

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1163

Chapter 343, Laws of 2023

68th Legislature
2023 Regular Session

LEASEHOLD EXCISE TAX—EXEMPTION—CERTAIN ARENAS

EFFECTIVE DATE: October 1, 2023

Passed by the House April 20, 2023
Yeas 87 Nays 9

LAURIE JINKINS

**Speaker of the House of
Representatives**

Passed by the Senate April 19, 2023
Yeas 42 Nays 7

DENNY HECK

President of the Senate

Approved May 9, 2023 10:38 AM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1163** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN

Chief Clerk

FILED

May 10, 2023

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1163

AS AMENDED BY THE SENATE

Passed Legislature - 2023 Regular Session

State of Washington 68th Legislature 2023 Regular Session

By House Finance (originally sponsored by Representative Fey)

READ FIRST TIME 01/30/23.

1 AN ACT Relating to exempting certain leasehold interests in
2 arenas with a seating capacity of more than 2,000 from the leasehold
3 excise tax; amending RCW 82.29A.130; creating a new section;
4 providing an effective date; and providing an expiration date.

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

6 NEW SECTION. **Sec. 1.** (1) This section is the tax preference
7 performance statement for the tax preference contained in section
8 2(23), chapter . . ., Laws of 2023 (section 2(23) of this act). The
9 performance statement is only intended to be used for subsequent
10 evaluation of the tax preference. It is not intended to create a
11 private right of action by any party or be used to determine
12 eligibility for preferential tax treatment.

13 (a) The legislature categorizes the tax preference contained in
14 section 2(23), chapter . . ., Laws of 2023 (section 2(23) of this
15 act) as one intended to induce certain designated behavior by
16 taxpayers and provide tax parity, as indicated in RCW 82.32.808(2)
17 (a) and (f).

18 (b) For the tax preference evaluation under subsection (2) of
19 this section, the legislature's specific public policy objective is
20 to provide tax parity resulting in leasehold excise tax relief for
21 large arena facilities used for professional sports with the

1 expectation that the operational entities overseeing operations at
2 these facilities will provide substantial economic benefits to their
3 specific region with a focus on: Providing employment opportunities
4 for women and minority-owned businesses; fostering equity and social
5 justice with an emphasis on arena-impacted communities; providing
6 general community resource support; and ensuring quality access to
7 the facilities for people across a range of income levels.

8 (c) For the tax preference evaluation under subsection (3) of
9 this section, the legislature's specific public policy objectives are
10 to provide tax parity resulting in leasehold excise tax relief with
11 the expectation that employees employed at the facilities receive
12 competitive wages and benefits and the facilities advance and promote
13 diverse and inclusive voices, experiences, perspectives, and
14 employment opportunities.

15 (2) To measure the effectiveness of the tax preference identified
16 in section 2(23), chapter . . ., Laws of 2023 (section 2(23) of this
17 act), except as provided in subsection (3) of this section, the joint
18 legislative audit and review committee must evaluate the following:

19 (a) State and local fiscal impacts;

20 (b) To the extent data is available from the operating entity,
21 the number of employment positions and wages at the facility for all
22 employers, the degree to which employment positions at the facility
23 have been filled by people residing in economically distressed
24 regions of the county in which the facility is located, and the race
25 and ethnicity of the employees. The evaluation must include a
26 comparison of annual average wages at the facility and annual county
27 average wages as published by the employment security department as
28 part of its covered employment data;

29 (c) The extent to which the operational entity provides
30 opportunities for patrons of all income levels to enjoy programming
31 by offering seating at a range of price points that are equitably
32 distributed throughout the facility; and

33 (d) The extent to which the operational entity generally
34 contributes resources to: Organizations that serve the region; the
35 communities surrounding the facility; and programs and services for
36 youth, arts, music, and culture.

37 (3) To measure the effectiveness of the tax preference in section
38 2(23), chapter . . ., Laws of 2023 (section 2(23) of this act) for
39 arenas with a seating capacity of 17,000 or less, the joint
40 legislative audit and review committee must evaluate the following to

1 the extent that data is available from the operating entity or public
2 owner of the arena:

3 (a) State and local fiscal impacts;

4 (b) The number of employment positions and wages at the facility
5 for all employers operating at the facility. The evaluation must
6 include a comparison of annual average wages at the facility and
7 annual county average wages as published by the employment security
8 department as part of its covered employment data;

9 (c) The financial stability of the facility through an
10 examination of revenues and expenditures specific to the facility;

11 (d) The types of programming and events scheduled at the
12 facility; and

13 (e) The economic impact of the facility in the county in which
14 the facility is located.

15 (4) In order to obtain the data necessary to perform the reviews
16 in subsections (2) and (3) of this section, the department of revenue
17 must provide tax-related data needed for the joint legislative audit
18 and review committee analysis, including the annual tax performance
19 reports provided pursuant to RCW 82.32.534. In addition to the data
20 source described under this subsection, the joint legislative audit
21 and review committee may use any other data it deems necessary and
22 the legislative auditor, or his or her designee, may contact
23 operational entities after the effective date of this section to
24 establish appropriate documentation to be provided by the operational
25 entities to the joint legislative audit and review committee to
26 facilitate its review of the tax preferences identified in this act.

27 (5) For the purpose of this section, "operational entity" means a
28 limited liability company or any other public or private legal entity
29 that is primarily responsible for the management and operation of a
30 stadium or arena facility.

31 **Sec. 2.** RCW 82.29A.130 and 2022 c 147 s 1 are each amended to
32 read as follows:

33 The following leasehold interests are exempt from taxes imposed
34 pursuant to RCW 82.29A.030 and 82.29A.040:

35 (1) All leasehold interests constituting a part of the operating
36 properties of any public utility that is assessed and taxed as a
37 public utility pursuant to chapter 84.12 RCW.

38 (2) All leasehold interests in facilities owned or used by a
39 school, college or university which leasehold provides housing for

1 students and which is otherwise exempt from taxation under provisions
2 of RCW 84.36.010 and 84.36.050.

3 (3) All leasehold interests of subsidized housing where the fee
4 ownership of such property is vested in the government of the United
5 States, or the state of Washington or any political subdivision
6 thereof but only if income qualification exists for such housing.

7 (4) All leasehold interests used for fair purposes of a nonprofit
8 fair association that sponsors or conducts a fair or fairs which
9 receive support from revenues collected pursuant to RCW 67.16.100 and
10 allocated by the director of the department of agriculture where the
11 fee ownership of such property is vested in the government of the
12 United States, the state of Washington or any of its political
13 subdivisions. However, this exemption does not apply to the leasehold
14 interest of any sublessee of such nonprofit fair association if such
15 leasehold interest would be taxable if it were the primary lease.

16 (5) All leasehold interests in any property of any public entity
17 used as a residence by an employee of that public entity who is
18 required as a condition of employment to live in the publicly owned
19 property.

20 (6) All leasehold interests held by enrolled Indians of lands
21 owned or held by any Indian or Indian tribe where the fee ownership
22 of such property is vested in or held in trust by the United States
23 and which are not subleased to other than to a lessee which would
24 qualify pursuant to this chapter, RCW 84.36.451 and 84.40.175.

25 (7) All leasehold interests in any real property of any Indian or
26 Indian tribe, band, or community that is held in trust by the United
27 States or is subject to a restriction against alienation imposed by
28 the United States. However, this exemption applies only where it is
29 determined that contract rent paid is greater than or equal to
30 (~~ninety~~) 90 percent of fair market rental, to be determined by the
31 department of revenue using the same criteria used to establish
32 taxable rent in RCW 82.29A.020(2)(g).

33 (8) All leasehold interests for which annual taxable rent is less
34 than (~~two hundred fifty dollars~~) \$250 per year. For purposes of
35 this subsection leasehold interests held by the same lessee in
36 contiguous properties owned by the same lessor are deemed a single
37 leasehold interest.

38 (9) All leasehold interests which give use or possession of the
39 leased property for a continuous period of less than (~~thirty~~) 30
40 days: PROVIDED, That for purposes of this subsection, successive

1 leases or lease renewals giving substantially continuous use of
2 possession of the same property to the same lessee are deemed a
3 single leasehold interest: PROVIDED FURTHER, That no leasehold
4 interest is deemed to give use or possession for a period of less
5 than (~~thirty~~) 30 days solely by virtue of the reservation by the
6 public lessor of the right to use the property or to allow third
7 parties to use the property on an occasional, temporary basis.

8 (10) All leasehold interests under month-to-month leases in
9 residential units rented for residential purposes of the lessee
10 pending destruction or removal for the purpose of constructing a
11 public highway or building.

12 (11) All leasehold interests in any publicly owned real or
13 personal property to the extent such leasehold interests arises
14 solely by virtue of a contract for public improvements or work
15 executed under the public works statutes of this state or of the
16 United States between the public owner of the property and a
17 contractor.

18 (12) All leasehold interests that give use or possession of state
19 adult correctional facilities for the purposes of operating
20 correctional industries under RCW 72.09.100.

21 (13) All leasehold interests used to provide organized and
22 supervised recreational activities for persons with disabilities of
23 all ages in a camp facility and for public recreational purposes by a
24 nonprofit organization, association, or corporation that would be
25 exempt from property tax under RCW 84.36.030(1) if it owned the
26 property. If the publicly owned property is used for any taxable
27 purpose, the leasehold excise taxes set forth in RCW 82.29A.030 and
28 82.29A.040 must be imposed and must be apportioned accordingly.

29 (14) All leasehold interests in the public or entertainment areas
30 of a baseball stadium with natural turf and a retractable roof or
31 canopy that is in a county with a population of over (~~one million~~)
32 1,000,000, that has a seating capacity of over (~~forty thousand~~)
33 40,000, and that is constructed on or after January 1, 1995. "Public
34 or entertainment areas" include ticket sales areas, ramps and stairs,
35 lobbies and concourses, parking areas, concession areas, restaurants,
36 hospitality and stadium club areas, kitchens or other work areas
37 primarily servicing other public or entertainment areas, public rest
38 room areas, press and media areas, control booths, broadcast and
39 production areas, retail sales areas, museum and exhibit areas,
40 scoreboards or other public displays, storage areas, loading,

1 staging, and servicing areas, seating areas and suites, the playing
2 field, and any other areas to which the public has access or which
3 are used for the production of the entertainment event or other
4 public usage, and any other personal property used for these
5 purposes. "Public or entertainment areas" does not include locker
6 rooms or private offices exclusively used by the lessee.

7 (15) All leasehold interests in the public or entertainment areas
8 of a stadium and exhibition center, as defined in RCW 36.102.010,
9 that is constructed on or after January 1, 1998. For the purposes of
10 this subsection, "public or entertainment areas" has the same meaning
11 as in subsection (14) of this section, and includes exhibition areas.

12 (16) All leasehold interests in public facilities districts, as
13 provided in chapter 36.100 or 35.57 RCW.

14 (17) All leasehold interests in property that is: (a) Owned by
15 the United States government or a municipal corporation; (b) listed
16 on any federal or state register of historical sites; and (c) wholly
17 contained within a designated national historic reserve under 16
18 U.S.C. Sec. 461.

19 (18) All leasehold interests in the public or entertainment areas
20 of an amphitheater if a private entity is responsible for (~~one~~
21 ~~hundred~~) 100 percent of the cost of constructing the amphitheater
22 which is not reimbursed by the public owner, both the public owner
23 and the private lessee sponsor events at the facility on a regular
24 basis, the lessee is responsible under the lease or agreement to
25 operate and maintain the facility, and the amphitheater has a seating
26 capacity of over (~~seventeen thousand~~) 17,000 reserved and general
27 admission seats and is in a county that had a population of over
28 (~~three hundred fifty thousand~~) 350,000, but less than (~~four~~
29 ~~hundred twenty-five thousand~~) 425,000 when the amphitheater first
30 opened to the public.

31 For the purposes of this subsection, "public or entertainment
32 areas" include box offices or other ticket sales areas, entrance
33 gates, ramps and stairs, lobbies and concourses, parking areas,
34 concession areas, restaurants, hospitality areas, kitchens or other
35 work areas primarily servicing other public or entertainment areas,
36 public rest room areas, press and media areas, control booths,
37 broadcast and production areas, retail sales areas, museum and
38 exhibit areas, scoreboards or other public displays, storage areas,
39 loading, staging, and servicing areas, seating areas including lawn
40 seating areas and suites, stages, and any other areas to which the

1 public has access or which are used for the production of the
2 entertainment event or other public usage, and any other personal
3 property used for these purposes. "Public or entertainment areas"
4 does not include office areas used predominately by the lessee.

5 (19) All leasehold interests in real property used for the
6 placement of military housing meeting the requirements of RCW
7 84.36.665.

8 (20) All leasehold interests in facilities owned or used by a
9 community college or technical college, which leasehold interest
10 provides:

11 (a) Food services for students, faculty, and staff;

12 (b) The operation of a bookstore on campus; or

13 (c) Maintenance, operational, or administrative services to the
14 community college or technical college.

15 (21)(a) All leasehold interests in the public or entertainment
16 areas of an arena if it:

17 (i) Has a seating capacity of more than (~~two thousand~~) 2,000;

18 (ii) Is located on city-owned land; and

19 (iii) Is owned by a city with a population over (~~two hundred
20 thousand~~) 200,000 within a county with a population of less than
21 (~~one million five hundred thousand~~) 1,500,000.

22 (b) For the purposes of this subsection (21), "public or
23 entertainment areas" has the same meaning as provided in subsection
24 (18) of this section.

25 (22) All leasehold interests in facilities owned by the state
26 parks and recreation commission that are listed on the national
27 register of historic places or the Washington heritage register.

28 (23)(a) All leasehold interests in the public or entertainment
29 areas of an arena if:

30 (i) The arena has a seating capacity of more than 4,000;

31 (ii) The arena is located on city-owned land;

32 (iii) The arena is located within a city with a population over
33 100,000; and

34 (iv) Private entities were responsible for 100 percent of the
35 cost of constructing improvements to the arena, which were not
36 reimbursed by the public owner.

37 (b) For the purposes of this subsection (23), "public or
38 entertainment areas" has the same meaning as provided in subsection
39 (18) of this section, except that it also includes office areas used
40 predominately by the lessee.

1 (c) A taxpayer claiming an exemption under this subsection (23)
2 must file a complete annual tax performance report as provided in RCW
3 82.32.534.

4 (d) This subsection (23) does not apply to leasehold interests on
5 or after October 1, 2033.

6 NEW SECTION. **Sec. 3.** Sections 1 and 2 of this act take effect
7 October 1, 2023.

8 NEW SECTION. **Sec. 4.** Section 2 of this act expires January 1,
9 2034.

Passed by the House April 20, 2023.
Passed by the Senate April 19, 2023.
Approved by the Governor May 9, 2023.
Filed in Office of Secretary of State May 10, 2023.

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