
HOUSE BILL 1572

State of Washington

67th Legislature

2021 Regular Session

By Representatives Fitzgibbon and Duerr

Read first time 04/06/21. Referred to Committee on Finance.

1 AN ACT Relating to modifying the sales and use tax treatment of
2 motor vehicles purchased by rental car companies; amending RCW
3 82.08.020, 82.12.020, 82.04.050, and 82.12.010; adding a new section
4 to chapter 82.08 RCW; adding a new section to chapter 82.12 RCW;
5 creating a new section; and providing an effective date.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 82.08
8 RCW to read as follows:

9 (1) The tax levied by RCW 82.08.020 does not apply to sales of
10 motor vehicles to a rental car company, if the motor vehicle is used
11 exclusively for the purpose of renting to consumers in the ordinary
12 course of business, and is:

13 (a) An electric vehicle; or

14 (b) A hybrid vehicle.

15 (2) This exemption is available only if the buyer provides the
16 seller with an exemption certificate in a form and manner as
17 prescribed by the department.

18 (3) For purposes of this section, the following definitions
19 apply:

1 (a) "Electric vehicle" means a vehicle that uses energy stored in
2 rechargeable battery packs or in hydrogen fuel cells and which relies
3 solely on electric motors for propulsion.

4 (b) "Hybrid vehicle" means a vehicle with a hybrid propulsion
5 system that operates on both traditional fuel and stored electricity.

6 (c) "Motor vehicle" means a vehicle that is self-propelled and
7 that is capable of being moved upon a public highway.

8 (d) "Rental car company" has the same meaning as provided in RCW
9 48.115.005.

10 (4) This section expires January 1, 2032.

11 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.12
12 RCW to read as follows:

13 (1) The provisions of this chapter do not apply with respect to
14 the use of a motor vehicle by a rental car company, if the motor
15 vehicle is used exclusively for the purpose of renting to consumers
16 in the ordinary course of business, and is:

17 (a) An electric vehicle; or

18 (b) A hybrid vehicle.

19 (2) The definitions in section 1 of this act apply to this
20 section.

21 (3) This section expires January 1, 2032.

22 **Sec. 3.** RCW 82.08.020 and 2014 c 140 s 12 are each amended to
23 read as follows:

24 (1) There is levied and collected a tax equal to six and five-
25 tenths percent of the selling price on each retail sale in this state
26 of:

27 (a) Tangible personal property, unless the sale is specifically
28 excluded from the RCW 82.04.050 definition of retail sale;

29 (b) Digital goods, digital codes, and digital automated services,
30 if the sale is included within the RCW 82.04.050 definition of retail
31 sale;

32 (c) Services, other than digital automated services, included
33 within the RCW 82.04.050 definition of retail sale;

34 (d) Extended warranties to consumers; and

35 (e) Anything else, the sale of which is included within the RCW
36 82.04.050 definition of retail sale.

37 (2) (a) There is levied and collected an additional tax on each
38 retail car rental, regardless of whether the vehicle is licensed in

1 this state, equal to five and nine-tenths percent of the selling
2 price. The revenue collected under this subsection must be deposited
3 in the multimodal transportation account created in RCW 47.66.070.

4 (b) (i) There is levied and collected an additional tax on peer-
5 to-peer car sharing transactions equal to the selling price
6 multiplied by the rate of tax imposed in (a) of this subsection,
7 except as provided in (b) (ii) of this subsection. The revenue
8 collected under this subsection must be deposited in the multimodal
9 transportation account created in RCW 47.66.070.

10 (ii) The rate of tax levied pursuant to (b) (i) of this subsection
11 is equal to zero percent, if at any time after the effective date of
12 this section:

13 (A) Rental car companies are authorized to use a reseller permit
14 for the acquisition of vehicles for use as rental cars; or

15 (B) Any law, rule, or regulation takes effect which exempts a
16 rental car company from the obligation to pay sales or use tax or any
17 other tax generally applicable to a transaction involving the
18 acquisition of any motor vehicle as a sale for resale or for any
19 other reason.

20 (iii) The tax rate in (b) (ii) of this subsection takes effect on
21 the date that any of the conditions in (b) (ii) (A) or (B) of this
22 subsection take effect.

23 (iv) For purposes of this subsection (2) (b), "peer-to-peer car
24 sharing" means the authorized use of a vehicle by an individual other
25 than the vehicle's owner through a peer-to-peer car sharing program.

26 "Peer-to-peer car sharing" does not mean:

27 (A) "Retail car rental" as defined in RCW 82.08.011; or

28 (B) "Rental car" as defined in RCW 46.04.465 or 48.115.005.

29 (3) Beginning July 1, 2003, there is levied and collected an
30 additional tax of three-tenths of one percent of the selling price on
31 each retail sale of a motor vehicle in this state, other than retail
32 car rentals taxed under subsection (2) of this section. The revenue
33 collected under this subsection must be deposited in the multimodal
34 transportation account created in RCW 47.66.070.

35 (4) For purposes of subsection (3) of this section, "motor
36 vehicle" has the meaning provided in RCW 46.04.320, but does not
37 include:

38 (a) Farm tractors or farm vehicles as defined in RCW 46.04.180
39 and 46.04.181, unless the farm tractor or farm vehicle is for use in
40 the production of marijuana;

- 1 (b) Off-road vehicles as defined in RCW 46.04.365;
- 2 (c) Nonhighway vehicles as defined in RCW 46.09.310; and
- 3 (d) Snowmobiles as defined in RCW 46.04.546.

4 (5) Beginning on December 8, 2005, 0.16 percent of the taxes
5 collected under subsection (1) of this section must be dedicated to
6 funding comprehensive performance audits required under RCW
7 43.09.470. The revenue identified in this subsection must be
8 deposited in the performance audits of government account created in
9 RCW 43.09.475.

10 (6) The taxes imposed under this chapter apply to successive
11 retail sales of the same property.

12 (7) The rates provided in this section apply to taxes imposed
13 under chapter 82.12 RCW as provided in RCW 82.12.020.

14 **Sec. 4.** RCW 82.12.020 and 2017 c 323 s 520 are each amended to
15 read as follows:

16 (1) There is levied and collected from every person in this state
17 a tax or excise for the privilege of using within this state as a
18 consumer any:

19 (a) Article of tangible personal property acquired by the user in
20 any manner, including tangible personal property acquired at a casual
21 or isolated sale, and including by-products used by the manufacturer
22 thereof, except as otherwise provided in this chapter, irrespective
23 of whether the article or similar articles are manufactured or are
24 available for purchase within this state;

25 (b) Prewritten computer software, regardless of the method of
26 delivery, but excluding prewritten computer software that is either
27 provided free of charge or is provided for temporary use in viewing
28 information, or both;

29 (c) Services defined as a retail sale in RCW 82.04.050 (2) (a) or
30 (g) or (6)(c), excluding services defined as a retail sale in RCW
31 82.04.050(6)(c) that are provided free of charge;

32 (d) Extended warranty; or

33 (e)(i) Digital good, digital code, or digital automated service,
34 including the use of any services provided by a seller exclusively in
35 connection with digital goods, digital codes, or digital automated
36 services, whether or not a separate charge is made for such services.

37 (ii) With respect to the use of digital goods, digital automated
38 services, and digital codes acquired by purchase, the tax imposed in
39 this subsection (1)(e) applies in respect to:

1 (A) Sales in which the seller has granted the purchaser the right
2 of permanent use;

3 (B) Sales in which the seller has granted the purchaser a right
4 of use that is less than permanent;

5 (C) Sales in which the purchaser is not obligated to make
6 continued payment as a condition of the sale; and

7 (D) Sales in which the purchaser is obligated to make continued
8 payment as a condition of the sale.

9 (iii) With respect to digital goods, digital automated services,
10 and digital codes acquired other than by purchase, the tax imposed in
11 this subsection (1)(e) applies regardless of whether or not the
12 consumer has a right of permanent use or is obligated to make
13 continued payment as a condition of use.

14 (2) The provisions of this chapter do not apply in respect to the
15 use of any article of tangible personal property, extended warranty,
16 digital good, digital code, digital automated service, or service
17 taxable under RCW 82.04.050 (2) (a) or (g) or (6)(c), if the sale to,
18 or the use by, the present user or the present user's bailor or donor
19 has already been subjected to the tax under chapter 82.08 RCW or this
20 chapter and the tax has been paid by the present user or by the
21 present user's bailor or donor.

22 (3)(a) Except as provided in this section, payment of the tax
23 imposed by this chapter or chapter 82.08 RCW by one purchaser or user
24 of tangible personal property, extended warranty, digital good,
25 digital code, digital automated service, or other service does not
26 have the effect of exempting any other purchaser or user of the same
27 property, extended warranty, digital good, digital code, digital
28 automated service, or other service from the taxes imposed by such
29 chapters.

30 (b) The tax imposed by this chapter does not apply:

31 (i) If the sale to, or the use by, the present user or his or her
32 bailor or donor has already been subjected to the tax under chapter
33 82.08 RCW or this chapter and the tax has been paid by the present
34 user or by his or her bailor or donor;

35 (ii) In respect to the use of any article of tangible personal
36 property acquired by bailment and the tax has once been paid based on
37 reasonable rental as determined by RCW 82.12.060 measured by the
38 value of the article at time of first use multiplied by the tax rate
39 imposed by chapter 82.08 RCW or this chapter as of the time of first
40 use;

1 (iii) In respect to the use of any article of tangible personal
2 property acquired by bailment, if the property was acquired by a
3 previous bailee from the same bailor for use in the same general
4 activity and the original bailment was prior to June 9, 1961; or

5 (iv) To the use of digital goods or digital automated services,
6 which were obtained through the use of a digital code, if the sale of
7 the digital code to, or the use of the digital code by, the present
8 user or the present user's bailor or donor has already been subjected
9 to the tax under chapter 82.08 RCW or this chapter and the tax has
10 been paid by the present user or by the present user's bailor or
11 donor.

12 (4) (a) Except as provided in (b) of this subsection (4), the tax
13 is levied and must be collected in an amount equal to the value of
14 the article used, value of the digital good or digital code used,
15 value of the extended warranty used, or value of the service used by
16 the taxpayer, multiplied by the applicable rates in effect for the
17 retail sales tax under RCW 82.08.020.

18 (b) In the case of a seller required to collect use tax from the
19 purchaser, the tax must be collected in an amount equal to the
20 purchase price multiplied by the applicable rate in effect for the
21 retail sales tax under RCW 82.08.020.

22 (5) For purposes of the tax imposed in this section, "person"
23 includes anyone within the definition of "buyer," "purchaser," and
24 "consumer" in RCW 82.08.010.

25 (6) With respect to motor vehicles purchased prior to the
26 effective date of this section only, the department may not assess
27 use tax against a taxpayer receiving the benefit of a use tax
28 exemption solely by reason of the expiration or repeal of that use
29 tax exemption, unless a contrary intention is clearly expressed in
30 law.

31 **Sec. 5.** RCW 82.04.050 and 2021 c 4 s 3 are each amended to read
32 as follows:

33 (1) (a) "Sale at retail" or "retail sale" means every sale of
34 tangible personal property (including articles produced, fabricated,
35 or imprinted) to all persons irrespective of the nature of their
36 business and including, among others, without limiting the scope
37 hereof, persons who install, repair, clean, alter, improve,
38 construct, or decorate real or personal property of or for consumers
39 other than a sale to a person who:

1 (i) Purchases for the purpose of resale as tangible personal
2 property in the regular course of business without intervening use by
3 such person, but a purchase for the purpose of resale by a regional
4 transit authority under RCW 81.112.300 is not a sale for resale; or

5 (ii) Installs, repairs, cleans, alters, imprints, improves,
6 constructs, or decorates real or personal property of or for
7 consumers, if such tangible personal property becomes an ingredient
8 or component of such real or personal property without intervening
9 use by such person; or

10 (iii) Purchases for the purpose of consuming the property
11 purchased in producing for sale as a new article of tangible personal
12 property or substance, of which such property becomes an ingredient
13 or component or is a chemical used in processing, when the primary
14 purpose of such chemical is to create a chemical reaction directly
15 through contact with an ingredient of a new article being produced
16 for sale; or

17 (iv) Purchases for the purpose of consuming the property
18 purchased in producing ferrosilicon which is subsequently used in
19 producing magnesium for sale, if the primary purpose of such property
20 is to create a chemical reaction directly through contact with an
21 ingredient of ferrosilicon; or

22 (v) Purchases for the purpose of providing the property to
23 consumers as part of competitive telephone service, as defined in RCW
24 82.04.065; or

25 (vi) Purchases for the purpose of satisfying the person's
26 obligations under an extended warranty as defined in subsection (7)
27 of this section, if such tangible personal property replaces or
28 becomes an ingredient or component of property covered by the
29 extended warranty without intervening use by such person.

30 (b) The term includes every sale of tangible personal property
31 that is used or consumed or to be used or consumed in the performance
32 of any activity defined as a "sale at retail" or "retail sale" even
33 though such property is resold or used as provided in (a)(i) through
34 (vi) of this subsection following such use.

35 (c) The term also means every sale of tangible personal property
36 to persons engaged in any business that is taxable under RCW
37 82.04.280(1) (a), (b), and (g), 82.04.290, and 82.04.2908.

38 (d) Notwithstanding any law, rule, or regulation to the contrary,
39 the term "sale at retail" or "retail sale" also means the acquisition

1 of a rental car as defined in RCW 48.115.005 by a rental car company
2 as defined in RCW 48.115.005.

3 (2) The term "sale at retail" or "retail sale" includes the sale
4 of or charge made for tangible personal property consumed and/or for
5 labor and services rendered in respect to the following:

6 (a) The installing, repairing, cleaning, altering, imprinting, or
7 improving of tangible personal property of or for consumers,
8 including charges made for the mere use of facilities in respect
9 thereto, but excluding charges made for the use of self-service
10 laundry facilities, and also excluding sales of laundry service to
11 nonprofit health care facilities, and excluding services rendered in
12 respect to live animals, birds and insects;

13 (b) The constructing, repairing, decorating, or improving of new
14 or existing buildings or other structures under, upon, or above real
15 property of or for consumers, including the installing or attaching
16 of any article of tangible personal property therein or thereto,
17 whether or not such personal property becomes a part of the realty by
18 virtue of installation, and also includes the sale of services or
19 charges made for the clearing of land and the moving of earth
20 excepting the mere leveling of land used in commercial farming or
21 agriculture;

22 (c) The constructing, repairing, or improving of any structure
23 upon, above, or under any real property owned by an owner who conveys
24 the property by title, possession, or any other means to the person
25 performing such construction, repair, or improvement for the purpose
26 of performing such construction, repair, or improvement and the
27 property is then reconveyed by title, possession, or any other means
28 to the original owner;

29 (d) The cleaning, fumigating, razing, or moving of existing
30 buildings or structures, but does not include the charge made for
31 janitorial services; and for purposes of this section the term
32 "janitorial services" means those cleaning and caretaking services
33 ordinarily performed by commercial janitor service businesses
34 including, but not limited to, wall and window washing, floor
35 cleaning and waxing, and the cleaning in place of rugs, drapes and
36 upholstery. The term "janitorial services" does not include painting,
37 papering, repairing, furnace or septic tank cleaning, snow removal or
38 sandblasting;

1 (e) Automobile towing and similar automotive transportation
2 services, but not in respect to those required to report and pay
3 taxes under chapter 82.16 RCW;

4 (f) The furnishing of lodging and all other services by a hotel,
5 rooming house, tourist court, motel, trailer camp, and the granting
6 of any similar license to use real property, as distinguished from
7 the renting or leasing of real property, and it is presumed that the
8 occupancy of real property for a continuous period of one month or
9 more constitutes a rental or lease of real property and not a mere
10 license to use or enjoy the same. For the purposes of this
11 subsection, it is presumed that the sale of and charge made for the
12 furnishing of lodging for a continuous period of one month or more to
13 a person is a rental or lease of real property and not a mere license
14 to enjoy the same;

15 (g) The installing, repairing, altering, or improving of digital
16 goods for consumers;

17 (h) Persons taxable under (a), (b), (c), (d), (e), (f), and (g)
18 of this subsection when such sales or charges are for property, labor
19 and services which are used or consumed in whole or in part by such
20 persons in the performance of any activity defined as a "sale at
21 retail" or "retail sale" even though such property, labor and
22 services may be resold after such use or consumption. Nothing
23 contained in this subsection may be construed to modify subsection
24 (1) of this section and nothing contained in subsection (1) of this
25 section may be construed to modify this subsection.

26 (3) The term "sale at retail" or "retail sale" includes the sale
27 of or charge made for personal, business, or professional services
28 including amounts designated as interest, rents, fees, admission, and
29 other service emoluments however designated, received by persons
30 engaging in the following business activities:

31 (a) Abstract, title insurance, and escrow services;

32 (b) Credit bureau services;

33 (c) Automobile parking and storage garage services;

34 (d) Landscape maintenance and horticultural services but
35 excluding (i) horticultural services provided to farmers and (ii)
36 pruning, trimming, repairing, removing, and clearing of trees and
37 brush near electric transmission or distribution lines or equipment,
38 if performed by or at the direction of an electric utility;

39 (e) Service charges associated with tickets to professional
40 sporting events;

1 (f) The following personal services: Tanning salon services,
2 tattoo parlor services, steam bath services, turkish bath services,
3 escort services, and dating services; and

4 (g)(i) Operating an athletic or fitness facility, including all
5 charges for the use of such a facility or for any associated services
6 and amenities, except as provided in (g)(ii) of this subsection.

7 (ii) Notwithstanding anything to the contrary in (g)(i) of this
8 subsection (3), the term "sale at retail" and "retail sale" under
9 this subsection does not include:

10 (A) Separately stated charges for the use of an athletic or
11 fitness facility where such use is primarily for a purpose other than
12 engaging in or receiving instruction in a physical fitness activity;

13 (B) Separately stated charges for the use of a discrete portion
14 of an athletic or fitness facility, other than a pool, where such
15 discrete portion of the facility does not by itself meet the
16 definition of "athletic or fitness facility" in this subsection;

17 (C) Separately stated charges for services, such as advertising,
18 massage, nutritional consulting, and body composition testing, that
19 do not require the customer to engage in physical fitness activities
20 to receive the service. The exclusion in this subsection
21 (3)(g)(ii)(C) does not apply to personal training services and
22 instruction in a physical fitness activity;

23 (D) Separately stated charges for physical therapy provided by a
24 physical therapist, as those terms are defined in RCW 18.74.010, or
25 occupational therapy provided by an occupational therapy
26 practitioner, as those terms are defined in RCW 18.59.020, when
27 performed pursuant to a referral from an authorized health care
28 practitioner or in consultation with an authorized health care
29 practitioner. For the purposes of this subsection (3)(g)(ii)(D), an
30 authorized health care practitioner means a health care practitioner
31 licensed under chapter 18.83, 18.25, 18.36A, 18.57, 18.71, or 18.71A
32 RCW, or, until July 1, 2022, chapter 18.57A RCW;

33 (E) Rent or association fees charged by a landlord or residential
34 association to a tenant or residential owner with access to an
35 athletic or fitness facility maintained by the landlord or
36 residential association, unless the rent or fee varies depending on
37 whether the tenant or owner has access to the facility;

38 (F) Services provided in the regular course of employment by an
39 employee with access to an athletic or fitness facility maintained by

1 the employer for use without charge by its employees or their family
2 members;

3 (G) The provision of access to an athletic or fitness facility by
4 an educational institution to its students and staff. However,
5 charges made by an educational institution to its alumni or other
6 members of the public for the use of any of the educational
7 institution's athletic or fitness facilities are a retail sale under
8 this subsection (3)(g). For purposes of this subsection
9 (3)(g)(ii)(G), "educational institution" has the same meaning as in
10 RCW 82.04.170;

11 (H) Yoga, chi gong, or martial arts classes, training, or events
12 held at a community center, park, school gymnasium, college or
13 university, hospital or other medical facility, private residence, or
14 any other facility that is not operated within and as part of an
15 athletic or fitness facility.

16 (iii) Nothing in (g)(ii) of this subsection (3) may be construed
17 to affect the taxation of sales made by the operator of an athletic
18 or fitness facility, where such sales are defined as a retail sale
19 under any provision of this section other than this subsection (3).

20 (iv) For the purposes of this subsection (3)(g), the following
21 definitions apply:

22 (A) "Athletic or fitness facility" means an indoor or outdoor
23 facility or portion of a facility that is primarily used for:
24 Exercise classes; strength and conditioning programs; personal
25 training services; tennis, racquetball, handball, squash, or
26 pickleball; or other activities requiring the use of exercise or
27 strength training equipment, such as treadmills, elliptical machines,
28 stair climbers, stationary cycles, rowing machines, pilates
29 equipment, balls, climbing ropes, jump ropes, and weightlifting
30 equipment.

31 (B) "Martial arts" means any of the various systems of training
32 for physical combat or self-defense. "Martial arts" includes, but is
33 not limited to, karate, kung fu, tae kwon do, Krav Maga, boxing,
34 kickboxing, jujitsu, shootfighting, wrestling, aikido, judo, hapkido,
35 Kendo, tai chi, and mixed martial arts.

36 (C) "Physical fitness activities" means activities that involve
37 physical exertion for the purpose of improving or maintaining the
38 general fitness, strength, flexibility, conditioning, or health of
39 the participant. "Physical fitness activities" includes participating
40 in yoga, chi gong, or martial arts.

1 (4) (a) The term also includes the renting or leasing of tangible
2 personal property to consumers.

3 (b) The term does not include the renting or leasing of tangible
4 personal property where the lease or rental is for the purpose of
5 sublease or subrent.

6 (5) The term also includes the providing of "competitive
7 telephone service," "telecommunications service," or "ancillary
8 services," as those terms are defined in RCW 82.04.065, to consumers.

9 (6) (a) The term also includes the sale of prewritten computer
10 software to a consumer, regardless of the method of delivery to the
11 end user. For purposes of (a) and (b) of this subsection, the sale of
12 prewritten computer software includes the sale of or charge made for
13 a key or an enabling or activation code, where the key or code is
14 required to activate prewritten computer software and put the
15 software into use. There is no separate sale of the key or code from
16 the prewritten computer software, regardless of how the sale may be
17 characterized by the vendor or by the purchaser.

18 (b) The term "retail sale" does not include the sale of or charge
19 made for:

20 (i) Custom software; or

21 (ii) The customization of prewritten computer software.

22 (c) (i) The term also includes the charge made to consumers for
23 the right to access and use prewritten computer software, where
24 possession of the software is maintained by the seller or a third
25 party, regardless of whether the charge for the service is on a per
26 use, per user, per license, subscription, or some other basis.

27 (ii) (A) The service described in (c) (i) of this subsection (6)
28 includes the right to access and use prewritten computer software to
29 perform data processing.

30 (B) For purposes of this subsection (6) (c) (ii), "data processing"
31 means the systematic performance of operations on data to extract the
32 required information in an appropriate form or to convert the data to
33 usable information. Data processing includes check processing, image
34 processing, form processing, survey processing, payroll processing,
35 claim processing, and similar activities.

36 (7) The term also includes the sale of or charge made for an
37 extended warranty to a consumer. For purposes of this subsection,
38 "extended warranty" means an agreement for a specified duration to
39 perform the replacement or repair of tangible personal property at no
40 additional charge or a reduced charge for tangible personal property,

1 labor, or both, or to provide indemnification for the replacement or
2 repair of tangible personal property, based on the occurrence of
3 specified events. The term "extended warranty" does not include an
4 agreement, otherwise meeting the definition of extended warranty in
5 this subsection, if no separate charge is made for the agreement and
6 the value of the agreement is included in the sales price of the
7 tangible personal property covered by the agreement. For purposes of
8 this subsection, "sales price" has the same meaning as in RCW
9 82.08.010.

10 (8) (a) The term also includes the following sales to consumers of
11 digital goods, digital codes, and digital automated services:

12 (i) Sales in which the seller has granted the purchaser the right
13 of permanent use;

14 (ii) Sales in which the seller has granted the purchaser a right
15 of use that is less than permanent;

16 (iii) Sales in which the purchaser is not obligated to make
17 continued payment as a condition of the sale; and

18 (iv) Sales in which the purchaser is obligated to make continued
19 payment as a condition of the sale.

20 (b) A retail sale of digital goods, digital codes, or digital
21 automated services under this subsection (8) includes any services
22 provided by the seller exclusively in connection with the digital
23 goods, digital codes, or digital automated services, whether or not a
24 separate charge is made for such services.

25 (c) For purposes of this subsection, "permanent" means perpetual
26 or for an indefinite or unspecified length of time. A right of
27 permanent use is presumed to have been granted unless the agreement
28 between the seller and the purchaser specifies or the circumstances
29 surrounding the transaction suggest or indicate that the right to use
30 terminates on the occurrence of a condition subsequent.

31 (9) The term also includes the charge made for providing tangible
32 personal property along with an operator for a fixed or indeterminate
33 period of time. A consideration of this is that the operator is
34 necessary for the tangible personal property to perform as designed.
35 For the purpose of this subsection (9), an operator must do more than
36 maintain, inspect, or set up the tangible personal property.

37 (10) The term does not include the sale of or charge made for
38 labor and services rendered in respect to the building, repairing, or
39 improving of any street, place, road, highway, easement, right-of-
40 way, mass public transportation terminal or parking facility, bridge,

1 tunnel, or trestle which is owned by a municipal corporation or
2 political subdivision of the state or by the United States and which
3 is used or to be used primarily for foot or vehicular traffic
4 including mass transportation vehicles of any kind.

5 (11) The term also does not include sales of chemical sprays or
6 washes to persons for the purpose of postharvest treatment of fruit
7 for the prevention of scald, fungus, mold, or decay, nor does it
8 include sales of feed, seed, seedlings, fertilizer, agents for
9 enhanced pollination including insects such as bees, and spray
10 materials to: (a) Persons who participate in the federal conservation
11 reserve program, the environmental quality incentives program, the
12 wetlands reserve program, and the wildlife habitat incentives
13 program, or their successors administered by the United States
14 department of agriculture; (b) farmers for the purpose of producing
15 for sale any agricultural product; (c) farmers for the purpose of
16 providing bee pollination services; and (d) farmers acting under
17 cooperative habitat development or access contracts with an
18 organization exempt from federal income tax under 26 U.S.C. Sec.
19 501(c)(3) of the federal internal revenue code or the Washington
20 state department of fish and wildlife to produce or improve wildlife
21 habitat on land that the farmer owns or leases.

22 (12) The term does not include the sale of or charge made for
23 labor and services rendered in respect to the constructing,
24 repairing, decorating, or improving of new or existing buildings or
25 other structures under, upon, or above real property of or for the
26 United States, any instrumentality thereof, or a county or city
27 housing authority created pursuant to chapter 35.82 RCW, including
28 the installing, or attaching of any article of tangible personal
29 property therein or thereto, whether or not such personal property
30 becomes a part of the realty by virtue of installation. Nor does the
31 term include the sale of services or charges made for the clearing of
32 land and the moving of earth of or for the United States, any
33 instrumentality thereof, or a county or city housing authority. Nor
34 does the term include the sale of services or charges made for
35 cleaning up for the United States, or its instrumentalities,
36 radioactive waste and other by-products of weapons production and
37 nuclear research and development.

38 (13) The term does not include the sale of or charge made for
39 labor, services, or tangible personal property pursuant to agreements
40 providing maintenance services for bus, rail, or rail fixed guideway

1 equipment when a regional transit authority is the recipient of the
2 labor, services, or tangible personal property, and a transit agency,
3 as defined in RCW 81.104.015, performs the labor or services.

4 (14) The term does not include the sale for resale of any service
5 described in this section if the sale would otherwise constitute a
6 "sale at retail" and "retail sale" under this section.

7 (15)(a) The term "sale at retail" or "retail sale" includes
8 amounts charged, however labeled, to consumers to engage in any of
9 the activities listed in this subsection (15)(a), including the
10 furnishing of any associated equipment or, except as otherwise
11 provided in this subsection, providing instruction in such
12 activities, where such charges are not otherwise defined as a "sale
13 at retail" or "retail sale" in this section:

14 (i)(A) Golf, including any variant in which either golf balls or
15 golf clubs are used, such as miniature golf, hitting golf balls at a
16 driving range, and golf simulators, and including fees charged by a
17 golf course to a player for using his or her own cart. However,
18 charges for golf instruction are not a retail sale, provided that if
19 the instruction involves the use of a golfing facility that would
20 otherwise require the payment of a fee, such as green fees or driving
21 range fees, such fees, including the applicable retail sales tax,
22 must be separately identified and charged by the golfing facility
23 operator to the instructor or the person receiving the instruction.

24 (B) Notwithstanding (a)(i)(A) of this subsection (15) and except
25 as otherwise provided in this subsection (15)(a)(i)(B), the term
26 "sale at retail" or "retail sale" does not include amounts charged to
27 participate in, or conduct, a golf tournament or other competitive
28 event. However, amounts paid by event participants to the golf
29 facility operator are retail sales under this subsection (15)(a)(i).
30 Likewise, amounts paid by the event organizer to the golf facility
31 are retail sales under this subsection (15)(a)(i), if such amounts
32 vary based on the number of event participants;

33 (ii) Ballooning, hang gliding, indoor or outdoor sky diving,
34 paragliding, parasailing, and similar activities;

35 (iii) Air hockey, billiards, pool, foosball, darts, shuffleboard,
36 ping pong, and similar games;

37 (iv) Access to amusement park, theme park, and water park
38 facilities, including but not limited to charges for admission and
39 locker or cabana rentals. Discrete charges for rides or other
40 attractions or entertainment that are in addition to the charge for

1 admission are not a retail sale under this subsection (15)(a)(iv).
2 For the purposes of this subsection, an amusement park or theme park
3 is a location that provides permanently affixed amusement rides,
4 games, and other entertainment, but does not include parks or zoos
5 for which the primary purpose is the exhibition of wildlife, or
6 fairs, carnivals, and festivals as defined in (b)(i) of this
7 subsection;

8 (v) Batting cage activities;

9 (vi) Bowling, but not including competitive events, except that
10 amounts paid by the event participants to the bowling alley operator
11 are retail sales under this subsection (15)(a)(vi). Likewise, amounts
12 paid by the event organizer to the operator of the bowling alley are
13 retail sales under this subsection (15)(a)(vi), if such amounts vary
14 based on the number of event participants;

15 (vii) Climbing on artificial climbing structures, whether indoors
16 or outdoors;

17 (viii) Day trips for sightseeing purposes;

18 (ix) Bungee jumping, zip lining, and riding inside a ball,
19 whether inflatable or otherwise;

20 (x) Horseback riding offered to the public, where the seller
21 furnishes the horse to the buyer and providing instruction is not the
22 primary focus of the activity, including guided rides, but not
23 including therapeutic horseback riding provided by an instructor
24 certified by a nonprofit organization that offers national or
25 international certification for therapeutic riding instructors;

26 (xi) Fishing, including providing access to private fishing areas
27 and charter or guided fishing, except that fishing contests and
28 license fees imposed by a government entity are not a retail sale
29 under this subsection;

30 (xii) Guided hunting and hunting at game farms and shooting
31 preserves, except that hunting contests and license fees imposed by a
32 government entity are not a retail sale under this subsection;

33 (xiii) Swimming, but only in respect to (A) recreational or
34 fitness swimming that is open to the public, such as open swim, lap
35 swimming, and special events like kids night out and pool parties
36 during open swim time, and (B) pool parties for private events, such
37 as birthdays, family gatherings, and employee outings. Fees for
38 swimming lessons, to participate in swim meets and other
39 competitions, or to join a swim team, club, or aquatic facility are
40 not retail sales under this subsection (15)(a)(xiii);

1 (xiv) Go-karting, bumper cars, and other motorized activities
2 where the seller provides the vehicle and the premises where the
3 buyer will operate the vehicle;

4 (xv) Indoor or outdoor playground activities, such as inflatable
5 bounce structures and other inflatables; mazes; trampolines; slides;
6 ball pits; games of tag, including laser tag and soft-dart tag; and
7 human gyroscope rides, regardless of whether such activities occur at
8 the seller's place of business, but not including playground
9 activities provided for children by a licensed child day care center
10 or licensed family day care provider as those terms are defined in
11 RCW 43.216.010;

12 (xvi) Shooting sports and activities, such as target shooting,
13 skeet, trap, sporting clays, "5" stand, and archery, but only in
14 respect to discrete charges to members of the public to engage in
15 these activities, but not including fees to enter a competitive
16 event, instruction that is entirely or predominately classroom based,
17 or to join or renew a membership at a club, range, or other facility;

18 (xvii) Paintball and airsoft activities;

19 (xviii) Skating, including ice skating, roller skating, and
20 inline skating, but only in respect to discrete charges to members of
21 the public to engage in skating activities, but not including skating
22 lessons, competitive events, team activities, or fees to join or
23 renew a membership at a skating facility, club, or other
24 organization;

25 (xix) Nonmotorized snow sports and activities, such as downhill
26 and cross-country skiing, snowboarding, ski jumping, sledding, snow
27 tubing, snowshoeing, and similar snow sports and activities, whether
28 engaged in outdoors or in an indoor facility with or without snow,
29 but only in respect to discrete charges to the public for the use of
30 land or facilities to engage in nonmotorized snow sports and
31 activities, such as fees, however labeled, for the use of ski lifts
32 and tows and daily or season passes for access to trails or other
33 areas where nonmotorized snow sports and activities are conducted.
34 However, fees for the following are not retail sales under this
35 subsection (15)(a)(xix): (A) Instructional lessons; (B) permits
36 issued by a governmental entity to park a vehicle on or access public
37 lands; and (C) permits or leases granted by an owner of private
38 timberland for recreational access to areas used primarily for
39 growing and harvesting timber; and

1 (xx) Scuba diving; snorkeling; river rafting; surfing;
2 kiteboarding; flyboarding; water slides; inflatables, such as water
3 pillows, water trampolines, and water rollers; and similar water
4 sports and activities.

5 (b) Notwithstanding anything to the contrary in this subsection
6 (15), the term "sale at retail" or "retail sale" does not include
7 charges:

8 (i) Made for admission to, and rides or attractions at, fairs,
9 carnivals, and festivals. For the purposes of this subsection, fairs,
10 carnivals, and festivals are events that do not exceed twenty-one
11 days and a majority of the amusement rides, if any, are not affixed
12 to real property;

13 (ii) Made by an educational institution to its students and staff
14 for activities defined as retail sales by (a)(i) through (xx) of this
15 subsection. However, charges made by an educational institution to
16 its alumni or other members of the general public for these
17 activities are a retail sale under this subsection (15). For purposes
18 of this subsection (15)(b)(ii), "educational institution" has the
19 same meaning as in RCW 82.04.170;

20 (iii) Made by a vocational school for commercial diver training
21 that is licensed by the workforce training and education coordinating
22 board under chapter 28C.10 RCW; or

23 (iv) Made for day camps offered by a nonprofit organization or
24 state or local governmental entity that provide youth not older than
25 age eighteen, or that are focused on providing individuals with
26 disabilities or mental illness, the opportunity to participate in a
27 variety of supervised activities.

28 (16)(a) The term "sale at retail" or "retail sale" includes the
29 purchase or acquisition of tangible personal property and specified
30 services by a person who receives a qualifying grant exempt from tax
31 under RCW 82.04.--- (section 1, chapter 4, Laws of 2021) or 82.16.---
32 (section 2, chapter 4, Laws of 2021), except for transactions
33 excluded from the definition of "sale at retail" or "retail sale" by
34 any other provision of this section. Nothing in this subsection (16)
35 may be construed to limit the application of any other provision of
36 this section to purchases by a recipient of a qualifying grant exempt
37 from tax under RCW 82.04.--- (section 1, chapter 4, Laws of 2021) or
38 by any other person.

39 (b) For purposes of this subsection (16), "specified services"
40 means:

1 (i) The constructing, repairing, decorating, or improving of new
2 or existing buildings or other structures under, upon, or above real
3 property, including the installing or attaching of any article of
4 tangible personal property therein or thereto, whether or not such
5 personal property becomes a part of the realty by virtue of
6 installation;

7 (ii) The clearing of land or the moving of earth, whether or not
8 associated with activities described in (b)(i) of this subsection
9 (16);

10 (iii) The razing or moving of existing buildings or structures;
11 and

12 (iv) Landscape maintenance and horticultural services.

13 **Sec. 6.** RCW 82.12.010 and 2017 c 323 s 519 are each amended to
14 read as follows:

15 For the purposes of this chapter:

16 (1) The meaning ascribed to words and phrases in chapters 82.04
17 and 82.08 RCW, insofar as applicable, has full force and effect with
18 respect to taxes imposed under the provisions of this chapter.

19 (a) "Consumer," in addition to the meaning ascribed to it in
20 chapters 82.04 and 82.08 RCW insofar as applicable, also means any
21 person who distributes or displays, or causes to be distributed or
22 displayed, any article of tangible personal property, except
23 newspapers, the primary purpose of which is to promote the sale of
24 products or services. With respect to property distributed to persons
25 within this state by a consumer as defined in this subsection (1),
26 the use of the property is deemed to be by such consumer.

27 (b) "Consumer" also includes a rental car company, as defined in
28 RCW 48.115.005, who acquires a rental car, as defined in RCW
29 48.115.005, for any purpose, including rental to others for periods
30 not exceeding 30 consecutive days.

31 (2) "Extended warranty" has the same meaning as in RCW
32 82.04.050(7).

33 (3) "Purchase price" means the same as sales price as defined in
34 RCW 82.08.010.

35 (4)(a)(i) Except as provided in (a)(ii) of this subsection (4),
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
38 at retail and every person required to collect from purchasers the
39 tax imposed under this chapter.

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

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

16 (5) "Taxpayer" and "purchaser" include all persons included
17 within the meaning of the word "buyer" and the word "consumer" as
18 defined in chapters 82.04 and 82.08 RCW.

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

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

36 (c) With respect to an extended warranty, the first act within
37 this state after the extended warranty has been acquired by which the
38 taxpayer takes or assumes dominion or control over the article of
39 tangible personal property to which the extended warranty applies,
40 and includes installation, storage, withdrawal from storage,

1 distribution, or any other act preparatory to subsequent actual use
2 or consumption of the article within this state;

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

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

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

13 (g) With respect to a service defined as a retail sale in RCW
14 82.04.050(2)(g), the first act within this state after the service
15 has been performed by which the taxpayer, as a consumer, views,
16 accesses, downloads, possesses, stores, opens, manipulates, or
17 otherwise uses or enjoys the digital good upon which the service was
18 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
22 this state by which the taxpayer consumes the gas by burning the gas
23 or storing the gas in the taxpayer's own facilities for later
24 consumption by the taxpayer.

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

37 (b) In case the articles used are acquired by bailment, the value
38 of the use of the articles so used must be in an amount representing
39 a reasonable rental for the use of the articles so bailed, determined
40 as nearly as possible according to the value of such use at the

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

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

28 (d) In the case of articles manufactured or produced by the user
29 and used in the manufacture or production of products sold or to be
30 sold to the department of defense of the United States, the value of
31 the articles used is determined according to the value of the
32 ingredients of such articles.

33 (e) In the case of an article manufactured or produced for
34 purposes of serving as a prototype for the development of a new or
35 improved product, the value of the article used is determined by: (i)
36 The retail selling price of such new or improved product when first
37 offered for sale; or (ii) the value of materials incorporated into
38 the prototype in cases in which the new or improved product is not
39 offered for sale.

1 (f) In the case of an article purchased with a direct pay permit
2 under RCW 82.32.087, the value of the article used is determined by
3 the purchase price of such article if, but for the use of the direct
4 pay permit, the transaction would have been subject to sales tax.

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

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

21 (10) "Value of the service used" means the purchase price for the
22 digital automated service or other service, the use of which is
23 taxable under this chapter. If the service is received by gift or
24 under conditions wherein the purchase price does not represent the
25 true value thereof, the value of the service used is determined as
26 nearly as possible according to the retail selling price at place of
27 use of similar services of like quality and character under rules the
28 department may prescribe.

29 NEW SECTION. **Sec. 7.** (1) This section is the tax preference
30 performance statement for the tax preference contained in sections 1
31 and 2 of this act, chapter . . . , Laws of 2021 (sections 1 and 2 of
32 this act). This performance statement is only intended to be used for
33 subsequent evaluation of the tax preference. It is not intended to
34 create a private right of action by any party or to be used to
35 determine eligibility for preferential tax treatment.

36 (2) The legislature categorizes this tax preference as one
37 intended to induce certain designated behavior by taxpayers, as
38 indicated in RCW 82.32.808(2) (a).

1 (3) It is the legislature's specific public policy objective to
2 increase the percentage of electric, hybrid, and fuel cell vehicles,
3 as well as the fueling infrastructure that supports them, in the
4 state.

5 (4) If a review finds that the percentage of vehicles in the
6 state that are electric, hybrid, or fuel cell has surpassed that of
7 conventional gas vehicles, and the amount of fueling infrastructure
8 for electric, hybrid, or fuel cell vehicles has increased, then the
9 legislature intends to extend the expiration date of the tax
10 preference.

11 (5) In order to obtain the data necessary to perform the review
12 in subsection (4) of this section, the joint legislative audit and
13 review committee may refer to any data collected by the state.

14 NEW SECTION. **Sec. 8.** Sections 1 through 6 of this act take
15 effect October 1, 2021.

--- END ---