
SUBSTITUTE HOUSE BILL 1095

State of Washington

67th Legislature

2021 Regular Session

By House Finance (originally sponsored by Representatives Walen, Boehnke, Ryu, Leavitt, Corry, Wicks, Tharinger, Ortiz-Self, Callan, Graham, Fey, Frame, Stokesbary, Orwall, Rule, Bergquist, and Pollet; by request of Department of Revenue)

1 AN ACT Relating to the taxation of governmental financial
2 assistance programs addressing the impacts of conditions giving rise
3 to a gubernatorial or presidential emergency proclamation by creating
4 state business and occupation tax and state public utility tax
5 exemptions, a sales and use tax exemption for the receipt of such
6 financial assistance, and clarifying the sales and use tax
7 obligations for goods and services purchased by recipients of such
8 financial assistance; amending RCW 82.04.050; amending 2020 c 80 s 62
9 (uncodified); adding a new section to chapter 82.04 RCW; adding a new
10 section to chapter 82.16 RCW; adding a new section to chapter 82.08
11 RCW; creating new sections; repealing 2020 c 80 s 58; and declaring
12 an emergency.

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

14 NEW SECTION. **Sec. 1.** A new section is added to chapter 82.04
15 RCW to read as follows:

16 (1) This chapter does not apply to any person with respect to the
17 value proceeding or accruing from a qualifying grant received on or
18 after February 29, 2020.

19 (2) For purposes of this section, "qualifying grant" means an
20 amount received, or relief from debt or other legal obligation
21 received, that:

1 (a) Is received under a government-funded program either directly
2 from a government entity, or through a nongovernmental third-party
3 entity authorized by a government entity to distribute the program
4 funds, or, in the case of relief from debt or other legal obligation,
5 is received from a private entity under circumstances where, in
6 exchange for providing the relief, the private entity receives some
7 form of direct financial benefit from a government entity;

8 (b) Is provided to address the impacts of conditions giving rise
9 to an official proclamation of a national emergency by the president
10 of the United States or an official proclamation of a state of
11 emergency by the governor of this state; and

12 (c) Is not an amount received:

13 (i) Under a contract, including a sole source contract, for the
14 acquisition of specific goods or services, or both, by purchase,
15 lease, or barter, that was solicited and established in accordance
16 with procurement laws or regulations; or

17 (ii) For manufacturing, extracting, or making sales of products,
18 when the amount received is determined based on the quantity of
19 products manufactured, extracted, or sold. For purposes of this
20 subsection (2)(c)(ii), "products" has the same meaning as in RCW
21 82.32.023.

22 (3) For purposes of a grant awarded to address the impacts of
23 conditions giving rise to a national emergency or state of emergency,
24 the exemption under this section applies only if the legislation
25 authorizing the grant or the associated legislative history, public
26 records created by the grantor, or the terms of the underlying grant
27 agreement between the grantor and grantee, clearly indicate that the
28 grant was established to address the impacts of conditions giving
29 rise to a national emergency or state of emergency.

30 (4) For purposes of this section, "government" means any
31 national, tribal, state, or local government.

32 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.16
33 RCW to read as follows:

34 (1) This chapter does not apply to any person with respect to the
35 value proceeding or accruing from a qualifying grant received on or
36 after February 29, 2020.

37 (2) For purposes of this section, "qualifying grant" means an
38 amount received, or relief from debt or other legal obligation
39 received, that:

1 (a) Is received under a government-funded program either directly
2 from a government entity, or through a nongovernmental third-party
3 entity authorized by a government entity to distribute the program
4 funds, or, in the case of relief from debt or other legal obligation,
5 is received from a private entity under circumstances where, in
6 exchange for providing the relief, the private entity receives some
7 form of direct financial benefit from a government entity;

8 (b) Is provided to address the impacts of conditions giving rise
9 to an official proclamation of a national emergency by the president
10 of the United States or an official proclamation of a state of
11 emergency by the governor of this state; and

12 (c) Is not an amount received:

13 (i) Under a contract, including a sole source contract, for the
14 acquisition of specific goods or services, or both, by purchase,
15 lease, or barter, that was solicited and established in accordance
16 with procurement laws or regulations; or

17 (ii) When the amount received or accrued during a tax reporting
18 period is determined based on the amount of business actually
19 conducted during that tax reporting period, such as the quantity,
20 volume, or weight of products sold or transported, or the number of
21 passengers transported. For purposes of this subsection (2)(c)(ii),
22 "products" has the same meaning as in RCW 82.32.023 and includes
23 electrical energy, water, natural gas, manufactured gas, and
24 transporting persons or property.

25 (3) For purposes of a grant awarded to address the impacts of
26 conditions giving rise to a national emergency or state of emergency,
27 the exemption under this section applies only if the legislation
28 authorizing the grant or the associated legislative history, public
29 records created by the grantor, or the terms of the underlying grant
30 agreement between the grantor and grantee, clearly indicate that the
31 grant was established to address the impacts of conditions giving
32 rise to a national emergency or state of emergency.

33 (4) For purposes of this section, "government" means any
34 national, tribal, state, or local government.

35 **Sec. 3.** RCW 82.04.050 and 2017 3rd sp.s. c 37 s 1201 are each
36 amended to read as follows:

37 (1)(a) "Sale at retail" or "retail sale" means every sale of
38 tangible personal property (including articles produced, fabricated,
39 or imprinted) to all persons irrespective of the nature of their

1 business and including, among others, without limiting the scope
2 hereof, persons who install, repair, clean, alter, improve,
3 construct, or decorate real or personal property of or for consumers
4 other than a sale to a person who:

5 (i) Purchases for the purpose of resale as tangible personal
6 property in the regular course of business without intervening use by
7 such person, but a purchase for the purpose of resale by a regional
8 transit authority under RCW 81.112.300 is not a sale for resale; or

9 (ii) Installs, repairs, cleans, alters, imprints, improves,
10 constructs, or decorates real or personal property of or for
11 consumers, if such tangible personal property becomes an ingredient
12 or component of such real or personal property without intervening
13 use by such person; or

14 (iii) Purchases for the purpose of consuming the property
15 purchased in producing for sale as a new article of tangible personal
16 property or substance, of which such property becomes an ingredient
17 or component or is a chemical used in processing, when the primary
18 purpose of such chemical is to create a chemical reaction directly
19 through contact with an ingredient of a new article being produced
20 for sale; or

21 (iv) Purchases for the purpose of consuming the property
22 purchased in producing ferrosilicon which is subsequently used in
23 producing magnesium for sale, if the primary purpose of such property
24 is to create a chemical reaction directly through contact with an
25 ingredient of ferrosilicon; or

26 (v) Purchases for the purpose of providing the property to
27 consumers as part of competitive telephone service, as defined in RCW
28 82.04.065; or

29 (vi) Purchases for the purpose of satisfying the person's
30 obligations under an extended warranty as defined in subsection (7)
31 of this section, if such tangible personal property replaces or
32 becomes an ingredient or component of property covered by the
33 extended warranty without intervening use by such person.

34 (b) The term includes every sale of tangible personal property
35 that is used or consumed or to be used or consumed in the performance
36 of any activity defined as a "sale at retail" or "retail sale" even
37 though such property is resold or used as provided in (a)(i) through
38 (vi) of this subsection following such use.

1 (c) The term also means every sale of tangible personal property
2 to persons engaged in any business that is taxable under RCW
3 82.04.280(1) (a), (b), and (g), 82.04.290, and 82.04.2908.

4 (2) The term "sale at retail" or "retail sale" includes the sale
5 of or charge made for tangible personal property consumed and/or for
6 labor and services rendered in respect to the following:

7 (a) The installing, repairing, cleaning, altering, imprinting, or
8 improving of tangible personal property of or for consumers,
9 including charges made for the mere use of facilities in respect
10 thereto, but excluding charges made for the use of self-service
11 laundry facilities, and also excluding sales of laundry service to
12 nonprofit health care facilities, and excluding services rendered in
13 respect to live animals, birds and insects;

14 (b) The constructing, repairing, decorating, or improving of new
15 or existing buildings or other structures under, upon, or above real
16 property of or for consumers, including the installing or attaching
17 of any article of tangible personal property therein or thereto,
18 whether or not such personal property becomes a part of the realty by
19 virtue of installation, and also includes the sale of services or
20 charges made for the clearing of land and the moving of earth
21 excepting the mere leveling of land used in commercial farming or
22 agriculture;

23 (c) The constructing, repairing, or improving of any structure
24 upon, above, or under any real property owned by an owner who conveys
25 the property by title, possession, or any other means to the person
26 performing such construction, repair, or improvement for the purpose
27 of performing such construction, repair, or improvement and the
28 property is then reconveyed by title, possession, or any other means
29 to the original owner;

30 (d) The cleaning, fumigating, razing, or moving of existing
31 buildings or structures, but does not include the charge made for
32 janitorial services; and for purposes of this section the term
33 "janitorial services" means those cleaning and caretaking services
34 ordinarily performed by commercial janitor service businesses
35 including, but not limited to, wall and window washing, floor
36 cleaning and waxing, and the cleaning in place of rugs, drapes and
37 upholstery. The term "janitorial services" does not include painting,
38 papering, repairing, furnace or septic tank cleaning, snow removal or
39 sandblasting;

1 (e) Automobile towing and similar automotive transportation
2 services, but not in respect to those required to report and pay
3 taxes under chapter 82.16 RCW;

4 (f) The furnishing of lodging and all other services by a hotel,
5 rooming house, tourist court, motel, trailer camp, and the granting
6 of any similar license to use real property, as distinguished from
7 the renting or leasing of real property, and it is presumed that the
8 occupancy of real property for a continuous period of one month or
9 more constitutes a rental or lease of real property and not a mere
10 license to use or enjoy the same. For the purposes of this
11 subsection, it is presumed that the sale of and charge made for the
12 furnishing of lodging for a continuous period of one month or more to
13 a person is a rental or lease of real property and not a mere license
14 to enjoy the same;

15 (g) The installing, repairing, altering, or improving of digital
16 goods for consumers;

17 (h) Persons taxable under (a), (b), (c), (d), (e), (f), and (g)
18 of this subsection when such sales or charges are for property, labor
19 and services which are used or consumed in whole or in part by such
20 persons in the performance of any activity defined as a "sale at
21 retail" or "retail sale" even though such property, labor and
22 services may be resold after such use or consumption. Nothing
23 contained in this subsection may be construed to modify subsection
24 (1) of this section and nothing contained in subsection (1) of this
25 section may be construed to modify this subsection.

26 (3) The term "sale at retail" or "retail sale" includes the sale
27 of or charge made for personal, business, or professional services
28 including amounts designated as interest, rents, fees, admission, and
29 other service emoluments however designated, received by persons
30 engaging in the following business activities:

31 (a) Abstract, title insurance, and escrow services;

32 (b) Credit bureau services;

33 (c) Automobile parking and storage garage services;

34 (d) Landscape maintenance and horticultural services but
35 excluding (i) horticultural services provided to farmers and (ii)
36 pruning, trimming, repairing, removing, and clearing of trees and
37 brush near electric transmission or distribution lines or equipment,
38 if performed by or at the direction of an electric utility;

39 (e) Service charges associated with tickets to professional
40 sporting events;

1 (f) The following personal services: Tanning salon services,
2 tattoo parlor services, steam bath services, turkish bath services,
3 escort services, and dating services; and

4 (g)(i) Operating an athletic or fitness facility, including all
5 charges for the use of such a facility or for any associated services
6 and amenities, except as provided in (g)(ii) of this subsection.

7 (ii) Notwithstanding anything to the contrary in (g)(i) of this
8 subsection (3), the term "sale at retail" and "retail sale" under
9 this subsection does not include:

10 (A) Separately stated charges for the use of an athletic or
11 fitness facility where such use is primarily for a purpose other than
12 engaging in or receiving instruction in a physical fitness activity;

13 (B) Separately stated charges for the use of a discrete portion
14 of an athletic or fitness facility, other than a pool, where such
15 discrete portion of the facility does not by itself meet the
16 definition of "athletic or fitness facility" in this subsection;

17 (C) Separately stated charges for services, such as advertising,
18 massage, nutritional consulting, and body composition testing, that
19 do not require the customer to engage in physical fitness activities
20 to receive the service. The exclusion in this subsection
21 (3)(g)(ii)(C) does not apply to personal training services and
22 instruction in a physical fitness activity;

23 (D) Separately stated charges for physical therapy provided by a
24 physical therapist, as those terms are defined in RCW 18.74.010, or
25 occupational therapy provided by an occupational therapy
26 practitioner, as those terms are defined in RCW 18.59.020, when
27 performed pursuant to a referral from an authorized health care
28 practitioner or in consultation with an authorized health care
29 practitioner. For the purposes of this subsection (3)(g)(ii)(D), an
30 authorized health care practitioner means a health care practitioner
31 licensed under chapter 18.83, 18.25, 18.36A, 18.57, (~~18.57A,~~)
32 18.71, or 18.71A RCW, or, until July 1, 2022, chapter 18.57A RCW;

33 (E) Rent or association fees charged by a landlord or residential
34 association to a tenant or residential owner with access to an
35 athletic or fitness facility maintained by the landlord or
36 residential association, unless the rent or fee varies depending on
37 whether the tenant or owner has access to the facility;

38 (F) Services provided in the regular course of employment by an
39 employee with access to an athletic or fitness facility maintained by

1 the employer for use without charge by its employees or their family
2 members;

3 (G) The provision of access to an athletic or fitness facility by
4 an educational institution to its students and staff. However,
5 charges made by an educational institution to its alumni or other
6 members of the public for the use of any of the educational
7 institution's athletic or fitness facilities are a retail sale under
8 this subsection (3)(g). For purposes of this subsection
9 (3)(g)(ii)(G), "educational institution" has the same meaning as in
10 RCW 82.04.170;

11 (H) Yoga, chi gong, or martial arts classes, training, or events
12 held at a community center, park, school gymnasium, college or
13 university, hospital or other medical facility, private residence, or
14 any other facility that is not operated within and as part of an
15 athletic or fitness facility.

16 (iii) Nothing in (g)(ii) of this subsection (3) may be construed
17 to affect the taxation of sales made by the operator of an athletic
18 or fitness facility, where such sales are defined as a retail sale
19 under any provision of this section other than this subsection (3).

20 (iv) For the purposes of this subsection (3)(g), the following
21 definitions apply:

22 (A) "Athletic or fitness facility" means an indoor or outdoor
23 facility or portion of a facility that is primarily used for:
24 Exercise classes; strength and conditioning programs; personal
25 training services; tennis, racquetball, handball, squash, or
26 pickleball; or other activities requiring the use of exercise or
27 strength training equipment, such as treadmills, elliptical machines,
28 stair climbers, stationary cycles, rowing machines, pilates
29 equipment, balls, climbing ropes, jump ropes, and weightlifting
30 equipment.

31 (B) "Martial arts" means any of the various systems of training
32 for physical combat or self-defense. "Martial arts" includes, but is
33 not limited to, karate, kung fu, tae kwon do, Krav Maga, boxing,
34 kickboxing, jujitsu, shootfighting, wrestling, aikido, judo, hapkido,
35 Kendo, tai chi, and mixed martial arts.

36 (C) "Physical fitness activities" means activities that involve
37 physical exertion for the purpose of improving or maintaining the
38 general fitness, strength, flexibility, conditioning, or health of
39 the participant. "Physical fitness activities" includes participating
40 in yoga, chi gong, or martial arts.

1 (4) (a) The term also includes the renting or leasing of tangible
2 personal property to consumers.

3 (b) The term does not include the renting or leasing of tangible
4 personal property where the lease or rental is for the purpose of
5 sublease or subrent.

6 (5) The term also includes the providing of "competitive
7 telephone service," "telecommunications service," or "ancillary
8 services," as those terms are defined in RCW 82.04.065, to consumers.

9 (6) (a) The term also includes the sale of prewritten computer
10 software to a consumer, regardless of the method of delivery to the
11 end user. For purposes of (a) and (b) of this subsection, the sale of
12 prewritten computer software includes the sale of or charge made for
13 a key or an enabling or activation code, where the key or code is
14 required to activate prewritten computer software and put the
15 software into use. There is no separate sale of the key or code from
16 the prewritten computer software, regardless of how the sale may be
17 characterized by the vendor or by the purchaser.

18 (b) The term "retail sale" does not include the sale of or charge
19 made for:

20 (i) Custom software; or

21 (ii) The customization of prewritten computer software.

22 (c) (i) The term also includes the charge made to consumers for
23 the right to access and use prewritten computer software, where
24 possession of the software is maintained by the seller or a third
25 party, regardless of whether the charge for the service is on a per
26 use, per user, per license, subscription, or some other basis.

27 (ii) (A) The service described in (c) (i) of this subsection (6)
28 includes the right to access and use prewritten computer software to
29 perform data processing.

30 (B) For purposes of this subsection (6) (c) (ii), "data processing"
31 means the systematic performance of operations on data to extract the
32 required information in an appropriate form or to convert the data to
33 usable information. Data processing includes check processing, image
34 processing, form processing, survey processing, payroll processing,
35 claim processing, and similar activities.

36 (7) The term also includes the sale of or charge made for an
37 extended warranty to a consumer. For purposes of this subsection,
38 "extended warranty" means an agreement for a specified duration to
39 perform the replacement or repair of tangible personal property at no
40 additional charge or a reduced charge for tangible personal property,

1 labor, or both, or to provide indemnification for the replacement or
2 repair of tangible personal property, based on the occurrence of
3 specified events. The term "extended warranty" does not include an
4 agreement, otherwise meeting the definition of extended warranty in
5 this subsection, if no separate charge is made for the agreement and
6 the value of the agreement is included in the sales price of the
7 tangible personal property covered by the agreement. For purposes of
8 this subsection, "sales price" has the same meaning as in RCW
9 82.08.010.

10 (8) (a) The term also includes the following sales to consumers of
11 digital goods, digital codes, and digital automated services:

12 (i) Sales in which the seller has granted the purchaser the right
13 of permanent use;

14 (ii) Sales in which the seller has granted the purchaser a right
15 of use that is less than permanent;

16 (iii) Sales in which the purchaser is not obligated to make
17 continued payment as a condition of the sale; and

18 (iv) Sales in which the purchaser is obligated to make continued
19 payment as a condition of the sale.

20 (b) A retail sale of digital goods, digital codes, or digital
21 automated services under this subsection (8) includes any services
22 provided by the seller exclusively in connection with the digital
23 goods, digital codes, or digital automated services, whether or not a
24 separate charge is made for such services.

25 (c) For purposes of this subsection, "permanent" means perpetual
26 or for an indefinite or unspecified length of time. A right of
27 permanent use is presumed to have been granted unless the agreement
28 between the seller and the purchaser specifies or the circumstances
29 surrounding the transaction suggest or indicate that the right to use
30 terminates on the occurrence of a condition subsequent.

31 (9) The term also includes the charge made for providing tangible
32 personal property along with an operator for a fixed or indeterminate
33 period of time. A consideration of this is that the operator is
34 necessary for the tangible personal property to perform as designed.
35 For the purpose of this subsection (9), an operator must do more than
36 maintain, inspect, or set up the tangible personal property.

37 (10) The term does not include the sale of or charge made for
38 labor and services rendered in respect to the building, repairing, or
39 improving of any street, place, road, highway, easement, right-of-
40 way, mass public transportation terminal or parking facility, bridge,

1 tunnel, or trestle which is owned by a municipal corporation or
2 political subdivision of the state or by the United States and which
3 is used or to be used primarily for foot or vehicular traffic
4 including mass transportation vehicles of any kind.

5 (11) The term also does not include sales of chemical sprays or
6 washes to persons for the purpose of postharvest treatment of fruit
7 for the prevention of scald, fungus, mold, or decay, nor does it
8 include sales of feed, seed, seedlings, fertilizer, agents for
9 enhanced pollination including insects such as bees, and spray
10 materials to: (a) Persons who participate in the federal conservation
11 reserve program, the environmental quality incentives program, the
12 wetlands reserve program, and the wildlife habitat incentives
13 program, or their successors administered by the United States
14 department of agriculture; (b) farmers for the purpose of producing
15 for sale any agricultural product; (c) farmers for the purpose of
16 providing bee pollination services; and (d) farmers acting under
17 cooperative habitat development or access contracts with an
18 organization exempt from federal income tax under 26 U.S.C. Sec.
19 501(c)(3) of the federal internal revenue code or the Washington
20 state department of fish and wildlife to produce or improve wildlife
21 habitat on land that the farmer owns or leases.

22 (12) The term does not include the sale of or charge made for
23 labor and services rendered in respect to the constructing,
24 repairing, decorating, or improving of new or existing buildings or
25 other structures under, upon, or above real property of or for the
26 United States, any instrumentality thereof, or a county or city
27 housing authority created pursuant to chapter 35.82 RCW, including
28 the installing, or attaching of any article of tangible personal
29 property therein or thereto, whether or not such personal property
30 becomes a part of the realty by virtue of installation. Nor does the
31 term include the sale of services or charges made for the clearing of
32 land and the moving of earth of or for the United States, any
33 instrumentality thereof, or a county or city housing authority. Nor
34 does the term include the sale of services or charges made for
35 cleaning up for the United States, or its instrumentalities,
36 radioactive waste and other by-products of weapons production and
37 nuclear research and development.

38 (13) The term does not include the sale of or charge made for
39 labor, services, or tangible personal property pursuant to agreements
40 providing maintenance services for bus, rail, or rail fixed guideway

1 equipment when a regional transit authority is the recipient of the
2 labor, services, or tangible personal property, and a transit agency,
3 as defined in RCW 81.104.015, performs the labor or services.

4 (14) The term does not include the sale for resale of any service
5 described in this section if the sale would otherwise constitute a
6 "sale at retail" and "retail sale" under this section.

7 (15)(a) The term "sale at retail" or "retail sale" includes
8 amounts charged, however labeled, to consumers to engage in any of
9 the activities listed in this subsection (15)(a), including the
10 furnishing of any associated equipment or, except as otherwise
11 provided in this subsection, providing instruction in such
12 activities, where such charges are not otherwise defined as a "sale
13 at retail" or "retail sale" in this section:

14 (i)(A) Golf, including any variant in which either golf balls or
15 golf clubs are used, such as miniature golf, hitting golf balls at a
16 driving range, and golf simulators, and including fees charged by a
17 golf course to a player for using his or her own cart. However,
18 charges for golf instruction are not a retail sale, provided that if
19 the instruction involves the use of a golfing facility that would
20 otherwise require the payment of a fee, such as green fees or driving
21 range fees, such fees, including the applicable retail sales tax,
22 must be separately identified and charged by the golfing facility
23 operator to the instructor or the person receiving the instruction.

24 (B) Notwithstanding (a)(i)(A) of this subsection (15) and except
25 as otherwise provided in this subsection (15)(a)(i)(B), the term
26 "sale at retail" or "retail sale" does not include amounts charged to
27 participate in, or conduct, a golf tournament or other competitive
28 event. However, amounts paid by event participants to the golf
29 facility operator are retail sales under this subsection (15)(a)(i).
30 Likewise, amounts paid by the event organizer to the golf facility
31 are retail sales under this subsection (15)(a)(i), if such amounts
32 vary based on the number of event participants;

33 (ii) Ballooning, hang gliding, indoor or outdoor sky diving,
34 paragliding, parasailing, and similar activities;

35 (iii) Air hockey, billiards, pool, foosball, darts, shuffleboard,
36 ping pong, and similar games;

37 (iv) Access to amusement park, theme park, and water park
38 facilities, including but not limited to charges for admission and
39 locker or cabana rentals. Discrete charges for rides or other
40 attractions or entertainment that are in addition to the charge for

1 admission are not a retail sale under this subsection (15)(a)(iv).
2 For the purposes of this subsection, an amusement park or theme park
3 is a location that provides permanently affixed amusement rides,
4 games, and other entertainment, but does not include parks or zoos
5 for which the primary purpose is the exhibition of wildlife, or
6 fairs, carnivals, and festivals as defined in (b)(i) of this
7 subsection;

8 (v) Batting cage activities;

9 (vi) Bowling, but not including competitive events, except that
10 amounts paid by the event participants to the bowling alley operator
11 are retail sales under this subsection (15)(a)(vi). Likewise, amounts
12 paid by the event organizer to the operator of the bowling alley are
13 retail sales under this subsection (15)(a)(vi), if such amounts vary
14 based on the number of event participants;

15 (vii) Climbing on artificial climbing structures, whether indoors
16 or outdoors;

17 (viii) Day trips for sightseeing purposes;

18 (ix) Bungee jumping, zip lining, and riding inside a ball,
19 whether inflatable or otherwise;

20 (x) Horseback riding offered to the public, where the seller
21 furnishes the horse to the buyer and providing instruction is not the
22 primary focus of the activity, including guided rides, but not
23 including therapeutic horseback riding provided by an instructor
24 certified by a nonprofit organization that offers national or
25 international certification for therapeutic riding instructors;

26 (xi) Fishing, including providing access to private fishing areas
27 and charter or guided fishing, except that fishing contests and
28 license fees imposed by a government entity are not a retail sale
29 under this subsection;

30 (xii) Guided hunting and hunting at game farms and shooting
31 preserves, except that hunting contests and license fees imposed by a
32 government entity are not a retail sale under this subsection;

33 (xiii) Swimming, but only in respect to (A) recreational or
34 fitness swimming that is open to the public, such as open swim, lap
35 swimming, and special events like kids night out and pool parties
36 during open swim time, and (B) pool parties for private events, such
37 as birthdays, family gatherings, and employee outings. Fees for
38 swimming lessons, to participate in swim meets and other
39 competitions, or to join a swim team, club, or aquatic facility are
40 not retail sales under this subsection (15)(a)(xiii);

1 (xiv) Go-karting, bumper cars, and other motorized activities
2 where the seller provides the vehicle and the premises where the
3 buyer will operate the vehicle;

4 (xv) Indoor or outdoor playground activities, such as inflatable
5 bounce structures and other inflatables; mazes; trampolines; slides;
6 ball pits; games of tag, including laser tag and soft-dart tag; and
7 human gyroscope rides, regardless of whether such activities occur at
8 the seller's place of business, but not including playground
9 activities provided for children by a licensed child day care center
10 or licensed family day care provider as those terms are defined in
11 RCW ((~~43.215.010~~)) 43.216.010;

12 (xvi) Shooting sports and activities, such as target shooting,
13 skeet, trap, sporting clays, "5" stand, and archery, but only in
14 respect to discrete charges to members of the public to engage in
15 these activities, but not including fees to enter a competitive
16 event, instruction that is entirely or predominately classroom based,
17 or to join or renew a membership at a club, range, or other facility;

18 (xvii) Paintball and airsoft activities;

19 (xviii) Skating, including ice skating, roller skating, and
20 inline skating, but only in respect to discrete charges to members of
21 the public to engage in skating activities, but not including skating
22 lessons, competitive events, team activities, or fees to join or
23 renew a membership at a skating facility, club, or other
24 organization;

25 (xix) Nonmotorized snow sports and activities, such as downhill
26 and cross-country skiing, snowboarding, ski jumping, sledding, snow
27 tubing, snowshoeing, and similar snow sports and activities, whether
28 engaged in outdoors or in an indoor facility with or without snow,
29 but only in respect to discrete charges to the public for the use of
30 land or facilities to engage in nonmotorized snow sports and
31 activities, such as fees, however labeled, for the use of ski lifts
32 and tows and daily or season passes for access to trails or other
33 areas where nonmotorized snow sports and activities are conducted.
34 However, fees for the following are not retail sales under this
35 subsection (15)(a)(xix): (A) Instructional lessons; (B) permits
36 issued by a governmental entity to park a vehicle on or access public
37 lands; and (C) permits or leases granted by an owner of private
38 timberland for recreational access to areas used primarily for
39 growing and harvesting timber; and

1 (xx) Scuba diving; snorkeling; river rafting; surfing;
2 kiteboarding; flyboarding; water slides; inflatables, such as water
3 pillows, water trampolines, and water rollers; and similar water
4 sports and activities.

5 (b) Notwithstanding anything to the contrary in this subsection
6 (15), the term "sale at retail" or "retail sale" does not include
7 charges:

8 (i) Made for admission to, and rides or attractions at, fairs,
9 carnivals, and festivals. For the purposes of this subsection, fairs,
10 carnivals, and festivals are events that do not exceed twenty-one
11 days and a majority of the amusement rides, if any, are not affixed
12 to real property;

13 (ii) Made by an educational institution to its students and staff
14 for activities defined as retail sales by (a)(i) through (xx) of this
15 subsection. However, charges made by an educational institution to
16 its alumni or other members of the general public for these
17 activities are a retail sale under this subsection (15). For purposes
18 of this subsection (15)(b)(ii), "educational institution" has the
19 same meaning as in RCW 82.04.170;

20 (iii) Made by a vocational school for commercial diver training
21 that is licensed by the workforce training and education coordinating
22 board under chapter 28C.10 RCW; or

23 (iv) Made for day camps offered by a nonprofit organization or
24 state or local governmental entity that provide youth not older than
25 age eighteen, or that are focused on providing individuals with
26 disabilities or mental illness, the opportunity to participate in a
27 variety of supervised activities.

28 (16)(a) The term "sale at retail" or "retail sale" includes the
29 purchase or acquisition of tangible personal property and specified
30 services by a person who receives a qualifying grant exempt from tax
31 under section 1 or 2 of this act, except for transactions excluded
32 from the definition of "sale at retail" or "retail sale" by any other
33 provision of this section. Nothing in this subsection (16) may be
34 construed to limit the application of any other provision of this
35 section to purchases by a recipient of a qualifying grant exempt from
36 tax under section 1 of this act or by any other person.

37 (b) For purposes of this subsection (16), "specified services"
38 means:

39 (i) The constructing, repairing, decorating, or improving of new
40 or existing buildings or other structures under, upon, or above real

1 property, including the installing or attaching of any article of
2 tangible personal property therein or thereto, whether or not such
3 personal property becomes a part of the realty by virtue of
4 installation;

5 (ii) The clearing of land or the moving of earth, whether or not
6 associated with activities described in (b)(i) of this subsection
7 (16);

8 (iii) The razing or moving of existing buildings or structures;
9 and

10 (iv) Landscape maintenance and horticultural services.

11 NEW SECTION. Sec. 4. A new section is added to chapter 82.08
12 RCW to read as follows:

13 (1) The tax levied by RCW 82.08.020 does not apply to a grantee's
14 receipt of a qualifying grant that is exempt from business and
15 occupation tax under section 1 of this act.

16 (2) Nothing in this section may be construed to:

17 (a) Imply that the tax levied by RCW 82.08.020 applies to any
18 circumstance not described in subsection (1) of this section; or

19 (b) Provide an exemption from the tax levied by RCW 82.08.020 for
20 the grantee's use of a qualifying grant to acquire products in a
21 transaction meeting the definition of "retail sale" in RCW 82.04.050.

22 (3) For purposes of this section, the following definitions
23 apply:

24 (a) "Grantee" means the recipient of a qualifying grant.

25 (b) "Product" means the same as in RCW 82.32.023.

26 (c) "Qualifying grant" means the same as in section 1 of this
27 act.

28 NEW SECTION. Sec. 5. 2020 c 80 s 58 is repealed.

29 **Sec. 6.** 2020 c 80 s 62 (uncodified) is amended to read as
30 follows:

31 Sections 12 through 57 and 59 of this act take effect July 1,
32 2022.

33 NEW SECTION. Sec. 7. This act applies both prospectively and
34 retroactively to February 29, 2020.

1 NEW SECTION. **Sec. 8.** The provisions of RCW 82.32.805 and
2 82.32.808 do not apply to this act.

3 NEW SECTION. **Sec. 9.** This act is necessary for the immediate
4 preservation of the public peace, health, or safety, or support of
5 the state government and its existing public institutions, and takes
6 effect immediately.

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