H-2170.1

SUBSTITUTE HOUSE BILL 1737

State of Washington 58th Legislature 2003 Regular Session

By House Committee on Finance (originally sponsored by Representatives McIntire, Morris, Conway and Simpson)

READ FIRST TIME 03/04/03.

- AN ACT Relating to repealing outdated and unused tax preferences; amending RCW 15.76.165, 43.52.460, 82.04.050, 82.04.260, 82.08.0255, and 82.12.0256; creating a new section; repealing RCW 82.35.010, 82.35.020, 82.35.040, 82.35.050, 82.35.070, 82.35.080, 82.35.900, 82.61.010, 82.61.030, 82.61.050, 82.61.060, 82.61.080, 82.61.090, 82.61.900, 82.61.901, 48.14.029, 82.04.4329, 82.08.0276, 82.08.0295, 82.29A.135, 84.56.450, and 84.36.300; and providing an effective date.
- 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:
- 9 <u>NEW SECTION.</u> **Sec. 1.** The legislature finds that a number of tax exemptions, deductions, credits, and other preferences have outlived their usefulness. State records show no taxpayers have claimed relief under these tax preferences in recent years. The intent of this act is to update and simplify the tax statutes by repealing these outdated tax preferences.
- 15 **Sec. 2.** RCW 15.76.165 and 1973 c 117 s 1 are each amended to read 16 as follows:
- Any county which owns or leases property from another governmental agency and provides such property for area or county and district

p. 1 SHB 1737

agricultural fair purposes may apply to the director for special assistance in carrying out necessary capital improvements to such property and maintenance of the appurtenances thereto((, and in the event such property and capital improvements are leased to any organization conducting an agricultural fair pursuant to chapter 15.76 RCW and chapter 257 of the Laws of 1955, such leasehold and such leased property shall be exempt from real and personal property taxation)).

8 Sec. 3. RCW 43.52.460 and 1971 ex.s. c 75 s 1 are each amended to 9 read as follows:

Any joint operating agency formed under this chapter shall pay in lieu of taxes payments in the same amounts as paid by public utility districts. Such payments shall be distributed in accordance with the provisions applicable to public utility districts((: PROVIDED, HOWEVER, That such tax shall not apply to steam generated electricity produced by a nuclear steam powered electric generating facility constructed or acquired by a joint operating agency and in operation prior to May 17, 1971)).

- **Sec. 4.** RCW 82.04.050 and 2002 c 178 s 1 are each amended to read 19 as follows:
 - (1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who presents a resale certificate under RCW 82.04.470 and who:
 - (a) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person, but a purchase for the purpose of resale by a regional transit authority under RCW 81.112.300 is not a sale for resale; or
 - (b) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

SHB 1737 p. 2

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

- (d) ((Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or
- (e))) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), or (d)(($\frac{1}{1}$ or (e))) of this subsection following such use. The term also means every sale of tangible personal property to persons engaged in any business which is taxable under RCW 82.04.280 (2) and (7) and 82.04.290.
- (2) The term "sale at retail" or "retail sale" shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:
- (a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of coin-operated laundry facilities when such facilities are situated in an apartment house, rooming house, or mobile home park for the exclusive use of the tenants thereof, and also excluding sales of laundry service to nonprofit health care facilities, and excluding services rendered in respect to live animals, birds and insects;
- (b) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of

p. 3 SHB 1737

installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

- (c) The charge for labor and services rendered in respect to constructing, repairing, or improving any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;
- (d) The sale of or charge made for labor and services rendered in respect to the cleaning, fumigating, razing or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;
 - (e) The sale of or charge made for labor and services rendered in respect to automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;
- (f) The sale of and charge made for the furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it shall be presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;

- (g) The sale of or charge made for tangible personal property, labor and services to persons taxable under (a), (b), (c), (d), (e), and (f) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection shall be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section shall be construed to modify this subsection.
- (3) The term "sale at retail" or "retail sale" shall include the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:
- (a) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others, when provided to consumers;
 - (b) Abstract, title insurance, and escrow services;
 - (c) Credit bureau services;

- (d) Automobile parking and storage garage services;
- (e) Landscape maintenance and horticultural services but excluding
 (i) horticultural services provided to farmers and (ii) pruning,
 trimming, repairing, removing, and clearing of trees and brush near
 electric transmission or distribution lines or equipment, if performed
 by or at the direction of an electric utility;
 - (f) Service charges associated with tickets to professional sporting events; and
 - (g) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.
 - (4) The term shall also include the renting or leasing of tangible personal property to consumers and the rental of equipment with an operator.
- 35 (5) The term shall also include the providing of telephone service, 36 as defined in RCW 82.04.065, to consumers.
 - (6) The term shall also include the sale of canned software other than a sale to a person who presents a resale certificate under RCW

p. 5 SHB 1737

82.04.470, regardless of the method of delivery to the end user, but shall not include custom software or the customization of canned software.

- (7) The term shall not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.
- (8) The term shall also not include sales of chemical sprays or washes to persons for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, nor shall it include sales of feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials to:

 (a) Persons who participate in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, and the wildlife habitat incentives program, or their successors administered by the United States department of agriculture;

 (b) farmers for the purpose of producing for sale any agricultural product; and (c) farmers acting under cooperative habitat development or access contracts with an organization exempt from federal income tax under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of fish and wildlife to produce or improve wildlife habitat on land that the farmer owns or leases.
- (9) The term shall not include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor shall the term include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor

- shall the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development.
 - (10) Until July 1, 2003, the term shall not include the sale of or charge made for labor and services rendered for environmental remedial action as defined in RCW 82.04.2635(2).

- 8 Sec. 5. RCW 82.04.260 and 2001 2nd sp.s. c 25 s 2 are each amended to read as follows:
 - (1) Upon every person engaging within this state in the business of manufacturing:
 - (a) Wheat into flour, barley into pearl barley, soybeans into soybean oil, canola into canola oil, canola meal, or canola byproducts, or sunflower seeds into sunflower oil; as to such persons the amount of tax with respect to such business shall be equal to the value of the flour, pearl barley, oil, canola meal, or canola byproduct manufactured, multiplied by the rate of 0.138 percent;
 - (b) Seafood products which remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured, multiplied by the rate of 0.138 percent;
 - (c) By canning, preserving, freezing, processing, or dehydrating fresh fruits and vegetables, or selling at wholesale fresh fruits and vegetables canned, preserved, frozen, processed, or dehydrated by the seller and sold to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business shall be equal to the value of the products canned, preserved, frozen, processed, or dehydrated multiplied by the rate of 0.138 percent. As proof of sale to a person who transports in the ordinary course of business goods out of this state, the seller shall annually provide a statement in a form prescribed by the department and retain the statement as a business record; and
 - (d) Dairy products that as of September 20, 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135, including byproducts from the manufacturing of the dairy products such as whey and casein; or selling the same to purchasers who transport in the ordinary course

p. 7 SHB 1737

of business the goods out of state; as to such persons the tax imposed shall be equal to the value of the products manufactured multiplied by the rate of 0.138 percent. As proof of sale to a person who transports in the ordinary course of business goods out of this state, the seller shall annually provide a statement in a form prescribed by the department and retain the statement as a business record.

- (2) Upon every person engaging within this state in the business of splitting or processing dried peas; as to such persons the amount of tax with respect to such business shall be equal to the value of the peas split or processed, multiplied by the rate of 0.138 percent.
- (3) Upon every nonprofit corporation and nonprofit association engaging within this state in research and development, as to such corporations and associations, the amount of tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.
- (4) Upon every person engaging within this state in the business of slaughtering, breaking and/or processing perishable meat products and/or selling the same at wholesale only and not at retail; as to such persons the tax imposed shall be equal to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent.
- (5) ((Upon every person engaging within this state in the business of making sales, at retail or wholesale, of nuclear fuel assemblies manufactured by that person, as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the assemblies multiplied by the rate of 0.275 percent.
- (6) Upon every person engaging within this state in the business of manufacturing nuclear fuel assemblies, as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured multiplied by the rate of 0.275 percent.
- (7)) Upon every person engaging within this state in the business of acting as a travel agent or tour operator; as to such persons the amount of the tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.
- (((8))) (6) Upon every person engaging within this state in business as an international steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo

agent; as to such persons the amount of the tax with respect to only international activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

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 $((\frac{9}{1}))$ Upon every person engaging within this state in the business of stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds derived from such activities multiplied by the rate of 0.275 percent. Persons subject to taxation under this subsection shall be exempt from payment of taxes imposed by chapter 82.16 RCW for that portion of their business subject to taxation under this subsection. Stevedoring and associated activities pertinent to the conduct of goods and commodities in waterborne interstate or foreign commerce are defined as all activities of a labor, service or transportation nature whereby cargo may be loaded or unloaded to or from vessels or barges, passing over, onto or under a wharf, pier, or similar structure; cargo may be moved to a warehouse or similar holding or storage yard or area to await further movement in import or export or may move to a consolidation freight station and be stuffed, unstuffed, containerized, separated or otherwise segregated or aggregated for delivery or loaded on any mode of transportation for delivery to its consignee. Specific activities included in this definition are: Wharfage, handling, unloading, moving of cargo to a convenient place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to plugging and unplugging refrigerator service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

(((10))) (8) Upon every person engaging within this state in the business of disposing of low-level waste, as defined in RCW 43.145.010; as to such persons the amount of the tax with respect to such business shall be equal to the gross income of the business, excluding any fees imposed under chapter 43.200 RCW, multiplied by the rate of 3.3 percent.

p. 9 SHB 1737

If the gross income of the taxpayer is attributable to activities both within and without this state, the gross income attributable to this state shall be determined in accordance with the methods of apportionment required under RCW 82.04.460.

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- $((\frac{11}{11}))$ (9) Upon every person engaging within this state as an insurance agent, insurance broker, or insurance solicitor licensed under chapter 48.17 RCW; as to such persons, the amount of the tax with respect to such licensed activities shall be equal to the gross income of such business multiplied by the rate of 0.484 percent.
- 10 $((\frac{12}{12}))$ (10) Upon every person engaging within this state in business as a hospital, as defined in chapter 70.41 RCW, that is 11 12 operated as a nonprofit corporation or by the state or any of its 13 political subdivisions, as to such persons, the amount of tax with 14 respect to such activities shall be equal to the gross income of the business multiplied by the rate of 0.75 percent through June 30, 1995, 15 16 and 1.5 percent thereafter. The moneys collected under this subsection 17 shall be deposited in the health services account created under RCW 18 43.72.900.
- 19 **Sec. 6.** RCW 82.08.0255 and 1998 c 176 s 4 are each amended to read 20 as follows:
- 21 (1) The tax levied by RCW 82.08.020 shall not apply to sales of((÷
 22 (a) Motor vehicle fuel used in aircraft by the manufacturer thereof
 23 for research, development, and testing purposes; and
 - (b))) motor vehicle and special fuel if:
 - $((\frac{1}{2}))$ (a) The fuel is purchased for the purpose of public transportation and the purchaser is entitled to a refund or an exemption under RCW 82.36.275 or 82.38.080(3); or
 - $((\frac{(ii)}{)})$ (b) The fuel is purchased by a private, nonprofit transportation provider certified under chapter 81.66 RCW and the purchaser is entitled to a refund or an exemption under RCW 82.36.285 or 82.38.080(1)(h); or
- $((\frac{(iii)}{)}))$ (c) The fuel is taxable under chapter 82.36 or 82.38 RCW.
- 33 (2) Any person who has paid the tax imposed by RCW 82.08.020 on the 34 sale of special fuel delivered in this state shall be entitled to a 35 credit or refund of such tax with respect to fuel subsequently 36 established to have been actually transported and used outside this

- 1 state by persons engaged in interstate commerce. The tax shall be
- 2 claimed as a credit or refunded through the tax reports required under
- 3 RCW 82.38.150.
- 4 **Sec. 7.** RCW 82.12.0256 and 1998 c 176 s 5 are each amended to read 5 as follows:
- The provisions of this chapter shall not apply in respect to the use of:
- 8 (1) ((Motor vehicle fuel used in aircraft by the manufacturer 9 thereof for research, development, and testing purposes; and
- 10 $\frac{(2)}{(2)}$) Special fuel purchased in this state upon which a refund is obtained as provided in RCW 82.38.180(2); and
- 12 $((\frac{3}{3}))$ (2) Motor vehicle and special fuel if:
- 13 (a) The fuel is used for the purpose of public transportation and 14 the purchaser is entitled to a refund or an exemption under RCW 15 82.36.275 or 82.38.080(3); or
- (b) The fuel is purchased by a private, nonprofit transportation provider certified under chapter 81.66 RCW and the purchaser is entitled to a refund or an exemption under RCW 82.36.285 or 82.38.080(1)(h); or
- 20 (c) The fuel is taxable under chapter 82.36 or 82.38 RCW: PROVIDED, That the use of motor vehicle and special fuel upon which a refund of the applicable fuel tax is obtained shall not be exempt under this subsection $((\frac{3}{2}))$ (2)(c), and the director of licensing shall deduct from the amount of such tax to be refunded the amount of tax due under this chapter and remit the same each month to the department of revenue.
- NEW SECTION. Sec. 8. The following acts or parts of acts are each repealed:
- 29 (1) RCW 82.35.010 (Intent) and 1979 ex.s. c 191 s 1;
- 30 (2) RCW 82.35.020 (Definitions) and 1996 c 186 s 521 & 1979 ex.s.
- 31 c 191 s 2;
- 32 (3) RCW 82.35.040 (Issuance of certificate--Limitations--Tabulation
- 33 of costs incurred--Administrative rules) and 1982 1st ex.s. c 2 s 3 &
- 34 1979 ex.s. c 191 s 4;
- 35 (4) RCW 82.35.050 (Credit against taxes--Conditions--Amount--
- 36 Limitations) and 1982 1st ex.s. c 2 s 1 & 1979 ex.s. c 191 s 5;

p. 11 SHB 1737

- 1 (5) RCW 82.35.070 (Issuance of certificate or supplement and notice 2 of refusal to issue certificate or supplement--Certified mail) and 1979 3 ex.s. c 191 s 7;
- 4 (6) RCW 82.35.080 (Revocation of certificate--Grounds--Continuance 5 of certificate--Liability for money saved--Technical assistance) and 6 1999 c 358 s 15, 1996 c 186 s 522, & 1979 ex.s. c 191 s 8;
- 7 (7) RCW 82.35.900 (Severability--1979 ex.s. c 191) and 1979 ex.s. 8 c 191 s 13;
- 9 (8) RCW 82.61.010 (Definitions) and 1995 1st sp.s. c 3 s 10, 1994 10 c 125 s 1, 1988 c 41 s 1, 1987 c 497 s 1, 1986 c 116 s 9, & 1985 ex.s.
- 11 c 2 s 1;
- 12 (9) RCW 82.61.030 (Tax deferral--Eligibility) and 1987 c 497 s 3 & 1985 ex.s. c 2 s 3;
- 14 (10) RCW 82.61.050 (Issuance of tax deferral certificate) and 1985 15 ex.s. c 2 s 4;
- 16 (11) RCW 82.61.060 (Repayment schedule) and 1987 c 497 s 4 & 1985 17 ex.s. c 2 s 5;
- 18 (12) RCW 82.61.080 (Applicability of general administrative provisions) and 1985 ex.s. c 2 s 7;
- 20 (13) RCW 82.61.090 (Applications and information subject to disclosure) and 1987 c 49 s 2;
- 22 (14) RCW 82.61.900 (Severability--1987 c 497) and 1987 c 497 s 5;
- 23 (15) RCW 82.61.901 (Severability--1988 c 41) and 1988 c 41 s 6;
- 24 (16) RCW 48.14.029 (Premium tax credit--New employment for 25 international service activities in eligible areas--Designation of 26 census tracts for eligibility--Records--Tax due upon ineligibility--27 Interest assessment--Information from employment security department) 28 and 1998 c 313 s 3;
- 29 (17) RCW 82.04.4329 (Deductions--Health insurance pool members--30 Deficit assessments) and 1987 c 431 s 24;
- 31 (18) RCW 82.08.0276 (Exemptions--Sales of wearing apparel for use only as a sample for display for sale) and 1980 c 37 s 42;
- 33 (19) RCW 82.08.0295 (Exemptions--Lease amounts and repurchase 34 amount for certain property under sale/leaseback agreement) and 1986 c 35 231 s 3;
- 36 (20) RCW 82.29A.135 (Exemption for leasehold interests in land, 37 buildings, machinery, etc., used to manufacture alcohol fuel--

- Exceptions--Limitations--Claims--Administrative rules) and 1985 c 371
 s 3 & 1980 c 157 s 2;
- 3 (21) RCW 82.12.02545 (Exemption--Use of naval aircraft training 4 equipment transferred due to base closure) and 1995 c 128 s 1;
- 5 (22) RCW 84.36.135 (Real and personal property of housing finance commission) and 1983 c 161 s 26;
- 7 (23) RCW 84.56.450 (Year 2000 failure--No interest or penalties--8 Payment of tax) and 1999 c 369 s 6; and
- 9 (24) RCW 84.36.300 (Stocks of merchandise, goods, wares or 10 material--Aircraft parts, etc.--When eligible for exemption) and 1973 11 c 149 s 2 & 1969 ex.s. c 124 s 1.
- 12 <u>NEW SECTION.</u> **Sec. 9.** This act takes effect July 1, 2005.

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p. 13 SHB 1737