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**SENATE BILL 5578**

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**State of Washington**

**67th Legislature**

**2022 Regular Session**

**By** Senators King, Lias, and Mullet

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1 AN ACT Relating to clarifying the method for determining the  
2 value of specified tangible personal property incorporated as part of  
3 certain public infrastructure for the purposes of use tax and  
4 business and occupation tax; and amending RCW 82.12.010 and  
5 82.04.450.

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

7 **Sec. 1.** RCW 82.12.010 and 2017 c 323 s 519 are each amended to  
8 read as follows:

9 For the purposes of this chapter:

10 (1) The meaning ascribed to words and phrases in chapters 82.04  
11 and 82.08 RCW, insofar as applicable, has full force and effect with  
12 respect to taxes imposed under the provisions of this chapter.  
13 "Consumer," in addition to the meaning ascribed to it in chapters  
14 82.04 and 82.08 RCW insofar as applicable, also means any person who  
15 distributes or displays, or causes to be distributed or displayed,  
16 any article of tangible personal property, except newspapers, the  
17 primary purpose of which is to promote the sale of products or  
18 services. With respect to property distributed to persons within this  
19 state by a consumer as defined in this subsection (1), the use of the  
20 property is deemed to be by such consumer.

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

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

5 (4) (a) (i) Except as provided in (a)(ii) of this subsection (4),  
6 "retailer" means every seller as defined in RCW 82.08.010 and every  
7 person engaged in the business of selling tangible personal property  
8 at retail and every person required to collect from purchasers the  
9 tax imposed under this chapter.

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

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

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

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

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

37 (b) With respect to a service defined in RCW 82.04.050(2)(a), the  
38 first act within this state after the service has been performed by  
39 which the taxpayer takes or assumes dominion or control over the  
40 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  
3 to subsequent actual use or consumption of the article within this  
4 state;

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

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

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

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

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

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

34 (7)(a) "Value of the article used" is the purchase price for the  
35 article of tangible personal property, the use of which is taxable  
36 under this chapter. The term also includes, in addition to the  
37 purchase price, the amount of any tariff or duty paid with respect to  
38 the importation of the article used. In case the article used is  
39 acquired by lease or by gift or is extracted, produced, or  
40 manufactured by the person using the same or is sold under conditions

1 wherein the purchase price does not represent the true value thereof,  
2 the value of the article used is determined as nearly as possible  
3 according to the retail selling price at place of use of similar  
4 products of like quality and character under such rules as the  
5 department may prescribe.

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

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

37 (d) In the case of articles manufactured or produced by the user  
38 and used in the manufacture or production of products sold or to be  
39 sold to the department of defense of the United States, the value of

1 the articles used is determined according to the value of the  
2 ingredients of such articles.

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

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

14 (g)(i) In the case of an article of tangible personal property  
15 incorporated as an ingredient or component of a publicly owned  
16 street, place, road, highway, easement, right-of-way, mass public  
17 transportation terminal or parking facility, bridge, tunnel, or  
18 trestle by installing, placing, or spreading the property in or upon  
19 the right-of-way of such street, place, road, highway, easement,  
20 bridge, tunnel, or trestle or in or upon the site of such mass public  
21 transportation terminal or parking facility by a person meeting the  
22 definition of "consumer" under RCW 82.04.190(3), the value of the  
23 article used is determined upon a cost basis when there is no  
24 purchase price pursuant to (a) of this subsection. In the case where  
25 such article of tangible personal property has a purchase price, the  
26 value of the article used is determined as provided in (a) of this  
27 subsection.

28 (ii) The cost basis must include every item of cost attributable  
29 to the articles specified in (g)(i) of this subsection, including all  
30 direct and indirect overhead costs.

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

39 (9) "Value of the extended warranty used" means the purchase  
40 price for the extended warranty, the use of which is taxable under

1 this chapter. If the extended warranty is received by gift or under  
2 conditions wherein the purchase price does not represent the true  
3 value of the extended warranty, the value of the extended warranty  
4 used is determined as nearly as possible according to the retail  
5 selling price at place of use of similar extended warranties of like  
6 quality and character under rules the department may prescribe.

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

15 **Sec. 2.** RCW 82.04.450 and 1983 1st ex.s. c 55 s 3 are each  
16 amended to read as follows:

17 (1) The value of products, including by-products, extracted or  
18 manufactured shall be determined by the gross proceeds derived from  
19 the sale thereof whether such sale is at wholesale or at retail, to  
20 which shall be added all subsidies and bonuses received from the  
21 purchaser or from any other person with respect to the extraction,  
22 manufacture, or sale of such products or by-products by the seller,  
23 except:

24 (a) Where such products, including by-products, are extracted or  
25 manufactured for commercial or industrial use;

26 (b) Where such products, including by-products, are shipped,  
27 transported or transferred out of the state, or to another person,  
28 without prior sale or are sold under circumstances such that the  
29 gross proceeds from the sale are not indicative of the true value of  
30 the subject matter of the sale.

31 (2) In the above cases the value shall correspond as nearly as  
32 possible to the gross proceeds from sales in this state of similar  
33 products of like quality and character, and in similar quantities by  
34 other taxpayers, plus the amount of subsidies or bonuses ordinarily  
35 payable by the purchaser or by any third person with respect to the  
36 extraction, manufacture, or sale of such products: PROVIDED, That the  
37 value of a product manufactured or produced for purposes of serving  
38 as a prototype for the development of a new or improved product shall  
39 correspond: (a) To the retail selling price of such new or improved

1 product when first offered for sale; or (b) to the value of materials  
2 incorporated into the prototype in cases in which the new or improved  
3 product is not offered for sale. The department of revenue shall  
4 prescribe uniform and equitable rules for the purpose of ascertaining  
5 such values.

6 (3) In the case of a person engaged in public road construction  
7 activities taxable under RCW 82.04.280(1)(b), the value of products  
8 used in such public road construction activities must be determined  
9 in the manner provided in RCW 82.12.010(7)(g).

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