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HOUSE BILL 1388

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State of Washington

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1995 Regular Session

By Representatives Carrell, Boldt, Morris, Sommers, Brown, Cody, Mason, Conway, Campbell, Huff, Carlson, Dickerson, B. Thomas, Chandler, Patterson, Mielke, Buck, Cooke and Kessler

Read first time 01/24/95. Referred to Committee on Finance.

1 AN ACT Relating to taxation of massage services; amending RCW  
2 82.04.050; creating a new section; providing an effective date; and  
3 declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** It is the intent of the legislature that  
6 massage services be recognized as health care practitioners for the  
7 purposes of business and occupation tax application. To achieve this  
8 intent massage services are being removed from the definition of sale  
9 at retail and retail sale.

10 **Sec. 2.** RCW 82.04.050 and 1993 sp.s. c 25 s 301 are each amended  
11 to read as follows:

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

1 (a) Purchases for the purpose of resale as tangible personal  
2 property in the regular course of business without intervening use by  
3 such person; or

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

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

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

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

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

33 (a) The installing, repairing, cleaning, altering, imprinting, or  
34 improving of tangible personal property of or for consumers, including  
35 charges made for the mere use of facilities in respect thereto, but  
36 excluding sales of laundry service to members by nonprofit associations  
37 composed exclusively of nonprofit hospitals, and excluding services  
38 rendered in respect to live animals, birds and insects;

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

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

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

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

32 (f) The sale of and charge made for the furnishing of lodging and  
33 all other services by a hotel, rooming house, tourist court, motel,  
34 trailer camp, and the granting of any similar license to use real  
35 property, as distinguished from the renting or leasing of real  
36 property, and it shall be presumed that the occupancy of real property  
37 for a continuous period of one month or more constitutes a rental or  
38 lease of real property and not a mere license to use or enjoy the same;

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

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

16 (a) Amusement and recreation services including but not limited to  
17 golf, pool, billiards, skating, bowling, ski lifts and tows, and  
18 others;

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

20 (c) Credit bureau services;

21 (d) Automobile parking and storage garage services;

22 (e) Landscape maintenance and horticultural services but excluding  
23 horticultural services provided to farmers;

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

26 (g) Guided tours and guided charters; and

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

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

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

36 (6) The term shall not include the sale of or charge made for labor  
37 and services rendered in respect to the building, repairing, or  
38 improving of any street, place, road, highway, easement, right of way,  
39 mass public transportation terminal or parking facility, bridge,

1 tunnel, or trestle which is owned by a municipal corporation or  
2 political subdivision of the state or by the United States and which is  
3 used or to be used primarily for foot or vehicular traffic including  
4 mass transportation vehicles of any kind.

5 (7) The term shall also not include sales of feed, seed, seedlings,  
6 fertilizer, agents for enhanced pollination including insects such as  
7 bees, and spray materials to persons who participate in the federal  
8 conservation reserve program or its successor administered by the  
9 United States department of agriculture, or to farmers for the purpose  
10 of producing for sale any agricultural product, nor shall it include  
11 sales of chemical sprays or washes to persons for the purpose of post-  
12 harvest treatment of fruit for the prevention of scald, fungus, mold,  
13 or decay.

14 (8) The term shall not include the sale of or charge made for labor  
15 and services rendered in respect to the constructing, repairing,  
16 decorating, or improving of new or existing buildings or other  
17 structures under, upon, or above real property of or for the United  
18 States, any instrumentality thereof, or a county or city housing  
19 authority created pursuant to chapter 35.82 RCW, including the  
20 installing, or attaching of any article of tangible personal property  
21 therein or thereto, whether or not such personal property becomes a  
22 part of the realty by virtue of installation. Nor shall the term  
23 include the sale of services or charges made for the clearing of land  
24 and the moving of earth of or for the United States, any  
25 instrumentality thereof, or a county or city housing authority.

26 NEW SECTION. **Sec. 3.** This act is necessary for the immediate  
27 preservation of the public peace, health, or safety, or support of the  
28 state government and its existing public institutions, and shall take  
29 effect July 1, 1995.

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