**1163-S AMS BFGT S2346.1 - NOT FOR FLOOR USE**

**SHB 1163** - S COMM AMD

By Committee on Business, Financial Services, Gaming & Trade

**ADOPTED 04/19/2023**

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec.**  (1) This section is the tax preference performance statement for the tax preference contained in section 2(23), chapter . . ., Laws of 2023 (section 2(23) of this act). The 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.

(a) The legislature categorizes the tax preference contained in section 2(23), chapter . . ., Laws of 2023 (section 2(23) of this act) as one intended to induce certain designated behavior by taxpayers and provide tax parity, as indicated in RCW 82.32.808(2) (a) and (f).

(b) For the tax preference evaluation under subsection (2) of this section, the legislature's specific public policy objective is to provide tax parity resulting in leasehold excise tax relief for large arena facilities used for professional sports with the expectation that the operational entities overseeing operations at these facilities will provide substantial economic benefits to their specific region with a focus on: Providing employment opportunities for women and minority-owned businesses; fostering equity and social justice with an emphasis on arena-impacted communities; providing general community resource support; and ensuring quality access to the facilities for people across a range of income levels.

(c) For the tax preference evaluation under subsection (3) of this section, the legislature's specific public policy objectives are to provide tax parity resulting in leasehold excise tax relief with the expectation that employees employed at the facilities receive competitive wages and benefits and the facilities advance and promote diverse and inclusive voices, experiences, perspectives, and employment opportunities.

(2) To measure the effectiveness of the tax preference identified in section 2(23), chapter . . ., Laws of 2023 (section 2(23) of this act), except as provided in subsection (3) of this section, the joint legislative audit and review committee must evaluate the following:

(a) State and local fiscal impacts;

(b) To the extent data is available from the operating entity, the number of employment positions and wages at the facility for all employers, the degree to which employment positions at the facility have been filled by people residing in economically distressed regions of the county in which the facility is located, and the race and ethnicity of the employees. The evaluation must include a comparison of annual average wages at the facility and annual county average wages as published by the employment security department as part of its covered employment data;

(c) The extent to which the operational entity provides opportunities for patrons of all income levels to enjoy programming by offering seating at a range of price points that are equitably distributed throughout the facility; and

(d) The extent to which the operational entity generally contributes resources to: Organizations that serve the region; the communities surrounding the facility; and programs and services for youth, arts, music, and culture.

(3) To measure the effectiveness of the tax preference in section 2(23), chapter . . ., Laws of 2023 (section 2(23) of this act) for arenas with a seating capacity of 17,000 or less, the joint legislative audit and review committee must evaluate the following to the extent that data is available from the operating entity or public owner of the arena:

(a) State and local fiscal impacts;

(b) The number of employment positions and wages at the facility for all employers operating at the facility. The evaluation must include a comparison of annual average wages at the facility and annual county average wages as published by the employment security department as part of its covered employment data;

(c) The financial stability of the facility through an examination of revenues and expenditures specific to the facility;

(d) The types of programming and events scheduled at the facility; and

(e) The economic impact of the facility in the county in which the facility is located.

(4) In order to obtain the data necessary to perform the reviews in subsections (2) and (3) of this section, the department of revenue must provide tax-related data needed for the joint legislative audit and review committee analysis, including the annual tax performance reports provided pursuant to RCW 82.32.534. In addition to the data source described under this subsection, the joint legislative audit and review committee may use any other data it deems necessary and the legislative auditor, or his or her designee, may contact operational entities after the effective date of this section to establish appropriate documentation to be provided by the operational entities to the joint legislative audit and review committee to facilitate its review of the tax preferences identified in this act.

(5) For the purpose of this section, "operational entity" means a limited liability company or any other public or private legal entity that is primarily responsible for the management and operation of a stadium or arena facility.

**Sec.**  RCW 82.29A.130 and 2022 c 147 s 1 are each amended to read as follows:

The following leasehold interests are exempt from taxes imposed pursuant to RCW 82.29A.030 and 82.29A.040:

(1) All leasehold interests constituting a part of the operating properties of any public utility that is assessed and taxed as a public utility pursuant to chapter 84.12 RCW.

(2) All leasehold interests in facilities owned or used by a school, college or university which leasehold provides housing for students and which is otherwise exempt from taxation under provisions of RCW 84.36.010 and 84.36.050.

(3) All leasehold interests of subsidized housing where the fee ownership of such property is vested in the government of the United States, or the state of Washington or any political subdivision thereof but only if income qualification exists for such housing.

(4) All leasehold interests used for fair purposes of a nonprofit fair association that sponsors or conducts a fair or fairs which receive support from revenues collected pursuant to RCW 67.16.100 and allocated by the director of the department of agriculture where the fee ownership of such property is vested in the government of the United States, the state of Washington or any of its political subdivisions. However, this exemption does not apply to the leasehold interest of any sublessee of such nonprofit fair association if such leasehold interest would be taxable if it were the primary lease.

(5) All leasehold interests in any property of any public entity used as a residence by an employee of that public entity who is required as a condition of employment to live in the publicly owned property.

(6) All leasehold interests held by enrolled Indians of lands owned or held by any Indian or Indian tribe where the fee ownership of such property is vested in or held in trust by the United States and which are not subleased to other than to a lessee which would qualify pursuant to this chapter, RCW 84.36.451 and 84.40.175.

(7) All leasehold interests in any real property of any Indian or Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States. However, this exemption applies only where it is determined that contract rent paid is greater than or equal to ((~~ninety~~)) 90 percent of fair market rental, to be determined by the department of revenue using the same criteria used to establish taxable rent in RCW 82.29A.020(2)(g).

(8) All leasehold interests for which annual taxable rent is less than ((~~two hundred fifty dollars~~)) $250 per year. For purposes of this subsection leasehold interests held by the same lessee in contiguous properties owned by the same lessor are deemed a single leasehold interest.

(9) All leasehold interests which give use or possession of the leased property for a continuous period of less than ((~~thirty~~)) 30 days: PROVIDED, That for purposes of this subsection, successive leases or lease renewals giving substantially continuous use of possession of the same property to the same lessee are deemed a single leasehold interest: PROVIDED FURTHER, That no leasehold interest is deemed to give use or possession for a period of less than ((~~thirty~~)) 30 days solely by virtue of the reservation by the public lessor of the right to use the property or to allow third parties to use the property on an occasional, temporary basis.

(10) All leasehold interests under month-to-month leases in residential units rented for residential purposes of the lessee pending destruction or removal for the purpose of constructing a public highway or building.

(11) All leasehold interests in any publicly owned real or personal property to the extent such leasehold interests arises solely by virtue of a contract for public improvements or work executed under the public works statutes of this state or of the United States between the public owner of the property and a contractor.

(12) All leasehold interests that give use or possession of state adult correctional facilities for the purposes of operating correctional industries under RCW 72.09.100.

(13) All leasehold interests used to provide organized and supervised recreational activities for persons with disabilities of all ages in a camp facility and for public recreational purposes by a nonprofit organization, association, or corporation that would be exempt from property tax under RCW 84.36.030(1) if it owned the property. If the publicly owned property is used for any taxable purpose, the leasehold excise taxes set forth in RCW 82.29A.030 and 82.29A.040 must be imposed and must be apportioned accordingly.

(14) All leasehold interests in the public or entertainment areas of a baseball stadium with natural turf and a retractable roof or canopy that is in a county with a population of over ((~~one million~~)) 1,000,000, that has a seating capacity of over ((~~forty thousand~~)) 40,000, and that is constructed on or after January 1, 1995. "Public or entertainment areas" include ticket sales areas, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality and stadium club areas, kitchens or other work areas primarily servicing other public or entertainment areas, public rest room areas, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas and suites, the playing field, and any other areas to which the public has access or which are used for the production of the entertainment event or other public usage, and any other personal property used for these purposes. "Public or entertainment areas" does not include locker rooms or private offices exclusively used by the lessee.

(15) All leasehold interests in the public or entertainment areas of a stadium and exhibition center, as defined in RCW 36.102.010, that is constructed on or after January 1, 1998. For the purposes of this subsection, "public or entertainment areas" has the same meaning as in subsection (14) of this section, and includes exhibition areas.

(16) All leasehold interests in public facilities districts, as provided in chapter 36.100 or 35.57 RCW.

(17) All leasehold interests in property that is: (a) Owned by the United States government or a municipal corporation; (b) listed on any federal or state register of historical sites; and (c) wholly contained within a designated national historic reserve under 16 U.S.C. Sec. 461.

(18) All leasehold interests in the public or entertainment areas of an amphitheater if a private entity is responsible for ((~~one hundred~~)) 100 percent of the cost of constructing the amphitheater which is not reimbursed by the public owner, both the public owner and the private lessee sponsor events at the facility on a regular basis, the lessee is responsible under the lease or agreement to operate and maintain the facility, and the amphitheater has a seating capacity of over ((~~seventeen thousand~~)) 17,000 reserved and general admission seats and is in a county that had a population of over ((~~three hundred fifty thousand~~)) 350,000, but less than ((~~four hundred twenty-five thousand~~)) 425,000 when the amphitheater first opened to the public.

For the purposes of this subsection, "public or entertainment areas" include box offices or other ticket sales areas, entrance gates, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality areas, kitchens or other work areas primarily servicing other public or entertainment areas, public rest room areas, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas including lawn seating areas and suites, stages, and any other areas to which the public has access or which are used for the production of the entertainment event or other public usage, and any other personal property used for these purposes. "Public or entertainment areas" does not include office areas used predominately by the lessee.

(19) All leasehold interests in real property used for the placement of military housing meeting the requirements of RCW 84.36.665.

(20) All leasehold interests in facilities owned or used by a community college or technical college, which leasehold interest provides:

(a) Food services for students, faculty, and staff;

(b) The operation of a bookstore on campus; or

(c) Maintenance, operational, or administrative services to the community college or technical college.

(21)(a) All leasehold interests in the public or entertainment areas of an arena if it:

(i) Has a seating capacity of more than ((~~two thousand~~)) 2,000;

(ii) Is located on city-owned land; and

(iii) Is owned by a city with a population over ((~~two hundred thousand~~)) 200,000 within a county with a population of less than ((~~one million five hundred thousand~~)) 1,500,000.

(b) For the purposes of this subsection (21), "public or entertainment areas" has the same meaning as provided in subsection (18) of this section.

(22) All leasehold interests in facilities owned by the state parks and recreation commission that are listed on the national register of historic places or the Washington heritage register.

(23)(a) All leasehold interests in the public or entertainment areas of an arena if:

(i) The arena has a seating capacity of more than 4,000;

(ii) The arena is located on city-owned land;

(iii) The arena is located within a city with a population over 100,000; and

(iv) Private entities were responsible for 100 percent of the cost of constructing improvements to the arena, which were not reimbursed by the public owner.

(b) For the purposes of this subsection (23), "public or entertainment areas" has the same meaning as provided in subsection (18) of this section, except that it also includes office areas used predominately by the lessee.

(c) A taxpayer claiming an exemption under this subsection (23) must file a complete annual tax performance report as provided in RCW 82.32.534.

(d) This subsection (23) does not apply to leasehold interests on or after October 1, 2033.

NEW SECTION. **Sec.**  Sections 1 and 2 of this act take effect October 1, 2023.

NEW SECTION. **Sec.**  Section 2 of this act expires January 1, 2034."

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**ADOPTED 04/19/2023**

On page 1, line 3 of the title, after "tax;" strike the remainder of the title and insert "amending RCW 82.29A.130; creating a new section; providing an effective date; and providing an expiration date."

EFFECT: Adds a 10-year expiration date. Requires a JLARC review. Modifies the criteria of eligibility for the new leasehold excise tax exemption. Requires any taxpayer claiming the new exemption to file an annual tax performance report.