
SENATE BILL 5641

State of Washington

61st Legislature

2009 Regular Session

By Senators Regala, Swecker, and McDermott

Read first time 01/28/09. Referred to Committee on Government Operations & Elections.

1 AN ACT Relating to removing essential government services as a
2 condition to exempt from taxation property belonging to any federally
3 recognized Indian tribe located in the state; and amending RCW
4 82.29A.010, 82.29A.020, 84.36.010, 84.36.451, and 84.40.230.

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

6 **Sec. 1.** RCW 82.29A.010 and 1999 c 220 s 1 are each amended to read
7 as follows:

8 (1)(a) The legislature hereby recognizes that properties of the
9 state of Washington, counties, school districts, and other municipal
10 corporations are exempted by Article 7, section 1 of the state
11 Constitution from property tax obligations, but that private lessees of
12 such public properties receive substantial benefits from governmental
13 services provided by units of government.

14 (b) The legislature finds that eliminating the property tax on
15 property owned exclusively by federally recognized Indian tribes within
16 the state requires that the leasehold excise tax also be applied to
17 leasehold interests on tribally owned property.

18 (c) The legislature further recognizes that a uniform method of

1 taxation should apply to such leasehold interests in publicly owned
2 property.

3 ((+e)) (d) The legislature finds that lessees of publicly owned
4 property are entitled to those same governmental services and does
5 hereby provide for a leasehold excise tax to fairly compensate
6 governmental units for services rendered to such lessees of publicly
7 owned property.

8 (2) The legislature further finds that experience gained by
9 lessors, lessees, and the department of revenue since enactment of the
10 leasehold excise tax under this chapter has shed light on areas in the
11 leasehold excise statutes that need explanation and clarification. The
12 purpose of chapter 220, Laws of 1999 is to make those changes.

13 **Sec. 2.** RCW 82.29A.020 and 1999 c 220 s 2 are each amended to read
14 as follows:

15 As used in this chapter the following terms shall be defined as
16 follows, unless the context otherwise requires:

17 (1) "Leasehold interest" shall mean an interest in publicly owned
18 real or personal property which exists by virtue of any lease, permit,
19 license, or any other agreement, written or verbal, between the public
20 owner of the property and a person who would not be exempt from
21 property taxes if that person owned the property in fee, granting
22 possession and use, to a degree less than fee simple ownership:
23 PROVIDED, That no interest in personal property (excluding land or
24 buildings) which is owned by the United States, whether or not as
25 trustee, or by any foreign government shall constitute a leasehold
26 interest hereunder when the right to use such property is granted
27 pursuant to a contract solely for the manufacture or production of
28 articles for sale to the United States or any foreign government. The
29 term "leasehold interest" shall include the rights of use or occupancy
30 by others of property which is owned in fee or held in trust by a
31 public corporation, commission, or authority created under RCW
32 35.21.730 or 35.21.660 if the property is listed on or is within a
33 district listed on any federal or state register of historical sites.
34 The term "leasehold interest" shall not include road or utility
35 easements, rights of access, occupancy, or use granted solely for the
36 purpose of removing materials or products purchased from a public owner
37 or the lessee of a public owner, or rights of access, occupancy, or use

1 granted solely for the purpose of natural energy resource exploration.
2 "Publicly owned real or personal property" includes real or personal
3 property owned by a federally recognized Indian tribe in the state and
4 exempt from tax under RCW 84.36.010.

5 (2) "Taxable rent" shall mean contract rent as defined in
6 subsection (a) of this subsection in all cases where the lease or
7 agreement has been established or renegotiated through competitive
8 bidding, or negotiated or renegotiated in accordance with statutory
9 requirements regarding the rent payable, or negotiated or renegotiated
10 under circumstances, established by public record, clearly showing that
11 the contract rent was the maximum attainable by the lessor: PROVIDED,
12 That after January 1, 1986, with respect to any lease which has been in
13 effect for ten years or more without renegotiation, taxable rent may be
14 established by procedures set forth in subsection (b) of this
15 subsection. All other leasehold interests shall be subject to the
16 determination of taxable rent under the terms of subsection (b) of this
17 subsection.

18 For purposes of determining leasehold excise tax on any lands on
19 the Hanford reservation subleased to a private or public entity by the
20 department of ecology, taxable rent shall include only the annual cash
21 rental payment made by such entity to the department of ecology as
22 specifically referred to as rent in the sublease agreement between the
23 parties and shall not include any other fees, assessments, or charges
24 imposed on or collected by such entity irrespective of whether the
25 private or public entity pays or collects such other fees, assessments,
26 or charges as specified in the sublease agreement.

27 (a) "Contract rent" shall mean the amount of consideration due as
28 payment for a leasehold interest, including: The total of cash
29 payments made to the lessor or to another party for the benefit of the
30 lessor according to the requirements of the lease or agreement,
31 including any rents paid by a sublessee; expenditures for the
32 protection of the lessor's interest when required by the terms of the
33 lease or agreement; and expenditures for improvements to the property
34 to the extent that such improvements become the property of the lessor.
35 Where the consideration conveyed for the leasehold interest is made in
36 combination with payment for concession or other rights granted by the
37 lessor, only that portion of such payment which represents

1 consideration for the leasehold interest shall be part of contract
2 rent.

3 "Contract rent" shall not include: (i) Expenditures made by the
4 lessee, which under the terms of the lease or agreement, are to be
5 reimbursed by the lessor to the lessee or expenditures for improvements
6 and protection made pursuant to a lease or an agreement which requires
7 that the use of the improved property be open to the general public and
8 that no profit will inure to the lessee from the lease; (ii)
9 expenditures made by the lessee for the replacement or repair of
10 facilities due to fire or other casualty including payments for
11 insurance to provide reimbursement for losses or payments to a public
12 or private entity for protection of such property from damage or loss
13 or for alterations or additions made necessary by an action of
14 government taken after the date of the execution of the lease or
15 agreement; (iii) improvements added to publicly owned property by a
16 sublessee under an agreement executed prior to January 1, 1976, which
17 have been taxed as personal property of the sublessee prior to January
18 1, 1976, or improvements made by a sublessee of the same lessee under
19 a similar agreement executed prior to January 1, 1976, and such
20 improvements shall be taxable to the sublessee as personal property;
21 (iv) improvements added to publicly owned property if such improvements
22 are being taxed as personal property to any person.

23 Any prepaid contract rent shall be considered to have been paid in
24 the year due and not in the year actually paid with respect to
25 prepayment for a period of more than one year. Expenditures for
26 improvements with a useful life of more than one year which are
27 included as part of contract rent shall be treated as prepaid contract
28 rent and prorated over the useful life of the improvement or the
29 remaining term of the lease or agreement if the useful life is in
30 excess of the remaining term of the lease or agreement. Rent prepaid
31 prior to January 1, 1976, shall be prorated from the date of
32 prepayment.

33 With respect to a "product lease", the value shall be that value
34 determined at the time of sale under terms of the lease.

35 (b) If it shall be determined by the department of revenue, upon
36 examination of a lessee's accounts or those of a lessor of publicly
37 owned property, that a lessee is occupying or using publicly owned
38 property in such a manner as to create a leasehold interest and that

1 such leasehold interest has not been established through competitive
2 bidding, or negotiated in accordance with statutory requirements
3 regarding the rent payable, or negotiated under circumstances,
4 established by public record, clearly showing that the contract rent
5 was the maximum attainable by the lessor, the department may establish
6 a taxable rent computation for use in determining the tax payable under
7 authority granted in this chapter based upon the following criteria:
8 (i) Consideration shall be given to rental being paid to other lessors
9 by lessees of similar property for similar purposes over similar
10 periods of time; (ii) consideration shall be given to what would be
11 considered a fair rate of return on the market value of the property
12 leased less reasonable deductions for any restrictions on use, special
13 operating requirements or provisions for concurrent use by the lessor,
14 another person or the general public.

15 (3) "Product lease" as used in this chapter shall mean a lease of
16 property for use in the production of agricultural or marine products
17 to the extent that such lease provides for the contract rent to be paid
18 by the delivery of a stated percentage of the production of such
19 agricultural or marine products to the credit of the lessor or the
20 payment to the lessor of a stated percentage of the proceeds from the
21 sale of such products.

22 (4) "Renegotiated" means a change in the lease agreement which
23 changes the agreed time of possession, restrictions on use, the rate of
24 the cash rental or of any other consideration payable by the lessee to
25 or for the benefit of the lessor, other than any such change required
26 by the terms of the lease or agreement. In addition "renegotiated"
27 shall mean a continuation of possession by the lessee beyond the date
28 when, under the terms of the lease agreement, the lessee had the right
29 to vacate the premises without any further liability to the lessor.

30 (5) "City" means any city or town.

31 (6) "Products" includes natural resource products such as cut or
32 picked evergreen foliage, Cascara bark, wild edible mushrooms, native
33 ornamental trees and shrubs, ore and minerals, natural gas, geothermal
34 water and steam, and forage removed through the grazing of livestock.

35 **Sec. 3.** RCW 84.36.010 and 2004 c 236 s 1 are each amended to read
36 as follows:

37 ((+1)) All property belonging exclusively to the United States,

1 the state, or any county or municipal corporation; all property
2 belonging exclusively to any federally recognized Indian tribe located
3 in the state(~~(, if that property is used exclusively for essential~~
4 ~~government services))~~); all state route number 16 corridor
5 transportation systems and facilities constructed under chapter 47.46
6 RCW; and all property under a financing contract pursuant to chapter
7 39.94 RCW or recorded agreement granting immediate possession and use
8 to the public bodies listed in this section or under an order of
9 immediate possession and use pursuant to RCW 8.04.090; is exempt from
10 taxation. All property belonging exclusively to a foreign national
11 government is exempt from taxation if that property is used exclusively
12 as an office or residence for a consul or other official representative
13 of the foreign national government, and if the consul or other official
14 representative is a citizen of that foreign nation.

15 ~~((2) For the purposes of this section, "essential government~~
16 ~~services" means services such as tribal administration, public~~
17 ~~facilities, fire, police, public health, education, sewer, water,~~
18 ~~environmental and land use, transportation, and utility services.))~~

19 **Sec. 4.** RCW 84.36.451 and 2001 c 26 s 2 are each amended to read
20 as follows:

21 (1) The following property shall be exempt from taxation: Any and
22 all rights to occupy or use any real or personal property owned in fee
23 or held in trust by:

24 (a) The United States, the state of Washington, or any political
25 subdivision or municipal corporation of the state of Washington, or a
26 federally recognized Indian tribe for property exempt under RCW
27 84.36.010; or

28 (b) A public corporation, commission, or authority created under
29 RCW 35.21.730 or 35.21.660 if the property is listed on or is within a
30 district listed on any federal or state register of historical sites;
31 and

32 (c) ~~((Including))~~ Any leasehold interest arising from the property
33 identified in (a) and (b) of this subsection as defined in RCW
34 82.29A.020.

35 (2) The exemption under this section shall not apply to:

36 (a) Any such leasehold interests which are a part of operating

1 properties of public utilities subject to assessment under chapter
2 84.12 RCW; or

3 (b) Any such leasehold interest consisting of three thousand or
4 more residential and recreational lots that are or may be subleased for
5 residential and recreational purposes.

6 (3) The exemption under this section shall not be construed to
7 modify the provisions of RCW 84.40.230.

8 **Sec. 5.** RCW 84.40.230 and 1994 c 124 s 25 are each amended to read
9 as follows:

10 When any real property is sold on contract by the United States of
11 America, the state, (~~or~~) any county or municipality, or any federally
12 recognized Indian tribe, and the contract expresses or implies that the
13 vendee is entitled to the possession, use, benefits and profits thereof
14 and therefrom so long as the vendee complies with the terms of the
15 contract, it shall be deemed that the vendor retains title merely as
16 security for the fulfillment of the contract, and the property shall be
17 assessed and taxed in the same manner as other similar property in
18 private ownership is taxed, and the tax roll shall contain, opposite
19 the description of the property so assessed the following notation:
20 "Subject to title remaining in the vendor" or other notation of similar
21 significance. No foreclosure for delinquent taxes nor any deed issued
22 pursuant thereto shall extinguish or otherwise affect the title of the
23 vendor. In any case under former law where the contract and not the
24 property was taxed no deed of the property described in such contract
25 shall ever be executed and delivered by the state or any county or
26 municipality until all taxes assessed against such contract and local
27 assessments assessed against the land described thereon are fully paid.

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