
HOUSE BILL 2788

State of Washington

62nd Legislature

2012 Regular Session

By Representative Anderson

Read first time 02/20/12. Referred to Committee on Ways & Means.

1 AN ACT Relating to excluding charges made for the opportunity to
2 dance from sales and use taxes; amending RCW 82.04.050; creating a new
3 section; and declaring an emergency.

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

5 **Sec. 1.** RCW 82.04.050 and 2011 c 174 s 202 are each amended to
6 read as follows:

7 (1)(a) "Sale at retail" or "retail sale" means every sale of
8 tangible personal property (including articles produced, fabricated, or
9 imprinted) to all persons irrespective of the nature of their business
10 and including, among others, without limiting the scope hereof, persons
11 who install, repair, clean, alter, improve, construct, or decorate real
12 or personal property of or for consumers other than a sale to a person
13 who:

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

18 (ii) Installs, repairs, cleans, alters, imprints, improves,
19 constructs, or decorates real or personal property of or for consumers,

1 if such tangible personal property becomes an ingredient or component
2 of such real or personal property without intervening use by such
3 person; or

4 (iii) Purchases for the purpose of consuming the property purchased
5 in producing for sale as a new article of tangible personal property or
6 substance, of which such property becomes an ingredient or component or
7 is a chemical used in processing, when the primary purpose of such
8 chemical is to create a chemical reaction directly through contact with
9 an ingredient of a new article being produced for sale; or

10 (iv) Purchases for the purpose of consuming the property purchased
11 in producing ferrosilicon which is subsequently used in producing
12 magnesium for sale, if the primary purpose of such property is to
13 create a chemical reaction directly through contact with an ingredient
14 of ferrosilicon; or

15 (v) Purchases for the purpose of providing the property to
16 consumers as part of competitive telephone service, as defined in RCW
17 82.04.065; or

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

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

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

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

34 (a) The installing, repairing, cleaning, altering, imprinting, or
35 improving of tangible personal property of or for consumers, including
36 charges made for the mere use of facilities in respect thereto, but
37 excluding charges made for the use of self-service laundry facilities,

1 and also excluding sales of laundry service to nonprofit health care
2 facilities, and excluding services rendered in respect to live animals,
3 birds and insects;

4 (b) The constructing, repairing, decorating, or improving of new or
5 existing buildings or other structures under, upon, or above real
6 property of or for consumers, including the installing or attaching of
7 any article of tangible personal property therein or thereto, whether
8 or not such personal property becomes a part of the realty by virtue of
9 installation, and also includes the sale of services or charges made
10 for the clearing of land and the moving of earth excepting the mere
11 leveling of land used in commercial farming or agriculture;

12 (c) The constructing, repairing, or improving of any structure
13 upon, above, or under any real property owned by an owner who conveys
14 the property by title, possession, or any other means to the person
15 performing such construction, repair, or improvement for the purpose of
16 performing such construction, repair, or improvement and the property
17 is then reconveyed by title, possession, or any other means to the
18 original owner;

19 (d) The cleaning, fumigating, razing, or moving of existing
20 buildings or structures, but does not include the charge made for
21 janitorial services; and for purposes of this section the term
22 "janitorial services" means those cleaning and caretaking services
23 ordinarily performed by commercial janitor service businesses
24 including, but not limited to, wall and window washing, floor cleaning
25 and waxing, and the cleaning in place of rugs, drapes and upholstery.
26 The term "janitorial services" does not include painting, papering,
27 repairing, furnace or septic tank cleaning, snow removal or
28 sandblasting;

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

32 (f) The furnishing of lodging and all other services by a hotel,
33 rooming house, tourist court, motel, trailer camp, and the granting of
34 any similar license to use real property, as distinguished from the
35 renting or leasing of real property, and it is presumed that the
36 occupancy of real property for a continuous period of one month or more
37 constitutes a rental or lease of real property and not a mere license
38 to use or enjoy the same. For the purposes of this subsection, it is

1 presumed that the sale of and charge made for the furnishing of lodging
2 for a continuous period of one month or more to a person is a rental or
3 lease of real property and not a mere license to enjoy the same;

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

6 (h) Persons taxable under (a), (b), (c), (d), (e), (f), and (g) of
7 this subsection when such sales or charges are for property, labor and
8 services which are used or consumed in whole or in part by such persons
9 in the performance of any activity defined as a "sale at retail" or
10 "retail sale" even though such property, labor and services may be
11 resold after such use or consumption. Nothing contained in this
12 subsection may be construed to modify subsection (1) of this section
13 and nothing contained in subsection (1) of this section may be
14 construed to modify this subsection.

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

20 (a) Amusement and recreation services including but not limited to
21 golf, pool, billiards, skating, bowling, ski lifts and tows, day trips
22 for sightseeing purposes, and others, when provided to consumers.
23 Amusement and recreation services do not include charges made for
24 providing the opportunity to dance;

25 (b) Abstract, title insurance, and escrow services;

26 (c) Credit bureau services;

27 (d) Automobile parking and storage garage services;

28 (e) Landscape maintenance and horticultural services but excluding
29 (i) horticultural services provided to farmers and (ii) pruning,
30 trimming, repairing, removing, and clearing of trees and brush near
31 electric transmission or distribution lines or equipment, if performed
32 by or at the direction of an electric utility;

33 (f) Service charges associated with tickets to professional
34 sporting events; and

35 (g) The following personal services: Physical fitness services,
36 tanning salon services, tattoo parlor services, steam bath services,
37 turkish bath services, escort services, and dating services.

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 telephone
7 service," "telecommunications service," or "ancillary services," as
8 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 end
11 user. For purposes of this subsection (6)(a), the sale of prewritten
12 computer software includes the sale of or charge made for a key or an
13 enabling or activation code, where the key or code is required to
14 activate prewritten computer software and put the software into use.
15 There is no separate sale of the key or code from the prewritten
16 computer software, regardless of how the sale may be characterized by
17 the vendor or by the purchaser.

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

20 (i) Custom software; or

21 (ii) The customization of prewritten computer software.

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

27 (ii)(A) The service described in (b)(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)(b)(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

1 perform the replacement or repair of tangible personal property at no
2 additional charge or a reduced charge for tangible personal property,
3 labor, or both, or to provide indemnification for the replacement or
4 repair of tangible personal property, based on the occurrence of
5 specified events. The term "extended warranty" does not include an
6 agreement, otherwise meeting the definition of extended warranty in
7 this subsection, if no separate charge is made for the agreement and
8 the value of the agreement is included in the sales price of the
9 tangible personal property covered by the agreement. For purposes of
10 this subsection, "sales price" has the same meaning as in RCW
11 82.08.010.

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

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

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

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

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

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

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

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

1 (10) The term does not include the sale of or charge made for labor
2 and services rendered in respect to the building, repairing, or
3 improving of any street, place, road, highway, easement, right-of-way,
4 mass public transportation terminal or parking facility, bridge,
5 tunnel, or trestle which is owned by a municipal corporation or
6 political subdivision of the state or by the United States and which is
7 used or to be used primarily for foot or vehicular traffic including
8 mass transportation vehicles of any kind.

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

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

1 and other by-products of weapons production and nuclear research and
2 development.

3 (13) The term does not include the sale of or charge made for
4 labor, services, or tangible personal property pursuant to agreements
5 providing maintenance services for bus, rail, or rail fixed guideway
6 equipment when a regional transit authority is the recipient of the
7 labor, services, or tangible personal property, and a transit agency,
8 as defined in RCW 81.104.015, performs the labor or services.

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

12 NEW SECTION. **Sec. 2.** This act applies retroactively as well as
13 prospectively.

14 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
15 preservation of the public peace, health, or safety, or support of the
16 state government and its existing public institutions, and takes effect
17 immediately.

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