
HOUSE BILL 2103

State of Washington

61st Legislature

2009 Regular Session

By Representatives Miloscia, O'Brien, Hasegawa, McCoy, Kessler, Chase, and Conway

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1 AN ACT Relating to the taxation of adult entertainment materials
2 and services; amending RCW 82.08.020, 82.08.010, 82.12.010, 82.12.020,
3 and 82.12.035; adding a new section to chapter 82.32 RCW; creating a
4 new section; and providing an effective date.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that the sale and use
7 of adult entertainment materials and services result in increased costs
8 to the state through the provision of increased governmental services,
9 including human services and criminal justice services. It is the
10 legislature's intention that the activities that result in these
11 increased services bear more of the costs of these services. The
12 legislature intends to dedicate the revenues from a tax on the sale and
13 use of adult entertainment materials and services to crime victims'
14 compensation, with an emphasis towards providing services, support, or
15 therapy to those children who are victims of sexual abuse.

16 **Sec. 2.** RCW 82.08.020 and 2006 c 1 s 3 are each amended to read as
17 follows:

1 (1) There is levied and there shall be collected a tax on each
2 retail sale in this state equal to six and five-tenths percent of the
3 selling price.

4 (2) There is levied and (~~there shall be~~) collected an additional
5 tax on each retail car rental, regardless of whether the vehicle is
6 licensed in this state, equal to five and nine-tenths percent of the
7 selling price. The revenue collected under this subsection shall be
8 deposited in the multimodal transportation account created in RCW
9 47.66.070.

10 (3) Beginning July 1, 2003, there is levied and collected an
11 additional tax of three-tenths of one percent of the selling price on
12 each retail sale of a motor vehicle in this state, other than retail
13 car rentals taxed under subsection (2) of this section. The revenue
14 collected under this subsection shall be deposited in the multimodal
15 transportation account created in RCW 47.66.070.

16 (4) In addition to any tax imposed under subsection (1) of this
17 section there is levied and there shall be collected a tax on each
18 retail sale of adult entertainment materials and services equal to
19 eighteen and one-half percent of the selling price.

20 (5) For purposes of subsection (3) of this section, "motor vehicle"
21 has the meaning provided in RCW 46.04.320, but does not include farm
22 tractors or farm vehicles as defined in RCW 46.04.180 and 46.04.181,
23 off-road and nonhighway vehicles as defined in RCW 46.09.020, and
24 snowmobiles as defined in RCW 46.10.010.

25 (~~(+5)~~) (6) Beginning on December 8, 2005, 0.16 percent of the
26 taxes collected under subsection (1) of this section shall be dedicated
27 to funding comprehensive performance audits required under RCW
28 43.09.470. The revenue identified in this subsection shall be
29 deposited in the performance audits of government account created in
30 RCW 43.09.475.

31 (~~(+6)~~) (7) The taxes imposed under this chapter (~~shall~~) apply to
32 successive retail sales of the same property.

33 (~~(+7)~~) (8) The rates provided in this section apply to taxes
34 imposed under chapter 82.12 RCW as provided in RCW 82.12.020.

35 **Sec. 3.** RCW 82.08.010 and 2007 c 6 s 1302 are each amended to read
36 as follows:

37 For the purposes of this chapter:

1 (1)(a) "Selling price" includes "sales price." "Sales price" means
2 the total amount of consideration, except separately stated trade-in
3 property of like kind, including cash, credit, property, and services,
4 for which tangible personal property, extended warranties, or services
5 defined as a "retail sale" under RCW 82.04.050 are sold, leased, or
6 rented, valued in money, whether received in money or otherwise. No
7 deduction from the total amount of consideration is allowed for the
8 following: (i) The seller's cost of the property sold; (ii) the cost
9 of materials used, labor or service cost, interest, losses, all costs
10 of transportation to the seller, all taxes imposed on the seller, and
11 any other expense of the seller; (iii) charges by the seller for any
12 services necessary to complete the sale, other than delivery and
13 installation charges; (iv) delivery charges; and (v) installation
14 charges.

15 When tangible personal property is rented or leased under
16 circumstances that the consideration paid does not represent a
17 reasonable rental for the use of the articles so rented or leased, the
18 "selling price" shall be determined as nearly as possible according to
19 the value of such use at the places of use of similar products of like
20 quality and character under such rules as the department may prescribe;

21 (b) "Selling price" or "sales price" does not include: Discounts,
22 including cash, term, or coupons that are not reimbursed by a third
23 party that are allowed by a seller and taken by a purchaser on a sale;
24 interest, financing, and carrying charges from credit extended on the
25 sale of tangible personal property, extended warranties, or services,
26 if the amount is separately stated on the invoice, bill of sale, or
27 similar document given to the purchaser; and any taxes legally imposed
28 directly on the consumer that are separately stated on the invoice,
29 bill of sale, or similar document given to the purchaser;

30 (c) "Selling price" or "sales price" includes consideration
31 received by the seller from a third party if:

32 (i) The seller actually receives consideration from a party other
33 than the purchaser, and the consideration is directly related to a
34 price reduction or discount on the sale;

35 (ii) The seller has an obligation to pass the price reduction or
36 discount through to the purchaser;

37 (iii) The amount of the consideration attributable to the sale is

1 fixed and determinable by the seller at the time of the sale of the
2 item to the purchaser; and

3 (iv) One of the criteria in this subsection (1)(c)(iv) is met:

4 (A) The purchaser presents a coupon, certificate, or other
5 documentation to the seller to claim a price reduction or discount
6 where the coupon, certificate, or documentation is authorized,
7 distributed, or granted by a third party with the understanding that
8 the third party will reimburse any seller to whom the coupon,
9 certificate, or documentation is presented;

10 (B) The purchaser identifies himself or herself to the seller as a
11 member of a group or organization entitled to a price reduction or
12 discount, however a "preferred customer" card that is available to any
13 patron does not constitute membership in such a group; or

14 (C) The price reduction or discount is identified as a third party
15 price reduction or discount on the invoice received by the purchaser or
16 on a coupon, certificate, or other documentation presented by the
17 purchaser;

18 (2)(a) "Seller" means every person, including the state and its
19 departments and institutions, making sales at retail or retail sales to
20 a buyer, purchaser, or consumer, whether as agent, broker, or
21 principal, except "seller" does not mean:

22 (i) The state and its departments and institutions when making
23 sales to the state and its departments and institutions; or

24 (ii) A professional employer organization when a covered employee
25 coemployed with the client under the terms of a professional employer
26 agreement engages in activities that constitute a sale at retail that
27 is subject to the tax imposed by this chapter. In such cases, the
28 client, and not the professional employer organization, is deemed to be
29 the seller and is responsible for collecting and remitting the tax
30 imposed by this chapter.

31 (b) For the purposes of (a) of this subsection, the terms "client,"
32 "covered employee," "professional employer agreement," and
33 "professional employer organization" have the same meanings as in RCW
34 82.04.540;

35 (3) "Buyer," "purchaser," and "consumer" include, without limiting
36 the scope hereof, every individual, receiver, assignee, trustee in
37 bankruptcy, trust, estate, firm, copartnership, joint venture, club,
38 company, joint stock company, business trust, corporation, association,

1 society, or any group of individuals acting as a unit, whether mutual,
2 cooperative, fraternal, nonprofit, or otherwise, municipal corporation,
3 quasi municipal corporation, and also the state, its departments and
4 institutions and all political subdivisions thereof, irrespective of
5 the nature of the activities engaged in or functions performed, and
6 also the United States or any instrumentality thereof;

7 (4) "Delivery charges" means charges by the seller of personal
8 property or services for preparation and delivery to a location
9 designated by the purchaser of personal property or services including,
10 but not limited to, transportation, shipping, postage, handling,
11 crating, and packing;

12 (5) "Direct mail" means printed material delivered or distributed
13 by United States mail or other delivery service to a mass audience or
14 to addressees on a mailing list provided by the purchaser or at the
15 direction of the purchaser when the cost of the items are not billed
16 directly to the recipients. "Direct mail" includes tangible personal
17 property supplied directly or indirectly by the purchaser to the direct
18 mail seller for inclusion in the package containing the printed
19 material. "Direct mail" does not include multiple items of printed
20 material delivered to a single address;

21 (6) The meaning attributed in chapter 82.04 RCW to the terms "tax
22 year," "taxable year," "person," "company," "sale," "sale at retail,"
23 "retail sale," "sale at wholesale," "wholesale," "business," "engaging
24 in business," "cash discount," "successor," "consumer," "in this state"
25 and "within this state" shall apply equally to the provisions of this
26 chapter;

27 (7) For the purposes of the taxes imposed under this chapter and
28 under chapter 82.12 RCW, "tangible personal property" means personal
29 property that can be seen, weighed, measured, felt, or touched, or that
30 is in any other manner perceptible to the senses. Tangible personal
31 property includes electricity, water, gas, steam, and prewritten
32 computer software;

33 (8) "Extended warranty" has the same meaning as in RCW
34 82.04.050(7);

35 (9) "Adult entertainment materials and services" means those
36 entertainment materials and services that are primarily oriented to an
37 interest in sex, including but not limited to magazines, photographs,
38 motion pictures, videotapes, videodiscs, cable television services,

1 telephone services, audiotapes, computer programs, and paraphernalia.
2 "Adult entertainment materials and services" does not include (a) books
3 or magazines that contain no photographs or other graphics; or (b)
4 motion pictures, videotapes, videodiscs, or cable television services
5 that do not contain any explicit sex of the type that would be rated
6 "X" using the standards existing on January 1, 2009, of the motion
7 picture association of America, inc. Any motion picture, videotape,
8 videodisc, cable television service, or other visual medium that
9 contains any explicit sex of the type that would be rated "X" using
10 these standards is considered to be primarily oriented to an interest
11 in sex. Notwithstanding subsection (6) of this section, adult
12 entertainment services are a sale at retail for the purposes of this
13 chapter and chapter 82.12 RCW.

14 NEW SECTION. Sec. 4. A new section is added to chapter 82.32 RCW
15 to read as follows:

16 All revenues collected on sales and use of adult entertainment
17 materials and services under chapter 82.08 or 82.12 RCW must be
18 deposited in the general fund to be used solely for the general
19 assistance-unemployable program.

20 **Sec. 5.** RCW 82.12.010 and 2006 c 301 s 3 are each amended to read
21 as follows:

22 For the purposes of this chapter:

23 (1) "Purchase price" means the same as sales price as defined in
24 RCW 82.08.010(~~(-)~~);

25 (2)(a) "Value of the article used" shall be the purchase price for
26 the article of tangible personal property, the use of which is taxable
27 under this chapter. The term also includes, in addition to the
28 purchase price, the amount of any tariff or duty paid with respect to
29 the importation of the article used. In case the article used is
30 acquired by lease or by gift or is extracted, produced, or manufactured
31 by the person using the same or is sold under conditions wherein the
32 purchase price does not represent the true value thereof, the value of
33 the article used shall be determined as nearly as possible according to
34 the retail selling price at place of use of similar products of like
35 quality and character under such rules as the department may prescribe.

1 (b) In case the articles used are acquired by bailment, the value
2 of the use of the articles so used shall be in an amount representing
3 a reasonable rental for the use of the articles so bailed, determined
4 as nearly as possible according to the value of such use at the places
5 of use of similar products of like quality and character under such
6 rules as the department of revenue may prescribe. In case any such
7 articles of tangible personal property are used in respect to the
8 construction, repairing, decorating, or improving of, and which become
9 or are to become an ingredient or component of, new or existing
10 buildings or other structures under, upon, or above real property of or
11 for the United States, any instrumentality thereof, or a county or city
12 housing authority created pursuant to chapter 35.82 RCW, including the
13 installing or attaching of any such articles therein or thereto,
14 whether or not such personal property becomes a part of the realty by
15 virtue of installation, then the value of the use of such articles so
16 used shall be determined according to the retail selling price of such
17 articles, or in the absence of such a selling price, as nearly as
18 possible according to the retail selling price at place of use of
19 similar products of like quality and character or, in the absence of
20 either of these selling price measures, such value may be determined
21 upon a cost basis, in any event under such rules as the department of
22 revenue may prescribe.

23 (c) In the case of articles owned by a user engaged in business
24 outside the state which are brought into the state for no more than one
25 hundred eighty days in any period of three hundred sixty-five
26 consecutive days and which are temporarily used for business purposes
27 by the person in this state, the value of the article used shall be an
28 amount representing a reasonable rental for the use of the articles,
29 unless the person has paid tax under this chapter or chapter 82.08 RCW
30 upon the full value of the article used, as defined in (a) of this
31 subsection.

32 (d) In the case of articles manufactured or produced by the user
33 and used in the manufacture or production of products sold or to be
34 sold to the department of defense of the United States, the value of
35 the articles used shall be determined according to the value of the
36 ingredients of such articles.

37 (e) In the case of an article manufactured or produced for purposes
38 of serving as a prototype for the development of a new or improved

1 product, the value of the article used shall be determined by: (i) The
2 retail selling price of such new or improved product when first offered
3 for sale; or (ii) the value of materials incorporated into the
4 prototype in cases in which the new or improved product is not offered
5 for sale.

6 (f) In the case of an article purchased with a direct pay permit
7 under RCW 82.32.087, the value of the article used shall be determined
8 by the purchase price of such article if, but for the use of the direct
9 pay permit, the transaction would have been subject to sales tax;

10 (3) "Value of the service used" means the purchase price for the
11 service, the use of which is taxable under this chapter. If the
12 service is received by gift or under conditions wherein the purchase
13 price does not represent the true value thereof, the value of the
14 service used shall be determined as nearly as possible according to the
15 retail selling price at place of use of similar services of like
16 quality and character under rules the department may prescribe;

17 (4) "Value of the extended warranty used" means the purchase price
18 for the extended warranty, the use of which is taxable under this
19 chapter. If the extended warranty is received by gift or under
20 conditions wherein the purchase price does not represent the true value
21 of the extended warranty, the value of the extended warranty used shall
22 be determined as nearly as possible according to the retail selling
23 price at place of use of similar extended warranties of like quality
24 and character under rules the department may prescribe;

25 (5) "Use," "used," "using," or "put to use" (~~shall~~) have their
26 ordinary meaning, and (~~shall~~) mean:

27 (a) With respect to tangible personal property, the first act
28 within this state by which the taxpayer takes or assumes dominion or
29 control over the article of tangible personal property (as a consumer),
30 and include installation, storage, withdrawal from storage,
31 distribution, or any other act preparatory to subsequent actual use or
32 consumption within this state;

33 (b) With respect to a service defined in RCW 82.04.050(2)(a), the
34 first act within this state after the service has been performed by
35 which the taxpayer takes or assumes dominion or control over the
36 article of tangible personal property upon which the service was
37 performed (as a consumer), and includes installation, storage,

1 withdrawal from storage, distribution, or any other act preparatory to
2 subsequent actual use or consumption of the article within this state;
3 ((and))

4 (c) With respect to an extended warranty, the first act within this
5 state after the extended warranty has been acquired by which the
6 taxpayer takes or assumes dominion or control over the article of
7 tangible personal property to which the extended warranty applies, and
8 includes installation, storage, withdrawal from storage, distribution,
9 or any other act preparatory to subsequent actual use or consumption of
10 the article within this state; and

11 (d) With respect to an adult entertainment service which affords a
12 benefit or is otherwise capable of use within this state, the use
13 within this state of the service, regardless of the place of
14 performance;

15 (6) "Taxpayer" and "purchaser" include all persons included within
16 the meaning of the word "buyer" and the word "consumer" as defined in
17 chapters 82.04 and 82.08 RCW;

18 (7)(a)(i) Except as provided in (a)(ii) of this subsection (7),
19 "retailer" means every seller as defined in RCW 82.08.010 and every
20 person engaged in the business of selling tangible personal property or
21 adult entertainment services at retail and every person required to
22 collect from purchasers the tax imposed under this chapter.

23 (ii) "Retailer" does not include a professional employer
24 organization when a covered employee coemployed with the client under
25 the terms of a professional employer agreement engages in activities
26 that constitute a sale of tangible personal property, extended
27 warranty, or a sale of any service defined as a retail sale in RCW
28 82.04.050 (2)(a) or (3)(a) that is subject to the tax imposed by this
29 chapter. In such cases, the client, and not the professional employer
30 organization, is deemed to be the retailer and is responsible for
31 collecting and remitting the tax imposed by this chapter.

32 (b) For the purposes of (a) of this subsection, the terms "client,"
33 "covered employee," "professional employer agreement," and
34 "professional employer organization" have the same meanings as in RCW
35 82.04.540;

36 (8) "Extended warranty" has the same meaning as in RCW
37 82.04.050(7);

1 (9) The meaning ascribed to words and phrases in chapters 82.04 and
2 82.08 RCW, insofar as applicable, shall have full force and effect with
3 respect to taxes imposed under the provisions of this chapter.
4 "Consumer," in addition to the meaning ascribed to it in chapters 82.04
5 and 82.08 RCW insofar as applicable, shall also mean any person who
6 distributes or displays, or causes to be distributed or displayed, any
7 article of tangible personal property, except newspapers, the primary
8 purpose of which is to promote the sale of products or services. With
9 respect to property distributed to persons within this state by a
10 consumer as defined in this subsection (9), the use of the property
11 (~~shall be~~) is deemed to be by such consumer. In addition, "consumer"
12 includes any person who purchases, acquires, or uses any adult
13 entertainment service other than for resale in the regular course of
14 business. Resale of a service means a separately stated charge to
15 another person for the service by a person who has paid or is obligated
16 to pay an identical charge to one who has originally rendered the
17 identical service.

18 **Sec. 6.** RCW 82.12.020 and 2005 c 514 s 105 are each amended to
19 read as follows:

20 (1) There is (~~hereby~~) levied and (~~there shall be~~) collected
21 from every person in this state a tax or excise for the privilege of
22 using within this state as a consumer: (a) Any article of tangible
23 personal property purchased at retail, or acquired by lease, gift,
24 repossession, or bailment, or extracted or produced or manufactured by
25 the person so using the same, or otherwise furnished to a person
26 engaged in any business taxable under RCW 82.04.280 (2) or (7); (b) any
27 prewritten computer software, regardless of the method of delivery, but
28 excluding prewritten computer software that is either provided free of
29 charge or is provided for temporary use in viewing information, or
30 both; or (c) any extended warranty.

31 (2) This tax (~~shall apply~~) applies to the use of every extended
32 warranty, service defined as a retail sale in RCW 82.04.050 (2)(a) or
33 (3)(a) and 82.08.010, and the use of every article of tangible personal
34 property, including property acquired at a casual or isolated sale, and
35 including byproducts used by the manufacturer thereof, except as
36 hereinafter provided, irrespective of whether the article or similar

1 articles are manufactured or are available for purchase within this
2 state.

3 (3) The provisions of this chapter do not apply in respect to the
4 use of any article of tangible personal property, extended warranty, or
5 service taxable under RCW 82.04.050 (2)(a) or (3)(a), purchased at
6 retail or acquired by lease, gift, or bailment if the sale to, or the
7 use by, the present user or his bailor or donor has already been
8 subjected to the tax under chapter 82.08 RCW or this chapter and the
9 tax has been paid by the present user or by his bailor or donor.

10 (4) Except as provided in this section, payment by one purchaser or
11 user of tangible personal property, extended warranty, or service of
12 the tax imposed by chapter 82.08 or 82.12 RCW shall not have the effect
13 of exempting any other purchaser or user of the same property, extended
14 warranty, or service from the taxes imposed by such chapters. If the
15 sale to, or the use by, the present user or his or her bailor or donor
16 has already been subjected to the tax under chapter 82.08 RCW or this
17 chapter and the tax has been paid by the present user or by his or her
18 bailor or donor; or in respect to the use of property acquired by
19 bailment and the tax has once been paid based on reasonable rental as
20 determined by RCW 82.12.060 measured by the value of the article at
21 time of first use multiplied by the tax rate imposed by chapter 82.08
22 RCW or this chapter as of the time of first use; or in respect to the
23 use of any article of tangible personal property acquired by bailment,
24 if the property was acquired by a previous bailee from the same bailor
25 for use in the same general activity and the original bailment was
26 prior to June 9, 1961, the tax imposed by this chapter does not apply.

27 (5) The tax shall be levied and collected in an amount equal to the
28 value of the article used, value of the extended warranty used, or
29 value of the service used by the taxpayer multiplied by the rates in
30 effect for the retail sales tax under RCW 82.08.020, except in the case
31 of a seller required to collect use tax from the purchaser, the tax
32 shall be collected in an amount equal to the purchase price multiplied
33 by the rate in effect for the retail sales tax under RCW 82.08.020.

34 **Sec. 7.** RCW 82.12.035 and 2007 c 6 s 1203 are each amended to read
35 as follows:

36 A credit shall be allowed against the taxes imposed by this chapter
37 upon the use of tangible personal property, extended warranty, or

1 services taxable under RCW 82.04.050 (2)(a) or (3)(a) or defined as a
2 retail sale under RCW 82.08.010, in the state of Washington in the
3 amount that the present user thereof or his or her bailor or donor has
4 paid a retail sales or use tax with respect to such property, extended
5 warranty, or service to any other state, possession, territory, or
6 commonwealth of the United States, any political subdivision thereof,
7 the District of Columbia, and any foreign country or political
8 subdivision thereof, prior to the use of such property, extended
9 warranty, or service in Washington.

10 NEW SECTION. **Sec. 8.** This act takes effect October 1, 2009.

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