
HOUSE BILL 1422

State of Washington 61st Legislature 2009 Regular Session

By Representatives Conway, Hasegawa, Springer, Santos, and Kenney

Read first time 01/21/09. Referred to Committee on Finance.

1 AN ACT Relating to the taxation of brokered natural gas and
2 manufactured gas; amending RCW 82.12.010 and 82.14.230; and creating a
3 new section.

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

5 **Sec. 1.** RCW 82.12.010 and 2006 c 301 s 3 are each amended to read
6 as follows:

7 For the purposes of this chapter:

8 (1) "Purchase price" means the same as sales price as defined in
9 RCW 82.08.010.

10 (2)(a) "Value of the article used" shall be the purchase price for
11 the article of tangible personal property, the use of which is taxable
12 under this chapter. The term also includes, in addition to the
13 purchase price, the amount of any tariff or duty paid with respect to
14 the importation of the article used. In case the article used is
15 acquired by lease or by gift or is extracted, produced, or manufactured
16 by the person using the same or is sold under conditions wherein the
17 purchase price does not represent the true value thereof, the value of
18 the article used shall be determined as nearly as possible according to

1 the retail selling price at place of use of similar products of like
2 quality and character under such rules as the department may prescribe.

3 (b) In case the articles used are acquired by bailment, the value
4 of the use of the articles so used shall be in an amount representing
5 a reasonable rental for the use of the articles so bailed, determined
6 as nearly as possible according to the value of such use at the places
7 of use of similar products of like quality and character under such
8 rules as the department of revenue may prescribe. In case any such
9 articles of tangible personal property are used in respect to the
10 construction, repairing, decorating, or improving of, and which become
11 or are to become an ingredient or component of, new or existing
12 buildings or other structures under, upon, or above real property of or
13 for the United States, any instrumentality thereof, or a county or city
14 housing authority created pursuant to chapter 35.82 RCW, including the
15 installing or attaching of any such articles therein or thereto,
16 whether or not such personal property becomes a part of the realty by
17 virtue of installation, then the value of the use of such articles so
18 used shall be determined according to the retail selling price of such
19 articles, or in the absence of such a selling price, as nearly as
20 possible according to the retail selling price at place of use of
21 similar products of like quality and character or, in the absence of
22 either of these selling price measures, such value may be determined
23 upon a cost basis, in any event under such rules as the department of
24 revenue may prescribe.

25 (c) In the case of articles owned by a user engaged in business
26 outside the state which are brought into the state for no more than one
27 hundred eighty days in any period of three hundred sixty-five
28 consecutive days and which are temporarily used for business purposes
29 by the person in this state, the value of the article used shall be an
30 amount representing a reasonable rental for the use of the articles,
31 unless the person has paid tax under this chapter or chapter 82.08 RCW
32 upon the full value of the article used, as defined in (a) of this
33 subsection.

34 (d) In the case of articles manufactured or produced by the user
35 and used in the manufacture or production of products sold or to be
36 sold to the department of defense of the United States, the value of
37 the articles used shall be determined according to the value of the
38 ingredients of such articles.

1 (e) In the case of an article manufactured or produced for purposes
2 of serving as a prototype for the development of a new or improved
3 product, the value of the article used shall be determined by: (i) The
4 retail selling price of such new or improved product when first offered
5 for sale; or (ii) the value of materials incorporated into the
6 prototype in cases in which the new or improved product is not offered
7 for sale.

8 (f) In the case of an article purchased with a direct pay permit
9 under RCW 82.32.087, the value of the article used shall be determined
10 by the purchase price of such article if, but for the use of the direct
11 pay permit, the transaction would have been subject to sales tax;

12 (3) "Value of the service used" means the purchase price for the
13 service, the use of which is taxable under this chapter. If the
14 service is received by gift or under conditions wherein the purchase
15 price does not represent the true value thereof, the value of the
16 service used shall be determined as nearly as possible according to the
17 retail selling price at place of use of similar services of like
18 quality and character under rules the department may prescribe;

19 (4) "Value of the extended warranty used" means the purchase price
20 for the extended warranty, the use of which is taxable under this
21 chapter. If the extended warranty is received by gift or under
22 conditions wherein the purchase price does not represent the true value
23 of the extended warranty, the value of the extended warranty used shall
24 be determined as nearly as possible according to the retail selling
25 price at place of use of similar extended warranties of like quality
26 and character under rules the department may prescribe;

27 (5) "Use," "used," "using," or "put to use" shall have their
28 ordinary meaning, and shall mean:

29 (a) With respect to tangible personal property, except for natural
30 gas and manufactured gas, the first act within this state by which the
31 taxpayer takes or assumes dominion or control over the article of
32 tangible personal property (as a consumer), and include installation,
33 storage, withdrawal from storage, distribution, or any other act
34 preparatory to subsequent actual use or consumption within this state;

35 (b) With respect to a service defined in RCW 82.04.050(2)(a), the
36 first act within this state after the service has been performed by
37 which the taxpayer takes or assumes dominion or control over the
38 article of tangible personal property upon which the service was

1 performed (as a consumer), and includes installation, storage,
2 withdrawal from storage, distribution, or any other act preparatory to
3 subsequent actual use or consumption of the article within this state;
4 (~~and~~)

5 (c) With respect to an extended warranty, the first act within this
6 state after the extended warranty has been acquired by which the
7 taxpayer takes or assumes dominion or control over the article of
8 tangible personal property to which the extended warranty applies, and
9 includes installation, storage, withdrawal from storage, distribution,
10 or any other act preparatory to subsequent actual use or consumption of
11 the article within this state; and

12 (d) With respect to natural gas or manufactured gas, the use of
13 which is taxable under RCW 82.12.022, including gas that is also
14 taxable under the authority of RCW 82.14.230, the first act within this
15 state by which the taxpayer consumes the gas by burning the gas or
16 storing the gas in the taxpayer's own facilities for later consumption
17 by the taxpayer;

18 (6) "Taxpayer" and "purchaser" include all persons included within
19 the meaning of the word "buyer" and the word "consumer" as defined in
20 chapters 82.04 and 82.08 RCW;

21 (7)(a)(i) Except as provided in (a)(ii) of this subsection (7),
22 "retailer" means every seller as defined in RCW 82.08.010 and every
23 person engaged in the business of selling tangible personal property at
24 retail and every person required to collect from purchasers the tax
25 imposed under this chapter.

26 (ii) "Retailer" does not include a professional employer
27 organization when a covered employee coemployed with the client under
28 the terms of a professional employer agreement engages in activities
29 that constitute a sale of tangible personal property, extended
30 warranty, or a sale of any service defined as a retail sale in RCW
31 82.04.050 (2)(a) or (3)(a) that is subject to the tax imposed by this
32 chapter. In such cases, the client, and not the professional employer
33 organization, is deemed to be the retailer and is responsible for
34 collecting and remitting the tax imposed by this chapter.

35 (b) For the purposes of (a) of this subsection, the terms "client,"
36 "covered employee," "professional employer agreement," and
37 "professional employer organization" have the same meanings as in RCW
38 82.04.540;

1 (8) "Extended warranty" has the same meaning as in RCW
2 82.04.050(7);

3 (9) The meaning ascribed to words and phrases in chapters 82.04 and
4 82.08 RCW, insofar as applicable, shall have full force and effect with
5 respect to taxes imposed under the provisions of this chapter.
6 "Consumer," in addition to the meaning ascribed to it in chapters 82.04
7 and 82.08 RCW insofar as applicable, shall also mean any person who
8 distributes or displays, or causes to be distributed or displayed, any
9 article of tangible personal property, except newspapers, the primary
10 purpose of which is to promote the sale of products or services. With
11 respect to property distributed to persons within this state by a
12 consumer as defined in this subsection (9), the use of the property
13 shall be deemed to be by such consumer.

14 **Sec. 2.** RCW 82.14.230 and 1989 c 384 s 2 are each amended to read
15 as follows:

16 (1) The governing body of any city, while not required by
17 legislative mandate to do so, may, by resolution or ordinance for the
18 purposes authorized by this chapter, fix and impose on every person a
19 use tax for the privilege of using natural gas or manufactured gas in
20 the city as a consumer.

21 (2) The tax shall be imposed in an amount equal to the value of the
22 article used by the taxpayer multiplied by the rate in effect for the
23 tax on natural gas businesses under RCW 35.21.870 in the city in which
24 the article is used. The "value of the article used," does not include
25 any amounts that are paid for the hire or use of a natural gas business
26 in transporting the gas subject to tax under this subsection if those
27 amounts are subject to tax under RCW 35.21.870.

28 (3) The tax imposed under this section shall not apply to the use
29 of natural or manufactured gas if the person who sold the gas to the
30 consumer has paid a tax under RCW 35.21.870 with respect to the gas for
31 which exemption is sought under this subsection.

32 (4) There shall be a credit against the tax levied under this
33 section in an amount equal to any tax paid by:

34 (a) The person who sold the gas to the consumer when that tax is a
35 gross receipts tax similar to that imposed pursuant to RCW 35.21.870 by
36 another ((state)) municipality or other unit of local government with

1 respect to the gas for which a credit is sought under this subsection;
2 or

3 (b) The person consuming the gas upon which a use tax similar to
4 the tax imposed by this section was paid to another (~~state~~)
5 municipality or other unit of local government with respect to the gas
6 for which a credit is sought under this subsection.

7 (5) The use tax hereby imposed shall be paid by the consumer. The
8 administration and collection of the tax hereby imposed shall be
9 pursuant to RCW 82.14.050.

10 NEW SECTION. **Sec. 3.** The provisions of this act apply both
11 prospectively and retroactively to use taxes due pursuant to RCW
12 82.14.230.

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