

VETO MESSAGE ON 5129-S

April 17, 1995

To the Honorable President and Members,
The Senate of the State of Washington
Ladies and Gentlemen:

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.

Respectfully submitted,
Mike Lowry
Governor

