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SENATE BILL 5708

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State of Washington

64th Legislature

2015 Regular Session

By Senators Ericksen, Bailey, Sheldon, Becker, Baumgartner, Brown, Pearson, Warnick, and Padden

Read first time 01/29/15. Referred to Committee on Agriculture, Water & Rural Economic Development.

1 AN ACT Relating to the taxation of certain rented property owned  
2 by nonprofit fair associations; amending RCW 84.36.480, 82.29A.020,  
3 and 82.29A.030; reenacting and amending RCW 82.29A.020; providing  
4 effective dates; and providing an expiration date.

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

6 **Sec. 1.** RCW 84.36.480 and 2013 c 212 s 2 are each amended to  
7 read as follows:

8 (1) Except as provided otherwise in subsections (2) and (3) of  
9 this section, the real and personal property of a nonprofit fair  
10 association that sponsors or conducts a fair or fairs that is  
11 eligible to receive support from the fair fund, as created in RCW  
12 15.76.115 and allocated by the director of the department of  
13 agriculture, is exempt from taxation. To be exempt under this  
14 subsection (1), the property must be used exclusively for fair  
15 purposes, except as provided in RCW 84.36.805. However, the loan or  
16 rental of property otherwise exempt under this section to a private  
17 concessionaire or to any person for use as a concession in  
18 conjunction with activities permitted under this section shall not  
19 nullify the exemption if the concession charges are subject to  
20 agreement and the rental income, if any, is reasonable and is devoted  
21 solely to the operation and maintenance of the property.

1 (2)(a) Except as provided otherwise in subsection (3) of this  
2 section, the real and personal property owned by a nonprofit fair  
3 association organized under chapter 24.06 RCW and used for fair  
4 purposes is exempt from taxation if the majority of such property, as  
5 determined by assessed value, was purchased or acquired by the same  
6 nonprofit fair association from a county or a city between 1995 and  
7 1998.

8 (b) (~~The exemption under this subsection (2) may not be claimed~~  
9 ~~for taxes levied for collection in 2019 and thereafter.~~) Any rents  
10 or donations received for the use of a portion of the property must  
11 be reasonable and not exceed the maintenance and operation expenses  
12 of the property.

13 (c) If any portion of the property is knowingly rented for more  
14 than fifty days the exemption under this subsection still applies,  
15 but the rental income is subject to the tax under chapter 82.29A RCW.

16 (3) A nonprofit fair association with real and personal property  
17 having an assessed value of more than fifteen million dollars is not  
18 eligible for the exemptions under this section.

19 **Sec. 2.** RCW 82.29A.020 and 2014 c 207 s 3 and 2014 c 140 s 26  
20 are each reenacted and amended to read as follows:

21 The definitions in this section apply throughout this chapter  
22 unless the context requires otherwise.

23 (1)(a) "Leasehold interest" means an interest in publicly owned  
24 real or personal property which exists by virtue of any lease,  
25 permit, license, or any other agreement, written or verbal, between  
26 the public owner of the property and a person who would not be exempt  
27 from property taxes if that person owned the property in fee,  
28 granting possession and use, to a degree less than fee simple  
29 ownership. However, no interest in personal property (excluding land  
30 or buildings) which is owned by the United States, whether or not as  
31 trustee, or by any foreign government may constitute a leasehold  
32 interest hereunder when the right to use such property is granted  
33 pursuant to a contract solely for the manufacture or production of  
34 articles for sale to the United States or any foreign government. The  
35 term "leasehold interest" includes the rights of use or occupancy by  
36 others of property which is owned in fee or held in trust by a public  
37 corporation, commission, or authority created under RCW 35.21.730 or  
38 35.21.660 if the property is listed on or is within a district listed  
39 on any federal or state register of historical sites. The term

1 "leasehold interest" also includes portions of property owned by a  
2 nonprofit fair association exempt from property tax under RCW  
3 84.36.480(2), but rented for periods of fifty days or more.

4 (b) The term "leasehold interest" does not include:

5 (i) Road or utility easements, rights of access, occupancy, or  
6 use granted solely for the purpose of removing materials or products  
7 purchased from a public owner or the lessee of a public owner, or  
8 rights of access, occupancy, or use granted solely for the purpose of  
9 natural energy resource exploration; or

10 (ii) The preferential use of publicly owned cargo cranes and  
11 docks and associated areas used in the loading and discharging of  
12 cargo located at a port district marine facility. "Preferential use"  
13 means that publicly owned real or personal property is used by a  
14 private party under a written agreement with the public owner, but  
15 the public owner or any third party maintains a right to use the  
16 property when not being used by the private party.

17 (c) "Publicly owned real or personal property" includes real or  
18 personal property owned by a federally recognized Indian tribe in the  
19 state and exempt from tax under RCW 84.36.010.

20 (2)(a) "Taxable rent" means contract rent as defined in (c) of  
21 this subsection in all cases where the lease or agreement has been  
22 established or renegotiated through competitive bidding, or  
23 negotiated or renegotiated in accordance with statutory requirements  
24 regarding the rent payable, or negotiated or renegotiated under  
25 circumstances, established by public record, clearly showing that the  
26 contract rent was the maximum attainable by the lessor. However,  
27 after January 1, 1986, with respect to any lease which has been in  
28 effect for ten years or more without renegotiation, taxable rent may  
29 be established by procedures set forth in (g) of this subsection. All  
30 other leasehold interests are subject to the determination of taxable  
31 rent under the terms of (g) of this subsection.

32 (b) For purposes of determining leasehold excise tax on any lands  
33 on the Hanford reservation subleased to a private or public entity by  
34 the department of ecology, taxable rent includes only the annual cash  
35 rental payment made by such entity to the department of ecology as  
36 specifically referred to as rent in the sublease agreement between  
37 the parties and does not include any other fees, assessments, or  
38 charges imposed on or collected by such entity irrespective of  
39 whether the private or public entity pays or collects such other  
40 fees, assessments, or charges as specified in the sublease agreement.

1 (c) "Contract rent" means the amount of consideration due as  
2 payment for a leasehold interest, including: The total of cash  
3 payments made to the lessor or to another party for the benefit of  
4 the lessor according to the requirements of the lease or agreement,  
5 including any rents paid by a sublessee; expenditures for the  
6 protection of the lessor's interest when required by the terms of the  
7 lease or agreement; and expenditures for improvements to the property  
8 to the extent that such improvements become the property of the  
9 lessor. Where the consideration conveyed for the leasehold interest  
10 is made in combination with payment for concession or other rights  
11 granted by the lessor, only that portion of such payment which  
12 represents consideration for the leasehold interest is part of  
13 contract rent.

14 (d) "Contract rent" does not include: (i) Expenditures made by  
15 the lessee, which under the terms of the lease or agreement, are to  
16 be reimbursed by the lessor to the lessee or expenditures for  
17 improvements and protection made pursuant to a lease or an agreement  
18 which requires that the use of the improved property be open to the  
19 general public and that no profit will inure to the lessee from the  
20 lease; (ii) expenditures made by the lessee for the replacement or  
21 repair of facilities due to fire or other casualty including payments  
22 for insurance to provide reimbursement for losses or payments to a  
23 public or private entity for protection of such property from damage  
24 or loss or for alterations or additions made necessary by an action  
25 of government taken after the date of the execution of the lease or  
26 agreement; (iii) improvements added to publicly owned property by a  
27 sublessee under an agreement executed prior to January 1, 1976, which  
28 have been taxed as personal property of the sublessee prior to  
29 January 1, 1976, or improvements made by a sublessee of the same  
30 lessee under a similar agreement executed prior to January 1, 1976,  
31 and such improvements are taxable to the sublessee as personal  
32 property; (iv) improvements added to publicly owned property if such  
33 improvements are being taxed as personal property to any person.

34 (e) Any prepaid contract rent is considered to have been paid in  
35 the year due and not in the year actually paid with respect to  
36 prepayment for a period of more than one year. Expenditures for  
37 improvements with a useful life of more than one year which are  
38 included as part of contract rent must be treated as prepaid contract  
39 rent and prorated over the useful life of the improvement or the  
40 remaining term of the lease or agreement if the useful life is in

1 excess of the remaining term of the lease or agreement. Rent prepaid  
2 prior to January 1, 1976, must be prorated from the date of  
3 prepayment.

4 (f) With respect to a "product lease", the value is that value  
5 determined at the time of sale under terms of the lease.

6 (g) If it is determined by the department of revenue, upon  
7 examination of a lessee's accounts or those of a lessor of publicly  
8 owned property, that a lessee is occupying or using publicly owned  
9 property in such a manner as to create a leasehold interest and that  
10 such leasehold interest has not been established through competitive  
11 bidding, or negotiated in accordance with statutory requirements  
12 regarding the rent payable, or negotiated under circumstances,  
13 established by public record, clearly showing that the contract rent  
14 was the maximum attainable by the lessor, the department may  
15 establish a taxable rent computation for use in determining the tax  
16 payable under authority granted in this chapter based upon the  
17 following criteria: (i) Consideration must be given to rental being  
18 paid to other lessors by lessees of similar property for similar  
19 purposes over similar periods of time; (ii) consideration must be  
20 given to what would be considered a fair rate of return on the market  
21 value of the property leased less reasonable deductions for any  
22 restrictions on use, special operating requirements or provisions for  
23 concurrent use by the lessor, another person or the general public.

24 (3) "Product lease" as used in this chapter means a lease of  
25 property for use in the production of agricultural or marine  
26 products, not including the production of marijuana as defined in RCW  
27 69.50.101, to the extent that such lease provides for the contract  
28 rent to be paid by the delivery of a stated percentage of the  
29 production of such agricultural or marine products to the credit of  
30 the lessor or the payment to the lessor of a stated percentage of the  
31 proceeds from the sale of such products.

32 (4) "Renegotiated" means a change in the lease agreement which  
33 changes the agreed time of possession, restrictions on use, the rate  
34 of the cash rental or of any other consideration payable by the  
35 lessee to or for the benefit of the lessor, other than any such  
36 change required by the terms of the lease or agreement. In addition  
37 "renegotiated" means a continuation of possession by the lessee  
38 beyond the date when, under the terms of the lease agreement, the  
39 lessee had the right to vacate the premises without any further  
40 liability to the lessor.

1 (5) "City" means any city or town.

2 (6) "Products" includes natural resource products such as cut or  
3 picked evergreen foliage, Cascara bark, wild edible mushrooms, native  
4 ornamental trees and shrubs, ore and minerals, natural gas,  
5 geothermal water and steam, and forage removed through the grazing of  
6 livestock.

7 **Sec. 3.** RCW 82.29A.020 and 2014 c 140 s 26 are each amended to  
8 read as follows:

9 The definitions in this section apply throughout this chapter  
10 unless the context requires otherwise.

11 (1)(a) "Leasehold interest" means an interest in publicly owned  
12 real or personal property which exists by virtue of any lease,  
13 permit, license, or any other agreement, written or verbal, between  
14 the public owner of the property and a person who would not be exempt  
15 from property taxes if that person owned the property in fee,  
16 granting possession and use, to a degree less than fee simple  
17 ownership. However, no interest in personal property (excluding land  
18 or buildings) which is owned by the United States, whether or not as  
19 trustee, or by any foreign government may constitute a leasehold  
20 interest hereunder when the right to use such property is granted  
21 pursuant to a contract solely for the manufacture or production of  
22 articles for sale to the United States or any foreign government. The  
23 term "leasehold interest" includes the rights of use or occupancy by  
24 others of property which is owned in fee or held in trust by a public  
25 corporation, commission, or authority created under RCW 35.21.730 or  
26 35.21.660 if the property is listed on or is within a district listed  
27 on any federal or state register of historical sites. The term  
28 "leasehold interest" also includes portions of property owned by a  
29 nonprofit fair association exempt from property tax under RCW  
30 84.36.480(2), but rented for periods of fifty days or more.

31 (b) The term "leasehold interest" does not include:

32 (i) Road or utility easements, rights of access, occupancy, or  
33 use granted solely for the purpose of removing materials or products  
34 purchased from a public owner or the lessee of a public owner, or  
35 rights of access, occupancy, or use granted solely for the purpose of  
36 natural energy resource exploration(~~(. "Leasehold interest" does not~~  
37 ~~include)); or~~

38 (ii) The preferential use of publicly owned cargo cranes and  
39 docks and associated areas used in the loading and discharging of

1 cargo located at a port district marine facility. "Preferential use"  
2 means that publicly owned real or personal property is used by a  
3 private party under a written agreement with the public owner, but  
4 the public owner or any third party maintains a right to use the  
5 property when not being used by the private party.

6 (2)(a) "Taxable rent" means contract rent as defined in (c) of  
7 this subsection in all cases where the lease or agreement has been  
8 established or renegotiated through competitive bidding, or  
9 negotiated or renegotiated in accordance with statutory requirements  
10 regarding the rent payable, or negotiated or renegotiated under  
11 circumstances, established by public record, clearly showing that the  
12 contract rent was the maximum attainable by the lessor. However,  
13 after January 1, 1986, with respect to any lease which has been in  
14 effect for ten years or more without renegotiation, taxable rent may  
15 be established by procedures set forth in (g) of this subsection. All  
16 other leasehold interests are subject to the determination of taxable  
17 rent under the terms of (g) of this subsection.

18 (b) For purposes of determining leasehold excise tax on any lands  
19 on the Hanford reservation subleased to a private or public entity by  
20 the department of ecology, taxable rent includes only the annual cash  
21 rental payment made by such entity to the department of ecology as  
22 specifically referred to as rent in the sublease agreement between  
23 the parties and does not include any other fees, assessments, or  
24 charges imposed on or collected by such entity irrespective of  
25 whether the private or public entity pays or collects such other  
26 fees, assessments, or charges as specified in the sublease agreement.

27 (c) "Contract rent" means the amount of consideration due as  
28 payment for a leasehold interest, including: The total of cash  
29 payments made to the lessor or to another party for the benefit of  
30 the lessor according to the requirements of the lease or agreement,  
31 including any rents paid by a sublessee; expenditures for the  
32 protection of the lessor's interest when required by the terms of the  
33 lease or agreement; and expenditures for improvements to the property  
34 to the extent that such improvements become the property of the  
35 lessor. Where the consideration conveyed for the leasehold interest  
36 is made in combination with payment for concession or other rights  
37 granted by the lessor, only that portion of such payment which  
38 represents consideration for the leasehold interest is part of  
39 contract rent.

1 (d) "Contract rent" does not include: (i) Expenditures made by  
2 the lessee, which under the terms of the lease or agreement, are to  
3 be reimbursed by the lessor to the lessee or expenditures for  
4 improvements and protection made pursuant to a lease or an agreement  
5 which requires that the use of the improved property be open to the  
6 general public and that no profit will inure to the lessee from the  
7 lease; (ii) expenditures made by the lessee for the replacement or  
8 repair of facilities due to fire or other casualty including payments  
9 for insurance to provide reimbursement for losses or payments to a  
10 public or private entity for protection of such property from damage  
11 or loss or for alterations or additions made necessary by an action  
12 of government taken after the date of the execution of the lease or  
13 agreement; (iii) improvements added to publicly owned property by a  
14 sublessee under an agreement executed prior to January 1, 1976, which  
15 have been taxed as personal property of the sublessee prior to  
16 January 1, 1976, or improvements made by a sublessee of the same  
17 lessee under a similar agreement executed prior to January 1, 1976,  
18 and such improvements are taxable to the sublessee as personal  
19 property; (iv) improvements added to publicly owned property if such  
20 improvements are being taxed as personal property to any person.

21 (e) Any prepaid contract rent is considered to have been paid in  
22 the year due and not in the year actually paid with respect to  
23 prepayment for a period of more than one year. Expenditures for  
24 improvements with a useful life of more than one year which are  
25 included as part of contract rent must be treated as prepaid contract  
26 rent and prorated over the useful life of the improvement or the  
27 remaining term of the lease or agreement if the useful life is in  
28 excess of the remaining term of the lease or agreement. Rent prepaid  
29 prior to January 1, 1976, must be prorated from the date of  
30 prepayment.

31 (f) With respect to a "product lease", the value is that value  
32 determined at the time of sale under terms of the lease.

33 (g) If it is determined by the department of revenue, upon  
34 examination of a lessee's accounts or those of a lessor of publicly  
35 owned property, that a lessee is occupying or using publicly owned  
36 property in such a manner as to create a leasehold interest and that  
37 such leasehold interest has not been established through competitive  
38 bidding, or negotiated in accordance with statutory requirements  
39 regarding the rent payable, or negotiated under circumstances,  
40 established by public record, clearly showing that the contract rent

1 was the maximum attainable by the lessor, the department may  
2 establish a taxable rent computation for use in determining the tax  
3 payable under authority granted in this chapter based upon the  
4 following criteria: (i) Consideration must be given to rental being  
5 paid to other lessors by lessees of similar property for similar  
6 purposes over similar periods of time; (ii) consideration must be  
7 given to what would be considered a fair rate of return on the market  
8 value of the property leased less reasonable deductions for any  
9 restrictions on use, special operating requirements or provisions for  
10 concurrent use by the lessor, another person or the general public.

11 (3) "Product lease" as used in this chapter means a lease of  
12 property for use in the production of agricultural or marine  
13 products, not including the production of marijuana as defined in RCW  
14 69.50.101, to the extent that such lease provides for the contract  
15 rent to be paid by the delivery of a stated percentage of the  
16 production of such agricultural or marine products to the credit of  
17 the lessor or the payment to the lessor of a stated percentage of the  
18 proceeds from the sale of such products.

19 (4) "Renegotiated" means a change in the lease agreement which  
20 changes the agreed time of possession, restrictions on use, the rate  
21 of the cash rental or of any other consideration payable by the  
22 lessee to or for the benefit of the lessor, other than any such  
23 change required by the terms of the lease or agreement. In addition  
24 "renegotiated" means a continuation of possession by the lessee  
25 beyond the date when, under the terms of the lease agreement, the  
26 lessee had the right to vacate the premises without any further  
27 liability to the lessor.

28 (5) "City" means any city or town.

29 (6) "Products" includes natural resource products such as cut or  
30 picked evergreen foliage, Cascara bark, wild edible mushrooms, native  
31 ornamental trees and shrubs, ore and minerals, natural gas,  
32 geothermal water and steam, and forage removed through the grazing of  
33 livestock.

34 **Sec. 4.** RCW 82.29A.030 and 2010 c 281 s 3 are each amended to  
35 read as follows:

36 (1)(a) There is levied and collected a leasehold excise tax on  
37 the act or privilege of occupying or using publicly owned real or  
38 personal property exempt from property taxation under RCW  
39 84.36.480(2), or real or personal property of a community center

1 through a leasehold interest on and after January 1, 1976, at a rate  
2 of twelve percent of taxable rent. However, after the computation of  
3 the tax a credit is allowed for any tax collected pursuant to RCW  
4 82.29A.040.

5 (b) For the purposes of this subsection, "community center" has  
6 the same meaning as provided in RCW 84.36.010.

7 (2) An additional tax is imposed equal to the rate specified in  
8 RCW 82.02.030 multiplied by the tax payable under subsection (1) of  
9 this section.

10 NEW SECTION. **Sec. 5.** Except for section 3 of this act, this act  
11 takes effect August 1, 2015.

12 NEW SECTION. **Sec. 6.** Section 3 of this act takes effect January  
13 1, 2022.

14 NEW SECTION. **Sec. 7.** Section 2 of this act expires January 1,  
15 2022.

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