
SENATE BILL 6847

State of Washington

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By Senators Pridemore, Prentice, Regala, Keiser, Kline, Fraser, Berkey, Murray, Shin, and Kohl-Welles

Read first time 02/05/10. Referred to Committee on Ways & Means.

1 AN ACT Relating to the use taxation of natural and manufactured
2 gas; and amending RCW 82.12.010.

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

4 **Sec. 1.** 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~~) means 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~~) must be determined as nearly as possible
18 according to the retail selling price at place of use of similar

1 products of like quality and character under such rules as the
2 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~~) must be in an amount
5 representing a reasonable rental for the use of the articles so bailed,
6 determined as nearly as possible according to the value of such use at
7 the places of use of similar products of like quality and character
8 under such rules as the department of revenue may prescribe. In case
9 any such articles of tangible personal property are used in respect to
10 the construction, repairing, decorating, or improving of, and which
11 become 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~~) must be determined according to the retail selling price
19 of such articles, or in the absence of such a selling price, as nearly
20 as 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~~)
30 must be an amount representing a reasonable rental for the use of the
31 articles, unless the person has paid tax under this chapter or chapter
32 82.08 RCW upon the full value of the article used, as defined in (a) of
33 this 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~~) must be determined according to the value
38 of the 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)~~) must be determined by:
4 (i) The retail selling price of such new or improved product when first
5 offered 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)~~) must be
10 determined by the purchase price of such article if, but for the use of
11 the direct pay permit, the transaction would have been subject to sales
12 tax;

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

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

29 (5) "Value of the digital good or digital code used" means the
30 purchase price for the digital good or digital code, the use of which
31 is taxable under this chapter. If the digital good or digital code is
32 acquired other than by purchase, the value of the digital good or
33 digital code must be determined as nearly as possible according to the
34 retail selling price at place of use of similar digital goods or
35 digital codes of like quality and character under rules the department
36 may prescribe;

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

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

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

14 (c) With respect to an extended warranty, the first act within this
15 state after the extended warranty has been acquired by which the
16 taxpayer takes or assumes dominion or control over the article of
17 tangible personal property to which the extended warranty applies, and
18 includes installation, storage, withdrawal from storage, distribution,
19 or any other act preparatory to subsequent actual use or consumption of
20 the article within this state;

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

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

28 (f) With respect to a service defined as a retail sale in RCW
29 82.04.050(6)(b), the first act within this state by which the taxpayer,
30 as a consumer, accesses the prewritten computer software; (~~and~~)

31 (g) With respect to a service defined as a retail sale in RCW
32 82.04.050(2)(g), the first act within this state after the service has
33 been performed by which the taxpayer, as a consumer, views, accesses,
34 downloads, possesses, stores, opens, manipulates, or otherwise uses or
35 enjoys the digital good upon which the service was performed; and

36 (h) With respect to natural gas or manufactured gas, the use of
37 which is taxable under RCW 82.12.022, including gas that is also
38 taxable under the authority of RCW 82.14.230, the first act within this

1 state by which the taxpayer consumes the gas by burning the gas or
2 storing the gas in the taxpayer's own facilities for later consumption
3 by the taxpayer;

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

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

12 (ii) "Retailer" does not include a professional employer
13 organization when a covered employee coemployed with the client under
14 the terms of a professional employer agreement engages in activities
15 that constitute a sale of tangible personal property, extended
16 warranty, digital good, digital code, or a sale of any digital
17 automated service or service defined as a retail sale in RCW 82.04.050
18 (2) (a) or (g), (3)(a), or (6)(b) that is subject to the tax imposed by
19 this chapter. In such cases, the client, and not the professional
20 employer organization, is deemed to be the retailer and is responsible
21 for collecting and remitting the tax imposed by this chapter.

22 (b) For the purposes of (a) of this subsection, the terms "client,"
23 "covered employee," "professional employer agreement," and
24 "professional employer organization" have the same meanings as in RCW
25 82.04.540;

26 (9) "Extended warranty" has the same meaning as in RCW
27 82.04.050(7);

28 (10) The meaning ascribed to words and phrases in chapters 82.04
29 and 82.08 RCW, insofar as applicable, (~~shall have~~) has full force and
30 effect with respect to taxes imposed under the provisions of this
31 chapter. "Consumer," in addition to the meaning ascribed to it in
32 chapters 82.04 and 82.08 RCW insofar as applicable, (~~shall~~) also
33 means any person who distributes or displays, or causes to be
34 distributed or displayed, any article of tangible personal property,
35 except newspapers, the primary purpose of which is to promote the sale
36 of products or services. With respect to property distributed to
37 persons within this state by a consumer as defined in this subsection

1 (10), the use of the property (~~shall be~~) is deemed to be by such
2 consumer.

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