

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1431

Chapter 416, Laws of 2023

68th Legislature
2023 Regular Session

SENIOR LIVING COMMUNITIES—TENANT MEALS—SALES AND USE TAX

EFFECTIVE DATE: July 23, 2023—Except for section 2, which takes effect January 1, 2030.

Passed by the House March 16, 2023
Yeas 95 Nays 0

LAURIE JINKINS

**Speaker of the House of
Representatives**

Passed by the Senate April 19, 2023
Yeas 48 Nays 0

DENNY HECK

President of the Senate

Approved May 11, 2023 9:43 AM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1431** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN

Chief Clerk

FILED

May 11, 2023

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1431

Passed Legislature - 2023 Regular Session

State of Washington

68th Legislature

2023 Regular Session

By House Finance (originally sponsored by Representatives Timmons, Stokesbary, Springer, Corry, Stonier, Abbarno, Rule, Schmick, Street, Fitzgibbon, Jacobsen, Harris, Hutchins, Riccelli, McEntire, Maycumber, Bronoske, Ramel, Robertson, Taylor, Simmons, Tharinger, Berry, Caldier, Reeves, Ortiz-Self, Thai, Christian, Kloba, Bateman, Gregerson, Barnard, Pollet, Reed, Ormsby, Doglio, and Cheney)

READ FIRST TIME 02/17/23.

1 AN ACT Relating to clarifying that meals furnished to tenants of
2 senior living communities as part of their rental agreement are not
3 subject to sales and use tax; amending RCW 82.04.040 and 82.04.040;
4 adding a new section to chapter 82.12 RCW; creating a new section;
5 providing an effective date; and providing an expiration date.

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

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

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

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

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

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

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

11 (c) Food, drink, or meals furnished by a senior living community
12 to 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) "Casual or isolated sale" means a sale made by a person who
16 is not engaged in the business of selling the type of property
17 involved.

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

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

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

35 (ii) A transfer of possession or control of property under an
36 agreement that requires the transfer of title upon completion of
37 required payments, and payment of an option price does not exceed the
38 greater of (~~one hundred dollars~~) \$100 or one percent of the total
39 required payments; or

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

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

12 (b) "Animal care and control agency" means the same as in RCW
13 16.52.011 and also includes any similar entity operating outside of
14 this state.

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

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

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

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

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

26 (A) Stray or abandoned;

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

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

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

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

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

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

38 (1) Except as otherwise provided in this subsection, "sale" means
39 any transfer of the ownership of, title to, or possession of property

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

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

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

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

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

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

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

36 (ii) A transfer of possession or control of property under an
37 agreement that requires the transfer of title upon completion of
38 required payments, and payment of an option price does not exceed the
39 greater of ~~((one hundred dollars))~~ \$100 or one percent of the total
40 required payments; or

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

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11 identification tags, collars, and leashes.

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17 Sec. 501(c) of the federal internal revenue code as it exists on July
18 23, 2017; or

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

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

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

26 (A) Stray or abandoned;

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

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

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

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

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

36 NEW SECTION. Sec. 3. A new section is added to chapter 82.12
37 RCW to read as follows:

38 This chapter does not apply to food, drinks, or meals furnished
39 by a senior living community to tenants as part of a rental or

1 residency agreement for which no separate charge is made, regardless
2 of whether the tenant is a resident for purposes of chapter 18.20 or
3 18.390 RCW.

4 NEW SECTION. **Sec. 4.** RCW 82.32.805 and 82.32.808 do not apply
5 to this act.

6 NEW SECTION. **Sec. 5.** Section 1 of this act expires January 1,
7 2030.

8 NEW SECTION. **Sec. 6.** Section 2 of this act takes effect January
9 1, 2030.

Passed by the House March 16, 2023.
Passed by the Senate April 19, 2023.
Approved by the Governor May 11, 2023.
Filed in Office of Secretary of State May 11, 2023.

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