

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5129

54th Legislature
1995 Regular Session

Passed by the Senate March 9, 1995
YEAS 46 NAYS 1

President of the Senate

Passed by the House April 4, 1995
YEAS 95 NAYS 0

**Speaker of the
House of Representatives**

Approved

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5129** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

Governor of the State of Washington

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5129

Passed Legislature - 1995 Regular Session

State of Washington 54th Legislature 1995 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Sheldon, McCaslin, West and Snyder; by request of Department of Revenue)

Read first time 02/20/95.

1 AN ACT Relating to excluding utility line clearing from the
2 definition of retail sale; amending RCW 82.04.050; creating a new
3 section; providing an effective date; and declaring an emergency.

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

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

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

1 It is therefore the intent of section 2 of this act to clarify that
2 these activities are not subject to the sales tax.

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

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

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

15 (b) Installs, repairs, cleans, alters, imprints, improves,
16 constructs, or decorates real or personal property of or for consumers,
17 if such tangible personal property becomes an ingredient or component
18 of such real or personal property without intervening use by such
19 person; or

20 (c) Purchases for the purpose of consuming the property purchased
21 in producing for sale a new article of tangible personal property or
22 substance, of which such property becomes an ingredient or component or
23 is a chemical used in processing, when the primary purpose of such
24 chemical is to create a chemical reaction directly through contact with
25 an ingredient of a new article being produced for sale; or

26 (d) Purchases for the purpose of consuming the property purchased
27 in producing ferrosilicon which is subsequently used in producing
28 magnesium for sale, if the primary purpose of such property is to
29 create a chemical reaction directly through contact with an ingredient
30 of ferrosilicon; or

31 (e) Purchases for the purpose of providing the property to
32 consumers as part of competitive telephone service, as defined in RCW
33 82.04.065. The term shall include every sale of tangible personal
34 property which is used or consumed or to be used or consumed in the
35 performance of any activity classified as a "sale at retail" or "retail
36 sale" even though such property is resold or utilized as provided in
37 (a), (b), (c), (d), or (e) of this subsection following such use. The
38 term also means every sale of tangible personal property to persons

1 engaged in any business which is taxable under RCW 82.04.280 (2) and
2 (7) and 82.04.290.

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

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

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

20 (c) The charge for labor and services rendered in respect to
21 constructing, repairing, or improving any structure upon, above, or
22 under any real property owned by an owner who conveys the property by
23 title, possession, or any other means to the person performing such
24 construction, repair, or improvement for the purpose of performing such
25 construction, repair, or improvement and the property is then
26 reconveyed by title, possession, or any other means to the original
27 owner;

28 (d) The sale of or charge made for labor and services rendered in
29 respect to the cleaning, fumigating, razing or moving of existing
30 buildings or structures, but shall not include the charge made for
31 janitorial services; and for purposes of this section the term
32 "janitorial services" shall mean those cleaning and caretaking services
33 ordinarily performed by commercial janitor service businesses
34 including, but not limited to, wall and window washing, floor cleaning
35 and waxing, and the cleaning in place of rugs, drapes and upholstery.
36 The term "janitorial services" does not include painting, papering,
37 repairing, furnace or septic tank cleaning, snow removal or
38 sandblasting;

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

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

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

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

27 (a) Amusement and recreation services including but not limited to
28 golf, pool, billiards, skating, bowling, ski lifts and tows, and
29 others;

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

31 (c) Credit bureau services;

32 (d) Automobile parking and storage garage services;

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

38 (f) Service charges associated with tickets to professional
39 sporting events;

1 (g) Guided tours and guided charters; and

2 (h) The following personal services: Physical fitness services,
3 tanning salon services, tattoo parlor services, massage services, steam
4 bath services, turkish bath services, escort services, and dating
5 services.

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

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

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

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

28 (8) The term shall not include the sale of or charge made for labor
29 and services rendered in respect to the constructing, repairing,
30 decorating, or improving of new or existing buildings or other
31 structures under, upon, or above real property of or for the United
32 States, any instrumentality thereof, or a county or city housing
33 authority created pursuant to chapter 35.82 RCW, including the
34 installing, or attaching of any article of tangible personal property
35 therein or thereto, whether or not such personal property becomes a
36 part of the realty by virtue of installation. Nor shall the term
37 include the sale of services or charges made for the clearing of land
38 and the moving of earth of or for the United States, any
39 instrumentality thereof, or a county or city housing authority.

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

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