
SENATE BILL 5867

State of Washington 58th Legislature 2003 Regular Session

By Senators Swecker, Oke, Doumit, Horn, Prentice, Eide, Schmidt, Regala, B. Sheldon and Jacobsen

Read first time 02/18/2003. Referred to Committee on Natural Resources, Energy & Water.

1 AN ACT Relating to environmental remediation; amending RCW
2 82.04.050, 82.04.190, and 82.04.2635; providing an effective date; and
3 declaring an emergency.

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

5 **Sec. 1.** RCW 82.04.050 and 2002 c 178 s 1 are each amended to read
6 as follows:

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

14 (a) Purchases for the purpose of resale as tangible personal
15 property in the regular course of business without intervening use by
16 such person, but a purchase for the purpose of resale by a regional
17 transit authority under RCW 81.112.300 is not a sale for resale; or

18 (b) Installs, repairs, cleans, alters, imprints, improves,
19 constructs, or decorates real or personal property of or for consumers,

1 if such tangible personal property becomes an ingredient or component
2 of such real or personal property without intervening use by such
3 person; or

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

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

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

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

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

37 (b) The constructing, repairing, decorating, or improving of new or
38 existing buildings or other structures under, upon, or above real

1 property of or for consumers, including the installing or attaching of
2 any article of tangible personal property therein or thereto, whether
3 or not such personal property becomes a part of the realty by virtue of
4 installation, and shall also include the sale of services or charges
5 made for the clearing of land and the moving of earth excepting the
6 mere leveling of land used in commercial farming or agriculture;

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

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

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

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

1 of and charge made for the furnishing of lodging for a continuous
2 period of one month or more to a person is a rental or lease of real
3 property and not a mere license to enjoy the same;

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

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

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

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

23 (c) Credit bureau services;

24 (d) Automobile parking and storage garage services;

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

30 (f) Service charges associated with tickets to professional
31 sporting events; and

32 (g) The following personal services: Physical fitness services,
33 tanning salon services, tattoo parlor services, steam bath services,
34 turkish bath services, escort services, and dating services.

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

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

3 (6) The term shall also include the sale of canned software other
4 than a sale to a person who presents a resale certificate under RCW
5 82.04.470, regardless of the method of delivery to the end user, but
6 shall not include custom software or the customization of canned
7 software.

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

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

31 (9) The term shall not include the sale of or charge made for labor
32 and services rendered in respect to the constructing, repairing,
33 decorating, or improving of new or existing buildings or other
34 structures under, upon, or above real property of or for the United
35 States, any instrumentality thereof, or a county or city housing
36 authority created pursuant to chapter 35.82 RCW, including the
37 installing, or attaching of any article of tangible personal property
38 therein or thereto, whether or not such personal property becomes a

1 part of the realty by virtue of installation. Nor shall the term
2 include the sale of services or charges made for the clearing of land
3 and the moving of earth of or for the United States, any
4 instrumentality thereof, or a county or city housing authority. Nor
5 shall the term include the sale of services or charges made for
6 cleaning up for the United States, or its instrumentalities,
7 radioactive waste and other byproducts of weapons production and
8 nuclear research and development.

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

12 **Sec. 2.** RCW 82.04.190 and 2002 c 367 s 2 are each amended to read
13 as follows:

14 "Consumer" means the following:

15 (1) Any person who purchases, acquires, owns, holds, or uses any
16 article of tangible personal property irrespective of the nature of the
17 person's business and including, among others, without limiting the
18 scope hereof, persons who install, repair, clean, alter, improve,
19 construct, or decorate real or personal property of or for consumers
20 other than for the purpose (a) of resale as tangible personal property
21 in the regular course of business or (b) of incorporating such property
22 as an ingredient or component of real or personal property when
23 installing, repairing, cleaning, altering, imprinting, improving,
24 constructing, or decorating such real or personal property of or for
25 consumers or (c) of consuming such property in producing for sale a new
26 article of tangible personal property or a new substance, of which such
27 property becomes an ingredient or component or as a chemical used in
28 processing, when the primary purpose of such chemical is to create a
29 chemical reaction directly through contact with an ingredient of a new
30 article being produced for sale or (d) purchases for the purpose of
31 consuming the property purchased in producing ferrosilicon which is
32 subsequently used in producing magnesium for sale, if the primary
33 purpose of such property is to create a chemical reaction directly
34 through contact with an ingredient of ferrosilicon;

35 (2)(a) Any person engaged in any business activity taxable under
36 RCW 82.04.290; (b) any person who purchases, acquires, or uses any
37 telephone service as defined in RCW 82.04.065, other than for resale in

1 the regular course of business; (c) any person who purchases, acquires,
2 or uses any service defined in RCW 82.04.050(2)(a) or any amusement and
3 recreation service defined in RCW 82.04.050(3)(a), other than for
4 resale in the regular course of business; and (d) any person who is an
5 end user of software;

6 (3) Any person engaged in the business of contracting for the
7 building, repairing or improving of any street, place, road, highway,
8 easement, right of way, mass public transportation terminal or parking
9 facility, bridge, tunnel, or trestle which is owned by a municipal
10 corporation or political subdivision of the state of Washington or by
11 the United States and which is used or to be used primarily for foot or
12 vehicular traffic including mass transportation vehicles of any kind as
13 defined in RCW 82.04.280, in respect to tangible personal property when
14 such person incorporates such property as an ingredient or component of
15 such publicly owned street, place, road, highway, easement, right of
16 way, mass public transportation terminal or parking facility, bridge,
17 tunnel, or trestle by installing, placing or spreading the property in
18 or upon the right of way of such street, place, road, highway,
19 easement, bridge, tunnel, or trestle or in or upon the site of such
20 mass public transportation terminal or parking facility;

21 (4) Any person who is an owner, lessee or has the right of
22 possession to or an easement in real property which is being
23 constructed, repaired, decorated, improved, or otherwise altered by a
24 person engaged in business, excluding only (a) municipal corporations
25 or political subdivisions of the state in respect to labor and services
26 rendered to their real property which is used or held for public road
27 purposes, and (b) the United States, instrumentalities thereof, and
28 county and city housing authorities created pursuant to chapter 35.82
29 RCW in respect to labor and services rendered to their real property.
30 Nothing contained in this or any other subsection of this definition
31 shall be construed to modify any other definition of "consumer";

32 (5) Any person who is an owner, lessee, or has the right of
33 possession to personal property which is being constructed, repaired,
34 improved, cleaned, imprinted, or otherwise altered by a person engaged
35 in business;

36 (6) Any person engaged in the business of constructing, repairing,
37 decorating, or improving new or existing buildings or other structures
38 under, upon, or above real property of or for the United States, any

1 instrumentality thereof, or a county or city housing authority created
2 pursuant to chapter 35.82 RCW, including the installing or attaching of
3 any article of tangible personal property therein or thereto, whether
4 or not such personal property becomes a part of the realty by virtue of
5 installation; also, any person engaged in the business of clearing land
6 and moving earth of or for the United States, any instrumentality
7 thereof, or a county or city housing authority created pursuant to
8 chapter 35.82 RCW. Any such person shall be a consumer within the
9 meaning of this subsection in respect to tangible personal property
10 incorporated into, installed in, or attached to such building or other
11 structure by such person;

12 (7) Any person who is a lessor of machinery and equipment, the
13 rental of which is exempt from the tax imposed by RCW 82.08.020 under
14 RCW 82.08.02565, with respect to the sale of or charge made for
15 tangible personal property consumed in respect to repairing the
16 machinery and equipment, if the tangible personal property has a useful
17 life of less than one year. Nothing contained in this or any other
18 subsection of this section shall be construed to modify any other
19 definition of "consumer"; and

20 (8) Any person engaged in the business of cleaning up for the
21 United States, or its instrumentalities, radioactive waste and other
22 byproducts of weapons production and nuclear research and
23 development(~~(; and~~

24 ~~(9) Until July 1, 2003, any person engaged in the business of~~
25 ~~conducting environmental remedial action as defined in RCW~~
26 ~~82.04.2635(2)).~~

27 **Sec. 3.** RCW 82.04.2635 and 2001 c 320 s 2 are each amended to read
28 as follows:

29 (1) Upon every person engaging within this state in the business of
30 environmental remedial action, the amount of tax with respect to such
31 business shall be equal to the value of the gross income of the
32 business multiplied by the rate 0.471 percent.

33 (2) For purposes of this chapter, "environmental remedial action"
34 means:

35 (a) Those services related to the identification, investigation, or
36 cleanup arising out of the release or threatened release of hazardous
37 substances that are conducted under contract with the department of

1 ecology or under an enforcement order, agreed order, or consent decree
2 executed by the department of ecology, or those services, when
3 evaluated as a whole, that are the substantial equivalent of a
4 department of ecology-conducted or supervised remedial action under the
5 model toxics control act, chapter 70.105D RCW; or

6 (b) Those services related to the identification, investigation, or
7 cleanup of a facility that are conducted under contract with the United
8 States environmental protection agency or under an order or consent
9 decree executed by the United States environmental protection agency,
10 or that are consistent with the national contingency plan adopted under
11 the comprehensive environmental response compensation and liability
12 act, 42 U.S.C. Sec. 9605 as it exists on July 1, 1998, and those
13 services are conducted at facilities that are included on the national
14 priorities list adopted under 42 U.S.C. Sec. 9605 as it exists on July
15 1, 1998, or at facilities subject to a removal action authorized under
16 42 U.S.C. Sec. 9604 as it exists on July 1, 1998.

17 (3) A site is eligible for environmental remedial action upon
18 submittal, via certified mail to the department of ecology and the
19 department of revenue, of the following:

20 (a) A certification from the owner, the department of ecology, or
21 the United States environmental protection agency, containing the
22 following information:

23 (i) The location of the site, shown on a map and identified by
24 parcel number or numbers and street address;

25 (ii) The name and address and daytime phone number of a contact
26 person;

27 (iii) A statement that the proposed environmental remedial actions
28 will be conducted by the department of ecology or its authorized
29 contractor under chapter 70.105D RCW or will be substantially
30 equivalent to a department of ecology-conducted or supervised remedial
31 action under the model toxics control act, chapter 70.105D RCW, or will
32 be conducted by the United States environmental protection agency or
33 its authorized contractor or will be consistent with the national
34 contingency plan under 42 U.S.C. Sec. 9605 as it exists on July 1,
35 1998; and

36 (iv) A description of the proposed environmental remedial actions
37 to be taken; and

1 (b)(i) A certification from a certified underground storage tank
2 service supervisor as authorized in chapter 90.76 RCW, from a
3 professional engineer licensed in the state of Washington, or from an
4 environmental professional who subscribes to a code of professional
5 responsibility administered by a recognized organization representing
6 such professions containing the following information:

7 (A) Confirmation that an environmental remedial action as defined
8 in this section is to be conducted at the site;

9 (B) The location of the site, shown on a map and identified by
10 parcel number or numbers and street address, and the approximate
11 location of the proposed environmental remedial action; and

12 (C) The name, address, telephone number, and uniform business
13 identifier of the person providing the certification; or

14 (ii) If applicable to the site, a copy of an enforcement order,
15 agreed order, or consent decree executed by the department of ecology
16 or the United States environmental protection agency.

17 (4) The department of revenue shall respond in writing to the owner
18 within thirty days confirming receipt of the certification, or
19 certifications, of eligibility. Under RCW 82.32.330(3)(m),
20 certification is subject to disclosure and copies may be obtained from
21 the department upon request. The request shall be in writing and shall
22 identify the site by county and parcel number or numbers.

23 (5) The owner shall provide a copy of the confirmation from the
24 department of revenue to each person who renders environmental remedial
25 action at the site. Each person who renders such action shall
26 separately state the charges for labor and services associated with the
27 environmental remedial action.

28 (6) Upon completion of the environmental remedial action, the owner
29 shall submit to the department of ecology a report documenting the
30 environmental remedial actions conducted at the site and documenting
31 compliance with the requirements of chapter 70.105D RCW.

32 (7) In addition to any other penalties, a person who files a
33 certificate with the department of ecology or the department of revenue
34 that contains falsehoods or misrepresentations are subject to penalties
35 authorized under chapter 18.43 or 90.76 RCW or RCW 9A.76.175. Also, a
36 person who improperly reports the person's tax class shall be assessed
37 a penalty of fifty percent of the tax due, in addition to other taxes
38 or penalties, together with interest. The department of revenue shall

1 waive the penalty imposed under this section if it finds that the
2 falsehoods or misrepresentations or improper reporting of the tax
3 classification was due to circumstances beyond the control of the
4 person.

5 ~~((8) This section expires July 1, 2003.)~~

6 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
7 preservation of the public peace, health, or safety, or support of the
8 state government and its existing public institutions, and takes effect
9 July 1, 2003.

--- END ---