
SENATE BILL 5932

State of Washington

62nd Legislature

2011 Regular Session

By Senators Kohl-Welles, Conway, Nelson, White, Murray, Keiser, Regala, Chase, Kline, and Harper

Read first time 04/12/11. Referred to Committee on Ways & Means.

1 AN ACT Relating to clarifying the taxability of initiation fees and
2 dues to provide funding for essential government services; amending RCW
3 82.04.4282; reenacting and amending RCW 82.04.050; making an
4 appropriation; and providing a contingent effective date.

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

6 **Sec. 1.** RCW 82.04.4282 and 2009 c 535 s 410 are each amended to
7 read as follows:

8 In computing tax there may be deducted from the measure of tax
9 amounts derived from bona fide (1) dues and initiation fees paid to a
10 nonprofit organization exempt from federal income tax under 26 U.S.C.
11 Sec. 501(c)(3), (c)(4), (c)(5), (c)(6), (c)(8), (c)(10), or (c)(19) of
12 the federal internal revenue code, as amended as of January 1, 2011,
13 (2) (~~dues, (3)~~) contributions, (~~(4)~~) (3) donations, (~~(5)~~) (4)
14 tuition fees, (~~(6)~~) (5) charges made by a nonprofit trade or
15 professional organization for attending or occupying space at a trade
16 show, convention, or educational seminar sponsored by the nonprofit
17 trade or professional organization, which trade show, convention, or
18 educational seminar is not open to the general public, (~~(7)~~) (6)
19 charges made for operation of privately operated kindergartens, and

1 ((+8)) (7) endowment funds. This section may not be construed to
2 exempt any person, association, or society from tax liability upon
3 selling tangible personal property, digital goods, digital codes, or
4 digital automated services, or upon providing facilities or other
5 services for which a special charge is made to members or others. If
6 dues are in exchange for any significant amount of goods or services
7 rendered by the recipient thereof to members without any additional
8 charge to the member, or if the dues are graduated upon the amount of
9 goods or services rendered, the value of such goods or services
10 (~~shall~~) is not (~~be~~) considered as a deduction under this section.

11 **Sec. 2.** RCW 82.04.050 and 2010 c 112 s 14, 2010 c 111 s 201, and
12 2010 c 106 s 202 are each reenacted and amended to read as follows:

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

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

24 (ii) Installs, repairs, cleans, alters, imprints, improves,
25 constructs, or decorates real or personal property of or for consumers,
26 if such tangible personal property becomes an ingredient or component
27 of such real or personal property without intervening use by such
28 person; or

29 (iii) Purchases for the purpose of consuming the property purchased
30 in producing for sale as a new article of tangible personal property or
31 substance, of which such property becomes an ingredient or component or
32 is a chemical used in processing, when the primary purpose of such
33 chemical is to create a chemical reaction directly through contact with
34 an ingredient of a new article being produced for sale; or

35 (iv) Purchases for the purpose of consuming the property purchased
36 in producing ferrosilicon which is subsequently used in producing

1 magnesium for sale, if the primary purpose of such property is to
2 create a chemical reaction directly through contact with an ingredient
3 of ferrosilicon; or

4 (v) Purchases for the purpose of providing the property to
5 consumers as part of competitive telephone service, as defined in RCW
6 82.04.065; or

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

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

17 (c) The term also means every sale of tangible personal property to
18 persons engaged in any business that is taxable under RCW 82.04.280
19 (1), (2), and (7), 82.04.290, and 82.04.2908.

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

23 (a) The installing, repairing, cleaning, altering, imprinting, or
24 improving of tangible personal property of or for consumers, including
25 charges made for the mere use of facilities in respect thereto, but
26 excluding charges made for the use of self-service laundry facilities,
27 and also excluding sales of laundry service to nonprofit health care
28 facilities, and excluding services rendered in respect to live animals,
29 birds and insects;

30 (b) The constructing, repairing, decorating, or improving of new or
31 existing buildings or other structures under, upon, or above real
32 property of or for consumers, including the installing or attaching of
33 any article of tangible personal property therein or thereto, whether
34 or not such personal property becomes a part of the realty by virtue of
35 installation, and also includes the sale of services or charges made
36 for the clearing of land and the moving of earth excepting the mere
37 leveling of land used in commercial farming or agriculture;

1 (c) The constructing, repairing, or improving of any structure
2 upon, above, or under any real property owned by an owner who conveys
3 the property by title, possession, or any other means to the person
4 performing such construction, repair, or improvement for the purpose of
5 performing such construction, repair, or improvement and the property
6 is then reconveyed by title, possession, or any other means to the
7 original owner;

8 (d) The cleaning, fumigating, razing, or moving of existing
9 buildings or structures, but does not include the charge made for
10 janitorial services; and for purposes of this section the term
11 "janitorial services" means those cleaning and caretaking services
12 ordinarily performed by commercial janitor service businesses
13 including, but not limited to, wall and window washing, floor cleaning
14 and waxing, and the cleaning in place of rugs, drapes and upholstery.
15 The term "janitorial services" does not include painting, papering,
16 repairing, furnace or septic tank cleaning, snow removal or
17 sandblasting;

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

21 (f) The furnishing of lodging and all other services by a hotel,
22 rooming house, tourist court, motel, trailer camp, and the granting of
23 any similar license to use real property, as distinguished from the
24 renting or leasing of real property, and it is presumed that the
25 occupancy of real property for a continuous period of one month or more
26 constitutes a rental or lease of real property and not a mere license
27 to use or enjoy the same. For the purposes of this subsection, it is
28 presumed that the sale of and charge made for the furnishing of lodging
29 for a continuous period of one month or more to a person is a rental or
30 lease of real property and not a mere license to enjoy the same;

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

33 (h) Persons taxable under (a), (b), (c), (d), (e), (f), and (g) of
34 this subsection when such sales or charges are for property, labor and
35 services which are used or consumed in whole or in part by such persons
36 in the performance of any activity defined as a "sale at retail" or
37 "retail sale" even though such property, labor and services may be
38 resold after such use or consumption. Nothing contained in this

1 subsection may be construed to modify subsection (1) of this section
2 and nothing contained in subsection (1) of this section may be
3 construed to modify this subsection.

4 (3) The term "sale at retail" or "retail sale" includes the sale of
5 or charge made for personal, business, or professional services
6 including amounts designated as interest, rents, dues, fees, admission,
7 initiation fees and dues paid to organizations that do not qualify for
8 the deduction under RCW 82.04.4282, and other service emoluments
9 however designated, received by persons engaging in the following
10 business activities:

11 (a) Amusement and recreation services including but not limited to
12 golf, pool, billiards, skating, bowling, ski lifts and tows, day trips
13 for sightseeing purposes, and others, when provided to consumers;

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

15 (c) Credit bureau services;

16 (d) Automobile parking and storage garage services;

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

22 (f) Service charges associated with tickets to professional
23 sporting events; and

24 (g) The following personal services: Physical fitness services,
25 tanning salon services, tattoo parlor services, steam bath services,
26 turkish bath services, escort services, and dating services.

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

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

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

35 (6)(a) The term also includes the sale of prewritten computer
36 software to a consumer, regardless of the method of delivery to the end
37 user. For purposes of this subsection (6)(a), the sale of prewritten
38 computer software includes the sale of or charge made for a key or an

1 enabling or activation code, where the key or code is required to
2 activate prewritten computer software and put the software into use.
3 There is no separate sale of the key or code from the prewritten
4 computer software, regardless of how the sale may be characterized by
5 the vendor or by the purchaser.

6 The term "retail sale" does not include the sale of or charge made
7 for:

- 8 (i) Custom software; or
- 9 (ii) The customization of prewritten computer software.

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

15 (ii)(A) The service described in (b)(i) of this subsection (6)
16 includes the right to access and use prewritten computer software to
17 perform data processing.

18 (B) For purposes of this subsection (6)(b)(ii), "data processing"
19 means the systematic performance of operations on data to extract the
20 required information in an appropriate form or to convert the data to
21 usable information. Data processing includes check processing, image
22 processing, form processing, survey processing, payroll processing,
23 claim processing, and similar activities.

24 (7) The term also includes the sale of or charge made for an
25 extended warranty to a consumer. For purposes of this subsection,
26 "extended warranty" means an agreement for a specified duration to
27 perform the replacement or repair of tangible personal property at no
28 additional charge or a reduced charge for tangible personal property,
29 labor, or both, or to provide indemnification for the replacement or
30 repair of tangible personal property, based on the occurrence of
31 specified events. The term "extended warranty" does not include an
32 agreement, otherwise meeting the definition of extended warranty in
33 this subsection, if no separate charge is made for the agreement and
34 the value of the agreement is included in the sales price of the
35 tangible personal property covered by the agreement. For purposes of
36 this subsection, "sales price" has the same meaning as in RCW
37 82.08.010.

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

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

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

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

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

11 (b) A retail sale of digital goods, digital codes, or digital
12 automated services under this subsection (8) includes any services
13 provided by the seller exclusively in connection with the digital
14 goods, digital codes, or digital automated services, whether or not a
15 separate charge is made for such services.

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

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

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

36 (11) The term also does not include sales of chemical sprays or
37 washes to persons for the purpose of postharvest treatment of fruit for
38 the prevention of scald, fungus, mold, or decay, nor does it include

1 sales of feed, seed, seedlings, fertilizer, agents for enhanced
2 pollination including insects such as bees, and spray materials to:
3 (a) Persons who participate in the federal conservation reserve
4 program, the environmental quality incentives program, the wetlands
5 reserve program, and the wildlife habitat incentives program, or their
6 successors administered by the United States department of agriculture;
7 (b) farmers for the purpose of producing for sale any agricultural
8 product; and (c) farmers acting under cooperative habitat development
9 or access contracts with an organization exempt from federal income tax
10 under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code or
11 the Washington state department of fish and wildlife to produce or
12 improve wildlife habitat on land that the farmer owns or leases.

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

29 (13) The term does not include the sale of or charge made for
30 labor, services, or tangible personal property pursuant to agreements
31 providing maintenance services for bus, rail, or rail fixed guideway
32 equipment when a regional transit authority is the recipient of the
33 labor, services, or tangible personal property, and a transit agency,
34 as defined in RCW 81.104.015, performs the labor or services.

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

1 NEW SECTION. **Sec. 3.** The sum of four million five hundred
2 thousand dollars, which reflects the increased revenue receipts from
3 this act for the biennium ending June 30, 2013, is appropriated from
4 the general fund to the department of social and health services
5 medical assistance program solely for purposes of providing hearing
6 aids and eyeglasses for adults enrolled in state medical assistance
7 programs under chapter 74.09 RCW.

8 NEW SECTION. **Sec. 4.** This act takes effect if Referendum Bill No.
9 . . . (Senate Bill No. . . . (S-2241/11)) is approved by the voters at
10 the next general election.

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