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HOUSE BILL 1531

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State of Washington

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By Representatives Morris and Cairnes

Read first time 01/29/2001. Referred to Committee on Finance.

1 AN ACT Relating to the taxation of lodging; and amending RCW  
2 82.04.050.

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

4 **Sec. 1.** RCW 82.04.050 and 2000 2nd sp.s. c 4 s 23 are each amended  
5 to read as follows:

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

13 (a) Purchases for the purpose of resale as tangible personal  
14 property in the regular course of business without intervening use by  
15 such person, but a purchase for the purpose of resale by a regional  
16 transit authority under RCW 81.112.300 is not a sale for resale; or

17 (b) Installs, repairs, cleans, alters, imprints, improves,  
18 constructs, or decorates real or personal property of or for consumers,  
19 if such tangible personal property becomes an ingredient or component

1 of such real or personal property without intervening use by such  
2 person; or

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

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

14 (e) Purchases for the purpose of providing the property to  
15 consumers as part of competitive telephone service, as defined in RCW  
16 82.04.065. The term shall include every sale of tangible personal  
17 property which is used or consumed or to be used or consumed in the  
18 performance of any activity classified as a "sale at retail" or "retail  
19 sale" even though such property is resold or utilized as provided in  
20 (a), (b), (c), (d), or (e) of this subsection following such use. The  
21 term also means every sale of tangible personal property to persons  
22 engaged in any business which is taxable under RCW 82.04.280 (2) and  
23 (7) and 82.04.290.

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

27 (a) The installing, repairing, cleaning, altering, imprinting, or  
28 improving of tangible personal property of or for consumers, including  
29 charges made for the mere use of facilities in respect thereto, but  
30 excluding charges made for the use of coin-operated laundry facilities  
31 when such facilities are situated in an apartment house, rooming house,  
32 or mobile home park for the exclusive use of the tenants thereof, and  
33 also excluding sales of laundry service to nonprofit health care  
34 facilities, and excluding services rendered in respect to live animals,  
35 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  
33 property for a continuous period of one month or more constitutes a  
34 rental or lease of real property and not a mere license to use or enjoy  
35 the same))~~ furnishing of lodging and all other services for a  
36 continuous period of one month or more constitutes a rental or lease of  
37 real property;

38 (g) The sale of or charge made for tangible personal property,  
39 labor and services to persons taxable under (a), (b), (c), (d), (e),

1 and (f) of this subsection when such sales or charges are for property,  
2 labor and services which are used or consumed in whole or in part by  
3 such persons in the performance of any activity defined as a "sale at  
4 retail" or "retail sale" even though such property, labor and services  
5 may be resold after such use or consumption. Nothing contained in this  
6 subsection shall be construed to modify subsection (1) of this section  
7 and nothing contained in subsection (1) of this section shall be  
8 construed to modify this subsection.

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

14 (a) Amusement and recreation services including but not limited to  
15 golf, pool, billiards, skating, bowling, ski lifts and tows, day trips  
16 for sightseeing purposes, and others, when provided to consumers;

17 (b) Abstract, title insurance, and escrow services;

18 (c) Credit bureau services;

19 (d) Automobile parking and storage garage services;

20 (e) Landscape maintenance and horticultural services but excluding  
21 (i) horticultural services provided to farmers and (ii) pruning,  
22 trimming, repairing, removing, and clearing of trees and brush near  
23 electric transmission or distribution lines or equipment, if performed  
24 by or at the direction of an electric utility;

25 (f) Service charges associated with tickets to professional  
26 sporting events; and

27 (g) The following personal services: Physical fitness services,  
28 tanning salon services, tattoo parlor services, steam bath services,  
29 turkish bath services, escort services, and dating services.

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

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

35 (6) The term shall also include the sale of canned software other  
36 than a sale to a person who presents a resale certificate under RCW  
37 82.04.470, regardless of the method of delivery to the end user, but  
38 shall not include custom software or the customization of canned  
39 software.

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

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

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

1           (10) Until July 1, 2003, the term shall not include the sale of or  
2 charge made for labor and services rendered for environmental remedial  
3 action as defined in RCW 82.04.2635(2).

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