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**SUBSTITUTE SENATE BILL 5708**

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**State of Washington**

**64th Legislature**

**2015 Regular Session**

**By** Senate Agriculture, Water & Rural Economic Development (originally sponsored by Senators Ericksen, Bailey, Sheldon, Becker, Baumgartner, Brown, Pearson, Warnick, and Padden)

READ FIRST TIME 02/18/15.

1 AN ACT Relating to the taxation of certain rented property owned  
2 by nonprofit fair associations; amending RCW 84.36.480, 82.29A.020,  
3 82.29A.030, and 82.29A.040; reenacting and amending RCW 82.29A.020;  
4 creating new sections; providing effective dates; and providing an  
5 expiration date.

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

7 NEW SECTION. **Sec. 1.** (1) This section is the tax preference  
8 performance statement for the tax preference contained in section 2  
9 of this act. This performance statement is only intended to be used  
10 for subsequent evaluation of the tax preference. It is not intended  
11 to create a private right of action by any party or be used to  
12 determine eligibility for preferential tax treatment.

13 (2) The legislature categorizes this tax preference as intended  
14 to accomplish a general purpose not identified in RCW 82.32.808(2)  
15 (a) through (e).

16 (3) It is the legislature's specific public policy objective to  
17 support nonprofit fairs that obtained a majority of their property  
18 from a city or county between 1995 and 1998. The legislature intends  
19 to make their property tax exemption permanent, while requiring the  
20 collection of leasehold excise tax on any rentals of their exempt  
21 property that exceed fifty consecutive days. Because the legislature

1 intends for the changes in this act to be permanent, they are exempt  
2 from the ten-year expiration provision in RCW 82.32.805(1)(a).

3 **Sec. 2.** RCW 84.36.480 and 2013 c 212 s 2 are each amended to  
4 read as follows:

5 (1) Except as provided otherwise in subsections (2) and (3) of  
6 this section, the real and personal property of a nonprofit fair  
7 association that sponsors or conducts a fair or fairs that is  
8 eligible to receive support from the fair fund, as created in RCW  
9 15.76.115 and allocated by the director of the department of  
10 agriculture, is exempt from taxation. To be exempt under this  
11 subsection (1), the property must be used exclusively for fair  
12 purposes, except as provided in RCW 84.36.805. However, the loan or  
13 rental of property otherwise exempt under this section to a private  
14 concessionaire or to any person for use as a concession in  
15 conjunction with activities permitted under this section shall not  
16 nullify the exemption if the concession charges are subject to  
17 agreement and the rental income, if any, is reasonable and is devoted  
18 solely to the operation and maintenance of the property.

19 (2)(a) Except as provided otherwise in this subsection and  
20 subsection (3) of this section, the real and personal property owned  
21 by a nonprofit fair association organized under chapter 24.06 RCW and  
22 used for fair purposes is exempt from taxation if the majority of  
23 such property, as determined by assessed value, was purchased or  
24 acquired by the same nonprofit fair association from a county or a  
25 city between 1995 and 1998.

26 (b) (~~The exemption under this subsection (2) may not be claimed~~  
27 ~~for taxes levied for collection in 2019 and thereafter.~~) The loan or  
28 rental of the property subjects the portion of the property loaned or  
29 rented to property taxation for the assessment year unless the rents  
30 or donations received for the use of that portion of the property are  
31 reasonable and do not exceed the maintenance and operation expenses  
32 attributable to that portion of the property.

33 (c) Except as otherwise provided in (b) of this subsection, the  
34 use of exempt property for rental purposes does not negate the  
35 exemption under this subsection. However, any rental exceeding fifty  
36 consecutive days during any calendar year is subject to leasehold  
37 excise tax under chapter 82.29A RCW, unless the property is subject  
38 to property taxes pursuant to (b) of this subsection. For purposes of  
39 this subsection, "rental" means a lease, permit, license, or any

1 other agreement granting possession and use, to a degree less than  
2 fee simple ownership, between the nonprofit fair association and a  
3 person who would not be exempt from property taxes if that person  
4 owned the property in fee.

5 (3) A nonprofit fair association with real and personal property  
6 having an assessed value of more than fifteen million dollars is not  
7 eligible for the exemptions under this section.

8 **Sec. 3.** RCW 82.29A.020 and 2014 c 207 s 3 and 2014 c 140 s 26  
9 are each reenacted and amended to read as follows:

10 The definitions in this section apply throughout this chapter  
11 unless the context requires otherwise.

12 (1)(a) "Leasehold interest" means an interest in publicly owned,  
13 or specified privately owned, real or personal property which exists  
14 by virtue of any lease, permit, license, or any other agreement,  
15 written or verbal, between the ((public)) owner of the property and a  
16 person who would not be exempt from property taxes if that person  
17 owned the property in fee, granting possession and use, to a degree  
18 less than fee simple ownership. However, no interest in personal  
19 property (excluding land or buildings) which is owned by the United  
20 States, whether or not as trustee, or by any foreign government may  
21 constitute a leasehold interest hereunder when the right to use such  
22 property is granted pursuant to a contract solely for the manufacture  
23 or production of articles for sale to the United States or any  
24 foreign government. The term "leasehold interest" includes the rights  
25 of use or occupancy by others of property which is owned in fee or  
26 held in trust by a public corporation, commission, or authority  
27 created under RCW 35.21.730 or 35.21.660 if the property is listed on  
28 or is within a district listed on any federal or state register of  
29 historical sites.

30 (b) The term "leasehold interest" does not include:

31 (i) Road or utility easements, rights of access, occupancy, or  
32 use granted solely for the purpose of removing materials or products  
33 purchased from ((a public)) an owner or the lessee of ((a public)) an  
34 owner, or rights of access, occupancy, or use granted solely for the  
35 purpose of natural energy resource exploration; or

36 (ii) The preferential use of publicly owned cargo cranes and  
37 docks and associated areas used in the loading and discharging of  
38 cargo located at a port district marine facility. "Preferential use"  
39 means that publicly owned real or personal property is used by a

1 private party under a written agreement with the public owner, but  
2 the public owner or any third party maintains a right to use the  
3 property when not being used by the private party.

4 ~~((c) "Publicly owned real or personal property" includes real or  
5 personal property owned by a federally recognized Indian tribe in the  
6 state and exempt from tax under RCW 84.36.010.))~~

7 (2)(a) "Taxable rent" means contract rent as defined in (c) of  
8 this subsection in all cases where the lease or agreement has been  
9 established or renegotiated through competitive bidding, or  
10 negotiated or renegotiated in accordance with statutory requirements  
11 regarding the rent payable, or negotiated or renegotiated under  
12 circumstances, established by public record, clearly showing that the  
13 contract rent was the maximum attainable by the lessor. With respect  
14 to a leasehold interest in privately owned property, "taxable rent"  
15 means contract rent. However, after January 1, 1986, with respect to  
16 any lease which has been in effect for ten years or more without  
17 renegotiation, taxable rent may be established by procedures set  
18 forth in (g) of this subsection. All other leasehold interests are  
19 subject to the determination of taxable rent under the terms of (g)  
20 of this subsection.

21 (b) For purposes of determining leasehold excise tax on any lands  
22 on the Hanford reservation subleased to a private or public entity by  
23 the department of ecology, taxable rent includes only the annual cash  
24 rental payment made by such entity to the department of ecology as  
25 specifically referred to as rent in the sublease agreement between  
26 the parties and does not include any other fees, assessments, or  
27 charges imposed on or collected by such entity irrespective of  
28 whether the private or public entity pays or collects such other  
29 fees, assessments, or charges as specified in the sublease agreement.

30 (c) "Contract rent" means the amount of consideration due as  
31 payment for a leasehold interest, including: The total of cash  
32 payments made to the lessor or to another party for the benefit of  
33 the lessor according to the requirements of the lease or agreement,  
34 including any rents paid by a sublessee; expenditures for the  
35 protection of the lessor's interest when required by the terms of the  
36 lease or agreement; and expenditures for improvements to the property  
37 to the extent that such improvements become the property of the  
38 lessor. Where the consideration conveyed for the leasehold interest  
39 is made in combination with payment for concession or other rights  
40 granted by the lessor, only that portion of such payment which

1 represents consideration for the leasehold interest is part of  
2 contract rent.

3 (d) "Contract rent" does not include: (i) Expenditures made by  
4 the lessee, which under the terms of the lease or agreement, are to  
5 be reimbursed by the lessor to the lessee or expenditures for  
6 improvements and protection made pursuant to a lease or an agreement  
7 which requires that the use of the improved property be open to the  
8 general public and that no profit will inure to the lessee from the  
9 lease; (ii) expenditures made by the lessee for the replacement or  
10 repair of facilities due to fire or other casualty including payments  
11 for insurance to provide reimbursement for losses or payments to a  
12 public or private entity for protection of such property from damage  
13 or loss or for alterations or additions made necessary by an action  
14 of government taken after the date of the execution of the lease or  
15 agreement; (iii) improvements added to publicly owned property by a  
16 sublessee under an agreement executed prior to January 1, 1976, which  
17 have been taxed as personal property of the sublessee prior to  
18 January 1, 1976, or improvements made by a sublessee of the same  
19 lessee under a similar agreement executed prior to January 1, 1976,  
20 and such improvements are taxable to the sublessee as personal  
21 property; (iv) improvements added to publicly owned property if such  
22 improvements are being taxed as personal property to any person.

23 (e) Any prepaid contract rent is considered to have been paid in  
24 the year due and not in the year actually paid with respect to  
25 prepayment for a period of more than one year. Expenditures for  
26 improvements with a useful life of more than one year which are  
27 included as part of contract rent must be treated as prepaid contract  
28 rent and prorated over the useful life of the improvement or the  
29 remaining term of the lease or agreement if the useful life is in  
30 excess of the remaining term of the lease or agreement. Rent prepaid  
31 prior to January 1, 1976, must be prorated from the date of  
32 prepayment.

33 (f) With respect to a "product lease", the value is that value  
34 determined at the time of sale under terms of the lease.

35 (g) If it is determined by the department of revenue, upon  
36 examination of a lessee's accounts or those of a lessor of publicly  
37 owned property, that a lessee is occupying or using publicly owned  
38 property in such a manner as to create a leasehold interest and that  
39 such leasehold interest has not been established through competitive  
40 bidding, or negotiated in accordance with statutory requirements

1 regarding the rent payable, or negotiated under circumstances,  
2 established by public record, clearly showing that the contract rent  
3 was the maximum attainable by the lessor, the department may  
4 establish a taxable rent computation for use in determining the tax  
5 payable under authority granted in this chapter based upon the  
6 following criteria: (i) Consideration must be given to rental being  
7 paid to other lessors by lessees of similar property for similar  
8 purposes over similar periods of time; (ii) consideration must be  
9 given to what would be considered a fair rate of return on the market  
10 value of the property leased less reasonable deductions for any  
11 restrictions on use, special operating requirements or provisions for  
12 concurrent use by the lessor, another person or the general public.

13 (3) "Product lease" as used in this chapter means a lease of  
14 property for use in the production of agricultural or marine  
15 products, not including the production of marijuana as defined in RCW  
16 69.50.101, to the extent that such lease provides for the contract  
17 rent to be paid by the delivery of a stated percentage of the  
18 production of such agricultural or marine products to the credit of  
19 the lessor or the payment to the lessor of a stated percentage of the  
20 proceeds from the sale of such products.

21 (4) "Renegotiated" means a change in the lease agreement which  
22 changes the agreed time of possession, restrictions on use, the rate  
23 of the cash rental or of any other consideration payable by the  
24 lessee to or for the benefit of the lessor, other than any such  
25 change required by the terms of the lease or agreement. In addition  
26 "renegotiated" means a continuation of possession by the lessee  
27 beyond the date when, under the terms of the lease agreement, the  
28 lessee had the right to vacate the premises without any further  
29 liability to the lessor.

30 (5) "City" means any city or town.

31 (6) "Products" includes natural resource products such as cut or  
32 picked evergreen foliage, Cascara bark, wild edible mushrooms, native  
33 ornamental trees and shrubs, ore and minerals, natural gas,  
34 geothermal water and steam, and forage removed through the grazing of  
35 livestock.

36 (7) "Publicly owned, or specified privately owned, real or  
37 personal property" includes real or personal property:

38 (a) Owned in fee or held in trust by a public entity and exempt  
39 from property tax under the laws or Constitution of this state or the  
40 Constitution of the United States;

1 (b) Owned by a federally recognized Indian tribe in the state and  
2 exempt from property tax under RCW 84.36.010;

3 (c) Owned by a nonprofit fair association exempt from property  
4 tax under RCW 84.36.480(2), but only with respect to that portion of  
5 the fair's property subject to the tax imposed in this chapter  
6 pursuant to RCW 84.36.480(2)(c); or

7 (d) Owned by a community center exempt from property tax under  
8 RCW 84.36.010.

9 **Sec. 4.** RCW 82.29A.020 and 2014 c 140 s 26 are each amended to  
10 read as follows:

11 The definitions in this section apply throughout this chapter  
12 unless the context requires otherwise.

13 (1)(a) "Leasehold interest" means an interest in publicly owned,  
14 or specified privately owned, real or personal property which exists  
15 by virtue of any lease, permit, license, or any other agreement,  
16 written or verbal, between the (~~public~~) owner of the property and a  
17 person who would not be exempt from property taxes if that person  
18 owned the property in fee, granting possession and use, to a degree  
19 less than fee simple ownership. However, no interest in personal  
20 property (excluding land or buildings) which is owned by the United  
21 States, whether or not as trustee, or by any foreign government may  
22 constitute a leasehold interest hereunder when the right to use such  
23 property is granted pursuant to a contract solely for the manufacture  
24 or production of articles for sale to the United States or any  
25 foreign government. The term "leasehold interest" includes the rights  
26 of use or occupancy by others of property which is owned in fee or  
27 held in trust by a public corporation, commission, or authority  
28 created under RCW 35.21.730 or 35.21.660 if the property is listed on  
29 or is within a district listed on any federal or state register of  
30 historical sites.

31 (b) The term "leasehold interest" does not include:

32 (i) Road or utility easements, rights of access, occupancy, or  
33 use granted solely for the purpose of removing materials or products  
34 purchased from (~~a public~~) an owner or the lessee of (~~a public~~) an  
35 owner, or rights of access, occupancy, or use granted solely for the  
36 purpose of natural energy resource exploration(~~—"Leasehold~~  
37 interest" does not include)); or

38 (ii) The preferential use of publicly owned cargo cranes and  
39 docks and associated areas used in the loading and discharging of

1 cargo located at a port district marine facility. "Preferential use"  
2 means that publicly owned real or personal property is used by a  
3 private party under a written agreement with the public owner, but  
4 the public owner or any third party maintains a right to use the  
5 property when not being used by the private party.

6 (2)(a) "Taxable rent" means contract rent as defined in (c) of  
7 this subsection in all cases where the lease or agreement has been  
8 established or renegotiated through competitive bidding, or  
9 negotiated or renegotiated in accordance with statutory requirements  
10 regarding the rent payable, or negotiated or renegotiated under  
11 circumstances, established by public record, clearly showing that the  
12 contract rent was the maximum attainable by the lessor. With respect  
13 to a leasehold interest in privately owned property, "taxable rent"  
14 means contract rent. However, after January 1, 1986, with respect to  
15 any lease which has been in effect for ten years or more without  
16 renegotiation, taxable rent may be established by procedures set  
17 forth in (g) of this subsection. All other leasehold interests are  
18 subject to the determination of taxable rent under the terms of (g)  
19 of this subsection.

20 (b) For purposes of determining leasehold excise tax on any lands  
21 on the Hanford reservation subleased to a private or public entity by  
22 the department of ecology, taxable rent includes only the annual cash  
23 rental payment made by such entity to the department of ecology as  
24 specifically referred to as rent in the sublease agreement between  
25 the parties and does not include any other fees, assessments, or  
26 charges imposed on or collected by such entity irrespective of  
27 whether the private or public entity pays or collects such other  
28 fees, assessments, or charges as specified in the sublease agreement.

29 (c) "Contract rent" means the amount of consideration due as  
30 payment for a leasehold interest, including: The total of cash  
31 payments made to the lessor or to another party for the benefit of  
32 the lessor according to the requirements of the lease or agreement,  
33 including any rents paid by a sublessee; expenditures for the  
34 protection of the lessor's interest when required by the terms of the  
35 lease or agreement; and expenditures for improvements to the property  
36 to the extent that such improvements become the property of the  
37 lessor. Where the consideration conveyed for the leasehold interest  
38 is made in combination with payment for concession or other rights  
39 granted by the lessor, only that portion of such payment which



1 represents consideration for the leasehold interest is part of  
2 contract rent.

3 (d) "Contract rent" does not include: (i) Expenditures made by  
4 the lessee, which under the terms of the lease or agreement, are to  
5 be reimbursed by the lessor to the lessee or expenditures for  
6 improvements and protection made pursuant to a lease or an agreement  
7 which requires that the use of the improved property be open to the  
8 general public and that no profit will inure to the lessee from the  
9 lease; (ii) expenditures made by the lessee for the replacement or  
10 repair of facilities due to fire or other casualty including payments  
11 for insurance to provide reimbursement for losses or payments to a  
12 public or private entity for protection of such property from damage  
13 or loss or for alterations or additions made necessary by an action  
14 of government taken after the date of the execution of the lease or  
15 agreement; (iii) improvements added to publicly owned property by a  
16 sublessee under an agreement executed prior to January 1, 1976, which  
17 have been taxed as personal property of the sublessee prior to  
18 January 1, 1976, or improvements made by a sublessee of the same  
19 lessee under a similar agreement executed prior to January 1, 1976,  
20 and such improvements are taxable to the sublessee as personal  
21 property; (iv) improvements added to publicly owned property if such  
22 improvements are being taxed as personal property to any person.

23 (e) Any prepaid contract rent is considered to have been paid in  
24 the year due and not in the year actually paid with respect to  
25 prepayment for a period of more than one year. Expenditures for  
26 improvements with a useful life of more than one year which are  
27 included as part of contract rent must be treated as prepaid contract  
28 rent and prorated over the useful life of the improvement or the  
29 remaining term of the lease or agreement if the useful life is in  
30 excess of the remaining term of the lease or agreement. Rent prepaid  
31 prior to January 1, 1976, must be prorated from the date of  
32 prepayment.

33 (f) With respect to a "product lease", the value is that value  
34 determined at the time of sale under terms of the lease.

35 (g) If it is determined by the department of revenue, upon  
36 examination of a lessee's accounts or those of a lessor of publicly  
37 owned property, that a lessee is occupying or using publicly owned  
38 property in such a manner as to create a leasehold interest and that  
39 such leasehold interest has not been established through competitive  
40 bidding, or negotiated in accordance with statutory requirements

1 regarding the rent payable, or negotiated under circumstances,  
2 established by public record, clearly showing that the contract rent  
3 was the maximum attainable by the lessor, the department may  
4 establish a taxable rent computation for use in determining the tax  
5 payable under authority granted in this chapter based upon the  
6 following criteria: (i) Consideration must be given to rental being  
7 paid to other lessors by lessees of similar property for similar  
8 purposes over similar periods of time; (ii) consideration must be  
9 given to what would be considered a fair rate of return on the market  
10 value of the property leased less reasonable deductions for any  
11 restrictions on use, special operating requirements or provisions for  
12 concurrent use by the lessor, another person or the general public.

13 (3) "Product lease" as used in this chapter means a lease of  
14 property for use in the production of agricultural or marine  
15 products, not including the production of marijuana as defined in RCW  
16 69.50.101, to the extent that such lease provides for the contract  
17 rent to be paid by the delivery of a stated percentage of the  
18 production of such agricultural or marine products to the credit of  
19 the lessor or the payment to the lessor of a stated percentage of the  
20 proceeds from the sale of such products.

21 (4) "Renegotiated" means a change in the lease agreement which  
22 changes the agreed time of possession, restrictions on use, the rate  
23 of the cash rental or of any other consideration payable by the  
24 lessee to or for the benefit of the lessor, other than any such  
25 change required by the terms of the lease or agreement. In addition  
26 "renegotiated" means a continuation of possession by the lessee  
27 beyond the date when, under the terms of the lease agreement, the  
28 lessee had the right to vacate the premises without any further  
29 liability to the lessor.

30 (5) "City" means any city or town.

31 (6) "Products" includes natural resource products such as cut or  
32 picked evergreen foliage, Cascara bark, wild edible mushrooms, native  
33 ornamental trees and shrubs, ore and minerals, natural gas,  
34 geothermal water and steam, and forage removed through the grazing of  
35 livestock.

36 (7) "Publicly owned, or specified privately owned, real or  
37 personal property" includes real or personal property:

38 (a) Owned in fee or held in trust by a public entity and exempt  
39 from property tax under the laws or Constitution of this state or the  
40 Constitution of the United States;

1 (b) Owned by a federally recognized Indian tribe in the state and  
2 exempt from property tax under RCW 84.36.010;

3 (c) Owned by a nonprofit fair association exempt from property  
4 tax under RCW 84.36.480(2), but only with respect to that portion of  
5 the fair's property subject to the tax imposed in this chapter  
6 pursuant to RCW 84.36.480(2)(c); or

7 (d) Owned by a community center exempt from property tax under  
8 RCW 84.36.010.

9 **Sec. 5.** RCW 82.29A.030 and 2010 c 281 s 3 are each amended to  
10 read as follows:

11 (1)~~((a))~~ There is levied and collected a leasehold excise tax  
12 on the act or privilege of occupying or using publicly owned, or  
13 specified privately owned, real or personal property (~~(or real or~~  
14 ~~personal property of a community center)) through a leasehold  
15 interest on and after January 1, 1976, at a rate of twelve percent of  
16 taxable rent. However, after the computation of the tax a credit is  
17 allowed for any tax collected pursuant to RCW 82.29A.040.~~

18 ~~((b) For the purposes of this subsection, "community center" has~~  
19 ~~the same meaning as provided in RCW 84.36.010.))~~

20 (2) An additional tax is imposed equal to the rate specified in  
21 RCW 82.02.030 multiplied by the tax payable under subsection (1) of  
22 this section.

23 **Sec. 6.** RCW 82.29A.040 and 1975-'76 2nd ex.s. c 61 s 4 are each  
24 amended to read as follows:

25 (1) The legislative body of any county or city is hereby  
26 authorized to levy and collect a leasehold excise tax on the act or  
27 privilege of occupying or using publicly owned, or specified  
28 privately owned, real or personal property through a leasehold  
29 interest in publicly owned property within the territorial limits of  
30 such county or city. The tax levied by a county under authority of  
31 this section shall not exceed six percent and the tax levied by a  
32 city shall not exceed four percent of taxable rent(~~(- PROVIDED,~~  
33 ~~That)).~~ However, any county ordinance levying such tax shall contain  
34 a provision allowing a credit against the county tax for the full  
35 amount of any city tax imposed upon the same taxable event.

36 (2) The department of revenue shall perform the collection of  
37 such taxes on behalf of such county or city.

1        NEW SECTION.    **Sec. 7.**    Sections 3, 5, and 6 of this act apply  
2 with respect to taxable rent, as defined in RCW 82.29A.020, payable  
3 on or after the effective date of this section.

4        NEW SECTION.    **Sec. 8.**    Except for section 4 of this act, this act  
5 takes effect August 1, 2015.

6        NEW SECTION.    **Sec. 9.**    Section 4 of this act takes effect January  
7 1, 2022.

8        NEW SECTION.    **Sec. 10.**    Section 3 of this act expires January 1,  
9 2022.

--- END ---