervisor as authorized in chapter 90.76 RCW or from a professional
26 engineer licensed in the state of Washington containing the following
27 information:

28 (i) Confirmation that a hazardous substance or substances is
29 released or threatens to be released and that such release poses a
30 threat to human health and the environment;

31 (ii) The location of the site, shown on a map and identified by
32 parcel number or numbers and street address, and the approximate
33 location of the release; and

34 (iii) The name, address, telephone number, and uniform business
35 identifier of the person signing the affidavit.

36 (4) The department of revenue shall respond in writing to the
37 owner within sixty days either confirming or denying the site is
38 eligible for environmental remedial action.

1 (5) The owner shall provide a copy of the confirmation from the
2 department of revenue to each person who renders environmental remedial
3 action at the site. Each person who renders such action shall
4 separately state the charges for labor and services associated with the
5 environmental remedial action.

6 (6) Upon completion of the environmental remedial action, the
7 person who rendered the environmental remedial action shall submit via
8 certified mail to the department of ecology a report documenting the
9 environmental remedial actions conducted at the site, including testing
10 data, engineering plans documenting the work performed, and other
11 pertinent information together with an affidavit containing the
12 following information:

13 (a) The location of the site, shown on a map and identified by
14 parcel number or numbers and street address;

15 (b) A general description of the environmental remedial action
16 conducted at the site;

17 (c) A statement that the environmental remedial actions conducted
18 were by the department of ecology or its authorized contractor under
19 chapter 70.105D RCW, were substantially equivalent to a department of
20 ecology conducted or supervised remedial action under the model toxics
21 control act, chapter 70.105D RCW, or were conducted by the United
22 States environmental protection agency or its authorized contractor or
23 were consistent with the national contingency plan under 42 U.S.C. Sec.
24 9605 as it exists on the effective date of this section; and

25 (d) The name, address, telephone number, and uniform business
26 identifier of the person signing the affidavit.

27 (7) In addition to any other penalties, a person who files an
28 affidavit with the department of ecology or the department of revenue
29 that contains falsehoods or misrepresentations are subject to penalties
30 authorized under chapter 18.43 or 90.76 RCW; or any person who
31 improperly reports their tax class shall be assessed a penalty of fifty
32 percent of the tax due, in addition to other taxes or penalties,
33 together with interest. The department of revenue shall waive the
34 penalty imposed under this section if it finds that the falsehoods or
35 misrepresentations or improper reporting of the tax classification was
36 due to circumstances beyond the control of the person.

37 (8) This section expires June 30, 2003.

1 **Sec. 4.** RCW 82.04.290 and 1997 c 7 s 2 are each amended to read as
2 follows:

3 (1) Upon every person engaging within this state in the business of
4 providing international investment management services, as to such
5 persons, the amount of tax with respect to such business shall be equal
6 to the gross income or gross proceeds of sales of the business
7 multiplied by a rate of 0.275 percent.

8 (2) Upon every person engaging within this state in any business
9 activity other than or in addition to those enumerated in RCW
10 82.04.230, 82.04.240, 82.04.250, 82.04.255, 82.04.260, 82.04.270,
11 (~~and~~) 82.04.280, and section 3 of this act, and subsection (1) of
12 this section; as to such persons the amount of tax on account of such
13 activities shall be equal to the gross income of the business
14 multiplied by the rate of 1.5 percent.

15 This section includes, among others, and without limiting the scope
16 hereof (whether or not title to materials used in the performance of
17 such business passes to another by accession, confusion or other than
18 by outright sale), persons engaged in the business of rendering any
19 type of service which does not constitute a "sale at retail" or a "sale
20 at wholesale." The value of advertising, demonstration, and
21 promotional supplies and materials furnished to an agent by his
22 principal or supplier to be used for informational, educational and
23 promotional purposes shall not be considered a part of the agent's
24 remuneration or commission and shall not be subject to taxation under
25 this section.

26 **Sec. 5.** RCW 82.04.290 and 1998 c . . . s 4 (section 4 of this act)
27 are each amended to read as follows:

28 (1) Upon every person engaging within this state in the business of
29 providing international investment management services, as to such
30 persons, the amount of tax with respect to such business shall be equal
31 to the gross income or gross proceeds of sales of the business
32 multiplied by a rate of 0.275 percent.

33 (2) Upon every person engaging within this state in any business
34 activity other than or in addition to those enumerated in RCW
35 82.04.230, 82.04.240, 82.04.250, 82.04.255, 82.04.260, 82.04.270, and
36 82.04.280, (~~and section 3 of this act,~~) and subsection (1) of this
37 section; as to such persons the amount of tax on account of such

1 activities shall be equal to the gross income of the business
2 multiplied by the rate of 1.5 percent.

3 This section includes, among others, and without limiting the scope
4 hereof (whether or not title to materials used in the performance of
5 such business passes to another by accession, confusion or other than
6 by outright sale), persons engaged in the business of rendering any
7 type of service which does not constitute a "sale at retail" or a "sale
8 at wholesale." The value of advertising, demonstration, and
9 promotional supplies and materials furnished to an agent by his
10 principal or supplier to be used for informational, educational and
11 promotional purposes shall not be considered a part of the agent's
12 remuneration or commission and shall not be subject to taxation under
13 this section.

14 NEW SECTION. **Sec. 6.** (1) Sections 1 through 4 of this act take
15 effect July 1, 1998.

16 (2) Section 5 of this act takes effect June 30, 2003.

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