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FLOOR DEBATE

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structure as defined in section 77-2704."

SENATOR STUTHMAN: Okay. I will give you a little scenario and you can tell me whether it should be taxed or shouldn't be taxed. I was in contact a couple weeks ago with an individual that there's a large housing development on a lake area. The lawns do not survive very well on the sand. He wanted to buy topsoil to put on the sand and for a better lawn. Now, the topsoil would be dirt, in my opinion. By delivering him that dirt, which is my topsoil, to his lot for repairing of the lawn, would that be considered taxable or not?

SENATOR LANDIS: Well, if it's not new construction, which it might be, as I hear you describing it, it does not sound like it's using a building material, and is not taxed. If, on the other hand, they were putting in, let's say, a retaining wall so that you wouldn't lose that soil or that sand, and you did use the construction, that would be taxed.

SENATOR STUTHMAN: Then the retaining wall portion of it would be taxed. But...

SENATOR LANDIS: What that would do is it would say, look, that's right, this is real estate now...and I'm sorry, it's not real estate, it is the use of building materials which is the triggering device there.

SENATOR STUTHMAN: Okay. But if there was...there was never anything entered into the repair/remodeling of the lawn, the landscaping and just ten loads of topsoil were delivered in, there should not be any sales tax on that, the way you understand it.

SENATOR LANDIS: That's right. On the other hand, I'd just as soon you appointed me to TERC and pay me \$80,000 a year for the answer to that question. But the answer is, it's not taxed. However, I'll be happy to accept a position on TERC and speak with full authority and a stone tablet when I render these opinions. I got to say I could be wrong, but my answer is it's not taxed.