
SECOND SUBSTITUTE SENATE BILL 5708

State of Washington

64th Legislature

2015 Regular Session

By Senate Ways & Means (originally sponsored by Senators Ericksen, Bailey, Sheldon, Becker, Baumgartner, Brown, Pearson, Warnick, and Padden)

READ FIRST TIME 04/02/15.

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 use of
28 exempt property for rental purposes does not negate the exemption
29 under this subsection. However, any rental exceeding fifty
30 consecutive days during any calendar year is subject to leasehold
31 excise tax under chapter 82.29A RCW, unless the property is subject
32 to property taxes pursuant to (b) of this subsection. For purposes of
33 this subsection, "rental" means a lease, permit, license, or any
34 other agreement granting possession and use, to a degree less than
35 fee simple ownership, between the nonprofit fair association and a
36 person who would not be exempt from property taxes if that person
37 owned the property in fee.

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

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

6 The definitions in this section apply throughout this chapter
7 unless the context requires otherwise.

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

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

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

32 (ii) The preferential use of publicly owned cargo cranes and
33 docks and associated areas used in the loading and discharging of
34 cargo located at a port district marine facility. "Preferential use"
35 means that publicly owned real or personal property is used by a
36 private party under a written agreement with the public owner, but
37 the public owner or any third party maintains a right to use the
38 property when not being used by the private party.

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (7) "Publicly owned, or specified privately owned, real or
35 personal property" includes real or personal property:

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

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

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

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

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

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

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

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

30 (i) Road or utility easements, rights of access, occupancy, or
31 use granted solely for the purpose of removing materials or products
32 purchased from ((a-public)) an owner or the lessee of ((a-public)) an
33 owner, or rights of access, occupancy, or use granted solely for the
34 purpose of natural energy resource exploration((.—"Leasehold
35 interest" does not include)); 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 (2)(a) "Taxable rent" means contract rent as defined in (c) of
5 this subsection in all cases where the lease or agreement has been
6 established or renegotiated through competitive bidding, or
7 negotiated or renegotiated in accordance with statutory requirements
8 regarding the rent payable, or negotiated or renegotiated under
9 circumstances, established by public record, clearly showing that the
10 contract rent was the maximum attainable by the lessor. With respect
11 to a leasehold interest in privately owned property, "taxable rent"
12 means contract rent. However, after January 1, 1986, with respect to
13 any lease which has been in effect for ten years or more without
14 renegotiation, taxable rent may be established by procedures set
15 forth in (g) of this subsection. All other leasehold interests are
16 subject to the determination of taxable rent under the terms of (g)
17 of this subsection.

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

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

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

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

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

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

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

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

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

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

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

34 (7) "Publicly owned, or specified privately owned, real or
35 personal property" includes real or personal property:

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

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

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

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

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

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

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

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

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

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

34 (2) The department of revenue shall perform the collection of
35 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 January 1, 2019.

6 NEW SECTION. **Sec. 9.** Section 2 of this act applies to taxes
7 levied for collection in 2019 and thereafter.

8 NEW SECTION. **Sec. 10.** Section 4 of this act takes effect
9 January 1, 2022.

10 NEW SECTION. **Sec. 11.** Section 3 of this act expires January 1,
11 2022.

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