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**SUBSTITUTE HOUSE BILL 1764**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** House Finance (originally sponsored by Representatives Wylie and Orcutt)

READ FIRST TIME 02/23/23.

1 AN ACT Relating to establishing a method of valuing asphalt and  
2 aggregate used in public road construction for purposes of taxation;  
3 amending RCW 82.12.010 and 82.04.450; creating new sections; and  
4 providing an effective date.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that public road  
7 construction and repair is vital to the continued development of  
8 economic opportunity in this state.

9 (2) The legislature finds that the vast majority of public road  
10 construction projects involve paving companies that self-manufacture  
11 the asphalt and aggregates used in public road construction projects.  
12 Because most of the asphalt and aggregates these companies produce is  
13 used for their own public road construction projects, the legislature  
14 finds that it is difficult to obtain objective, consistent, and  
15 reliable information regarding the market value of the asphalt and  
16 aggregates used in public road construction projects.

17 (3) In light of the unique circumstances surrounding the  
18 valuation of self-manufactured asphalt and aggregates incorporated  
19 into public roads, the legislature intends to establish a method for  
20 valuing asphalt and aggregates that reduces the burdens on taxpayers  
21 and the department of revenue promotes certainty and consistency in

1 the calculation of use tax and business and occupation tax on self-  
2 manufactured asphalt and aggregates across the paving industry.

3 **Sec. 2.** RCW 82.12.010 and 2017 c 323 s 519 are each amended to  
4 read as follows:

5 For the purposes of this chapter:

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

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

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

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

26 (ii) "Retailer" does not include a professional employer  
27 organization when a covered employee coemployed with the client under  
28 the terms of a professional employer agreement engages in activities  
29 that constitute a sale of tangible personal property, extended  
30 warranty, digital good, digital code, or a sale of any digital  
31 automated service or service defined as a retail sale in RCW  
32 82.04.050 (2) (a) or (g) or (6)(c) that is subject to the tax imposed  
33 by this chapter. In such cases, the client, and not the professional  
34 employer organization, is deemed to be the retailer and is  
35 responsible for collecting and remitting the tax imposed by this  
36 chapter.

37 (b) For the purposes of (a) of this subsection, the terms  
38 "client," "covered employee," "professional employer agreement," and

1 "professional employer organization" have the same meanings as in RCW  
2 82.04.540.

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

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

8 (a) With respect to tangible personal property, except for  
9 natural gas and manufactured gas, the first act within this state by  
10 which the taxpayer takes or assumes dominion or control over the  
11 article of tangible personal property (as a consumer), and include  
12 installation, storage, withdrawal from storage, distribution, or any  
13 other act preparatory to subsequent actual use or consumption within  
14 this state;

15 (b) With respect to a service defined in RCW 82.04.050(2)(a), the  
16 first act within this state after the service has been performed by  
17 which the taxpayer takes or assumes dominion or control over the  
18 article of tangible personal property upon which the service was  
19 performed (as a consumer), and includes installation, storage,  
20 withdrawal from storage, distribution, or any other act preparatory  
21 to subsequent actual use or consumption of the article within this  
22 state;

23 (c) With respect to an extended warranty, the first act within  
24 this state after the extended warranty has been acquired by which the  
25 taxpayer takes or assumes dominion or control over the article of  
26 tangible personal property to which the extended warranty applies,  
27 and includes installation, storage, withdrawal from storage,  
28 distribution, or any other act preparatory to subsequent actual use  
29 or consumption of the article within this state;

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

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

37 (f) With respect to a service defined as a retail sale in RCW  
38 82.04.050(6)(c), the first act within this state by which the  
39 taxpayer, as a consumer, accesses the prewritten computer software;

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

7 (h) With respect to natural gas or manufactured gas, the use of  
8 which is taxable under RCW 82.12.022, including gas that is also  
9 taxable under the authority of RCW 82.14.230, the first act within  
10 this state by which the taxpayer consumes the gas by burning the gas  
11 or storing the gas in the taxpayer's own facilities for later  
12 consumption by the taxpayer.

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

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

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

7 (c) In the case of articles owned by a user engaged in business  
8 outside the state which are brought into the state for no more than  
9 (~~one hundred eighty~~) 180 days in any period of (~~three hundred~~  
10 ~~sixty-five~~) 365 consecutive days and which are temporarily used for  
11 business purposes by the person in this state, the value of the  
12 article used must be an amount representing a reasonable rental for  
13 the use of the articles, unless the person has paid tax under this  
14 chapter or chapter 82.08 RCW upon the full value of the article used,  
15 as defined in (a) of this subsection.

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

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

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

32 (g) In the case of asphalt or aggregates manufactured or  
33 extracted by a person providing services taxable under RCW  
34 82.04.280(1)(b) and used by that person in providing those services,  
35 the value of the asphalt or aggregates is equal to the sum of all  
36 direct and indirect costs attributable to the asphalt or aggregates  
37 used, plus a public road construction market adjustment of five  
38 percent of those costs.

39 (8) "Value of the digital good or digital code used" means the  
40 purchase price for the digital good or digital code, the use of which

1 is taxable under this chapter. If the digital good or digital code is  
2 acquired other than by purchase, the value of the digital good or  
3 digital code must be determined as nearly as possible according to  
4 the retail selling price at place of use of similar digital goods or  
5 digital codes of like quality and character under rules the  
6 department may prescribe.

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

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

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

25 (1) The value of products, including by-products, extracted or  
26 manufactured shall be determined by the gross proceeds derived from  
27 the sale thereof whether such sale is at wholesale or at retail, to  
28 which shall be added all subsidies and bonuses received from the  
29 purchaser or from any other person with respect to the extraction,  
30 manufacture, or sale of such products or by-products by the seller,  
31 except:

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

34 (b) Where such products, including by-products, are shipped,  
35 transported or transferred out of the state, or to another person,  
36 without prior sale or are sold under circumstances such that the  
37 gross proceeds from the sale are not indicative of the true value of  
38 the subject matter of the sale.

1           (2) (~~(1)~~) Except as otherwise provided in this subsection, in  
2 the (~~above~~) cases described in subsection (1)(a) and (b) of this  
3 section, the value shall correspond as nearly as possible to the  
4 gross proceeds from sales in this state of similar products of like  
5 quality and character, and in similar quantities by other taxpayers,  
6 plus the amount of subsidies or bonuses ordinarily payable by the  
7 purchaser or by any third person with respect to the extraction,  
8 manufacture, or sale of such products(~~(: PROVIDED, That the)~~).

9           (a) The value of a product manufactured or produced for purposes  
10 of serving as a prototype for the development of a new or improved  
11 product shall correspond: (~~(a)~~) (i) To the retail selling price of  
12 such new or improved product when first offered for sale; or (~~(b)~~)  
13 (ii) to the value of materials incorporated into the prototype in  
14 cases in which the new or improved product is not offered for sale.  
15 The department of revenue shall prescribe uniform and equitable rules  
16 for the purpose of ascertaining such values.

17           (b) In the case of asphalt or aggregates manufactured or  
18 extracted by a person providing services taxable under RCW  
19 82.04.280(1)(b) and used by that person in providing those services,  
20 the value of the asphalt or aggregates is equal to the sum of all  
21 direct and indirect costs attributable to the asphalt or aggregates  
22 used, plus a public road construction market adjustment of five  
23 percent of those costs.

24           NEW SECTION. Sec. 4. This act applies prospectively only to tax  
25 liability incurred as a result of contracts executed on or after the  
26 effective date of this section.

27           NEW SECTION. Sec. 5. This act takes effect August 1, 2023.

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