

CERTIFICATION OF ENROLLMENT
SECOND ENGROSSED SENATE BILL 5555

Chapter 12, Laws of 1995

(partial veto)

54th Legislature
1995 First Special Session

MESSAGE SERVICES TAXATION--MODIFICATIONS

EFFECTIVE DATE: 7/1/95

Passed by the Senate May 23, 1995
YEAS 46 NAYS 0

JOEL PRITCHARD

President of the Senate

Passed by the House May 23, 1995
YEAS 90 NAYS 7

CLYDE BALLARD

**Speaker of the
House of Representatives**

Approved June 14, 1995, with the
exception of sections 3 and 4, which
are vetoed.

MIKE LOWRY

Governor of the State of Washington

CERTIFICATE

I, Marty Brown, Secretary of the
Senate of the State of Washington, do
hereby certify that the attached is
SECOND ENGROSSED SENATE BILL 5555 as
passed by the Senate and the House of
Representatives on the dates hereon
set forth.

MARTY BROWN

Secretary

FILED

June 14, 1995 - 10:21 a.m.

**Secretary of State
State of Washington**

SECOND ENGROSSED SENATE BILL 5555

Passed Legislature - 1995 First Special Session

State of Washington 54th Legislature 1995 Regular Session

By Senators C. Anderson, Long, Kohl, A. Anderson, Fairley, Sheldon,
Prentice and Moyer

Read first time 01/26/95. Referred to Committee on Ways & Means.

1 AN ACT Relating to taxation of massage services; amending RCW
2 82.04.050, 82.04.290, and 82.04.2201; creating a new section; providing
3 an effective date; and declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** It is the intent of the legislature that
6 massage services be recognized as health care practitioners for the
7 purposes of business and occupation tax application. To achieve this
8 intent massage services are being removed from the definition of sale
9 at retail and retail sale.

10 **Sec. 2.** RCW 82.04.050 and 1995 c 39 s 2 are each amended to read
11 as follows:

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

1 (a) Purchases for the purpose of resale as tangible personal
2 property in the regular course of business without intervening use by
3 such person; or

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

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

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

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

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

33 (a) The installing, repairing, cleaning, altering, imprinting, or
34 improving of tangible personal property of or for consumers, including
35 charges made for the mere use of facilities in respect thereto, but
36 excluding sales of laundry service to members by nonprofit associations
37 composed exclusively of nonprofit hospitals, and excluding services
38 rendered in respect to live animals, 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 (g) The sale of or charge made for tangible personal property,
2 labor and services to persons taxable under (a), (b), (c), (d), (e),
3 and (f) of this subsection when such sales or charges are for property,
4 labor and services which are used or consumed in whole or in part by
5 such persons in the performance of any activity defined as a "sale at
6 retail" or "retail sale" even though such property, labor and services
7 may be resold after such use or consumption. Nothing contained in this
8 subsection shall be construed to modify subsection (1) of this section
9 and nothing contained in subsection (1) of this section shall be
10 construed to modify this subsection.

11 (3) The term "sale at retail" or "retail sale" shall include the
12 sale of or charge made for personal, business, or professional services
13 including amounts designated as interest, rents, fees, admission, and
14 other service emoluments however designated, received by persons
15 engaging in the following business activities:

16 (a) Amusement and recreation services including but not limited to
17 golf, pool, billiards, skating, bowling, ski lifts and tows, and
18 others;

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

20 (c) Credit bureau services;

21 (d) Automobile parking and storage garage services;

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

27 (f) Service charges associated with tickets to professional
28 sporting events;

29 (g) Guided tours and guided charters; and

30 (h) The following personal services: Physical fitness services,
31 tanning salon services, tattoo parlor services, (~~massage services,~~)
32 steam bath services, turkish bath services, escort services, and dating
33 services.

34 (4) The term shall also include the renting or leasing of tangible
35 personal property to consumers and the rental of equipment with an
36 operator.

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

1 (6) The term shall 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 (7) The term shall also not include sales of feed, seed, seedlings,
10 fertilizer, agents for enhanced pollination including insects such as
11 bees, and spray materials to persons who participate in the federal
12 conservation reserve program or its successor administered by the
13 United States department of agriculture, or to farmers for the purpose
14 of producing for sale any agricultural product, nor shall it include
15 sales of chemical sprays or washes to persons for the purpose of post-
16 harvest treatment of fruit for the prevention of scald, fungus, mold,
17 or decay.

18 (8) The term shall not include the sale of or charge made for labor
19 and services rendered in respect to the constructing, repairing,
20 decorating, or improving of new or existing buildings or other
21 structures under, upon, or above real property of or for the United
22 States, any instrumentality thereof, or a county or city housing
23 authority created pursuant to chapter 35.82 RCW, including the
24 installing, or attaching of any article of tangible personal property
25 therein or thereto, whether or not such personal property becomes a
26 part of the realty by virtue of installation. Nor shall the term
27 include the sale of services or charges made for the clearing of land
28 and the moving of earth of or for the United States, any
29 instrumentality thereof, or a county or city housing authority.

30 ****Sec. 3. RCW 82.04.290 and 1995 c 229 s 3 are each amended to read***
31 ***as follows:***

32 ***(1) Upon every person engaging within this state in the business of***
33 ***providing selected business services other than or in addition to those***
34 ***enumerated in RCW 82.04.250 or 82.04.270; as to such persons the amount***
35 ***of tax on account of such activities shall be equal to the gross income***
36 ***of the business multiplied by the rate of 2.5 percent.***

37 ***(2) Upon every person engaging within this state in banking, loan,***
38 ***security, investment management, investment advisory, or other***

1 financial businesses, other than or in addition to those enumerated in
2 subsection (3) of this section; as to such persons, the amount of the
3 tax with respect to such business shall be equal to the gross income of
4 the business, multiplied by the rate of 1.70 percent.

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

10 (4) Upon every person engaging within this state in the business of
11 providing massage services; as to such persons, the amount of the tax
12 with respect to such business shall be equal to the gross income of the
13 business, multiplied by the rate of 0.471 percent.

14 (5) Upon every person engaging within this state in any business
15 activity other than or in addition to those enumerated in RCW
16 82.04.230, 82.04.240, 82.04.250, 82.04.255, 82.04.260, 82.04.270, and
17 82.04.280, and subsections (1)(~~(, (2), and (3))~~) through (4) of this
18 section; as to such persons the amount of tax on account of such
19 activities shall be equal to the gross income of the business
20 multiplied by the rate of 2.0 percent. This section includes, among
21 others, and without limiting the scope hereof (whether or not title to
22 materials used in the performance of such business passes to another by
23 accession, confusion or other than by outright sale), persons engaged
24 in the business of rendering any type of service which does not
25 constitute a "sale at retail" or a "sale at wholesale." The value of
26 advertising, demonstration, and promotional supplies and materials
27 furnished to an agent by his principal or supplier to be used for
28 informational, educational and promotional purposes shall not be
29 considered a part of the agent's remuneration or commission and shall
30 not be subject to taxation under this section.

31 *Sec. 3 was vetoed. See message at end of chapter.

32 *Sec. 4. RCW 82.04.2201 and 1995 c 229 s 2 are each amended to
33 read as follows:

34 There is levied and shall be collected for the period July 1, 1993,
35 through June 30, 1997, from every person for the act or privilege of
36 engaging in business activities, as a part of the tax imposed under RCW
37 82.04.220 through 82.04.280 and 82.04.290 (3) and (~~(+4)~~) (5), except

1 *RCW 82.04.250(1) and 82.04.260(15), an additional tax equal to 4.5*
2 *percent multiplied by the tax payable under those sections.*

3 *To facilitate collection of these additional taxes, the department*
4 *of revenue is authorized to adjust the basic rates of persons to which*
5 *this section applies in such manner as to reflect the amount to the*
6 *nearest one-thousandth of one percent of the additional tax hereby*
7 *imposed, adjusting ten-thousandths equal to or greater than five ten-*
8 *thousandths to the greater thousandth.*

9 **Sec. 4 was vetoed. See message at end of chapter.*

10 NEW SECTION. **Sec. 5.** This act is necessary for the immediate
11 preservation of the public peace, health, or safety, or support of the
12 state government and its existing public institutions, and shall take
13 effect July 1, 1995.

Passed the Senate May 23, 1995.

Passed the House May 23, 1995.

Approved by the Governor June 14, 1995, with the exception of
certain items which were vetoed.

Filed in Office of Secretary of State June 14, 1995.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to sections 3 and
3 4, Second Engrossed Senate Bill No. 5555 entitled:

4 "AN ACT Relating to taxation of massage services;"

5 Second Engrossed Senate Bill No. 5555 provides that massage
6 services no longer would be subject to the retail sales tax, but would
7 continue to be taxed at the same business and occupation tax rate as
8 retailers.

9 Massage services were added to the list of services subject to the
10 retail sales tax in 1993. The state further agreed that medically-
11 ordered massage was part of physical therapy services and should remain
12 taxable under the service classification. Massage therapists
13 performing both medically-ordered massage and discretionary massage
14 services were forced to report under two classifications.

15 Massage therapists have argued since the change in 1993 that they
16 are health care professionals and should be taxed, as are most other
17 health care professionals, under the service classification of the
18 business and occupation tax.

19 Although the bill orders massage services to be taxed under the
20 new, special rate, it does not end the distinction between medically-
21 ordered massage and discretionary massage.

22 Thus, in order to return the massage therapists to the tax status
23 they enjoyed prior to the 1993 legislative session, I am vetoing
24 sections 3 and 4 of Second Engrossed Senate Bill No. 5555. This will
25 have the effect of removing massage services from the retail sales tax,

1 making all massage services taxable at a single rate. With this veto,
2 massage services will be taxed under the service and other business and
3 occupation tax.

4 For these reasons, I have vetoed sections 3 and 4 of Second
5 Engrossed Senate Bill No. 5555.

6 With the exception of sections 3 and 4, Second Engrossed Senate
7 Bill No. 5555 is approved."