
SUBSTITUTE SENATE BILL 5528

State of Washington

56th Legislature

1999 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Loveland, Horn and Winsley; by request of Department of Revenue)

Read first time 02/26/1999.

1 AN ACT Relating to the meaning of the phrase "services rendered in
2 respect to constructing" for purposes of the business and occupation
3 and sales and use taxes; adding a new section to chapter 82.04 RCW; and
4 creating a new section.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that the taxation
7 of "services rendered in respect to constructing buildings or other
8 structures" has generally included the entire transaction for
9 construction, including certain services provided directly to the
10 consumer or owner rather than the person engaged in the performance of
11 the constructing activity. Changes in business practices and recent
12 administrative and court decisions have confused the issue. It is the
13 intent of the legislature to clarify which services, if standing alone
14 and not part of the construction agreement, are taxed as retail or
15 wholesale sales, and which services will continue to be taxed as a
16 service.

17 (2) It is further the intent of the legislature to confirm that the
18 entire price for the construction of a building or other structure for
19 a consumer or owner continues to be a retail sale, even though some of

1 the individual services reflected in the price, if provided alone,
2 would be taxed as services and not as separate retail or wholesale
3 sales.

4 (3) Therefore, the intent of this act is to maintain the
5 application of the law and not to extend retail treatment to activities
6 not previously treated as retail activities. Services that are
7 otherwise subject to tax as a service under RCW 82.04.290(2), including
8 but not limited to architectural, engineering, surveying, flagging,
9 accounting, legal, consulting, or administrative services, remain
10 subject to tax as a service under RCW 82.04.290(2), if the person
11 responsible for the performance of those services is not also
12 responsible for the performance of the constructing, building,
13 repairing, improving, or decorating activities. Additionally, unless
14 otherwise provided by law, a person entering into an agreement to be
15 responsible for the performance of services otherwise subject to tax as
16 a service under RCW 82.04.290(2), and subsequently entering into a
17 separate agreement to be responsible for the performance of
18 constructing, building, repairing, improving, or decorating activities,
19 is subject to tax as a service under RCW 82.04.290(2) with respect to
20 the first agreement, and is subject to tax under the appropriate
21 section of chapter 82.04 RCW with respect to the second agreement, if
22 at the time of the first agreement there was no contemplation by the
23 parties, as evidenced by the facts, that the agreements would be
24 awarded to the same person.

25 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.04 RCW
26 to read as follows:

27 (1) As used in RCW 82.04.050, the term "services rendered in
28 respect to" means those services that are directly related to the
29 constructing, building, repairing, improving, and decorating of
30 buildings or other structures and that are performed by a person who is
31 responsible for the performance of the constructing, building,
32 repairing, improving, or decorating activity. The term does not
33 include services such as architectural, engineering, surveying,
34 flagging, accounting, legal, consulting, or administrative services
35 provided to the consumer of, or person responsible for performing, the
36 constructing, building, repairing, improving, or decorating services.

37 (2) A contract or agreement under which a person is responsible for
38 both services that would otherwise be subject to tax as a service under

1 RCW 82.04.290(2) and also constructing, building, repairing, improving,
2 or decorating activities that would otherwise be subject to tax under
3 another section of this chapter is subject to the tax that applies to
4 the predominant activity under the contract or agreement.

5 (3) Unless otherwise provided by law, a contract or agreement under
6 which a person is responsible for activities that are subject to tax as
7 a service under RCW 82.04.290(2), and a subsequent contract or
8 agreement under which the same person is responsible for constructing,
9 building, repairing, improving, or decorating activities subject to tax
10 under another section of this chapter, shall not be combined and taxed
11 as a single activity if at the time of the first contract or agreement
12 it was not contemplated by the parties, as evidenced by the facts, that
13 the same person would be awarded both contracts.

14 (4) As used in this section "responsible for the performance" means
15 that the person is obligated to perform the activities, either
16 personally or through a third party. A person who reviews work for a
17 consumer, retailer, or wholesaler but does not supervise or direct the
18 work is not responsible for the performance of the work. A person who
19 is financially obligated for the work, such as a bank, but who does not
20 have control over the work itself, is not responsible for the
21 performance of the work.

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