

---

SENATE BILL 5218

---

State of Washington

59th Legislature

2005 Regular Session

By Senators Regala, Hewitt, Eide, Zarelli, Kohl-Welles, Rasmussen and Benton

Read first time 01/18/2005. Referred to Committee on Ways & Means.

1 AN ACT Relating to the taxation of temporary staffing services;  
2 amending RCW 82.04.460, 82.04.290, and 82.08.054; reenacting and  
3 amending RCW 82.04.190 and 82.08.050; adding a new section to chapter  
4 82.04 RCW; adding a new section to chapter 82.08 RCW; creating a new  
5 section; and declaring an emergency.

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

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

9 (1) Upon every person engaging in this state in the business of  
10 providing staffing services; as to such persons the amount of tax with  
11 respect to such business shall be equal to the gross income of the  
12 business, multiplied by the rate of 0.484 percent.

13 (2) For the purpose of this section, "staffing services" means an  
14 arrangement in which the taxpayer recruits and hires employees from the  
15 labor market and assigns them on a temporary basis to perform services  
16 for another to support, or supplement, the customer's work force, or to  
17 provide assistance in special work situations such as employee  
18 absences, skill shortages, and seasonal workloads, or to perform

1 special assignments or projects, all under the direction and  
2 supervision of the customer. "Staffing services" does not include  
3 permanent employee leasing or permanent employee placement services.

4 **Sec. 2.** RCW 82.04.460 and 2004 c 174 s 6 are each amended to read  
5 as follows:

6 (1) Any person rendering services taxable under RCW 82.04.290  
7 (~~(e)~~), 82.04.2908, or section 1 of this act and maintaining places of  
8 business both within and without this state which contribute to the  
9 rendition of such services shall, for the purpose of computing tax  
10 liability under RCW 82.04.290 (~~(e)~~), 82.04.2908, or section 1 of this  
11 act, apportion to this state that portion of the person's gross income  
12 which is derived from services rendered within this state. Where such  
13 apportionment cannot be accurately made by separate accounting methods,  
14 the taxpayer shall apportion to this state that proportion of the  
15 taxpayer's total income which the cost of doing business within the  
16 state bears to the total cost of doing business both within and without  
17 the state.

18 (2) Notwithstanding the provision of subsection (1) of this  
19 section, persons doing business both within and without the state who  
20 receive gross income from service charges, as defined in RCW 63.14.010  
21 (relating to amounts charged for granting the right or privilege to  
22 make deferred or installment payments) or who receive gross income from  
23 engaging in business as financial institutions within the scope of  
24 chapter 82.14A RCW (relating to city taxes on financial institutions)  
25 shall apportion or allocate gross income taxable under RCW 82.04.290 to  
26 this state pursuant to rules promulgated by the department consistent  
27 with uniform rules for apportionment or allocation developed by the  
28 states.

29 (3) The department shall by rule provide a method or methods of  
30 apportioning or allocating gross income derived from sales of telephone  
31 services taxed under this chapter, if the gross proceeds of sales  
32 subject to tax under this chapter do not fairly represent the extent of  
33 the taxpayer's income attributable to this state. The rules shall be,  
34 so far as feasible, consistent with the methods of apportionment  
35 contained in this section and shall require the consideration of those  
36 facts, circumstances, and apportionment factors as will result in an  
37 equitable and constitutionally permissible division of the services.

1           **Sec. 3.** RCW 82.04.190 and 2004 c 174 s 4 and 2004 c 2 s 8 are each  
2 reenacted and amended to read as follows:

3           "Consumer" means the following:

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

24           (2)(a) Any person engaged in any business activity taxable under  
25 RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or  
26 uses any telephone service as defined in RCW 82.04.065, other than for  
27 resale in the regular course of business; (c) any person who purchases,  
28 acquires, or uses any service defined in RCW 82.04.050(2)(a) or any  
29 amusement and recreation service defined in RCW 82.04.050(3)(a), other  
30 than for resale in the regular course of business; (~~and~~) (d) any  
31 person who is an end user of software; and (e) any person who  
32 purchases, acquires, or uses staffing services to perform any service  
33 defined as a retail sale in RCW 82.04.050;

34           (3) Any person engaged in the business of contracting for the  
35 building, repairing or improving of any street, place, road, highway,  
36 easement, right of way, mass public transportation terminal or parking  
37 facility, bridge, tunnel, or trestle which is owned by a municipal  
38 corporation or political subdivision of the state of Washington or by

1 the United States and which is used or to be used primarily for foot or  
2 vehicular traffic including mass transportation vehicles of any kind as  
3 defined in RCW 82.04.280, in respect to tangible personal property when  
4 such person incorporates such property as an ingredient or component of  
5 such publicly owned street, place, road, highway, easement, right of  
6 way, mass public transportation terminal or parking facility, bridge,  
7 tunnel, or trestle by installing, placing or spreading the property in  
8 or upon the right of way of such street, place, road, highway,  
9 easement, bridge, tunnel, or trestle or in or upon the site of such  
10 mass public transportation terminal or parking facility;

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

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

26 (6) Any person engaged in the business of constructing, repairing,  
27 decorating, or improving new or existing buildings or other structures  
28 under, upon, or above real property of or for the United States, any  
29 instrumentality thereof, or a county or city housing authority created  
30 pursuant to chapter 35.82 RCW, including the installing or attaching of  
31 any article of tangible personal property therein or thereto, whether  
32 or not such personal property becomes a part of the realty by virtue of  
33 installation; also, any person engaged in the business of clearing land  
34 and moving earth of or for the United States, any instrumentality  
35 thereof, or a county or city housing authority created pursuant to  
36 chapter 35.82 RCW. Any such person shall be a consumer within the  
37 meaning of this subsection in respect to tangible personal property  
38 incorporated into, installed in, or attached to such building or other

1 structure by such person, except that consumer does not include any  
2 person engaged in the business of constructing, repairing, decorating,  
3 or improving new or existing buildings or other structures under, upon,  
4 or above real property of or for the United States, or any  
5 instrumentality thereof, if the investment project would qualify for  
6 sales and use tax deferral under chapter 82.63 RCW if undertaken by a  
7 private entity;

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

16 (8) Any person engaged in the business of cleaning up for the  
17 United States, or its instrumentalities, radioactive waste and other  
18 byproducts of weapons production and nuclear research and development.

19 **Sec. 4.** RCW 82.04.290 and 2004 c 174 s 2 are each amended to read  
20 as follows:

21 (1) Upon every person engaging within this state in the business of  
22 providing international investment management services, as to such  
23 persons, the amount of tax with respect to such business shall be equal  
24 to the gross income or gross proceeds of sales of the business  
25 multiplied by a rate of 0.275 percent.

26 (2) Upon every person engaging within this state in any business  
27 activity other than (~~or in addition to those enumerated in RCW~~  
28 ~~82.04.230, 82.04.240, 82.04.250, 82.04.255, 82.04.260, 82.04.270,~~  
29 ~~82.04.298, 82.04.2905, 82.04.280, 82.04.2907, 82.04.272, 82.04.2906,~~  
30 ~~and 82.04.2908, and~~) an activity taxed explicitly under another  
31 section in this chapter or subsection (1) of this section; as to such  
32 persons the amount of tax on account of such activities shall be equal  
33 to the gross income of the business multiplied by the rate of 1.5  
34 percent.

35 (3) Subsection (2) of this section includes, among others, and  
36 without limiting the scope hereof (whether or not title to materials  
37 used in the performance of such business passes to another by

1 accession, confusion or other than by outright sale), persons engaged  
2 in the business of rendering any type of service which does not  
3 constitute a "sale at retail" or a "sale at wholesale." The value of  
4 advertising, demonstration, and promotional supplies and materials  
5 furnished to an agent by his principal or supplier to be used for  
6 informational, educational and promotional purposes shall not be  
7 considered a part of the agent's remuneration or commission and shall  
8 not be subject to taxation under this section.

9 **Sec. 5.** RCW 82.08.054 and 2003 c 168 s 210 are each amended to  
10 read as follows:

11 Sellers, or buyers remitting tax directly to the department, shall  
12 compute the tax due under this chapter and chapters 82.12 and 82.14 RCW  
13 by carrying the computation to the third decimal place and rounding to  
14 a whole cent using a method that rounds up to the next cent whenever  
15 the third decimal place is greater than four. Sellers may elect to  
16 compute the tax due on a transaction on an item or an invoice basis.  
17 This rounding rule shall be applied to the aggregated state and local  
18 taxes.

19 NEW SECTION. **Sec. 6.** A new section is added to chapter 82.08 RCW  
20 to read as follows:

21 Persons providing staffing services as defined in section 1 of this  
22 act are not liable to collect and remit the retail sales tax to the  
23 department when performing services that are defined as a retail sale.  
24 The consumer of such staffing services shall be required to remit the  
25 sales tax on the sale of or charges for the staffing services directly  
26 to the department.

27 **Sec. 7.** RCW 82.08.050 and 2003 c 168 s 203, 2003 c 76 s 3, and  
28 2003 c 53 s 400 are each reenacted and amended to read as follows:

29 (1) Except as provided in section 6 of this act, the tax hereby  
30 imposed shall be paid by the buyer to the seller, and each seller shall  
31 collect from the buyer the full amount of the tax payable in respect to  
32 each taxable sale in accordance with the schedule of collections  
33 adopted by the department pursuant to the provisions of RCW 82.08.060.

34 (2) The tax required by this chapter, to be collected by the  
35 seller, shall be deemed to be held in trust by the seller until paid to

1 the department, and any seller who appropriates or converts the tax  
2 collected to his or her own use or to any use other than the payment of  
3 the tax to the extent that the money required to be collected is not  
4 available for payment on the due date as prescribed in this chapter is  
5 guilty of a gross misdemeanor.

6 (3) In case any seller fails to collect the tax herein imposed or,  
7 having collected the tax, fails to pay it to the department in the  
8 manner prescribed by this chapter, whether such failure is the result  
9 of his or her own acts or the result of acts or conditions beyond his  
10 or her control, he or she shall, nevertheless, be personally liable to  
11 the state for the amount of the tax, unless the seller has taken from  
12 the buyer a resale certificate under RCW 82.04.470, a copy of a direct  
13 pay permit issued under RCW 82.32.087, information required under the  
14 streamlined sales and use tax agreement, or information required under  
15 rules adopted by the department. Sellers shall not be relieved from  
16 personal liability for the amount of the tax unless they maintain  
17 proper records of exempt transactions and provide them to the  
18 department when requested.

19 (4) The amount of tax, until paid by the buyer to the seller or to  
20 the department, shall constitute a debt from the buyer to the seller  
21 and any seller who fails or refuses to collect the tax as required with  
22 intent to violate the provisions of this chapter or to gain some  
23 advantage or benefit, either direct or indirect, and any buyer who  
24 refuses to pay any tax due under this chapter is guilty of a  
25 misdemeanor.

26 (5) The tax required by this chapter to be collected by the seller  
27 shall be stated separately from the selling price in any sales invoice  
28 or other instrument of sale. On all retail sales through vending  
29 machines, the tax need not be stated separately from the selling price  
30 or collected separately from the buyer. For purposes of determining  
31 the tax due from the buyer to the seller, or the department, and from  
32 the seller to the department it shall be conclusively presumed that the  
33 selling price quoted in any price list, sales document, contract or  
34 other agreement between the parties does not include the tax imposed by  
35 this chapter, but if the seller advertises the price as including the  
36 tax or that the seller is paying the tax, the advertised price shall  
37 not be considered the selling price, except in cases where the buyer is  
38 required to pay the tax directly to the department.

1 (6) Where a buyer has failed to pay to the seller the tax imposed  
2 by this chapter and the seller has not paid the amount of the tax to  
3 the department, the department may, in its discretion, proceed directly  
4 against the buyer for collection of the tax, in which case a penalty of  
5 ten percent may be added to the amount of the tax for failure of the  
6 buyer to pay the same to the seller, regardless of when the tax may be  
7 collected by the department; and all of the provisions of chapter 82.32  
8 RCW, including those relative to interest and penalties, shall apply in  
9 addition; and, for the sole purpose of applying the various provisions  
10 of chapter 82.32 RCW, the twenty-fifth day of the month following the  
11 tax period in which the purchase was made shall be considered as the  
12 due date of the tax.

13 (7) Notwithstanding subsections (1) through (6) of this section,  
14 any person making sales is not obligated to collect the tax imposed by  
15 this chapter if:

16 (a) The person's activities in this state, whether conducted  
17 directly or through another person, are limited to:

18 (i) The storage, dissemination, or display of advertising;

19 (ii) The taking of orders; or

20 (iii) The processing of payments; and

21 (b) The activities are conducted electronically via a web site on  
22 a server or other computer equipment located in Washington that is not  
23 owned or operated by the person making sales into this state nor owned  
24 or operated by an affiliated person. "Affiliated persons" has the same  
25 meaning as provided in RCW 82.04.424.

26 (8) Subsection (7) of this section expires when: (a) The United  
27 States congress grants individual states the authority to impose sales  
28 and use tax collection duties on remote sellers; or (b) it is  
29 determined by a court of competent jurisdiction, in a judgment not  
30 subject to review, that a state can impose sales and use tax collection  
31 duties on remote sellers.

32 NEW SECTION. **Sec. 8.** This act applies to staffing services, as  
33 defined in section 1 of this act, rendered on or after April 1, 2005.

34 NEW SECTION. **Sec. 9.** This act is necessary for the immediate  
35 preservation of the public peace, health, or safety, or support of the



1 state government and its existing public institutions, and takes effect  
2 immediately.

--- END ---