
SUBSTITUTE SENATE BILL 5451

State of Washington

59th Legislature

2005 Regular Session

By Senate Committee on Health & Long-Term Care (originally sponsored by Senators Keiser, Prentice, Doumit and Kohl-Welles)

READ FIRST TIME 02/25/05.

1 AN ACT Relating to excise taxation of certain cosmetic medical
2 services; amending RCW 82.08.020; reenacting and amending RCW
3 82.04.050; and adding a new section to chapter 82.04 RCW.

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

5 **Sec. 1.** RCW 82.04.050 and 2004 c 174 s 3 and 2004 c 153 s 407 are
6 each reenacted and amended to read 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), 82.04.290, and 82.04.2908.

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; and

35 (h) Cosmetic medical services, including services directly related
36 to the performance of cosmetic medical services.

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

1 (i) The renting or leasing of tangible personal property to
2 consumers; and

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

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

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

14 (6) The term shall also include the sale of prewritten computer
15 software other than a sale to a person who presents a resale
16 certificate under RCW 82.04.470, regardless of the method of delivery
17 to the end user, but shall not include custom software or the
18 customization of prewritten computer software.

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

27 (8) The term shall also not include sales of chemical sprays or
28 washes to persons for the purpose of postharvest treatment of fruit for
29 the prevention of scald, fungus, mold, or decay, nor shall it include
30 sales of feed, seed, seedlings, fertilizer, agents for enhanced
31 pollination including insects such as bees, and spray materials to:

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

36 (b) farmers for the purpose of producing for sale any agricultural
37 product; and (c) farmers acting under cooperative habitat development
38 or access contracts with an organization exempt from federal income tax

1 under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of
2 fish and wildlife to produce or improve wildlife habitat on land that
3 the farmer owns or leases.

4 (9) The term shall not include the sale of or charge made for labor
5 and services rendered in respect to the constructing, repairing,
6 decorating, or improving of new or existing buildings or other
7 structures under, upon, or above real property of or for the United
8 States, any instrumentality thereof, or a county or city housing
9 authority created pursuant to chapter 35.82 RCW, including the
10 installing, or attaching of any article of tangible personal property
11 therein or thereto, whether or not such personal property becomes a
12 part of the realty by virtue of installation. Nor shall the term
13 include the sale of services or charges made for the clearing of land
14 and the moving of earth of or for the United States, any
15 instrumentality thereof, or a county or city housing authority. Nor
16 shall the term include the sale of services or charges made for
17 cleaning up for the United States, or its instrumentalities,
18 radioactive waste and other byproducts of weapons production and
19 nuclear research and development.

20 **Sec. 2.** RCW 82.08.020 and 2003 c 361 s 301 are each amended to
21 read as follows:

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

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

31 (3) The tax collected under this section on each retail sale of
32 cosmetic medical services, as defined in section 3 of this act, shall
33 be deposited into the health services account in RCW 43.72.900 to be
34 used for children's health care services.

35 (4) Beginning July 1, 2003, there is levied and collected an
36 additional tax of three-tenths of one percent of the selling price on
37 each retail sale of a motor vehicle in this state, other than retail

1 car rentals taxed under subsection (2) of this section. The revenue
2 collected under this subsection shall be deposited in the multimodal
3 transportation account created in RCW 47.66.070.

4 ~~((4))~~ (5) For purposes of subsection ~~((3))~~ (4) of this section,
5 "motor vehicle" has the meaning provided in RCW 46.04.320, but does not
6 include farm tractors or farm vehicles as defined in RCW 46.04.180 and
7 46.04.181, off-road and nonhighway vehicles as defined in RCW
8 46.09.020, and snowmobiles as defined in RCW 46.10.010.

9 ~~((5))~~ (6) The taxes imposed under this chapter shall apply to
10 successive retail sales of the same property.

11 ~~((6))~~ (7) The rates provided in this section apply to taxes
12 imposed under chapter 82.12 RCW as provided in RCW 82.12.020.

13 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.04 RCW
14 to read as follows:

15 (1) "Cosmetic medical service" means any medical procedure
16 performed on an individual over eighteen years of age that is directed
17 at improving the subject's appearance and which does not meaningfully
18 promote the proper function of the body or prevent or treat illness or
19 disease. "Cosmetic medical service" includes, but is not limited to,
20 cosmetic surgery, hair transplants, cosmetic injections, cosmetic soft
21 tissue fillers, dermabrasion and chemical peel, laser hair removal,
22 laser skin resurfacing, laser treatment of leg veins for cosmetic
23 purposes, sclerotherapy for cosmetic purposes, and only in-office
24 bleaching procedures for dentists. "Cosmetic medical service" does not
25 include reconstructive surgery or dentistry, nor does it include
26 services covered by the individual's medical insurance or that are
27 deductible by the individual as medical expenses for federal income tax
28 purposes. "Services directly related to the performance of cosmetic
29 medical services," include occupancy at medical facilities and services
30 provided by an anesthesiologist, surgeon, or other licensed or
31 regulated health professional described in RCW 18.120.020, but do not
32 include evaluation and referral by a primary care physician or
33 consultation or treatment by a counselor, psychologist, or
34 psychiatrist.

35 (2) "Cosmetic surgery" means the surgical reshaping of normal
36 structures on the body to improve the body image, self-esteem, or
37 appearance of an individual.

1 (3) "Reconstructive surgery or dentistry" includes any surgery or
2 dentistry performed on abnormal structures caused by or related to
3 congenital defects, developmental abnormalities, trauma, infection,
4 tumors, or disease, including procedures to improve function or give a
5 more normal appearance.

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