

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5628

66th Legislature
2020 Regular Session

Passed by the Senate March 10, 2020
Yeas 48 Nays 0

President of the Senate

Passed by the House March 12, 2020
Yeas 53 Nays 44

**Speaker of the House of
Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5628** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5628

Passed Legislature - 2020 Regular Session

State of Washington

66th Legislature

2020 Regular Session

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

READ FIRST TIME 03/02/20.

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

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 84.36
6 RCW to read as follows:

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

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

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

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

16 (B) Is customarily used for construction, earthmoving, or
17 industrial applications. For the purposes of this subsection,
18 "construction, earthmoving, or industrial applications" means the
19 constructing of new buildings or other structures, or the repairing,
20 remodeling, or expansion of existing buildings or other structures,
21 under, upon, or above real property; the repositioning of terrain

1 using vehicles or self-propelled equipment; and manufacturing or
2 processing raw materials or other ingredients or components into new
3 articles of tangible personal property for sale; and

4 (C) Is rented without an operator.

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

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

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

12 (C) Industrial electrical generation equipment;

13 (D) Industrial lift equipment;

14 (E) Industrial material handling equipment;

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

16 (G) Portable power and HVAC generation equipment;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 NEW SECTION. **Sec. 2.** (1) Beginning January 1, 2022, there is
33 levied and collected a heavy equipment rental tax equal to one and
34 one-quarter percent of the rental price on each rental in this state
35 of heavy equipment rental property to a consumer by a heavy equipment
36 rental property dealer.

37 (2)(a) Each heavy equipment rental property dealer shall add the
38 heavy equipment rental tax to the rental invoice of any rental
39 subject to the heavy equipment rental tax under this section. All

1 heavy equipment rental taxes shall be reported and remitted to the
2 department in a manner and frequency consistent with the reporting
3 and remittance of state sales taxes, and on such forms as the
4 department shall prescribe and approve.

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

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

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

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

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

21 NEW SECTION. **Sec. 3.** (1) Fifty percent of the receipts from the
22 tax imposed in section 2 of this act must be deposited in the motor
23 vehicle fund created in RCW 46.68.070; and

24 (2) Fifty percent of the receipts from the tax imposed in section
25 2 of this act must be deposited in the multimodal transportation
26 account created in RCW 47.66.070.

27 NEW SECTION. **Sec. 4.** (1) The heavy equipment rental tax does
28 not apply to any transaction that the state is prohibited from taxing
29 under the Constitution of this state or the Constitution or laws of
30 the United States, or to the rental of heavy equipment rental
31 property to the state or any of its political subdivisions, or to any
32 municipal corporation.

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

1 location in this state and delivered to the consumer outside this
2 state or made from a rental location outside of this state and
3 delivered to the consumer in this state.

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

5 NEW SECTION. **Sec. 5.** Chapter 82.32 RCW applies to the
6 administration of the heavy equipment rental tax in this chapter.

7 **Sec. 6.** RCW 82.32.145 and 2015 c 188 s 121 are each amended to
8 read as follows:

9 (1) Whenever the department has issued a warrant under RCW
10 82.32.210 for the collection of unpaid trust fund taxes from a
11 limited liability business entity and that business entity has been
12 terminated, dissolved, or abandoned, or is insolvent, the department
13 may pursue collection of the entity's unpaid trust fund taxes,
14 including penalties and interest on those taxes, against any or all
15 of the responsible individuals. For purposes of this subsection,
16 "insolvent" means the condition that results when the sum of the
17 entity's debts exceeds the fair market value of its assets. The
18 department may presume that an entity is insolvent if the entity
19 refuses to disclose to the department the nature of its assets and
20 liabilities.

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

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

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

32 (4)(a) Except as provided in this subsection (4)(a), a
33 responsible individual who is the current or a former chief executive
34 or chief financial officer is liable under this section only for
35 trust fund tax liability accrued during the period that he or she was
36 the chief executive or chief financial officer. However, if the
37 responsible individual had the responsibility or duty to remit
38 payment of the limited liability business entity's trust fund taxes

1 to the department during any period of time that the person was not
2 the chief executive or chief financial officer, that individual is
3 also liable for trust fund tax liability that became due during the
4 period that he or she had the duty to remit payment of the limited
5 liability business entity's taxes to the department but was not the
6 chief executive or chief financial officer.

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

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

16 (6) Any person having been issued a notice of assessment under
17 this section is entitled to the appeal procedures under RCW
18 82.32.160, 82.32.170, 82.32.180, 82.32.190, and 82.32.200.

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

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

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

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

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

36 (c) "Limited liability business entity" means a type of business
37 entity that generally shields its owners from personal liability for
38 the debts, obligations, and liabilities of the entity, or a business
39 entity that is managed or owned in whole or in part by an entity that
40 generally shields its owners from personal liability for the debts,

1 obligations, and liabilities of the entity. Limited liability
2 business entities include corporations, limited liability companies,
3 limited liability partnerships, trusts, general partnerships and
4 joint ventures in which one or more of the partners or parties are
5 also limited liability business entities, and limited partnerships in
6 which one or more of the general partners are also limited liability
7 business entities.

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

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

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

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

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

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

31 (h) "Trust fund taxes" means taxes collected from purchasers and
32 held in trust under RCW 82.08.050, including taxes imposed under RCW
33 82.08.020 (~~and~~), 82.08.150, and section 2 of this act.

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

37 NEW SECTION. **Sec. 7.** Sections 2 through 5 of this act
38 constitute a new chapter in Title 82 RCW.

1 NEW SECTION. **Sec. 8.** Section 1 of this act applies to taxes
2 levied for collection in 2022 and thereafter.

3 NEW SECTION. **Sec. 9.** Section 2 of this act applies only with
4 respect to rental contracts or agreements entered into on or after
5 January 1, 2022.

6 NEW SECTION. **Sec. 10.** The provisions of RCW 82.32.805 and
7 82.32.808 do not apply to this act.

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