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**SENATE BILL 5748**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senators Muzzall, Mullet, and Shewmake

Read first time 02/17/23. Referred to Committee on Ways & Means.

1 AN ACT Relating to clarifying the excise tax treatment of meals  
2 furnished to tenants of senior living communities as part of their  
3 rental agreement; amending RCW 82.04.040 and 82.04.040; adding a new  
4 section to chapter 82.04 RCW; adding a new section to chapter 82.12  
5 RCW; creating new sections; providing an effective date; and  
6 providing an expiration date.

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

8 **Sec. 1.** RCW 82.04.040 and 2019 c 357 s 2 are each amended to  
9 read as follows:

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

1 (a) An animal by an animal rescue organization in exchange for  
2 the payment of an adoption fee; ((~~or~~))

3 (b) An abandoned vehicle sold by a registered tow truck operator  
4 to a successful bidder at public auction or, if there is no  
5 successful bidder, to a licensed vehicle wrecker, hulk hauler, or  
6 scrap processor, as provided in RCW 46.55.130. Nothing in this  
7 subsection (1)(b) may be construed as providing an exemption from:

8 (i) The tax imposed by chapter 82.12 RCW on the use of an  
9 abandoned vehicle by any consumer; or

10 (ii) Taxes imposed under this chapter and chapter 82.08 RCW on  
11 automobile towing and automobile storage services provided by a  
12 registered tow truck operator; or

13 (c) Food, drink, or meals furnished by a senior living community  
14 to tenants as part of a rental or residency agreement for which no  
15 separate charge is made, regardless of whether the tenant is a  
16 resident for purposes of chapter 18.20 or 18.390 RCW.

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

20 (3)(a) "Lease or rental" means any transfer of possession or  
21 control of tangible personal property for a fixed or indeterminate  
22 term for consideration. A lease or rental may include future options  
23 to purchase or extend. "Lease or rental" includes agreements covering  
24 motor vehicles and trailers where the amount of consideration may be  
25 increased or decreased by reference to the amount realized upon sale  
26 or disposition of the property as defined in 26 U.S.C. Sec.  
27 7701(h)(1), as amended or renumbered as of January 1, 2003. The  
28 definition in this subsection (3) must be used for sales and use tax  
29 purposes regardless if a transaction is characterized as a lease or  
30 rental under generally accepted accounting principles, the United  
31 States internal revenue code, Washington state's commercial code, or  
32 other provisions of federal, state, or local law.

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

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

37 (ii) A transfer of possession or control of property under an  
38 agreement that requires the transfer of title upon completion of  
39 required payments, and payment of an option price does not exceed the

1 greater of (~~one hundred dollars~~) \$100 or one percent of the total  
2 required payments; or

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

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

14 (b) "Animal care and control agency" means the same as in RCW  
15 16.52.011 and also includes any similar entity operating outside of  
16 this state.

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

18 (i)(A) Is exempt from federal income taxation under 26 U.S.C.  
19 Sec. 501(c) of the federal internal revenue code as it exists on July  
20 23, 2017; or

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

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

26 (iii) Exclusively obtains dogs, cats, or other animals for  
27 placement that are:

28 (A) Stray or abandoned;

29 (B) Surrendered or relinquished by animal owners or caretakers;

30 (C) Transferred from other animal rescue organizations; or

31 (D) Born in the care of such nonprofit organization other than  
32 through intentional breeding by the nonprofit organization.

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

35 (e) "Senior living community" means any facility or campus  
36 operated by a person licensed or registered under chapter 18.20 or  
37 18.390 RCW.

38 **Sec. 2.** RCW 82.04.040 and 2017 c 323 s 201 are each amended to  
39 read as follows:

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

12 (a) An animal by an animal rescue organization in exchange for  
13 the payment of an adoption fee; or

14 (b) Food, drink, or meals furnished by a senior living community  
15 to tenants as part of a rental or residency agreement for which no  
16 separate charge is made, regardless of whether the tenant is a  
17 resident for purposes of chapter 18.20 or 18.390 RCW.

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.

21 (3)(a) "Lease or rental" means any transfer of possession or  
22 control of tangible personal property for a fixed or indeterminate  
23 term for consideration. A lease or rental may include future options  
24 to purchase or extend. "Lease or rental" includes agreements covering  
25 motor vehicles and trailers where the amount of consideration may be  
26 increased or decreased by reference to the amount realized upon sale  
27 or disposition of the property as defined in 26 U.S.C. Sec.  
28 7701(h)(1), as amended or renumbered as of January 1, 2003. The  
29 definition in this subsection (3) must be used for sales and use tax  
30 purposes regardless if a transaction is characterized as a lease or  
31 rental under generally accepted accounting principles, the United  
32 States internal revenue code, Washington state's commercial code, or  
33 other provisions of federal, state, or local law.

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

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

38 (ii) A transfer of possession or control of property under an  
39 agreement that requires the transfer of title upon completion of  
40 required payments, and payment of an option price does not exceed the

1 greater of (~~one hundred dollars~~) \$100 or one percent of the total  
2 required payments; or

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

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

14 (b) "Animal care and control agency" means the same as in RCW  
15 16.52.011 and also includes any similar entity operating outside of  
16 this state.

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

18 (i)(A) Is exempt from federal income taxation under 26 U.S.C.  
19 Sec. 501(c) of the federal internal revenue code as it exists on July  
20 23, 2017; or

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

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

26 (iii) Exclusively obtains dogs, cats, or other animals for  
27 placement that are:

28 (A) Stray or abandoned;

29 (B) Surrendered or relinquished by animal owners or caretakers;

30 (C) Transferred from other animal rescue organizations; or

31 (D) Born in the care of such nonprofit organization other than  
32 through intentional breeding by the nonprofit organization.

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

35 (e) "Senior living community" means any facility or campus  
36 operated by a person licensed or registered under chapter 18.20 or  
37 18.390 RCW.

38 NEW SECTION. Sec. 3. A new section is added to chapter 82.04  
39 RCW to read as follows:

1 (1) This chapter does not apply to amounts received for food,  
2 drink, or meals furnished by a senior living community to tenants as  
3 part of a rental or residency agreement for which no separate charge  
4 is made, regardless of whether the tenant is a resident for purposes  
5 of chapter 18.20 or 18.390 RCW.

6 (2) For purposes of this section, "senior living community" has  
7 the meaning provided in RCW 82.04.040.

8 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.12  
9 RCW to read as follows:

10 (1) The tax levied by RCW 82.12.020 does not apply to the use of  
11 food, drink, or meals furnished by a senior living community to  
12 tenants as part of a rental or residency agreement for which no  
13 separate charge is made, regardless of whether the tenant is a  
14 resident for purposes of chapter 18.20 or 18.390 RCW.

15 (2) For purposes of this section, "senior living community" has  
16 the meaning provided in RCW 82.04.040.

17 NEW SECTION. **Sec. 5.** This act applies prospectively as well as  
18 retroactively to disputed assessments pending before the department  
19 of revenue, board of tax appeals, or any court of law.

20 NEW SECTION. **Sec. 6.** RCW 82.32.805 and 82.32.808 do not apply  
21 to this act.

22 NEW SECTION. **Sec. 7.** Section 1 of this act expires January 1,  
23 2030.

24 NEW SECTION. **Sec. 8.** Section 2 of this act takes effect January  
25 1, 2030.

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