

# SENATE BILL REPORT

## ESSB 6472

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As Passed Senate, March 5, 2014

**Title:** An act relating to simplifying the taxation of amusement, recreation, and physical fitness services.

**Brief Description:** Simplifying the taxation of amusement, recreation, and physical fitness services.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Hill, Keiser and Fraser; by request of Department of Revenue).

**Brief History:**

**Committee Activity:** Ways & Means: 2/03/14, 2/05/14 [DPS, DNP, w/oRec].  
Passed Senate: 3/05/14, 37-12.

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Substitute Senate Bill No. 6472 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hill, Chair; Honeyford, Capital Budget Chair; Hargrove, Ranking Member; Keiser, Assistant Ranking Member on the Capital Budget; Ranker, Assistant Ranking Member on the Operating Budget; Bailey, Becker, Billig, Braun, Conway, Dammeier, Fraser, Hatfield, Hewitt, Kohl-Welles, Padden, Parlette, Schoesler and Tom.

**Minority Report:** Do not pass.  
Signed by Senator Hasegawa.

**Minority Report:** That it be referred without recommendation.  
Signed by Senator Frockt.

**Staff:** Juliana Roe (786-7438)

**Background:** Retail sales taxes are imposed on retail sales of most articles of tangible personal property, digital products, and some services. A retail sale is a sale to the final consumer or end user of the property, digital product, or service. If retail sales taxes were not collected when the user acquired the property, digital products, or services, then use taxes apply to the value of the property, digital product, or service when used in this state. The state, most cities, and all counties levy retail sales and use taxes. The state sales and use tax

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rate is 6.5 percent, whereas local sales and use tax rates vary from 0.5 percent to 3.1 percent, depending on the location.

Amusement and recreational services are included in the definition of retail sale for business and occupation (B&O) and retail sales tax purposes. A specific definition of amusement and recreational services is not provided in statute. Current law does include a list of activities that are classified as amusement and recreation services including golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others when provided to consumers. Sales of these retail services are subject to retail sales or use taxes.

Physical fitness services are also included in the definition of retail sale for B&O and retail sales tax purposes. The term physical fitness services is not defined in statute but is referred to as a personal service. The Department of Revenue (DOR) by rule has defined physical fitness services to include all exercise classes, use of exercise equipment, and personal training, and does not include instructional lessons. Instructional lessons can be distinguished from exercise classes in that education is the primary focus in the former and exercise is the primary focus in the latter. Sales of these retail services are subject to retail sales tax.

The opportunity to dance is defined in statute as a provision by an establishment of a designated physical space where customers are allowed to dance. Under current law, charges for the opportunity to dance are exempt from retail sales tax. The exemption is set to expire July 1, 2017.

**Summary of Engrossed Substitute Bill:** The term amusement and recreation service is replaced in the definition of retail sales with a specific list of retailing activities of an amusement and recreational nature. Specific exclusions are provided for: (1) admission to fairs, carnivals, and festivals, including charges for rides and attractions; (2) otherwise taxable activities provided by an educational institution to its students and staff, not applying to charges made to its alumni and other members of the public; (3) diver training provided by a licensed vocational school; and (4) day camps provided by nonprofit organizations or state or local governmental entities for persons who are under 19 years of age or that are focused on persons who have a disability or a mental illness. In instances where sales tax was not collected for the retail sale of specified amusement or recreational services, use tax is no longer due from the buyer.

The term physical fitness services is removed from the definition of retail sale. Instead, the operation of an athletic or fitness facility is included in the definition of a retail sale. An athletic or fitness facility is defined as an indoor or outdoor facility, or portion of a facility, that is predominantly used for physical fitness activities. Physical fitness activities are activities that involve physical exertion for the purpose of improving or maintaining the general fitness, strength, flexibility, conditioning, or health of the participant. With certain exceptions, all charges for the use of an athletic or fitness facility are retail sales including any charges associated with services or amenities. Specific exclusions are provided for: (1) separately stated charges for the use of an athletic or fitness facility for purposes other than engaging in physical activity, use of a discrete portion of the facility that does not meet the definition of athletic or fitness facility, and services that do not involve physical exertion; (2) rent or associated fees; (3) services provided without charge to employees or their family

members; and (4) yoga, tai chi, and chi gong classes held in a facility not primarily used for physical fitness activities other than yoga, tai chi, and chi gong.

The sales tax exemption for charges for the opportunity to dance is made permanent July 1, 2017.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill:** PRO: This bill addresses a long-standing issue with amusement and recreation services. The opportunity to dance issue arose from the problems with amusement and recreation services. These activities are not specified in statute and the DOR is left to interpret. Many nonprofits and other organizations have no knowledge that they owe sales tax on their amusement activities. DOR does not generally audit nonprofits, and when they do these taxpayers are surprised that they owe tax. This proposal will make a specified list to clarify what is in and what is out. Things in the list are either sales taxable or service. This clarification will make it easier for taxpayers to understand their responsibilities, easier for purposes of education, and easier to administer.

In 2011 an excise tax advisory was put out on league fees which swept up our student league. The fee for them included participation in races. This bill would make them exempt. The entire sport has been confused and conflicted about tax collection for bike community events. This would provide clarity.

We thank DOR for being thoughtful about this legislation. This statute has historically been very confusing. It has been difficult in an industry in which some people properly paid the tax and other people refused or failed to understand that they owed. This legislative fix is important.

We are glad DOR is cleaning up this area of the law that has typically been a grey area.

CON: We oppose imposing a sales tax on golf lessons. We propose language to rectify this issue. Taxing golf lessons would hurt the ailing golf industry and keep people from taking lessons.

**Persons Testifying:** PRO: Doug Levy, WA Recreation and Park Assn., cities of Everett, Fife, Issaquah, Kent, Lake Stevens, Puyallup, Redmond, Renton; Jim Lux, Capital City Marathon; Mary Dodsworth, Parks, Recreation, and Community Services Director, City of Lakewood; Andy Cole, Greater Seattle Hockey League, Coalition of Seattle Sports Leagues; Glenn Glover, Evergreen Mountain Bike Alliance; Drew Shirk, DOR.

CON: Troy Andrew, Executive Director, WA Golf Assn.; Heather Hansen, WA Golf Assn.