CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2051

Chapter 308, Laws of 1998

55th Legislature
1998 Regular Session

REMEDIES AND REMEDIAL ACTIONS REGARDING HAZARDOUS WASTE--TAX EXEMPTIONS

EFFECTIVE DATE: 6/11/98 - Except sections 1 through 4 which become effective on 7/1/98; and section 5 which becomes effective on 7/1/2003.

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

---------
CLYDE BALLARD
Speaker of the
House of Representatives

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

---------
BRAD OWEN
President of the Senate

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.

---------
TIMOTHY A. MARTIN
Chief Clerk

Approved April 3, 1998

FILED

April 3, 1998 - 2:09 p.m.

---------
GARY LOCKE
Governor of the State of Washington

---------
Secretary of State
State of Washington
AN ACT Relating to exempting from taxation remedies and remedial
actions regarding hazardous waste; amending RCW 82.04.050, 82.04.290,
and 82.04.290; reenacting and amending RCW 82.04.190; adding a new
section to chapter 82.04 RCW; providing effective dates; and providing
an expiration date.

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

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

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

(a) Purchases for the purpose of resale as tangible personal
property in the regular course of business without intervening use by
such person; or
(b) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

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

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

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

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

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

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

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

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

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

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

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

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

(a) Amusement and recreation services including but not limited to
golf, pool, billiards, skating, bowling, ski lifts and tows, day trips
for sightseeing purposes, and others, when provided to consumers;
(b) Abstract, title insurance, and escrow services;
(c) Credit bureau services;
(d) Automobile parking and storage garage services;
(e) Landscape maintenance and horticultural services but excluding
(i) horticultural services provided to farmers and (ii) pruning,
trimming, repairing, removing, and clearing of trees and brush near
electric transmission or distribution lines or equipment, if performed
by or at the direction of an electric utility;
(f) Service charges associated with tickets to professional
sporting events; and
(g) The following personal services: Physical fitness services,
tanning salon services, tattoo parlor services, steam bath services,
turkish bath services, escort services, and dating services.

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

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

(6) The term shall not include the sale of or charge made for labor
and services rendered in respect to the building, repairing, or
improving of any street, place, road, highway, easement, right of way,
mass public transportation terminal or parking facility, bridge,
tunnel, or trestle which is owned by a municipal corporation or
political subdivision of the state or by the United States and which is
used or to be used primarily for foot or vehicular traffic including
mass transportation vehicles of any kind.
(7) The term shall also not include sales of chemical sprays or washes to persons for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, nor shall it include sales of feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials to:
(a) Persons who participate in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, and the wildlife habitat incentives program, or their successors administered by the United States department of agriculture;
(b) farmers for the purpose of producing for sale any agricultural product; and (c) farmers acting under cooperative habitat development or access contracts with an organization exempt from federal income tax under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of fish and wildlife to produce or improve wildlife habitat on land that the farmer owns or leases.

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

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

Sec. 2. RCW 82.04.190 and 1996 c 173 s 2, 1996 c 148 s 4, and 1996 c 112 s 2 are each reenacted and amended to read as follows:
"Consumer" means the following:
(1) Any person who purchases, acquires, owns, holds, or uses any article of tangible personal property irrespective of the nature of the person’s business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than for the purpose (a) of resale as tangible personal property in the regular course of business or (b) of incorporating such property as an ingredient or component of real or personal property when installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating such real or personal property of or for consumers or (c) of consuming such property in producing for sale a new article of tangible personal property or a new substance, of which such property becomes an ingredient or component or as a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale or (d) purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon;

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

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

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

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

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

(7) Any person who is a lessor of machinery and equipment, the rental of which is exempt from the tax imposed by RCW 82.08.020 under RCW 82.08.02565, with respect to the sale of or charge made for tangible personal property consumed in respect to repairing the machinery and equipment, if the tangible personal property has a useful life of less than one year. Nothing contained in this or any other
subsection of this section shall be construed to modify any other
definition of "consumer"; (and))

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

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

(9) Until July 1, 2003, any person engaged in the business of
conducting environmental remedial action as defined in section 3(2) of
this act.

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

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

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

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

(b) Those services related to the identification, investigation, or
cleanup of a facility that are conducted under contract with the United
States environmental protection agency or under an order or consent
decree executed by the United States environmental protection agency,
or that are consistent with the national contingency plan adopted under
the comprehensive environmental response compensation and liability
act, 42 U.S.C. Sec. 9605 as it exists on the effective date of this
section, and those services are conducted at facilities that are
included on the national priorities list adopted under 42 U.S.C. Sec.
9605 as it exists on the effective date of this section or at
facilities subject to a removal action authorized under 42 U.S.C. Sec. 9604 as it exists on the effective date of this section.

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

(a) A certification from the owner, the department of ecology, or the United States environmental protection agency, containing the following information:

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

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

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

   (iv) A description of the proposed environmental remedial actions to be taken; and

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

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

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

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

   (ii) If applicable to the site, a copy of an enforcement order, agreed order, or consent decree executed by the department of ecology or the United States environmental protection agency.
(4) The department of revenue shall respond in writing to the owner within thirty days confirming receipt of the certification, or certifications, of eligibility.

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

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

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

(8) This section expires July 1, 2003.

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

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

(2) Upon every person engaging within this state in any business activity other than or in addition to those enumerated in RCW 82.04.230, 82.04.240, 82.04.250, 82.04.255, 82.04.260, 82.04.270, (and) 82.04.280, and section 3 of this act, and subsection (1) of this section; as to such persons the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of 1.5 percent.
This section includes, among others, and without limiting the scope hereof (whether or not title to materials used in the performance of such business passes to another by accession, confusion or other than by outright sale), persons engaged in the business of rendering any type of service which does not constitute a "sale at retail" or a "sale at wholesale." The value of advertising, demonstration, and promotional supplies and materials furnished to an agent by his principal or supplier to be used for informational, educational and promotional purposes shall not be considered a part of the agent’s remuneration or commission and shall not be subject to taxation under this section.

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

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

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

This section includes, among others, and without limiting the scope hereof (whether or not title to materials used in the performance of such business passes to another by accession, confusion or other than by outright sale), persons engaged in the business of rendering any type of service which does not constitute a "sale at retail" or a "sale at wholesale." The value of advertising, demonstration, and promotional supplies and materials furnished to an agent by his principal or supplier to be used for informational, educational and promotional purposes shall not be considered a part of the agent’s remuneration or commission and shall not be subject to taxation under this section.
NEW SECTION. Sec. 6. (1) Sections 1 through 4 of this act take effect July 1, 1998.

(2) Section 5 of this act takes effect July 1, 2003.

Passed the House March 12, 1998.
Passed the Senate March 12, 1998.
Approved by the Governor April 3, 1998.
Filed in Office of Secretary of State April 3, 1998.