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SENATE BILL 5699

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State of Washington                      52nd Legislature                      1991 Regular Session

By Senators Owen and Conner.

Read first time February 15, 1991. Referred to Committee on Ways & Means.

1            AN ACT Relating to leasehold excise taxes; and amending RCW  
2 82.29A.020, 82.29A.130, and 82.29A.060.

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

4            **Sec. 1.** RCW 82.29A.020 and 1986 c 285 s 1 are each amended to read  
5 as follows:

6            As used in this chapter the following terms shall be defined as  
7 follows, unless the context otherwise requires:

8            (1) "Leasehold interest" shall mean an interest in publicly owned  
9 real or personal property which exists by virtue of any lease, permit,  
10 license, or any other agreement, written or verbal, between the public  
11 owner of the property and a person who would not be exempt from  
12 property taxes if that person owned the property in fee, granting  
13 possession and use, to a degree less than fee simple ownership:  
14 PROVIDED, That no interest in personal property (excluding land or  
15 buildings) which is owned by the United States, whether or not as

1 trustee, or by any foreign government shall constitute a leasehold  
2 interest hereunder when the right to use such property is granted  
3 pursuant to a contract solely for the manufacture or production of  
4 articles for sale to the United States or any foreign government. The  
5 term "leasehold interest" shall include the rights of use or occupancy  
6 by others of property which is owned in fee or held in trust by a  
7 public corporation, commission, or authority created under RCW  
8 35.21.730 or 35.21.660 if the property is listed on or is within a  
9 district listed on any federal or state register of historical sites.  
10 The term "leasehold interest" shall not include road or utility  
11 easements or rights of access, occupancy or use granted solely for the  
12 purpose of removing materials or products purchased from a public owner  
13 or the lessee of a public owner.

14 (2) "Taxable rent" shall mean contract rent as defined in  
15 subsection (a) of this subsection in all cases where the lease or  
16 agreement has been established or renegotiated through competitive  
17 bidding, or negotiated or renegotiated in accordance with statutory  
18 requirements regarding the rent payable, or negotiated or renegotiated  
19 under circumstances, established by public record, clearly showing that  
20 the contract rent was the maximum attainable by the lessor: PROVIDED,  
21 That after January 1, 1986, with respect to any lease which has been in  
22 effect for ten years or more without renegotiation, taxable rent may be  
23 established by procedures set forth in subsection (b) of this  
24 subsection. All other leasehold interests shall be subject to the  
25 determination of taxable rent under the terms of subsection (b) of this  
26 subsection.

27 (a) "Contract rent" shall mean 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 the  
30 lessor according to the requirements of the lease or agreement,

1 including any rents paid by a sublessee; expenditures for the  
2 protection of the lessor's interest when required by the terms of the  
3 lease or agreement; and expenditures for improvements to the property  
4 to the extent that such improvements become the property of the lessor.  
5 Where the consideration conveyed for the leasehold interest is made in  
6 combination with payment for concession or other rights granted by the  
7 lessor, only that portion of such payment which represents  
8 consideration for the leasehold interest shall be part of contract  
9 rent.

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

1 Any prepaid contract rent shall be considered to have been paid in  
2 the year due and not in the year actually paid with respect to  
3 prepayment for a period of more than one year. Expenditures for  
4 improvements with a useful life of more than one year which are  
5 included as part of contract rent shall be treated as prepaid contract  
6 rent and prorated over the useful life of the improvement or the  
7 remaining term of the lease or agreement if the useful life is in  
8 excess of the remaining term of the lease or agreement. Rent prepaid  
9 prior to January 1, 1976, shall be prorated from the date of  
10 prepayment.

11 With respect to a "product lease", the value of agricultural  
12 products received as rent shall be the value at the place of delivery  
13 as of the fifteenth day of the month of delivery; with respect to all  
14 other products received as contract rent, the value shall be that value  
15 determined at the time of sale under terms of the lease.

16 (b) If it shall be determined by the department of revenue, upon  
17 examination of a lessee's accounts or those of a lessor of publicly  
18 owned property, that a lessee is occupying or using publicly owned  
19 property in such a manner as to create a leasehold interest and that  
20 such leasehold interest has not been established through competitive  
21 bidding, or negotiated in accordance with statutory requirements  
22 regarding the rent payable, or negotiated under circumstances,  
23 established by public record, clearly showing that the contract rent  
24 was the maximum attainable by the lessor, the department may establish  
25 a taxable rent computation for use in determining the tax payable under  
26 authority granted in this chapter based upon the following criteria:  
27 (i) Consideration shall be given to rental being paid to other lessors  
28 by lessees of similar property for similar purposes over similar  
29 periods of time; (ii) consideration shall be given to what would be  
30 considered a fair rate of return on the market value of the property

1 leased less reasonable deductions for any restrictions on use, special  
2 operating requirements or provisions for concurrent use by the lessor,  
3 another person or the general public.

4 (3) "Product lease" as used in this chapter shall mean a lease of  
5 property for use in the production of agricultural or marine products  
6 to the extent that such lease provides for the contract rent to be paid  
7 by the delivery of a stated percentage of the production of such  
8 agricultural or marine products to the credit of the lessor or the  
9 payment to the lessor of a stated percentage of the proceeds from the  
10 sale of such products.

11 (4) "Renegotiated" means a change in the lease agreement which  
12 changes the agreed time of possession, restrictions on use, the rate of  
13 the cash rental or of any other consideration payable by the lessee to  
14 or for the benefit of the lessor, other than any such change required  
15 by the terms of the lease or agreement, except that a lease for ten  
16 years or longer that calls for changes in rent on a set schedule of at  
17 least every five years shall be considered a renegotiated lease, if the  
18 change in rent is based on a standard state or federal index such as  
19 the consumer price index. In addition "renegotiated" shall mean a  
20 continuation of possession by the lessee beyond the date when, under  
21 the terms of the lease agreement, the lessee had the right to vacate  
22 the premises without any further liability to the lessor.

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

24 **Sec. 2.** RCW 82.29A.130 and 1975-'76 2nd ex.s. c 61 s 13 are each  
25 amended to read as follows:

26 The following leasehold interests shall be exempt from taxes  
27 imposed pursuant to RCW 82.29A.030 and 82.29A.040:

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

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

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

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

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

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

1 (7) All leasehold interests in any real property of any Indian or  
2 Indian tribe, band, or community that is held in trust by the United  
3 States or is subject to a restriction against alienation imposed by the  
4 United States: PROVIDED, That this exemption shall apply only where it  
5 is determined that contract rent paid is greater than or equal to  
6 ninety percent of fair market rental, to be determined by the  
7 department of revenue using the same criteria used to establish taxable  
8 rent in RCW 82.29A.020(2)(b).

9 (8) All leasehold interests for which annual taxable rent is less  
10 than two hundred fifty dollars per year. For purposes of this  
11 subsection leasehold interests held by the same lessee in contiguous  
12 properties owned by the same lessor shall be deemed a single leasehold  
13 interest.

14 (9) All leasehold interests which give use or possession of the  
15 leased property for a continuous period of less than thirty days:  
16 PROVIDED, That for purposes of this subsection, successive leases or  
17 lease renewals giving substantially continuous use of possession of the  
18 same property to the same lessee shall be deemed a single leasehold  
19 interest: PROVIDED FURTHER, That no leasehold interest shall be deemed  
20 to give use or possession for a period of less than thirty days solely  
21 by virtue of the reservation by the public lessor of the right to use  
22 the property or to allow third parties to use the property on an  
23 occasional, temporary basis.

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

28 (11) All leasehold interests in any publicly owned real or personal  
29 property to the extent such leasehold interests arises solely by virtue  
30 of a contract for public improvements or work executed under the public

1 works statutes of this state or of the United States between the public  
2 owner of the property and a contractor.

3 (12) All leasehold interests held by a lessee who would qualify for  
4 a senior citizen property tax exemption, if the leasehold property was  
5 held in fee simple ownership: PROVIDED, That a lessee who qualifies  
6 for a partial senior citizen property tax exemption shall receive a  
7 leasehold excise tax reduction of an equal percentage.

8 **Sec. 3.** RCW 82.29A.060 and 1975-'76 2nd ex.s. c 61 s 6 are each  
9 amended to read as follows:

10 All administrative provisions and appeal procedures in chapters  
11 82.02 and 82.32 RCW, as now or hereafter amended shall be applicable to  
12 taxes imposed pursuant to this chapter: PROVIDED, That this section  
13 shall not authorize the issuance of any levy upon any property owned by  
14 the public lessor.

15 In selecting leasehold excise tax returns for audit the department  
16 of revenue shall give priority to any return an audit of which is  
17 specifically requested in writing by the county assessor or treasurer  
18 or other chief financial officer of any city or county affected by such  
19 return. Notwithstanding the provisions of RCW 82.32.330, findings of  
20 fact and determinations of the amount of taxable rent made pursuant to  
21 the provisions of this chapter shall be open to public inspection at  
22 all reasonable times.