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HOUSE BILL 2637

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State of Washington

61st Legislature

2010 Regular Session

By Representatives Hunter and Moeller

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1 AN ACT Relating to local government taxation; amending RCW  
2 82.14.450, 82.14.450, 82.14.460, 82.14.460, 84.55.050, 82.46.035,  
3 82.12.010, and 82.14.230; reenacting and amending RCW 82.46.035; adding  
4 a new section to chapter 35.21 RCW; adding a new chapter to Title 36  
5 RCW; providing effective dates; and providing expiration dates.

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

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

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

1 ~~supplant existing funding in calendar year 2012; up to forty percent~~  
2 ~~may be used to supplant existing funding in calendar year 2013; and up~~  
3 ~~to twenty percent may be used to supplant existing funding in calendar~~  
4 ~~year 2014. For purposes of this subsection, existing funds means the~~  
5 ~~actual operating expenditures for the calendar year in which the ballot~~  
6 ~~measure is approved by voters. Actual operating expenditures excludes~~  
7 ~~lost federal funds, lost or expired state grants or loans,~~  
8 ~~extraordinary events not likely to reoccur, changes in contract~~  
9 ~~provisions beyond the control of the county or city receiving the~~  
10 ~~services, and major nonrecurring capital expenditures.))~~ The rate of  
11 tax under this section may not exceed three-tenths of one percent of  
12 the selling price in the case of a sales tax, or value of the article  
13 used, in the case of a use tax.

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

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

21 (4) One-third of all money received under this section must be used  
22 solely for criminal justice purposes, fire protection purposes, or  
23 both. For the purposes of this subsection, "criminal justice purposes"  
24 has the same meaning as provided in RCW 82.14.340.

25 (5) Money received under this section must be shared between the  
26 county and the cities as follows: Sixty percent must be retained by  
27 the county and forty percent must be distributed on a per capita basis  
28 to cities in the county.

29 **Sec. 2.** RCW 82.14.450 and 2007 c 380 s 1 are each amended to read  
30 as follows:

31 **ELIMINATING NONSUPPLANT LANGUAGE.** (1) A county legislative  
32 authority may submit an authorizing proposition to the county voters at  
33 a primary or general election and, if the proposition is approved by a  
34 majority of persons voting, impose a sales and use tax in accordance  
35 with the terms of this chapter. The title of each ballot measure must  
36 clearly state the purposes for which the proposed sales and use tax  
37 will be used. (~~Funds raised under this tax shall not supplant~~

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

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

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

18 (4) One-third of all money received under this section (~~shall~~)  
19 must be used solely for criminal justice purposes. For the purposes of  
20 this subsection, "criminal justice purposes" means additional police  
21 protection, mitigation of congested court systems, or relief of  
22 overcrowded jails or other local correctional facilities.

23 (5) Money received under this section (~~shall~~) must be shared  
24 between the county and the cities as follows: Sixty percent (~~shall~~)  
25 must be retained by the county and forty percent (~~shall~~) must be  
26 distributed on a per capita basis to cities in the county.

27 **Sec. 3.** RCW 82.14.460 and 2009 c 551 s 2 are each amended to read  
28 as follows:

29 **ELIMINATING NONSUPPLANT LANGUAGE.** (1) A county legislative  
30 authority may authorize, fix, and impose a sales and use tax in  
31 accordance with the terms of this chapter.

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

1 the selling price in the case of a sales tax, or value of the article  
2 used, in the case of a use tax.

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

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

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

26 **Sec. 4.** RCW 82.14.460 and 2008 c 157 s 2 are each amended to read  
27 as follows:

28 **ELIMINATING NONSUPPLANT LANGUAGE.** (1) A county legislative  
29 authority may authorize, fix, and impose a sales and use tax in  
30 accordance with the terms of this chapter.

31 (2) The tax authorized in this section (~~shall be~~) is in addition  
32 to any other taxes authorized by law and (~~shall~~) must be collected  
33 from those persons who are taxable by the state under chapters 82.08  
34 and 82.12 RCW upon the occurrence of any taxable event within the  
35 county. The rate of tax (~~shall~~) equals one-tenth of one percent of  
36 the selling price in the case of a sales tax, or value of the article  
37 used, in the case of a use tax.

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

10 ~~((4) Moneys collected under this section shall not be used to  
11 supplant existing funding for these purposes, provided that nothing in  
12 this section shall be interpreted to prohibit the use of moneys  
13 collected under this section for the replacement of lapsed federal  
14 funding previously provided for the operation or delivery of services  
15 and programs as provided in this section.))~~

16 **Sec. 5.** RCW 84.55.050 and 2009 c 551 s 3 are each amended to read  
17 as follows:

18 **ELIMINATING NONSUPPLANT LANGUAGE.** (1) Subject to any otherwise  
19 applicable statutory dollar rate limitations, regular property taxes  
20 may be levied by or for a taxing district in an amount exceeding the  
21 limitations provided for in this chapter if such levy is authorized by  
22 a proposition approved by a majority of the voters of the taxing  
23 district voting on the proposition at a general election held within  
24 the district or at a special election within the taxing district called  
25 by the district for the purpose of submitting such proposition to the  
26 voters. Any election held pursuant to this section (~~shall~~) must be  
27 held not more than twelve months prior to the date on which the  
28 proposed levy is to be made, except as provided in subsection (2) of  
29 this section. The ballot of the proposition (~~shall~~) must state the  
30 dollar rate proposed and (~~shall~~) must clearly state the conditions,  
31 if any, which are applicable under subsection (4) of this section.

32 (2)(~~(a)~~) Subject to statutory dollar limitations, a proposition  
33 placed before the voters under this section may authorize annual  
34 increases in levies for multiple consecutive years, up to six  
35 consecutive years, during which period each year's authorized maximum  
36 legal levy (~~shall~~) must be used as the base upon which an increased  
37 levy limit for the succeeding year is computed, but the ballot

1 proposition must state the dollar rate proposed only for the first year  
2 of the consecutive years and must state the limit factor, or a  
3 specified index to be used for determining a limit factor, such as the  
4 consumer price index, which need not be the same for all years, by  
5 which the regular tax levy for the district may be increased in each of  
6 the subsequent consecutive years. Elections for this purpose must be  
7 held at a primary or general election. The title of each ballot  
8 measure must state the limited purposes for which the proposed annual  
9 increases during the specified period of up to six consecutive years  
10 shall be used.

11 ~~((b)(i) Except as otherwise provided in this subsection (2)(b),~~  
12 ~~funds raised by a levy under this subsection may not supplant existing~~  
13 ~~funds used for the limited purpose specified in the ballot title. For~~  
14 ~~purposes of this subsection, existing funds means the actual operating~~  
15 ~~expenditures for the calendar year in which the ballot measure is~~  
16 ~~approved by voters. Actual operating expenditures excludes lost~~  
17 ~~federal funds, lost or expired state grants or loans, extraordinary~~  
18 ~~events not likely to reoccur, changes in contract provisions beyond the~~  
19 ~~control of the taxing district receiving the services, and major~~  
20 ~~nonrecurring capital expenditures.~~

21 ~~(ii) The supplanting limitations in (b)(i) of this subsection do~~  
22 ~~not apply to levies approved by the voters in calendar years 2009,~~  
23 ~~2010, and 2011, in any county with a population of one million five~~  
24 ~~hundred thousand or more. This subsection (2)(b)(ii) only applies to~~  
25 ~~levies approved by the voters after July 26, 2009.~~

26 ~~(iii) The supplanting limitations in (b)(i) of this subsection do~~  
27 ~~not apply to levies approved by the voters in calendar year 2009 and~~  
28 ~~thereafter in any county with a population less than one million five~~  
29 ~~hundred thousand. This subsection (2)(b)(iii) only applies to levies~~  
30 ~~approved by the voters after July 26, 2009.))~~

31 (3) After a levy authorized pursuant to this section is made, the  
32 dollar amount of ~~((such))~~ the levy may not be used for the purpose of  
33 computing the limitations for subsequent levies provided for in this  
34 chapter, unless the ballot proposition expressly states that the levy  
35 made under this section will be used for this purpose.

36 (4) If expressly stated, a proposition placed before the voters  
37 under subsection (1) or (2) of this section may:

1 (a) Use the dollar amount of a levy under subsection (1) of this  
2 section, or the dollar amount of the final levy under subsection (2) of  
3 this section, for the purpose of computing the limitations for  
4 subsequent levies provided for in this chapter;

5 (b) Limit the period for which the increased levy is to be made  
6 under (a) of this subsection;

7 (c) Limit the purpose for which the increased levy is to be made  
8 under (a) of this subsection, but if the limited purpose includes  
9 making redemption payments on bonds, the period for which the increased  
10 levies are made shall not exceed nine years;

11 (d) Set the levy or levies at a rate less than the maximum rate  
12 allowed for the district; or

13 (e) Include any combination of the conditions in this subsection.

14 (5) Except as otherwise expressly stated in an approved ballot  
15 measure under this section, subsequent levies (~~shall~~) must be  
16 computed as if:

17 (a) The proposition under this section had not been approved; and

18 (b) The taxing district had made levies at the maximum rates which  
19 would otherwise have been allowed under this chapter during the years  
20 levies were made under the proposition.

21 NEW SECTION. **Sec. 6. AUTHORIZING A COUNTY UTILITY TAX.** (1)

22 Subject to the conditions and requirements of this section, a county  
23 may impose an excise tax on the privilege of engaging in business as a  
24 utility. The tax is equal to the gross income derived from providing  
25 service to consumers within the county multiplied by the rate provided  
26 in subsection (3) of this section.

27 (2) A county with a population of one million five hundred thousand  
28 persons or less may not impose an excise tax on the privilege of  
29 engaging in business as a gas utility.

30 (3) A county may not impose a rate of tax that exceeds six percent,  
31 except a county with a population of one million five hundred thousand  
32 persons or less may not impose a rate that exceeds one percent on an  
33 electrical power utility.

34 (4) A county must use taxes collected under the authority of this  
35 section only for public safety, infrastructure, capital projects, and  
36 other services.

1 (5) A utility subject to tax under this section must add the tax to  
2 the rates or charges it makes for utility services and separately state  
3 the amount of tax on billings.

4 (6) A county may initially impose the tax authorized under this  
5 section only on the first day of a calendar quarter and no sooner than  
6 seventy-five days from the date the county adopts the ordinance or  
7 resolution imposing the tax.

8 (7) A county may provide exemptions for sales by utilities to  
9 business customers, such as manufacturing facilities, aircraft repair  
10 facilities, industrial parks, industrial facilities, farm businesses,  
11 and computer data centers. A county may not provide a general  
12 exemption for sales by utilities to residential customers unless  
13 business customers are also exempt.

14 (8) A county must allow a credit against the cable service utility  
15 tax for any franchise fee paid by the cable service utility to the  
16 county.

17 (9) A county must provide a deduction for gross income derived from  
18 providing utility service to consumers: (a) Located within the  
19 incorporated areas of the county; and (b) located within the  
20 unincorporated areas of the county that are outside any urban growth  
21 areas, as designated in the county's comprehensive plan.

22 (10) The following definitions apply throughout this section unless  
23 the context clearly requires otherwise.

24 (a) "Cable service utility" means a person providing cable service  
25 as defined in the federal telecommunications act of 1996.

26 (b) "Electrical power utility" means a "light and power business"  
27 as defined in RCW 82.16.010.

28 (c) "Gas utility" means a "gas distribution business" as defined in  
29 RCW 82.16.010.

30 (d) "Gross income" has the same meaning as provided in RCW  
31 82.16.010.

32 (e) "Sewer utility" means a sewerage collection business as that  
33 term is used in chapter 82.16 RCW.

34 (f) "Solid waste utility" means a "solid waste collection business"  
35 as defined in RCW 82.18.010.

36 (g) "Telephone utility" means a person providing  
37 "telecommunications service" as defined in RCW 82.04.065.



1 (h) "Water utility" means a "water distribution business" as  
2 defined in RCW 82.16.010.

3 (i) "Utility" means an electrical power utility, gas utility,  
4 telephone utility, water utility, sewer utility, solid waste utility,  
5 or cable service utility. "Utility" also means a water-sewer district  
6 formed under Title 57 RCW.

7 NEW SECTION. **Sec. 7.** A new section is added to chapter 35.21 RCW  
8 to read as follows:

9 **AUTHORIZING A CITY TAX ON WATER-SEWER DISTRICTS.** (1) Subject to  
10 the requirements of this section, a city or town may impose a tax upon  
11 the gross income of a water-sewer district formed under Title 57 RCW.

12 (2) A city or town imposing the tax authorized under this section  
13 may not impose a rate of tax that exceeds six percent. A city or town  
14 may impose the tax only upon the gross income of a water-sewer district  
15 derived from services provided within the city or town.

16 (3) A city or town imposing the tax authorized under this section  
17 must allow a credit against the tax for any franchise fee paid by a  
18 water-sewer district to the city or town.

19 **Sec. 8.** RCW 82.46.035 and 2009 c 211 s 1 are each amended to read  
20 as follows:

21 **ALLOWING USE OF LOCAL REET FOR PARK OPERATIONS.** (1) The  
22 legislative authority of any county or city (~~shall~~) must identify in  
23 the adopted budget the capital projects and park maintenance and  
24 operation expenditures, or both, funded in whole or in part from the  
25 proceeds of the tax authorized in this section(~~(, and shall indicate~~  
26 ~~that such tax is intended to be in addition to other funds that may be~~  
27 ~~reasonably available for such capital projects))~~).

28 (2) The legislative authority of any county or any city that plans  
29 under RCW 36.70A.040(1) may impose an additional excise tax on each  
30 sale of real property in the unincorporated areas of the county for the  
31 county tax and in the corporate limits of the city for the city tax at  
32 a rate not exceeding one-quarter of one percent of the selling price.  
33 Any county choosing to plan under RCW 36.70A.040(2) and any city within  
34 such a county may only adopt an ordinance imposing the excise tax  
35 authorized by this section if the ordinance is first authorized by a  
36 proposition approved by a majority of the voters of the taxing district

1 voting on the proposition at a general election held within the  
2 district or at a special election within the taxing district called by  
3 the district for the purpose of submitting such proposition to the  
4 voters.

5 (3) Revenues generated from the tax imposed under subsection (2) of  
6 this section (~~shall~~) must be used by such counties and cities  
7 (~~solely~~) for financing capital projects specified in a capital  
8 facilities plan element of a comprehensive plan and park maintenance  
9 and operation expenditures. However, revenues (a) pledged by such  
10 counties and cities to debt retirement prior to March 1, 1992, may  
11 continue to be used for that purpose until the original debt for which  
12 the revenues were pledged is retired, or (b) committed prior to March  
13 1, 1992, by such counties or cities to a project may continue to be  
14 used for that purpose until the project is completed.

15 (4) Revenues generated by the tax imposed by this section (~~shall~~)  
16 must be deposited in a separate account.

17 (5) As used in this section: (a) "City" means any city or town;  
18 (b) "capital project" means those public works projects of a local  
19 government for planning, acquisition, construction, reconstruction,  
20 repair, replacement, rehabilitation, or improvement of streets, roads,  
21 highways, sidewalks, street and road lighting systems, traffic signals,  
22 bridges, municipally owned heavy rail short line railroads, domestic  
23 water systems, storm and sanitary sewer systems, and planning,  
24 construction, reconstruction, repair, rehabilitation, or improvement of  
25 parks; and (c) "short line railroads" means class III railroads as  
26 defined by the United States surface transportation board.

27 (6) When the governor files a notice of noncompliance under RCW  
28 36.70A.340 with the secretary of state and the appropriate county or  
29 city, the county or city's authority to impose the additional excise  
30 tax under this section (~~shall~~) must be temporarily rescinded until  
31 the governor files a subsequent notice rescinding the notice of  
32 noncompliance.

33 (7) A city or county may use revenue generated under subsection (2)  
34 of this section for municipally owned heavy short line railroads only  
35 if the revenue was collected prior to December 31, 2008, and may not  
36 use more than twenty-five percent of the total revenue generated under  
37 subsection (2) of this section for municipally owned heavy short line  
38 railroads.

1       **Sec. 9.** RCW 82.46.035 and 1992 c 221 s 3 and 1991 sp.s. c 32 s 33  
2 are each reenacted and amended to read as follows:

3       **ALLOWING USE OF LOCAL REET FOR PARK OPERATIONS.** (1) The  
4 legislative authority of any county or city shall identify in the  
5 adopted budget the capital projects and park maintenance and operation  
6 expenditures, or both, funded in whole or in part from the proceeds of  
7 the tax authorized in this section(~~(, and shall indicate that such tax~~  
8 ~~is intended to be in addition to other funds that may be reasonably~~  
9 ~~available for such capital projects)~~).

10       (2) The legislative authority of any county or any city that plans  
11 under RCW 36.70A.040(1) may impose an additional excise tax on each  
12 sale of real property in the unincorporated areas of the county for the  
13 county tax and in the corporate limits of the city for the city tax at  
14 a rate not exceeding one-quarter of one percent of the selling price.  
15 Any county choosing to plan under RCW 36.70A.040(2) and any city within  
16 such a county may only adopt an ordinance imposing the excise tax  
17 authorized by this section if the ordinance is first authorized by a  
18 proposition approved by a majority of the voters of the taxing district  
19 voting on the proposition at a general election held within the  
20 district or at a special election within the taxing district called by  
21 the district for the purpose of submitting such proposition to the  
22 voters.

23       (3) Revenues generated from the tax imposed under subsection (2) of  
24 this section (~~(shall)~~) must be used by such counties and cities  
25 (~~(solely)~~) for financing capital projects specified in a capital  
26 facilities plan element of a comprehensive plan and park maintenance  
27 and operation expenditures. However, revenues (a) pledged by such  
28 counties and cities to debt retirement prior to March 1, 1992, may  
29 continue to be used for that purpose until the original debt for which  
30 the revenues were pledged is retired, or (b) committed prior to March  
31 1, 1992, by such counties or cities to a project may continue to be  
32 used for that purpose until the project is completed.

33       (4) Revenues generated by the tax imposed by this section (~~(shall)~~)  
34 must be deposited in a separate account.

35       (5) As used in this section, "city" means any city or town and  
36 "capital project" means those public works projects of a local  
37 government for planning, acquisition, construction, reconstruction,  
38 repair, replacement, rehabilitation, or improvement of streets, roads,

1 highways, sidewalks, street and road lighting systems, traffic signals,  
2 bridges, domestic water systems, storm and sanitary sewer systems, and  
3 planning, construction, reconstruction, repair, rehabilitation, or  
4 improvement of parks.

5 (6) When the governor files a notice of noncompliance under RCW  
6 36.70A.340 with the secretary of state and the appropriate county or  
7 city, the county or city's authority to impose the additional excise  
8 tax under this section (~~shall~~) must be temporarily rescinded until  
9 the governor files a subsequent notice rescinding the notice of  
10 noncompliance.

11 **Sec. 10.** RCW 82.12.010 and 2009 c 535 s 304 are each amended to  
12 read as follows:

13 **CLARIFYING THE LOCATION OF FIRST USE FOR BROKERED NATURAL GAS.** For  
14 the purposes of this chapter:

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

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

29 (b) In case the articles used are acquired by bailment, the value  
30 of the use of the articles so used (~~shall~~) must be in an amount  
31 representing a reasonable rental for the use of the articles so bailed,  
32 determined as nearly as possible according to the value of such use at  
33 the places of use of similar products of like quality and character  
34 under such rules as the department of revenue may prescribe. In case  
35 any such articles of tangible personal property are used in respect to  
36 the construction, repairing, decorating, or improving of, and which  
37 become or are to become an ingredient or component of, new or existing

1 buildings or other structures under, upon, or above real property of or  
2 for the United States, any instrumentality thereof, or a county or city  
3 housing authority created pursuant to chapter 35.82 RCW, including the  
4 installing or attaching of any such articles therein or thereto,  
5 whether or not such personal property becomes a part of the realty by  
6 virtue of installation, then the value of the use of such articles so  
7 used (~~shall be~~) is determined according to the retail selling price  
8 of such articles, or in the absence of such a selling price, as nearly  
9 as possible according to the retail selling price at place of use of  
10 similar products of like quality and character or, in the absence of  
11 either of these selling price measures, such value may be determined  
12 upon a cost basis, in any event under such rules as the department of  
13 revenue may prescribe.

14 (c) In the case of articles owned by a user engaged in business  
15 outside the state which are brought into the state for no more than one  
16 hundred eighty days in any period of three hundred sixty-five  
17 consecutive days and which are temporarily used for business purposes  
18 by the person in this state, the value of the article used (~~shall~~)  
19 must be an amount representing a reasonable rental for the use of the  
20 articles, unless the person has paid tax under this chapter or chapter  
21 82.08 RCW upon the full value of the article used, as defined in (a) of  
22 this subsection.

23 (d) In the case of articles manufactured or produced by the user  
24 and used in the manufacture or production of products sold or to be  
25 sold to the department of defense of the United States, the value of  
26 the articles used (~~shall be~~) is determined according to the value of  
27 the ingredients of such articles.

28 (e) In the case of an article manufactured or produced for purposes  
29 of serving as a prototype for the development of a new or improved  
30 product, the value of the article used (~~shall be~~) is determined by:  
31 (i) The retail selling price of such new or improved product when first  
32 offered for sale; or (ii) the value of materials incorporated into the  
33 prototype in cases in which the new or improved product is not offered  
34 for sale.

35 (f) In the case of an article purchased with a direct pay permit  
36 under RCW 82.32.087, the value of the article used (~~shall be~~) is  
37 determined by the purchase price of such article if, but for the use of

1 the direct pay permit, the transaction would have been subject to sales  
2 tax;

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

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

19 (5) "Value of the digital good or digital code used" means the  
20 purchase price for the digital good or digital code, the use of which  
21 is taxable under this chapter. If the digital good or digital code is  
22 acquired other than by purchase, the value of the digital good or  
23 digital code must be determined as nearly as possible according to the  
24 retail selling price at place of use of similar digital goods or  
25 digital codes of like quality and character under rules the department  
26 may prescribe;

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

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

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

18 (f) With respect to a service defined as a retail sale in RCW  
19 82.04.050(6)(b), the first act within this state by which the taxpayer,  
20 as a consumer, accesses the prewritten computer software; (~~and~~)

21 (g) With respect to a service defined as a retail sale in RCW  
22 82.04.050(2)(g), the first act within this state after the service has  
23 been performed by which the taxpayer, as a consumer, views, accesses,  
24 downloads, possesses, stores, opens, manipulates, or otherwise uses or  
25 enjoys the digital good upon which the service was performed; and

26 (h) With respect to natural gas or manufactured gas, the use of  
27 which is taxable under RCW 82.12.022, including gas that is also  
28 taxable under the authority of RCW 82.14.230, the first act within this  
29 state by which the taxpayer consumes the gas by burning the gas or  
30 storing the gas in the taxpayer's own facilities for later consumption  
31 by the taxpayer;

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

35 (8)(a)(i) Except as provided in (a)(ii) of this subsection (8),  
36 "retailer" means every seller as defined in RCW 82.08.010 and every  
37 person engaged in the business of selling tangible personal property at

1 retail and every person required to collect from purchasers the tax  
2 imposed under this chapter.

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

13 (b) For the purposes of (a) of this subsection, the terms "client,"  
14 "covered employee," "professional employer agreement," and  
15 "professional employer organization" have the same meanings as in RCW  
16 82.04.540;

17 (9) "Extended warranty" has the same meaning as in RCW  
18 82.04.050(7);

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

30 **Sec. 11.** RCW 82.14.230 and 1989 c 384 s 2 are each amended to read  
31 as follows:

32 **CLARIFYING THE LOCATION OF FIRST USE FOR BROKERED NATURAL GAS.** (1)  
33 The governing body of any city, while not required by legislative  
34 mandate to do so, may, by resolution or ordinance for the purposes  
35 authorized by this chapter, fix and impose on every person a use tax  
36 for the privilege of using natural gas or manufactured gas in the city  
37 as a consumer.



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

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

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

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

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

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

26 NEW SECTION. Sec. 12. Section 6 of this act constitutes a new  
27 chapter in Title 36 RCW.

28 NEW SECTION. Sec. 13. Sections 2 and 4 of this act take effect  
29 January 1, 2015.

30 NEW SECTION. Sec. 14. Sections 1 and 3 of this act expire January  
31 1, 2015.

32 NEW SECTION. Sec. 15. Section 9 of this act takes effect June 30,  
33 2012.

1        NEW SECTION.    **Sec. 16.**    Section 8 of this act expires June 30,  
2    2012.

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