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NO. _____

Court of Appeals No. 35883-2-II

CLERK

SUPREME COURT OF THE STATE OF WASHINGTON

G-P GYPSUM CORPORATION,

Respondent,

v.

STATE OF WASHINGTON, DEPARTMENT OF REVENUE,

Petitioner.

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STATE OF WASHINGTON
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PETITION FOR REVIEW

ROBERT M. MCKENNA
Attorney General

PETER B. GONICK
Assistant Attorney General
WSBA No. 25616
7141 Cleanwater Dr. SW
PO Box 40123
Olympia, WA 98504-0123

ORIGINAL

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I. INTRODUCTION

This Court should accept review because the Court of Appeals opinion conflicts with Washington Supreme Court opinions explaining the “plain meaning” analysis and holding that statements of legislative intent should be considered when interpreting a statute. In ruling that a business does not “use” natural gas when it burns the natural gas in the city if it had first obtained dominion and control of the gas outside the city, the Court of Appeals failed to consider the legislative intent section of the natural gas use tax. In doing so, the Court of Appeals reaches a result directly contrary to legislative intent and statutory language of the local natural gas use tax. The issue presented is also one of substantial public interest because the ability of cities across Washington to impose local natural gas use taxes will be severely hampered if not eliminated altogether. Cities will not only lose significant revenue, but city taxpayers will be treated unfairly: while industrial users of natural gas that purchase gas from out-of-state brokers will pay no local natural gas use tax and no local public utility tax, all other natural gas users in the city, including residential users, will pay the local public utility tax.

II. IDENTITY OF PETITIONER

The Petitioner is the State of Washington, Department of Revenue, (“Department”) Respondent to the Court of Appeals.¹

¹ Although the tax at issue is imposed by Tacoma and other cities, the Department administers the tax pursuant to RCW 82.14.050, .230. Thus, G-P Gypsum Corp. sued the Department for a refund.

III. COURT OF APPEALS DECISION

The Department seeks review of the decision of the Court of Appeals, Division Two, in *G-P Gypsum Corp. v. Dep't of Revenue*, Cause No. 35883-2-II. The decision was filed May 20, 2008. (Slip. Op., attached at Appendix A-1 to 11).

IV. ISSUES PRESENTED

RCW 82.14.230 authorizes, and Tacoma has imposed, a local tax for the privilege of “using” natural gas within Tacoma. As declared by the Legislature, the tax was authorized to allow cities to recapture revenue lost when deregulation of the natural gas industry allowed some users to bypass the local public utility tax. The statutory definition of “using” includes both its “ordinary meaning” and the “first act of dominion and control” within the state.

Can a taxpayer that burns natural gas within Tacoma avoid the local natural gas use tax by claiming that it first uses the gas outside the City because it contracts for delivery of the gas to stations outside the City and then arranges for delivery to its plant in the City?

V. STATEMENT OF THE CASE

During 1996 through 2000, G-P Gypsum Corporation (“G-P Gypsum”) manufactured gypsum wallboard in Tacoma, Washington. CP 84, 174. In order to manufacture the wallboard, G-P Gypsum consumed large amounts of natural gas at its plant in Tacoma. *Id.*; Pl. Ex. 17. G-P Gypsum primarily purchased the gas for delivery to stations outside the city limits of Tacoma. CP at 84, 174; RP at 19, 21 (Trial Proceedings,

October 16, 2006). G-P Gypsum then arranged for transportation of the natural gas by pipeline to its facility in Tacoma, where it was consumed. CP 174-75. When G-P Gypsum purchased natural gas for delivery directly to its plant in Tacoma, it purchased the gas from the local public utility. CP 86 (“Additional gas needs are also purchased from PSE and delivered to G-P at its Tacoma plant.”) G-P Gypsum purchased the gas outside Sumas because of favorable pricing. RP at 21 (Trial Proceedings, October 16, 2006).

The trial court ruled that the plain language of the statute “means quite simply what it says, and that is the City may fix and impose a use tax for the privilege of using natural gas or manufactured gas in the City as a consumer.” RP at 66 (Court’s Ruling, October 17, 2006). Thus, G-P Gypsum’s use of the natural gas within the City of Tacoma was subject to Tacoma’s local natural gas use tax. *Id.* The Court of Appeals reversed, reasoning that the definition of “use” set forth at RCW 82.12.010(2) for state use taxes limited the application of the local natural gas use tax to only those circumstances when the natural gas user first took dominion and control over the gas within city limits. Slip Op. at 4, 7. The court reasoned that although the definition of “use” for state use tax purposes was incorporated into the local natural gas use tax only “insofar as applicable,” the definition would apply here because the local natural gas use tax did not “preclude” the definition from applying. Slip Op. at 5. The Court of Appeals further rejected applying the ordinary meaning of “use,” even though RCW 82.12.010(2) included within its definition of

“use” that it should have its “ordinary meaning,” reasoning that the statute had a more specific definition as well. The Court of Appeals noted the intent of the Legislature in creating the tax, but refused to consider it in determining the meaning of statutory terms. Slip. Op. at 5.

VI. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

The Court should accept review because the Court of Appeals opinion conflicts with Supreme Court opinions regarding “plain meaning” analysis and that statements of legislative intent should be considered when construing a statute. By failing to consider legislative intent, the Court of Appeals severely limits if not effectively repeals the local natural gas use tax. The resulting unequal and unfair taxation, windfall to industrial users of natural gas, and revenue loss to cities is a matter of substantial public interest. Accordingly, the Court should accept review pursuant to RAP 13.4(b)(1) and (4).

A. The Court Of Appeals Opinion Conflicts With Supreme Court Opinions In Concluding That It Could Not Consider Legislative Intent Enacted As Part Of The Statute

The conclusion of the Court of Appeals that it could not consider the legislative intent of the statute authorizing local natural gas use taxes conflicts with numerous Supreme Court opinions. The Court of Appeals refused to consider the Legislature’s statement of intent and the background faced by the Legislature when authorizing a local natural gas use tax: “The Department sets out in some detail the legislature’s intent in creating the tax But we do not resort to extrinsic sources in

interpreting a statute unless we find more than one reasonable interpretation of the statutory language.” Slip Op. at 5. This is error first because the Court of Appeals interpretation is not the only reasonable interpretation of the language, as discussed more fully below and in briefing to the Court of Appeals. But this is an even more significant error because it conflicts with this Court’s opinions when it suggests that a court is not permitted to consider specific statements of intent adopted by the Legislature when construing a statute.

This Court has made clear that the plain meaning of a statute “is discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question.” *Dep’t of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002). In explaining the court’s plain meaning analysis, the *Campbell & Gwinn* court adopted an approach that considers “legislative purposes or policies appearing on the face of the statute as part of the statute’s context” and “background facts of which judicial notice can be taken.” *Id.* (quoting 2A Norman J. Singer, *Statutes and Statutory Construction* § 48A:16, at 809-10 (6th ed. 2000)). This Court has also repeatedly relied on a statement of legislative intent when interpreting a statute. *E.g.*, *Judd v. AT&T Co.*, 152 Wn.2d 195, 203-04, 95 P.3d 337 (2004) (stating that legislative policy statements are considered in construing, interpreting, and administering the statute); *Spokane Cy. Health Dist. v. Brockett*, 120 Wn.2d 140, 151, 839 P.2d 324 (1992) (reasoning that preamble or

statement of legislative intent can be crucial to interpretation of statute in broadly interpreting terms of statute to accomplish legislative intent).²

The Court of Appeals thus misstates the requirements of a plain meaning analysis and is in conflict with this Court's opinions when it suggests that a statement of legislative intent is an "extrinsic source," to be consulted only upon finding that there is more than one reasonable interpretation of a statute. Slip Op. at 5. Rather, the statement of legislative intent must be considered as part of what "the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question." *Campbell & Gwinn*, 146 Wn.2d at 11. Since the focus of a plain meaning analysis is to examine all that the Legislature has said in the statute that discloses legislative intent, *id.*, it would be odd indeed to ignore the one statement in the statute that specifically discloses legislative intent. The failure of the Court of Appeals to consider the stated intent of the natural gas use tax not only conflicts with Supreme Court opinions, but also leads the court to an incorrect interpretation of the statute.

² See also *Hartman v. State Game Comm'n*, 85 Wn.2d 176, 179, 532 P.2d 614 (1975) (legislative intent section serves as important guide in understanding intended effect of operative sections); *Postema v. Postema Enterprises, Inc.*, 118 Wn. App. 185, 198, 72 P.3d 1122 (2003) (reversing prior interpretation of statutory term because later enacted statement of intent clarified meaning of term), *review denied*, 151 Wn.2d 1011 (2004); *City of Port Orchard v. Dep't of Retirement Sys.*, 112 Wn. App. 811, 817, 50 P.3d 682 (2002) ("We may examine the legislative declaration of purpose to assist in determining that the plain meaning is consistent with that declared purpose."), *review denied*, 148 Wn.2d 1024 (2003).

B. The Refusal Of The Court Of Appeals To Consider Legislative Intent Results In An Incorrect Interpretation Of The Local Natural Gas Use Tax

The significance of the Court of Appeals devotion to ignoring legislative intent is evident in the present case. Here, the Court of Appeals achieves a result directly contrary to the intent of the Legislature stated when it authorized the local natural gas use tax:

Due to a change in the federal regulations governing the sale of brokered natural gas, cities have lost significant revenues from the utility tax on natural gas. It is therefore the intent of the legislature to adjust the utility and use tax authority of the state and cities to maintain this revenue source for the municipalities and provide equality of taxation between intrastate and interstate transactions.

Laws of 1989, ch. 384, § 1 (Appendix B-1).

As discussed in greater detail in briefing to the Court of Appeals, the “change in federal regulations” involved deregulation of the natural gas industry. Resp’t Br. at 8-10. Before deregulation, consumers of natural gas generally purchased gas from the local distribution company, which was subject to a local public utility tax based on the revenue of the local distribution company.³ *General Motors Corp. v. Tracy*, 519 U.S. 278, 284, 117 S. Ct. 811, 136 L. Ed. 2d 761 (1997); RCW 35.21.870. As part of the deregulation of the natural gas industry, local distribution companies were required to unbundle their services and to allow others to purchase transmission along its pipeline without purchasing the gas. *General Motors Corp.*, 519 U.S. at 283. Thus, deregulation allowed

³ A local distribution company is the local public utility, an entity most of us are familiar with as providing residential service for natural gas. For example, the local distribution company in Olympia is Puget Sound Energy.

consumers to purchase gas directly from producers or brokers and transport the gas to the place of consumption along the local distribution company's pipeline. *Id.*; Laws of 1989, ch. 384, § 1 (intent section).

Because the local public utility tax is based on the gross income of the local distribution company, the natural gas that was burned within a city but purchased from brokers would no longer be subject to that tax. In order to allow cities to continue to tax consumption of natural gas in light of this new type of transaction, the Legislature authorized cities to "impose on every person a use tax for the privilege of using natural gas or manufactured gas in the city as a consumer." RCW 82.14.230.⁴

Accordingly, rather than impose the general use tax rate applicable to local sales and use taxes, the Legislature mandated that the local natural gas tax rate be equal to the local public utility tax rate. RCW 82.14.230(2). The Legislature plainly intended the local natural gas tax to complement the local public utility tax, ensuring that one or the other tax was imposed on natural gas used within a city, that cities did not lose a source of revenue, and that natural gas users were taxed fairly and equally.⁵

The local natural gas use tax was thus authorized to tax the exact type of transaction at issue here. G-P Gypsum, which before deregulation would have purchased natural gas from the local distribution company and

⁴ Tacoma's natural gas use tax, at issue in this case, mirrors the statutory language: "Pursuant to RCW 82.14.230, there is fixed and imposed upon every person a use tax for the privilege of using natural gas or manufactured gas in the City as a consumer." Tacoma Muni. Code §6A.90.040.

⁵ The fact that the local natural gas use tax is designed to complement the local public utility tax rather than the local sales tax is one of the many ways in which it differs from the more general local use tax. Resp't Br. at 19-22.

paid the local public utility tax,⁶ now purchases its natural gas from brokers, avoiding the local public utility tax. CP 84, 174-75. The Court of Appeals ruling, in the mistaken impression that it could not consider the stated legislative intent when construing the statute, reaches the opposite of the intended result.

The Court of Appeals compounded its error of refusing to consider legislative intent when it concluded that the statute has only one reasonable interpretation. Slip Op. at 5. To the contrary, the Court is not faced with the dilemma of a clear conflict between statutory language and legislative intent. Rather, the language of the local natural gas use tax and the overall statutory scheme is consistent with taxing the consumption of natural gas within a city, regardless of where the purchaser of natural gas receives delivery of the natural gas. If statutory language is susceptible of a construction that carries out the purpose and intent of the statute, that construction should be adopted. *See Dep't of Labor & Indus. v. Gongyin*, 154 Wn.2d 38, 46, 109 P.3d 816 (2005).

RCW 82.14.230 authorizes a tax on the “privilege of using natural gas . . . in the City as a consumer.” “Using” is not defined in the local natural gas use tax, nor in the chapter dealing more broadly with local sales and use taxes and the local natural gas use tax. RCW 82.14.

⁶ The local public utility tax is not imposed directly on the purchaser of natural gas but is imposed on the gross income of the local public utility. Nevertheless, the economic impact of the tax is felt directly by the purchaser, either as a line-item pass through on an invoice or as reflected in higher utility rates.

However, definitions for state use taxes are incorporated into local use taxes “insofar as applicable.” RCW 82.14.020(7) (1983).⁷

The definition of “using” set forth in the statewide use tax chapter provides:

“Use,” “used,” “using,” or “put to use” shall have their ordinary meaning, and shall mean the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property (as a consumer), and include installation, storage, withdrawal from storage, or any other act preparatory to subsequent actual use or consumption within this state.

RCW 82.12.010(2) (1994).⁸ As the concurring opinion in this case recognized, the “ordinary meaning” of “use” includes: “[T]o put into action or service: have recourse or employment of: EMPLOY,” and “to expend or consume by putting to use.” Slip Op. at 10 (Hunt, J., concurring) (quoting Webster’s Third New International Dictionary 2523-24 (1971)).

Harmonizing this broad, statutory definition of “using” with the local natural gas use tax results in taxable use occurring upon consumption, or burning, within a city. This result gives effect to the “ordinary meaning” language in the definitional statute, the “insofar as applicable language” in RCW 82.14.020(7), and the language of the local

⁷ This statutory provision has been recodified at RCW 82.14.020(9). Throughout the Petition for Review, the Department cites to the statutory provisions in effect during the tax period at issue, 1996-2000.

⁸ Now codified at RCW 82.12.010(5).

natural gas use tax being imposed on “use as a consumer within the city.”⁹ This result is also consistent with the purpose of the statute to complement the local public utility tax, which effectively is imposed on consumption within the city.

The Court of Appeals majority opinion refused to apply the ordinary meaning of the term “use,” citing cases that hold that the ordinary meaning of a term will not be used where the Legislature has provided a definition for the term. Slip Op. at 6. As the concurring opinion recognized, however, those cases are inapplicable here because the “ordinary meaning” is an actual part of the statutory definition of “using.” RCW 82.12.010(2). Accordingly, the majority opinion fails to give any effect to the “ordinary meaning” language of RCW 82.12.010(2). Slip Op. at 8 (Hunt, J., concurring).

The Court of Appeals also incorrectly reasons that the more “precise” definition of “first act of dominion and control” is required because use taxes are imposed only once. Slip Op. at 6. In the context of a local natural gas use tax, the ordinary meaning of “using” natural gas as a consumer within a city is more precise than “first act of dominion or

⁹ G-P Gypsum argued at the Court of Appeals that, despite the inclusion of “ordinary meaning” in the definition of “use,” court opinions and Department determinations have applied only the “first act of dominion and control” prong of the definition. The instances cited by G-P Gypsum are distinguished by the fact that they all concern application of the sales and use tax and not the natural gas use tax. Thus, those courts were not harmonizing the definition of use with the language and purpose of the natural gas use tax. Moreover, the court cases cited by G-P Gypsum do not hold that only the first act of dominion and control can be subject to use tax. See *Seattle Filmworks v. State*, 106 Wn. App. 448, 458-60, 24 P.3d 460, review denied, 145 Wn.2d 1009 (2001); *Mayflower Park Hotel v. Dep’t of Revenue*, 123 Wn. App. 628, 632, 98 P.3d 534 (2004), review denied, 154 Wn.2d 1022 (2005).

control.” The ordinary meaning of “using” natural gas is to consume it by burning the natural gas.¹⁰ On the other hand, the “first act of dominion or control” is not always clear in the context of natural gas, which is essentially fungible and being continuously transported along a pipeline intermingled with other natural gas.

Giving “using” its ordinary meaning is bolstered by the Legislature’s command that the definition be incorporated into the chapter that includes the local natural gas use tax only “insofar as applicable.” Such language has been relied upon, in part, to limit the application of a definition taken from another chapter where it would not make sense in the context of the more specific statute. *St. Paul & Tacoma Lumber Co. v. State*, 40 Wn.2d 347, 353, 243 P.2d 474 (1952).

The Court of Appeals distinguished *St. Paul* because in that case the statute included language that the definitions should apply “unless otherwise required by the context.” Slip Op. at 5. In doing so, the Court of Appeals failed to give effect to the “insofar as applicable” language, reasoning instead that the definitions applied unless a separate statutory provision “precluded” its application. Slip. Op. at 5. First, the Court of Appeals failed to recognize that the local natural gas use tax itself

¹⁰ Applying the ordinary meaning of “using” natural gas as burning the gas also ensures that the tax will be imposed only once. The fact that natural gas can only be “used” once is yet another way that the local natural gas tax differs from sales and use taxes. Most items of personal property can be “used” many times. Accordingly, it may make sense to apply the tax on the “first act of dominion and control” over the property. Similarly, since the use tax complements the sales tax, which is imposed once and in the usual circumstance upon the “first act of dominion and control” – i.e., the purchase, that portion of the definition again makes sense. By contrast, the local natural gas use tax complements the public utility tax, which is effectively taxed on burning the natural gas.

“precludes” application of the definition (if the definition means only the first act of dominion and control). Otherwise, the local natural gas use tax would not be given effect. Second, the Court of Appeals failed to give any effect to the “insofar as applicable” language. Rather, the Court of Appeals applies the definitions of RCW 82.12.010 to RCW 82.14 unless some language other than “insofar as applicable” precludes it. The Court of Appeals thus ensures that in neither case – whether a separate statute independently precludes use of the definition or if there is no such statute, the “insofar as applicable” language will have no effect.

The Court of Appeals ruling avoided codified legislative statements of intent, thereby adopting an interpretation that defeats the express legislative purpose of the statute. Review should be granted to uphold this Court’s enunciation of the plain meaning analysis of statutory construction and to prevent the frustration of legislative intent.

C. The Case Involves Issues Of Substantial Public Interest Because The Court Of Appeals Contradicts The Will Of The Legislature And Impacts The Public Fisc

The incorrect interpretation of RCW 82.14.230 by the Court of Appeals leaves cities with no ability to tax the consumption of natural gas within its borders where the purchaser of the natural gas takes delivery of the natural gas outside city limits. Even if there are some that purchase natural gas from brokers that currently accept delivery of the natural gas within a city, the Court of Appeals decision ensures that the number of such purchasers will dwindle if not disappear.

The Court of Appeals interpretation will encourage the unfairness and inequality that the Legislature sought to prevent when it enacted the local natural gas use tax. Large, industrial users of natural gas that can purchase its gas from out-of-state brokers will not pay a local public utility tax and will not pay a local natural gas use tax. Meanwhile, all other consumers within the city – the homeowners heating their houses and cooking their meals, the small business owners who cannot economically purchase natural gas from brokers – will continue to pay tax of up to 6 % on the value of the natural gas they consume. RCW 82.14.230; 35.21.870(1) (establishing maximum rate of 6% for local public utility tax and local natural gas use tax).

Not only will the Court of Appeals interpretation contradict the Legislature's intent by creating unequal and unfair treatment of taxpayers, but cities will have no means of recouping its lost revenue. There are no municipal code amendments that can cure the defect created by the Court of Appeals interpretation. As of 2007, there were 46 cities that imposed a natural gas use tax. Washington State Department of Revenue, *Tax Reference Manual, Information on State and Local Taxes in Washington State* 92-94 (January 2007) (Appendix E-3).¹¹ Cities that impose the local natural gas use tax span the state, from Everett (Everett Muni. Code

¹¹ The entire Tax Reference Manual can be found at http://dor.wa.gov/Content/AboutUs/StatisticsAndReports/2007/Tax_Reference_2007/default.aspx.

§3.76.010) to Washougal (Washougal Muni. Code §3.78.010) to Wenatchee (Wenatchee Muni. Code §5.82.010).

In 2006, cities received over \$10 million dollars from this tax to be used for general purposes. Washington State Department of Revenue, *Tax Reference Manual, Information on State and Local Taxes in Washington State 92-94* (January 2007). The amount received by cities from this tax has been steadily increasing since 1997. *Id.* The Court of Appeals decision severely limits or cuts off entirely this revenue source for cities – a revenue source designed to promote fair and equal taxation. Cities that impose a local natural gas use tax will therefore have to cut expenditures or seek alternative revenue.

As difficult as it will be for cities to make up future annual revenues of over \$10 million, the Court of Appeals opinion has further consequences for these cities. Taxpayers may sue for a refund of taxes paid in the current period and four years prior. RCW 82.32.050, .060, .170, .180. Thus, if the incorrect interpretation of the Court of Appeals stands, cities will be faced with refunding substantial revenues. The record in the present case suggests that at least some, and possibly all, of those that purchased natural gas from brokers received delivery outside the city of consumption. Accordingly, the effect of providing a retrospective, four to five year refund to these taxpayers will be devastating to cities and a windfall to industrial users of natural gas.

Not only are cities powerless to amend their municipal codes to address the Court of Appeals opinion, but it is unlikely that any other

division of the Court of Appeals will have the opportunity to address the statute. Although numerous cities impose the local natural gas use tax, the Department of Revenue is charged with administering the taxes. RCW 82.14.050, .230. Thus, taxpayers suing in court for a refund are required to file their lawsuit in Thurston County Superior Court. RCW 82.32.180. Accordingly, there will likely be no opportunity for other courts of appeal to address this statute.¹² Consequently, cities all across Washington will be bound by the ruling in Division II and there will be no opportunity for other courts to interpret the statute.

The Department respectfully submits that the Washington Supreme Court should decide this question of statutory interpretation with such dire implications for cities all across the state because it is a question of substantial public interest. RAP 13.4(b)(4).

VII. CONCLUSION

The Court should accept review of this case because the opinion of the Court of Appeals conflicts with Washington Supreme Court opinions regarding the role of legislative intent sections in statutory interpretation. As a result, the opinion incorrectly interprets the local natural gas use tax in a manner directly contrary to the language and intent of the statute. This interpretation results in unfair tax treatment and undue and unanticipated revenue loss to 46 cities across Washington, which is an

¹² It is possible, but not likely, that a court other than Thurston County Superior Court will address this issue in the context of an appeal from a Board of Tax Appeals decision. RCW 82.03.180. If this petition for review is denied, it seems likely that taxpayers, which have the choice of venue, will file in Thurston County Superior Court to ensure a jurisdiction covered by Division II of the Court of Appeals.

issue of substantial public interest. The Department respectfully requests that this Court accept review.

RESPECTFULLY SUBMITTED this 19th day of June 2008.

ROBERT M. McKENNA
Attorney General

A handwritten signature in black ink, appearing to read "Peter B. Gonick", written over the typed name of Peter B. Gonick. The signature is fluid and cursive, with a long horizontal flourish extending to the right.

PETER B. GONICK, WSBA #25616
Assistant Attorney General
Attorneys for Petitioner

FILED
COURT OF APPEALS
DIVISION II

OR MAY 20 AM 8:42
STATE OF WASHINGTON
BY _____
DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

G-P GYPSUM CORPORATION,

No. 35883-2-II

Appellant;

v.

STATE OF WASHINGTON
DEPARTMENT OF REVENUE,

PUBLISHED OPINION

Respondent.

ARMSTRONG, J.—G-P Gypsum Corporation (Gypsum) appeals the trial court's decision denying it a refund of Tacoma city use taxes it paid for its use of natural gas in Tacoma. It argues that the statutory definition of "use" limits Tacoma's tax to situations where the taxpayer first exercises its dominion or control over the gas in Tacoma. Gypsum reasons that because it first exercised dominion over its natural gas in Washington outside Tacoma, it did not "use" the gas in Tacoma and the local tax does not apply. Because the only statutory definition of "use" supports Gypsum's argument, we reverse and remand for entry of judgment granting Gypsum the refund requested.

FACTS

At trial, the parties stipulated to the following facts. Gypsum manufactures wallboard in Tacoma, Washington, consuming natural gas in the process. During the time in question, Gypsum purchased natural gas at stations in Sumas and Sumner, both cities in Washington, then transported the gas to its Tacoma plant. Gypsum paid the City of Tacoma a total of \$853,722.55 for the natural gas it consumed in Tacoma from January 1, 1996, to December 31, 2000.¹

Gypsum sought a refund of the entire amount. After exhausting its remedies with the

¹ Local use taxes are collected by the state Department of Revenue (Department) and then distributed to the local governments under RCW 82.14.050. *See also* RCW 82.14.230(5).

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Department of Revenue (Department), Gypsum sued for a refund in Thurston County Superior Court. Gypsum alleged that it owed no Tacoma natural gas use taxes because it did not first take possession, dominion, or control of the gas in Tacoma.

The trial court denied Gypsum's request for a refund of the Tacoma natural gas use taxes, finding that even though Gypsum took dominion and control over its natural gas at the Sumas or Sumner stations where it purchased the gas, the Tacoma tax still applied because a "harmonious reading of RCW 82.14 and corresponding statutes leads to only one reasonable conclusion - that the natural gas use tax of RCW 82.14.230(1) is imposed upon the first use or the first exercise of dominion and control over natural gas within a city." Clerk's Papers (CP) at 179.

The issue is whether Gypsum is subject to Tacoma's local use tax for natural gas under RCW 82.14.230 even though its first act of dominion or control over the gas in Washington occurred outside the city.

ANALYSIS

Gypsum argues that local natural gas use taxes, just like any other use tax, may be imposed only at the place of first use within Washington, not on any subsequent use elsewhere. Thus, according to Gypsum, because it first exercised dominion or control over its natural gas in Washington outside of Tacoma, Tacoma's tax does not apply to it. Gypsum relies on the statutory definition of "use" in former RCW 82.12.010(2) (1994), various judicial and administrative decisions limiting other use taxes to "the first act" of dominion and control in Washington and not "any subsequent act," and the Department's alleged administrative practice of imposing the state and local use taxes simultaneously. It also argues that if the meaning of "use" is ambiguous, that ambiguity must be resolved in favor of the taxpayer.

We review a lower court's interpretation of a statute de novo. *Qwest Corp. v. City of*

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Bellevue, 161 Wn.2d 353, 358, 166 P.3d 667 (2007). Our objective in construing a statute is to ascertain and carry out the legislature's intent. *Qwest Corp.*, 161 Wn.2d at 363 (quoting *Arborwood Idaho, LLC v. City of Kennewick*, 151 Wn.2d 359, 367, 89 P.3d 217 (2004)).

A. Statutory Background

This case concerns the interplay between two chapters of Washington's revenue code, chapters 82.12 and 82.14 RCW.

Chapter 82.12 RCW concerns state use taxes. RCW 82.12.022(1) levies "a use tax for the privilege of using natural gas . . . within this state as a consumer." Former RCW 82.12.010(2)² provided that for the purposes of chapter 82.12 RCW, the terms "[u]se,' 'used,' 'using,' or 'put to use' shall have their ordinary meaning, and shall mean the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property^[3] (as a consumer) and include installation, storage, withdrawal from storage . . . or any other act preparatory to subsequent actual use or consumption within this state."

Chapter 82.14 RCW authorizes local use taxes. RCW 82.14.230(1) authorizes cities to levy "a use tax for the privilege of using natural gas . . . in the city as a consumer." The term "use" is not defined, but former RCW 82.14.020(7) (1983)⁴ provides that "[t]he meaning ascribed to words and phrases in chapter[] 82.12 RCW, . . . *insofar as applicable*, shall have full force and effect with respect to taxes imposed under authority of this chapter." (Emphasis added.)

² Now codified in RCW 82.12.010(5)(a) with virtually identical language.

³ Neither party disputes that natural gas is "tangible personal property."

⁴ Now codified in RCW 82.14.020(9) with identical language.

B. Application

We begin our review with the statutory language itself; if the statute's meaning is plain on its face, we apply that meaning. *Tingey v. Haisch*, 159 Wn.2d 652, 657, 152 P.3d 1020 (2007) (quoting *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005)). We discern plain meaning not only from the statutory language but also from the context surrounding the statute, related provisions, and the statutory scheme as a whole. *Tingey*, 159 Wn.2d at 657. Only if a provision remains susceptible to more than one reasonable interpretation will we employ tools of statutory construction to discern its meaning. *Tingey*, 159 Wn.2d at 657 (citing *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 12, 43 P.3d 4 (2002)).

1. "Insofar As Applicable"

The parties first disagree about the extent to which the definition of "use" in former RCW 82.12.010(2) is "applicable" to local natural gas use taxes. Gypsum argues that the definition is fully applicable to local taxes. The Department maintains that the definition of "use" in chapter 82.12 RCW does not apply to local taxes and that we should define "use" under the local natural gas tax as the place of *consumption*, not first dominion or control. We are bound to apply legislative definitions included in a statute, *Am. Cont'l Ins. Co. v. Steen*, 151 Wn.2d 512, 518, 91 P.3d 864 (2004); thus, we focus on the meaning of "insofar as applicable" in former RCW 82.14.020(7).

Gypsum argues that the plain language of former RCW 82.14.020(7) applies the statutory definition of "use" to the local natural gas tax, notwithstanding the phrase "insofar as applicable," because neither the state nor local natural gas use tax statute precludes the definition from applying. Therefore, the definition must apply equivalently to the same "use" event as for any other use tax: the first taking of dominion and control in Washington.

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The Department relies on *St. Paul & Tacoma Lumber Co. v. State*, 40 Wn.2d 347, 353, 243 P.2d 474 (1952), for the proposition that a court may use the phrase “insofar as applicable” to reject a statutory definition and use the “generally understood meaning” of a term when the statutory definition “does not make sense” in that context. Br. of Resp’t at 14. In *St. Paul & Tacoma Lumber Co.*, as here, one title of the revenue code provided a series of statutory definitions, and another title incorporated those definitions “in so far as applicable.” See *St. Paul & Tacoma Lumber Co.*, 40 Wn.2d at 353. But *St. Paul* differed from this case in one critical respect: the definition statute itself stated that it applied “unless otherwise required by the context.” *St. Paul & Tacoma Lumber Co.*, 40 Wn.2d at 352. The court held that the statutory definition was therefore not “applicable” when a different definition was “required by the context” because “by its express terms, the statutory definition does not govern.” *St. Paul & Tacoma Lumber Co.*, 40 Wn.2d at 353.

Here, by contrast, no statute precludes the definition of use in RCW 82.12.010 from applying to the local gas use tax authorized by chapter 82.14 RCW. The Department sets out in some detail the legislature’s intent in creating the tax—to replace the local utility tax revenue cities collected from local distributors who sold to consumers like Gypsum. But we do not resort to extrinsic sources in interpreting a statute unless we find more than one reasonable interpretation of the statutory language. See *Tingey*, 159 Wn.2d at 657. And we cannot add language to an unambiguous statute even if we believe that the legislature intended something other than what it expressed. *Steen*, 151 Wn.2d at 518 (citing *State v. Watson*, 146 Wn.2d 947, 955, 51 P.3d 66 (2002)). The Department essentially asks us to craft a rule defining “use” to meet the legislature’s intent in passing chapter 82.14 RCW. And this we cannot do. Rather, we apply the “use” definition in chapter 82.12 RCW because nothing in chapters 82.12 or 82.14

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RCW precludes it, both chapters deal with use taxes, and chapter 82.14 RCW directs us to apply chapter 82.12 RCW “as applicable.”

2. “Ordinary Meaning”

The concurrence discusses the presence of the “ordinary meaning” language in former RCW 82.12.010(2), noting that the “ordinary meaning” of the term “use” would be “consumption.” See Concurrence at 8. But the concurrence’s resort to a dictionary definition is premature where the statute specifically defines “use” as “the first act [of] dominion or control.” See *Dahl-Smyth, Inc. v. City of Walla Walla*, 148 Wn.2d 835, 842-43, 64 P.3d 15 (2003) (only where no statutory definition is provided does the court refer to a word’s common meaning in the dictionary); see also *State v. Lilyblad*, 163 Wn.2d 1, 9, 177 P.3d 686 (2008) (“All words must be read in the context of the statute in which they appear, not in isolation or subject to all possible meanings found in a dictionary.”). The meaning of words in a statute may be indicated or controlled by those with which they are associated. *Lilyblad*, 177 P.3d at 690 (quoting *State v. Roggenkamp*, 153 Wn.2d 614, 623, 106 P.3d 196 (2005)); see also *City of Seattle v. Dep’t of Labor & Indus.*, 136 Wn.2d 693, 699, 965 P.2d 619 (1998) (rule of *ejusdem generic* provides that specific terms modify or restrict the application of general terms where both are used in sequence). We also note that because use taxes are imposed only once, a precise rather than “expansive” definition of the triggering event is required. Concurrence at 8; see WAC 458-20-178(3). Under these circumstances, we have no choice but to apply the legislature’s explicit definition over its vague reference to “ordinary meaning.”

3. “First Act Within This City”

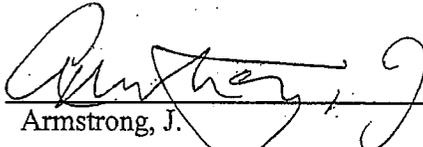
The Department argues finally that the appropriate definition for “use” as it pertains to the local tax is the consumer’s first use in the *city*; thus, when Gypsum transports the gas into the

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city, it owes the city tax. Such an interpretation is contrary to the language of former RCW 82.12.010(2), which defined "use" as the "first act within this *state* by which the taxpayer takes or assumes dominion or control." (Emphasis added.) Moreover, the Department's interpretation would make the gas taxable in every city through which Gypsum transports it, a result that runs counter to the legislature's mandate that state and local sales and use taxes are to be uniform and collected at the same time and place.⁵ Former RCW 82.14.070 (1970).

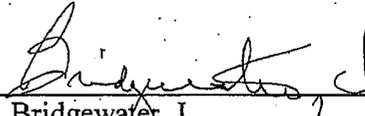
In conclusion, we find no ambiguity in chapters 82.12 and 82.14 RCW regarding the meaning of when a taxable use occurs. Applying the only statutory definition of "use" in either chapter, Gypsum first exercised dominion and control over the natural gas outside the City of Tacoma during the period in question. Thus, Tacoma's use tax did not apply.

We reverse and remand for entry of judgment granting Gypsum the refund requested.



Armstrong, J.

I concur:



Bridgewater, J.

⁵ The Department argues that RCW 82.14.070 does not apply to the local natural gas use tax because it is limited to "local sales and use taxes." We disagree; RCW 82.14.070 applies to "any local sales and use tax adopted pursuant to [chapter 82.14 RCW]," and the local natural gas tax is a use tax adopted under RCW 82.14.230. Former RCW 82.14.070 (emphasis added); *see also* RCW 82.14.030(1) ("except as provided in RCW 82.14.230, this sales and use tax shall not apply to natural or manufactured gas") (emphasis added). The legislature therefore intended the local natural gas use tax to be "as consistent and uniform as possible" with any other use tax. Former RCW 82.14.070.

HUNT, J. — (Concurring) I agree with my colleagues that Tacoma improperly taxed Gypsum. But I write separately to clarify the statutory definition of “use” in former RCW 82.12.010(2) (1994).

The version of former RCW 82.12.010(2) in effect during the period of contested taxation here, January 1, 1996, to December 31, 2000, provided the following definition of “use”:

“Use,” “used,” “using,” or “put to use” shall have their *ordinary meaning*, and shall mean the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property (as a consumer), and include installation, storage, withdrawal from storage, or any other act preparatory to subsequent actual use or consumption within this state.

Former RCW 82.12.010(2) (emphasis added).⁶

In essence, the majority adopts Gypsum’s argument and holds that for purposes of imposing a use tax on natural gas, the Legislature limited former RCW 82.12.010(2)’s definition of “use” to mean only “the first taking of dominion and control in Washington.” Majority at 5. In my view, the majority’s narrow reading of former RCW 82.12.010(2)’s definition is contrary to the statute’s plain language because it ignores the preceding “ordinary meaning” of “use” in the first clause of the statute. In contrast, the plain language of the statute provides a more

⁶ Chapter 14 of RCW 82 authorizes local use taxation. Chapter 12 of RCW 82 concerns state use taxes. RCW 82.14.020 (local tax) provides that the definition of “use” under chapter 12 (state tax) also applies to local use taxes, such that the “ordinary meaning” of “use” governs Tacoma city taxes as well as state taxes. See former RCW 82.14.020(7) (1983), which provided:

Definitions--Where retail sale occurs

The meaning ascribed to words and phrases in [chapter 82.12 RCW] . . . insofar as applicable, shall have full force and effect with respect to taxes imposed under authority of this chapter.

(recodified at RCW 82.14.020(9)).

expansive definition, including as a means of taking or assuming “dominion and control” that “use . . . shall have [its] ordinary meaning.” Former RCW 82.12.010(2).

I. STATUTORY CONSTRUCTION

When interpreting statutory language, our goal is to carry out the legislature’s intent. *Simpson Inv. Co. v. Dep’t of Revenue*, 141 Wn.2d 139, 148, 3 P.3d 741 (2000). If a statute is clear on its face, we derive the legislature’s intent from the plain language and ordinary meaning of the statute alone. *Berrocal v. Fernandez*, 155 Wn.2d 585, 590; 121 P.3d 82 (2005).⁷ Nonetheless, we must avoid unlikely, absurd, or strained results. *Berrocal*, 155 Wn.2d at 590. See also *Nelson Alaska Seafoods, Inc. v. Dep’t of Revenue*, ___ Wn. App. ___, 177 P.3d 1161, 1164-65 (2008).

II. PLAIN LANGUAGE

A. “Ordinary Meaning”

The plain language of the first clause of former RCW 82.12.010(2) expressly encompasses the ordinary meaning of the word “use”: “‘Use,’ ‘used,’ ‘using,’ or ‘put to use’ shall have their ordinary meaning[.]” Where, as here, the legislature “has not specifically defined” the “ordinary meaning” of “use,”⁸ we adopt its “common meaning,” which “may be

⁷ “In ascertaining this intent, the language at issue must be evaluated in the context of the entire statute.” *Simpson Inv. Co.*, 141 Wn.2d at 149. We must view each provision in relation to other provisions and harmonize, if possible, to insure proper construction of every provision. *Quadrant Corp. v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 154 Wn.2d 224, 238-39, 110 P.3d 1132 (2005) (We “begin with the statute’s plain language and ordinary meaning,” but we also look to “the applicable legislative enactment as a whole, harmonizing its provisions by reading them in context with related provisions and the statute as a whole.”)

⁸ Insofar as the majority asserts that the second clause of the statute, “the first act within this state by which the taxpayer takes or assumes dominion or control,” provides a specific statutory definition of “use,” I respectfully disagree. Majority at 3.

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determined by referring to a dictionary.” *Quadrant Corp. v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 154 Wn.2d 224, 239, 110 P.3d 1132 (2005) (citing WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1005 (1971)) (citing *Dahl-Smyth, Inc. v. City of Walla Walla*, 148 Wn.2d 835, 842-43, 64 P.3d 15 (2003)). The relevant dictionary definitions of “use” include, “[T]o put into action or service: have recourse or employment of: EMPLOY,” and “to expend or consume by putting to use.” WEBSTER’S, *supra* at 2523-24.

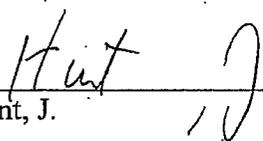
Thus, the legislature has not restricted former RCW 82.12.010(2)’s definition of “use” to occur only when a party establishes “dominion and control” over natural gas. Rather, “use” can also occur, for example, when a customer “consumes” natural gas, which may in retail customer circumstances also constitute that customer’s first exercise of “dominion and control” over the gas.

Here, however, regardless of the applicable definition of “use,” I agree with the majority that Gypsum “used” the natural gas at issue when it first exercised dominion and control over the gas after it entered the state near Sumas.⁹ Former RCW 82.12.010(2). Accordingly, because Gypsum had already “used” the natural gas at Sumas before transporting it to its Tacoma manufacturing plant, Gypsum could not “use” it again within Tacoma’s city limits. Therefore, there was no taxable event for which Tacoma could impose and collect a use tax.¹⁰

⁹ And Gypsum paid a state use tax on the natural gas, under former RCW 82.12.022 (1994), when Gypsum first exercised this dominion and control near Sumas.

¹⁰ In addition, in my view, the legislative intent behind former RCW 82.12.010(2) and 82.14.020(7) are not consistent. In order to ameliorate the loss of revenue to cities caused by federal legislation, our state legislature expressly gave cities the option of taxing natural gas “used” within city limits, but only if that is the taxpayer’s first act of use within the State. Former RCW 82.12.010(2); RCW 82.14.230(1); former RCW 82.14.020(7). *See, e.g.* the following “HISTORICAL AND STATUTORY NOTE” to RCW 82.12.022:

Accordingly, I concur in the majority's holding that Tacoma improperly collected a use tax from Gypsum and that Tacoma must refund this tax to Gypsum.



Hunt, J.

Intent--1989 c 384: "Due to a change in the federal regulations governing the sale of brokered natural gas, cities have lost significant revenues from the utility tax on natural gas. It is therefore the intent of the legislature to adjust the utility and use tax authority of the state and cities to maintain this revenue source for the municipalities and provide equality of taxation between intrastate and interstate transactions." [1989 c 384 § 1.]

Thus, it appears, for example, that if Northwest Pipelines had taken control over the natural gas at Sumas and piped it directly to Gypsum's Tacoma plant, the City of Tacoma could have taxed Gypsum's first use of and exercise of control over the natural gas because it occurred within city limits. Otherwise, however, Tacoma cannot take advantage of this ameliorating statute.

As Tacoma contends, however, the legislature may have intended to create two taxable events under the circumstances present here—the first event, subject to the state use tax, when Gypsum first exercised dominion and control over the gas at Sumas; and the second event, subject to a municipal use tax, when Gypsum consumed the gas at its Tacoma plant. But if this was the legislature's intent in enacting the ameliorating use tax statute for municipalities, then it is for the legislature, not the court, to amend the statutory scheme to allow cities to impose and to collect such natural gas use taxes.

(2) Credit shall be allowed, in accordance with rules of the department, against the taxes imposed in this chapter for any petroleum product paid to another state with respect to the same petroleum product. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to that petroleum product. For the purpose of this subsection:

- (a) "Petroleum product tax" means a tax.
- (i) That is imposed on the act or privilege of possessing petroleum products, and that is not generally imposed on other activities or privileges;
- (ii) That is measured by the value of the petroleum product, in terms of wholesale value or other terms, and in the determination of which the deductions allowed would not constitute the tax an income tax or value added tax.
- (b) "State" means (i) a state of the United States other than Washington, or any political subdivision of such other state, (ii) the District of Columbia, and (iii) any foreign country or political subdivision thereof.

NEW SECTION. Sec. 19. The sum of four hundred thousand dollars, as much thereof as may be necessary, is appropriated from the pollution liability reinsurance program trust account to the Washington pollution liability reinsurance program for the biennium ending June 30, 1991, to carry out the purposes of this act.

NEW SECTION. Sec. 20. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 21. Sections 1 through 13 of this act constitute new chapter in Title 70 RCW. Sections 14 through 18 of this act shall constitute a new chapter in Title 82 RCW.

NEW SECTION. Sec. 22. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately, except sections 14 through 19 of this act shall take effect July 1, 1989.

Passed the House April 20, 1989.

Passed the Senate April 19, 1989.

Approved by the Governor May 13, 1989.

Filed in Office of Secretary of State May 13, 1989.

CHAPTER 384

[Substitute House Bill No. 1574]
NATURAL AND MANUFACTURED GAS—TAXATION

AN ACT Relating to the taxation of utilities and natural gas; amending RCW 82.14.030; adding a new section to chapter 82.14 RCW; adding new sections to chapter 82.12 RCW; adding a new section to chapter 82.08 RCW; creating a new section; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. Due to a change in the federal regulations governing the sale of brokered natural gas, cities have lost significant revenues from the utility tax on natural gas. It is therefore the intent of the legislature to adjust the utility and use tax authority of the state and cities to maintain this revenue source for the municipalities and provide equality of taxation between intrastate and interstate transactions.

NEW SECTION. Sec. 2. A new section is added to chapter 82.14 RCW to read as follows:

(1) The governing body of any city, while not required by legislative mandate to do so, may, by resolution or ordinance for the purposes authorized by this chapter, fix and impose on every person a use tax for the privilege of using natural gas or manufactured gas in the city as a consumer.

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

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

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

(a) The person who sold the gas to the consumer when that tax is a gross receipts tax similar to that imposed pursuant to RCW 35.21.870 by another state with respect to the gas for which a credit is sought under this subsection; or

(b) The person consuming the gas upon which a use tax similar to the tax imposed by this section was paid to another state with respect to the gas for which a credit is sought under this subsection.

(5) The use tax hereby imposed shall be paid by the consumer. The administration and collection of the tax hereby imposed shall be pursuant to RCW 82.14.050.

NEW SECTION. Sec. 3. A new section is added to chapter 82.12 RCW to read as follows:

(1) There is hereby levied and there shall be collected from every person in this state a use tax for the privilege of using natural gas or manufactured gas within this state as a consumer.

(2) The tax shall be levied and collected in an amount equal to the value of the article used by the taxpayer multiplied by the rate in effect for the public utility tax on gas distribution businesses under RCW 82.16.020(1)(b). The "value of the article used" does not include any amounts that are paid for the hire or use of a gas distribution business as defined in RCW 82.16.010(7) in transporting the gas subject to tax under this subsection if those amounts are subject to tax under that chapter.

(3) The tax levied in this section shall not apply to the use of natural or manufactured gas if the person who sold the gas to the consumer has paid a tax under RCW 82.16.020(1)(b) with respect to the gas for which exemption is sought under this subsection.

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

(a) The person who sold the gas to the consumer when that tax is a gross receipts tax similar to that imposed pursuant to RCW 82.16.020(1)(b) by another state with respect to the gas for which a credit is sought under this subsection; or

(b) The person consuming the gas upon which a use tax similar to the tax imposed by this section was paid to another state with respect to the gas for which a credit is sought under this subsection.

(5) The use tax hereby imposed shall be paid by the consumer to the department.

(6) There is imposed a reporting requirement on the person who delivered the gas to the consumer to make a quarterly report to the department. Such report shall contain the volume of gas delivered, name of the consumer to whom delivered, and such other information as the department shall require by rule.

(7) The department may adopt rules under chapter 34.05 RCW for the administration and enforcement of sections 1 through 6 of this act.

NEW SECTION. Sec. 4. A new section is added to chapter 82.08 RCW to read as follows:

The tax levied by RCW 82.08.020 shall not apply to sales of natural or manufactured gas.

NEW SECTION. Sec. 5. A new section is added to chapter 82.12 RCW to read as follows:

The tax levied by RCW 82.12.020 shall not apply in respect to the use of natural or manufactured gas.

Sec. 6. Section 4, chapter 94, Laws of 1970 ex. sess. as amended by section 17, chapter 49, Laws of 1982 1st ex. sess. and RCW 82.14.030 are each amended to read as follows:

(1) The governing body of any county or city while not required by legislative mandate to do so, may, by resolution or ordinance for the purposes authorized by this chapter, fix and impose a sales and use tax in accordance with the terms of this chapter. Such tax shall be collected from those persons who are taxable by the state pursuant to chapters 82.08 and 82.12 RCW, upon the occurrence of any taxable event within the county or city as the case may be: **PROVIDED**, That except as provided in section 2 of this act, this sales and use tax shall not apply to natural or manufactured gas. The rate of such tax imposed by a county shall be five-tenths of one percent of the selling price (in the case of a sales tax) or value of the article used (in the case of a use tax). The rate of such tax imposed by a city shall not exceed five-tenths of one percent of the selling price (in the case of a sales tax) or value of the article used (in the case of a use tax): **PROVIDED**, HOWEVER, That in the event a county shall impose a sales and use tax under this subsection, the rate of such tax imposed under this subsection by any city therein shall not exceed four hundred and twenty-five one-thousandths of one percent.

(2) Subject to the enactment into law of the 1982 amendment to RCW 82.02.020 by section 5, chapter 49, Laws of 1982 1st ex. sess., in addition to the tax authorized in subsection (1) of this section, the governing body of any county or city may by resolution or ordinance impose an additional sales and use tax in accordance with the terms of this chapter. Such additional tax shall be collected upon the same taxable events upon which the tax imposed under subsection (1) of this section is levied. The rate of such additional tax imposed by a county shall be up to five-tenths of one percent of the selling price (in the case of a sales tax) or value of the article used (in the case of a use tax). The rate of such additional tax imposed by a city shall be up to five-tenths of one percent of the selling price (in the case of a sales tax) or value of the article used (in the case of a use tax): **PROVIDED**, HOWEVER, That in the event a county shall impose a sales and use tax under this subsection at a rate equal to or greater than the rate imposed under this subsection by a city within the county, the county shall receive fifteen percent of the city tax: **PROVIDED FURTHER**, That in the event that the county shall impose a sales and use tax under this subsection at a rate which is less than the rate imposed under this subsection by a city within the county, the county shall receive that amount of revenues from the city tax equal to fifteen percent of the rate of tax imposed by the county under this subsection. The authority to impose a tax under this subsection is

intended in part to compensate local government for any losses from the phase-out of the property tax on business inventories.

NEW SECTION. Sec. 7. This act shall take effect July 1, 1990.

Passed the House April 18, 1989.

Passed the Senate April 13, 1989.

Approved by the Governor May 13, 1989.

Filed in Office of Secretary of State May 13, 1989.

CHAPTER 385

[House Bill No. 2060]

HORSE RACING INDUSTRY—WORKERS' COMPENSATION COVERAGE

AN ACT Relating to the horse racing industry; amending RCW 51.16.140, 51.32.073, and 67.16.020; adding a new section to chapter 51.16 RCW; adding a new section to chapter 67.16 RCW; creating a new section; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 51.16 RCW to read as follows:

(1) The department shall assess premiums, under the provisions of this section, for certain horse racing employments licensed in accordance with chapter 67.16 RCW. This premium assessment shall be for the purpose of providing industrial insurance coverage for employees of trainers licensed under chapter 67.16 RCW, including but not limited to exercise riders, pony riders, and grooms, and including all on or off track employment. For the purposes of sections 1 through 5 of this act a hotwalker shall be considered a groom. The department may adopt rules under chapter 34.05 RCW to carry out the purposes of this section, including rules providing for alternative reporting periods and payment due dates for coverage under this section. The department rules shall ensure that no licensee licensed prior to the effective date of this act shall pay more than the assessment fixed at the basic manual rate.

(2) The department shall compute industrial insurance premium rates on a per license basis, which premiums shall be assessed at the time of each issuance or renewal of the license for owners, trainers, and grooms in amounts established by department rule for coverage under this section. Premium assessments shall be determined in accordance with the requirements of this title, except that assessments shall not be experience rated and shall be fixed at the basic manual rate. However, rates may vary according to differences in working conditions at major tracks and fair tracks.

(3) For the purposes of paying premiums and assessments under this section and making reports under this title, individuals licensed as trainers by the Washington horse racing commission shall be considered employers. The premium assessment for a groom's license shall be paid by the trainer

responsible for signing the groom's license application and shall be payable at the time of license issuance or renewal.

(4) The fee to be assessed on owner licenses as required by this section shall not exceed one hundred fifty dollars. However, those owners having less than a full ownership in a horse or horses shall pay a percentage of the required license fee that is equal to the total percentage of the ownership that the owner has in the horse or horses. In no event shall an owner having an ownership percentage in more than one horse pay more than a one hundred fifty-dollar license fee. The assessment on each owner's license shall not imply that an owner is an employer, but shall be required as part of the privilege of holding an owner's license.

(5) Premium assessments under this section shall be collected by the Washington horse racing commission and deposited in the industrial insurance trust funds as provided under department rules.

NEW SECTION. Sec. 2. A new section is added to chapter 67.16 RCW to read as follows:

In addition to the license fees authorized by this chapter, the commission shall collect the industrial insurance premium assessments required under section 1 of this act from trainers, grooms, and owners. The industrial insurance premium assessments required under section 1 of this act shall be retroactive to January 1, 1989, and shall be collected from all licensees whose licenses were issued after that date. The commission shall deposit the industrial insurance premium assessments in the industrial insurance trust fund as required by rules adopted by the department of labor and industries.

Sec. 3. Section 51.16.140, chapter 23, Laws of 1961 as last amended by section 29, chapter 350, Laws of 1977 ex. sess. and RCW 51.16.140 are each amended to read as follows:

(1) Every employer who is not a self-insurer shall deduct from the pay of each of his or her workers one-half of the amount he or she is required to pay, for medical benefits within each risk classification. Such amount shall be periodically determined by the director and reported by him or her to all employers under this title: PROVIDED, That the state governmental unit shall pay the entire amount into the medical aid fund for volunteers, as defined in RCW 51.12.035, and the state apprenticeship council shall pay the entire amount into the medical aid fund for registered apprentices or trainees, for the purposes of RCW 51.12.130. The deduction under this section is not authorized for premiums assessed under section 1 of this 1989 act.

(2) It shall be unlawful for the employer, unless specifically authorized by this title, to deduct or obtain any part of the premium or other costs required to be by him or her paid from the wages or earnings of any of his or her workers, and the making of or attempt to make any such deduction shall be a gross misdemeanor.

- 82.12.02569 Exemptions—Use of tangible personal property related to a building or structure that is an integral part of a laser interferometer gravitational wave observatory.
- 82.12.0257 Exemptions—Use of tangible personal property of the operating property of a public utility by state or political subdivision.
- 82.12.0258 Exemptions—Use of tangible personal property previously used in farming and purchased from farmer at auction.
- 82.12.0259 Exemptions—Use of tangible personal property by federal corporations providing aid and relief.
- 82.12.02595 Exemption—Use of donated tangible personal property by nonprofit organization or governmental entity.
- 82.12.0261 Exemptions—Use of purebred livestock for breeding—Cattle and milk cows.
- 82.12.0262 Exemptions—Use of poultry for producing poultry and poultry products for sale.
- 82.12.0263 Exemptions—Use of fuel by extractor or manufacturer thereof.
- 82.12.0264 Exemptions—Use of dual-controlled motor vehicles by school for driver training.
- 82.12.0265 Exemptions—Use by bailee of tangible personal property consumed in research, development, etc., activities.
- 82.12.0266 Exemptions—Use by residents of motor vehicles and trailers acquired and used while members of the armed services and stationed outside the state.
- 82.12.0267 Exemptions—Use of semen in artificial insemination of livestock.
- 82.12.0268 Exemptions—Use of form lumber by persons engaged in constructing, repairing, etc., structures for consumers.
- 82.12.02685 Exemptions—Use of tangible personal property related to agricultural employee housing.
- 82.12.0269 Exemptions—Use of sand, gravel, or rock to extent of labor and service charges for mining, sorting, crushing, etc., thereof from county or city quarry for public road purposes.
- 82.12.0271 Exemptions—Use of wearing apparel only as a sample for display for sale.
- 82.12.0272 Exemptions—Use of tangible personal property in single trade shows.
- 82.12.0273 Exemptions—Use of pollen.
- 82.12.0274 Exemptions—Use of tangible personal property by political subdivision resulting from annexation or incorporation.
- 82.12.02745 Exemptions—Use by free hospitals of certain items.
- 82.12.02747 Exemptions—Use by blood, bone, or tissue bank—Exceptions.
- 82.12.02748 Exemptions—Use of human blood, tissue, organs, bodies, or body parts for medical research or quality control testing.
- 82.12.0275 Exemptions—Use of prescription drugs.
- 82.12.0276 Exemptions—Use of returnable containers for beverages and foods.
- 82.12.0277 Exemptions—Use of insulin, prosthetic and orthotic devices, medicines used in treatment by a naturopath, ostomic items, and medically prescribed oxygen.
- 82.12.0279 Exemptions—Use of ferry vessels by the state or local governmental units—Components thereof.
- 82.12.0282 Exemptions—Use of vans as ride-sharing vehicles.
- 82.12.0283 Exemptions—Use of certain irrigation equipment.
- 82.12.0284 Exemptions—Use of computers or computer components, accessories, or software donated to schools or colleges.
- 82.12.02915 Exemptions—Use of items by health or social welfare organizations for alternative housing for youth in crisis—Expiration of section.
- 82.12.0293 Exemptions—Use of food products for human consumption.
- 82.12.0294 Exemptions—Use of feed for cultivating or raising fish for sale.
- 82.12.0295 Exemptions—Lease amounts and repurchase amount for certain property under sale/leaseback agreement.
- 82.12.0296 Exemptions—Use of feed consumed by livestock at a public livestock market.
- 82.12.0297 Exemptions—Use of food purchased with food stamp coupons.
- 82.12.0298 Exemptions—Use of diesel fuel in operating watercraft in commercial deep sea fishing or commercial passenger fishing boat operations outside the state.
- 82.12.031 Exemptions—Use by artistic or cultural organizations of certain objects.
- 82.12.0311 Exemptions—Use of materials and supplies in packing horticultural products.
- 82.12.0315 Exemptions—Rental or sales related to motion picture or video productions—Exceptions.
- 82.12.033 Exemption—Use of certain used mobile homes.
- 82.12.034 Exemption—Use of used floating homes.
- 82.12.0345 Exemptions—Use of newspapers.
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- 82.12.035 Credit for retail sales or use taxes paid to other jurisdictions with respect to property used.
- 82.12.036 Exemptions and credits—Pollution control facilities.
- 82.12.037 Credits and refunds—Debts deductible as worthless.
- 82.12.038 Exemptions—Vehicle battery core deposits or credits—Replacement vehicle tire fees—"Core deposits or credits" defined.
- 82.12.040 Retailers to collect tax—Penalty.
- 82.12.045 Collection of tax on motor vehicles by county auditor or director of licensing—Remittance.
- 82.12.060 Installment sales, leases, bailments.
- 82.12.070 Tax may be paid on cash receipts basis if books are so kept—Exemption for debts deductible as worthless.
- 82.12.080 Administration.

82.12.010 Definitions. For the purposes of this chapter:

(1)(a) "Value of the article used" shall mean the consideration, whether money, credit, rights, or other property except trade-in property of like kind, expressed in terms of money, paid or given or contracted to be paid or given by the purchaser to the seller for the article of tangible personal property, the use of which is taxable under this chapter. The term includes, in addition to the consideration paid or given or contracted to be paid or given, the amount of any tariff or duty paid with respect to the importation of the article used. In case the article used is acquired by lease or by gift or is extracted, produced, or manufactured by the person using the same or is sold under conditions wherein the purchase price does not represent the true value thereof, the value of the article used shall be determined as nearly as possible according to the retail selling price at place of use of similar products of like quality and character under such rules as the department of revenue may prescribe.

(b) In case the articles used are acquired by bailment, the value of the use of the articles so used shall be in an amount representing a reasonable rental for the use of the articles so bailed, determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character under such rules as the department of revenue may prescribe. In case any such articles of tangible personal property are used in respect to the construction, repairing, decorating, or improving of, and which become or are to become an ingredient or component of, new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any such articles therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, then the value of the use of such articles so used shall be determined according to the retail selling price of such articles, or in the absence of such a selling price, as nearly as possible according to the retail selling price at place of use of similar products of like quality and character or, in the absence of either of these

selling price measures, such value may be determined upon a cost basis, in any event under such rules as the department of revenue may prescribe.

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

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

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

(2) "Use," "used," "using," or "put to use" shall have their ordinary meaning, and shall mean the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property (as a consumer), and include installation, storage, withdrawal from storage, or any other act preparatory to subsequent actual use or consumption within this state;

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

(4) "Retailer" means every seller as defined in RCW 82.08.010 and every person engaged in the business of selling tangible personal property at retail and every person required to collect from purchasers the tax imposed under this chapter;

(5) The meaning ascribed to words and phrases in chapters 82.04 and 82.08 RCW, insofar as applicable, shall have full force and effect with respect to taxes imposed under the provisions of this chapter. "Consumer," in addition to the meaning ascribed to it in chapters 82.04 and 82.08 RCW insofar as applicable, shall also mean any person who distributes or displays, or causes to be distributed or displayed, any article of tangible personal property, except newspapers, the primary purpose of which is to promote the sale of products or services. [1994 c 93 § 1. Prior: 1985 c 222 § 1; 1985 c 132 § 1; 1983 1st ex.s. c 55 § 2; 1975-'76 2nd ex.s. c 1 § 1; 1975 1st ex.s. c 278 § 52; 1965 ex.s. c 173 § 17; 1961 c 293 § 15; 1961 c 15 § 82.12.010; prior: 1955 c 389 § 24; 1951 1st ex.s. c 9 § 3; 1949 c 228 § 9; 1945 c 249 § 8; 1943 c 156 § 10; 1939 c 225 § 18; 1937 c 191 § 4; 1935 c 180 § 35; Rem. Supp. 1949 § 8370-35.]

Effective date—1994 c 93: "This act shall take effect July 1, 1994." [1994 c 93 § 3.]

(1996 Ed.)

Effective dates—1983 1st ex.s. c 55: See note following RCW 82.08.010.

Application to preexisting contracts—1975-'76 2nd ex.s. c 1; 1975 1st ex.s. c 90: "In the event any person has entered into a contract prior to July 1, 1975 or has bid upon a contract prior to July 1, 1975 and has been awarded the contract after July 1, 1975, the additional taxes imposed by chapter 90, Laws of 1975 1st ex. sess., section 5, chapter 291, Laws of 1975 1st ex. sess. and this 1975 amendatory act shall not be required to be paid by such person in carrying on activities in the fulfillment of such contract." [1975-'76 2nd ex.s. c 1 § 3; 1975 1st ex.s. c 90 § 4.]

Severability—1975-'76 2nd ex.s. c 1: "If any provision of this 1975 amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1975-'76 2nd ex.s. c 1 § 4.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

Effective date—1965 ex.s. c 173: See note following RCW 82.04.050.

82.12.020 Use tax imposed. (1) There is hereby levied and there shall be collected from every person in this state a tax or excise for the privilege of using within this state as a consumer any article of tangible personal property purchased at retail, or acquired by lease, gift, repossession, or bailment, or extracted or produced or manufactured by the person so using the same, or otherwise furnished to a person engaged in any business taxable under RCW 82.04.280 (2) or (7), or any amusement or recreation service defined as a retail sale in RCW 82.04.050(3)(a).

(2) This tax shall apply to the use of every service defined as a retail sale in RCW 82.04.050(3)(a) and the use of every article of tangible personal property, including property acquired at a casual or isolated sale, and including byproducts used by the manufacturer thereof, except as hereinafter provided, irrespective of whether the article or similar articles are manufactured or are available for purchase within this state.

(3) Except as provided in RCW 82.12.0252, payment by one purchaser or user of tangible personal property or service of the tax imposed by chapter 82.08 or 82.12 RCW shall not have the effect of exempting any other purchaser or user of the same property or service from the taxes imposed by such chapters.

(4) The tax shall be levied and collected in an amount equal to the value of the article used by the taxpayer multiplied by the rate in effect for the retail sales tax under RCW 82.08.020. [1996 c 148 § 5; 1994 c 93 § 2; 1983 c 7 § 7; 1981 2nd ex.s. c 8 § 2; 1980 c 37 § 79; 1977 ex.s. c 324 § 3; 1975-'76 2nd ex.s. c 130 § 2; 1975-'76 2nd ex.s. c 1 § 2; 1971 ex.s. c 281 § 10; 1969 ex.s. c 262 § 32; 1967 ex.s. c 149 § 22; 1965 ex.s. c 173 § 18; 1961 c 293 § 9; 1961 c 15 § 82.12.020. Prior: 1959 ex.s. c 3 § 10; 1955 ex.s. c 10 § 3; 1955 c 389 § 25; 1949 c 228 § 7; 1943 c 156 § 8; 1941 c 76 § 6; 1939 c 225 § 14; 1937 c 191 § 1; 1935 c 180 § 31; Rem. Supp. 1949 § 8370-31.]

Severability—Effective date—1996 c 148: See notes following RCW 82.04.050.

Effective date—1994 c 93: See note following RCW 82.12.010.

Construction—Severability—Effective dates—1983 c 7: See notes following RCW 82.08.020.

Intent—1980 c 37: See note following RCW 82.04.4281.

Effective date—1975-'76 2nd ex.s. c 130: See note following RCW 82.08.020.

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Application to preexisting contracts—1975-'76 2nd ex.s. c 1: See note following RCW 82.12.010.

Severability—1975-'76 2nd ex.s. c 1: See note following RCW 82.12.010.

82.12.022 Natural or manufactured gas—Use tax imposed—Exemption. (1) There is hereby levied and there shall be collected from every person in this state a use tax for the privilege of using natural gas or manufactured gas within this state as a consumer.

(2) The tax shall be levied and collected in an amount equal to the value of the article used by the taxpayer multiplied by the rate in effect for the public utility tax on gas distribution businesses under RCW 82.16.020. The "value of the article used" does not include any amounts that are paid for the hire or use of a gas distribution business as defined in RCW 82.16.010(7) in transporting the gas subject to tax under this subsection if those amounts are subject to tax under that chapter.

(3) The tax levied in this section shall not apply to the use of natural or manufactured gas delivered to the consumer by other means than through a pipeline.

(4) The tax levied in this section shall not apply to the use of natural or manufactured gas if the person who sold the gas to the consumer has paid a tax under RCW 82.16.020 with respect to the gas for which exemption is sought under this subsection.

(5) There shall be a credit against the tax levied under this section in an amount equal to any tax paid by:

(a) The person who sold the gas to the consumer when that tax is a gross receipts tax similar to that imposed pursuant to RCW 82.16.020 by another state with respect to the gas for which a credit is sought under this subsection; or

(b) The person consuming the gas upon which a use tax similar to the tax imposed by this section was paid to another state with respect to the gas for which a credit is sought under this subsection.

(6) The use tax hereby imposed shall be paid by the consumer to the department.

(7) There is imposed a reporting requirement on the person who delivered the gas to the consumer to make a quarterly report to the department. Such report shall contain the volume of gas delivered, name of the consumer to whom delivered, and such other information as the department shall require by rule.

(8) The department may adopt rules under chapter 34.05 RCW for the administration and enforcement of sections 1 through 6, chapter 384, Laws of 1989. [1994 c 124 § 9; 1989 c 384 § 3.]

Intent—1989 c 384: "Due to a change in the federal regulations governing the sale of brokered natural gas, cities have lost significant revenues from the utility tax on natural gas. It is therefore the intent of the legislature to adjust the utility and use tax authority of the state and cities to maintain this revenue source for the municipalities and provide equality of taxation between intrastate and interstate transactions." [1989 c 384 § 1.]

Effective date—1989 c 384: "This act shall take effect July 1, 1990." [1989 c 384 § 7.]

82.12.023 Natural or manufactured gas, exempt from use tax imposed by RCW 82.12.020. The tax levied by RCW 82.12.020 shall not apply in respect to the use of natural or manufactured gas that is taxable under RCW 82.12.022. [1994 c 124 § 10; 1989 c 384 § 5.]

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Intent—Effective date—1989 c 384: See notes following RCW 82.12.022.

82.12.0251 Exemptions—Use by nonresident while temporarily within Washington of tangible personal property brought into Washington—Use by nonresident of motor vehicle or trailer licensed in another state—Use by resident or nonresident member of armed forces of household goods, personal effects, and private automobiles acquired in another state while a resident—"State" defined. The provisions of this chapter shall not apply in respect to the use of any article of tangible personal property brought into the state of Washington by a nonresident thereof for his or her use or enjoyment while temporarily within the state of Washington unless such property is used in conducting a nontransitory business activity within the state of Washington; or in respect to the use by a nonresident of Washington of a motor vehicle or trailer which is registered or licensed under the laws of the state of his or her residence, and which is not required to be registered or licensed under the laws of Washington, including motor vehicles or trailers exempt pursuant to a declaration issued by the department of licensing under RCW 46.85.060; or in respect to the use of household goods, personal effects, and private automobiles by a bona fide resident of Washington or nonresident members of the armed forces who are stationed in Washington pursuant to military orders, if such articles were acquired and used by such person in another state while a bona fide resident thereof and such acquisition and use occurred more than ninety days prior to the time he or she entered Washington.

For purposes of this section, "state" means a state of the United States, any political subdivision thereof, the District of Columbia, and any foreign country or political subdivision thereof. [1987 c 27 § 1; 1985 c 353 § 4; 1983 c 26 § 2; 1980 c 37 § 51. Formerly RCW 82.12.030(1).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0252 Exemptions—Use of tangible personal property upon which tax has been paid—Use of tangible personal property acquired by a previous bailee from same bailor before June 9, 1961. The provisions of this chapter shall not apply in respect to the use of any article of tangible personal property purchased at retail or acquired by lease, gift or bailment if the sale thereof to, or the use thereof by, the present user or his bailor or donor has already been subjected to the tax under chapter 82.08 or 82.12 RCW and such tax has been paid by the present user or by his bailor or donor; or in respect to the use of property acquired by bailment and such tax has once been paid based on reasonable rental as determined by RCW 82.12.060 measured by the value of the article at time of first use multiplied by the tax rate imposed by chapter 82.08 or 82.12 RCW as of the time of first use; or in respect to the use of any article of tangible personal property acquired by bailment, if the property was acquired by a previous bailee from the same bailor for use in the same general activity and such original bailment was prior to June 9, 1961. [1980 c 37 § 52. Formerly RCW 82.12.030(2).]

Intent—1980 c 37: See note following RCW 82.04.4281.

Findings—Intent—Effective date—1996 c 149: See notes following RCW 82.32.050.

82.12.060 Installment sales, leases, bailments. In the case of installment sales and leases of personal property, the department, by regulation, may provide for the collection of taxes upon the installments of the purchase price, or amount of rental, as of the time the same fall due.

In the case of property acquired by bailment, the department, by regulation, may provide for payment of the tax due in installments based on the reasonable rental for the property as determined under RCW 82.12.010(1). [1975 1st ex.s. c 278 § 54; 1961 c 293 § 16; 1961 c 15 § 82.12.060. Prior: 1959 ex.s. c 3 § 13; 1959 c 197 § 8; prior: 1941 c 178 § 11, part; Rem. Supp. 1941 § 8370-34a, part.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.12.070 Tax may be paid on cash receipts basis if books are so kept—Exemption for debts deductible as worthless. The department of revenue, by general regulation, shall provide that a taxpayer whose regular books of account are kept on a cash receipts basis may file returns based upon his cash receipts for each reporting period and pay the tax herein provided upon such basis in lieu of reporting and paying the tax on all sales made during such period. A taxpayer filing returns on a cash receipts basis is not required to pay such tax on debts which are deductible as worthless for federal income tax purposes. [1982 1st ex.s. c 35 § 38; 1975 1st ex.s. c 278 § 55; 1961 c 15 § 82.12.070. Prior: 1959 ex.s. c 3 § 14; 1959 c 197 § 9; prior: 1941 c 178 § 11, part; Rem. Supp. 1941 § 8370-34a, part.]

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.12.080 Administration. The provisions of chapter 82.32 RCW, insofar as applicable, shall have full force and application with respect to taxes imposed under the provisions of this chapter. [1961 c 15 § 82.12.080. Prior: 1949 c 228 § 9, part; 1945 c 249 § 8, part; 1943 c 156 § 10, part; 1939 c 225 § 18, part; 1937 c 191 § 4, part; 1935 c 180 § 35, part; Rem. Supp. 1949 § 8470-35, part.]

Chapter 82.14

LOCAL RETAIL SALES AND USE TAXES

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- 82.14.900 Severability—1970 ex.s. c 94.

82.14.010 Legislative finding—Purpose. The legislature finds that the several counties and cities of the state lack adequate sources of revenue to carry out essential county and municipal purposes. The legislature further finds that the most efficient and appropriate methods of deriving revenues for such purposes is to vest additional taxing powers in the governing bodies of counties and cities which they may or may not implement. The legislature intends, by enacting this chapter, to provide the means by which essential county and municipal purposes can be financially served should they choose to employ them. [1970 ex.s. c 94 § 1.]

82.14.020 Definitions—Where retail sale occurs. For purposes of this chapter:

(1) A retail sale consisting solely of the sale of tangible personal property shall be deemed to have occurred at the retail outlet at or from which delivery is made to the consumer;

(2) A retail sale consisting essentially of the performance of personal business or professional services shall be deemed to have occurred at the place at which such services were primarily performed;

Findings—Intent—Effective date—1996 c 149: See notes following RCW 82.32.050.

82.12.060 Installment sales, leases, bailments. In the case of installment sales and leases of personal property, the department, by regulation, may provide for the collection of taxes upon the installments of the purchase price, or amount of rental, as of the time the same fall due.

In the case of property acquired by bailment, the department, by regulation, may provide for payment of the tax due in installments based on the reasonable rental for the property as determined under RCW 82.12.010(1). [1975 1st ex.s. c 278 § 54; 1961 c 293 § 16; 1961 c 15 § 82.12.060. Prior: 1959 ex.s. c 3 § 13; 1959 c 197 § 8; prior: 1941 c 178 § 11, part; Rem. Supp. 1941 § 8370-34a, part.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.12.070 Tax may be paid on cash receipts basis if books are so kept—Exemption for debts deductible as worthless. The department of revenue, by general regulation, shall provide that a taxpayer whose regular books of account are kept on a cash receipts basis may file returns based upon his cash receipts for each reporting period and pay the tax herein provided upon such basis in lieu of reporting and paying the tax on all sales made during such period. A taxpayer filing returns on a cash receipts basis is not required to pay such tax on debts which are deductible as worthless for federal income tax purposes. [1982 1st ex.s. c 35 § 38; 1975 1st ex.s. c 278 § 55; 1961 c 15 § 82.12.070. Prior: 1959 ex.s. c 3 § 14; 1959 c 197 § 9; prior: 1941 c 178 § 11, part; Rem. Supp. 1941 § 8370-34a, part.]

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.12.080 Administration. The provisions of chapter 82.32 RCW, insofar as applicable, shall have full force and application with respect to taxes imposed under the provisions of this chapter. [1961 c 15 § 82.12.080. Prior: 1949 c 228 § 9, part; 1945 c 249 § 8, part; 1943 c 156 § 10, part; 1939 c 225 § 18, part; 1937 c 191 § 4, part; 1935 c 180 § 35, part; Rem. Supp. 1949 § 8470-35, part.]

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- 82.14.046 Sales and use tax equalization payments from local transit taxes.
- 82.14.048 Sales and use taxes for public facilities districts.

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- 82.14.0485 Sales and use tax for baseball stadium—Counties with population of one million or more—Deduction from tax otherwise required—"Baseball stadium" defined.
- 82.14.0486 State contribution for baseball stadium limited.
- 82.14.049 Sales and use tax for public sports facilities—Tax upon retail rental car rentals.
- 82.14.050 Administration and collection—Local sales and use tax account.
- 82.14.060 Distributions to counties, cities, transportation authorities, and public facilities districts—Imposition at excess rates, effect.
- 82.14.070 Consistency and uniformity with other taxes—Rules—Ordinances—Effective dates.
- 82.14.080 Deposit of tax prior to due date—Credit against future tax or assessment—When fund designation permitted—Use of tax revenues received in connection with large construction projects.
- 82.14.090 Payment of tax prior to taxable event—When permitted—Deposit with treasurer—Credit against future tax—When fund designation permitted.
- 82.14.200 County sales and use tax equalization account—Allocation procedure.
- 82.14.210 Municipal sales and use tax equalization account—Allocation procedure.
- 82.14.212 Transfer of funds pursuant to government service agreement.
- 82.14.215 Apportionment and distribution—Withholding revenue for noncompliance.
- 82.14.220 Figures for apportionments and distributions under RCW 82.14.200 and 82.14.210.
- 82.14.230 Natural or manufactured gas—Cities may impose use tax.
- 82.14.300 Local government criminal justice assistance—Finding.
- 82.14.310 County criminal justice assistance account—Distributions based on crime rate and population.
- 82.14.320 Municipal criminal justice assistance account—Distributions criteria and formula.
- 82.14.330 Municipal criminal justice assistance account—Distributions based on crime rate, population, and innovation.
- 82.14.335 Grant criteria for distributions under RCW 82.14.330(2).
- 82.14.340 Additional sales and use tax for criminal justice purposes—Referendum—Expenditures.
- 82.14.350 Sales and use tax for juvenile detention facilities and jails—Colocation.
- 82.14.360 Special stadium sales and use taxes.
- 82.14.900 Severability—1970 ex.s. c 94.

82.14.010 Legislative finding—Purpose. The legislature finds that the several counties and cities of the state lack adequate sources of revenue to carry out essential county and municipal purposes. The legislature further finds that the most efficient and appropriate methods of deriving revenues for such purposes is to vest additional taxing powers in the governing bodies of counties and cities which they may or may not implement. The legislature intends, by enacting this chapter, to provide the means by which essential county and municipal purposes can be financially served should they choose to employ them. [1970 ex.s. c 94 § 1.]

82.14.020 Definitions—Where retail sale occurs. For purposes of this chapter:

(1) A retail sale consisting solely of the sale of tangible personal property shall be deemed to have occurred at the retail outlet at or from which delivery is made to the consumer;

(2) A retail sale consisting essentially of the performance of personal business or professional services shall be deemed to have occurred at the place at which such services were primarily performed;

(3) A retail sale consisting of the rental of tangible personal property shall be deemed to have occurred (a) in the case of a rental involving periodic rental payments, at the primary place of use by the lessee during the period covered by each payment, or (b) in all other cases, at the place of first use by the lessee;

(4) A retail sale within the scope of the second paragraph of RCW 82.04.050, and a retail sale of taxable personal property to be installed by the seller shall be deemed to have occurred at the place where the labor and services involved were primarily performed;

(5) A retail sale consisting of the providing to a consumer of telephone service, as defined in RCW 82.04.065, other than a sale of tangible personal property under subsection (1) of this section or a rental of tangible personal property under subsection (3) of this section, shall be deemed to have occurred at the situs of the telephone or other instrument through which the telephone service is rendered;

(6) "City" means a city or town;

(7) The meaning ascribed to words and phrases in chapters 82.04, 82.08 and 82.12 RCW, as now or hereafter amended, insofar as applicable, shall have full force and effect with respect to taxes imposed under authority of this chapter;

(8) "Taxable event" shall mean any retail sale, or any use of an article of tangible personal property, upon which a state tax is imposed pursuant to chapter 82.08 or 82.12 RCW, as they now exist or may hereafter be amended: PROVIDED, HOWEVER, That the term shall not include a retail sale taxable pursuant to RCW 82.08.150, as now or hereafter amended;

(9) "Treasurer or other legal depository" shall mean the treasurer or legal depository of a county or city. [1983 2nd ex.s. c 3 § 31; 1982 c 211 § 1; 1981 c 144 § 4; 1970 ex.s. c 94 § 3.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Intent—Severability—Effective date—1981 c 144: See notes following RCW 82.16.010.

82.14.030 Sales and use taxes authorized—Additional taxes authorized—Maximum rates. (1) The governing body of any county or city while not required by legislative mandate to do so, may, by resolution or ordinance for the purposes authorized by this chapter, fix and impose a sales and use tax in accordance with the terms of this chapter. Such tax shall be collected from those persons who are taxable by the state pursuant to chapters 82.08 and 82.12 RCW, upon the occurrence of any taxable event within the county or city as the case may be: PROVIDED, That except as provided in RCW 82.14.230, this sales and use tax shall not apply to natural or manufactured gas. The rate of such tax imposed by a county shall be five-tenths of one percent of the selling price (in the case of a sales tax) or value of the article used (in the case of a use tax). The rate of such tax imposed by a city shall not exceed five-tenths of one percent of the selling price (in the case of a sales tax) or value of the article used (in the case of a use tax): PROVIDED, HOWEVER, That in the event a county shall impose a sales and use tax under this subsection, the rate of such tax imposed under this subsection by any city therein shall not exceed

four hundred and twenty-five one-thousandths of one percent.

(2) Subject to the enactment into law of the 1982 amendment to RCW 82.02.020 by section 5, chapter 49, Laws of 1982 1st ex. sess., in addition to the tax authorized in subsection (1) of this section, the governing body of any county or city may by resolution or ordinance impose an additional sales and use tax in accordance with the terms of this chapter. Such additional tax shall be collected upon the same taxable events upon which the tax imposed under subsection (1) of this section is levied. The rate of such additional tax imposed by a county shall be up to five-tenths of one percent of the selling price (in the case of a sales tax) or value of the article used (in the case of a use tax). The rate of such additional tax imposed by a city shall be up to five-tenths of one percent of the selling price (in the case of a sales tax) or value of the article used (in the case of a use tax): PROVIDED HOWEVER, That in the event a county shall impose a sales and use tax under this subsection at a rate equal to or greater than the rate imposed under this subsection by a city within the county, the county shall receive fifteen percent of the city tax: PROVIDED FURTHER, That in the event that the county shall impose a sales and use tax under this subsection at a rate which is less than the rate imposed under this subsection by a city within the county, the county shall receive that amount of revenues from the city tax equal to fifteen percent of the rate of tax imposed by the county under this subsection. The authority to impose a tax under this subsection is intended in part to compensate local government for any losses from the phase-out of the property tax on business inventories. [1989 c 384 § 6; 1982 1st ex.s. c 49 § 17; 1970 ex.s. c 94 § 4.]

Intent—Effective date—1989 c 384: See notes following RCW 82.12.022.

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

Additional tax for high capacity transportation service: RCW 81.104.170.
Imposition of additional tax on sale of real property in lieu of tax under RCW 82.14.030(2): RCW 82.46.010(3).

82.14.032 Alteration of tax rate pursuant to government service agreement. The rate of sales and use tax imposed by a city under RCW 82.14.030 (1) and (2) may be altered pursuant to a government service agreement as provided in RCW 36.115.040 and 36.115.050. [1994 c 266 § 11.]

82.14.034 Alteration of county's share of city's tax receipts pursuant to government service agreement. The percentage of a city's sales and use tax receipts that a county receives under RCW 82.14.030 (1) and (2) may be altered pursuant to a government service agreement as provided in RCW 36.115.040 and 36.115.050. [1994 c 266 § 12.]

82.14.036 Imposition or alteration of additional taxes—Referendum petition to repeal—Procedure—Exclusive method. Any referendum petition to repeal a county or city ordinance imposing a tax or altering the rate of the tax authorized under RCW 82.14.030(2) shall be filed with a filing officer, as identified in the ordinance, within seven days of passage of the ordinance. Within ten days, the filing officer shall confer with the petitioner concerning form

chapter which is collected by the department of revenue shall be deposited by the state department of revenue in the local sales and use tax account hereby created in the state treasury. Moneys in the local sales and use tax account may be spent only for distribution to counties, cities, transportation authorities, and public facilities districts imposing a sales and use tax. All administrative provisions in chapters 82.03, 82.08, 82.12, and 82.32 RCW, as they now exist or may hereafter be amended, shall, insofar as they are applicable to state sales and use taxes, be applicable to taxes imposed pursuant to this chapter. Except as provided in RCW 43.08.190, all earnings of investments of balances in the local sales and use tax account shall be credited to the local sales and use tax account and distributed to the counties, cities, transportation authorities, and public facilities districts monthly. [1991 sp.s. c 13 § 34; 1991 c 207 § 2; 1990 2nd ex.s. c 1 § 201; 1985 c 57 § 81; 1981 2nd ex.s. c 4 § 10; 1971 ex.s. c 296 § 3; 1970 ex.s. c 94 § 6.]

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Applicability—1990 2nd ex.s. c 1 §§ 201-204: "Sections 201 through 204 of this act shall not be effective for earnings on balances prior to July 1, 1990, regardless of when a distribution is made." [1990 2nd ex.s. c 1 § 205.]

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

Effective date—1985 c 57: See note following RCW 18.04.105.

Severability—1981 2nd ex.s. c 4: See note following RCW 43.85.130.

Legislative finding, declaration—Severability—1971 ex.s. c 296: See notes following RCW 82.14.045.

82.14.060 Distributions to counties, cities, transportation authorities, and public facilities districts—Imposition at excess rates, effect. Monthly the state treasurer shall make distribution from the local sales and use tax account to the counties, cities, transportation authorities, and public facilities districts the amount of tax collected on behalf of each taxing authority, less the deduction provided for in RCW 82.14.050. The state treasurer shall make the distribution under this section without appropriation.

In the event that any ordinance or resolution imposes a sales and use tax at a rate in excess of the applicable limits contained herein, such ordinance or resolution shall not be considered void in toto, but only with respect to that portion of the rate which is in excess of the applicable limits contained herein. [1991 c 207 § 3; 1990 2nd ex.s. c 1 § 202; 1981 2nd ex.s. c 4 § 11; 1971 ex.s. c 296 § 4; 1970 ex.s. c 94 § 7.]

Applicability—1990 2nd ex.s. c 1: See note following RCW 82.14.050.

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

Severability—1981 2nd ex.s. c 4: See note following RCW 43.85.130.

Legislative finding, declaration—Severability—1971 ex.s. c 296: See notes following RCW 82.14.045.

82.14.070 Consistency and uniformity with other taxes—Rules—Ordinances—Effective dates. It is the intent of this chapter that any local sales and use tax adopted pursuant to this chapter be as consistent and uniform as possible with the state sales and use tax and with other local

sales and use taxes adopted pursuant to this chapter. It is further the intent of this chapter that the local sales and use tax shall be imposed upon an individual taxable event simultaneously with the imposition of the state sales or use tax upon the same taxable event. The rule making powers of the state department of revenue contained in RCW 82.08.060 and 82.32.300 shall be applicable to this chapter. The department shall, as soon as practicable, and with the assistance of the appropriate associations of county prosecutors and city attorneys, draft a model resolution and ordinance. No resolution or ordinance or any amendment thereto adopted pursuant to this chapter shall be effective, except upon the first day of a calendar month. [1970 ex.s. c 94 § 10.]

82.14.080 Deposit of tax prior to due date—Credit against future tax or assessment—When fund designation permitted—Use of tax revenues received in connection with large construction projects. The taxes provided by this chapter may be deposited by any taxpayer prior to the due date thereof with the treasurer or other legal depository for the benefit of the funds to which they belong to be credited against any future tax or assessment that may be levied or become due from the taxpayer: PROVIDED, That the taxpayer may with the concurrence of the legislative authority designate a particular fund of such county or city against which such prepayment of tax or assessment is made. Such prepayment of taxes or assessments shall not be considered to be a debt for the purpose of the limitation of indebtedness imposed by law on a county or city.

By agreement made pursuant to chapter 39.34 RCW, counties or cities may utilize tax revenues received under the authority of this chapter in connection with large construction projects, including energy facilities as defined in RCW 80.50.020, for any purpose within their power or powers, privileges or authority exercised or capable of exercise by such counties or cities including, but not limited to, the purpose of the mitigation of socioeconomic impacts that may be caused by such large construction projects: PROVIDED, That the taxable event need not take place within the jurisdiction where the socioeconomic impact occurs if an intergovernmental agreement provides for redistribution. [1982 c 211 § 2.]

82.14.090 Payment of tax prior to taxable event—When permitted—Deposit with treasurer—Credit against future tax—When fund designation permitted. When permitted by resolution or ordinance, any tax authorized by this chapter may be paid prior to the taxable event to which it may be attributable. Such prepayment shall be made by deposit with the treasurer or other legal depository for the benefit of the funds to which they belong. They shall be credited by any county or city against any future tax that may become due from a taxpayer: PROVIDED, That the taxpayer with the concurrence of the legislative authority may designate a particular fund of such county or city against which such prepayment of tax is made. Prepayment of taxes under this section shall not relieve any taxpayer from remitting the full amount of any tax imposed under the authority of this chapter upon the occurrence of the taxable event. [1982 c 211 § 3.]

the number of months the city imposes the tax authorized under RCW 82.14.030(2) at the full rate.

(d) The department of revenue shall advise the state treasurer of the amounts calculated under (b) and (c) of this subsection and the state treasurer shall distribute these amounts to the new city from the municipal sales and use tax equalization account subject to the limitations imposed in subsection (6) of this section.

(e) Revenues estimated under this subsection shall not affect the calculation of the state-wide weighted average per capita level of revenues for all cities made under subsection (1) of this section.

(6) If inadequate revenues exist in the municipal sales and use tax equalization account to make the distributions under subsection (3), (4), or (5) of this section, then the distributions under subsections (3), (4), and (5) of this section shall be reduced ratably among the qualifying cities. At such time during the year as additional funds accrue to the municipal sales and use tax equalization account, additional distributions shall be made under subsections (3), (4), and (5) of this section to the cities.

(7) If the level of revenues in the municipal sales and use tax equalization account exceeds the amount necessary to make the distributions under subsections (2) through (5) of this section, then the additional revenues shall be apportioned among the several cities within the state ratably on the basis of population as last determined by the office of financial management: PROVIDED, That no such distribution shall be made to those cities receiving a distribution under subsection (2) of this section. [1996 c 64 § 1; 1991 sp.s. c 13 § 16; 1990 2nd ex.s. c 1 § 701; 1990 c 42 § 314; 1985 c 57 § 83; 1984 c 225 § 2; 1982 1st ex.s. c 49 § 22.]

Effective date—1996 c 64: "This act shall take effect July 1, 1996." [1996 c 64 § 2.]

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Effective dates—1990 2nd ex.s. c 1: See note following RCW 84.52.010.

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective date—1985 c 57: See note following RCW 18.04.105.

Intent—1984 c 225: "It is the intent of the legislature to provide for the allocation of moneys by the department of revenue from the municipal sales and use tax equalization account to cities and towns initially incorporated on or after January 1, 1983." [1984 c 225 § 1.]

Applicability—1984 c 225: "Sections 1 and 2 of this act apply to distributions for calendar year 1984 and thereafter which are made to cities and towns that were initially incorporated on or after January 1, 1983, and that impose the tax authorized by RCW 82.14.030(1)." [1984 c 225 § 3.] "Sections 1 and 2 of this act" consist of the intent section footnoted above and the 1984 c 225 amendment to RCW 82.14.210.

Rules—1984 c 225: "The department of revenue shall adopt rules as necessary to implement this act." [1984 c 225 § 7.]

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

82.14.212 Transfer of funds pursuant to government service agreement. Funds that are distributed to counties or cities pursuant to RCW 82.14.200 or 82.14.210 may be transferred by the recipient county or city to another unit of local government pursuant to a government service

agreement as provided in RCW 36.115.040 and 36.115.050. [1994 c 266 § 13.]

82.14.215 Apportionment and distribution—Withholding revenue for noncompliance. The governor may notify and direct the state treasurer to withhold the revenues to which the county or city is entitled under this chapter if a county or city is found to be in noncompliance pursuant to RCW 36.70A.340. [1991 sp.s. c 32 § 35.]

Section headings not law—1991 sp.s. c 32: See RCW 36.70A.902.

82.14.220 Figures for apportionments and distributions under RCW 82.14.200 and 82.14.210: The apportionments and distributions by the state treasurer under RCW 82.14.200 and 82.14.210 shall be based on figures supplied by the department of revenue. [1984 c 225 § 4.]

Rules—1984 c 225: See note following RCW 82.14.210.

82.14.230 Natural or manufactured gas—Cities may impose use tax. (1) The governing body of any city, while not required by legislative mandate to do so, may, by resolution or ordinance for the purposes authorized by this chapter, fix and impose on every person a use tax for the privilege of using natural gas or manufactured gas in the city as a consumer.

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

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

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

(a) The person who sold the gas to the consumer when that tax is a gross receipts tax similar to that imposed pursuant to RCW 35.21.870 by another state with respect to the gas for which a credit is sought under this subsection; or

(b) The person consuming the gas upon which a use tax similar to the tax imposed by this section was paid to another state with respect to the gas for which a credit is sought under this subsection.

(5) The use tax hereby imposed shall be paid by the consumer. The administration and collection of the tax hereby imposed shall be pursuant to RCW 82.14.050. [1989 c 384 § 2.]

Intent—Effective date—1989 c 384: See notes following RCW 82.12.022.

82.14.300 Local government criminal justice assistance—Finding. The legislature finds and declares that local government criminal justice systems are in need of assistance. Many counties and cities are unable to provide sufficient funding for additional police protection, mitigation

under RCW 82.14B.070 and 82.14B.090. [1991 c 54 § 14; c 17 § 4.]

Referral to electorate—1991 c 54: See note following RCW 82.14B.030.

82.14B.900 Severability—1981 c 160. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 c 160 § 7.]

Chapter 82.16 PUBLIC UTILITY TAX

Sections

82.16.010	Definitions.
82.16.020	Public utility tax imposed—Additional tax imposed—Deposit of moneys.
82.16.030	Taxable under each schedule if within its purview.
82.16.040	Exemption.
82.16.045	Exemptions and credits—Pollution control facilities.
82.16.047	Exemptions—Ride sharing.
82.16.048	Credit—Ride-sharing, public transportation, or nonmotorized commuting incentives—Penalty—Report to legislature.
82.16.049	Credit—Ride-sharing, public transportation, or nonmotorized commuting incentives—Ceiling.
82.16.050	Deductions in computing tax.
82.16.053	Deductions in computing tax—Light and power businesses.
82.16.055	Deductions relating to energy conservation or production from renewable resources.
82.16.060	May be taxed under other chapters.
82.16.080	Administration.
82.16.090	Light or power and gas distribution businesses—Information required on customer billings.

Public utility districts, privilege tax: Chapter 54.28 RCW.

82.16.010 Definitions. For the purposes of this chapter, unless otherwise required by the context:

(1) "Railroad business" means the business of operating any railroad, by whatever power operated, for public use in the conveyance of persons or property for hire. It shall not, however, include any business herein defined as an urban transportation business.

(2) "Express business" means the business of carrying property for public hire on the line of any common carrier operated in this state, when such common carrier is not owned or leased by the person engaging in such business.

(3) "Railroad car business" means the business of operating stock cars, furniture cars, refrigerator cars, fruit cars, poultry cars, tank cars, sleeping cars, parlor cars, buffet cars, tourist cars, or any other kinds of cars used for transportation of property or persons upon the line of any railroad operated in this state when such railroad is not owned or leased by the person engaging in such business.

(4) "Water distribution business" means the business of operating a plant or system for the distribution of water for hire or sale.

(5) "Light and power business" means the business of operating a plant or system for the generation, production or distribution of electrical energy for hire or sale and/or for the heating of electricity for others.

(6) "Telegraph business" means the business of affording telegraphic communication for hire.

(7) "Gas distribution business" means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural.

(8) "Motor transportation business" means the business (except urban transportation business) of operating any motor propelled vehicle by which persons or property of others are conveyed for hire, and includes, but is not limited to, the operation of any motor propelled vehicle as an auto transportation company (except urban transportation business), common carrier or contract carrier as defined by RCW 81.68.010 and 81.80.010: PROVIDED, That "motor transportation business" shall not mean or include the transportation of logs or other forest products exclusively upon private roads or private highways.

(9) "Urban transportation business" means the business of operating any vehicle for public use in the conveyance of persons or property for hire, insofar as (a) operating entirely within the corporate limits of any city or town, or within five miles of the corporate limits thereof, or (b) operating entirely within and between cities and towns whose corporate limits are not more than five miles apart or within five miles of the corporate limits of either thereof. Included herein, but without limiting the scope hereof, is the business of operating passenger vehicles of every type and also the business of operating cartage, pickup, or delivery services, including in such services the collection and distribution of property arriving from or destined to a point within or without the state, whether or not such collection or distribution be made by the person performing a local or interstate line-haul of such property.

(10) "Public service business" means any of the businesses defined in subdivisions (1), (2), (3), (4), (5), (6), (7), (8), and (9) or any business subject to control by the state, or having the powers of eminent domain and the duties incident thereto, or any business hereafter declared by the legislature to be of a public service nature, except telephone business as defined in RCW 82.04.065 and low-level radioactive waste site operating companies as redefined in RCW 81.04.010. It includes, among others, without limiting the scope hereof: Airplane transportation, boom, dock, ferry, pipe line, toll bridge, toll logging road, water transportation and wharf businesses.

(11) "Tugboat business" means the business of operating tugboats, towboats, wharf boats or similar vessels in the towing or pushing of vessels, barges or rafts for hire.

(12) "Gross income" means the value proceeding or accruing from the performance of the particular public service or transportation business involved, including operations incidental thereto, but without any deduction on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

(13) The meaning attributed, in chapter 82.04 RCW, to the term "tax year," "person," "value proceeding or accruing," "business," "engaging in business," "in this state," "within this state," "cash discount" and "successor" shall apply equally in the provisions of this chapter. [1996 c 150 § 1; 1994 c 163 § 4; 1991 c 272 § 14; 1989 c 302 § 203. Prior: 1989 c 302 § 102; 1986 c 226 § 1; 1983 2nd ex.s. c 3 § 32; 1982 2nd ex.s. c 9 § 1; 1981 c 144 § 2; 1965 ex.s. c 173 § 20; 1961 c 293 § 12; 1961 c 15 § 82.16.010; prior:

APPENDIX E
Excerpt of Washington State Department of Revenue,
*Tax Reference Manual, Information on State and Local
Taxes in Washington State (January 2007)*

BROKERED NATURAL GAS USE TAX
RCWs 82.12.022 and 82.14.230

Tax Base Natural or manufactured gas that is consumed within the state, if the supplier was not subject to the state public utility tax. The tax is paid by the in-state user and is measured by the value of the gas when delivered to the customer. It excludes costs of transportation if such costs were subject to the public utility tax; otherwise the tax includes charges for transportation of the gas to the customer.

Tax Rate State: 3.852 percent (the rate must be the same as the gas distribution rate under the state public utility tax).
Cities: maximum of 6 percent (the rate must be the same as the city applies to natural gas businesses under the municipal utility tax).

Levied by State - RCW 82.12.022
Cities - RCW 82.14.230

Administration Department of Revenue for the state tax. Cities contract with the Department for collection of the local utility taxes. Both state and local taxes are reported on a separate tax return, although there are plans to shift the tax to an addendum to the Combined Excise Tax return.

<u>Recent Collections</u> (\$000)		STATE TAX	
<u>Fiscal Year</u>	<u>Collections</u>	<u>% Change</u>	<u>% of All State Taxes</u>
2006	40,158	35.0%	0.3%
2005	29,745	23.0	0.2
2004	24,178	0.8	0.2
2003	23,977	(7.1)	0.2
2002	25,811	(15.8)	0.2
2001	30,669	106.7	0.3
2000	14,835	14.4	0.1
1999	12,968	24.2	0.1
1998	10,445	19.9	0.1
1997	8,708	14.0	0.1

Recent Collections (\$000) CITY TAXES (approximately 46 cities)

<u>Fiscal Year</u>	<u>Collections</u>	<u>% Change</u>
2006	\$10,845	27.4%
2005	8,510	28.7
2004	6,614	(10.3)
2003	7,370	60.1
2002	4,604	(31.7)
2001	6,737	63.2
2000	4,128	25.4
1999	3,293	17.3
1998	2,808	30.4
1997	2,154	70.8

<u>Distribution of Receipts</u>	State tax	-	general fund
	City tax	-	used for general purposes

Exemptions, Deductions and Credits

- natural gas that is subject to state or municipal utility tax is exempt from use tax.
- credit is provided for any taxes similar to the state or local public utility taxes or state or local "use" taxes paid in other states on the same natural/manufactured gas.
- deferral of the tax is allowed for direct service industries (DSIs) that purchase electric power from the Bonneville Power Administration if they construct and operate gas fired generating facilities. If the firm maintains previous employment levels, the deferred tax need not be repaid.
- natural or manufactured gas used in aluminum smelters, until January 1, 2012.

History

The state and municipal taxes on brokered natural or manufactured gas were adopted by the Legislature in 1989; the effective date of the taxes was July 1, 1990.

Discussion/Major Issues

The need for these taxes was a result of federal deregulation of the natural gas industry. Increasingly, large industrial and institutional users of gas have been able to make purchases of gas from sellers in other states through brokers; this enables large purchasers to take advantage of differentials on the spot market for natural gas. Although the gas may be delivered through the pipeline of a local gas company, the transaction is considered to take

place out of state. Some utilities had been reporting retail sales tax on such sales and some purchasers had reported use tax, but there was confusion about the tax liability of such transactions until the Legislature enacted the 1989 statute.

There are approximately 214 taxpayers that report use tax on natural/manufactured gas. The Department currently administers the municipal use tax on natural/manufactured gas for 46 cities, although not every one of them receives revenues each year depending upon when the taxable transactions occur.