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SENATE BILL 5689

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State of Washington                      56th Legislature                      1999 Regular Session

By Senators B. Sheldon, Swecker, Kohl-Welles and Johnson

Read first time 02/03/1999. Referred to Committee on Ways & Means.

1            AN ACT Relating to the taxation of physical fitness services;  
2 reenacting and amending RCW 82.04.050, 82.04.290, 82.04.290, and  
3 82.04.290; creating new sections; providing effective dates; providing  
4 expiration dates; and declaring an emergency.

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

6            **Sec. 1.** RCW 82.04.050 and 1998 c 332 s 2, 1998 c 315 s 1, 1998 c  
7 308 s 1, and 1998 c 275 s 1 are each reenacted and amended to read as  
8 follows:

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

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

1 (b) Installs, repairs, cleans, alters, imprints, improves,  
2 constructs, or decorates real or personal property of or for consumers,  
3 if such tangible personal property becomes an ingredient or component  
4 of such real or personal property without intervening use by such  
5 person; or

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

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

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

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

30 (a) The installing, repairing, cleaning, altering, imprinting, or  
31 improving of tangible personal property of or for consumers, including  
32 charges made for the mere use of facilities in respect thereto, but  
33 excluding charges made for the use of coin-operated laundry facilities  
34 when such facilities are situated in an apartment house, rooming house,  
35 or mobile home park for the exclusive use of the tenants thereof, and  
36 also excluding sales of laundry service to nonprofit health care  
37 facilities, and excluding services rendered in respect to live animals,  
38 birds and insects;

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

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

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

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

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

1 (g) The sale of or charge made for tangible personal property,  
2 labor and services to persons taxable under (a), (b), (c), (d), (e),  
3 and (f) of this subsection when such sales or charges are for property,  
4 labor and services which are used or consumed in whole or in part by  
5 such persons in the performance of any activity defined as a "sale at  
6 retail" or "retail sale" even though such property, labor and services  
7 may be resold after such use or consumption. Nothing contained in this  
8 subsection shall be construed to modify subsection (1) of this section  
9 and nothing contained in subsection (1) of this section shall be  
10 construed to modify this subsection.

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

16 (a) Amusement and recreation services including but not limited to  
17 golf, pool, billiards, skating, bowling, ski lifts and tows, day trips  
18 for sightseeing purposes, and others, when provided to consumers;

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

20 (c) Credit bureau services;

21 (d) Automobile parking and storage garage services;

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

27 (f) Service charges associated with tickets to professional  
28 sporting events; and

29 (g) The following personal services: ((Physical—fitness  
30 services,)) Tanning salon services, tattoo parlor services, steam bath  
31 services, turkish bath services, escort services, and dating services.

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

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

37 (6) The term shall also include the sale of canned software other  
38 than a sale to a person who presents a resale certificate under RCW  
39 82.04.470, regardless of the method of delivery to the end user, but

1 shall not include custom software or the customization of canned  
2 software.

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

11 (8) The term shall also not include sales of chemical sprays or  
12 washes to persons for the purpose of postharvest treatment of fruit for  
13 the prevention of scald, fungus, mold, or decay, nor shall it include  
14 sales of feed, seed, seedlings, fertilizer, agents for enhanced  
15 pollination including insects such as bees, and spray materials to:  
16 (a) Persons who participate in the federal conservation reserve  
17 program, the environmental quality incentives program, the wetlands  
18 reserve program, and the wildlife habitat incentives program, or their  
19 successors administered by the United States department of agriculture;  
20 (b) farmers for the purpose of producing for sale any agricultural  
21 product; and (c) farmers acting under cooperative habitat development  
22 or access contracts with an organization exempt from federal income tax  
23 under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of  
24 fish and wildlife to produce or improve wildlife habitat on land that  
25 the farmer owns or leases.

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

1 radioactive waste and other byproducts of weapons production and  
2 nuclear research and development.

3 (10) Until July 1, 2003, the term shall not include the sale of or  
4 charge made for labor and services rendered for environmental remedial  
5 action as defined in RCW 82.04.2635(2).

6 **Sec. 2.** RCW 82.04.290 and 1998 c 331 s 2, 1998 c 312 s 8, and 1998  
7 c 308 s 4 are each reenacted and amended to read as follows:

8 EFFECTIVE UNTIL JULY 1, 2001. (1) Upon every person engaging  
9 within this state in the business of providing international investment  
10 management services, as to such persons, the amount of tax with respect  
11 to such business shall be equal to the gross income or gross proceeds  
12 of sales of the business multiplied by a rate of 0.275 percent.

13 (2) Upon every person engaging within this state in the business of  
14 providing physical fitness services not otherwise classified as a sale  
15 of retail; as to such persons, the amount of the tax with respect to  
16 such business shall be equal to the gross income of the business,  
17 multiplied by the rate of 0.471 percent.

18 (3) Upon every person engaging within this state in any business  
19 activity other than or in addition to those enumerated in RCW  
20 82.04.230, 82.04.240, 82.04.250, 82.04.255, 82.04.260, 82.04.270,  
21 82.04.2905, 82.04.280, 82.04.2635, and 82.04.2907, and subsections (1)  
22 and (2) of this section; as to such persons the amount of tax on  
23 account of such activities shall be equal to the gross income of the  
24 business multiplied by the rate of 1.5 percent.

25 This section includes, among others, and without limiting the scope  
26 hereof (whether or not title to materials used in the performance of  
27 such business passes to another by accession, confusion or other than  
28 by outright sale), persons engaged in the business of rendering any  
29 type of service which does not constitute a "sale at retail" or a "sale  
30 at wholesale." The value of advertising, demonstration, and  
31 promotional supplies and materials furnished to an agent by his or her  
32 principal or supplier to be used for informational, educational and  
33 promotional purposes shall not be considered a part of the agent's  
34 remuneration or commission and shall not be subject to taxation under  
35 this section.

1       **Sec. 3.** RCW 82.04.290 and 1998 c 343 s 4, 1998 c 331 s 2, 1998 c  
2 312 s 8, and 1998 c 308 s 4 are each reenacted and amended to read as  
3 follows:

4       EFFECTIVE JULY 1, 2001, UNTIL JULY 1, 2003. (1) Upon every person  
5 engaging within this state in the business of providing international  
6 investment management services, as to such persons, the amount of tax  
7 with respect to such business shall be equal to the gross income or  
8 gross proceeds of sales of the business multiplied by a rate of 0.275  
9 percent.

10       (2) Upon every person engaging within this state in the business of  
11 providing physical fitness services not otherwise classified as a sale  
12 of retail; as to such persons, the amount of the tax with respect to  
13 such business shall be equal to the gross income of the business,  
14 multiplied by the rate of 0.471 percent.

15       (3) Upon every person engaging within this state in any business  
16 activity other than or in addition to those enumerated in RCW  
17 82.04.230, 82.04.240, 82.04.250, 82.04.255, 82.04.260, 82.04.270,  
18 82.04.2905, 82.04.280, 82.04.2635, 82.04.2907, and 82.04.272, and  
19 subsections (1) and (2) of this section; as to such persons the amount  
20 of tax on account of such activities shall be equal to the gross income  
21 of the business multiplied by the rate of 1.5 percent.

22       This section includes, among others, and without limiting the scope  
23 hereof (whether or not title to materials used in the performance of  
24 such business passes to another by accession, confusion or other than  
25 by outright sale), persons engaged in the business of rendering any  
26 type of service which does not constitute a "sale at retail" or a "sale  
27 at wholesale." The value of advertising, demonstration, and  
28 promotional supplies and materials furnished to an agent by his or her  
29 principal or supplier to be used for informational, educational and  
30 promotional purposes shall not be considered a part of the agent's  
31 remuneration or commission and shall not be subject to taxation under  
32 this section.

33       **Sec. 4.** RCW 82.04.290 and 1998 c 343 s 4, 1998 c 331 s 2, 1998 c  
34 312 s 8, and 1998 c 308 s 5 are each reenacted and amended to read as  
35 follows:

36       EFFECTIVE JULY 1, 2003. (1) Upon every person engaging within this  
37 state in the business of providing international investment management  
38 services, as to such persons, the amount of tax with respect to such

1 business shall be equal to the gross income or gross proceeds of sales  
2 of the business multiplied by a rate of 0.275 percent.

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

8 (3) Upon every person engaging within this state in any business  
9 activity other than or in addition to those enumerated in RCW  
10 82.04.230, 82.04.240, 82.04.250, 82.04.255, 82.04.260, 82.04.270,  
11 82.04.2905, 82.04.280, 82.04.2907, and 82.04.272, and subsections (1)  
12 and (2) of this section; as to such persons the amount of tax on  
13 account of such activities shall be equal to the gross income of the  
14 business multiplied by the rate of 1.5 percent.

15 This section includes, among others, and without limiting the scope  
16 hereof (whether or not title to materials used in the performance of  
17 such business passes to another by accession, confusion or other than  
18 by outright sale), persons engaged in the business of rendering any  
19 type of service which does not constitute a "sale at retail" or a "sale  
20 at wholesale." The value of advertising, demonstration, and  
21 promotional supplies and materials furnished to an agent by his or her  
22 principal or supplier to be used for informational, educational and  
23 promotional purposes shall not be considered a part of the agent's  
24 remuneration or commission and shall not be subject to taxation under  
25 this section.

26 NEW SECTION. **Sec. 5.** This act applies to physical fitness  
27 services rendered on and after July 1, 1999.

28 NEW SECTION. **Sec. 6.** Captions used in this act are not any part  
29 of the law.

30 NEW SECTION. **Sec. 7.** This act is necessary for the immediate  
31 preservation of the public peace, health, or safety, or support of the  
32 state government and its existing public institutions, and takes effect  
33 July 1, 1999, except section 4 of this act takes effect July 1, 2003.

34 NEW SECTION. **Sec. 8.** (1) Section 2 of this act expires July 1,  
35 2001.



1 (2) Section 3 of this act expires July 1, 2003.

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