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SENATE BILL 5451

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State of Washington                      59th Legislature                      2005 Regular Session

By Senators Keiser, Prentice, Doumit and Kohl-Welles

Read first time 01/25/2005. Referred to Committee on Health & Long-Term Care.

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.

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

37 (i) The renting or leasing of tangible personal property to  
38 consumers; and

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

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

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

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

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

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

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

34 (b) farmers for the purpose of producing for sale any agricultural  
35 product; and (c) farmers acting under cooperative habitat development  
36 or access contracts with an organization exempt from federal income tax  
37 under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of

1 fish and wildlife to produce or improve wildlife habitat on land that  
2 the farmer owns or leases.

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

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

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

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

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

34 (4) Beginning July 1, 2003, there is levied and collected an  
35 additional tax of three-tenths of one percent of the selling price on  
36 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, sclerotherapy,  
23 and cosmetic dentistry. "Cosmetic medical service" does not include  
24 reconstructive surgery or dentistry.

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

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

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