
SENATE BILL 6389

State of Washington

53rd Legislature

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By Senators Oke, Erwin, Nelson, McDonald, Winsley, Hochstatter, Schow and West

Read first time 01/21/94. Referred to Committee on Ways & Means.

1 AN ACT Relating to the taxation of physical fitness services;
2 amending RCW 82.04.050, 82.04.290, and 82.04.2201; and providing an
3 effective date.

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

5 **Sec. 1.** RCW 82.04.050 and 1993 sp.s. c 25 s 301 are each amended
6 to read as follows:

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

14 (a) Purchases for the purpose of resale as tangible personal
15 property in the regular course of business without intervening use by
16 such person; or

17 (b) Installs, repairs, cleans, alters, imprints, improves,
18 constructs, or decorates real or personal property of or for consumers,
19 if such tangible personal property becomes an ingredient or component

1 of such real or personal property without intervening use by such
2 person; or

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

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

14 (e) Purchases for the purpose of providing the property to
15 consumers as part of competitive telephone service, as defined in RCW
16 82.04.065. The term shall include every sale of tangible personal
17 property which is used or consumed or to be used or consumed in the
18 performance of any activity classified as a "sale at retail" or "retail
19 sale" even though such property is resold or utilized as provided in
20 (a), (b), (c), (d), or (e) of this subsection following such use. The
21 term also means every sale of tangible personal property to persons
22 engaged in any business which is taxable under RCW 82.04.280 (2) and
23 (7) and 82.04.290.

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

27 (a) The installing, repairing, cleaning, altering, imprinting, or
28 improving of tangible personal property of or for consumers, including
29 charges made for the mere use of facilities in respect thereto, but
30 excluding sales of laundry service to members by nonprofit associations
31 composed exclusively of nonprofit hospitals, and excluding services
32 rendered in respect to live animals, birds and insects;

33 (b) The constructing, repairing, decorating, or improving of new or
34 existing buildings or other structures under, upon, or above real
35 property of or for consumers, including the installing or attaching of
36 any article of tangible personal property therein or thereto, whether
37 or not such personal property becomes a part of the realty by virtue of
38 installation, and shall also include the sale of services or charges

1 made for the clearing of land and the moving of earth excepting the
2 mere leveling of land used in commercial farming or agriculture;

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

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

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

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

33 (g) The sale of or charge made for tangible personal property,
34 labor and services to persons taxable under (a), (b), (c), (d), (e),
35 and (f) of this subsection when such sales or charges are for property,
36 labor and services which are used or consumed in whole or in part by
37 such persons in the performance of any activity defined as a "sale at
38 retail" or "retail sale" even though such property, labor and services
39 may be resold after such use or consumption. Nothing contained in this

1 subsection shall be construed to modify subsection (1) of this section
2 and nothing contained in subsection (1) of this section shall be
3 construed to modify this subsection.

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

9 (a) Amusement and recreation services including but not limited to
10 golf, pool, billiards, skating, bowling, ski lifts and tows, and
11 others;

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

13 (c) Credit bureau services;

14 (d) Automobile parking and storage garage services;

15 (e) Landscape maintenance and horticultural services but excluding
16 horticultural services provided to farmers;

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

19 (g) Guided tours and guided charters; and

20 (h) The following personal services: ((Physical—fitness
21 services,)) Tanning salon services, tattoo parlor services, massage
22 services, steam bath services, turkish bath services, escort services,
23 and dating services.

24 (4) The term shall also include the renting or leasing of tangible
25 personal property to consumers and the rental of equipment with an
26 operator.

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

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

37 (7) The term shall also not include sales of feed, seed, seedlings,
38 fertilizer, agents for enhanced pollination including insects such as
39 bees, and spray materials to persons who participate in the federal

1 conservation reserve program or its successor administered by the
2 United States department of agriculture, or to farmers for the purpose
3 of producing for sale any agricultural product, nor shall it include
4 sales of chemical sprays or washes to persons for the purpose of post-
5 harvest treatment of fruit for the prevention of scald, fungus, mold,
6 or decay.

7 (8) The term shall not include the sale of or charge made for labor
8 and services rendered in respect to the constructing, repairing,
9 decorating, or improving of new or existing buildings or other
10 structures under, upon, or above real property of or for the United
11 States, any instrumentality thereof, or a county or city housing
12 authority created pursuant to chapter 35.82 RCW, including the
13 installing, or attaching of any article of tangible personal property
14 therein or thereto, whether or not such personal property becomes a
15 part of the realty by virtue of installation. Nor shall the term
16 include the sale of services or charges made for the clearing of land
17 and the moving of earth of or for the United States, any
18 instrumentality thereof, or a county or city housing authority.

19 **Sec. 2.** RCW 82.04.290 and 1993 sp.s. c 25 s 203 are each amended
20 to read as follows:

21 (1) Upon every person engaging within this state in the business of
22 providing selected business services other than or in addition to those
23 enumerated in RCW 82.04.250 or 82.04.270; as to such persons the amount
24 of tax on account of such activities shall be equal to the gross income
25 of the business multiplied by the rate of 2.5 percent.

26 (2) Upon every person engaging within this state in banking, loan,
27 security, investment management, investment advisory, or other
28 financial businesses; as to such persons, the amount of the tax with
29 respect to such business shall be equal to the gross income of the
30 business, multiplied by the rate of 1.70 percent.

31 (3) Upon every person engaging within this state in the business of
32 providing physical fitness services not otherwise classified as a sale
33 of retail; as to such persons, the amount of the tax with respect to
34 such business shall be equal to the gross income of the business,
35 multiplied by the rate of 0.471 percent.

36 (4) Upon every person engaging within this state in any business
37 activity other than or in addition to those enumerated in RCW
38 82.04.230, 82.04.240, 82.04.250, 82.04.255, 82.04.260, 82.04.270, and

1 82.04.280, and subsections (1) (~~(and (2))~~) through (3) of this section;
2 as to such persons the amount of tax on account of such activities
3 shall be equal to the gross income of the business multiplied by the
4 rate of 2.0 percent. This section includes, among others, and without
5 limiting the scope hereof (whether or not title to materials used in
6 the performance of such business passes to another by accession,
7 confusion or other than by outright sale), persons engaged in the
8 business of rendering any type of service which does not constitute a
9 "sale at retail" or a "sale at wholesale." The value of advertising,
10 demonstration, and promotional supplies and materials furnished to an
11 agent by his principal or supplier to be used for informational,
12 educational and promotional purposes shall not be considered a part of
13 the agent's remuneration or commission and shall not be subject to
14 taxation under this section.

15 **Sec. 3.** RCW 82.04.2201 and 1993 sp.s. c 25 s 204 are each amended
16 to read as follows:

17 There is levied and shall be collected for the period July 1, 1993,
18 through June 30, 1997, from every person for the act or privilege of
19 engaging in business activities, as a part of the tax imposed under RCW
20 82.04.220 through 82.04.280 and 82.04.290(~~(+3))~~) (4), except RCW
21 82.04.250(1) and 82.04.260(15), an additional tax equal to 6.5 percent
22 multiplied by the tax payable under those sections.

23 To facilitate collection of these additional taxes, the department
24 of revenue is authorized to adjust the basic rates of persons to which
25 this section applies in such manner as to reflect the amount to the
26 nearest one-thousandth of one percent of the additional tax hereby
27 imposed, adjusting ten-thousandths equal to or greater than five ten-
28 thousandths to the greater thousandth.

29 NEW SECTION. **Sec. 4.** This act shall take effect July 1, 1994, and
30 shall apply to physical fitness services rendered after July 1, 1994.

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