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HOUSE BILL 3062

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State of Washington

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2006 Regular Session

By Representatives Dunn, Armstrong, Sump, Ahern, Holmquist, McCune, Roach, Campbell, Alexander, Condotta, Kristiansen and Woods

Read first time 01/18/2006. Referred to Committee on Finance.

1 AN ACT Relating to reducing the taxation of physical fitness  
2 services; reenacting and amending RCW 82.04.050; adding a new section  
3 to chapter 82.04 RCW; creating a new section; and providing an  
4 effective date.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 82.04 RCW  
7 to read as follows:

8 Upon every person engaging within this state in the business of  
9 providing physical fitness services; as to such persons the amount of  
10 tax with respect to such business is equal to the gross proceeds  
11 derived from sales of physical fitness services multiplied by the rate  
12 of 0.138 percent.

13 **Sec. 2.** RCW 82.04.050 and 2005 c 515 s 2 and 2005 c 514 s 101 are  
14 each reenacted and amended to read as follows:

15 (1) "Sale at retail" or "retail sale" means every sale of tangible  
16 personal property (including articles produced, fabricated, or  
17 imprinted) to all persons irrespective of the nature of their business  
18 and including, among others, without limiting the scope hereof, persons

1 who install, repair, clean, alter, improve, construct, or decorate real  
2 or personal property of or for consumers other than a sale to a person  
3 who presents a resale certificate under RCW 82.04.470 and who:

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

8 (b) Installs, repairs, cleans, alters, imprints, improves,  
9 constructs, or decorates real or personal property of or for consumers,  
10 if such tangible personal property becomes an ingredient or component  
11 of such real or personal property without intervening use by such  
12 person; or

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

19 (d) Purchases for the purpose of consuming the property purchased  
20 in producing ferrosilicon which is subsequently used in producing  
21 magnesium for sale, if the primary purpose of such property is to  
22 create a chemical reaction directly through contact with an ingredient  
23 of ferrosilicon; [or]

24 (e) Purchases for the purpose of providing the property to  
25 consumers as part of competitive telephone service, as defined in RCW  
26 82.04.065. The term shall include every sale of tangible personal  
27 property which is used or consumed or to be used or consumed in the  
28 performance of any activity classified as a "sale at retail" or "retail  
29 sale" even though such property is resold or utilized as provided in  
30 (a), (b), (c), (d), or (e) of this subsection following such use. The  
31 term also means every sale of tangible personal property to persons  
32 engaged in any business which is taxable under RCW 82.04.280 (2) and  
33 (7), 82.04.290, and 82.04.2908; or

34 (f) Purchases for the purpose of satisfying the person's  
35 obligations under an extended warranty as defined in subsection (7) of  
36 this section, if such tangible personal property replaces or becomes an  
37 ingredient or component of property covered by the extended warranty  
38 without intervening use by such person.

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

4 (a) The installing, repairing, cleaning, altering, imprinting, or  
5 improving of tangible personal property of or for consumers, including  
6 charges made for the mere use of facilities in respect thereto, but  
7 excluding charges made for the use of self-service laundry facilities,  
8 and also excluding sales of laundry service to nonprofit health care  
9 facilities, and excluding services rendered in respect to live animals,  
10 birds and insects;

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

19 (c) The charge for labor and services rendered in respect to  
20 constructing, repairing, or improving any structure upon, above, or  
21 under any real property owned by an owner who conveys the property by  
22 title, possession, or any other means to the person performing such  
23 construction, repair, or improvement for the purpose of performing such  
24 construction, repair, or improvement and the property is then  
25 reconveyed by title, possession, or any other means to the original  
26 owner;

27 (d) The sale of or charge made for labor and services rendered in  
28 respect to the cleaning, fumigating, razing or moving of existing  
29 buildings or structures, but shall not include the charge made for  
30 janitorial services; and for purposes of this section the term  
31 "janitorial services" shall mean those cleaning and caretaking services  
32 ordinarily performed by commercial janitor service businesses  
33 including, but not limited to, wall and window washing, floor cleaning  
34 and waxing, and the cleaning in place of rugs, drapes and upholstery.  
35 The term "janitorial services" does not include painting, papering,  
36 repairing, furnace or septic tank cleaning, snow removal or  
37 sandblasting;

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

5 (f) The sale of and charge made for the furnishing of lodging and  
6 all other services by a hotel, rooming house, tourist court, motel,  
7 trailer camp, and the granting of any similar license to use real  
8 property, as distinguished from the renting or leasing of real  
9 property, and it shall be presumed that the occupancy of real property  
10 for a continuous period of one month or more constitutes a rental or  
11 lease of real property and not a mere license to use or enjoy the same.  
12 For the purposes of this subsection, it shall be presumed that the sale  
13 of and charge made for the furnishing of lodging for a continuous  
14 period of one month or more to a person is a rental or lease of real  
15 property and not a mere license to enjoy the same;

16 (g) The sale of or charge made for tangible personal property,  
17 labor and services to persons taxable under (a), (b), (c), (d), (e),  
18 and (f) of this subsection when such sales or charges are for property,  
19 labor and services which are used or consumed in whole or in part by  
20 such persons in the performance of any activity defined as a "sale at  
21 retail" or "retail sale" even though such property, labor and services  
22 may be resold after such use or consumption. Nothing contained in this  
23 subsection shall be construed to modify subsection (1) of this section  
24 and nothing contained in subsection (1) of this section shall be  
25 construed to modify this subsection.

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

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

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

35 (c) Credit bureau services;

36 (d) Automobile parking and storage garage services;

37 (e) Landscape maintenance and horticultural services but excluding  
38 (i) horticultural services provided to farmers and (ii) pruning,

1 trimming, repairing, removing, and clearing of trees and brush near  
2 electric transmission or distribution lines or equipment, if performed  
3 by or at the direction of an electric utility;

4 (f) Service charges associated with tickets to professional  
5 sporting events; and

6 (g) The following personal services: ((Physical—fitness  
7 services,)) Tanning salon services, tattoo parlor services, steam bath  
8 services, turkish bath services, escort services, and dating services.

9 (4)(a) The term shall also include:

10 (i) The renting or leasing of tangible personal property to  
11 consumers; and

12 (ii) Providing tangible personal property along with an operator  
13 for a fixed or indeterminate period of time. A consideration of this  
14 is that the operator is necessary for the tangible personal property to  
15 perform as designed. For the purpose of this subsection (4)(a)(ii), an  
16 operator must do more than maintain, inspect, or set up the tangible  
17 personal property.

18 (b) The term shall not include the renting or leasing of tangible  
19 personal property where the lease or rental is for the purpose of  
20 sublease or subrent.

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

23 (6) The term shall also include the sale of prewritten computer  
24 software other than a sale to a person who presents a resale  
25 certificate under RCW 82.04.470, regardless of the method of delivery  
26 to the end user, but shall not include custom software or the  
27 customization of prewritten computer software.

28 (7) The term shall also include the sale of or charge made for an  
29 extended warranty to a consumer. For purposes of this subsection,  
30 "extended warranty" means an agreement for a specified duration to  
31 perform the replacement or repair of tangible personal property at no  
32 additional charge or a reduced charge for tangible personal property,  
33 labor, or both, or to provide indemnification for the replacement or  
34 repair of tangible personal property, based on the occurrence of  
35 specified events. The term "extended warranty" does not include an  
36 agreement, otherwise meeting the definition of extended warranty in  
37 this subsection, if no separate charge is made for the agreement and  
38 the value of the agreement is included in the sales price of the

1 tangible personal property covered by the agreement. For purposes of  
2 this subsection, "sales price" has the same meaning as in RCW  
3 82.08.010.

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

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

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

1 shall the term include the sale of services or charges made for  
2 cleaning up for the United States, or its instrumentalities,  
3 radioactive waste and other byproducts of weapons production and  
4 nuclear research and development.

5 (11) The term shall not include the sale of or charge made for  
6 labor, services, or tangible personal property pursuant to agreements  
7 providing maintenance services for bus, rail, or rail fixed guideway  
8 equipment when a regional transit authority is the recipient of the  
9 labor, services, or tangible personal property, and a transit agency,  
10 as defined in RCW 81.104.015, performs the labor or services.

11 NEW SECTION. **Sec. 3.** This act applies to physical fitness  
12 services rendered on and after July 1, 2006.

13 NEW SECTION. **Sec. 4.** This act takes effect July 1, 2006.

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