

# FINAL BILL REPORT

## HB 1550

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Synopsis as Enacted

**Brief Description:** Simplifying the taxation of amusement, recreation, and physical fitness services.

**Sponsors:** Representatives Carlyle, Nealey, Reykdal and Wylie; by request of Department of Revenue.

**House Committee on Finance**  
**Senate Committee on Ways & Means**

### **Background:**

#### Sales and Use Tax.

Retail sales taxes are imposed on retail sales of most articles of tangible personal property, digital products, and some services. A retail sale is a sale to the final consumer or end user of the property, digital product, or service. If retail sales taxes were not collected when the user acquired the property, digital products, or services, then use taxes apply to the value of property, digital product, or service when used in this state. The state, most cities, and all counties levy retail sales and use taxes. The state sales and use tax rate is 6.5 percent; local sales and use tax rates vary from 0.5 percent to 3.1 percent, depending on the location.

#### Business and Occupation Tax.

Washington's major business tax is the business and occupation (B&O) tax. The B&O tax is imposed on the gross receipts of business activities conducted within the state, without any deduction for the costs of doing business. The tax is imposed on the gross receipts from all business activities conducted within the state. Revenues are deposited in the State General Fund. There are several rate categories, and a business may be subject to more than one B&O tax rate, depending on the types of activities conducted.

#### Amusement and Recreational Services.

"Amusement and recreational services" are included in the definition of retail sale for the B&O tax and retail sales tax purposes. There is no specific definition of "amusement and recreational services." There is, however, a list of activities that are classified as "amusement and recreation services" including golf, pool, billiards, skating, bowling, ski lifts and tows, and day trips for sightseeing purposes when provided to consumers. Sales of these retail services are subject to retail sales or use tax.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

### Physical Fitness Services.

"Physical fitness services" are also included in the definition of retail sale for B&O and retail sales tax purposes. The term "physical fitness services" is not defined in statute but is referred to as a personal service. The Department of Revenue by rule has defined "physical fitness services" to include all exercise classes, use of exercise equipment, and personal training, and does not include instructional lessons. Instructional lessons can be distinguished from exercise classes in that education is the primary focus in the former and exercise is the primary focus in the latter. Sales of these retail services are subject to retail sales tax.

### Opportunity to Dance.

The "opportunity to dance" is defined as an establishment that provides a designated physical space where customers are allowed to dance. Charges for the "opportunity to dance" are exempt from retail sales tax. The exemption is set to expire July 1, 2017.

### **Summary:**

The term "amusement and recreation service" is replaced in the definition of "retail sale" with a specific list of retailing activities of an amusement or recreational nature. Specific exclusions are provided for: (1) admission to fairs, carnivals, and festivals, including charges for rides and attractions; (2) otherwise taxable activities provided by an educational institution to its students and staff, not applying to charges made to its alumni and other members of the public; (3) diver training provided by a licensed vocational school; and (4) day camps provided by nonprofit organizations or state or local governmental entities for persons who are under 19 years of age or that are focused on persons who have a disability or a mental illness. In instances where sales tax was not collected for the retail sale of specified amusement or recreational services, use tax is no longer due from the buyer.

The term "physical fitness services" is removed from the definition of "retail sale." Instead, "retail sale" includes the operation of an "athletic or fitness facility." An "athletic or fitness facility" is defined as an indoor or outdoor facility, or portion of a facility, that is predominantly used for physical fitness activities. "Physical fitness activities" are activities that involve physical exertion for the purpose of improving or maintaining the general fitness, strength, flexibility, conditioning, or health of the participant. With certain exceptions, all charges for the use of an athletic or fitness facility are retail sales, including any charges associated with services or amenities. Specific exclusions are provided for: (1) separately stated charges for the use of an athletic or fitness facility for purposes other than engaging in physical activity, use of a discrete portion of the facility that does not meet the definition of "athletic or fitness facility," and services that do not involve physical exertion; (2) rent or associated fees; (3) services provided without charge to employees or their family members; and (4) yoga, tai chi, and chi gong classes held in a facility not primarily used for physical fitness activities other than yoga, tai chi, and chi gong.

The sales tax exemption for charges for the "opportunity to dance" is made permanent.

### **Votes on Final Passage:**

House	70	27	
Senate	43	4	(Senate amended)
House			(House refused to concur)
Senate			(Senate receded)
Senate	38	9	

**Effective:** January 1, 2016