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**SENATE BILL 5017**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senators Honeyford, Rolfes, King, Sheldon, and Hatfield

AN ACT Relating to defining honey bee products and services as an agricultural product; amending RCW 82.04.213, 82.04.330, 82.04.050, and 82.08.855; creating new sections; repealing RCW 82.04.629, 82.04.630, 82.08.0204, 82.12.0204, 82.08.200, 82.12.200, and 43.136.047; providing an effective date; and declaring an emergency.

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

NEW SECTION. **Sec.**  This section is the tax preference performance statement for the tax preference contained in this act. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

It is the legislature's specific public policy objective to support the honey bee industry and provide tax relief to eligible apiarists. Honey bees pollinate eighty percent of the nation's flowering crops, which include agricultural crops. They are vitally important to agriculture and an integral part of food production. Therefore, the legislature intends to permanently include eligible apiarists within the definition of farmer and define honey bee products as agricultural products so that they may receive the same tax relief as that provided to other sectors of agriculture. Because the legislature intends for the changes in this act to be permanent, they are exempt from the ten-year expiration provision in RCW 82.32.805(1)(a).

**Sec.**  RCW 82.04.213 and 2014 c 140 s 2 are each amended to read as follows:

(1) "Agricultural product" means any product of plant cultivation or animal husbandry including, but not limited to: A product of horticulture, grain cultivation, vermiculture, viticulture, or aquaculture as defined in RCW 15.85.020; plantation Christmas trees; short-rotation hardwoods as defined in RCW 84.33.035; turf; or any animal including but not limited to an animal that is a private sector cultured aquatic product as defined in RCW 15.85.020, or a bird, or insect, or the substances obtained from such an animal including honey bee products. "Agricultural product" does not include marijuana, useable marijuana, or marijuana-infused products, or animals defined as pet animals under RCW 16.70.020.

(2)(a) "Farmer" means any person engaged in the business of growing, raising, or producing, upon the person's own lands or upon the lands in which the person has a present right of possession, any agricultural product to be sold, and the growing, raising, or producing honey bee products for sale, or providing bee pollination services, by an eligible apiarist. "Farmer" does not include a person growing, raising, or producing such products for the person's own consumption; a person selling any animal or substance obtained therefrom in connection with the person's business of operating a stockyard or a slaughter or packing house; or a person in respect to the business of taking, cultivating, or raising timber.

(b) "Eligible apiarist" means a person who owns or keeps one or more bee colonies and who grows, raises, or produces honey bee products for sale at wholesale and is registered under RCW 15.60.021.

(c) "Honey bee products" means queen honey bees, packaged honey bees, honey, pollen, bees wax, propolis, or other substances obtained from honey bees. "Honey bee products" does not include manufactured substances or articles.

(3) The terms "agriculture," "farming," "horticulture," "horticultural," and "horticultural product" may not be construed to include or relate to marijuana, useable marijuana, or marijuana-infused products unless the applicable term is explicitly defined to include marijuana, useable marijuana, or marijuana-infused products.

(4) "Marijuana," "useable marijuana," and "marijuana-infused products" have the same meaning as in RCW 69.50.101.

**Sec.**  RCW 82.04.330 and 2014 c 140 s 7 are each amended to read as follows:

(1) This chapter does not apply to any farmer in respect to the sale of any agricultural product at wholesale or to any farmer who grows, raises, or produces agricultural products owned by others, such as custom feed operations. This exemption does not apply to any person selling such products at retail or to any person selling manufactured substances or articles. This chapter does not apply to bee pollination services provided to a farmer by an eligible apiarist.

(2) This chapter also does not apply to any persons who participate in the federal conservation reserve program or its successor administered by the United States department of agriculture with respect to land enrolled in that program.

**Sec.**  RCW 82.04.050 and 2013 2nd sp.s. c 13 s 802 are each amended to read as follows:

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

(i) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person, but a purchase for the purpose of resale by a regional transit authority under RCW 81.112.300 is not a sale for resale; or

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

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

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

(v) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065; or

(vi) Purchases for the purpose of satisfying the person's obligations under an extended warranty as defined in subsection (7) of this section, if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person.

(b) The term includes every sale of tangible personal property that is used or consumed or to be used or consumed in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property is resold or used as provided in (a)(i) through (vi) of this subsection following such use.

(c) The term also means every sale of tangible personal property to persons engaged in any business that is taxable under RCW 82.04.280(1) (a), (b), and (g), 82.04.290, and 82.04.2908.

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

(a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of self-service laundry facilities, and also excluding sales of laundry service to nonprofit health care facilities, and excluding services rendered in respect to live animals, birds and insects;

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

(c) The constructing, repairing, or improving of any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

(d) The cleaning, fumigating, razing, or moving of existing buildings or structures, but does not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" means those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

(e) Automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

(f) The furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it is presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it is presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;

(g) The installing, repairing, altering, or improving of digital goods for consumers;

(h) Persons taxable under (a), (b), (c), (d), (e), (f), and (g) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection may be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section may be construed to modify this subsection.

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

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

(ii) Until July 1, 2017, amusement and recreation services do not include the opportunity to dance provided by an establishment in exchange for a cover charge.

(iii) For purposes of this subsection (3)(a):

(A) "Cover charge" means a charge, regardless of its label, to enter an establishment or added to the purchaser's bill by an establishment or otherwise collected after entrance to the establishment, and the purchaser is provided the opportunity to dance in exchange for payment of the charge.

(B) "Opportunity to dance" means that an establishment provides a designated physical space, on either a temporary or permanent basis, where customers are allowed to dance and the establishment either advertises or otherwise makes customers aware that it has an area for dancing;

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

(c) Credit bureau services;

(d) Automobile parking and storage garage services;

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

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

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

(4)(a) The term also includes the renting or leasing of tangible personal property to consumers.

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

(5) The term also includes the providing of "competitive telephone service," "telecommunications service," or "ancillary services," as those terms are defined in RCW 82.04.065, to consumers.

(6)(a) The term also includes the sale of prewritten computer software to a consumer, regardless of the method of delivery to the end user. For purposes of this subsection (6)(a), the sale of prewritten computer software includes the sale of or charge made for a key or an enabling or activation code, where the key or code is required to activate prewritten computer software and put the software into use. There is no separate sale of the key or code from the prewritten computer software, regardless of how the sale may be characterized by the vendor or by the purchaser.

The term "retail sale" does not include the sale of or charge made for:

(i) Custom software; or

(ii) The customization of prewritten computer software.

(b)(i) The term also includes the charge made to consumers for the right to access and use prewritten computer software, where possession of the software is maintained by the seller or a third party, regardless of whether the charge for the service is on a per use, per user, per license, subscription, or some other basis.

(ii)(A) The service described in (b)(i) of this subsection (6) includes the right to access and use prewritten computer software to perform data processing.

(B) For purposes of this subsection (6)(b)(ii), "data processing" means the systematic performance of operations on data to extract the required information in an appropriate form or to convert the data to usable information. Data processing includes check processing, image processing, form processing, survey processing, payroll processing, claim processing, and similar activities.

(7) The term also includes the sale of or charge made for an extended warranty to a consumer. For purposes of this subsection, "extended warranty" means an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement, otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement. For purposes of this subsection, "sales price" has the same meaning as in RCW 82.08.010.

(8)(a) The term also includes the following sales to consumers of digital goods, digital codes, and digital automated services:

(i) Sales in which the seller has granted the purchaser the right of permanent use;

(ii) Sales in which the seller has granted the purchaser a right of use that is less than permanent;

(iii) Sales in which the purchaser is not obligated to make continued payment as a condition of the sale; and

(iv) Sales in which the purchaser is obligated to make continued payment as a condition of the sale.

(b) A retail sale of digital goods, digital codes, or digital automated services under this subsection (8) includes any services provided by the seller exclusively in connection with the digital goods, digital codes, or digital automated services, whether or not a separate charge is made for such services.

(c) For purposes of this subsection, "permanent" means perpetual or for an indefinite or unspecified length of time. A right of permanent use is presumed to have been granted unless the agreement between the seller and the purchaser specifies or the circumstances surrounding the transaction suggest or indicate that the right to use terminates on the occurrence of a condition subsequent.

(9) The term also includes the charge made for providing tangible personal property along with an operator for a fixed or indeterminate period of time. A consideration of this is that the operator is necessary for the tangible personal property to perform as designed. For the purpose of this subsection (9), an operator must do more than maintain, inspect, or set up the tangible personal property.

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

(11) The term also does not include sales of chemical sprays or washes to persons for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, nor does it include sales of feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials to: (a) Persons who participate in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, and the wildlife habitat incentives program, or their successors administered by the United States department of agriculture; (b) farmers for the purpose of producing for sale any agricultural product; (c) farmers for the purpose of providing bee pollination services; and ((~~(c)~~))(d) farmers acting under cooperative habitat development or access contracts with an organization exempt from federal income tax under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code or the Washington state department of fish and wildlife to produce or improve wildlife habitat on land that the farmer owns or leases.

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

(13) The term does not include the sale of or charge made for labor, services, or tangible personal property pursuant to agreements providing maintenance services for bus, rail, or rail fixed guideway equipment when a regional transit authority is the recipient of the labor, services, or tangible personal property, and a transit agency, as defined in RCW 81.104.015, performs the labor or services.

(14) The term does not include the sale for resale of any service described in this section if the sale would otherwise constitute a "sale at retail" and "retail sale" under this section.

**Sec.**  RCW 82.08.855 and 2014 c 97 s 601 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to the sale to an eligible farmer of:

(a) Replacement parts for qualifying farm machinery and equipment;

(b) Labor and services rendered in respect to the installing of replacement parts; and

(c) Labor and services rendered in respect to the repairing of qualifying farm machinery and equipment, provided that during the course of repairing no tangible personal property is installed, incorporated, or placed in, or becomes an ingredient or component of, the qualifying farm machinery and equipment other than replacement parts.

(2)(a) Notwithstanding anything to the contrary in this chapter, if a single transaction involves services that are not exempt under this section and services that would be exempt under this section if provided separately, the exemptions provided in subsection (1)(b) and (c) of this section apply if: (i) The seller makes a separately itemized charge for labor and services described in subsection (1)(b) or (c) of this section; and (ii) the separately itemized charge does not exceed the seller's usual and customary charge for such services.

(b) If the requirements in (a)(i) and (ii) of this subsection (2) are met, the exemption provided in subsection (1)(b) or (c) of this section applies to the separately itemized charge for labor and services described in subsection (1)(b) or (c) of this section.

(3)(a) A purchaser claiming an exemption under this section must keep records necessary for the department to verify eligibility under this section. Sellers making tax‑exempt sales under this section must obtain an exemption certificate from the purchaser in a form and manner prescribed by the department. In lieu of an exemption certificate, a seller may capture the relevant data elements as allowed under the streamlined sales and use tax agreement. The seller must retain a copy of the certificate or the data elements for the seller's files.

(b)(i) For a person who is an eligible farmer as defined in subsection (4)(b)(iv) of this section, the exemption is conditioned upon:

(A) The eligible farmer having gross sales or a harvested value of agricultural products grown, raised, or produced by that person or gross sales of bee pollination services of at least ten thousand dollars in the first full tax year in which the person engages in business as a farmer; or

(B) The eligible farmer, during the first full tax year in which that person engages in business as a farmer, growing, raising, or producing agricultural products or bee pollination services having an estimated value at any time during that year of at least ten thousand dollars, if the person will not sell or harvest an agricultural product or bee pollination service during the first full tax year in which the person engages in business as a farmer.

(ii) If a person fails to meet the condition provided in (b)(i)(A) or (B) of this subsection, the person must repay any taxes exempted under this section. Any taxes for which an exemption under this section was claimed are due and payable to the department within thirty days of the end of the first full tax year in which the person engages in business as a farmer. The department must assess interest on the taxes for which the exemption was claimed as provided in chapter 82.32 RCW, retroactively to the date the exemption was claimed, and accrues until the taxes for which the exemption was claimed are paid. Penalties may not be imposed on any tax required to be paid under this subsection (3) (b)(ii) if full payment is received by the due date.

(4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Agricultural products" has the meaning provided in RCW 82.04.213.

(b) "Eligible farmer" means:

(i) A farmer as defined in RCW 82.04.213 whose gross sales or harvested value of agricultural products grown, raised, or produced by that person or gross sales of bee pollination services was at least ten thousand dollars for the immediately preceding tax year;

(ii) A farmer as defined in RCW 82.04.213 whose agricultural products had an estimated value of at least ten thousand dollars for the immediately preceding tax year, if the person did not sell or harvest an agricultural product or bee pollination service during that year;

(iii) A farmer as defined in RCW 82.04.213 who has merely changed identity or the form of ownership of an entity that was an eligible farmer, where there was no change in beneficial ownership, and the combined gross sales, harvested value, or estimated value of agricultural products or bee pollination services by both entities met the requirements of (b)(i) or (ii) of this subsection for the immediately preceding tax year;

(iv) A farmer as defined in RCW 82.04.213((~~,~~)) who does not meet the definition of "eligible farmer" in (b)(i), (ii), or (iii) of this subsection, and who did not engage in farming for the entire immediately preceding tax year, because the farmer is either new to farming or newly returned to farming; or

(v) Anyone who otherwise meets the definition of "eligible farmer" in this subsection except that they are not a "person" as defined in RCW 82.04.030.

(c) "Farm vehicle" has the same meaning as in RCW 46.04.181.

(d) "Harvested value" means the number of units of the agricultural product that were grown, raised, or produced, multiplied by the average sales price of the agricultural product. For purposes of this subsection (4)(d), "average sales price" means the average price per unit of agricultural product received by farmers in this state as reported by the United States department of agriculture's national agricultural statistics service for the twelve-month period that coincides with, or that ends closest to, the end of the relevant tax year, regardless of whether the prices are subject to revision. If the price per unit of an agricultural product received by farmers in this state is not available from the national agricultural statistics service, average sales price may be determined by using the average price per unit of agricultural product received by farmers in this state as reported by a recognized authority for the agricultural product.

(e) "Qualifying farm machinery and equipment" means machinery and equipment used primarily by an eligible farmer for growing, raising, or producing agricultural products, providing bee pollination services, or both. "Qualifying farm machinery and equipment" does not include:

(i) Vehicles as defined in RCW 46.04.670, other than farm tractors as defined in RCW 46.04.180, farm vehicles, and other farm implements. For purposes of this subsection (4)(e)(i), "farm implement" means machinery or equipment manufactured, designed, or reconstructed for agricultural purposes and used primarily by an eligible farmer to grow, raise, or produce agricultural products, but does not include lawn tractors and all‑terrain vehicles;

(ii) Aircraft;

(iii) Hand tools and hand‑powered tools; and

(iv) Property with a useful life of less than one year.

(f)(i) "Replacement parts" means those parts that replace an existing part, or which are essential to maintain the working condition, of a piece of qualifying farm machinery or equipment.

(ii) Paint, fuel, oil, hydraulic fluids, antifreeze, and similar items are not replacement parts except when installed, incorporated, or placed in qualifying farm machinery and equipment during the course of installing replacement parts as defined in (f)(i) of this subsection or making repairs as described in subsection (1)(c) of this section.

(g) "Tax year" means the period for which a person files its federal income tax return, irrespective of whether the period represents a calendar year, fiscal year, or some other consecutive twelve‑month period. If a person is not required to file a federal income tax return, "tax year" means a calendar year.

NEW SECTION. **Sec.**  The following acts or parts of acts are each repealed:

(1) RCW 82.04.629 (Exemptions—Honey bee products) and 2013 2nd sp.s. c 13 s 306 & 2008 c 314 s 2;

(2) RCW 82.04.630 (Exemptions—Bee pollination services) and 2013 2nd sp.s. c 13 s 307 & 2008 c 314 s 3;

(3) RCW 82.08.0204 (Exemptions—Honey bees) and 2013 2nd sp.s. c 13 s 308 & 2008 c 314 s 4;

(4) RCW 82.12.0204 (Exemptions—Honey bees) and 2013 2nd sp.s. c 13 s 309 & 2008 c 314 s 5;

(5) RCW 82.08.200 (Exemptions—Honey beekeepers) and 2013 2nd sp.s. c 13 s 302;

(6) RCW 82.12.200 (Exemptions—Honey beekeepers) and 2013 2nd sp.s. c 13 s 303; and

(7) RCW 43.136.047 (Beekeeper evaluation) and 2013 2nd sp.s. c 13 s 304.

NEW SECTION. **Sec.**  The legislature intends for the amendments in this act to be permanent. Therefore, the amendments in this act are exempt from the ten-year expiration provision in RCW 82.32.805(1)(a).

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2015.

**--- END ---**