

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 3179

Chapter 127, Laws of 2010

61st Legislature
2010 Regular Session

LOCAL EXCISE TAXES

EFFECTIVE DATE: 06/10/10

Passed by the House March 9, 2010
Yeas 58 Nays 39

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate March 5, 2010
Yeas 28 Nays 18

BRAD OWEN

President of the Senate

Approved March 19, 2010, 1:43 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 3179** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

March 19, 2010

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 3179

AS AMENDED BY THE SENATE

Passed Legislature - 2010 Regular Session

State of Washington 61st Legislature 2010 Regular Session

By House Finance (originally sponsored by Representatives Springer and Ericks)

READ FIRST TIME 02/09/10.

1 AN ACT Relating to local excise tax provisions for counties and
2 cities; amending RCW 82.14.450, 82.14.460, 82.14.340, 82.12.010,
3 82.14.230, and 9.46.113; and repealing 2009 c 551 s 12 (uncodified).

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

5 **Sec. 1.** RCW 82.14.450 and 2009 c 551 s 1 are each amended to read
6 as follows:

7 (1) A county legislative authority may submit an authorizing
8 proposition to the county voters at a primary or general election and,
9 if the proposition is approved by a majority of persons voting, impose
10 a sales and use tax in accordance with the terms of this chapter. The
11 title of each ballot measure must clearly state the purposes for which
12 the proposed sales and use tax will be used. (~~Funds raised under this
13 tax shall not supplant existing funds used for these purposes, except
14 as follows: Up to one hundred percent may be used to supplant existing
15 funding in calendar year 2010; up to eighty percent may be used to
16 supplant existing funding in calendar year 2011; up to sixty percent
17 may be used to supplant existing funding in calendar year 2012; up to
18 forty percent may be used to supplant existing funding in calendar year
19 2013; and up to twenty percent may be used to supplant existing funding~~)

1 ~~in calendar year 2014. For purposes of this subsection, existing funds~~
2 ~~means the actual operating expenditures for the calendar year in which~~
3 ~~the ballot measure is approved by voters. Actual operating~~
4 ~~expenditures excludes lost federal funds, lost or expired state grants~~
5 ~~or loans, extraordinary events not likely to reoccur, changes in~~
6 ~~contract provisions beyond the control of the county or city receiving~~
7 ~~the services, and major nonrecurring capital expenditures.))~~ The rate
8 of tax under this section may not exceed three-tenths of one percent of
9 the selling price in the case of a sales tax, or value of the article
10 used, in the case of a use tax.

11 (2)(a) A city legislative authority may submit an authorizing
12 proposition to the city voters at a primary or general election and, if
13 the proposition is approved by a majority of persons voting, impose a
14 sales and use tax in accordance with the terms of this chapter. The
15 title of each ballot measure must clearly state the purposes for which
16 the proposed sales and use tax will be used. The rate of tax under
17 this subsection may not exceed one-tenth of one percent of the selling
18 price in the case of a sales tax, or value of the article used, in the
19 case of a use tax. A city may not begin imposing a tax approved by the
20 voters under this subsection prior to January 1, 2011.

21 (b) If a county adopts an ordinance or resolution to submit a
22 ballot proposition to the voters to impose the sales and use tax under
23 subsection (1) of this section prior to a city within the county
24 adopting an ordinance or resolution to submit a ballot proposition to
25 the voters to impose the tax under this subsection, the rate of tax by
26 the city under this subsection may not exceed an amount that would
27 cause the total county and city tax rate under this section to exceed
28 three-tenths of one percent. This subsection (2)(b) also applies if
29 the county and city adopt an ordinance or resolution to impose sales
30 and use taxes under this section on the same date.

31 (c) If the city adopts an ordinance or resolution to submit a
32 ballot proposition to the voters to impose the sales and use tax under
33 this subsection prior to the county in which the city is located, the
34 county must provide a credit against its tax under subsection (1) of
35 this section for the city tax under this subsection to the extent the
36 total county and city tax rate under this section would exceed three-
37 tenths of one percent.

1 (3) The tax authorized in this section is in addition to any other
2 taxes authorized by law and must be collected from those persons who
3 are taxable by the state under chapters 82.08 and 82.12 RCW upon the
4 occurrence of any taxable event within the county.

5 (~~(3)~~) (4) The retail sale or use of motor vehicles, and the lease
6 of motor vehicles for up to the first thirty-six months of the lease,
7 are exempt from tax imposed under this section.

8 (~~(4)~~) (5) One-third of all money received under this section must
9 be used solely for criminal justice purposes, fire protection purposes,
10 or both. For the purposes of this subsection, "criminal justice
11 purposes" has the same meaning as provided in RCW 82.14.340.

12 (~~(5)~~) (6) Money received by a county under subsection (1) of this
13 section must be shared between the county and the cities as follows:
14 Sixty percent must be retained by the county and forty percent must be
15 distributed on a per capita basis to cities in the county.

16 (7) Tax proceeds received by a city imposing a tax under this
17 section must be shared between the county and city as follows: Fifteen
18 percent must be distributed to the county and eighty-five percent is
19 retained by the city.

20 **Sec. 2.** RCW 82.14.460 and 2009 c 551 s 2 are each amended to read
21 as follows:

22 (1)(a) A county legislative authority may authorize, fix, and
23 impose a sales and use tax in accordance with the terms of this
24 chapter.

25 (b) If a county with a population over eight hundred thousand has
26 not imposed the tax authorized under this subsection by January 1,
27 2011, any city with a population over thirty thousand located in that
28 county may authorize, fix, and impose the sales and use tax in
29 accordance with the terms of this chapter. The county must provide a
30 credit against its tax for the full amount of tax imposed under this
31 subsection (1)(b) by any city located in that county if the county
32 imposes the tax after January 1, 2011.

33 (2) The tax authorized in this section (~~shall be~~) is in addition
34 to any other taxes authorized by law and (~~shall~~) must be collected
35 from those persons who are taxable by the state under chapters 82.08
36 and 82.12 RCW upon the occurrence of any taxable event within the
37 county for a county's tax and within a city for a city's tax. The rate

1 of tax (~~shall~~) equals one-tenth of one percent of the selling price
2 in the case of a sales tax, or value of the article used, in the case
3 of a use tax.

4 (3) Moneys collected under this section (~~shall~~) must be used
5 solely for the purpose of providing for the operation or delivery of
6 chemical dependency or mental health treatment programs and services
7 and for the operation or delivery of therapeutic court programs and
8 services. For the purposes of this section, "programs and services"
9 includes, but is not limited to, treatment services, case management,
10 and housing that are a component of a coordinated chemical dependency
11 or mental health treatment program or service.

12 (4) All moneys collected under this section must be used solely for
13 the purpose of providing new or expanded programs and services as
14 provided in this section, except a portion of moneys collected under
15 this section may be used to supplant existing funding for these
16 purposes in any county or city as follows: Up to fifty percent may be
17 used to supplant existing funding in calendar year 2010; up to forty
18 percent may be used to supplant existing funding in calendar year 2011;
19 up to thirty percent may be used to supplant existing funding in
20 calendar year 2012; up to twenty percent may be used to supplant
21 existing funding in calendar year 2013; and up to ten percent may be
22 used to supplant existing funding in calendar year 2014.

23 (5) Nothing in this section may be interpreted to prohibit the use
24 of moneys collected under this section for the replacement of lapsed
25 federal funding previously provided for the operation or delivery of
26 services and programs as provided in this section.

27 **Sec. 3.** RCW 82.14.340 and 1995 c 309 s 1 are each amended to read
28 as follows:

29 (1) The legislative authority of any county may fix and impose a
30 sales and use tax in accordance with the terms of this chapter,
31 provided that such sales and use tax is subject to repeal by
32 referendum, using the procedures provided in RCW 82.14.036. The
33 referendum procedure provided in RCW 82.14.036 is the exclusive method
34 for subjecting any county sales and use tax ordinance or resolution to
35 a referendum vote.

36 (2) The tax authorized in this section (~~shall be~~) is in addition
37 to any other taxes authorized by law and (~~shall~~) must be collected

1 from those persons who are taxable by the state pursuant to chapters
2 82.08 and 82.12 RCW upon the occurrence of any taxable event within
3 such county. The rate of tax (~~shall~~) equals one-tenth of one percent
4 of the selling price (in the case of a sales tax) or value of the
5 article used (in the case of a use tax).

6 (3) When distributing moneys collected under this section, the
7 state treasurer (~~shall~~) must distribute ten percent of the moneys to
8 the county in which the tax was collected. The remainder of the moneys
9 collected under this section (~~shall~~) must be distributed to the
10 county and the cities within the county ratably based on population as
11 last determined by the office of financial management. In making the
12 distribution based on population, the county (~~shall~~) must receive
13 that proportion that the unincorporated population of the county bears
14 to the total population of the county and each city (~~shall~~) must
15 receive that proportion that the city incorporated population bears to
16 the total county population.

17 (4) Moneys received from any tax imposed under this section
18 (~~shall~~) must be expended (~~exclusively~~) for criminal justice
19 purposes (~~and shall not be used to replace or supplant existing~~
20 ~~funding~~). Criminal justice purposes are defined as activities that
21 substantially assist the criminal justice system, which may include
22 circumstances where ancillary benefit to the civil justice system
23 occurs, and which includes domestic violence services such as those
24 provided by domestic violence programs, community advocates, and legal
25 advocates, as defined in RCW 70.123.020. (~~Existing funding for~~
26 ~~purposes of this subsection is defined as calendar year 1989 actual~~
27 ~~operating expenditures for criminal justice purposes. Calendar year~~
28 ~~1989 actual operating expenditures for criminal justice purposes~~
29 ~~exclude the following: Expenditures for extraordinary events not~~
30 ~~likely to reoccur, changes in contract provisions for criminal justice~~
31 ~~services, beyond the control of the local jurisdiction receiving the~~
32 ~~services, and major nonrecurring capital expenditures.))~~

33 (5) In the expenditure of funds for criminal justice purposes as
34 provided in this section, cities and counties, or any combination
35 thereof, are expressly authorized to participate in agreements,
36 pursuant to chapter 39.34 RCW, to jointly expend funds for criminal
37 justice purposes of mutual benefit. Such criminal justice purposes of
38 mutual benefit include, but are not limited to, the construction,

1 improvement, and expansion of jails, court facilities, (~~and~~) juvenile
2 justice facilities, and services with ancillary benefits to the civil
3 justice system.

4 **Sec. 4.** RCW 82.12.010 and 2009 c 535 s 304 are each amended to
5 read as follows:

6 For the purposes of this chapter:

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

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

21 (b) In case the articles used are acquired by bailment, the value
22 of the use of the articles so used (~~shall~~) must be in an amount
23 representing a reasonable rental for the use of the articles so bailed,
24 determined as nearly as possible according to the value of such use at
25 the places of use of similar products of like quality and character
26 under such rules as the department of revenue may prescribe. In case
27 any such articles of tangible personal property are used in respect to
28 the construction, repairing, decorating, or improving of, and which
29 become or are to become an ingredient or component of, new or existing
30 buildings or other structures under, upon, or above real property of or
31 for the United States, any instrumentality thereof, or a county or city
32 housing authority created pursuant to chapter 35.82 RCW, including the
33 installing or attaching of any such articles therein or thereto,
34 whether or not such personal property becomes a part of the realty by
35 virtue of installation, then the value of the use of such articles so
36 used (~~shall be~~) is determined according to the retail selling price
37 of such articles, or in the absence of such a selling price, as nearly

1 as possible according to the retail selling price at place of use of
2 similar products of like quality and character or, in the absence of
3 either of these selling price measures, such value may be determined
4 upon a cost basis, in any event under such rules as the department of
5 revenue may prescribe.

6 (c) In the case of articles owned by a user engaged in business
7 outside the state which are brought into the state for no more than one
8 hundred eighty days in any period of three hundred sixty-five
9 consecutive days and which are temporarily used for business purposes
10 by the person in this state, the value of the article used (~~shall~~)
11 must be an amount representing a reasonable rental for the use of the
12 articles, unless the person has paid tax under this chapter or chapter
13 82.08 RCW upon the full value of the article used, as defined in (a) of
14 this subsection.

15 (d) In the case of articles manufactured or produced by the user
16 and used in the manufacture or production of products sold or to be
17 sold to the department of defense of the United States, the value of
18 the articles used (~~shall be~~) is determined according to the value of
19 the ingredients of such articles.

20 (e) In the case of an article manufactured or produced for purposes
21 of serving as a prototype for the development of a new or improved
22 product, the value of the article used (~~shall be~~) is determined by:
23 (i) The retail selling price of such new or improved product when first
24 offered for sale; or (ii) the value of materials incorporated into the
25 prototype in cases in which the new or improved product is not offered
26 for sale.

27 (f) In the case of an article purchased with a direct pay permit
28 under RCW 82.32.087, the value of the article used (~~shall be~~) is
29 determined by the purchase price of such article if, but for the use of
30 the direct pay permit, the transaction would have been subject to sales
31 tax;

32 (3) "Value of the service used" means the purchase price for the
33 digital automated service or other service, the use of which is taxable
34 under this chapter. If the service is received by gift or under
35 conditions wherein the purchase price does not represent the true value
36 thereof, the value of the service used (~~shall be~~) is determined as
37 nearly as possible according to the retail selling price at place of

1 use of similar services of like quality and character under rules the
2 department may prescribe;

3 (4) "Value of the extended warranty used" means the purchase price
4 for the extended warranty, the use of which is taxable under this
5 chapter. If the extended warranty is received by gift or under
6 conditions wherein the purchase price does not represent the true value
7 of the extended warranty, the value of the extended warranty used
8 (~~shall be~~) is determined as nearly as possible according to the
9 retail selling price at place of use of similar extended warranties of
10 like quality and character under rules the department may prescribe;

11 (5) "Value of the digital good or digital code used" means the
12 purchase price for the digital good or digital code, the use of which
13 is taxable under this chapter. If the digital good or digital code is
14 acquired other than by purchase, the value of the digital good or
15 digital code must be determined as nearly as possible according to the
16 retail selling price at place of use of similar digital goods or
17 digital codes of like quality and character under rules the department
18 may prescribe;

19 (6) "Use," "used," "using," or "put to use" have their ordinary
20 meaning, and mean:

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

27 (b) With respect to a service defined in RCW 82.04.050(2)(a), the
28 first act within this state after the service has been performed by
29 which the taxpayer takes or assumes dominion or control over the
30 article of tangible personal property upon which the service was
31 performed (as a consumer), and includes installation, storage,
32 withdrawal from storage, distribution, or any other act preparatory to
33 subsequent actual use or consumption of the article within this state;

34 (c) With respect to an extended warranty, the first act within this
35 state after the extended warranty has been acquired by which the
36 taxpayer takes or assumes dominion or control over the article of
37 tangible personal property to which the extended warranty applies, and

1 includes installation, storage, withdrawal from storage, distribution,
2 or any other act preparatory to subsequent actual use or consumption of
3 the article within this state;

4 (d) With respect to a digital good or digital code, the first act
5 within this state by which the taxpayer, as a consumer, views,
6 accesses, downloads, possesses, stores, opens, manipulates, or
7 otherwise uses or enjoys the digital good or digital code;

8 (e) With respect to a digital automated service, the first act
9 within this state by which the taxpayer, as a consumer, uses, enjoys,
10 or otherwise receives the benefit of the service;

11 (f) With respect to a service defined as a retail sale in RCW
12 82.04.050(6)(b), the first act within this state by which the taxpayer,
13 as a consumer, accesses the prewritten computer software; (~~and~~)

14 (g) With respect to a service defined as a retail sale in RCW
15 82.04.050(2)(g), the first act within this state after the service has
16 been performed by which the taxpayer, as a consumer, views, accesses,
17 downloads, possesses, stores, opens, manipulates, or otherwise uses or
18 enjoys the digital good upon which the service was performed; and

19 (h) With respect to natural gas or manufactured gas, the use of
20 which is taxable under RCW 82.12.022, including gas that is also
21 taxable under the authority of RCW 82.14.230, the first act within this
22 state by which the taxpayer consumes the gas by burning the gas or
23 storing the gas in the taxpayer's own facilities for later consumption
24 by the taxpayer;

25 (7) "Taxpayer" and "purchaser" include all persons included within
26 the meaning of the word "buyer" and the word "consumer" as defined in
27 chapters 82.04 and 82.08 RCW;

28 (8)(a)(i) Except as provided in (a)(ii) of this subsection (8),
29 "retailer" means every seller as defined in RCW 82.08.010 and every
30 person engaged in the business of selling tangible personal property at
31 retail and every person required to collect from purchasers the tax
32 imposed under this chapter.

33 (ii) "Retailer" does not include a professional employer
34 organization when a covered employee coemployed with the client under
35 the terms of a professional employer agreement engages in activities
36 that constitute a sale of tangible personal property, extended
37 warranty, digital good, digital code, or a sale of any digital
38 automated service or service defined as a retail sale in RCW 82.04.050

1 (2)(a) or (g), (3)(a), or (6)(b) that is subject to the tax imposed by
2 this chapter. In such cases, the client, and not the professional
3 employer organization, is deemed to be the retailer and is responsible
4 for collecting and remitting the tax imposed by this chapter.

5 (b) For the purposes of (a) of this subsection, the terms "client,"
6 "covered employee," "professional employer agreement," and
7 "professional employer organization" have the same meanings as in RCW
8 82.04.540;

9 (9) "Extended warranty" has the same meaning as in RCW
10 82.04.050(7);

11 (10) The meaning ascribed to words and phrases in chapters 82.04
12 and 82.08 RCW, insofar as applicable, (~~shall have~~) has full force and
13 effect with respect to taxes imposed under the provisions of this
14 chapter. "Consumer," in addition to the meaning ascribed to it in
15 chapters 82.04 and 82.08 RCW insofar as applicable, (~~shall~~) also
16 means any person who distributes or displays, or causes to be
17 distributed or displayed, any article of tangible personal property,
18 except newspapers, the primary purpose of which is to promote the sale
19 of products or services. With respect to property distributed to
20 persons within this state by a consumer as defined in this subsection
21 (10), the use of the property (~~shall be~~) is deemed to be by such
22 consumer.

23 **Sec. 5.** RCW 82.14.230 and 1989 c 384 s 2 are each amended to read
24 as follows:

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

30 (2) The tax (~~shall be~~) is imposed in an amount equal to the value
31 of the article used by the taxpayer multiplied by the rate in effect
32 for the tax on natural gas businesses under RCW 35.21.870 in the city
33 in which the article is used. The "value of the article used," does
34 not include any amounts that are paid for the hire or use of a natural
35 gas business in transporting the gas subject to tax under this
36 subsection if those amounts are subject to tax under RCW 35.21.870.

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

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

7 (a) The person who sold the gas to the consumer when that tax is a
8 gross receipts tax similar to that imposed pursuant to RCW 35.21.870 by
9 another (~~state~~) municipality or other unit of local government with
10 respect to the gas for which a credit is sought under this subsection;
11 or

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

16 (5) The use tax (~~hereby~~) imposed (~~shall~~) must be paid by the
17 consumer. The administration and collection of the tax (~~hereby~~)
18 imposed (~~shall be~~) is pursuant to RCW 82.14.050.

19 **Sec. 6.** RCW 9.46.113 and 1975 1st ex.s. c 166 s 11 are each
20 amended to read as follows:

21 Any county, city or town which collects a tax on gambling
22 activities authorized pursuant to RCW 9.46.110 (~~shall~~) must use the
23 revenue from such tax primarily for the purpose of (~~enforcement of the~~
24 ~~provisions of this chapter by the county, city or town law enforcement~~
25 ~~agency~~) public safety.

26 NEW SECTION. **Sec. 7.** 2009 c 551 s 12 (uncodified) is hereby
27 repealed.

Passed by the House March 9, 2010.

Passed by the Senate March 5, 2010.

Approved by the Governor March 19, 2010.

Filed in Office of Secretary of State March 19, 2010.