

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5763

55th Legislature
1997 Regular Session

Passed by the Senate April 19, 1997
YEAS 44 NAYS 0

President of the Senate

Passed by the House April 10, 1997
YEAS 97 NAYS 1

**Speaker of the
House of Representatives**

Approved

CERTIFICATE

I, Mike O Connell, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5763** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

Governor of the State of Washington

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5763

AS AMENDED BY THE HOUSE

Passed Legislature - 1997 Regular Session

State of Washington 55th Legislature 1997 Regular Session

By Senate Committee on Energy & Utilities (originally sponsored by Senators Finkbeiner, Brown, Rossi, McAuliffe, Roach, Kohl, Jacobsen, Hochstatter, Haugen, Goings and West)

Read first time 02/27/97.

1 AN ACT Relating to prohibiting the taxation of internet service
2 providers as network telephone services providers; amending RCW
3 82.04.055 and 82.04.065; adding a new section to chapter 35.21 RCW;
4 adding a new section to chapter 82.04 RCW; creating a new section; and
5 declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that the newly
8 emerging business of providing internet service is providing widespread
9 benefits to all levels of society. The legislature further finds that
10 this business is important to our state's continued growth in the high-
11 technology sector of the economy and that, as this industry emerges, it
12 should not be burdened by new taxes that might not be appropriate for
13 the type of service being provided. The legislature further finds that
14 there is no clear statutory guidance as to how internet services should
15 be classified for tax purposes and intends to ratify the state's
16 current treatment of such services.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 35.21 RCW
18 to read as follows:

1 Until July 1, 1999, a city or town may not impose any new taxes or
2 fees specific to internet service providers. A city or town may tax
3 internet service providers under generally applicable business taxes or
4 fees, at a rate not to exceed the rate applied to a general service
5 classification. For the purposes of this section, "internet service"
6 has the same meaning as in section 4 of this act.

7 **Sec. 3.** RCW 82.04.055 and 1993 sp.s. c 25 s 201 are each amended
8 to read as follows:

9 (1) "Selected business services" means:

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

11 (b) Computer services, including but not limited to computer
12 programming, custom software modification, custom software
13 installation, custom software maintenance, custom software repair,
14 training in the use of custom software, computer systems design, and
15 custom software update services.

16 (c) Data processing services, including but not limited to word
17 processing, data entry, data retrieval, data search, information
18 compilation, payroll processing, business accounts processing, data
19 production, and other computerized data and information storage or
20 manipulation. Data processing services also includes the use of a
21 computer or computer time for data processing whether the processing is
22 performed by the provider of the computer or by the purchaser or other
23 beneficiary of the service.

24 (d) Information services, including but not limited to electronic
25 data retrieval or research that entails furnishing financial or legal
26 information, data or research, internet service as defined in section
27 4 of this act, general or specialized news, or current information
28 unless such news or current information is furnished to a newspaper
29 publisher or to a radio or television station licensed by the federal
30 communications commission.

31 (e) Legal, arbitration, and mediation services, including but not
32 limited to paralegal services, legal research services, and court
33 reporting services.

34 (f) Accounting, auditing, actuarial, bookkeeping, tax preparation,
35 and similar services.

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

1 (i) Engineering services, including civil, electrical, mechanical,
2 petroleum, marine, nuclear, and design engineering, machine designing,
3 machine tool designing, and sewage disposal system designing;

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

7 (h) Business consulting services. Business consulting services are
8 those primarily providing operating counsel, advice, or assistance to
9 the management or owner of any business, private, nonprofit, or public
10 organization, including but not limited to those in the following
11 areas: Administrative management consulting, general management
12 consulting, human resource consulting or training, management
13 engineering consulting, management information systems consulting,
14 manufacturing management consulting, marketing consulting, operations
15 research consulting, personnel management consulting, physical
16 distribution consulting, site location consulting, economic consulting,
17 motel, hotel, and resort consulting, restaurant consulting, government
18 affairs consulting, and lobbying.

19 (i) Business management services, including but not limited to
20 administrative management, business management, and office management,
21 but not including property management or property leasing, motel,
22 hotel, and resort management, or automobile parking management.

23 (j) Protective services, including but not limited to detective
24 agency services and private investigating services, armored car
25 services, guard or protective services, lie detection or polygraph
26 services, and security system, burglar, or fire alarm monitoring and
27 maintenance services.

28 (k) Public relations or advertising services, including but not
29 limited to layout, art direction, graphic design, copy writing,
30 mechanical preparation, opinion research, marketing research,
31 marketing, or production supervision, but excluding services provided
32 as part of broadcast or print advertising.

33 (l) Aerial and land surveying, geological consulting, and real
34 estate appraising.

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

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

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

4 (c) Services related to the identification, investigation, or
5 cleanup arising out of the release or threatened release of hazardous
6 substances when the services are remedial or response actions performed
7 under federal or state law, or when the services are performed to
8 determine if a release of hazardous substances has occurred or is
9 likely to occur.

10 (d) Services provided to or performed for, on behalf of, or for the
11 benefit of a collective investment fund such as: (i) A mutual fund or
12 other regulated investment company as defined in section 851(a) of the
13 Internal Revenue Code of 1986, as amended; (ii) an "investment company"
14 as that term is used in section 3(a) of the Investment Company Act of
15 1940 as well as an entity that would be an investment company under
16 section 3(a) of the Investment Company Act of 1940 except for the
17 section 3(c)(1) or (11) exemptions, or except that it is a foreign
18 investment company organized under laws of a foreign country; (iii) an
19 "employee benefit plan," which includes any plan, trust, commingled
20 employee benefit trusts, or custodial arrangement that is subject to
21 the Employee Retirement Income Security Act of 1974, as amended, 29
22 U.S.C. Sec. 1001 et seq., or that is described in sections 125, 401,
23 403, 408, 457, and 501(c)(9) and (17) through (23) of the Internal
24 Revenue Code of 1986, as amended, or similar plan maintained by state
25 or local governments, or plans, trusts, or custodial arrangements
26 established to self-insure benefits required by federal, state, or
27 local law; (iv) a fund maintained by a tax exempt organization as
28 defined in section 501(c)(3) or 509(a) of the Internal Revenue Code of
29 1986, as amended, for operating, quasi-endowment, or endowment
30 purposes; or (v) funds that are established for the benefit of such tax
31 exempt organization such as charitable remainder trusts, charitable
32 lead trusts, charitable annuity trusts, or other similar trusts.

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

36 (f) Financial services provided by a financial institution. The
37 term "financial institution" means a corporation, partnership, or other
38 business organization chartered under Title 30, 31, 32, or 33 RCW, or
39 under the National Bank Act, as amended, the Homeowners Loan Act, as

1 amended, or the Federal Credit Union Act, as amended, or a holding
2 company of any such business organization that is subject to the Bank
3 Holding Company Act, as amended, or the Homeowners Loan Act, as
4 amended, or a subsidiary or affiliate wholly owned or controlled by one
5 or more financial institutions, as well as a lender approved by the
6 United States secretary of housing and urban development for
7 participation in any mortgage insurance program under the National
8 Housing Act, as amended. The term "financial services" means those
9 activities authorized by the laws cited in this subsection (2)(f) and
10 includes services such as mortgage servicing, contract collection
11 servicing, finance leasing, and services provided in a fiduciary
12 capacity to a trust or estate.

13 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.04 RCW
14 to read as follows:

15 (1) The provision of internet services is a selected business
16 service activity and subject to tax under RCW 82.04.290(1), but if RCW
17 82.04.055 is repealed then the provision of internet services is
18 taxable under the general service business and occupation tax
19 classification of RCW 82.04.290.

20 (2) "Internet" means the international computer network of both
21 federal and nonfederal interoperable packet switched data networks,
22 including the graphical subnetwork called the world wide web.

23 (3) "Internet service" means a service that includes computer
24 processing applications, provides the user with additional or
25 restructured information, or permits the user to interact with stored
26 information through the internet or a proprietary subscriber network.
27 "Internet service" includes provision of internet electronic mail,
28 access to the internet for information retrieval, and hosting of
29 information for retrieval over the internet or the graphical subnetwork
30 called the world wide web.

31 **Sec. 5.** RCW 82.04.065 and 1983 2nd ex.s. c 3 s 24 are each amended
32 to read as follows:

33 (1) "Competitive telephone service" means the providing by any
34 person of telecommunications equipment or apparatus, or service related
35 to that equipment or apparatus such as repair or maintenance service,
36 if the equipment or apparatus is of a type which can be provided by

1 persons that are not subject to regulation as telephone companies under
2 Title 80 RCW and for which a separate charge is made.

3 (2) "Network telephone service" means the providing by any person
4 of access to a local telephone network, local telephone network
5 switching service, toll service, or coin telephone services, or the
6 providing of telephonic, video, data, or similar communication or
7 transmission for hire, via a local telephone network, toll line or
8 channel, cable, microwave, or similar communication or transmission
9 system. "Network telephone service" includes interstate service,
10 including toll service, originating from or received on
11 telecommunications equipment or apparatus in this state if the charge
12 for the service is billed to a person in this state. "Network
13 telephone service" includes the provision of transmission to and from
14 the site of an internet provider via a local telephone network, toll
15 line or channel, cable, microwave, or similar communication or
16 transmission system. "Network telephone service" does not include the
17 providing of competitive telephone service, the providing of cable
18 television service, ~~((nær))~~ the providing of broadcast services by
19 radio or television stations, nor the provision of internet service as
20 defined in section 4 of this act, including the reception of dial-in
21 connection, provided at the site of the internet service provider.

22 (3) "Telephone service" means competitive telephone service or
23 network telephone service, or both, as defined in subsections (1) and
24 (2) of this section.

25 (4) "Telephone business" means the business of providing network
26 telephone service, as defined in subsection (2) of this section. It
27 includes cooperative or farmer line telephone companies or associations
28 operating an exchange.

29 NEW SECTION. **Sec. 6.** If any provision of this act or its
30 application to any person or circumstance is held invalid, the
31 remainder of the act or the application of the provision to other
32 persons or circumstances is not affected.

33 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
34 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and takes effect
2 immediately.

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