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**SUBSTITUTE SENATE BILL 5063**

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**State of Washington**

**65th Legislature**

**2017 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Fain and Palumbo)

READ FIRST TIME 02/10/17.

1 AN ACT Relating to clarifying the taxation of pet adoption fees;  
2 amending RCW 82.04.040 and 82.04.190; and creating new sections.

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

4 **Sec. 1.** RCW 82.04.040 and 2004 c 153 s 402 are each amended to  
5 read as follows:

6 (1) Except as otherwise provided in this subsection, "sale" means  
7 any transfer of the ownership of, title to, or possession of property  
8 for a valuable consideration and includes any activity classified as  
9 a "sale at retail" or "retail sale" under RCW 82.04.050. It includes  
10 lease or rental, conditional sale contracts, and any contract under  
11 which possession of the property is given to the purchaser but title  
12 is retained by the vendor as security for the payment of the purchase  
13 price. It also includes the furnishing of food, drink, or meals for  
14 compensation whether consumed upon the premises or not. The term  
15 "sale" does not include the transfer of the ownership of, title to,  
16 or possession of an animal by an animal rescue organization in  
17 exchange for the payment of an adoption fee.

18 (2) "Casual or isolated sale" means a sale made by a person who  
19 is not engaged in the business of selling the type of property  
20 involved.

1 (3)(a) "Lease or rental" means any transfer of possession or  
2 control of tangible personal property for a fixed or indeterminate  
3 term for consideration. A lease or rental may include future options  
4 to purchase or extend. "Lease or rental" includes agreements covering  
5 motor vehicles and trailers where the amount of consideration may be  
6 increased or decreased by reference to the amount realized upon sale  
7 or disposition of the property as defined in 26 U.S.C. Sec.  
8 7701(h)(1), as amended or renumbered as of January 1, 2003. The  
9 definition in this subsection (3) (~~shall~~) must be used for sales  
10 and use tax purposes regardless if a transaction is characterized as  
11 a lease or rental under generally accepted accounting principles, the  
12 United States internal revenue code, Washington state's commercial  
13 code, or other provisions of federal, state, or local law.

14 (b) "Lease or rental" does not include:

15 (i) A transfer of possession or control of property under a  
16 security agreement or deferred payment plan that requires the  
17 transfer of title upon completion of the required payments;

18 (ii) A transfer of possession or control of property under an  
19 agreement that requires the transfer of title upon completion of  
20 required payments, and payment of an option price does not exceed the  
21 greater of one hundred dollars or one percent of the total required  
22 payments; or

23 (iii) Providing tangible personal property along with an operator  
24 for a fixed or indeterminate period of time. A condition of this  
25 exclusion is that the operator is necessary for the tangible personal  
26 property to perform as designed. For the purpose of this subsection  
27 (3)(b)(iii), an operator must do more than maintain, inspect, or set  
28 up the tangible personal property.

29 (4)(a) "Adoption fee" means an amount charged by an animal rescue  
30 organization to adopt an animal, except that "adoption fee" does not  
31 include any separately itemized charge for any incidental inanimate  
32 items provided to persons adopting an animal, including food,  
33 identification tags, collars, and leashes.

34 (b) "Animal care and control agency" means the same as in RCW  
35 16.52.011 and also includes any similar entity operating outside of  
36 this state.

37 (c) "Animal rescue group" means a nonprofit organization that:

38 (i)(A) Is exempt from federal income taxation under Title 26  
39 U.S.C. Sec. 501(c) of the federal internal revenue code as it exists  
40 on the effective date of this section; or

1 (B) Is registered as a charity with the Washington secretary of  
2 state under chapter 19.09 RCW, whether such registration is required  
3 by law or voluntary;

4 (ii) Has as its primary purpose the prevention of abuse, neglect,  
5 cruelty, exploitation, or homelessness of animals; and

6 (iii) Exclusively obtains dogs, cats, or other animals for  
7 placement that are stray or abandoned; surrendered or relinquished by  
8 animal owners or caretakers; transferred from other animal rescue  
9 organizations; or born in the care of such nonprofit organization  
10 other than through intentional breeding by the nonprofit  
11 organization.

12 (d) "Animal rescue organization" means an animal care and control  
13 agency or an animal rescue group.

14 **Sec. 2.** RCW 82.04.190 and 2015 c 169 s 3 are each amended to  
15 read as follows:

16 "Consumer" means the following:

17 (1) Except as provided otherwise in this section, any person who  
18 purchases, acquires, owns, holds, or uses any article of tangible  
19 personal property irrespective of the nature of the person's business  
20 and including, among others, without limiting the scope hereof,  
21 persons who install, repair, clean, alter, improve, construct, or  
22 decorate real or personal property of or for consumers other than for  
23 the purpose of:

24 (a) Resale as tangible personal property in the regular course of  
25 business;

26 (b) Incorporating such property as an ingredient or component of  
27 real or personal property when installing, repairing, cleaning,  
28 altering, imprinting, improving, constructing, or decorating such  
29 real or personal property of or for consumers;

30 (c) Consuming such property in producing for sale as a new  
31 article of tangible personal property or a new substance, of which  
32 such property becomes an ingredient or component or as a chemical  
33 used in processing, when the primary purpose of such chemical is to  
34 create a chemical reaction directly through contact with an  
35 ingredient of a new article being produced for sale;

36 (d) Consuming the property purchased in producing ferrosilicon  
37 which is subsequently used in producing magnesium for sale, if the  
38 primary purpose of such property is to create a chemical reaction  
39 directly through contact with an ingredient of ferrosilicon; or

1 (e) Satisfying the person's obligations under an extended  
2 warranty as defined in RCW 82.04.050(7), if such tangible personal  
3 property replaces or becomes an ingredient or component of property  
4 covered by the extended warranty without intervening use by such  
5 person;

6 (2)(a) Any person engaged in any business activity taxable under  
7 RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires,  
8 or uses any competitive telephone service, ancillary services, or  
9 telecommunications service as those terms are defined in RCW  
10 82.04.065, other than for resale in the regular course of business;  
11 (c) any person who purchases, acquires, or uses any service defined  
12 in RCW 82.04.050(2) (a) or (g), other than for resale in the regular  
13 course of business or for the purpose of satisfying the person's  
14 obligations under an extended warranty as defined in RCW  
15 82.04.050(7); (d) any person who makes a purchase meeting the  
16 definition of "sale at retail" and "retail sale" under RCW  
17 82.04.050(15), other than for resale in the regular course of  
18 business; (e) any person who purchases or acquires an extended  
19 warranty as defined in RCW 82.04.050(7) other than for resale in the  
20 regular course of business; and (f) any person who is an end user of  
21 software. For purposes of this subsection (2)(f) and RCW  
22 82.04.050(6), a person who purchases or otherwise acquires prewritten  
23 computer software, who provides services described in RCW  
24 82.04.050(6)((~~b~~)) (c) and who will charge consumers for the right  
25 to access and use the prewritten computer software, is not an end  
26 user of the prewritten computer software;

27 (3) Any person engaged in the business of contracting for the  
28 building, repairing or improving of any street, place, road, highway,  
29 easement, right-of-way, mass public transportation terminal or  
30 parking facility, bridge, tunnel, or trestle which is owned by a  
31 municipal corporation or political subdivision of the state of  
32 Washington or by the United States and which is used or to be used  
33 primarily for foot or vehicular traffic including mass transportation  
34 vehicles of any kind as defined in RCW 82.04.280, in respect to  
35 tangible personal property when such person incorporates such  
36 property as an ingredient or component of such publicly owned street,  
37 place, road, highway, easement, right-of-way, mass public  
38 transportation terminal or parking facility, bridge, tunnel, or  
39 trestle by installing, placing or spreading the property in or upon  
40 the right-of-way of such street, place, road, highway, easement,

1 bridge, tunnel, or trestle or in or upon the site of such mass public  
2 transportation terminal or parking facility;

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

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

19 (6) Any person engaged in the business of constructing,  
20 repairing, decorating, or improving new or existing buildings or  
21 other structures under, upon, or above real property of or for the  
22 United States, any instrumentality thereof, or a county or city  
23 housing authority created pursuant to chapter 35.82 RCW, including  
24 the installing or attaching of any article of tangible personal  
25 property therein or thereto, whether or not such personal property  
26 becomes a part of the realty by virtue of installation; also, any  
27 person engaged in the business of clearing land and moving earth of  
28 or for the United States, any instrumentality thereof, or a county or  
29 city housing authority created pursuant to chapter 35.82 RCW. Any  
30 such person is a consumer within the meaning of this subsection in  
31 respect to tangible personal property incorporated into, installed  
32 in, or attached to such building or other structure by such person,  
33 except that consumer does not include any person engaged in the  
34 business of constructing, repairing, decorating, or improving new or  
35 existing buildings or other structures under, upon, or above real  
36 property of or for the United States, or any instrumentality thereof,  
37 if the investment project would qualify for sales and use tax  
38 deferral under chapter 82.63 RCW if undertaken by a private entity;

39 (7) Any person who is a lessor of machinery and equipment, the  
40 rental of which is exempt from the tax imposed by RCW 82.08.020 under

1 RCW 82.08.02565, with respect to the sale of or charge made for  
2 tangible personal property consumed in respect to repairing the  
3 machinery and equipment, if the tangible personal property has a  
4 useful life of less than one year. Nothing contained in this or any  
5 other subsection of this section may be construed to modify any other  
6 definition of "consumer";

7 (8) Any person engaged in the business of cleaning up for the  
8 United States, or its instrumentalities, radioactive waste and other  
9 by-products of weapons production and nuclear research and  
10 development;

11 (9) Any person who is an owner, lessee, or has the right of  
12 possession of tangible personal property that, under the terms of an  
13 extended warranty as defined in RCW 82.04.050(7), has been repaired  
14 or is replacement property, but only with respect to the sale of or  
15 charge made for the repairing of the tangible personal property or  
16 the replacement property;

17 (10) Any person who purchases, acquires, or uses services  
18 described in RCW 82.04.050(6)((~~b~~)) (c) other than:

19 (a) For resale in the regular course of business; or

20 (b) For purposes of consuming the service described in RCW  
21 82.04.050(6)((~~b~~)) (c) in producing for sale a new product, but only  
22 if such service becomes a component of the new product. For purposes  
23 of this subsection (10), "product" means a digital product, an  
24 article of tangible personal property, or the service described in  
25 RCW 82.04.050(6)((~~b~~)) (c);

26 (11)(a) Any end user of a digital product or digital code.  
27 "Consumer" does not include any person who is not an end user of a  
28 digital product or a digital code and purchases, acquires, owns,  
29 holds, or uses any digital product or digital code for purposes of  
30 consuming the digital product or digital code in producing for sale a  
31 new product, but only if the digital product or digital code becomes  
32 a component of the new product. A digital code becomes a component of  
33 a new product if the digital good or digital automated service  
34 acquired through the use of the digital code becomes incorporated  
35 into a new product. For purposes of this subsection, "product" has  
36 the same meaning as in subsection (10) of this section.

37 (b)(i) For purposes of this subsection, "end user" means any  
38 taxpayer as defined in RCW 82.12.010 other than a taxpayer who  
39 receives by contract a digital product for further commercial  
40 broadcast, rebroadcast, transmission, retransmission, licensing,

1 relicensing, distribution, redistribution or exhibition of the  
2 product, in whole or in part, to others. A person that purchases  
3 digital products or digital codes for the purpose of giving away such  
4 products or codes will not be considered to have engaged in the  
5 distribution or redistribution of such products or codes and will be  
6 treated as an end user;

7 (ii) If a purchaser of a digital code does not receive the  
8 contractual right to further redistribute, after the digital code is  
9 redeemed, the underlying digital product to which the digital code  
10 relates, then the purchaser of the digital code is an end user. If  
11 the purchaser of the digital code receives the contractual right to  
12 further redistribute, after the digital code is redeemed, the  
13 underlying digital product to which the digital code relates, then  
14 the purchaser of the digital code is not an end user. A purchaser of  
15 a digital code who has the contractual right to further redistribute  
16 the digital code is an end user if that purchaser does not have the  
17 right to further redistribute, after the digital code is redeemed,  
18 the underlying digital product to which the digital code relates;

19 (12) Any person who provides services described in RCW  
20 82.04.050(9). Any such person is a consumer with respect to the  
21 purchase, acquisition, or use of the tangible personal property that  
22 the person provides along with an operator in rendering services  
23 defined as a retail sale in RCW 82.04.050(9). Any such person may  
24 also be a consumer under other provisions of this section;

25 (13) Any person who purchases, acquires, owns, holds, or uses  
26 chemical sprays or washes for the purpose of postharvest treatment of  
27 fruit for the prevention of scald, fungus, mold, or decay, or who  
28 purchases feed, seed, seedlings, fertilizer, agents for enhanced  
29 pollination including insects such as bees, and spray materials, is  
30 not a consumer of such items, but only to the extent that the items:

31 (a) Are used in relation to the person's participation in the  
32 federal conservation reserve program, the environmental quality  
33 incentives program, the wetlands reserve program, the wildlife  
34 habitat incentives program, or their successors administered by the  
35 United States department of agriculture;

36 (b) Are for use by a farmer for the purpose of producing for sale  
37 any agricultural product; or

38 (c) Are for use by a farmer to produce or improve wildlife  
39 habitat on land the farmer owns or leases while acting under  
40 cooperative habitat development or access contracts with an

1 organization exempt from federal income tax under 26 U.S.C. Sec.  
2 501(c)(3) of the federal internal revenue code or the Washington  
3 state department of fish and wildlife; (~~and~~)

4 (14) A regional transit authority is not a consumer with respect  
5 to labor, services, or tangible personal property purchased pursuant  
6 to agreements providing maintenance services for bus, rail, or rail  
7 fixed guideway equipment when a transit agency, as defined in RCW  
8 81.104.015, performs the labor or services; and

9 (15) The term "consumer" does not include:

10 (a) An animal rescue organization with respect to animals under  
11 its care and control; and

12 (b) Any person with respect to an animal adopted by that person  
13 from an animal rescue organization.

14 NEW SECTION. Sec. 3. Sections 1 and 2 of this act apply both  
15 prospectively and retroactively to July 1, 2015.

16 NEW SECTION. Sec. 4. The provisions of RCW 82.32.805 and  
17 82.32.808 do not apply to this act.

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