
SENATE BILL 5758

State of Washington 60th Legislature 2007 Regular Session

By Senators Murray, Hewitt and Eide

Read first time 01/31/2007. Referred to Committee on Ways & Means.

1 AN ACT Relating to the taxation of temporary staffing services;
2 amending RCW 82.04.460, 82.04.190, 82.04.290, and 82.08.054; reenacting
3 and amending RCW 82.08.050; adding a new section to chapter 82.04 RCW;
4 adding a new section to chapter 82.08 RCW; creating a new section;
5 providing an effective date; and declaring an emergency.

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

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

9 (1) Upon every person engaging in this state in the business of
10 providing staffing services; as to such persons the amount of tax with
11 respect to such business shall be equal to the gross income of the
12 business, multiplied by the rate of 0.484 percent.

13 (2) For the purpose of this section, "staffing services" means an
14 arrangement in which the taxpayer recruits and hires employees from the
15 labor market and assigns them on a temporary basis to perform services
16 for another to support, or supplement, the customer's work force, or to
17 provide assistance in special work situations such as employee
18 absences, skill shortages, and seasonal workloads, or to perform

1 special assignments or projects, all under the direction and
2 supervision of the customer. "Staffing services" does not include
3 permanent employee leasing or permanent employee placement services.

4 **Sec. 2.** RCW 82.04.460 and 2004 c 174 s 6 are each amended to read
5 as follows:

6 (1) Any person rendering services taxable under RCW 82.04.290
7 (~~(e)~~), 82.04.2908, or section 1 of this act and maintaining places of
8 business both within and without this state which contribute to the
9 rendition of such services shall, for the purpose of computing tax
10 liability under RCW 82.04.290 (~~(e)~~), 82.04.2908, or section 1 of this
11 act, apportion to this state that portion of the person's gross income
12 which is derived from services rendered within this state. Where such
13 apportionment cannot be accurately made by separate accounting methods,
14 the taxpayer shall apportion to this state that proportion of the
15 taxpayer's total income which the cost of doing business within the
16 state bears to the total cost of doing business both within and without
17 the state.

18 (2) Notwithstanding the provision of subsection (1) of this
19 section, persons doing business both within and without the state who
20 receive gross income from service charges, as defined in RCW 63.14.010
21 (relating to amounts charged for granting the right or privilege to
22 make deferred or installment payments) or who receive gross income from
23 engaging in business as financial institutions within the scope of
24 chapter 82.14A RCW (relating to city taxes on financial institutions)
25 shall apportion or allocate gross income taxable under RCW 82.04.290 to
26 this state pursuant to rules promulgated by the department consistent
27 with uniform rules for apportionment or allocation developed by the
28 states.

29 (3) The department shall by rule provide a method or methods of
30 apportioning or allocating gross income derived from sales of telephone
31 services taxed under this chapter, if the gross proceeds of sales
32 subject to tax under this chapter do not fairly represent the extent of
33 the taxpayer's income attributable to this state. The rules shall be,
34 so far as feasible, consistent with the methods of apportionment
35 contained in this section and shall require the consideration of those
36 facts, circumstances, and apportionment factors as will result in an
37 equitable and constitutionally permissible division of the services.

1 **Sec. 3.** RCW 82.04.190 and 2005 c 514 s 103 are each amended to
2 read as follows:

3 "Consumer" means the following:

4 (1) Any person who purchases, acquires, owns, holds, or uses any
5 article of tangible personal property irrespective of the nature of the
6 person's business and including, among others, without limiting the
7 scope hereof, persons who install, repair, clean, alter, improve,
8 construct, or decorate real or personal property of or for consumers
9 other than for the purpose (a) of resale as tangible personal property
10 in the regular course of business or (b) of incorporating such property
11 as an ingredient or component of real or personal property when
12 installing, repairing, cleaning, altering, imprinting, improving,
13 constructing, or decorating such real or personal property of or for
14 consumers or (c) of consuming such property in producing for sale a new
15 article of tangible personal property or a new substance, of which such
16 property becomes an ingredient or component or as a chemical used in
17 processing, when the primary purpose of such chemical is to create a
18 chemical reaction directly through contact with an ingredient of a new
19 article being produced for sale or (d) of consuming the property
20 purchased in producing ferrosilicon which is subsequently used in
21 producing magnesium for sale, if the primary purpose of such property
22 is to create a chemical reaction directly through contact with an
23 ingredient of ferrosilicon or (e) of satisfying the person's
24 obligations under an extended warranty as defined in RCW 82.04.050(7),
25 if such tangible personal property replaces or becomes an ingredient or
26 component of property covered by the extended warranty without
27 intervening use by such person;

28 (2)(a) Any person engaged in any business activity taxable under
29 RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or
30 uses any telephone service as defined in RCW 82.04.065, other than for
31 resale in the regular course of business; (c) any person who purchases,
32 acquires, or uses any service defined in RCW 82.04.050(2)(a), other
33 than for resale in the regular course of business or for the purpose of
34 satisfying the person's obligations under an extended warranty as
35 defined in RCW 82.04.050(7); (d) any person who purchases, acquires, or
36 uses any amusement and recreation service defined in RCW
37 82.04.050(3)(a), other than for resale in the regular course of
38 business; (e) any person who is an end user of software; (~~and~~) (f)

1 any person who purchases or acquires an extended warranty as defined in
2 RCW 82.04.050(7) other than for resale in the regular course of
3 business; and (g) any person who purchases, acquires, or uses staffing
4 services to perform any service defined as a retail sale in RCW
5 82.04.050;

6 (3) Any person engaged in the business of contracting for the
7 building, repairing or improving of any street, place, road, highway,
8 easement, right of way, mass public transportation terminal or parking
9 facility, bridge, tunnel, or trestle which is owned by a municipal
10 corporation or political subdivision of the state of Washington or by
11 the United States and which is used or to be used primarily for foot or
12 vehicular traffic including mass transportation vehicles of any kind as
13 defined in RCW 82.04.280, in respect to tangible personal property when
14 such person incorporates such property as an ingredient or component of
15 such publicly owned street, place, road, highway, easement, right of
16 way, mass public transportation terminal or parking facility, bridge,
17 tunnel, or trestle by installing, placing or spreading the property in
18 or upon the right of way of such street, place, road, highway,
19 easement, bridge, tunnel, or trestle or in or upon the site of such
20 mass public transportation terminal or parking facility;

21 (4) Any person who is an owner, lessee or has the right of
22 possession to or an easement in real property which is being
23 constructed, repaired, decorated, improved, or otherwise altered by a
24 person engaged in business, excluding only (a) municipal corporations
25 or political subdivisions of the state in respect to labor and services
26 rendered to their real property which is used or held for public road
27 purposes, and (b) the United States, instrumentalities thereof, and
28 county and city housing authorities created pursuant to chapter 35.82
29 RCW in respect to labor and services rendered to their real property.
30 Nothing contained in this or any other subsection of this definition
31 shall be construed to modify any other definition of "consumer";

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

36 (6) Any person engaged in the business of constructing, repairing,
37 decorating, or improving new or existing buildings or other structures
38 under, upon, or above real property of or for the United States, any

1 instrumentality thereof, or a county or city housing authority created
2 pursuant to chapter 35.82 RCW, including the installing or attaching of
3 any article of tangible personal property therein or thereto, whether
4 or not such personal property becomes a part of the realty by virtue of
5 installation; also, any person engaged in the business of clearing land
6 and moving earth of or for the United States, any instrumentality
7 thereof, or a county or city housing authority created pursuant to
8 chapter 35.82 RCW. Any such person shall be a consumer within the
9 meaning of this subsection in respect to tangible personal property
10 incorporated into, installed in, or attached to such building or other
11 structure by such person, except that consumer does not include any
12 person engaged in the business of constructing, repairing, decorating,
13 or improving new or existing buildings or other structures under, upon,
14 or above real property of or for the United States, or any
15 instrumentality thereof, if the investment project would qualify for
16 sales and use tax deferral under chapter 82.63 RCW if undertaken by a
17 private entity;

18 (7) Any person who is a lessor of machinery and equipment, the
19 rental of which is exempt from the tax imposed by RCW 82.08.020 under
20 RCW 82.08.02565, with respect to the sale of or charge made for
21 tangible personal property consumed in respect to repairing the
22 machinery and equipment, if the tangible personal property has a useful
23 life of less than one year. Nothing contained in this or any other
24 subsection of this section shall be construed to modify any other
25 definition of "consumer";

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

30 (9) Any person who is an owner, lessee, or has the right of
31 possession of tangible personal property that, under the terms of an
32 extended warranty as defined in RCW 82.04.050(7), has been repaired or
33 is replacement property, but only with respect to the sale of or charge
34 made for the repairing of the tangible personal property or the
35 replacement property.

36 **Sec. 4.** RCW 82.04.290 and 2005 c 369 s 8 are each amended to read
37 as follows:

1 (1) Upon every person engaging within this state in the business of
2 providing international investment management services, as to such
3 persons, the amount of tax with respect to such business shall be equal
4 to the gross income or gross proceeds of sales of the business
5 multiplied by a rate of 0.275 percent.

6 (2) Upon every person engaging within this state in any business
7 activity other than (~~or in addition to~~) an activity taxed explicitly
8 under another section in this chapter or subsection (1) of this
9 section; as to such persons the amount of tax on account of such
10 activities shall be equal to the gross income of the business
11 multiplied by the rate of 1.5 percent.

12 (3) Subsection (2) of this section includes, among others, and
13 without limiting the scope hereof (whether or not title to materials
14 used in the performance of such business passes to another by
15 accession, confusion or other than by outright sale), persons engaged
16 in the business of rendering any type of service which does not
17 constitute a "sale at retail" or a "sale at wholesale." The value of
18 advertising, demonstration, and promotional supplies and materials
19 furnished to an agent by his principal or supplier to be used for
20 informational, educational and promotional purposes shall not be
21 considered a part of the agent's remuneration or commission and shall
22 not be subject to taxation under this section.

23 **Sec. 5.** RCW 82.08.054 and 2003 c 168 s 210 are each amended to
24 read as follows:

25 Sellers, or buyers remitting tax directly to the department, shall
26 compute the tax due under this chapter and chapters 82.12 and 82.14 RCW
27 by carrying the computation to the third decimal place and rounding to
28 a whole cent using a method that rounds up to the next cent whenever
29 the third decimal place is greater than four. Sellers may elect to
30 compute the tax due on a transaction on an item or an invoice basis.
31 This rounding rule shall be applied to the aggregated state and local
32 taxes.

33 NEW SECTION. **Sec. 6.** A new section is added to chapter 82.08 RCW
34 to read as follows:

35 Persons providing staffing services as defined in section 1 of this
36 act are not liable to collect and remit the retail sales tax to the

1 department when performing services that are defined as a retail sale.
2 The consumer of such staffing services shall be required to remit the
3 sales tax on the sale of or charges for the staffing services directly
4 to the department.

5 **Sec. 7.** RCW 82.08.050 and 2003 c 168 s 203, 2003 c 76 s 3, and
6 2003 c 53 s 400 are each reenacted and amended to read as follows:

7 (1) Except as provided in section 6 of this act, the tax ((hereby))
8 imposed shall be paid by the buyer to the seller, and each seller shall
9 collect from the buyer the full amount of the tax payable in respect to
10 each taxable sale in accordance with the schedule of collections
11 adopted by the department pursuant to the provisions of RCW 82.08.060.

12 (2) The tax required by this chapter, to be collected by the
13 seller, shall be deemed to be held in trust by the seller until paid to
14 the department, and any seller who appropriates or converts the tax
15 collected to his or her own use or to any use other than the payment of
16 the tax to the extent that the money required to be collected is not
17 available for payment on the due date as prescribed in this chapter is
18 guilty of a gross misdemeanor.

19 (3) In case any seller fails to collect the tax herein imposed or,
20 having collected the tax, fails to pay it to the department in the
21 manner prescribed by this chapter, whether such failure is the result
22 of his or her own acts or the result of acts or conditions beyond his
23 or her control, he or she shall, nevertheless, be personally liable to
24 the state for the amount of the tax, unless the seller has taken from
25 the buyer a resale certificate under RCW 82.04.470, a copy of a direct
26 pay permit issued under RCW 82.32.087, information required under the
27 streamlined sales and use tax agreement, or information required under
28 rules adopted by the department. Sellers shall not be relieved from
29 personal liability for the amount of the tax unless they maintain
30 proper records of exempt transactions and provide them to the
31 department when requested.

32 (4) The amount of tax, until paid by the buyer to the seller or to
33 the department, shall constitute a debt from the buyer to the seller
34 and any seller who fails or refuses to collect the tax as required with
35 intent to violate the provisions of this chapter or to gain some
36 advantage or benefit, either direct or indirect, and any buyer who

1 refuses to pay any tax due under this chapter is guilty of a
2 misdemeanor.

3 (5) The tax required by this chapter to be collected by the seller
4 shall be stated separately from the selling price in any sales invoice
5 or other instrument of sale. On all retail sales through vending
6 machines, the tax need not be stated separately from the selling price
7 or collected separately from the buyer. For purposes of determining
8 the tax due from the buyer to the seller, or the department, and from
9 the seller to the department it shall be conclusively presumed that the
10 selling price quoted in any price list, sales document, contract or
11 other agreement between the parties does not include the tax imposed by
12 this chapter, but if the seller advertises the price as including the
13 tax or that the seller is paying the tax, the advertised price shall
14 not be considered the selling price, except in cases where the buyer is
15 required to pay the tax directly to the department.

16 (6) Where a buyer has failed to pay to the seller the tax imposed
17 by this chapter and the seller has not paid the amount of the tax to
18 the department, the department may, in its discretion, proceed directly
19 against the buyer for collection of the tax, in which case a penalty of
20 ten percent may be added to the amount of the tax for failure of the
21 buyer to pay the same to the seller, regardless of when the tax may be
22 collected by the department; and all of the provisions of chapter 82.32
23 RCW, including those relative to interest and penalties, shall apply in
24 addition; and, for the sole purpose of applying the various provisions
25 of chapter 82.32 RCW, the twenty-fifth day of the month following the
26 tax period in which the purchase was made shall be considered as the
27 due date of the tax.

28 (7) Notwithstanding subsections (1) through (6) of this section,
29 any person making sales is not obligated to collect the tax imposed by
30 this chapter if:

31 (a) The person's activities in this state, whether conducted
32 directly or through another person, are limited to:

- 33 (i) The storage, dissemination, or display of advertising;
- 34 (ii) The taking of orders; or
- 35 (iii) The processing of payments; and

36 (b) The activities are conducted electronically via a web site on
37 a server or other computer equipment located in Washington that is not

1 owned or operated by the person making sales into this state nor owned
2 or operated by an affiliated person. "Affiliated persons" has the same
3 meaning as provided in RCW 82.04.424.

4 (8) Subsection (7) of this section expires when: (a) The United
5 States congress grants individual states the authority to impose sales
6 and use tax collection duties on remote sellers; or (b) it is
7 determined by a court of competent jurisdiction, in a judgment not
8 subject to review, that a state can impose sales and use tax collection
9 duties on remote sellers.

10 NEW SECTION. **Sec. 8.** This act applies to staffing services, as
11 defined in section 1 of this act, rendered on or after May 1, 2007.

12 NEW SECTION. **Sec. 9.** This act is necessary for the immediate
13 preservation of the public peace, health, or safety, or support of the
14 state government and its existing public institutions, and takes effect
15 May 1, 2007.

--- END ---