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**SUBSTITUTE SENATE BILL 5628**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** Senate Transportation (originally sponsored by Senators Cleveland, Brown, Hobbs, Walsh, and Palumbo)

AN ACT Relating to heavy equipment rental property taxation; amending RCW 82.32.145; adding a new section to chapter 84.36 RCW; adding a new chapter to Title 82 RCW; and creating new sections.

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

NEW SECTION. **Sec.**  A new section is added to chapter 84.36 RCW to read as follows:

(1) All heavy equipment rental property owned by a heavy equipment rental property dealer is exempt from taxation.

(2) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a)(i) "Heavy equipment rental property" means any equipment that is rented by a heavy equipment rental property dealer that:

(A) Is mobile. For purposes of this subsection, "mobile" means that the heavy equipment property is not permanently affixed to real property and may be moved among worksites as needed;

(B) Is customarily used for construction, earthmoving, or industrial applications. For the purposes of this subsection, "construction, earthmoving, or industrial applications" means the constructing of new buildings or other structures, or the repairing, remodeling, or expansion of existing buildings or other structures, under, upon, or above real property; the repositioning of terrain using vehicles or self-propelled equipment; and manufacturing or processing raw materials or other ingredients or components into new articles of tangible personal property for sale; and

(C) Is rented without an operator.

(ii) Subject to the provisions of (a)(i) of this subsection, "heavy equipment rental property" includes, but is not limited to the following:

(A) Earthmoving equipment, including but not limited to backhoes, loaders, rollers, excavators, bulldozers, and dump trucks;

(B) Self-propelled vehicles that are not designed to be driven on the highway;

(C) Industrial electrical generation equipment;

(D) Industrial lift equipment;

(E) Industrial material handling equipment;

(F) Equipment used in shoring, shielding, and ground trenching;

(G) Portable power and HVAC generation equipment;

(H) Attachments to heavy equipment rental property, including but not limited to buckets, augers, hammers for backhoes, hoses, fittings, piping, chains, tools (such as jack hammers and cement chippers), and portable power connections;

(I) Ancillary equipment, including but not limited to generators, ground thawing equipment, fluid transfer equipment, pumping equipment, portable storage, portable fuel and water tanks, and light towers; and

(J) Equipment or vehicles not subject to vehicle license fees and not required to be registered with the department of licensing.

(iii) "Heavy equipment rental property" does not include small hand tools, chainsaws, or lawnmowers.

(b) "Heavy equipment rental property dealer" means a person principally engaged in the business of renting heavy equipment rental property. For purposes of this subsection, "principally" means that the heavy equipment rental property dealer receives more than fifty percent of the dealer's annual total revenue from the rental of heavy equipment rental property.

(3)(a) The exemption in subsection (1) of this section does not apply in any tax year to heavy equipment rental property that the heavy equipment rental property dealer rented or leased at any time during the immediately preceding tax year to a person with whom the heavy equipment rental property dealer is affiliated.

(b) For purposes of this subsection, "affiliated" means:

(i) One person has an ownership interest of more than five percent, whether direct or indirect, in the other person; or

(ii) Persons who are related to each other because a third person, or group of third persons who are affiliated with respect to each other, holds an ownership interest of more than five percent, whether direct or indirect, in the related persons.

(4)(a) A claim for exemption under this section must be filed with the county assessor together with the statement required under RCW 84.40.190, for exemption from taxes payable the following year.

(b) The claim must be made solely upon forms as prescribed and approved by the department.

(c) If the assessor finds that the applicant does not meet the requirements for exemption under this section, the exemption must be denied but such denial is subject to appeal under the provisions of RCW 84.48.010 and 84.40.038.

(5) If a heavy equipment rental property dealer received an exemption under this section based on erroneous information provided by the heavy equipment rental property dealer to the county assessor, the taxes must be collected for a period not to exceed five years, subject to penalties as follows:

(a) Twenty-five percent of the total tax due;

(b) Fifty percent of the total tax due if the heavy equipment rental property dealer was previously assessed a penalty under this subsection, unless the penalty was overturned by a court or administrative tribunal in a final decision that is no longer subject to appeal; or

(c) A penalty as provided in RCW 84.40.130(2), if the heavy equipment rental property dealer, with intent to defraud, submitted a false or materially misleading claim for exemption.

(6) The department may adopt rules as it deems necessary to administer this section.

NEW SECTION. **Sec.**  (1) Beginning January 1, 2022, there is levied and collected a heavy equipment rental tax equal to one and one-quarter percent of the rental price on each rental in this state of heavy equipment rental property to a consumer by a heavy equipment rental property dealer.

(2)(a) Each heavy equipment rental property dealer shall add the heavy equipment rental tax to the rental invoice of any rental subject to the heavy equipment rental tax under this section. All heavy equipment rental taxes shall be reported and remitted to the department in a manner and frequency consistent with the reporting and remittance of state sales taxes, and on such forms as the department shall prescribe and approve.

(b) The tax required by this section, to be collected by the heavy equipment rental property dealer, is deemed to be held in trust by the heavy equipment rental property dealer until paid to the department. Any heavy equipment rental property dealer who appropriates or converts the tax collected to the dealer's own use or to any use other than the payment of the tax to the extent that the money required to be collected is not available for payment on the due date as prescribed in this chapter is guilty of a gross misdemeanor.

(3) The definitions in this subsection apply throughout this chapter, unless the context clearly requires otherwise.

(a) "Consumer" means the same as provided in RCW 82.04.190.

(b) "Heavy equipment rental property" and "heavy equipment rental property dealer" mean the same as provided in section 1 of this act.

(c) "Rental price" means the same as "sales price" as defined in RCW 82.08.010.

NEW SECTION. **Sec.**  (1) Fifty percent of the receipts from the tax imposed in section 2 of this act must be deposited in the motor vehicle fund created in RCW 46.68.070; and

(2) Fifty percent of the receipts from the tax imposed in section 2 of this act must be deposited in the multimodal transportation account created in RCW 47.66.070.

NEW SECTION. **Sec.**  (1) The heavy equipment rental tax does not apply to any transaction that the state is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States, or to the rental of heavy equipment rental property to the state or any of its political subdivisions, or to any municipal corporation.

(2) The heavy equipment rental tax applies to all rentals of heavy equipment rental property made from a rental location in this state where the customer picks up the heavy equipment rental property or from where the heavy equipment rental property is delivered to the consumer in this state. The heavy equipment rental tax does not apply to rentals of heavy equipment rental property made from a rental location in this state and delivered to the consumer outside this state or made from a rental location outside of this state and delivered to the consumer in this state.

(3) There are no other exemptions from this tax.

NEW SECTION. **Sec.**  Chapter 82.32 RCW applies to the administration of the heavy equipment rental tax in this chapter.

**Sec.**  RCW 82.32.145 and 2015 c 188 s 121 are each amended to read as follows:

(1) Whenever the department has issued a warrant under RCW 82.32.210 for the collection of unpaid trust fund taxes from a limited liability business entity and that business entity has been terminated, dissolved, or abandoned, or is insolvent, the department may pursue collection of the entity's unpaid trust fund taxes, including penalties and interest on those taxes, against any or all of the responsible individuals. For purposes of this subsection, "insolvent" means the condition that results when the sum of the entity's debts exceeds the fair market value of its assets. The department may presume that an entity is insolvent if the entity refuses to disclose to the department the nature of its assets and liabilities.

(2) Personal liability under this section may be imposed for state and local trust fund taxes.

(3)(a) For a responsible individual who is the current or a former chief executive or chief financial officer, liability under this section applies regardless of fault or whether the individual was or should have been aware of the unpaid trust fund tax liability of the limited liability business entity.

(b) For any other responsible individual, liability under this section applies only if he or she willfully fails to pay or to cause to be paid to the department the trust fund taxes due from the limited liability business entity.

(4)(a) Except as provided in this subsection (4)(a), a responsible individual who is the current or a former chief executive or chief financial officer is liable under this section only for trust fund tax liability accrued during the period that he or she was the chief executive or chief financial officer. However, if the responsible individual had the responsibility or duty to remit payment of the limited liability business entity's trust fund taxes to the department during any period of time that the person was not the chief executive or chief financial officer, that individual is also liable for trust fund tax liability that became due during the period that he or she had the duty to remit payment of the limited liability business entity's taxes to the department but was not the chief executive or chief financial officer.

(b) All other responsible individuals are liable under this section only for trust fund tax liability that became due during the period he or she had the responsibility or duty to remit payment of the limited liability business entity's taxes to the department.

(5) Persons described in subsection (3)(b) of this section are exempt from liability under this section in situations where nonpayment of the limited liability business entity's trust fund taxes is due to reasons beyond their control as determined by the department by rule.

(6) Any person having been issued a notice of assessment under this section is entitled to the appeal procedures under RCW 82.32.160, 82.32.170, 82.32.180, 82.32.190, and 82.32.200.

(7) This section does not relieve the limited liability business entity of its trust fund tax liability or otherwise impair other tax collection remedies afforded by law.

(8) Collection authority and procedures prescribed in this chapter apply to collections under this section.

(9) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Chief executive" means: The president of a corporation; or for other entities or organizations other than corporations or if the corporation does not have a president as one of its officers, the highest ranking executive manager or administrator in charge of the management of the company or organization.

(b) "Chief financial officer" means: The treasurer of a corporation; or for entities or organizations other than corporations or if a corporation does not have a treasurer as one of its officers, the highest senior manager who is responsible for overseeing the financial activities of the entire company or organization.

(c) "Limited liability business entity" means a type of business entity that generally shields its owners from personal liability for the debts, obligations, and liabilities of the entity, or a business entity that is managed or owned in whole or in part by an entity that generally shields its owners from personal liability for the debts, obligations, and liabilities of the entity. Limited liability business entities include corporations, limited liability companies, limited liability partnerships, trusts, general partnerships and joint ventures in which one or more of the partners or parties are also limited liability business entities, and limited partnerships in which one or more of the general partners are also limited liability business entities.

(d) "Manager" has the same meaning as in RCW 25.15.006.

(e) "Member" has the same meaning as in RCW 25.15.006, except that the term only includes members of member-managed limited liability companies.

(f) "Officer" means any officer or assistant officer of a corporation, including the president, vice president, secretary, and treasurer.

(g)(i) "Responsible individual" includes any current or former officer, manager, member, partner, or trustee of a limited liability business entity with an unpaid tax warrant issued by the department.

(ii) "Responsible individual" also includes any current or former employee or other individual, but only if the individual had the responsibility or duty to remit payment of the limited liability business entity's unpaid trust fund tax liability reflected in a tax warrant issued by the department.

(iii) Whenever any taxpayer has one or more limited liability business entities as a member, manager, or partner, "responsible individual" also includes any current and former officers, members, or managers of the limited liability business entity or entities or of any other limited liability business entity involved directly in the management of the taxpayer. For purposes of this subsection (9)(g)(iii), "taxpayer" means a limited liability business entity with an unpaid tax warrant issued against it by the department.

(h) "Trust fund taxes" means taxes collected from purchasers and held in trust under RCW 82.08.050, including taxes imposed under RCW 82.08.020 ((~~and~~)), 82.08.150, and section 2 of this act.

(i) "Willfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action.

NEW SECTION. **Sec.**  Sections 2 through 5 of this act constitute a new chapter in Title 82 RCW.

NEW SECTION. **Sec.**  Section 1 of this act applies to taxes levied for collection in 2022 and thereafter.

NEW SECTION. **Sec.**  Section 2 of this act applies only with respect to rental contracts or agreements entered into on or after January 1, 2022.

NEW SECTION. **Sec.**  The provisions of RCW 82.32.805 and 82.32.808 do not apply to this act.

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