

In any subsequent civil action in which the next of kin of a decedent contends that he/she affirmatively informed the county coroner or medical examiner or designee of his/her objection to removal of corneal tissue from the decedent, it shall be presumed that the county coroner or medical examiner acted in good faith and without knowledge of the objection.

NEW SECTION. Sec. 3. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House January 26, 1976.

Passed the Senate February 13, 1976.

Approved by the Governor February 27, 1976.

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CHAPTER 61

[House Bill No. 971]

LEASEHOLD EXCISE TAX

AN ACT Relating to revenue and taxation; amending section 84.40.175, chapter 15, Laws of 1961 and RCW 84.40.175; adding a new section to chapter 15, Laws of 1961 and to chapter 84.36 RCW; adding a new chapter to chapter 15, Laws of 1961 and to Title 82 RCW; repealing section 2, chapter 187, Laws of 1973 1st ex. sess. and RCW 82.29.010; repealing section 3, chapter 187, Laws of 1973 1st ex. sess. and RCW 82.29.020; repealing section 4, chapter 187, Laws of 1973 1st ex. sess. and RCW 82.29.030; repealing section 5, chapter 187, Laws of 1973 1st ex. sess. and RCW 82.29.040; repealing section 6, chapter 187, Laws of 1973 1st ex. sess. and RCW 82.29.050; repealing section 7, chapter 187, Laws of 1973 1st ex. sess. and RCW 82.29.060; repealing section 8, chapter 187, Laws of 1973 1st ex. sess. and RCW 82.29.070; repealing section 9, chapter 187, Laws of 1973 1st ex. sess. and RCW 82.29.080; repealing section 10, chapter 198, Laws of 1973 1st ex. sess. and RCW 82.29.090; repealing section 11, chapter 198, Laws of 1973 1st ex. sess. and RCW 84.36.450; repealing section 14, chapter 187, Laws of 1973 1st ex. sess. and RCW 84.36.455; repealing section 15, chapter 187, Laws of 1973 1st ex. sess. and RCW 84.36.460; prescribing effective dates; making an appropriation; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Section 1. The legislature hereby recognizes that properties of the state of Washington, counties, school districts, and other municipal corporations are exempted by Article 7, section 1 of the state Constitution from property tax obligations, but that private lessees of such public properties receive substantial benefits from governmental services provided by units of government.

The legislature further recognizes that a uniform method of taxation should apply to such leasehold interests in publicly owned property.

The legislature finds that lessees of publicly owned property are entitled to those same governmental services and does hereby provide for a leasehold excise tax to fairly compensate governmental units for services rendered to such lessees of publicly owned property.

NEW SECTION. Sec. 2. As used in this chapter the following terms shall be defined as follows, unless the context otherwise requires:

(1) "Leasehold interest" shall mean an interest in publicly owned real or personal property which exists by virtue of any lease, permit, license, or any other agreement, written or verbal, between the public owner of the property and a person who would not be exempt from property taxes if that person owned the

property in fee, granting possession and use, to a degree less than fee simple ownership: PROVIDED, That no interest in personal property (excluding land or buildings) which is owned by the United States, whether or not as trustee, or by any foreign government shall constitute a leasehold interest hereunder when the right to use such property is granted pursuant to a contract solely for the manufacture or production of articles for sale to the United States or any foreign government. The term "leasehold interest" shall not include road or utility easements or rights of access, occupancy or use granted solely for the purpose of removing materials or products purchased from a public owner or the lessee of a public owner.

(2) "Taxable rent" shall mean contract rent as defined in subsection (a) of this subsection in all cases where the lease or agreement has been established or renegotiated through competitive bidding, or negotiated or renegotiated in accordance with statutory requirements regarding the rent payable, or negotiated or renegotiated under circumstances, established by public record, clearly showing that the contract rent was the maximum attainable by the lessor: PROVIDED, That after January 1, 1986, with respect to any lease which has been in effect for ten years or more without renegotiation, taxable rent may be established by procedures set forth in subsection (b) of this subsection. All other leasehold interests shall be subject to the determination of taxable rent under the terms of subsection (b) of this subsection.

(a) "Contract rent" shall mean the amount of consideration due as payment for a leasehold interest, including: The total of cash payments made to the lessor or to another party for the benefit of the lessor according to the requirements of the lease or agreement; expenditures for the protection of the lessor's interest when required by the terms of the lease or agreement; and expenditures for improvements to the property to the extent that such improvements become the property of the lessor. Where the consideration conveyed for the leasehold interest is made in combination with payment for concession or other rights granted by the lessor, only that portion of such payment which represents consideration for the leasehold interest shall be part of contract rent.

"Contract rent" shall not include: (i) Expenditures made by the lessee, which under the terms of the lease or agreement, are to be reimbursed by the lessor to the lessee; (ii) expenditures made by the lessee for the replacement or repair of facilities due to fire or other casualty or for alterations or additions made necessary by an action of government taken after the date of the execution of the lease or agreement; (iii) improvements added to publicly owned property by a sublessee under an agreement executed prior to January 1, 1976, which have been taxed as personal property of the sublessee prior to January 1, 1976, or improvements made by a sublessee of the same lessee under a similar agreement executed prior to January 1, 1976, and such improvements shall be taxable to the sublessee as personal property; (iv) improvements added to publicly owned property if such improvements are being taxed as personal property to any person.

Any prepaid contract rent shall be considered to have been paid in the year due and not in the year actually paid with respect to prepayment for a period of more than one year. Expenditures for improvements with a useful life of more

than one year which are included as part of contract rent shall be treated as pre-paid contract rent and prorated over the useful life of the improvement or the remaining term of the lease or agreement if the useful life is in excess of the remaining term of the lease or agreement. Rent prepaid prior to January 1, 1976, shall be prorated from the date of prepayment.

With respect to a "product lease", the value of agricultural products received as rent shall be the value at the place of delivery as of the fifteenth day of the month of delivery; with respect to all other products received as contract rent, the value shall be that value determined at the time of sale under terms of the lease.

(b) If it shall be determined by the department of revenue, upon examination of a lessee's accounts or those of a lessor of publicly owned property, that a lessee is occupying or using publicly owned property in such a manner as to create a leasehold interest and that such leasehold interest has not been established through competitive bidding, or negotiated in accordance with statutory requirements regarding the rent payable, or negotiated under circumstances, established by public record, clearly showing that the contract rent was the maximum attainable by the lessor, the department may establish a taxable rent computation for use in determining the tax payable under authority granted in this chapter based upon the following criteria: (i) Consideration shall be given to rental being paid to other lessors by lessees of similar property for similar purposes over similar periods of time; (ii) consideration shall be given to what would be considered a fair rate of return on the market value of the property leased less reasonable deductions for any restrictions on use, special operating requirements or provisions for concurrent use by the lessor, another person or the general public.

(3) "Product lease" as used in this chapter shall mean a lease of property for use in the production of agricultural or marine products to the extent that such lease provides for the contract rent to be paid by the delivery of a stated percentage of the production of such agricultural or marine products to the credit of the lessor or the payment to the lessor of a stated percentage of the proceeds from the sale of such products.

(4) "Renegotiated" means a change in the lease agreement which changes the agreed time of possession, restrictions on use, the rate of the cash rental or of any other consideration payable by the lessee to or for the benefit of the lessor, other than any such change required by the terms of the lease or agreement. In addition "renegotiated" shall mean a continuation of possession by the lessee beyond the date when, under the terms of the lease agreement, the lessee had the right to vacate the premises without any further liability to the lessor.

(5) "City" means any city or town.

NEW SECTION. Sec. 3. There is hereby levied and shall be collected a leasehold excise tax on the act or privilege of occupying or using publicly owned real or personal property through a leasehold interest on and after January 1, 1976, at a rate of twelve percent of taxable rent: **PROVIDED,** That after the computation of the tax there shall be allowed credit for any tax collected pursuant to section 4 of this 1976 amendatory act.

NEW SECTION. Sec. 4. The legislative body of any county or city is hereby authorized to levy and collect a leasehold excise tax on the act or privilege of occupying or using publicly owned real or personal property through a leasehold

interest in publicly owned property within the territorial limits of such county or city. The tax levied by a county under authority of this section shall not exceed six percent and the tax levied by a city shall not exceed four percent of taxable rent: PROVIDED, That any county ordinance levying such tax shall contain a provision allowing a credit against the county tax for the full amount of any city tax imposed upon the same taxable event.

The department of revenue shall perform the collection of such taxes on behalf of such county or city.

NEW SECTION. Sec. 5. (1) The leasehold excise taxes provided for in sections 3 and 4 of this 1976 amendatory act shall be paid by the lessee to the lessor and the lessor shall collect such tax and remit the same to the department of revenue. The tax shall be payable at the same time as payments are due to the lessor for use of the property from which the leasehold interest arises, and in the case of payment of contract rent to a person other than the lessor, at the time of payment. The tax payment shall be accompanied by such information as the department of revenue may require. In the case of prepaid contract rent the payment may be prorated in accordance with instructions of the department of revenue and the prorated portion of the tax shall be due, one-half not later than May 31 and the other half not later than November 30 each year.

(2) The lessor receiving taxes payable under the provisions of this chapter shall remit the same together with a return provided by the department, to the department of revenue on or before the fifteenth day of the month following the month in which the tax is collected. The department may relieve any taxpayer or class of taxpayers from the obligation of filing monthly returns and may require the return to cover other reporting periods, but in no event shall returns be filed for a period greater than one year. The lessor shall be fully liable for collection and remittance of the tax. The amount of tax until paid by the lessee to the lessor shall constitute a debt from the lessee to the lessor. The tax required by this chapter shall be stated separately from contract rent, and if not so separately stated for purposes of determining the tax due from the lessee to the lessor and from the lessor to the department, the contract rent does not include the tax imposed by this chapter. Where a lessee has failed to pay to the lessor the tax imposed by this chapter and the lessor has not paid the amount of the tax to the department, the department may, in its discretion, proceed directly against the lessee for collection of the tax: PROVIDED, That taxes due where contract rent has not been paid shall be reported by the lessor to the department and the lessee alone shall be liable for payment of the tax to the department.

(3) Each person having a leasehold interest subject to the tax provided for in this chapter arising out of a lease of federally owned or federal trust lands shall report and remit the tax due directly to the department of revenue in the same manner and at the same time as the lessor would be required to report and remit the tax if such lessor were a state public entity.

NEW SECTION. Sec. 6. All administrative provisions in chapters 82.02 and 82.32 RCW, as now or hereafter amended shall be applicable to taxes imposed pursuant to this chapter: PROVIDED, That this section shall not authorize the issuance of any levy upon any property owned by the public lessor.

In selecting leasehold excise tax returns for audit the department of revenue shall give priority to any return an audit of which is specifically requested in writing by the county assessor or treasurer or other chief financial officer of any city or county affected by such return. Notwithstanding the provisions of RCW 82.32-.330, findings of fact and determinations of the amount of taxable rent made pursuant to the provisions of this chapter shall be open to public inspection at all reasonable times.

NEW SECTION. Sec. 7. All moneys received by the department of revenue from taxes levied under provisions of section 3 of this 1976 amendatory act shall be transmitted to the state treasurer and deposited in the general fund.

NEW SECTION. Sec. 8. The counties and cities shall contract, prior to the effective date of an ordinance imposing a leasehold excise tax, with the department of revenue for administration and collection. The department of revenue shall deduct a percentage amount, as provided by such contract, not to exceed two percent of the taxes collected, for administration and collection expenses incurred by the department. The remainder of any portion of any tax authorized by section 4 of this 1976 amendatory act which is collected by the department of revenue shall be deposited by the state department of revenue in a special fund under the custody of the state treasurer to be known as the local leasehold excise tax revolving fund.

NEW SECTION. Sec. 9. Bimonthly the state treasurer shall make distribution from the local leasehold excise tax revolving fund to the counties and cities the amount of tax collected on behalf of each county or city.

NEW SECTION. Sec. 10. Any moneys received by a county from the leasehold excise tax provided for under section 4 of this 1976 amendatory act shall be distributed proportionately by the county treasurer in accordance with RCW 84-.56.230 as though such moneys were receipts from regular ad valorem property tax levies within such county: PROVIDED, That no distribution shall be made to the state or any city: AND PROVIDED FURTHER, That the pro rata calculation for proportionate distribution to taxing districts shall not include consideration of any rate(s) of levy by the state or any city.

NEW SECTION. Sec. 11. It is the intent of this chapter that any local leasehold excise tax adopted pursuant to this chapter be as consistent and uniform as possible with the state leasehold excise tax. It is further the intent of this chapter that the local leasehold excise tax shall be imposed upon an individual taxable event simultaneously with the imposition of the state leasehold excise tax upon the same taxable event. The department shall, as soon as practicable, and with the assistance of the appropriate associations of county prosecutors and city attorneys, draft a model ordinance.

NEW SECTION. Sec. 12. After computation of the taxes imposed pursuant to sections 3 and 4 of this 1976 amendatory act there shall be allowed the following credits in determining the tax payable:

(1) With respect to a leasehold interest arising out of any lease or agreement, the terms of which were binding on the lessee prior to July 1, 1970, where such lease or agreement has not been renegotiated since that date, and excluding from such credit (a) any leasehold interest arising out of any lease of property covered

by the provisions of RCW 28B.20.394 and (b) any lease or agreement including options to renew which extends beyond January 1, 1985, as follows:

With respect to taxes due in calendar year 1976, a credit equal to eighty percent of the tax otherwise due.

With respect to taxes due in calendar year 1977, a credit equal to sixty percent of the tax otherwise due.

With respect to taxes due in calendar year 1978, a credit equal to forty percent of the tax otherwise due.

With respect to taxes due in calendar year 1979, a credit equal to twenty percent of the tax otherwise due.

(2) With respect to a product lease, a credit of thirty-three percent of the tax otherwise due.

NEW SECTION. Sec. 13. The following leasehold interests shall be exempt from taxes imposed pursuant to sections 3 and 4 of this 1976 amendatory act:

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

(2) All leasehold interests in facilities owned or used by a school, college or university which leasehold provides housing for students and which is otherwise exempt from taxation under provisions of RCW 84.36.010 and 84.36.050.

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

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

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

(6) All leasehold interests held by enrolled Indians of lands owned or held by any Indian or Indian tribe where the fee ownership of such property is vested in or held in trust by the United States and which are not subleased to other than to a lessee which would qualify pursuant to this 1976 amendatory act.

(7) All leasehold interests in any real property of any Indian or Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States: PROVIDED, That this exemption shall apply only where it is determined that contract rent paid is greater than or equal to ninety percent of fair market rental, to be determined by the department of revenue using the same criteria used to establish taxable rent in section 2 subsection (2)(b) of this 1976 amendatory act.

(8) All leasehold interests for which annual taxable rent is less than two hundred fifty dollars per year. For purposes of this subsection leasehold interests held by the same lessee in contiguous properties owned by the same lessor shall be deemed a single leasehold interest.

(9) All leasehold interests which give use or possession of the leased property for a continuous period of less than thirty days: PROVIDED, That for purposes of this subsection, successive leases or lease renewals giving substantially continuous use of possession of the same property to the same lessee shall be deemed a single leasehold interest: PROVIDED FURTHER, That no leasehold interest shall be deemed to give use or possession for a period of less than thirty days solely by virtue of the reservation by the public lessor of the right to use the property or to allow third parties to use the property on an occasional, temporary basis.

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

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

NEW SECTION. Sec. 14. There is added to chapter 15, Laws of 1961 and to chapter 84.36 RCW a new section to read as follows:

The following property shall be exempt from taxation:

Any and all rights to occupy or use any real or personal property owned in fee or held in trust by the United States, the state of Washington, or any political subdivision or municipal corporation of the state of Washington, including any leasehold interest arising from such property as defined in section 2 of this 1976 amendatory act: PROVIDED, That this exemption shall not apply to any such leasehold interests which are a part of operating properties of public utilities subject to assessment under chapter 84.12 RCW nor be construed to modify the provisions of RCW 84.40.230.

Sec. 15. Section 84.40.175, chapter 15, Laws of 1961 and RCW 84.40.175 are each amended to read as follows:

At the time of making the assessment of real property, the assessor shall enter each description of property exempt under the provisions of RCW 84.36.005 through 84.36.060, and value and list the same in the manner and subject to the same rule as he is required to assess all other property, designating in each case to whom such property belongs, and for what purpose used, to entitle it to exemption, and he shall require from every person claiming such exemption proof of the right to such exemption: PROVIDED, That with respect to publicly owned property exempt from taxation under provisions of RCW 84.36.010, the assessor shall value only such property as is leased to or occupied by a private person under an agreement allowing such person to occupy or use such property for a private purpose when a request for such valuation is received from the department of revenue for use in an audit of the taxable rent as provided for in section 2(2)(b) of this

1976 amendatory act: PROVIDED FURTHER, That this section shall not prohibit any assessor from valuing any public property leased to or occupied by a private person for private purposes.

NEW SECTION. Sec. 16. The department of revenue of the state of Washington shall make such rules and regulations consistent with chapter 34.04 RCW and the provisions of this 1976 amendatory act as shall be necessary to permit its effective administration including procedures for collection and remittance of taxes imposed by this chapter, and for intervention by the cities and counties levying under section 4 of this 1976 amendatory act, in proceedings involving such levies and taxes collected pursuant thereto.

NEW SECTION. Sec. 17. All assessments or levies of property taxes for collection in calendar year 1976 are hereby canceled with respect to values arising out of property exempted by section 14 of this 1976 amendatory act.

NEW SECTION. Sec. 18. Notwithstanding any other provision of this 1976 amendatory act, improvements owned or being acquired by contract purchase or otherwise by any lessee or sublessee which are not defined as contract rent shall be taxable to such lessee or sublessee under Title 84 RCW.

NEW SECTION. Sec. 19. Sections 1 through 13, and 16 through 18 of this 1976 amendatory act are each added to chapter 15, Laws of 1961 and to Title 82 RCW and shall constitute a new chapter in Title 82 RCW.

NEW SECTION. Sec. 20. The following acts or parts of acts are each hereby repealed:

- (1) Section 2, chapter 187, Laws of 1973 1st ex. sess. and RCW 82.29.010;
- (2) Section 3, chapter 187, Laws of 1973 1st ex. sess. and RCW 82.29.020;
- (3) Section 4, chapter 187, Laws of 1973 1st ex. sess. and RCW 82.29.030;
- (4) Section 5, chapter 187, Laws of 1973 1st ex. sess. and RCW 82.29.040;
- (5) Section 6, chapter 187, Laws of 1973 1st ex. sess. and RCW 82.29.050;
- (6) Section 7, chapter 187, Laws of 1973 1st ex. sess. and RCW 82.29.060;
- (7) Section 8, chapter 187, Laws of 1973 1st ex. sess. and RCW 82.29.070;
- (8) Section 9, chapter 187, Laws of 1973 1st ex. sess. and RCW 82.29.080;
- (9) Section 10, chapter 187, Laws of 1973 1st ex. sess. and RCW 82.29.090;
- (10) Section 11, chapter 187, Laws of 1973 1st ex. sess. and RCW 84.36.450;
- (11) Section 14, chapter 187, Laws of 1973 1st ex. sess. and RCW 84.36.455;

and

- (12) Section 15, chapter 187, Laws of 1973 1st ex. sess. and RCW 84.36.460.

NEW SECTION. Sec. 21. There is hereby appropriated to the department of revenue one hundred and thirty-five thousand dollars from the general fund to administer the provisions of this 1976 amendatory act for the biennium ending June 30, 1977.

NEW SECTION. Sec. 22. This 1976 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately: PROVIDED, That in the event the cancellation of assessments or levies of property taxes for collection in calendar year 1976 as provided for in section 17 of

this 1976 amendatory act is declared null and void, then the effective date of this 1976 amendatory act shall be January 1, 1977.

NEW SECTION. Sec. 23. If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

Passed the House February 27, 1976.
 Passed the Senate February 13, 1976.
 Approved by the Governor March 1, 1976.
 Filed in Office of Secretary of State March 1, 1976.

CHAPTER 62

[Substitute House Bill No. 769]

LIQUOR CONTROL—DEALER SERVICES— WINERY WHOLESALING—CONVENTION HOSPITALITY PERMITS

AN ACT Relating to alcoholic beverage control; and amending section 14, chapter 21, Laws of 1969 ex. sess. as last amended by section 7, chapter 173, Laws of 1975 1st ex. sess. and RCW 66.28.025: and amending section 12, chapter 62, Laws of 1933 ex. sess. as last amended by section 2, chapter 111, Laws of 1959 and RCW 66.20.010.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 14, chapter 21, Laws of 1969 ex. sess. as last amended by section 7, chapter 173, Laws of 1975 1st ex. sess. and RCW 66.28.025 are each amended to read as follows:

No manufacturer of wine, or person financially interested, directly, in such business, whether resident or nonresident, shall have any financial interest, direct or indirect, in the business of any licensed wine wholesaler, nor shall any manufacturer of wine own any of the property upon which such licensed persons conduct their business, nor shall any such licensed person under any arrangement whatsoever, conduct his business upon property in which any manufacturer of wine has any interest, nor shall any manufacturer of wine advance money or moneys' worth other than such credit allowances customarily extended in the ordinary course of such business between wholesalers and manufacturers on purchases of inventories to any such licensed person under any arrangement whatsoever, nor shall any such licensed person receive, under any arrangement whatsoever, any such advance of money or moneys' worth other than such credit allowances: PROVIDED, That pursuant to rules promulgated by the board, in accordance with chapter 34.04 RCW, manufacturers, wholesalers and importers may perform, and retailers may accept the service of building, rotating and restocking case displays and stock room inventories; rotating and rearranging can and bottle displays of their own products; provide point of sale material and brand signs; and perform such similar normal business services as the board may by regulation prescribe.

PROVIDED FURTHER, That the provisions of this section shall not require the divesting of any such financial interest or arrangement which was held by any