

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2051

55th Legislature
1998 Regular Session

Passed by the House March 12, 1998
Yeas 98 Nays 0

**Speaker of the
House of Representatives**

Passed by the Senate March 12, 1998
Yeas 49 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2051** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2051

AS AMENDED BY THE SENATE

Passed Legislature - 1998 Regular Session

State of Washington 55th Legislature 1997 Regular Session

By House Committee on Agriculture & Ecology (originally sponsored by Representatives Chandler, Linville, Regala, Mastin, D. Schmidt, Grant, Veloria, Clements, Cody and Parlette)

Read first time 03/04/97.

1 AN ACT Relating to exempting from taxation remedies and remedial
2 actions regarding hazardous waste; amending RCW 82.04.050, 82.04.290,
3 and 82.04.290; reenacting and amending RCW 82.04.190; adding a new
4 section to chapter 82.04 RCW; providing effective dates; and providing
5 an expiration date.

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) Until July 1, 2003, the term shall not include the sale of or
33 charge made for labor and services rendered for environmental remedial
34 action as defined in section 3(2) of this act.

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

37 "Consumer" means the following:

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

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

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

1 or upon the right of way of such street, place, road, highway,
2 easement, bridge, tunnel, or trestle or in or upon the site of such
3 mass public transportation terminal or parking facility;

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

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

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

33 (7) Any person who is a lessor of machinery and equipment, the
34 rental of which is exempt from the tax imposed by RCW 82.08.020 under
35 RCW 82.08.02565, with respect to the sale of or charge made for
36 tangible personal property consumed in respect to repairing the
37 machinery and equipment, if the tangible personal property has a useful
38 life of less than one year. Nothing contained in this or any other

1 subsection of this section shall be construed to modify any other
2 definition of "consumer"; ((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) Until July 1, 2003, any person engaged in the business of
11 conducting environmental remedial action as defined in section 3(2) of
12 this act.

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

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

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

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

29 (b) Those services related to the identification, investigation, or
30 cleanup of a facility that are conducted under contract with the United
31 States environmental protection agency or under an order or consent
32 decree executed by the United States environmental protection agency,
33 or that are consistent with the national contingency plan adopted under
34 the comprehensive environmental response compensation and liability
35 act, 42 U.S.C. Sec. 9605 as it exists on the effective date of this
36 section, and those services are conducted at facilities that are
37 included on the national priorities list adopted under 42 U.S.C. Sec.
38 9605 as it exists on the effective date of this section or at

1 facilities subject to a removal action authorized under 42 U.S.C. Sec.
2 9604 as it exists 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, of the following:

6 (a) A certification from the owner, the department of ecology, or
7 the United States environmental protection agency, containing the
8 following 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; and

24 (b)(i) A certification from a certified underground storage tank
25 service supervisor as authorized in chapter 90.76 RCW, from a
26 professional engineer licensed in the state of Washington, or from an
27 environmental professional who subscribes to a code of professional
28 responsibility administered by a recognized organization representing
29 such professions containing the following information:

30 (A) Confirmation that an environmental remedial action as defined
31 in this section is to be conducted at the site;

32 (B) The location of the site, shown on a map and identified by
33 parcel number or numbers and street address, and the approximate
34 location of the proposed environmental remedial action; and

35 (C) The name, address, telephone number, and uniform business
36 identifier of the person providing the certification; or

37 (ii) If applicable to the site, a copy of an enforcement order,
38 agreed order, or consent decree executed by the department of ecology
39 or the United States environmental protection agency.

1 (4) The department of revenue shall respond in writing to the owner
2 within thirty days confirming receipt of the certification, or
3 certifications, of eligibility.

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

9 (6) Upon completion of the environmental remedial action, the owner
10 shall submit to the department of ecology a report documenting the
11 environmental remedial actions conducted at the site and documenting
12 compliance with the requirements of chapter 70.105D RCW.

13 (7) In addition to any other penalties, a person who files a
14 certificate with the department of ecology or the department of revenue
15 that contains falsehoods or misrepresentations are subject to penalties
16 authorized under chapter 18.43 or 90.76 RCW or RCW 9A.76.175. Also, a
17 person who improperly reports the person's tax class shall be assessed
18 a penalty of fifty percent of the tax due, in addition to other taxes
19 or penalties, together with interest. The department of revenue shall
20 waive the penalty imposed under this section if it finds that the
21 falsehoods or misrepresentations or improper reporting of the tax
22 classification was due to circumstances beyond the control of the
23 person.

24 (8) This section expires July 1, 2003.

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

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

32 (2) Upon every person engaging within this state in any business
33 activity other than or in addition to those enumerated in RCW
34 82.04.230, 82.04.240, 82.04.250, 82.04.255, 82.04.260, 82.04.270,
35 (~~and~~) 82.04.280, and section 3 of this act, and subsection (1) of
36 this section; as to such persons the amount of tax on account of such
37 activities shall be equal to the gross income of the business
38 multiplied by the rate of 1.5 percent.

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

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

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

19 (2) Upon every person engaging within this state in any business
20 activity other than or in addition to those enumerated in RCW
21 82.04.230, 82.04.240, 82.04.250, 82.04.255, 82.04.260, 82.04.270, and
22 82.04.280, (~~and section 3 of this act,~~) and subsection (1) of this
23 section; as to such persons the amount of tax on account of such
24 activities shall be equal to the gross income of the business
25 multiplied by the rate of 1.5 percent.

26 This section includes, among others, and without limiting the scope
27 hereof (whether or not title to materials used in the performance of
28 such business passes to another by accession, confusion or other than
29 by outright sale), persons engaged in the business of rendering any
30 type of service which does not constitute a "sale at retail" or a "sale
31 at wholesale." The value of advertising, demonstration, and
32 promotional supplies and materials furnished to an agent by his
33 principal or supplier to be used for informational, educational and
34 promotional purposes shall not be considered a part of the agent's
35 remuneration or commission and shall not be subject to taxation under
36 this section.

1 NEW SECTION. **Sec. 6.** (1) Sections 1 through 4 of this act take
2 effect July 1, 1998.
3 (2) Section 5 of this act takes effect July 1, 2003.

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