
SENATE BILL 6189

State of Washington

62nd Legislature

2012 Regular Session

By Senator Ericksen

Read first time 01/13/12. Referred to Committee on Ways & Means.

1 AN ACT Relating to the taxation of amusement and recreation
2 services involving amateur sports; amending RCW 82.04.050; adding a new
3 section to chapter 82.04 RCW; adding a new section to chapter 82.08
4 RCW; adding a new section to chapter 82.12 RCW; and providing an
5 effective date.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 82.04 RCW
8 to read as follows:

9 (1) The tax imposed in this chapter does not apply to amounts
10 received by a nonprofit organization or governmental entity for the
11 privilege of joining a competitive team sport league or for the right
12 to participate in the competitive team sport activities conducted under
13 the auspices of such a league, including amounts paid solely for the
14 privilege of entering a tournament or other type of competition.

15 (2) The tax imposed in this chapter does not apply to amounts
16 received by a nonprofit organization or governmental entity for the
17 right to participate in competitive sport contests, including but not
18 limited to tournaments, races, group activities promoting health and
19 wellness, or other types of competition.

1 (3) For the purposes of this section, the following definitions
2 apply:

3 (a) "Competitive team sport" means a sport in which teams of two or
4 more players compete against one another, where the collective effort
5 of the teams' members determines the final score and the outcome of the
6 competition.

7 (b) "Governmental entity" means any county, city, town, or other
8 municipal corporation.

9 (c) "League" means a group of teams that compete chiefly against
10 each other in a specific competitive team sport on a set schedule for
11 a specified duration of time.

12 (d) "Nonprofit organization" means:

13 (i) An organization described in 26 U.S.C. Sec. 501(c) of the
14 federal internal revenue code, as existing on the effective date of
15 this act; or

16 (ii) An organization that is organized and operated exclusively for
17 charitable, civic, or fraternal purposes and in which no part of its
18 net earnings inure to the benefit of any member, founder, contributor,
19 employee, shareholder, or trustee of the organization.

20 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.08 RCW
21 to read as follows:

22 (1) The tax imposed by RCW 82.08.020 does not apply to the sale of
23 amusement and recreation services by a nonprofit organization or
24 governmental entity, but only if the gross proceeds received from such
25 sale are exempt from business and occupation tax under section 1 of
26 this act or would be exempt from business and occupation tax under
27 section 1 of this act if the seller were subject to business and
28 occupation tax.

29 (2) For purposes of this section, the definitions in section 1 of
30 this act apply, except that "governmental entity" also includes a state
31 and any of its departments and institutions.

32 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.12 RCW
33 to read as follows:

34 The tax imposed by RCW 82.12.020 does not apply to the use of
35 amusement and recreation services if the sale of such services to the

1 user thereof was exempt from retail sales tax under section 2 of this
2 act.

3 **Sec. 4.** RCW 82.04.050 and 2011 c 174 s 202 are each amended to
4 read as follows:

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

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

16 (ii) Installs, repairs, cleans, alters, imprints, improves,
17 constructs, or decorates real or personal property of or for consumers,
18 if such tangible personal property becomes an ingredient or component
19 of such real or personal property without intervening use by such
20 person; or

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

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

32 (v) Purchases for the purpose of providing the property to
33 consumers as part of competitive telephone service, as defined in RCW
34 82.04.065; or

35 (vi) Purchases for the purpose of satisfying the person's
36 obligations under an extended warranty as defined in subsection (7) of

1 this section, if such tangible personal property replaces or becomes an
2 ingredient or component of property covered by the extended warranty
3 without intervening use by such person.

4 (b) The term includes every sale of tangible personal property that
5 is used or consumed or to be used or consumed in the performance of any
6 activity defined as a "sale at retail" or "retail sale" even though
7 such property is resold or used as provided in (a)(i) through (vi) of
8 this subsection following such use.

9 (c) The term also means every sale of tangible personal property to
10 persons engaged in any business that is taxable under RCW 82.04.280(1)
11 (a), (b), and (g), 82.04.290, and 82.04.2908.

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

15 (a) The installing, repairing, cleaning, altering, imprinting, or
16 improving of tangible personal property of or for consumers, including
17 charges made for the mere use of facilities in respect thereto, but
18 excluding charges made for the use of self-service laundry facilities,
19 and also excluding sales of laundry service to nonprofit health care
20 facilities, and excluding services rendered in respect to live animals,
21 birds and insects;

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

30 (c) The constructing, repairing, or improving of any structure
31 upon, above, or under any real property owned by an owner who conveys
32 the property by title, possession, or any other means to the person
33 performing such construction, repair, or improvement for the purpose of
34 performing such construction, repair, or improvement and the property
35 is then reconveyed by title, possession, or any other means to the
36 original owner;

37 (d) The cleaning, fumigating, razing, or moving of existing
38 buildings or structures, but does not include the charge made for

1 janitorial services; and for purposes of this section the term
2 "janitorial services" means those cleaning and caretaking services
3 ordinarily performed by commercial janitor service businesses
4 including, but not limited to, wall and window washing, floor cleaning
5 and waxing, and the cleaning in place of rugs, drapes and upholstery.
6 The term "janitorial services" does not include painting, papering,
7 repairing, furnace or septic tank cleaning, snow removal or
8 sandblasting;

9 (e) Automobile towing and similar automotive transportation
10 services, but not in respect to those required to report and pay taxes
11 under chapter 82.16 RCW;

12 (f) The furnishing of lodging and all other services by a hotel,
13 rooming house, tourist court, motel, trailer camp, and the granting of
14 any similar license to use real property, as distinguished from the
15 renting or leasing of real property, and it is presumed that the
16 occupancy of real property for a continuous period of one month or more
17 constitutes a rental or lease of real property and not a mere license
18 to use or enjoy the same. For the purposes of this subsection, it is
19 presumed that the sale of and charge made for the furnishing of lodging
20 for a continuous period of one month or more to a person is a rental or
21 lease of real property and not a mere license to enjoy the same;

22 (g) The installing, repairing, altering, or improving of digital
23 goods for consumers;

24 (h) Persons taxable under (a), (b), (c), (d), (e), (f), and (g) of
25 this subsection when such sales or charges are for property, labor and
26 services which are used or consumed in whole or in part by such persons
27 in the performance of any activity defined as a "sale at retail" or
28 "retail sale" even though such property, labor and services may be
29 resold after such use or consumption. Nothing contained in this
30 subsection may be construed to modify subsection (1) of this section
31 and nothing contained in subsection (1) of this section may be
32 construed to modify this subsection.

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

1 (a) Amusement and recreation services including but not limited to
2 golf, pool, billiards, skating, bowling, ski lifts and tows, day trips
3 for sightseeing purposes, and others, when provided to consumers. For
4 purposes of this subsection (3)(a), the sale of or charge made for
5 amusement and recreation services includes but is not limited to: (i)
6 Charges to participate in a sport or other amusement and recreation
7 activity, including fees to join a team or club, but not including
8 charges for admission to facilities where the consumer is merely a
9 spectator; (ii) fees charged for the privilege of entering a tournament
10 or other type of competition or event involving an amusement and
11 recreation activity; (iii) charges for the privilege of allowing an
12 individual, team, or club to join an association of teams or clubs that
13 compete chiefly among themselves; and (iv) charges for the use of
14 facilities for amusement and recreation activities, such as fields,
15 courts, rinks, gymnasiums, and swimming pools;

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

17 (c) Credit bureau services;

18 (d) Automobile parking and storage garage services;

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

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

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

29 (4)(a) The term also includes the renting or leasing of tangible
30 personal property to consumers.

31 (b) The term does not include the renting or leasing of tangible
32 personal property where the lease or rental is for the purpose of
33 sublease or subrent.

34 (5) The term also includes the providing of "competitive telephone
35 service," "telecommunications service," or "ancillary services," as
36 those terms are defined in RCW 82.04.065, to consumers.

37 (6)(a) The term also includes the sale of prewritten computer
38 software to a consumer, regardless of the method of delivery to the end

1 user. For purposes of this subsection (6)(a), the sale of prewritten
2 computer software includes the sale of or charge made for a key or an
3 enabling or activation code, where the key or code is required to
4 activate prewritten computer software and put the software into use.
5 There is no separate sale of the key or code from the prewritten
6 computer software, regardless of how the sale may be characterized by
7 the vendor or by the purchaser.

8 The term "retail sale" does not include the sale of or charge made
9 for:

10 (i) Custom software; or

11 (ii) The customization of prewritten computer software.

12 (b)(i) The term also includes the charge made to consumers for the
13 right to access and use prewritten computer software, where possession
14 of the software is maintained by the seller or a third party,
15 regardless of whether the charge for the service is on a per use, per
16 user, per license, subscription, or some other basis.

17 (ii)(A) The service described in (b)(i) of this subsection (6)
18 includes the right to access and use prewritten computer software to
19 perform data processing.

20 (B) For purposes of this subsection (6)(b)(ii), "data processing"
21 means the systematic performance of operations on data to extract the
22 required information in an appropriate form or to convert the data to
23 usable information. Data processing includes check processing, image
24 processing, form processing, survey processing, payroll processing,
25 claim processing, and similar activities.

26 (7) The term also includes the sale of or charge made for an
27 extended warranty to a consumer. For purposes of this subsection,
28 "extended warranty" means an agreement for a specified duration to
29 perform the replacement or repair of tangible personal property at no
30 additional charge or a reduced charge for tangible personal property,
31 labor, or both, or to provide indemnification for the replacement or
32 repair of tangible personal property, based on the occurrence of
33 specified events. The term "extended warranty" does not include an
34 agreement, otherwise meeting the definition of extended warranty in
35 this subsection, if no separate charge is made for the agreement and
36 the value of the agreement is included in the sales price of the
37 tangible personal property covered by the agreement. For purposes of

1 this subsection, "sales price" has the same meaning as in RCW
2 82.08.010.

3 (8)(a) The term also includes the following sales to consumers of
4 digital goods, digital codes, and digital automated services:

5 (i) Sales in which the seller has granted the purchaser the right
6 of permanent use;

7 (ii) Sales in which the seller has granted the purchaser a right of
8 use that is less than permanent;

9 (iii) Sales in which the purchaser is not obligated to make
10 continued payment as a condition of the sale; and

11 (iv) Sales in which the purchaser is obligated to make continued
12 payment as a condition of the sale.

13 (b) A retail sale of digital goods, digital codes, or digital
14 automated services under this subsection (8) includes any services
15 provided by the seller exclusively in connection with the digital
16 goods, digital codes, or digital automated services, whether or not a
17 separate charge is made for such services.

18 (c) For purposes of this subsection, "permanent" means perpetual or
19 for an indefinite or unspecified length of time. A right of permanent
20 use is presumed to have been granted unless the agreement between the
21 seller and the purchaser specifies or the circumstances surrounding the
22 transaction suggest or indicate that the right to use terminates on the
23 occurrence of a condition subsequent.

24 (9) The term also includes the charge made for providing tangible
25 personal property along with an operator for a fixed or indeterminate
26 period of time. A consideration of this is that the operator is
27 necessary for the tangible personal property to perform as designed.
28 For the purpose of this subsection (9), an operator must do more than
29 maintain, inspect, or set up the tangible personal property.

30 (10) The term does not include the sale of or charge made for labor
31 and services rendered in respect to the building, repairing, or
32 improving of any street, place, road, highway, easement, right-of-way,
33 mass public transportation terminal or parking facility, bridge,
34 tunnel, or trestle which is owned by a municipal corporation or
35 political subdivision of the state or by the United States and which is
36 used or to be used primarily for foot or vehicular traffic including
37 mass transportation vehicles of any kind.

1 (11) The term also does 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 does 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) of the federal internal revenue code or
14 the Washington state department of fish and wildlife to produce or
15 improve wildlife habitat on land that the farmer owns or leases.

16 (12) The term does 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 does 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 does the term include the sale of services or charges made for cleaning
29 up for the United States, or its instrumentalities, radioactive waste
30 and other by-products of weapons production and nuclear research and
31 development.

32 (13) The term does not include the sale of or charge made for
33 labor, services, or tangible personal property pursuant to agreements
34 providing maintenance services for bus, rail, or rail fixed guideway
35 equipment when a regional transit authority is the recipient of the
36 labor, services, or tangible personal property, and a transit agency,
37 as defined in RCW 81.104.015, performs the labor or services.

1 (14) The term does not include the sale for resale of any service
2 described in this section if the sale would otherwise constitute a
3 "sale at retail" and "retail sale" under this section.

4 NEW SECTION. **Sec. 5.** This act takes effect August 1, 2012.

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