

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5129

Chapter 39, Laws of 1995

(partial veto)

54th Legislature
1995 Regular Session

Utility line clearing--Exclusion from sales tax

EFFECTIVE DATE: 7/1/95

Passed by the Senate March 9, 1995
YEAS 46 NAYS 1

JOEL PRITCHARD

President of the Senate

Passed by the House April 4, 1995
YEAS 95 NAYS 0

CLYDE BALLARD

**Speaker of the
House of Representatives**

Approved April 17, 1995, with the
exception of section 1, which is
vetoed.

MIKE LOWRY

Governor of the State of Washington

CERTIFICATE

I, Marty Brown, Secretary of the
Senate of the State of Washington,
do hereby certify that the attached
is **SUBSTITUTE SENATE BILL 5129** as
passed by the Senate and the House
of Representatives on the dates
hereon set forth.

MARTY BROWN

Secretary

FILED

April 17, 1995 - 3:39 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5129

Passed Legislature - 1995 Regular Session

State of Washington 54th Legislature 1995 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Sheldon, McCaslin, West and Snyder; by request of Department of Revenue)

Read first time 02/20/95.

1 AN ACT Relating to excluding utility line clearing from the
2 definition of retail sale; amending RCW 82.04.050; creating a new
3 section; providing an effective date; and declaring an emergency.

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

5 ****NEW SECTION.** Sec. 1. In 1993, the legislature extended retail*
6 *sales taxes to discretionary spending on landscape maintenance and*
7 *horticultural services. The legislature did not intend to extend, nor*
8 *did it believe it was extending, retail sales taxes to pruning,*
9 *trimming, repairing, removing, and clearing of trees and brush near*
10 *electric distribution or transmission lines or equipment by, or at the*
11 *direction of, an electric utility. The latter activities generally*
12 *require nondiscretionary expenditures by electric utilities in the*
13 *interests of public safety and minimizing unplanned power*
14 *interruptions.*

15 *The legislature finds that the department of revenue misinterpreted*
16 *the intent of the legislature by adopting a rule extending retail sales*
17 *taxes to pruning, trimming, repairing, removing, and clearing of trees*
18 *and brush near electric distribution or transmission lines or*
19 *equipment, performed by, or at the direction of, an electric utility.*

1 *It is therefore the intent of section 2 of this act to clarify that*
2 *these activities are not subject to the sales tax.*

3 *Sec. 1 was vetoed. See message at end of chapter.

4 **Sec. 2.** RCW 82.04.050 and 1993 sp.s. c 25 s 301 are each amended
5 to read as follows:

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

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

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

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

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

32 (e) Purchases for the purpose of providing the property to
33 consumers as part of competitive telephone service, as defined in RCW
34 82.04.065. The term shall include every sale of tangible personal
35 property which is used or consumed or to be used or consumed in the
36 performance of any activity classified as a "sale at retail" or "retail
37 sale" even though such property is resold or utilized as provided in
38 (a), (b), (c), (d), or (e) of this subsection following such use. The

1 term also means every sale of tangible personal property to persons
2 engaged in any business which is taxable under RCW 82.04.280 (2) and
3 (7) and 82.04.290.

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

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

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

21 (c) The charge for labor and services rendered in respect to
22 constructing, repairing, or improving any structure upon, above, or
23 under any real property owned by an owner who conveys the property by
24 title, possession, or any other means to the person performing such
25 construction, repair, or improvement for the purpose of performing such
26 construction, repair, or improvement and the property is then
27 reconveyed by title, possession, or any other means to the original
28 owner;

29 (d) The sale of or charge made for labor and services rendered in
30 respect to the cleaning, fumigating, razing or moving of existing
31 buildings or structures, but shall not include the charge made for
32 janitorial services; and for purposes of this section the term
33 "janitorial services" shall mean those cleaning and caretaking services
34 ordinarily performed by commercial janitor service businesses
35 including, but not limited to, wall and window washing, floor cleaning
36 and waxing, and the cleaning in place of rugs, drapes and upholstery.
37 The term "janitorial services" does not include painting, papering,
38 repairing, furnace or septic tank cleaning, snow removal or
39 sandblasting;

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

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

12 (g) The sale of or charge made for tangible personal property,
13 labor and services to persons taxable under (a), (b), (c), (d), (e),
14 and (f) of this subsection when such sales or charges are for property,
15 labor and services which are used or consumed in whole or in part by
16 such persons in the performance of any activity defined as a "sale at
17 retail" or "retail sale" even though such property, labor and services
18 may be resold after such use or consumption. Nothing contained in this
19 subsection shall be construed to modify subsection (1) of this section
20 and nothing contained in subsection (1) of this section shall be
21 construed to modify this subsection.

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

27 (a) Amusement and recreation services including but not limited to
28 golf, pool, billiards, skating, bowling, ski lifts and tows, and
29 others;

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

31 (c) Credit bureau services;

32 (d) Automobile parking and storage garage services;

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

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

1 (g) Guided tours and guided charters; and

2 (h) The following personal services: Physical fitness services,
3 tanning salon services, tattoo parlor services, massage services, steam
4 bath services, turkish bath services, escort services, and dating
5 services.

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

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

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

19 (7) The term shall also not include sales of feed, seed, seedlings,
20 fertilizer, agents for enhanced pollination including insects such as
21 bees, and spray materials to persons who participate in the federal
22 conservation reserve program or its successor administered by the
23 United States department of agriculture, or to farmers for the purpose
24 of producing for sale any agricultural product, nor shall it include
25 sales of chemical sprays or washes to persons for the purpose of post-
26 harvest treatment of fruit for the prevention of scald, fungus, mold,
27 or decay.

28 (8) The term shall not include the sale of or charge made for labor
29 and services rendered in respect to the constructing, repairing,
30 decorating, or improving of new or existing buildings or other
31 structures under, upon, or above real property of or for the United
32 States, any instrumentality thereof, or a county or city housing
33 authority created pursuant to chapter 35.82 RCW, including the
34 installing, or attaching of any article of tangible personal property
35 therein or thereto, whether or not such personal property becomes a
36 part of the realty by virtue of installation. Nor shall the term
37 include the sale of services or charges made for the clearing of land
38 and the moving of earth of or for the United States, any
39 instrumentality thereof, or a county or city housing authority.

1 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of the
3 state government and its existing public institutions, and shall take
4 effect July 1, 1995.

Passed the Senate March 9, 1995.

Passed the House April 4, 1995.

Approved by the Governor April 17, 1995, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State April 17, 1995.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 1, Substitute Senate Bill No. 5129 entitled:

"AN ACT Relating to excluding utility line clearing from the definition of retail sale;"

This measure removes pruning, trimming, repairing, removing, and clearing trees and brush near electric transmission or distribution lines or equipment from the definition of retail sale, thereby exempting such activity from state and local retail sales taxes. By doing so, this activity is changed from the retailing classification to the service classification for purposes of the state's business and occupation tax. The measure is effective on July 1, 1995.

Section 1 of Substitute Senate Bill No. 5129 states that the 1993 Legislature did not intend to extend, nor did it believe it was extending, the sales tax to the trimming and clearing of trees and brush near power lines. The language further asserts that the Department of Revenue misinterpreted legislative intent by adopting a rule extending the sales tax to such services and that it is the intent of section 2 of the bill to clarify that these activities are not subject to the sales tax.

I believe the Department of Revenue had no alternative authority but to include the activity in the sales tax base through its rule. The language in the 1993 legislation pertaining to this question (E2SSB 5967) does not indicate that tree trimming near power lines was to be excluded from the term "landscape maintenance and horticultural services." In addition, there was no expression at the time by the legislature that the department could legally rely upon to exclude such activity from the sales tax base. It should be noted that when the sales tax was applied to these services by this previous legislature, horticultural services "provided to farmers" were excluded from application of the tax. No comparable explicit exclusion was provided for utility line clearing services.

As a result, section 2 of Substitute Senate Bill No. 5129 serves as a substantive change in law with application from July 1, 1995 forward. The presence of section 1, however, creates ambiguity and may encourage those who have paid sales tax on tree trimming near utility lines since the 1993 law change to believe they are entitled to refunds. Administering such claims and potentially litigating this issue would lead to an unnecessary expenditure of state funds and resources.

For these reasons, I have vetoed section 1 of Substitute Senate Bill No. 5129.

With the exception of section 1, Substitute Senate Bill No. 5129 is approved."

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