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HOUSE BILL 2175

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State of Washington                      57th Legislature                      2001 Regular Session

By Representatives Pennington, Morris, Cairnes and Conway

Read first time 02/21/2001. Referred to Committee on Finance.

1            AN ACT Relating to the tax treatment of boarding homes; amending  
2 RCW 82.04.050; and creating a new section.

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

4            NEW SECTION.    **Sec. 1.** It is the legislature's intent to clarify  
5 the law to reflect that boarding homes licensed under chapter 18.20 RCW  
6 are engaged in the renting or leasing of real property to consumers  
7 and, accordingly, are exempt from taxation under chapter 82.04 RCW.

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

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

17            (a) Purchases for the purpose of resale as tangible personal  
18 property in the regular course of business without intervening use by

1 such person, but a purchase for the purpose of resale by a regional  
2 transit authority under RCW 81.112.300 is not a sale for resale; or

3 (b) Installs, repairs, cleans, alters, imprints, improves,  
4 constructs, or decorates real or personal property of or for consumers,  
5 if such tangible personal property becomes an ingredient or component  
6 of such real or personal property without intervening use by such  
7 person; or

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

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

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

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

32 (a) The installing, repairing, cleaning, altering, imprinting, or  
33 improving of tangible personal property of or for consumers, including  
34 charges made for the mere use of facilities in respect thereto, but  
35 excluding charges made for the use of coin-operated laundry facilities  
36 when such facilities are situated in an apartment house, rooming house,  
37 or mobile home park for the exclusive use of the tenants thereof, and  
38 also excluding sales of laundry service to nonprofit health care

1 facilities, and excluding services rendered in respect to live animals,  
2 birds and insects;

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

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

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

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

34 (f) The sale of and charge made for the furnishing of lodging and  
35 all other services by a hotel, rooming house, tourist court, motel,  
36 trailer camp, and the granting of any similar license to use real  
37 property, as distinguished from the renting or leasing of real  
38 property, and it shall be presumed that the occupancy of real property

1 for a continuous period of one month or more constitutes a rental or  
2 lease of real property and not a mere license to use or enjoy the same;

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

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

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

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

22 (c) Credit bureau services;

23 (d) Automobile parking and storage garage services;

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

29 (f) Service charges associated with tickets to professional  
30 sporting events; and

31 (g) The following personal services: Physical fitness services,  
32 tanning salon services, tattoo parlor services, steam bath services,  
33 turkish bath services, escort services, and dating services.

34 (4) The term shall also include the renting or leasing of tangible  
35 personal or real property to consumers and the rental of equipment with  
36 an operator. This includes the renting or leasing of rooms within  
37 boarding homes licensed under chapter 18.20 RCW.

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

1 (6) The term shall also include the sale of canned software other  
2 than a sale to a person who presents a resale certificate under RCW  
3 82.04.470, regardless of the method of delivery to the end user, but  
4 shall not include custom software or the customization of canned  
5 software.

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

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

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

1 instrumentality thereof, or a county or city housing authority. Nor  
2 shall the term include the sale of services or charges made for  
3 cleaning up for the United States, or its instrumentalities,  
4 radioactive waste and other byproducts of weapons production and  
5 nuclear research and development.

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

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