
SUBSTITUTE HOUSE BILL 1328

State of Washington

58th Legislature

2004 Regular Session

By House Committee on Finance (originally sponsored by Representatives Fromhold, Cairnes, Sullivan, Voloria, Skinner, Alexander, Morris, Moeller, Benson, Darneille, Linville, Jarrett, Miloscia, Clibborn, Cox, Pettigrew, Clements, McCoy, Campbell, Romero, O'Brien, Talcott, Ahern, Schindler, Hinkle, Hunt, Rockefeller, Wallace, Quall, Conway, Flannigan, Chase, Blake, G. Simpson, Upthegrove, Kenney, Newhouse, Buck, Woods and Bush)

READ FIRST TIME 02/06/04.

1 AN ACT Relating to the tax treatment of boarding homes; amending
2 RCW 82.04.290, 82.04.050, 82.04.190, 82.04.440, and 82.04.460; adding
3 new sections to chapter 82.04 RCW; and providing an effective date.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 82.04 RCW
6 to read as follows:

7 (1) Upon every person engaging within this state in the business of
8 providing room and domiciliary care to residents of a boarding home
9 licensed under chapter 18.20 RCW, the amount of tax with respect to
10 such business shall be equal to the gross income from such services
11 multiplied by the rate of 0.275 percent.

12 (2) If the persons described in subsection (1) of this section
13 receive income from sources other than those described in subsection
14 (1) of this section or provide services other than those named in
15 subsection (1) of this section, that income and those services are
16 subject to tax as otherwise provided in this chapter.

17 (3) "Domiciliary care" has the same meaning as in RCW 18.20.020.

1 **Sec. 2.** RCW 82.04.290 and 2003 c 343 s 2 are each amended to read
2 as follows:

3 (1) Upon every person engaging within this state in the business of
4 providing international investment management services, as to such
5 persons, the amount of tax with respect to such business shall be equal
6 to the gross income or gross proceeds of sales of the business
7 multiplied by a rate of 0.275 percent.

8 (2) Upon every person engaging within this state in any business
9 activity other than or in addition to those enumerated in RCW
10 82.04.230, 82.04.240, 82.04.250, 82.04.255, 82.04.260, 82.04.270,
11 82.04.298, 82.04.2905, 82.04.280, 82.04.2907, 82.04.272, ~~((and))~~
12 82.04.2906, and section 1 of this act, and subsection (1) of this
13 section; as to such persons the amount of tax on account of such
14 activities shall be equal to the gross income of the business
15 multiplied by the rate of 1.5 percent.

16 (3) Subsection (2) of this section includes, among others, and
17 without limiting the scope hereof (whether or not title to materials
18 used in the performance of such business passes to another by
19 accession, confusion or other than by outright sale), persons engaged
20 in the business of rendering any type of service which does not
21 constitute a "sale at retail" or a "sale at wholesale." The value of
22 advertising, demonstration, and promotional supplies and materials
23 furnished to an agent by his principal or supplier to be used for
24 informational, educational and promotional purposes shall not be
25 considered a part of the agent's remuneration or commission and shall
26 not be subject to taxation under this section.

27 **Sec. 3.** RCW 82.04.050 and 2003 c 168 s 104 are each amended to
28 read as follows:

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

36 (a) Purchases for the purpose of resale as tangible personal

1 property in the regular course of business without intervening use by
2 such person, but a purchase for the purpose of resale by a regional
3 transit authority under RCW 81.112.300 is not a sale for resale; 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, and section 1 of this act.

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 charges made for the use of coin-operated laundry facilities
37 when such facilities are situated in an apartment house, rooming house,
38 or mobile home park for the exclusive use of the tenants thereof, and

1 also excluding sales of laundry service to nonprofit health care
2 facilities, and excluding services rendered in respect to live animals,
3 birds and insects;

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

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

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

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

35 (f) The sale of and charge made for the furnishing of lodging and
36 all other services by a hotel, rooming house, tourist court, motel,
37 trailer camp, and the granting of any similar license to use real
38 property, as distinguished from the renting or leasing of real

1 property, and it shall be presumed that the occupancy of real property
2 for a continuous period of one month or more constitutes a rental or
3 lease of real property and not a mere license to use or enjoy the same.
4 For the purposes of this subsection, it shall be presumed that the sale
5 of and charge made for the furnishing of lodging for a continuous
6 period of one month or more to a person is a rental or lease of real
7 property and not a mere license to enjoy the same;

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

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

23 (a) Amusement and recreation services including but not limited to
24 golf, pool, billiards, skating, bowling, ski lifts and tows, day trips
25 for sightseeing purposes, and others, when provided to consumers;

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

27 (c) Credit bureau services;

28 (d) Automobile parking and storage garage services;

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

34 (f) Service charges associated with tickets to professional
35 sporting events; and

36 (g) The following personal services: Physical fitness services,
37 tanning salon services, tattoo parlor services, steam bath services,
38 turkish bath services, escort services, and dating services.

1 (4)(a) The term shall also include:

2 (i) The renting or leasing of tangible personal property to
3 consumers; and

4 (ii) Providing tangible personal property along with an operator
5 for a fixed or indeterminate period of time. A consideration of this
6 is that the operator is necessary for the equipment to perform as
7 designed. For the purpose of this subsection (4)(a)(ii), an operator
8 must do more than maintain, inspect, or set up the tangible personal
9 property.

10 (b) The term shall not include the renting or leasing of tangible
11 personal property where the lease or rental is for the purpose of
12 sublease or subrent.

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

15 (6) The term shall also include the sale of prewritten computer
16 software other than a sale to a person who presents a resale
17 certificate under RCW 82.04.470, regardless of the method of delivery
18 to the end user, but shall not include custom software or the
19 customization of prewritten computer software.

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

28 (8) The term shall also not include sales of chemical sprays or
29 washes to persons for the purpose of postharvest treatment of fruit for
30 the prevention of scald, fungus, mold, or decay, nor shall it include
31 sales of feed, seed, seedlings, fertilizer, agents for enhanced
32 pollination including insects such as bees, and spray materials to:

33 (a) Persons who participate in the federal conservation reserve
34 program, the environmental quality incentives program, the wetlands
35 reserve program, and the wildlife habitat incentives program, or their
36 successors administered by the United States department of agriculture;

37 (b) farmers for the purpose of producing for sale any agricultural
38 product; and (c) farmers acting under cooperative habitat development

1 or access contracts with an organization exempt from federal income tax
2 under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of
3 fish and wildlife to produce or improve wildlife habitat on land that
4 the farmer owns or leases.

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

21 ~~((10) Until July 1, 2003, the term shall not include the sale of
22 or charge made for labor and services rendered for environmental
23 remedial action as defined in RCW 82.04.2635(2).))~~

24 **Sec. 4.** RCW 82.04.190 and 2002 c 367 s 2 are each amended to read
25 as follows:

26 "Consumer" means the following:

27 (1) Any person who purchases, acquires, owns, holds, or uses any
28 article of tangible personal property irrespective of the nature of the
29 person's business and including, among others, without limiting the
30 scope hereof, persons who install, repair, clean, alter, improve,
31 construct, or decorate real or personal property of or for consumers
32 other than for the purpose (a) of resale as tangible personal property
33 in the regular course of business or (b) of incorporating such property
34 as an ingredient or component of real or personal property when
35 installing, repairing, cleaning, altering, imprinting, improving,
36 constructing, or decorating such real or personal property of or for
37 consumers or (c) of consuming such property in producing for sale a new

1 article of tangible personal property or a new substance, of which such
2 property becomes an ingredient or component or as a chemical used in
3 processing, when the primary purpose of such chemical is to create a
4 chemical reaction directly through contact with an ingredient of a new
5 article being produced for sale or (d) purchases for the purpose of
6 consuming the property purchased in producing ferrosilicon which is
7 subsequently used in producing magnesium for sale, if the primary
8 purpose of such property is to create a chemical reaction directly
9 through contact with an ingredient of ferrosilicon;

10 (2)(a) Any person engaged in any business activity taxable under
11 RCW 82.04.290 or section 1 of this act; (b) any person who purchases,
12 acquires, or uses any telephone service as defined in RCW 82.04.065,
13 other than for resale in the regular course of business; (c) any person
14 who purchases, acquires, or uses any service defined in RCW
15 82.04.050(2)(a) or any amusement and recreation service defined in RCW
16 82.04.050(3)(a), other than for resale in the regular course of
17 business; and (d) any person who is an end user of software;

18 (3) Any person engaged in the business of contracting for the
19 building, repairing or improving of any street, place, road, highway,
20 easement, right of way, mass public transportation terminal or parking
21 facility, bridge, tunnel, or trestle which is owned by a municipal
22 corporation or political subdivision of the state of Washington or by
23 the United States and which is used or to be used primarily for foot or
24 vehicular traffic including mass transportation vehicles of any kind as
25 defined in RCW 82.04.280, in respect to tangible personal property when
26 such person incorporates such property as an ingredient or component of
27 such publicly owned street, place, road, highway, easement, right of
28 way, mass public transportation terminal or parking facility, bridge,
29 tunnel, or trestle by installing, placing or spreading the property in
30 or upon the right of way of such street, place, road, highway,
31 easement, bridge, tunnel, or trestle or in or upon the site of such
32 mass public transportation terminal or parking facility;

33 (4) Any person who is an owner, lessee or has the right of
34 possession to or an easement in real property which is being
35 constructed, repaired, decorated, improved, or otherwise altered by a
36 person engaged in business, excluding only (a) municipal corporations
37 or political subdivisions of the state in respect to labor and services
38 rendered to their real property which is used or held for public road

1 purposes, and (b) the United States, instrumentalities thereof, and
2 county and city housing authorities created pursuant to chapter 35.82
3 RCW in respect to labor and services rendered to their real property.
4 Nothing contained in this or any other subsection of this definition
5 shall be construed to modify any other definition of "consumer";

6 (5) Any person who is an owner, lessee, or has the right of
7 possession to personal property which is being constructed, repaired,
8 improved, cleaned, imprinted, or otherwise altered by a person engaged
9 in business;

10 (6) Any person engaged in the business of constructing, repairing,
11 decorating, or improving new or existing buildings or other structures
12 under, upon, or above real property of or for the United States, any
13 instrumentality thereof, or a county or city housing authority created
14 pursuant to chapter 35.82 RCW, 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; also, any person engaged in the business of clearing land
18 and moving earth of or for the United States, any instrumentality
19 thereof, or a county or city housing authority created pursuant to
20 chapter 35.82 RCW. Any such person shall be a consumer within the
21 meaning of this subsection in respect to tangible personal property
22 incorporated into, installed in, or attached to such building or other
23 structure by such person;

24 (7) Any person who is a lessor of machinery and equipment, the
25 rental of which is exempt from the tax imposed by RCW 82.08.020 under
26 RCW 82.08.02565, with respect to the sale of or charge made for
27 tangible personal property consumed in respect to repairing the
28 machinery and equipment, if the tangible personal property has a useful
29 life of less than one year. Nothing contained in this or any other
30 subsection of this section shall be construed to modify any other
31 definition of "consumer"; and

32 (8) Any person engaged in the business of cleaning up for the
33 United States, or its instrumentalities, radioactive waste and other
34 byproducts of weapons production and nuclear research and
35 development(~~(; and~~

36 ~~(9) Until July 1, 2003, any person engaged in the business of~~
37 ~~conducting environmental remedial action as defined in RCW~~
38 ~~82.04.2635(2)).~~

1 **Sec. 5.** RCW 82.04.440 and 2003 2nd sp.s. c 1 s 6 are each amended
2 to read as follows:

3 (1) Every person engaged in activities which are within the purview
4 of the provisions of two or more of sections RCW 82.04.230 to
5 (~~82.04.290~~) 82.04.298 and section 1 of this act, inclusive, shall be
6 taxable under each paragraph applicable to the activities engaged in.

7 (2) Persons taxable under RCW 82.04.250, 82.04.270, or 82.04.260
8 (4) or (13) with respect to selling products in this state shall be
9 allowed a credit against those taxes for any (a) manufacturing taxes
10 paid with respect to the manufacturing of products so sold in this
11 state, and/or (b) extracting taxes paid with respect to the extracting
12 of products so sold in this state or ingredients of products so sold in
13 this state. Extracting taxes taken as credit under subsection (3) of
14 this section may also be taken under this subsection, if otherwise
15 allowable under this subsection. The amount of the credit shall not
16 exceed the tax liability arising under this chapter with respect to the
17 sale of those products.

18 (3) Persons taxable under RCW 82.04.240 or 82.04.260(1)(b) shall be
19 allowed a credit against those taxes for any extracting taxes paid with
20 respect to extracting the ingredients of the products so manufactured
21 in this state. The amount of the credit shall not exceed the tax
22 liability arising under this chapter with respect to the manufacturing
23 of those products.

24 (4) Persons taxable under RCW 82.04.230, 82.04.240, or 82.04.260
25 (1), (2), (4), (6), or (13) with respect to extracting or manufacturing
26 products in this state shall be allowed a credit against those taxes
27 for any (i) gross receipts taxes paid to another state with respect to
28 the sales of the products so extracted or manufactured in this state,
29 (ii) manufacturing taxes paid with respect to the manufacturing of
30 products using ingredients so extracted in this state, or (iii)
31 manufacturing taxes paid with respect to manufacturing activities
32 completed in another state for products so manufactured in this state.
33 The amount of the credit shall not exceed the tax liability arising
34 under this chapter with respect to the extraction or manufacturing of
35 those products.

36 (5) For the purpose of this section:

37 (a) "Gross receipts tax" means a tax:

1 (i) Which is imposed on or measured by the gross volume of
2 business, in terms of gross receipts or in other terms, and in the
3 determination of which the deductions allowed would not constitute the
4 tax an income tax or value added tax; and

5 (ii) Which is also not, pursuant to law or custom, separately
6 stated from the sales price.

7 (b) "State" means (i) the state of Washington, (ii) a state of the
8 United States other than Washington, or any political subdivision of
9 such other state, (iii) the District of Columbia, and (iv) any foreign
10 country or political subdivision thereof.

11 (c) "Manufacturing tax" means a gross receipts tax imposed on the
12 act or privilege of engaging in business as a manufacturer, and
13 includes (i) the taxes imposed in RCW 82.04.240 and 82.04.260 (1), (2),
14 (4), and (13), and (ii) similar gross receipts taxes paid to other
15 states.

16 (d) "Extracting tax" means a gross receipts tax imposed on the act
17 or privilege of engaging in business as an extractor, and includes the
18 tax imposed in RCW 82.04.230 and similar gross receipts taxes paid to
19 other states.

20 (e) "Business", "manufacturer", "extractor", and other terms used
21 in this section have the meanings given in RCW 82.04.020 through
22 82.04.212, notwithstanding the use of those terms in the context of
23 describing taxes imposed by other states.

24 **Sec. 6.** RCW 82.04.460 and 1985 c 7 s 154 are each amended to read
25 as follows:

26 (1) Any person rendering services taxable under RCW 82.04.290 or
27 section 1 of this act and maintaining places of business both within
28 and without this state which contribute to the rendition of such
29 services shall, for the purpose of computing tax liability under RCW
30 82.04.290 or section 1 of this act, apportion to this state that
31 portion of (~~his~~) the person's gross income which is derived from
32 services rendered within this state. Where such apportionment cannot
33 be accurately made by separate accounting methods, the taxpayer shall
34 apportion to this state that proportion of (~~his~~) the taxpayer's total
35 income which the cost of doing business within the state bears to the
36 total cost of doing business both within and without the state.

1 (2) Notwithstanding the provision of subsection (1) of this
2 section, persons doing business both within and without the state who
3 receive gross income from service charges, as defined in RCW 63.14.010
4 (relating to amounts charged for granting the right or privilege to
5 make deferred or installment payments) or who receive gross income from
6 engaging in business as financial institutions within the scope of
7 chapter 82.14A RCW (relating to city taxes on financial institutions)
8 shall apportion or allocate gross income taxable under RCW 82.04.290 to
9 this state pursuant to rules promulgated by the department consistent
10 with uniform rules for apportionment or allocation developed by the
11 states.

12 (3) The department shall by rule provide a method or methods of
13 apportioning or allocating gross income derived from sales of telephone
14 services taxed under this chapter, if the gross proceeds of sales
15 subject to tax under this chapter do not fairly represent the extent of
16 the taxpayer's income attributable to this state. The rules shall be,
17 so far as feasible, consistent with the methods of apportionment
18 contained in this section and shall require the consideration of those
19 facts, circumstances, and apportionment factors as will result in an
20 equitable and constitutionally permissible division of the services.

21 NEW SECTION. **Sec. 7.** A new section is added to chapter 82.04 RCW
22 to read as follows:

23 (1) A boarding home licensed under chapter 18.20 RCW may deduct
24 from the measure of tax amounts received as compensation for providing
25 adult residential care, enhanced adult residential care, or assisted
26 living services under contract with the department of social and health
27 services authorized by chapter 74.39A RCW to residents who are medicaid
28 recipients.

29 (2) For purposes of this section, "adult residential care,"
30 "enhanced adult residential care," and "assisted living services" have
31 the same meaning as in RCW 74.39A.009.

32 NEW SECTION. **Sec. 8.** This act takes effect July 1, 2004.

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