
HOUSE BILL 1705

State of Washington

54th Legislature

1995 Regular Session

By Representatives Huff, Casada, Kremen, Patterson, Grant, Kessler, G. Fisher, Mielke, Crouse, Chandler, Hankins, Mitchell, Hatfield, Campbell, Smith, L. Thomas, Horn and Benton

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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 The legislature further finds that to be consistent with the
12 directives of Initiative 601, adopted by the voters in November 1993,
13 business and occupation taxes for such services should continue at the
14 current rate for retail activities.

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

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

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

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

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

1 (d) Purchases for the purpose of consuming the property purchased
2 in producing ferrosilicon which is subsequently used in producing
3 magnesium for sale, if the primary purpose of such property is to
4 create a chemical reaction directly through contact with an ingredient
5 of ferrosilicon; or

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

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

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

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

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

1 reconveyed by title, possession, or any other means to the original
2 owner;

3 (d) The sale of or charge made for labor and services rendered in
4 respect to the cleaning, fumigating, razing or moving of existing
5 buildings or structures, but shall not include the charge made for
6 janitorial services; and for purposes of this section the term
7 "janitorial services" shall mean those cleaning and caretaking services
8 ordinarily performed by commercial janitor service businesses
9 including, but not limited to, wall and window washing, floor cleaning
10 and waxing, and the cleaning in place of rugs, drapes and upholstery.
11 The term "janitorial services" does not include painting, papering,
12 repairing, furnace or septic tank cleaning, snow removal or
13 sandblasting;

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

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

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

35 (3) The term "sale at retail" or "retail sale" shall include the
36 sale of or charge made for personal, business, or professional services
37 including amounts designated as interest, rents, fees, admission, and
38 other service emoluments however designated, received by persons
39 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, and
3 others;

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

5 (c) Credit bureau services;

6 (d) Automobile parking and storage garage services;

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

12 (f) Service charges associated with tickets to professional
13 sporting events;

14 (g) Guided tours and guided charters; and

15 (h) The following personal services: Physical fitness services,
16 tanning salon services, tattoo parlor services, massage services, steam
17 bath services, turkish bath services, escort services, and dating
18 services.

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

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

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

32 (7) The term shall also not include sales of feed, seed, seedlings,
33 fertilizer, agents for enhanced pollination including insects such as
34 bees, and spray materials to persons who participate in the federal
35 conservation reserve program or its successor administered by the
36 United States department of agriculture, or to farmers for the purpose
37 of producing for sale any agricultural product, nor shall it include
38 sales of chemical sprays or washes to persons for the purpose of post-

1 harvest treatment of fruit for the prevention of scald, fungus, mold,
2 or decay.

3 (8) The term shall not include the sale of or charge made for labor
4 and services rendered in respect to the constructing, repairing,
5 decorating, or improving of new or existing buildings or other
6 structures under, upon, or above real property of or for the United
7 States, any instrumentality thereof, or a county or city housing
8 authority created pursuant to chapter 35.82 RCW, including the
9 installing, or attaching of any article of tangible personal property
10 therein or thereto, whether or not such personal property becomes a
11 part of the realty by virtue of installation. Nor shall the term
12 include the sale of services or charges made for the clearing of land
13 and the moving of earth of or for the United States, any
14 instrumentality thereof, or a county or city housing authority.

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

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

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

27 (3) Upon every person engaging within this state in any business
28 activity other than or in addition to those enumerated in RCW
29 82.04.230, 82.04.240, 82.04.250, 82.04.255, 82.04.260, 82.04.270,
30 (~~and~~) 82.04.280, and section 4 of this act, and subsections (1) and
31 (2) of this section; as to such persons the amount of tax on account of
32 such activities shall be equal to the gross income of the business
33 multiplied by the rate of 2.0 percent. This section includes, among
34 others, and without limiting the scope hereof (whether or not title to
35 materials used in the performance of such business passes to another by
36 accession, confusion or other than by outright sale), persons engaged
37 in the business of rendering any type of service which does not
38 constitute a "sale at retail" or a "sale at wholesale." The value of

1 advertising, demonstration, and promotional supplies and materials
2 furnished to an agent by his principal or supplier to be used for
3 informational, educational and promotional purposes shall not be
4 considered a part of the agent's remuneration or commission and shall
5 not be subject to taxation under this section.

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

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

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

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

30 NEW SECTION. **Sec. 6.** This act is necessary for the immediate
31 preservation of the public peace, health, or safety, or support of the
32 state government and its existing public institutions, and shall take
33 effect immediately.

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