

## WSR 24-09-056

## PROPOSED RULES

## DEPARTMENT OF REVENUE

[Filed April 15, 2024, 12:11 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-06-057.

Title of Rule and Other Identifying Information: New WAC 458-20-27901 Clean alternative fuel vehicles and plug-in hybrid vehicles.

Hearing Location(s): On May 22, 2024, at 10:00 a.m. This meeting will be conducted over the internet/telephone. Please contact Cathy Holder at CathyH@dor.wa.gov for login/dial-in information.

Date of Intended Adoption: June 3, 2024.

Submit Written Comments to: Leslie Mullin, P.O. Box 47453, Olympia, WA 98504-7453, email LeslieMu@dor.wa.gov, fax 360-534-1606, by May 31, 2024.

Assistance for Persons with Disabilities: Contact Julie King, phone 360-704-5733, TTY 800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to publish a new rule that addresses the sales and use tax exemption authorized under RCW 82.08.9999 and 82.12.9999, respectively, for certain clean energy vehicles. This rule is being written to provide additional guidance to buyers and sellers of eligible vehicles so they understand the exemption requirements and limitations.

Reasons Supporting Proposal: The new rule will assist buyers and sellers regarding exemption requirements and limitations in purchasing and/or leasing such qualifying vehicles and ensure they are receiving the correct exemption amount.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060(2).

Statute Being Implemented: RCW 82.08.9999, 82.12.9999.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Leslie Mullin, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1589; Implementation and Enforcement: Heidi Geathers, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1615.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This rule is not a significant legislative rule as defined by RCW 34.05.328.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed new rule provides information and examples for the sales and use tax exemption for certain clean energy vehicles authorized under RCW 82.08.9999 and 82.12.9999, respectively. The proposed new rule does not impose more-than-minor costs on businesses, as it does not propose any new tax rate, tax measure, reporting or recordkeeping requirements not already established by these statutes.

April 15, 2024

OTS-5243.2

NEW SECTION

**WAC 458-20-27901 Clean alternative fuel vehicles and plug-in hybrid vehicles.** (1)(a) **Introduction.** This rule provides information about the retail sales and use tax exemption (exemption) in RCW 82.08.9999 and 82.12.9999 for the purchase, lease, or use of clean alternative fuel vehicles and certain plug-in hybrid vehicles.

(b) **Other rules that may apply.** Readers may want to refer to other rules for additional information, including the following:

(i) WAC 458-20-108 Selling price—Credit card service fees, foreign currency, discounts, patronage dividends.

(ii) WAC 458-20-178 Use tax and the use of tangible personal property.

(iii) WAC 458-20-247 Trade-ins, selling price, sellers' tax measures.

(iv) WAC 458-20-257 Tangible personal property warranties and service contracts.

(c) **Examples.** This rule includes examples that identify certain facts and then state a conclusion. These examples should only be used as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(2) **Definitions.** The following definitions apply throughout this rule:

(a) **"Clean alternative fuel"** means natural gas, propane, hydrogen, or electricity, when used as a fuel in a motor vehicle that meets the California motor vehicle emission standards in Title 13 of the California Code of Regulations, effective January 1, 2019, and the rules of the Washington state department of ecology.

(b) **"Fair market value"** has the same meaning as "value of the article used" in RCW 82.12.010 and, for the purposes of this rule, the fair market value of a leased clean alternative fuel or plug-in hybrid vehicle is generally determined according to the retail selling price at the place of use of vehicles of similar quality and character. The fair market value includes delivery charges or any other services necessary to complete the lease. RCW 82.12.010; WAC 458-20-178.

(c) **"New vehicle"** has the same meaning as "new motor vehicle" in RCW 46.04.358 and means any motor vehicle that:

(i) Is self-propelled;

(ii) Is required to be registered and titled under Title 46 RCW;

(iii) Has not been previously titled to a retail purchaser or lessee; and

(iv) Is not a used vehicle as defined in (h) of this subsection.

(d) **"Plug-in hybrid vehicle"** is a vehicle that uses at least one method of propulsion capable of being reenergized by an external source of electricity and capable of traveling at least 30 miles using only battery power.

(e) **"Qualification period end date"** means August 1, 2025.

(f) **"Qualification period start date"** means August 1, 2019.

(g) **"Selling price"** has the same meaning as used in RCW 82.08.010. Selling price includes charges for delivery and installation, for vehicle accessories purchased as part of the purchase of the vehicle, and any other charges for services necessary to complete the sale. RCW 82.08.010; WAC 458-20-108; 458-20-178; 458-20-247. The selling price does not include the value of any trade-in. However, for purposes of this exemption, the value of any trade-in is added to the selling price to determine exemption eligibility.

(h) **"Used vehicle"** has the same meaning as "used vehicle" in RCW 46.04.660 and means a vehicle that:

(i) Has been sold, bargained, exchanged, given away, or title transferred from the person who first took title to it from the manufacturer or first importer, dealer, or agent of the manufacturer or importer; and

(ii) Is used in a manner to have become what is commonly known as "secondhand."

(3) **Exemption.** A sales and use tax exemption applies to new or used passenger cars, light duty trucks, or medium duty passenger vehicles that meet the power requirements and are within the value limitations described below. A person may not claim this exemption if the exemption under RCW 82.08.993 or 82.12.817(2) is claimed.

(a) **Power requirements.** The exemption applies only to the sale, lease, or use of a vehicle either exclusively powered by a clean alternative fuel or a plug-in hybrid vehicle.

(b) **List of eligible vehicles.** The department of licensing must maintain and publish a list of all vehicle models eligible for this tax exemption and is authorized to issue final rulings on vehicle model eligibility. A seller or lessor is not responsible for repayment of the tax exemption if a vehicle was listed as of the date it was purchased or the lease agreement was signed, and met the other exemption requirements, and is subsequently removed from the list.

(c) **Eligible vehicle values.** The selling price plus the trade-in value of property of like kind for vehicle sales at the time of purchase, or the fair market value for vehicles at the inception of the lease agreement, may not exceed the following amounts:

(i) New vehicles: \$45,000.

(ii) Used vehicles: \$30,000.

(d) **Trade-in values.** When determining whether a new or used vehicle is eligible for the exemption in this rule, the value of any trade-in vehicle must be added to the selling price of the vehicle.

**Example 1.** An automobile dealer sells a new clean alternative fuel vehicle for \$53,000. As part of the sale, the dealer accepts a trade-in vehicle from the buyer with an agreed upon value of \$10,000, resulting in a taxable selling price of \$43,000. The new vehicle does not qualify for the exemption because the selling price, as defined in subsection (2) of this rule, plus the vehicle trade-in value of \$10,000, exceeds the new vehicle value limit of \$45,000.

(e) **Determining amount subject to retail sales tax.** After determining the new or used vehicle qualifies for the exemption, the seller must then determine the eligible exemption amount as described in the table in this subsection (3)(e). The amount subject to retail sales tax is calculated by subtracting the exemption amount and the trade-in allowance, if any, from the selling price. In the case of a lease, the exemption amount applies up to the eligible exemption amount identified in the table in this subsection (3)(e) for lease payments made, and any additional selling price of the leased vehicle if the original

lessee purchases the leased vehicle before the qualification period end date. The exemption amounts are provided below and based on the date of purchase or date of the signed lease agreement.

Date of purchase/Date of signed lease agreement	Exemption amount (New vehicles)	Exemption amount (Used vehicles)
August 1, 2019 - July 31, 2021	\$25,000	Total sales price or \$16,000, whichever is less
August 1, 2021 - July 31, 2023	\$20,000	
August 1, 2023 - July 31, 2025	\$15,000	

**Example 2.** In February 2022, an automobile dealer sells a new clean alternative fuel vehicle for \$44,000, before factoring in a trade-in allowance. The purchaser provides a down payment of \$5,000 and the dealer accepts a trade-in vehicle from the buyer with an agreed upon value of \$7,000 and finances the remaining \$32,000. The new vehicle qualifies for the exemption because the taxable selling price of \$37,000, plus the value of the buyer's trade-in vehicle of \$7,000, does not exceed the \$45,000 limit. To determine the amount of the sale subject to retail sales tax, the dealer will subtract the exemption amount indicated in the chart in subsection (3)(e) of this rule and the trade-in value from the vehicle's selling price. The seller is required to report \$44,000 in gross revenue under the retailing B&O and retail sales tax classifications, then report a \$7,000 trade-in allowance deduction and a \$20,000 clean alternative fuel vehicle deduction from the retail sales tax classification. The retail sales taxable amount is \$17,000. The retailing B&O taxable amount is \$44,000.

**Example 3.** On March 1, 2023, an automobile dealer (who is assigned a monthly tax reporting frequency) leased a new clean alternative fuel vehicle with a fair market value of \$42,000. The new leased vehicle qualifies for the exemption because its fair market value is \$45,000 or less. The maximum allowable exemption amount is \$20,000. The lease covers a 36-month period, and the monthly lease payment is \$500. The lessee decides to purchase the vehicle following the expiration of the lease on March 1, 2026, for \$24,000. Because the lessee paid \$18,000 in total lease payments prior to purchasing the vehicle, the remaining available exemption is \$2,000, which may be deducted from the selling price of \$24,000, resulting in a retail sales taxable amount of \$22,000.

For the entire 36-month lease period, the seller is required to report \$500 in gross revenue from monthly vehicle lease payments under the retailing B&O and retail sales tax classifications on each of its monthly excise tax returns, then report a \$500 deduction from the retail sales tax classification, resulting in a retail sales taxable amount of \$0. The seller may not claim a deduction for B&O tax purposes, resulting in a retailing B&O taxable amount of \$500. For the March 2026 return, the seller is required to report \$24,000 in gross revenue under the retailing B&O and retail sales tax classifications, then report a \$2,000 clean alternative fuel vehicle deduction from the retail sales tax classification. The retail sales taxable amount is \$22,000. The retailing B&O taxable amount is \$24,000.

(f) **Exemption eligibility dates.**

(i) **Sales.** For vehicle sales, the sale must be made between August 1, 2019, and July 31, 2025, to qualify for the exemption. Sales of vehicles after July 31, 2025, do not qualify for the exemption.

(ii) **Leases.** For vehicle leases, the lease agreement must be signed between August 1, 2019, and July 31, 2025, to qualify for the

exemption. Lease agreements signed after July 31, 2025, do not qualify for the exemption. However, leases that qualified for the exemption before August 1, 2025, will continue to receive the exemption on any lease payments due through the remainder of the lease through July 31, 2028. RCW 82.08.9999(7).

**Example 4.** A lessee signs a four-year vehicle lease agreement for an eligible vehicle on June 15, 2025, with the first payment due on July 15, 2025, and the last payment due on June 15, 2029. Because this exemption expires on August 1, 2028, the retail sales tax exemption will be applied to each lease payment, beginning July 15, 2025, and continue until the earlier of July 31, 2028, or until the available exemption amount is reduced to zero.

(4) **Recordkeeping.** The seller, or lessor in the case of a lease, of any eligible vehicle, new or used, must keep the following records necessary for the department of revenue to verify eligibility:

- (a) Vehicle make, model, and year;
- (b) Whether the vehicle was sold or leased;
- (c) Selling price for purchased vehicles, or fair market value at the inception of the lease for leased vehicles;
- (d) Date of sale or start date of lease;
- (e) Terms of lease, including monthly lease payment and length of lease; and
- (f) Total amount qualifying for the incentive claimed for each vehicle, including the future monthly amount to be claimed for each leased vehicle.