
HOUSE BILL 3145

State of Washington

58th Legislature

2004 Regular Session

By Representatives Veloria, Wallace, Morrell, McDonald, McCoy, Chase and Hudgins

Read first time 01/29/2004. Referred to Committee on Trade & Economic Development.

1 AN ACT Relating to tax relief for the construction of manufacturing
2 facilities; amending RCW 82.04.050, 82.04.190, 82.04.280, and
3 82.04.280; providing an effective date; providing a contingent
4 effective date; and providing a contingent expiration date.

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

6 **Sec. 1.** RCW 82.04.050 and 2003 c 168 s 104 are each amended to
7 read as follows:

8 (1) "Sale at retail" or "retail sale" means every sale of tangible
9 personal property (including articles produced, fabricated, or
10 imprinted) to all persons irrespective of the nature of their business
11 and including, among others, without limiting the scope hereof, persons
12 who install, repair, clean, alter, improve, construct, or decorate real
13 or personal property of or for consumers other than a sale to a person
14 who presents a resale certificate under RCW 82.04.470 and who:

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

1 (b) Installs, repairs, cleans, alters, imprints, improves,
2 constructs, or decorates real or personal property of or for consumers,
3 if such tangible personal property becomes an ingredient or component
4 of such real or personal property without intervening use by such
5 person; or

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

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

17 (e) Purchases for the purpose of providing the property to
18 consumers as part of competitive telephone service, as defined in RCW
19 82.04.065. The term shall include every sale of tangible personal
20 property which is used or consumed or to be used or consumed in the
21 performance of any activity classified as a "sale at retail" or "retail
22 sale" even though such property is resold or utilized as provided in
23 (a), (b), (c), (d), or (e) of this subsection following such use. The
24 term also means every sale of tangible personal property to persons
25 engaged in any business which is taxable under RCW 82.04.280 (2) and
26 (7) and 82.04.290.

27 (2) The term "sale at retail" or "retail sale" shall include the
28 sale of or charge made for tangible personal property consumed and/or
29 for labor and services rendered in respect to the following:

30 (a) The installing, repairing, cleaning, altering, imprinting, or
31 improving of tangible personal property of or for consumers, including
32 charges made for the mere use of facilities in respect thereto, but
33 excluding charges made for the use of coin-operated laundry facilities
34 when such facilities are situated in an apartment house, rooming house,
35 or mobile home park for the exclusive use of the tenants thereof, and
36 also excluding sales of laundry service to nonprofit health care
37 facilities, and excluding services rendered in respect to live animals,
38 birds and insects;

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

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

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

28 (e) The sale of or charge made for labor and services rendered in
29 respect to 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 sale of and charge made for the furnishing of lodging and
33 all other services by a hotel, rooming house, tourist court, motel,
34 trailer camp, and the granting of any similar license to use real
35 property, as distinguished from the renting or leasing of real
36 property, and it shall be presumed that the occupancy of real property
37 for a continuous period of one month or more constitutes a rental or
38 lease of real property and not a mere license to use or enjoy the same.

1 For the purposes of this subsection, it shall be presumed that the sale
2 of and charge made for the furnishing of lodging for a continuous
3 period of one month or more to a person is a rental or lease of real
4 property and not a mere license to enjoy the same;

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

15 (3) The term "sale at retail" or "retail sale" shall include the
16 sale of 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 (b) Abstract, title insurance, and escrow services;

24 (c) Credit bureau services;

25 (d) Automobile parking and storage garage services;

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

31 (f) Service charges associated with tickets to professional
32 sporting events; and

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

36 (4)(a) The term shall also include:

37 (i) The renting or leasing of tangible personal property to
38 consumers; and

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

7 (b) The term shall not include the renting or leasing of tangible
8 personal property where the lease or rental is for the purpose of
9 sublease or subrent.

10 (5) The term shall also include the providing of telephone service,
11 as defined in RCW 82.04.065, to consumers.

12 (6) The term shall also include the sale of prewritten computer
13 software other than a sale to a person who presents a resale
14 certificate under RCW 82.04.470, regardless of the method of delivery
15 to the end user, but shall not include custom software or the
16 customization of prewritten computer software.

17 (7) The term shall not include the sale of or charge made for labor
18 and services rendered in respect to the building, repairing, or
19 improving of any street, place, road, highway, easement, right of way,
20 mass public transportation terminal or parking facility, bridge,
21 tunnel, or trestle which is owned by a municipal corporation or
22 political subdivision of the state or by the United States and which is
23 used or to be used primarily for foot or vehicular traffic including
24 mass transportation vehicles of any kind.

25 (8) The term shall also not include sales of chemical sprays or
26 washes to persons for the purpose of postharvest treatment of fruit for
27 the prevention of scald, fungus, mold, or decay, nor shall it include
28 sales of feed, seed, seedlings, fertilizer, agents for enhanced
29 pollination including insects such as bees, and spray materials to:

30 (a) Persons who participate in the federal conservation reserve
31 program, the environmental quality incentives program, the wetlands
32 reserve program, and the wildlife habitat incentives program, or their
33 successors administered by the United States department of agriculture;

34 (b) farmers for the purpose of producing for sale any agricultural
35 product; and (c) farmers acting under cooperative habitat development
36 or access contracts with an organization exempt from federal income tax
37 under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of

1 fish and wildlife to produce or improve wildlife habitat on land that
2 the farmer owns or leases.

3 (9) The term shall not include the sale of or charge made for labor
4 and services rendered in respect to the constructing, repairing,
5 decorating, or improving of new or existing buildings or other
6 structures under, upon, or above real property of or for the United
7 States, any instrumentality thereof, or a county or city housing
8 authority created pursuant to chapter 35.82 RCW, including the
9 installing, or attaching of any article of tangible personal property
10 therein or thereto, whether or not such personal property becomes a
11 part of the realty by virtue of installation. Nor shall the term
12 include the sale of services or charges made for the clearing of land
13 and the moving of earth of or for the United States, any
14 instrumentality thereof, or a county or city housing authority. Nor
15 shall the term include the sale of services or charges made for
16 cleaning up for the United States, or its instrumentalities,
17 radioactive waste and other byproducts of weapons production and
18 nuclear research and development.

19 (10) (~~Until July 1, 2003, the term shall not include the sale of~~
20 ~~or charge made for labor and services rendered for environmental~~
21 ~~remedial action as defined in RCW 82.04.2635(2)) The term shall also
22 not include the sale of or charge made for labor and services rendered
23 in respect to the constructing, repairing, decorating, or improving of
24 qualified buildings. For purposes of this subsection (10), "qualified
25 buildings" means new or existing buildings or other structures under,
26 upon, or above real property of or for a manufacturer, but only if the
27 buildings or structures are used for the purpose of manufacturing,
28 including plant offices and warehouses or other facilities for the
29 storage of raw material or finished goods if the facilities are an
30 essential or an integral part of a factory, mill, or plant used for
31 manufacturing. If a building is used partly for manufacturing and
32 partly for other purposes, the building is a "qualified building" if it
33 is used primarily, as measured by square footage, for manufacturing.~~

34 **Sec. 2.** RCW 82.04.190 and 2002 c 367 s 2 are each amended to read
35 as follows:

36 "Consumer" means the following:

1 (1) Any person who purchases, acquires, owns, holds, or uses any
2 article of tangible personal property irrespective of the nature of the
3 person's business and including, among others, without limiting the
4 scope hereof, persons who install, repair, clean, alter, improve,
5 construct, or decorate real or personal property of or for consumers
6 other than for the purpose (a) of resale as tangible personal property
7 in the regular course of business or (b) of incorporating such property
8 as an ingredient or component of real or personal property when
9 installing, repairing, cleaning, altering, imprinting, improving,
10 constructing, or decorating such real or personal property of or for
11 consumers or (c) of consuming such property in producing for sale a new
12 article of tangible personal property or a new substance, of which such
13 property becomes an ingredient or component or as a chemical used in
14 processing, when the primary purpose of such chemical is to create a
15 chemical reaction directly through contact with an ingredient of a new
16 article being produced for sale or (d) purchases for the purpose of
17 consuming the property purchased in producing ferrosilicon which is
18 subsequently used in producing magnesium for sale, if the primary
19 purpose of such property is to create a chemical reaction directly
20 through contact with an ingredient of ferrosilicon;

21 (2)(a) Any person engaged in any business activity taxable under
22 RCW 82.04.290; (b) any person who purchases, acquires, or uses any
23 telephone service as defined in RCW 82.04.065, other than for resale in
24 the regular course of business; (c) any person who purchases, acquires,
25 or uses any service defined in RCW 82.04.050(2)(a) or any amusement and
26 recreation service defined in RCW 82.04.050(3)(a), other than for
27 resale in the regular course of business; and (d) any person who is an
28 end user of software;

29 (3) Any person engaged in the business of contracting for the
30 building, repairing or improving of any street, place, road, highway,
31 easement, right of way, mass public transportation terminal or parking
32 facility, bridge, tunnel, or trestle which is owned by a municipal
33 corporation or political subdivision of the state of Washington or by
34 the United States and which is used or to be used primarily for foot or
35 vehicular traffic including mass transportation vehicles of any kind as
36 defined in RCW 82.04.280, in respect to tangible personal property when
37 such person incorporates such property as an ingredient or component of
38 such publicly owned street, place, road, highway, easement, right of

1 way, mass public transportation terminal or parking facility, bridge,
2 tunnel, or trestle by installing, placing or spreading the property in
3 or upon the right of way of such street, place, road, highway,
4 easement, bridge, tunnel, or trestle or in or upon the site of such
5 mass public transportation terminal or parking facility;

6 (4) Any person who is an owner, lessee or has the right of
7 possession to or an easement in real property which is being
8 constructed, repaired, decorated, improved, or otherwise altered by a
9 person engaged in business, excluding only (a) municipal corporations
10 or political subdivisions of the state in respect to labor and services
11 rendered to their real property which is used or held for public road
12 purposes, and (b) the United States, instrumentalities thereof, and
13 county and city housing authorities created pursuant to chapter 35.82
14 RCW in respect to labor and services rendered to their real property.
15 Nothing contained in this or any other subsection of this definition
16 shall be construed to modify any other definition of "consumer";

17 (5) Any person who is an owner, lessee, or has the right of
18 possession to personal property which is being constructed, repaired,
19 improved, cleaned, imprinted, or otherwise altered by a person engaged
20 in business;

21 (6) Any person engaged in the business of constructing, repairing,
22 decorating, or improving new or existing buildings or other structures
23 under, upon, or above real property of or for the United States, any
24 instrumentality thereof, or a county or city housing authority created
25 pursuant to chapter 35.82 RCW, including the installing or attaching of
26 any article of tangible personal property therein or thereto, whether
27 or not such personal property becomes a part of the realty by virtue of
28 installation; also, any person engaged in the business of clearing land
29 and moving earth of or for the United States, any instrumentality
30 thereof, or a county or city housing authority created pursuant to
31 chapter 35.82 RCW. Any such person shall be a consumer within the
32 meaning of this subsection in respect to tangible personal property
33 incorporated into, installed in, or attached to such building or other
34 structure by such person;

35 (7) Any person who is a lessor of machinery and equipment, the
36 rental of which is exempt from the tax imposed by RCW 82.08.020 under
37 RCW 82.08.02565, with respect to the sale of or charge made for
38 tangible personal property consumed in respect to repairing the

1 machinery and equipment, if the tangible personal property has a useful
2 life of less than one year. Nothing contained in this or any other
3 subsection of this section shall be construed to modify any other
4 definition of "consumer";

5 (8) Any person engaged in the business of cleaning up for the
6 United States, or its instrumentalities, radioactive waste and other
7 byproducts of weapons production and nuclear research and development;
8 and

9 (9) (~~Until July 1, 2003, any person engaged in the business of~~
10 ~~conducting environmental remedial action as defined in RCW~~
11 ~~82.04.2635(2)) Any person engaged in the business of constructing,
12 repairing, decorating, or improving of qualified buildings as defined
13 in RCW 82.04.050(10).~~

14 **Sec. 3.** RCW 82.04.280 and 1998 c 343 s 3 are each amended to read
15 as follows:

16 Upon every person engaging within this state in the business of:
17 (1) Printing, and of publishing newspapers, periodicals, or magazines;
18 (2) building, repairing or improving any street, place, road, highway,
19 easement, right of way, mass public transportation terminal or parking
20 facility, bridge, tunnel, or trestle which is owned by a municipal
21 corporation or political subdivision of the state or by the United
22 States and which is used or to be used, primarily for foot or vehicular
23 traffic including mass transportation vehicles of any kind and
24 including any readjustment, reconstruction or relocation of the
25 facilities of any public, private or cooperatively owned utility or
26 railroad in the course of such building, repairing or improving, the
27 cost of which readjustment, reconstruction, or relocation, is the
28 responsibility of the public authority whose street, place, road,
29 highway, easement, right of way, mass public transportation terminal or
30 parking facility, bridge, tunnel, or trestle is being built, repaired
31 or improved; (3) extracting for hire or processing for hire; (4)
32 operating a cold storage warehouse or storage warehouse, but not
33 including the rental of cold storage lockers; (5) representing and
34 performing services for fire or casualty insurance companies as an
35 independent resident managing general agent licensed under the
36 provisions of RCW 48.05.310; (6) radio and television broadcasting,
37 excluding network, national and regional advertising computed as a

1 standard deduction based on the national average thereof as annually
2 reported by the Federal Communications Commission, or in lieu thereof
3 by itemization by the individual broadcasting station, and excluding
4 that portion of revenue represented by the out-of-state audience
5 computed as a ratio to the station's total audience as measured by the
6 100 micro-volt signal strength and delivery by wire, if any; and (7)
7 (~~engaging in~~) activities which bring a person within the definition
8 of consumer contained in RCW 82.04.190 (6) or (9); as to such persons,
9 the amount of tax on such business shall be equal to the gross income
10 of the business multiplied by the rate of 0.484 percent.

11 As used in this section, "cold storage warehouse" means a storage
12 warehouse used to store fresh and/or frozen perishable fruits or
13 vegetables, meat, seafood, dairy products, or fowl, or any combination
14 thereof, at a desired temperature to maintain the quality of the
15 product for orderly marketing.

16 As used in this section, "storage warehouse" means a building or
17 structure, or any part thereof, in which goods, wares, or merchandise
18 are received for storage for compensation, except field warehouses,
19 fruit warehouses, fruit packing plants, warehouses licensed under
20 chapter 22.09 RCW, public garages storing automobiles, railroad freight
21 sheds, docks and wharves, and "self-storage" or "mini storage"
22 facilities whereby customers have direct access to individual storage
23 areas by separate entrance. "Storage warehouse" does not include a
24 building or structure, or that part of such building or structure, in
25 which an activity taxable under RCW 82.04.272 is conducted.

26 As used in this section, "periodical or magazine" means a printed
27 publication, other than a newspaper, issued regularly at stated
28 intervals at least once every three months, including any supplement or
29 special edition of the publication.

30 **Sec. 4.** RCW 82.04.280 and 2003 c 149 s 4 are each amended to read
31 as follows:

32 Upon every person engaging within this state in the business of:
33 (1) Printing, and of publishing newspapers, periodicals, or magazines;
34 (2) building, repairing or improving any street, place, road, highway,
35 easement, right of way, mass public transportation terminal or parking
36 facility, bridge, tunnel, or trestle which is owned by a municipal
37 corporation or political subdivision of the state or by the United

1 States and which is used or to be used, primarily for foot or vehicular
2 traffic including mass transportation vehicles of any kind and
3 including any readjustment, reconstruction or relocation of the
4 facilities of any public, private or cooperatively owned utility or
5 railroad in the course of such building, repairing or improving, the
6 cost of which readjustment, reconstruction, or relocation, is the
7 responsibility of the public authority whose street, place, road,
8 highway, easement, right of way, mass public transportation terminal or
9 parking facility, bridge, tunnel, or trestle is being built, repaired
10 or improved; (3) extracting for hire or processing for hire, except
11 persons taxable as processors for hire under another section of this
12 chapter; (4) operating a cold storage warehouse or storage warehouse,
13 but not including the rental of cold storage lockers; (5) representing
14 and performing services for fire or casualty insurance companies as an
15 independent resident managing general agent licensed under the
16 provisions of RCW 48.05.310; (6) radio and television broadcasting,
17 excluding network, national and regional advertising computed as a
18 standard deduction based on the national average thereof as annually
19 reported by the Federal Communications Commission, or in lieu thereof
20 by itemization by the individual broadcasting station, and excluding
21 that portion of revenue represented by the out-of-state audience
22 computed as a ratio to the station's total audience as measured by the
23 100 micro-volt signal strength and delivery by wire, if any; and (7)
24 (~~engaging in~~) activities which bring a person within the definition
25 of consumer contained in RCW 82.04.190 (6) or (9); as to such persons,
26 the amount of tax on such business shall be equal to the gross income
27 of the business multiplied by the rate of 0.484 percent.

28 As used in this section, "cold storage warehouse" means a storage
29 warehouse used to store fresh and/or frozen perishable fruits or
30 vegetables, meat, seafood, dairy products, or fowl, or any combination
31 thereof, at a desired temperature to maintain the quality of the
32 product for orderly marketing.

33 As used in this section, "storage warehouse" means a building or
34 structure, or any part thereof, in which goods, wares, or merchandise
35 are received for storage for compensation, except field warehouses,
36 fruit warehouses, fruit packing plants, warehouses licensed under
37 chapter 22.09 RCW, public garages storing automobiles, railroad freight
38 sheds, docks and wharves, and "self-storage" or "mini storage"

1 facilities whereby customers have direct access to individual storage
2 areas by separate entrance. "Storage warehouse" does not include a
3 building or structure, or that part of such building or structure, in
4 which an activity taxable under RCW 82.04.272 is conducted.

5 As used in this section, "periodical or magazine" means a printed
6 publication, other than a newspaper, issued regularly at stated
7 intervals at least once every three months, including any supplement or
8 special edition of the publication.

9 NEW SECTION. **Sec. 5.** Section 3 of this act expires if c 149, Laws
10 of 2003 takes effect.

11 NEW SECTION. **Sec. 6.** Section 4 of this act takes effect if c 149,
12 Laws of 2003 takes effect.

13 NEW SECTION. **Sec. 7.** Sections 1 through 3 of this act take effect
14 July 1, 2004.

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