
SUBSTITUTE HOUSE BILL 1705

State of Washington

54th Legislature

1995 Regular Session

By House Committee on Energy & Utilities (originally sponsored by Representatives Huff, Casada, Kremen, Patterson, Grant, Kessler, G. Fisher, Mielke, Crouse, Chandler, Hankins, Mitchell, Hatfield, Campbell, Smith, L. Thomas, Horn and Benton)

Read first time 02/09/95.

1 AN ACT Relating to excluding utility line clearing from the
2 definition of retail sale; amending RCW 82.04.050 and 82.04.290; adding
3 a new section to chapter 82.04 RCW; adding a new section to chapter
4 82.08 RCW; creating a new section; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** In 1993, the legislature extended retail
7 sales taxes to discretionary spending on landscape maintenance and
8 horticultural services. The legislature did not intend to extend, nor
9 did it believe it was extending, retail sales taxes to pruning,
10 trimming, repairing, removing, and clearing of trees and brush near
11 electric distribution or transmission lines or equipment by, or at the
12 direction of, an electric utility. The latter activities generally
13 require nondiscretionary expenditures by electric utilities in the
14 interests of public safety and minimizing unplanned power
15 interruptions.

16 The legislature finds that the department of revenue misinterpreted
17 the intent of the legislature by adopting a rule extending retail sales
18 taxes to pruning, trimming, repairing, removing, and clearing of trees
19 and brush near electric distribution or transmission lines or

1 equipment, performed by, or at the direction of, an electric utility.
2 As a result of this misinterpretation, the department of revenue has
3 improperly collected retail sales tax on such services.

4 To avoid disputes and potential litigation, the legislature finds
5 that persons having paid taxes under chapter 82.08 RCW on or after July
6 1, 1993, for pruning, trimming, repairing, removing, or clearing of
7 trees and brush near electric distribution or transmission lines or
8 equipment, performed by, or at the direction of, an electric utility,
9 are entitled to credit against present and future taxes due to the
10 department of revenue.

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

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

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

23 (b) Installs, repairs, cleans, alters, imprints, improves,
24 constructs, or decorates real or personal property of or for consumers,
25 if such tangible personal property becomes an ingredient or component
26 of such real or personal property without intervening use by such
27 person; or

28 (c) Purchases for the purpose of consuming the property purchased
29 in producing for sale a new article of tangible personal property or
30 substance, of which such property becomes an ingredient or component or
31 is a chemical used in processing, when the primary purpose of such
32 chemical is to create a chemical reaction directly through contact with
33 an ingredient of a new article being produced for sale; or

34 (d) Purchases for the purpose of consuming the property purchased
35 in producing ferrosilicon which is subsequently used in producing
36 magnesium for sale, if the primary purpose of such property is to
37 create a chemical reaction directly through contact with an ingredient
38 of ferrosilicon; or

1 (e) Purchases for the purpose of providing the property to
2 consumers as part of competitive telephone service, as defined in RCW
3 82.04.065. The term shall include every sale of tangible personal
4 property which is used or consumed or to be used or consumed in the
5 performance of any activity classified as a "sale at retail" or "retail
6 sale" even though such property is resold or utilized as provided in
7 (a), (b), (c), (d), or (e) of this subsection following such use. The
8 term also means every sale of tangible personal property to persons
9 engaged in any business which is taxable under RCW 82.04.280 (2) and
10 (7) and 82.04.290.

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

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

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

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

36 (d) The sale of or charge made for labor and services rendered in
37 respect to the cleaning, fumigating, razing or moving of existing
38 buildings or structures, but shall not include the charge made for
39 janitorial services; and for purposes of this section the term

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

8 (e) The sale of or charge made for labor and services rendered in
9 respect to 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 sale of and charge made for the furnishing of lodging and
13 all other services by a hotel, rooming house, tourist court, motel,
14 trailer camp, and the granting of any similar license to use real
15 property, as distinguished from the renting or leasing of real
16 property, and it shall be presumed that the occupancy of real property
17 for a continuous period of one month or more constitutes a rental or
18 lease of real property and not a mere license to use or enjoy the same;

19 (g) The sale of or charge made for tangible personal property,
20 labor and services to persons taxable under (a), (b), (c), (d), (e),
21 and (f) of this subsection when such sales or charges are for property,
22 labor and services which are used or consumed in whole or in part by
23 such persons in the performance of any activity defined as a "sale at
24 retail" or "retail sale" even though such property, labor and services
25 may be resold after such use or consumption. Nothing contained in this
26 subsection shall be construed to modify subsection (1) of this section
27 and nothing contained in subsection (1) of this section shall be
28 construed to modify this subsection.

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

34 (a) Amusement and recreation services including but not limited to
35 golf, pool, billiards, skating, bowling, ski lifts and tows, and
36 others;

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

38 (c) Credit bureau services;

39 (d) Automobile parking and storage garage services;

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

6 (f) Service charges associated with tickets to professional
7 sporting events;

8 (g) Guided tours and guided charters; and

9 (h) The following personal services: Physical fitness services,
10 tanning salon services, tattoo parlor services, massage services, steam
11 bath services, turkish bath services, escort services, and dating
12 services.

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

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

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

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

35 (8) The term shall not include the sale of or charge made for labor
36 and services rendered in respect to the constructing, repairing,
37 decorating, or improving of new or existing buildings or other
38 structures under, upon, or above real property of or for the United
39 States, any instrumentality thereof, or a county or city housing

1 authority created pursuant to chapter 35.82 RCW, including the
2 installing, or attaching of any article of tangible personal property
3 therein or thereto, whether or not such personal property becomes a
4 part of the realty by virtue of installation. Nor shall the term
5 include the sale of services or charges made for the clearing of land
6 and the moving of earth of or for the United States, any
7 instrumentality thereof, or a county or city housing authority.

8 **Sec. 3.** RCW 82.04.290 and 1993 sp.s. c 25 s 203 are each amended
9 to read as follows:

10 (1) Upon every person engaging within this state in the business of
11 providing selected business services other than or in addition to those
12 enumerated in RCW 82.04.250 or 82.04.270; as to such persons the amount
13 of tax on account of such activities shall be equal to the gross income
14 of the business multiplied by the rate of 2.5 percent.

15 (2) Upon every person engaging within this state in banking, loan,
16 security, investment management, investment advisory, or other
17 financial businesses; as to such persons, the amount of the tax with
18 respect to such business shall be equal to the gross income of the
19 business, multiplied by the rate of 1.70 percent.

20 (3) Upon every person engaging within this state in any business
21 activity other than or in addition to those enumerated in RCW
22 82.04.230, 82.04.240, 82.04.250, 82.04.255, 82.04.260, 82.04.270,
23 (~~and~~) 82.04.280, and section 4 of this act, and subsections (1) and
24 (2) of this section; as to such persons the amount of tax on account of
25 such activities shall be equal to the gross income of the business
26 multiplied by the rate of 2.0 percent. This section includes, among
27 others, and without limiting the scope hereof (whether or not title to
28 materials used in the performance of such business passes to another by
29 accession, confusion or other than by outright sale), persons engaged
30 in the business of rendering any type of service which does not
31 constitute a "sale at retail" or a "sale at wholesale." The value of
32 advertising, demonstration, and promotional supplies and materials
33 furnished to an agent by his principal or supplier to be used for
34 informational, educational and promotional purposes shall not be
35 considered a part of the agent's remuneration or commission and shall
36 not be subject to taxation under this section.

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.04 RCW,
2 to be codified after RCW 82.04.290, to read as follows:

3 Upon every person engaging within this state in the business of
4 providing utility line clearance services, including pruning, trimming,
5 repairing, removing, and clearing trees and brush near electric
6 distribution or transmission lines or equipment where performed at the
7 direction of an electric utility; as to such persons the amount of the
8 tax with respect to such business shall be equal to the gross proceeds
9 of sales of the business, multiplied by the rate of 0.471 percent.

10 NEW SECTION. **Sec. 5.** A new section is added to chapter 82.08 RCW
11 to read as follows:

12 A person may claim a credit against any taxes due to the department
13 of revenue under chapters 82.04, 82.12, and 82.16 RCW as provided in
14 this section. The credit is equal to the amount of taxes, including
15 penalties and interest on such taxes, paid by the person under this
16 chapter on or after July 1, 1993, for pruning, trimming, repairing,
17 removing, and clearing of trees and brush near electric distribution or
18 transmission lines or equipment, if performed by or at the direction of
19 an electric utility. A buyer who has paid such tax to the seller shall
20 claim the credit directly with the department of revenue. A seller may
21 claim the credit only if the seller has paid such tax to the department
22 and has not collected the tax from the buyer. The credit may be
23 carried forward and taken against taxes reported in subsequent
24 reporting periods until fully used.

25 NEW SECTION. **Sec. 6.** If any provision of this act or its
26 application to any person or circumstance is held invalid, the
27 remainder of the act or the application of the provision to other
28 persons or circumstances is not affected.

29 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
30 preservation of the public peace, health, or safety, or support of the
31 state government and its existing public institutions, and shall take
32 effect immediately.

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