

bond by the surety the vehicle dealer license shall automatically be deemed canceled.

~~((2))~~ **(5) Except as provided in subsection (3) of this section, the bond for any vehicle dealer licensed or to be licensed under more than one classification shall be the highest bond required for any such classification.**

~~((3))~~ **(6) Vehicle dealers shall maintain a bond for each business location in this state and bond coverage for all temporary subagencies.**

*Sec. 4 was vetoed, see message at end of chapter.

Passed the House April 18, 1989.

Passed the Senate April 4, 1989.

Approved by the Governor May 11, 1989, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 11, 1989.

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

"I am returning herewith, without my approval as to section 4, Substitute House Bill No. 1221 entitled:

"AN ACT Relating to auctioneers and auction companies."

An auctioneer, licensed under RCW 18.11, must comply with licensing requirements applicable to regulated "goods". As such, existing statutes require an auctioneer to obtain a vehicle dealer's license, post surety bonds, and acquire a temporary sub-agency license. These licenses ensure that the appropriate measures have been taken to protect consumers in these purchases.

This bill eliminates the temporary sub-agency license requirements, revises place of business requirements, and relaxes dealer licensing and surety bond requirements for auctioneers and auction companies. The changes provide for simplified departmental procedures while adequate consumer protection remains in effect, with one exception.

In reviewing the surety bond requirement, it is not clear why auctioneers selling mobile homes or travel trailers should not be required to post a bond comparable to those required for mobile home and travel trailer dealers. Passage of this section would not provide the public with adequate consumer protection.

With the exception of Section 4, Substitute House Bill No. 1221 is approved."

CHAPTER 302

[Substitute House Bill No. 1305]

LIGHT AND POWER COMPANIES—TAXATION

AN ACT Relating to public utility taxation; amending RCW 82.04.120, 82.16.010, 82.16.050, 82.04.310, 82.16.020, and 82.16.030; reenacting and amending RCW 82.04.120, 82.16.010, and 82.16.050; creating a new section; and declaring an emergency.

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

NEW SECTION. Sec. 1. (1) The legislature finds that chapter 9, Laws of 1982 2nd ex. sess. was intended to extend state public utility taxation to electrical energy generated in this state for eventual distribution outside this state. The legislature further finds that chapter 9, Laws of 1982 2nd ex. sess. was held unconstitutional by the Thurston county superior

court in *Washington Water Power v. State of Washington* (memorandum opinion No. 83-2-00977-1). The purpose of Part I of this act is to recognize the effect of that decision by correcting the relevant RCW sections to read as though the legislature had not enacted chapter 9, Laws of 1982 2nd ex. sess., and thereby make clear the effect of subsequent amendments in Part II of this act.

(2) The purpose of Part II of this act is to provide a constitutional means of replacing the revenue lost as a result of the Washington water power decision.

PART I

Sec. 101. Section 82.04.120, chapter 15, Laws of 1961 as last amended by section 1, chapter 493, Laws of 1987 and RCW 82.04.120 are each amended to read as follows:

"To manufacture" embraces all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials so that as a result thereof a new, different or useful substance or article of tangible personal property is produced for sale or commercial or industrial use, and shall include the production or fabrication of special made or custom made articles, and the generation or production of electrical energy for resale or consumption outside the state.

"To manufacture" shall not include conditioning of seed for use in planting or activities which consist of cutting, grading, or ice glazing seafood which has been cooked, frozen or canned outside this state.

Sec. 102. Section 82.16.010, chapter 15, Laws of 1961 as last amended by section 1, chapter 226, Laws of 1986 and RCW 82.16.010 are each amended to read as follows:

For the purposes of this chapter, unless otherwise required by the context:

(1) "Railroad business" means the business of operating any railroad, by whatever power operated, for public use in the conveyance of persons or property for hire. It shall not, however, include any business herein defined as an urban transportation business.

(2) "Express business" means the business of carrying property for public hire on the line of any common carrier operated in this state, when such common carrier is not owned or leased by the person engaging in such business.

(3) "Railroad car business" means the business of renting, leasing or operating stock cars, furniture cars, refrigerator cars, fruit cars, poultry cars, tank cars, sleeping cars, parlor cars, buffet cars, tourist cars, or any other kinds of cars used for transportation of property or persons upon the line of any railroad operated in this state when such railroad is not owned or leased by the person engaging in such business.

(4) "Water distribution business" means the business of operating a plant or system for the distribution of water for hire or sale.

(5) "Light and power business" means the business of operating a plant or system for the generation, production or distribution of electrical energy for hire or sale.

(6) "Telegraph business" means the business of affording telegraphic communication for hire.

(7) "Gas distribution business" means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural.

(8) "Motor transportation business" means the business (except urban transportation business) of operating any motor propelled vehicle by which persons or property of others are conveyed for hire, and includes, but is not limited to, the operation of any motor propelled vehicle as an auto transportation company (except urban transportation business), common carrier or contract carrier as defined by RCW 81.68.010 and 81.80.010: PROVIDED, That "motor transportation business" shall not mean or include the transportation of logs or other forest products exclusively upon private roads or private highways.

(9) "Urban transportation business" means the business of operating any vehicle for public use in the conveyance of persons or property for hire, insofar as (a) operating entirely within the corporate limits of any city or town, or within five miles of the corporate limits thereof, or (b) operating entirely within and between cities and towns whose corporate limits are not more than five miles apart or within five miles of the corporate limits of either thereof. Included herein, but without limiting the scope hereof, is the business of operating passenger vehicles of every type and also the business of operating cartage, pickup, or delivery services, including in such services the collection and distribution of property arriving from or destined to a point within or without the state, whether or not such collection or distribution be made by the person performing a local or interstate line-haul of such property.

(10) "Public service business" means any of the businesses defined in subdivisions (1), (2), (3), (4), (5), (6), (7), (8), and (9) or any business subject to control by the state, or having the powers of eminent domain and the duties incident thereto, or any business hereafter declared by the legislature to be of a public service nature, except telephone business as defined in RCW 82.04.065. It includes, among others, without limiting the scope hereof: Airplane transportation, boom, dock, ferry, log patrol, pipe line, toll bridge, toll logging road, water transportation and wharf businesses.

(11) "Tugboat business" means the business of operating tugboats, towboats, wharf boats or similar vessels in the towing or pushing of vessels, barges or rafts for hire.

(12) "Gross income" means the value proceeding or accruing from the performance of the particular public service or transportation business involved, including operations incidental thereto, but without any deduction on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses(~~(-PROVIDED, That gross income of a light and power business means those amounts or value accruing to a taxpayer from the last distribution of electrical energy which is a taxable event within this state))~~).

(13) The meaning attributed, in chapter 82.04 RCW, to the term "tax year," "person," "value proceeding or accruing," "business," "engaging in business," "in this state," "within this state," "cash discount" and "successor" shall apply equally in the provisions of this chapter.

Sec. 103. Section 82.16.050, chapter 15, Laws of 1961 as last amended by section 1, chapter 207, Laws of 1987 and RCW 82.16.050 are each amended to read as follows:

In computing tax there may be deducted from the gross income the following items:

(1) Amounts derived by municipally owned or operated public service businesses, directly from taxes levied for the support or maintenance thereof: PROVIDED, That this section shall not be construed to exempt service charges which are spread on the property tax rolls and collected as taxes;

(2) Amounts derived from the sale of commodities to persons in the same public service business as the seller, for resale as such within this state. This deduction is allowed only with respect to water distribution, light and power, gas distribution or other public service businesses which furnish water, electrical energy, gas or any other commodity(~~(-other than electrical energy;))~~) in the performance of public service businesses;

(3) Amounts actually paid by a taxpayer to another person taxable under this chapter as the latter's portion of the consideration due for services furnished jointly by both, if the total amount has been credited to and appears in the gross income reported for tax by the former;

(4) The amount of cash discount actually taken by the purchaser or customer;

(5) The amount of credit losses actually sustained by taxpayers whose regular books of accounts are kept upon an accrual basis;

(6) Amounts derived from business which the state is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States;

(7) Amounts derived from the distribution of water through an irrigation system, for irrigation purposes;

(8) Amounts derived from the transportation of commodities from points of origin in this state to final destination outside this state, or from

points of origin outside this state to final destination in this state, with respect to which the carrier grants to the shipper the privilege of stopping the shipment in transit at some point in this state for the purpose of storing, manufacturing, milling, or other processing, and thereafter forwards the same commodity, or its equivalent, in the same or converted form, under a through freight rate from point of origin to final destination; and amounts derived from the transportation of commodities from points of origin in the state to an export elevator, wharf, dock or ship side on tidewater or navigable tributaries thereto from which such commodities are forwarded, without intervening transportation, by vessel, in their original form, to interstate or foreign destinations: PROVIDED, That no deduction will be allowed when the point of origin and the point of delivery to such an export elevator, wharf, dock, or ship side are located within the corporate limits of the same city or town;

(9) Amounts derived from the production, sale, or transfer of electrical energy for resale or consumption outside the state if the production or generation of such energy is subject to tax under the manufacturing classification of chapter 82.04 RCW: PROVIDED, That the exemption set forth in RCW 82.04.310 shall not be applicable to the generation or production of the electrical energy so produced, sold, or transferred: AND PROVIDED FURTHER, That no credit has been claimed as an offset to taxes imposed under RCW 82.04.240;

(10) Amounts derived from the distribution of water by a nonprofit water association and used for capital improvements by that nonprofit water association;

~~((+0))~~ (11) Amounts paid by a sewerage collection business taxable under RCW 82.16.020(1)(a) to a person taxable under chapter 82.04 RCW for the treatment or disposal of sewage.

PART II

Sec. 201. Section 82.04.120, chapter 15, Laws of 1961 as last amended by section 101 of this act and RCW 82.04.120 are each reenacted and amended to read as follows:

"To manufacture" embraces all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials so that as a result thereof a new, different or useful substance or article of tangible personal property is produced for sale or commercial or industrial use, and shall include the production or fabrication of special made or custom made articles(~~(; and the generation or production of electrical energy for resale or consumption outside the state)~~).

"To manufacture" shall not include conditioning of seed for use in planting or activities which consist of cutting, grading, or ice glazing seafood which has been cooked, frozen or canned outside this state.

Sec. 202. Section 82.04.310, chapter 15, Laws of 1961 and RCW 82-.04.310 are each amended to read as follows:

This chapter shall not apply to any person in respect to a business activity with respect to which tax liability is specifically imposed under the provisions of chapter 82.16 RCW including amounts derived from the sale of commodities for which a deduction is allowed under RCW 82.16.050.

Sec. 203. Section 82.16.010, chapter 15, Laws of 1961 as last amended by section 102 of this act and RCW 82.16.010 are each reenacted and amended to read as follows:

For the purposes of this chapter, unless otherwise required by the context:

(1) "Railroad business" means the business of operating any railroad, by whatever power operated, for public use in the conveyance of persons or property for hire. It shall not, however, include any business herein defined as an urban transportation business.

(2) "Express business" means the business of carrying property for public hire on the line of any common carrier operated in this state, when such common carrier is not owned or leased by the person engaging in such business.

(3) "Railroad car business" means the business of renting, leasing or operating stock cars, furniture cars, refrigerator cars, fruit cars, poultry cars, tank cars, sleeping cars, parlor cars, buffet cars, tourist cars, or any other kinds of cars used for transportation of property or persons upon the line of any railroad operated in this state when such railroad is not owned or leased by the person engaging in such business.

(4) "Water distribution business" means the business of operating a plant or system for the distribution of water for hire or sale.

(5) "Light and power business" means the business of operating a plant or system for the generation, production or distribution of electrical energy for hire or sale and/or for the wheeling of electricity for others.

(6) "Telegraph business" means the business of affording telegraphic communication for hire.

(7) "Gas distribution business" means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural.

(8) "Motor transportation business" means the business (except urban transportation business) of operating any motor propelled vehicle by which persons or property of others are conveyed for hire, and includes, but is not limited to, the operation of any motor propelled vehicle as an auto transportation company (except urban transportation business), common carrier or contract carrier as defined by RCW 81.68.010 and 81.80.010: PROVIDED, That "motor transportation business" shall not mean or include the transportation of logs or other forest products exclusively upon private roads or private highways.

(9) "Urban transportation business" means the business of operating any vehicle for public use in the conveyance of persons or property for hire, insofar as (a) operating entirely within the corporate limits of any city or town, or within five miles of the corporate limits thereof, or (b) operating entirely within and between cities and towns whose corporate limits are not more than five miles apart or within five miles of the corporate limits of either thereof. Included herein, but without limiting the scope hereof, is the business of operating passenger vehicles of every type and also the business of operating cartage, pickup, or delivery services, including in such services the collection and distribution of property arriving from or destined to a point within or without the state, whether or not such collection or distribution be made by the person performing a local or interstate line-haul of such property.

(10) "Public service business" means any of the businesses defined in subdivisions (1), (2), (3), (4), (5), (6), (7), (8), and (9) or any business subject to control by the state, or having the powers of eminent domain and the duties incident thereto, or any business hereafter declared by the legislature to be of a public service nature, except telephone business as defined in RCW 82.04.065. It includes, among others, without limiting the scope hereof: Airplane transportation, boom, dock, ferry, log patrol, pipe line, toll bridge, toll logging road, water transportation and wharf businesses.

(11) "Tugboat business" means the business of operating tugboats, towboats, wharf boats or similar vessels in the towing or pushing of vessels, barges or rafts for hire.

(12) "Gross income" means the value proceeding or accruing from the performance of the particular public service or transportation business involved, including operations incidental thereto, but without any deduction on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

(13) The meaning attributed, in chapter 82.04 RCW, to the term "tax year," "person," "value proceeding or accruing," "business," "engaging in business," "in this state," "within this state," "cash discount" and "successor" shall apply equally in the provisions of this chapter.

Sec. 204. Section 82.16.020, chapter 15, Laws of 1961 as last amended by section 14, chapter 282, Laws of 1986 and RCW 82.16.020 are each amended to read as follows:

(1) There is levied and there shall be collected from every person a tax for the act or privilege of engaging within this state in any one or more of the businesses herein mentioned. The tax shall be equal to the gross income of the business, multiplied by the rate set out after the business, as follows:

(a) Railroad, express, railroad car, sewerage collection, (~~light and power~~;) and telegraph businesses: Three and six-tenths percent;

(b) Light and power business: Three and sixty-two one-hundredths percent;

(c) Gas distribution business: Three and six-tenths percent;

~~((c))~~ (d) Urban transportation business: Six-tenths of one percent;

~~((d))~~ (e) Vessels under sixty-five feet in length, except tugboats, operating upon the waters within the state: Six-tenths of one percent;

~~((c))~~ (f) Motor transportation and tugboat businesses, and all public service businesses other than ones mentioned above: One and eight-tenths of one percent;

~~((f))~~ (g) Water distribution business: Four and seven-tenths percent.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section.

(3) Twenty percent of the moneys collected under subsection (1) of this section on water distribution businesses and sixty percent of the moneys collected under subsection (1) of this section on sewerage collection businesses shall be deposited in the public works assistance account created in RCW 43.155.050.

Sec. 205. Section 82.16.030, chapter 15, Laws of 1961 as amended by section 6, chapter 35, Laws of 1982 1st ex. sess. and RCW 82.16.030 are each amended to read as follows:

Every person engaging in businesses which are within the purview of two or more of schedules ~~((a), (b), (c), (d), and (e))~~ of RCW 82.16.020(1), shall be taxable under each schedule applicable to the businesses engaged in.

***Sec. 206. Section 82.16.050, chapter 15, Laws of 1961 as last amended by section 103 of this act and RCW 82.16.050 are each reenacted and amended to read as follows:**

In computing tax there may be deducted from the gross income the following items:

(1) Amounts derived by municipally owned or operated public service businesses, directly from taxes levied for the support or maintenance thereof: PROVIDED, That this section shall not be construed to exempt service charges which are spread on the property tax rolls and collected as taxes;

(2) Amounts derived from the sale of commodities to persons in the same public service business as the seller, for resale as such within this state. This deduction is allowed only with respect to water distribution, ~~((light and power,))~~ gas distribution or other public service businesses which furnish water, ~~((electrical energy,))~~ gas or any other commodity in the performance of public service businesses;

(3) Amounts actually paid by a taxpayer to another person taxable under this chapter as the latter's portion of the consideration due for services furnished jointly by both, if the total amount has been credited to and appears in the gross income reported for tax by the former;

(4) The amount of cash discount actually taken by the purchaser or customer;

(5) The amount of credit losses actually sustained by taxpayers whose regular books of accounts are kept upon an accrual basis;

(6) Amounts derived from business which the state is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States;

(7) Amounts derived from the distribution of water through an irrigation system, for irrigation purposes;

(8) Amounts derived from the transportation of commodities from points of origin in this state to final destination outside this state, or from points of origin outside this state to final destination in this state, with respect to which the carrier grants to the shipper the privilege of stopping the shipment in transit at some point in this state for the purpose of storing, manufacturing, milling, or other processing, and thereafter forwards the same commodity, or its equivalent, in the same or converted form, under a through freight rate from point of origin to final destination; and amounts derived from the transportation of commodities from points of origin in the state to an export elevator, wharf, dock or ship side on tidewater or navigable tributaries thereof from which such commodities are forwarded, without intervening transportation, by vessel, in their original form, to interstate or foreign destinations: PROVIDED, That no deduction will be allowed when the point of origin and the point of delivery to such an export elevator, wharf, dock, or ship side are located within the corporate limits of the same city or town;

(9) Amounts derived from the production, sale, or transfer of electrical energy for resale or consumption outside the state ~~((if the production or generation of such energy is subject to tax under the manufacturing classification of chapter 82.04 RCW: PROVIDED, That the exemption set forth in RCW 82.04.310 shall not be applicable to the generation or production of the electrical energy so produced, sold, or transferred: AND PROVIDED FURTHER, That no credit has been claimed as an offset to taxes imposed under RCW 82.04.240));~~

(10) Amounts derived from the distribution of water by a nonprofit water association and used for capital improvements by that nonprofit water association;

(11) Amounts paid by a sewerage collection business taxable under RCW 82.16.020(1)(a) to a person taxable under chapter 82.04 RCW for the treatment or disposal of sewage;

(12) Amounts derived from the sale of electrical energy for resale as such within this state. This deduction is allowed only to light and power businesses that furnish electrical energy in the performance of a public service business.

*Sec. 206 was vetoed, see message at end of chapter.

PART III

NEW SECTION. Sec. 301. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House April 22, 1989.

Passed the Senate April 14, 1989.

Approved by the Governor May 11, 1989, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 11, 1989.

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

"I am returning herewith, without my approval as to section 206, Substitute House Bill No. 1305 entitled:

"AN ACT Relating to public utility taxation."

Section 206 creates a new exemption to the public utility tax for electrical power purchased for resale. This exemption would create an unfair competitive advantage for firms which purchase electrical power and then resell it. Such power would be subject only to a B&O tax of 1.5% while other power in the state is subject to a public utility tax of 3.852%.

To our knowledge, only one firm would benefit from this exemption. The purpose of the exemption was to eliminate the double taxation of such electrical power. In this case, a firm purchases electrical power from a utility. The utility pays a public utility tax on such power of 3.852%. The firm which purchases the power then sells it to a subsidiary. Since the power is a sale by the firm, it is part of its gross receipts and subject to a 1.5% B&O tax. The firm argues that the public utility tax is unfair double taxation.

Unfortunately, double taxation is the rule with the B&O tax, not the exception. The B&O tax is a gross receipts tax which is imposed on gross income with no deductions. Since the firm is in business and sells the power, the value of the power is part of their gross receipts. What the firm in fact wants is a deduction for the costs of doing business. In effect, this is tax reform, but only for one firm not for everybody. The need for tax reform is real. This piecemeal revision of the tax code is not the appropriate way to address the shortcomings of the existing tax system.

Furthermore, no logical argument has been presented which would indicate that electrical power for resale should be exempt. Under this bill, the power purchased by the firm in this case would be subject to a B&O tax of only 1.5%. All other power sold for in-state use is subject to a public utility tax of 3.852%. There is no reason why this power should be taxed at a lower rate.

With the exception of section 206, Substitute House Bill No. 1305 is approved."

 CHAPTER 303

[Substitute Senate Bill No. 5147]

CREDIT SERVICES ORGANIZATIONS—DEFINITION AND BONDING
REQUIREMENTS

AN ACT Relating to credit service organizations; and amending RCW 19.134.010 and 19.134.020.

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