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HOUSE BILL 2267

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State of Washington

58th Legislature

2003 Regular Session

By Representatives Gombosky, Sommers, Moeller, Cody, Conway, Fromhold and McIntire

Read first time 04/17/2003. Referred to Committee on Finance.

1 AN ACT Relating to revenue for dedicated accounts; amending RCW  
2 82.08.020, 82.04.4282, 82.08.0293, 82.12.0293, 82.32.090, and  
3 82.08.064; adding a new section to chapter 82.08 RCW; adding a new  
4 section to chapter 82.24 RCW; adding a new section to chapter 82.32  
5 RCW; adding a new section to chapter 43.135 RCW; creating new sections;  
6 repealing RCW 82.04.4283; providing an effective date; and declaring an  
7 emergency.

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

9 NEW SECTION. **Sec. 1.** (1)(a) The legislature finds that the people  
10 of Washington want their children to be healthy and well-educated. In  
11 2000, the voters overwhelmingly passed Initiative Measure No. 728,  
12 creating the student achievement account. School districts around the  
13 state use critical Initiative Measure No. 728 funds to improve student  
14 achievement by reducing class size, providing early childhood  
15 education, and expanding before-and-after school programs. Education  
16 is the key to a vital economy and a prosperous future for our children.

17 (b) This act improves funding for education by imposing an  
18 additional 0.2 percent retail sales and use tax that is dedicated for  
19 education purposes. The revenue from this tax will be deposited in the

1 student achievement account and will provide three hundred sixteen  
2 dollars per pupil funding in school year 2005, better schools funding,  
3 promise scholarship funding, and high-demand enrollment in the higher  
4 education institutions.

5 (2)(a) In order for children to succeed in school they also need  
6 adequate health care. Washington has been a national leader in  
7 providing medical insurance for children.

8 (b) This act improves funding for health care by providing  
9 dedicated revenue from the following sources:

10 (i) An additional tax on cigarettes of fifty cents per pack;

11 (ii) An additional tax of five percent on retail sales of spirits  
12 (hard liquor) and beverages containing spirits;

13 (iii) Limiting the business and occupation tax deduction for dues  
14 by excluding businesses that provide amusement, recreation, or physical  
15 fitness services in exchange for the dues;

16 (iv) Repealing the sales and use tax exemptions for candy and gum;

17 (v) Imposing penalties on businesses that underpay state excise  
18 taxes; and

19 (vi) Repealing the business and occupation tax deduction for cash  
20 discounts.

21 (c) The revenues from these sources are deposited in the health  
22 services account, and will provide funding for children's medical  
23 coverage up to two hundred fifty percent of federal poverty level and  
24 enrollment in the basic health plan.

25 **Sec. 2.** RCW 82.08.020 and 2000 2nd sp.s. c 4 s 1 are each amended  
26 to read as follows:

27 (1) There is levied and there shall be collected a tax on each  
28 retail sale in this state equal to six and five-tenths percent of the  
29 selling price.

30 (2) There is levied and there shall be collected an additional tax  
31 on each retail car rental, regardless of whether the vehicle is  
32 licensed in this state, equal to five and nine-tenths percent of the  
33 selling price. The revenue collected under this subsection shall be  
34 deposited in the multimodal transportation account created in RCW  
35 47.66.070.

36 (3) There is levied and there shall be collected an additional tax  
37 on each retail sale in this state equal to two-tenths percent of the

1 selling price. The revenue collected under this subsection, and under  
2 RCW 82.12.020 attributable to the rate in this subsection, shall be  
3 deposited in the student achievement fund.

4 (4) The taxes imposed under this chapter shall apply to successive  
5 retail sales of the same property.

6 ((+4)) (5) The rates provided in this section apply to taxes  
7 imposed under chapter 82.12 RCW as provided in RCW 82.12.020.

8 NEW SECTION. Sec. 3. A new section is added to chapter 82.08 RCW  
9 to read as follows:

10 (1) There is levied and shall be collected a tax upon each retail  
11 sale of spirits, strong beer, or beverage containing spirits, at the  
12 rate of five percent of the selling price. The tax imposed in this  
13 section applies to all such retail sales by the Washington state liquor  
14 stores, agencies, and other persons. For the purposes of this section,  
15 "retail sale" does not include sales by the Washington state liquor  
16 stores or agencies to spirits, beer, and wine restaurant licensees.

17 (2) As used in this section, the terms, "spirits," "strong beer,"  
18 and "package" have the meanings given in chapter 66.04 RCW.

19 (3) The revenue collected under this section shall be deposited in  
20 the health services account.

21 NEW SECTION. Sec. 4. A new section is added to chapter 82.24 RCW  
22 to read as follows:

23 (1) There is hereby levied and there shall be collected by the  
24 department of revenue from the persons mentioned in and in the manner  
25 provided by this chapter, an additional tax upon the sale, use,  
26 consumption, handling, possession, or distribution of cigarettes in an  
27 amount equal to the rate of twenty-five mills per cigarette.

28 (2) The revenue collected under this section shall be deposited as  
29 follows:

30 (a) To ensure continued availability of previously dedicated  
31 revenues for existing programs, each fiscal year eight million five  
32 hundred thousand dollars shall be deposited in the general fund, two  
33 million nine hundred thousand dollars shall be deposited in the water  
34 quality account, and three million nine hundred thousand dollars shall  
35 be deposited in the violence reduction and drug enforcement account;  
36 and

1 (b) The remainder shall be deposited in the health services  
2 account.

3 **Sec. 5.** RCW 82.04.4282 and 1994 c 124 s 3 are each amended to read  
4 as follows:

5 In computing tax there may be deducted from the measure of tax  
6 amounts derived from bona fide (1) initiation fees, (2) dues, (3)  
7 contributions, (4) donations, (5) tuition fees, (6) charges made by a  
8 nonprofit trade or professional organization for attending or occupying  
9 space at a trade show, convention, or educational seminar sponsored by  
10 the nonprofit trade or professional organization, which trade show,  
11 convention, or educational seminar is not open to the general public,  
12 (7) charges made for operation of privately operated kindergartens, and  
13 (8) endowment funds. This section shall not be construed to exempt any  
14 person, association, or society from tax liability upon selling  
15 tangible personal property or upon providing facilities or services for  
16 which a special charge is made to members or others. If dues are in  
17 exchange for any significant amount of goods or services rendered by  
18 the recipient thereof to members without any additional charge to the  
19 member, or if the dues are graduated upon the amount of goods or  
20 services rendered, the value of such goods or services shall not be  
21 considered as a deduction under this section. The deduction under this  
22 section is not available to any person engaging in the business of  
23 providing any amusement and recreation service under RCW  
24 82.04.050(3)(a) or fitness service under RCW 82.04.050(3)(g).

25 **Sec. 6.** RCW 82.08.0293 and 1988 c 103 s 1 are each amended to read  
26 as follows:

27 (1) The tax levied by RCW 82.08.020 shall not apply to sales of  
28 food products for human consumption.

29 "Food products" include cereals and cereal products, oleomargarine,  
30 meat and meat products including livestock sold for personal  
31 consumption, fish and fish products, eggs and egg products, vegetables  
32 and vegetable products, fruit and fruit products, spices and salt,  
33 sugar and sugar products, coffee and coffee substitutes, tea, cocoa and  
34 cocoa products.

35 "Food products" include milk and milk products, milk shakes, malted

1 milks, and any other similar type beverages which are composed at least  
2 in part of milk or a milk product and which require the use of milk or  
3 a milk product in their preparation.

4 "Food products" include all fruit juices, vegetable juices, and  
5 other beverages except bottled water, spirituous, malt or vinous  
6 liquors or carbonated beverages, whether liquid or frozen.

7 "Food products" do not include medicines and preparations in  
8 liquid, powdered, granular, tablet, capsule, lozenge, and pill form  
9 sold as dietary supplements or adjuncts.

10 "Food products" do not include candy. "Candy" means a preparation  
11 of sugar, honey, or other natural or artificial sweeteners in  
12 combination with chocolate, fruits, nuts, or other ingredients or  
13 flavorings in the form of bars, drops, or pieces. "Candy" does not  
14 include any preparation containing flour or any product that requires  
15 refrigeration.

16 (2) The exemption of "food products" provided for in subsection (1)  
17 of this section shall not apply: (a) When the food products are  
18 ordinarily sold for immediate consumption on or near a location at  
19 which parking facilities are provided primarily for the use of patrons  
20 in consuming the products purchased at the location, even though such  
21 products are sold on a "takeout" or "to go" order and are actually  
22 packaged or wrapped and taken from the premises of the retailer, or (b)  
23 when the food products are sold for consumption within a place, the  
24 entrance to which is subject to an admission charge, except for  
25 national and state parks and monuments, or (c) to a food product, when  
26 sold by the retail vendor, which by law must be handled on the vendor's  
27 premises by a person with a food and beverage service worker's permit  
28 under RCW 69.06.010, including but not be limited to sandwiches  
29 prepared or chicken cooked on the premises, deli trays, home-delivered  
30 pizzas or meals, and salad bars but excluding:

31 (i) Raw meat prepared by persons who slaughter animals, including  
32 fish and fowl, or dress or wrap slaughtered raw meat such as fish  
33 mongers, butchers, or meat wrappers;

34 (ii) Meat and cheese sliced and/or wrapped, in any quantity  
35 determined by the buyer, sold by vendors such as meat markets,  
36 delicatessens, and grocery stores;

37 (iii) Bakeries which only sell baked goods;

1 (iv) Combination bakery businesses, as prescribed by rule of the  
2 department, to the extent that sales of baked goods are separately  
3 accounted for and the baked goods claimed for exemption are not sold as  
4 part of meals or with beverages in unsealed containers; or

5 (v) Bulk food products sold from bins or barrels, including but not  
6 limited to flour, fruits, vegetables, sugar, salt, (~~candy,~~) chips,  
7 and cocoa.

8 (3) Notwithstanding anything in this section to the contrary, the  
9 exemption of "food products" provided in this section shall apply to  
10 food products which are furnished, prepared, or served as meals:

11 (a) Under a state administered nutrition program for the aged as  
12 provided for in the Older Americans Act (P.L. 95-478 Title III) and RCW  
13 74.38.040(6); or

14 (b) Which are provided to senior citizens, disabled persons, or  
15 low-income persons by a not-for-profit organization organized under  
16 chapter 24.03 or 24.12 RCW.

17 (4) Subsection (1) of this section notwithstanding, the retail sale  
18 of food products is subject to sales tax under RCW 82.08.020 if the  
19 food products are sold through a vending machine, and in this case the  
20 selling price for purposes of RCW 82.08.020 is fifty-seven percent of  
21 the gross receipts.

22 This subsection does not apply to hot prepared food products, other  
23 than food products which are heated after they have been dispensed from  
24 the vending machine.

25 For tax collected under this subsection, the requirements that the  
26 tax be collected from the buyer and that the amount of tax be stated as  
27 a separate item are waived.

28 **Sec. 7.** RCW 82.12.0293 and 1988 c 103 s 2 are each amended to read  
29 as follows:

30 (1) The provisions of this chapter shall not apply in respect to  
31 the use of food products for human consumption.

32 "Food products" include cereals and cereal products, oleomargarine,  
33 meat and meat products including livestock sold for personal  
34 consumption, fish and fish products, eggs and egg products, vegetables  
35 and vegetable products, fruit and fruit products, spices and salt,  
36 sugar and sugar products, coffee and coffee substitutes, tea, cocoa and  
37 cocoa products.

1 "Food products" include milk and milk products, milk shakes, malted  
2 milks, and any other similar type beverages which are composed at least  
3 in part of milk or a milk product and which require the use of milk or  
4 a milk product in their preparation.

5 "Food products" include all fruit juices, vegetable juices, and  
6 other beverages except bottled water, spirituous, malt or vinous  
7 liquors or carbonated beverages, whether liquid or frozen.

8 "Food products" do not include medicines and preparations in  
9 liquid, powdered, granular, tablet, capsule, lozenge, and pill form  
10 sold as dietary supplements or adjuncts.

11 "Food products" do not include candy. "Candy" means a preparation  
12 of sugar, honey, or other natural or artificial sweeteners in  
13 combination with chocolate, fruits, nuts, or other ingredients or  
14 flavorings in the form of bars, drops, or pieces. "Candy" does not  
15 include any preparation containing flour or any product that requires  
16 refrigeration.

17 (2) The exemption of "food products" provided for in subsection (1)  
18 of this section shall not apply: (a) When the food products are  
19 ordinarily sold for immediate consumption on or near a location at  
20 which parking facilities are provided primarily for the use of patrons  
21 in consuming the products purchased at the location, even though such  
22 products are sold on a "takeout" or "to go" order and are actually  
23 packaged or wrapped and taken from the premises of the retailer, or (b)  
24 when the food products are sold for consumption within a place, the  
25 entrance to which is subject to an admission charge, except for  
26 national and state parks and monuments, or (c) to a food product, when  
27 sold by the retail vendor, which by law must be handled on the vendor's  
28 premises by a person with a food and beverage service worker's permit  
29 under RCW 69.06.010, including but not be limited to sandwiches  
30 prepared or chicken cooked on the premises, deli trays, home-delivered  
31 pizzas or meals, and salad bars but excluding:

32 (i) Raw meat prepared by persons who slaughter animals, including  
33 fish and fowl, or dress or wrap slaughtered raw meat such as fish  
34 mongers, butchers, or meat wrappers;

35 (ii) Meat and cheese sliced and/or wrapped, in any quantity  
36 determined by the buyer, sold by vendors such as meat markets,  
37 delicatessens, and grocery stores;

38 (iii) Bakeries which only sell baked goods;

1 (iv) Combination bakery businesses, as prescribed by rule of the  
2 department, to the extent that sales of baked goods are separately  
3 accounted for and the baked goods claimed for exemption are not sold as  
4 part of meals or with beverages in unsealed containers; or

5 (v) Bulk food products sold from bins or barrels, including but not  
6 limited to flour, fruits, vegetables, sugar, salt, (~~candy,~~) chips,  
7 and cocoa.

8 (3) Notwithstanding anything in this section to the contrary, the  
9 exemption of "food products" provided in this section shall apply to  
10 food products which are furnished, prepared, or served as meals:

11 (a) Under a state administered nutrition program for the aged as  
12 provided for in the Older Americans Act (P.L. 95-478 Title III) and RCW  
13 74.38.040(6); or

14 (b) Which are provided to senior citizens, disabled persons, or  
15 low-income persons by a not-for-profit organization organized under  
16 chapter 24.03 or 24.12 RCW.

17 **Sec. 8.** RCW 82.32.090 and 2000 c 229 s 7 are each amended to read  
18 as follows:

19 (1) If payment of any tax due (~~on a return to be filed by a~~  
20 ~~taxpayer~~) is not received by the department of revenue by the due  
21 date, there shall be assessed a penalty of five percent of the amount  
22 of the tax; and if the tax is not received on or before the last day of  
23 the month following the due date, there shall be assessed a total  
24 penalty of ten percent of the amount of the tax; and if the tax is not  
25 received on or before the last day of the second month following the  
26 due date, there shall be assessed a total penalty of twenty percent of  
27 the amount of the tax. No penalty so added shall be less than five  
28 dollars.

29 (2) If payment of any tax assessed by the department of revenue is  
30 not received by the department by the due date specified in the notice,  
31 or any extension thereof, the department shall add a penalty of ten  
32 percent of the amount of the additional tax found due. No penalty so  
33 added shall be less than five dollars.

34 (3) If a warrant be issued by the department of revenue for the  
35 collection of taxes, increases, and penalties, there shall be added  
36 thereto a penalty of five percent of the amount of the tax, but not  
37 less than ten dollars.

1 (4) If the department finds that all or any part of a deficiency  
2 resulted from the disregard of specific written instructions as to  
3 reporting or tax liabilities, the department shall add a penalty of ten  
4 percent of the amount of the additional tax found due because of the  
5 failure to follow the instructions. A taxpayer disregards specific  
6 written instructions when the department of revenue has informed the  
7 taxpayer in writing of the taxpayer's tax obligations and the taxpayer  
8 fails to act in accordance with those instructions unless the  
9 department has not issued final instructions because the matter is  
10 under appeal pursuant to this chapter or departmental regulations. The  
11 department shall not assess the penalty under this section upon any  
12 taxpayer who has made a good faith effort to comply with the specific  
13 written instructions provided by the department to that taxpayer.  
14 Specific written instructions may be given as a part of a tax  
15 assessment, audit, determination, or closing agreement, provided that  
16 such specific written instructions shall apply only to the taxpayer  
17 addressed or referenced on such documents. Any specific written  
18 instructions by the department of revenue shall be clearly identified  
19 as such and shall inform the taxpayer that failure to follow the  
20 instructions may subject the taxpayer to the penalties imposed by this  
21 subsection.

22 (5) If the department finds that all or any part of the deficiency  
23 resulted from an intent to evade the tax payable hereunder, a further  
24 penalty of fifty percent of the additional tax found to be due shall be  
25 added.

26 (6) The aggregate of penalties imposed under subsections (1), (2),  
27 and (3) of this section shall not exceed thirty-five percent of the tax  
28 due, or twenty dollars, whichever is greater. This subsection does not  
29 prohibit or restrict the application of other penalties authorized by  
30 law.

31 (7) The department of revenue may not impose both the evasion  
32 penalty and the penalty for disregarding specific written instructions  
33 on the same tax found to be due.

34 (8) For the purposes of this section, "return" means any document  
35 a person is required by the state of Washington to file to satisfy or  
36 establish a tax or fee obligation that is administered or collected by  
37 the department of revenue, and that has a statutorily defined due date.

1        NEW SECTION.    **Sec. 9.** Section 8 of this act applies to all  
2 assessments made after the effective date of section 8 of this act,  
3 regardless of the due date of the taxes subject to the assessment.

4        NEW SECTION.    **Sec. 10.** RCW 82.04.4283 (Deductions--Cash discount  
5 taken by purchaser) and 1980 c 37 s 4 are each repealed.

6        NEW SECTION.    **Sec. 11.** A new section is added to chapter 82.32 RCW  
7 to read as follows:

8            (1) The changes in sections 5 through 10 of this act are intended  
9 to provide dedicated revenue sources for the health services account.  
10 Since it is not practical to determine precisely the revenues derived  
11 from these changes, a fixed percentage of sales tax revenue is  
12 dedicated in lieu thereof.

13            (2) Eight hundred and sixty-six thousandths of one percent of all  
14 revenue from the tax imposed in RCW 82.08.020(1) shall be deposited in  
15 the health services account.

16            (3) On or before January 1st of each year, the department of  
17 revenue shall provide the legislature with an updated estimate of the  
18 percentage of sales tax revenue attributable as dedicated revenue under  
19 subsection (1) of this section. The updated estimate is not effective  
20 until adopted by the legislature.

21        NEW SECTION.    **Sec. 12.** A new section is added to chapter 43.135  
22 RCW to read as follows:

23            RCW 43.135.035(4) does not apply to section 11 of this act.

24        **Sec. 13.** RCW 82.08.064 and 2000 c 104 s 3 are each amended to read  
25 as follows:

26            (1) A sales and use tax rate change under this chapter or chapter  
27 82.12 RCW shall be imposed (1) no sooner than seventy-five days after  
28 its enactment into law and (2) only on the first day of January, April,  
29 July, or October.

30            (2) Subsection (1) of this section does not apply to the tax rate  
31 changes in chapter ... Laws of 2003 (this act).

32        NEW SECTION.    **Sec. 14.** This act is necessary for the immediate

1 preservation of the public peace, health, or safety, or support of the  
2 state government and its existing public institutions, and takes effect  
3 July 1, 2003.

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