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HOUSE BILL 2590

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State of Washington

54th Legislature

1996 Regular Session

By Representatives Van Luven, Dickerson and B. Thomas; by request of Department of Revenue

Read first time 01/15/96. Referred to Committee on Finance.

1 AN ACT Relating to excise tax changes needed as a result of the  
2 United States supreme court in *Jefferson Lines v. Oklahoma*; amending  
3 RCW 82.04.050, 82.04.060, and 82.12.020; adding a new section to  
4 chapter 82.04 RCW; adding a new section to chapter 82.08 RCW; providing  
5 an effective date; and declaring an emergency.

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

7 **Sec. 1.** RCW 82.04.050 and 1995 1st sp.s. c 12 s 2 are each amended  
8 to read as follows:

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

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

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

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

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

17 (e) Purchases for the purpose of providing the property to  
18 consumers as part of competitive telephone service, as defined in RCW  
19 82.04.065. The term shall include every sale of tangible personal  
20 property which is used or consumed or to be used or consumed in the  
21 performance of any activity classified as a "sale at retail" or "retail  
22 sale" even though such property is resold or utilized as provided in  
23 (a), (b), (c), (d), or (e) of this subsection following such use. The  
24 term also means every sale of tangible personal property to persons  
25 engaged in any business which is taxable under RCW 82.04.280 (2) and  
26 (7) and 82.04.290.

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

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

36 (b) The constructing, repairing, decorating, or improving of new or  
37 existing buildings or other structures under, upon, or above real  
38 property of or for consumers, including the installing or attaching of  
39 any article of tangible personal property therein or thereto, whether

1 or not such personal property becomes a part of the realty by virtue of  
2 installation, and shall also include the sale of services or charges  
3 made for the clearing of land and the moving of earth excepting the  
4 mere leveling of land used in commercial farming or agriculture;

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

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

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

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

35 (g) The sale of or charge made for tangible personal property,  
36 labor and services to persons taxable under (a), (b), (c), (d), (e),  
37 and (f) of this subsection when such sales or charges are for property,  
38 labor and services which are used or consumed in whole or in part by  
39 such persons in the performance of any activity defined as a "sale at

1 retail" or "retail sale" even though such property, labor and services  
2 may be resold after such use or consumption. Nothing contained in this  
3 subsection shall be construed to modify subsection (1) of this section  
4 and nothing contained in subsection (1) of this section shall be  
5 construed to modify this subsection.

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

11 (a) Amusement and recreation services including but not limited to  
12 golf, pool, billiards, skating, bowling, ski lifts and tows, day trips  
13 for sightseeing purposes, and others;

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

15 (c) Credit bureau services;

16 (d) Automobile parking and storage garage services;

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

22 (f) Service charges associated with tickets to professional  
23 sporting events; and

24 (g) (~~Guided tours and guided charters; and~~

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

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

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

33 (6) The term shall not include the sale of or charge made for labor  
34 and services rendered in respect to the building, repairing, or  
35 improving of any street, place, road, highway, easement, right of way,  
36 mass public transportation terminal or parking facility, bridge,  
37 tunnel, or trestle which is owned by a municipal corporation or  
38 political subdivision of the state or by the United States and which is

1 used or to be used primarily for foot or vehicular traffic including  
2 mass transportation vehicles of any kind.

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

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

24 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.04 RCW  
25 to read as follows:

26 For the purposes of this chapter, unless the context requires  
27 otherwise, "travel agent" has the same meaning as a "seller of travel"  
28 in RCW 19.138.021.

29 **Sec. 3.** RCW 82.04.060 and 1983 2nd ex.s. c 3 s 26 are each amended  
30 to read as follows:

31 "Sale at wholesale" or "wholesale sale" means any sale of tangible  
32 personal property, any sale of amusement or recreation services as  
33 defined in RCW 82.04.050(3)(a), or any sale of telephone service as  
34 defined in RCW 82.04.065, which is not a sale at retail and means any  
35 charge made for labor and services rendered for persons who are not  
36 consumers, in respect to real or personal property, if such charge is  
37 expressly defined as a retail sale by RCW 82.04.050 when rendered to or

1 for consumers: PROVIDED, That the term "real or personal property" as  
2 used in this section shall not include any natural products named in  
3 RCW 82.04.100.

4 **Sec. 4.** RCW 82.12.020 and 1994 c 93 s 2 are each amended to read  
5 as follows:

6 (1) There is hereby levied and there shall be collected from every  
7 person in this state a tax or excise for the privilege of using within  
8 this state as a consumer any article of tangible personal property  
9 purchased at retail, or acquired by lease, gift, repossession, or  
10 bailment, or extracted or produced or manufactured by the person so  
11 using the same, or otherwise furnished to a person engaged in any  
12 business taxable under RCW 82.04.280 (2) or (7), or any amusement or  
13 recreation service defined as a retail sale in RCW 82.04.050(3)(a).

14 (2) This tax shall apply to the use of every service defined as a  
15 retail sale in RCW 82.04.050(3)(a) and the use of every article of  
16 tangible personal property, including property acquired at a casual or  
17 isolated sale, and including byproducts used by the manufacturer  
18 thereof, except as hereinafter provided, irrespective of whether the  
19 article or similar articles are manufactured or are available for  
20 purchase within this state.

21 (3) Except as provided in RCW 82.12.0252, payment by one purchaser  
22 or user of tangible personal property or service of the tax imposed by  
23 chapter 82.08 or 82.12 RCW shall not have the effect of exempting any  
24 other purchaser or user of the same property or service from the taxes  
25 imposed by such chapters.

26 (4) The tax shall be levied and collected in an amount equal to the  
27 value of the article used by the taxpayer multiplied by the rate in  
28 effect for the retail sales tax under RCW 82.08.020.

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

31 A credit shall be allowed against the taxes imposed by this chapter  
32 upon the sale of tangible personal property or services in the state of  
33 Washington in the amount that the buyer has paid a retail sales or use  
34 tax with respect to such property or services to any other state of the  
35 United States and any political subdivision thereof, the District of  
36 Columbia, and any foreign country or political subdivision thereof.

1        NEW SECTION.    **Sec. 6.**    If any provision of this act or its  
2 application to any person or circumstance is held invalid, the  
3 remainder of the act or the application of the provision to other  
4 persons or circumstances is not affected.

5        NEW SECTION.    **Sec. 7.**    This act is necessary for the immediate  
6 preservation of the public peace, health, or safety, or support of the  
7 state government and its existing public institutions, and shall take  
8 effect April 1, 1996.

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