

---

HOUSE BILL 3145

---

State of Washington

58th Legislature

2004 Regular Session

By Representatives Veloria, Wallace, Morrell, McDonald, McCoy, Chase and Hudgins

Read first time 01/29/2004. Referred to Committee on Trade & Economic Development.

1 AN ACT Relating to tax relief for the construction of manufacturing  
2 facilities; amending RCW 82.04.050, 82.04.190, 82.04.280, and  
3 82.04.280; providing an effective date; providing a contingent  
4 effective date; and providing a contingent expiration date.

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

6 **Sec. 1.** RCW 82.04.050 and 2003 c 168 s 104 are each amended to  
7 read as follows:

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

15 (a) Purchases for the purpose of resale as tangible personal  
16 property in the regular course of business without intervening use by  
17 such person, but a purchase for the purpose of resale by a regional  
18 transit authority under RCW 81.112.300 is not a sale for resale; 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 charges made for the use of coin-operated laundry facilities  
34 when such facilities are situated in an apartment house, rooming house,  
35 or mobile home park for the exclusive use of the tenants thereof, and  
36 also excluding sales of laundry service to nonprofit health care  
37 facilities, and excluding services rendered in respect to live animals,  
38 birds and insects;

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

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

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

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

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

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

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

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

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

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

24 (c) Credit bureau services;

25 (d) Automobile parking and storage garage services;

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

31 (f) Service charges associated with tickets to professional  
32 sporting events; and

33 (g) The following personal services: Physical fitness services,  
34 tanning salon services, tattoo parlor services, steam bath services,  
35 turkish bath services, escort services, and dating services.

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

37 (i) The renting or leasing of tangible personal property to  
38 consumers; and

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

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

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

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

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

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

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

34 (b) farmers for the purpose of producing for sale any agricultural  
35 product; and (c) farmers acting under cooperative habitat development  
36 or access contracts with an organization exempt from federal income tax  
37 under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of

1 fish and wildlife to produce or improve wildlife habitat on land that  
2 the farmer owns or leases.

3 (9) 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. Nor  
15 shall the term include the sale of services or charges made for  
16 cleaning up for the United States, or its instrumentalities,  
17 radioactive waste and other byproducts of weapons production and  
18 nuclear research and development.

19 (10) (~~Until July 1, 2003, the term shall not include the sale of~~  
20 ~~or charge made for labor and services rendered for environmental~~  
21 ~~remedial action as defined in RCW 82.04.2635(2)) The term shall also  
22 not include the sale of or charge made for labor and services rendered  
23 in respect to the constructing, repairing, decorating, or improving of  
24 qualified buildings. For purposes of this subsection (10), "qualified  
25 buildings" means new or existing buildings or other structures under,  
26 upon, or above real property of or for a manufacturer, but only if the  
27 buildings or structures are used for the purpose of manufacturing,  
28 including plant offices and warehouses or other facilities for the  
29 storage of raw material or finished goods if the facilities are an  
30 essential or an integral part of a factory, mill, or plant used for  
31 manufacturing. If a building is used partly for manufacturing and  
32 partly for other purposes, the building is a "qualified building" if it  
33 is used primarily, as measured by square footage, for manufacturing.~~

34 **Sec. 2.** RCW 82.04.190 and 2002 c 367 s 2 are each amended to read  
35 as follows:

36 "Consumer" means the following:

1           (1) Any person who purchases, acquires, owns, holds, or uses any  
2 article of tangible personal property irrespective of the nature of the  
3 person's business and including, among others, without limiting the  
4 scope hereof, persons who install, repair, clean, alter, improve,  
5 construct, or decorate real or personal property of or for consumers  
6 other than for the purpose (a) of resale as tangible personal property  
7 in the regular course of business or (b) of incorporating such property  
8 as an ingredient or component of real or personal property when  
9 installing, repairing, cleaning, altering, imprinting, improving,  
10 constructing, or decorating such real or personal property of or for  
11 consumers or (c) of consuming such property in producing for sale a new  
12 article of tangible personal property or a new substance, of which such  
13 property becomes an ingredient or component or as a chemical used in  
14 processing, when the primary purpose of such chemical is to create a  
15 chemical reaction directly through contact with an ingredient of a new  
16 article being produced for sale or (d) purchases for the purpose of  
17 consuming the property purchased in producing ferrosilicon which is  
18 subsequently used in producing magnesium for sale, if the primary  
19 purpose of such property is to create a chemical reaction directly  
20 through contact with an ingredient of ferrosilicon;

21           (2)(a) Any person engaged in any business activity taxable under  
22 RCW 82.04.290; (b) any person who purchases, acquires, or uses any  
23 telephone service as defined in RCW 82.04.065, other than for resale in  
24 the regular course of business; (c) any person who purchases, acquires,  
25 or uses any service defined in RCW 82.04.050(2)(a) or any amusement and  
26 recreation service defined in RCW 82.04.050(3)(a), other than for  
27 resale in the regular course of business; and (d) any person who is an  
28 end user of software;

29           (3) Any person engaged in the business of contracting for the  
30 building, repairing or improving of any street, place, road, highway,  
31 easement, right of way, mass public transportation terminal or parking  
32 facility, bridge, tunnel, or trestle which is owned by a municipal  
33 corporation or political subdivision of the state of Washington or by  
34 the United States and which is used or to be used primarily for foot or  
35 vehicular traffic including mass transportation vehicles of any kind as  
36 defined in RCW 82.04.280, in respect to tangible personal property when  
37 such person incorporates such property as an ingredient or component of  
38 such publicly owned street, place, road, highway, easement, right of

1 way, mass public transportation terminal or parking facility, bridge,  
2 tunnel, or trestle by installing, placing or spreading the property in  
3 or upon the right of way of such street, place, road, highway,  
4 easement, bridge, tunnel, or trestle or in or upon the site of such  
5 mass public transportation terminal or parking facility;

6 (4) Any person who is an owner, lessee or has the right of  
7 possession to or an easement in real property which is being  
8 constructed, repaired, decorated, improved, or otherwise altered by a  
9 person engaged in business, excluding only (a) municipal corporations  
10 or political subdivisions of the state in respect to labor and services  
11 rendered to their real property which is used or held for public road  
12 purposes, and (b) the United States, instrumentalities thereof, and  
13 county and city housing authorities created pursuant to chapter 35.82  
14 RCW in respect to labor and services rendered to their real property.  
15 Nothing contained in this or any other subsection of this definition  
16 shall be construed to modify any other definition of "consumer";

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

21 (6) Any person engaged in the business of constructing, repairing,  
22 decorating, or improving new or existing buildings or other structures  
23 under, upon, or above real property of or for the United States, any  
24 instrumentality thereof, or a county or city housing authority created  
25 pursuant to chapter 35.82 RCW, including the installing or attaching of  
26 any article of tangible personal property therein or thereto, whether  
27 or not such personal property becomes a part of the realty by virtue of  
28 installation; also, any person engaged in the business of clearing land  
29 and moving earth of or for the United States, any instrumentality  
30 thereof, or a county or city housing authority created pursuant to  
31 chapter 35.82 RCW. Any such person shall be a consumer within the  
32 meaning of this subsection in respect to tangible personal property  
33 incorporated into, installed in, or attached to such building or other  
34 structure by such person;

35 (7) Any person who is a lessor of machinery and equipment, the  
36 rental of which is exempt from the tax imposed by RCW 82.08.020 under  
37 RCW 82.08.02565, with respect to the sale of or charge made for  
38 tangible personal property consumed in respect to repairing the

1 machinery and equipment, if the tangible personal property has a useful  
2 life of less than one year. Nothing contained in this or any other  
3 subsection of this section shall be construed to modify any other  
4 definition of "consumer";

5 (8) Any person engaged in the business of cleaning up for the  
6 United States, or its instrumentalities, radioactive waste and other  
7 byproducts of weapons production and nuclear research and development;  
8 and

9 ~~(9) ((Until July 1, 2003, any person engaged in the business of~~  
10 ~~conducting environmental remedial action as defined in RCW~~  
11 ~~82.04.2635(2))~~ Any person engaged in the business of constructing,  
12 repairing, decorating, or improving of qualified buildings as defined  
13 in RCW 82.04.050(10).

14 **Sec. 3.** RCW 82.04.280 and 1998 c 343 s 3 are each amended to read  
15 as follows:

16 Upon every person engaging within this state in the business of:  
17 (1) Printing, and of publishing newspapers, periodicals, or magazines;  
18 (2) building, repairing or improving any street, place, road, highway,  
19 easement, right of way, mass public transportation terminal or parking  
20 facility, bridge, tunnel, or trestle which is owned by a municipal  
21 corporation or political subdivision of the state or by the United  
22 States and which is used or to be used, primarily for foot or vehicular  
23 traffic including mass transportation vehicles of any kind and  
24 including any readjustment, reconstruction or relocation of the  
25 facilities of any public, private or cooperatively owned utility or  
26 railroad in the course of such building, repairing or improving, the  
27 cost of which readjustment, reconstruction, or relocation, is the  
28 responsibility of the public authority whose street, place, road,  
29 highway, easement, right of way, mass public transportation terminal or  
30 parking facility, bridge, tunnel, or trestle is being built, repaired  
31 or improved; (3) extracting for hire or processing for hire; (4)  
32 operating a cold storage warehouse or storage warehouse, but not  
33 including the rental of cold storage lockers; (5) representing and  
34 performing services for fire or casualty insurance companies as an  
35 independent resident managing general agent licensed under the  
36 provisions of RCW 48.05.310; (6) radio and television broadcasting,  
37 excluding network, national and regional advertising computed as a

1 standard deduction based on the national average thereof as annually  
2 reported by the Federal Communications Commission, or in lieu thereof  
3 by itemization by the individual broadcasting station, and excluding  
4 that portion of revenue represented by the out-of-state audience  
5 computed as a ratio to the station's total audience as measured by the  
6 100 micro-volt signal strength and delivery by wire, if any; and (7)  
7 (~~engaging in~~) activities which bring a person within the definition  
8 of consumer contained in RCW 82.04.190 (6) or (9); as to such persons,  
9 the amount of tax on such business shall be equal to the gross income  
10 of the business multiplied by the rate of 0.484 percent.

11 As used in this section, "cold storage warehouse" means a storage  
12 warehouse used to store fresh and/or frozen perishable fruits or  
13 vegetables, meat, seafood, dairy products, or fowl, or any combination  
14 thereof, at a desired temperature to maintain the quality of the  
15 product for orderly marketing.

16 As used in this section, "storage warehouse" means a building or  
17 structure, or any part thereof, in which goods, wares, or merchandise  
18 are received for storage for compensation, except field warehouses,  
19 fruit warehouses, fruit packing plants, warehouses licensed under  
20 chapter 22.09 RCW, public garages storing automobiles, railroad freight  
21 sheds, docks and wharves, and "self-storage" or "mini storage"  
22 facilities whereby customers have direct access to individual storage  
23 areas by separate entrance. "Storage warehouse" does not include a  
24 building or structure, or that part of such building or structure, in  
25 which an activity taxable under RCW 82.04.272 is conducted.

26 As used in this section, "periodical or magazine" means a printed  
27 publication, other than a newspaper, issued regularly at stated  
28 intervals at least once every three months, including any supplement or  
29 special edition of the publication.

30 **Sec. 4.** RCW 82.04.280 and 2003 c 149 s 4 are each amended to read  
31 as follows:

32 Upon every person engaging within this state in the business of:  
33 (1) Printing, and of publishing newspapers, periodicals, or magazines;  
34 (2) building, repairing or improving any street, place, road, highway,  
35 easement, right of way, mass public transportation terminal or parking  
36 facility, bridge, tunnel, or trestle which is owned by a municipal  
37 corporation or political subdivision of the state or by the United

1 States and which is used or to be used, primarily for foot or vehicular  
2 traffic including mass transportation vehicles of any kind and  
3 including any readjustment, reconstruction or relocation of the  
4 facilities of any public, private or cooperatively owned utility or  
5 railroad in the course of such building, repairing or improving, the  
6 cost of which readjustment, reconstruction, or relocation, is the  
7 responsibility of the public authority whose street, place, road,  
8 highway, easement, right of way, mass public transportation terminal or  
9 parking facility, bridge, tunnel, or trestle is being built, repaired  
10 or improved; (3) extracting for hire or processing for hire, except  
11 persons taxable as processors for hire under another section of this  
12 chapter; (4) operating a cold storage warehouse or storage warehouse,  
13 but not including the rental of cold storage lockers; (5) representing  
14 and performing services for fire or casualty insurance companies as an  
15 independent resident managing general agent licensed under the  
16 provisions of RCW 48.05.310; (6) radio and television broadcasting,  
17 excluding network, national and regional advertising computed as a  
18 standard deduction based on the national average thereof as annually  
19 reported by the Federal Communications Commission, or in lieu thereof  
20 by itemization by the individual broadcasting station, and excluding  
21 that portion of revenue represented by the out-of-state audience  
22 computed as a ratio to the station's total audience as measured by the  
23 100 micro-volt signal strength and delivery by wire, if any; and (7)  
24 (~~engaging in~~) activities which bring a person within the definition  
25 of consumer contained in RCW 82.04.190 (6) or (9); as to such persons,  
26 the amount of tax on such business shall be equal to the gross income  
27 of the business multiplied by the rate of 0.484 percent.

28 As used in this section, "cold storage warehouse" means a storage  
29 warehouse used to store fresh and/or frozen perishable fruits or  
30 vegetables, meat, seafood, dairy products, or fowl, or any combination  
31 thereof, at a desired temperature to maintain the quality of the  
32 product for orderly marketing.

33 As used in this section, "storage warehouse" means a building or  
34 structure, or any part thereof, in which goods, wares, or merchandise  
35 are received for storage for compensation, except field warehouses,  
36 fruit warehouses, fruit packing plants, warehouses licensed under  
37 chapter 22.09 RCW, public garages storing automobiles, railroad freight  
38 sheds, docks and wharves, and "self-storage" or "mini storage"

1 facilities whereby customers have direct access to individual storage  
2 areas by separate entrance. "Storage warehouse" does not include a  
3 building or structure, or that part of such building or structure, in  
4 which an activity taxable under RCW 82.04.272 is conducted.

5 As used in this section, "periodical or magazine" means a printed  
6 publication, other than a newspaper, issued regularly at stated  
7 intervals at least once every three months, including any supplement or  
8 special edition of the publication.

9 NEW SECTION. **Sec. 5.** Section 3 of this act expires if c 149, Laws  
10 of 2003 takes effect.

11 NEW SECTION. **Sec. 6.** Section 4 of this act takes effect if c 149,  
12 Laws of 2003 takes effect.

13 NEW SECTION. **Sec. 7.** Sections 1 through 3 of this act take effect  
14 July 1, 2004.

--- END ---