

**THIS PROPOSED RULE IS SUBMITTED FOR PUBLIC COMMENTS AFTER INPUT FROM INTERESTED PARTIES AND IS TO BE USED SOLELY FOR DISCUSSION PURPOSES AT THE PUBLIC HEARING ON THE PROPOSED RULE. UNDER NO CIRCUMSTANCES IS THIS PROPOSED RULE TO BE USED TO DETERMINE TAX LIABILITY AND OR EXEMPTIONS.**

**WAC 458-20-279 Clean Alternative Fuel Vehicles and High Gas Mileage Vehicles.**

**(1) Introduction.** For the period January 1, 2009 through December 31, 2010 inclusive, RCW 82.08.809 and 82.12.809 provide a retail sales and use tax exemption for new passenger cars, light duty trucks, and medium duty passenger vehicles that are exclusively powered by a clean alternative fuel. For the same period, RCW 82.08.813 and 82.12.813 provide a retail sales and use tax exemption for new passenger cars, light duty trucks, and medium duty passenger vehicles that utilize hybrid technology and have a United States environmental protection agency estimated highway gasoline mileage rating of at least forty miles per gallon. This section provides additional information about the requirements for the exemptions provided by RCW 82.08.809, 82.08.813, 82.12.809, and 82.12.813 (“the exemptions”).

**(2) Definitions.** The following definitions apply throughout this section.

(a) “Clean alternative fuel” means natural gas, propane, hydrogen, or electricity, when used as a fuel in a motor vehicle that meets the California motor vehicle emission standards in Title 13 of the California code of regulations, effective January 1, 2005, and the rules of the Washington state department of ecology. See RCW 82.08.809 (3) and 82.12.809 (2).

(b) “Gross vehicle weight rating” is the value specified by the manufacturer as the maximum design loaded weight of a single vehicle. See WAC 173-423-040 (4).

(c) “Hybrid technology” means propulsion units powered by both electricity and gasoline. See RCW 82.08.813 (3) and 82.12.813 (2).

(d) “Light duty truck” is any vehicle certified to the standards in Title 13, CCR, section 1961 (a)(1) rated at 8,500 pounds gross vehicle weight or less, and any other motor vehicle rated at 6,000 pounds gross vehicle weight or less, which is designed primarily for the purposes of transportation of property or is a derivative of such vehicle, or is available with special features enabling off-street or off-highway operation and use. See WAC 173-423-040 (8).

(e) “Medium duty passenger vehicle” is any medium duty vehicle with a gross vehicle weight rating of less than 10,000 pounds that is designed primarily for the transportation of persons. The medium duty passenger vehicle definition does not include any vehicle which:

- (i) Is an “incomplete truck,” i.e., is a truck that does not have the primary load carrying device or container attached; or
- (ii) Has a seating capacity of more than twelve persons; or
- (iii) Is designed for more than nine persons in seating rearward of the driver's seat; or
- (iv) Is equipped with an open cargo area of 72.0 inches in interior length or more. A covered box not readily accessible from the passenger compartment will be considered an open cargo area for the purpose of this definition.

See WAC 173-423-040 (9).

(f) “Medium duty vehicle” is a vehicle with a gross vehicle weight rating of 8,501 to 14,000 pounds. See WAC 173-423-100 (2).

(g) “Model year” is the manufacturer's annual production period which includes January 1 of a calendar year. If the manufacturer has no annual production period, “model year” is the calendar year. In the case of any vehicle manufactured in two or more stages, the time of manufacture shall be the date of completion of the chassis. See WAC 173-423-040 (10).

(h) “New motor vehicle” is any motor vehicle that:

- (i) is self-propelled;
- (ii) is required to be registered and titled under Title 46 RCW;
- (iii) has not been previously titled to a retail purchaser or lessee; and
- (iv) is not a vehicle which has been sold, bargained, exchanged, given away, or title transferred from the person who first took title to it from the manufacturer or first importer, dealer, or agent of the manufacturer or importer, and so used as to have become what is commonly known as “secondhand” within the ordinary meaning thereof. See RCW 46.70.011 and RCW 46.04.660.

The model year of the vehicle is not determinative of whether it meets the definition of “new motor vehicle.”

(i) “Passenger car” means every motor vehicle except motorcycles and motor-driven cycles designed primarily for transportation of persons and having a design capacity of twelve persons or less. See WAC 173-423-040 (13) and RCW 46.04.382.

**(3) New passenger cars, light duty trucks, and medium duty passenger vehicles.** In order to qualify for the exemptions, the vehicle must meet the definition of “passenger

car,” “light duty truck,” or “medium duty passenger vehicle” in addition to meeting the definition of “new motor vehicle.”

**(a) Purchases of previously owned clean alternative fuel or high gas mileage vehicles.** The exemptions do not apply to purchases of used vehicles, even if they are exclusively powered by clean alternative fuel or utilize hybrid technology and have a United States environmental protection agency estimated highway gasoline mileage rating of at least forty miles per gallon. The exemptions only apply to new clean alternative fuel or new high gas mileage vehicles purchased between January 1, 2009 and December 31, 2010.

**(i) Example 1.** Mike purchases a *used* 2007 model year hybrid vehicle from a dealer or private party in 2009. The purchase would not qualify for the exemptions. The exemptions only apply to new vehicles.

**(ii) Example 2.** Nicole purchases a *new* 2008 model year hybrid vehicle in 2009 from a dealer. This purchase would be exempt (assuming it meets the other requirements). A new vehicle could be any model year as long as it has not been previously titled to a retail purchaser or lessee.

**(4) Conversions.** For purposes of this rule, a conversion refers to the alteration of an otherwise nonqualifying vehicle exclusively powered by gasoline or diesel into a qualifying vehicle that either: (1) is exclusively powered by clean alternative fuel; or (2) utilizes hybrid technology and has a United States environmental protection agency estimated highway gasoline mileage rating of at least forty miles per gallon.

**(a) Purchases of converted vehicles.** The purchase of a new vehicle that is converted prior to or as part of the retail sale to the purchaser and that otherwise satisfies the requirements of the exemptions will qualify for the exemptions. If the conversion is performed after the retail sale, the purchase of the vehicle will not qualify for the exemptions.

**(b) Purchases of the service of converting vehicles.** While the purchase of a new vehicle converted by the seller prior to or as part of the retail sale to the purchaser qualifies for the exemptions as described in (4)(a) of this section, the purchase of the service of converting a vehicle does not qualify for the exemptions. However, if the seller hires a third party to convert the vehicle, it can give the third party a resale certificate.

**(i) Example 1.** Tom wants to purchase a new nonqualifying vehicle from Dealer but have it converted as a part of the purchase transaction. Dealer hires John’s Shop to convert the vehicle for Tom, and Tom purchases the converted vehicle from Dealer. Tom’s purchase of the converted vehicle qualifies for the exemptions.

**(ii) Example 2.** Tom purchases a new nonqualifying vehicle from Dealer. Tom then hires John’s Shop to convert the vehicle. The purchase of the nonqualifying vehicle does

not qualify for the exemptions, even if Dealer delivers the vehicle directly to John's Shop on Tom's behalf for conversion.

**(5) Use Tax.** The use of a qualifying vehicle by the original title holder is exempt from use tax if the vehicle is purchased between January 1, 2009 and December 31, 2010.

**(a) Example 1.** Will, a Washington resident, purchases a new qualifying vehicle in Oregon from Dealer on February 1, 2009 and returns to Washington in the vehicle on February 2, 2009. Will's use of the vehicle in Washington is exempt from use tax.

**(b) Example 2.** Oliver, an Oregon resident, purchases a new qualifying vehicle from Dealer in Oregon on April 1, 2009. Oliver moves to Washington on May 15, 2009. Oliver's use of the vehicle in Washington is exempt from use tax. Note: In the absence of the exemptions discussed in this section, Oliver's purchase would likely be subject to use tax since his first use of the vehicle in Washington occurred within 90 days of his acquisition and use of the vehicle in another state. See RCW 82.12.0251.

**(6) Extended warranties and maintenance agreements.** The sale of an extended warranty or maintenance agreement is subject to retail sales tax even though the vehicle itself may qualify for the exemptions. See WAC 458-20-257.

**(7) Replacement parts and/or repair services.** The sale of replacement parts or repair services is subject to retail sales tax even though the vehicle itself may have qualified for the exemptions. Only the purchase and use of a qualifying vehicle is exempt from retail sales and use tax.

**(8) Accessories.** Accessories qualify for the exemptions if the accessories are components of the qualifying vehicle at the time of purchase. Accessories purchased after the qualifying vehicle is purchased are subject to retail sales tax.

**(9) Leases.** A vehicle is exempt from retail sales and use taxes on a lease if the other requirements are met. If the vehicle is new, registered, and titled in the lessee's name between January 1, 2009 and December 31, 2010, the retail sales tax exemption will apply only to amounts due between January 1, 2009 and December 31, 2010. See also WAC 458-20-103 and 458-20-235.

**(a) Example 1.** Alex leases a new hybrid vehicle that he registers and titles on December 8, 2008. None of his lease payments will qualify for the exemptions because the vehicle was registered and titled prior to January 1, 2009.

**(b) Example 2.** Beth leases a new hybrid vehicle that she registers and titles on December 8, 2010. Assuming that the other requirements of the exemptions are met, any amounts due under the lease before January 1, 2011 are exempt from retail sales tax.

**(10) Payments made prior to January 1, 2009.** Any payment made toward the purchase of an otherwise qualifying vehicle prior to the effective date of the exemptions,

January 1, 2009, qualifies for the exemptions if the vehicle sold is titled and registered on or after January 1, 2009, and the purchaser takes possession of the vehicle on or after January 1, 2009. See WAC 458-20-103, 458-20-197, and 458-20-235.

**Example.** Greg makes a down payment toward the purchase of a new qualifying vehicle on November 7, 2008 but does not actually take possession of the vehicle at the dealership lot until January 2, 2009. The vehicle is titled and registered on January 9, 2009. The down payment is exempt from retail sales tax.

**(11) Payments made prior to January 1, 2011.** Any payment made toward the purchase of an otherwise qualifying vehicle prior to the expiration date of the exemptions, January 1, 2011, does not qualify for the exemptions if the vehicle sold is titled or registered on or after January 1, 2011, or if the purchaser takes possession of the vehicle on or after January 1, 2011. See WAC 458-20-103, 458-20-197, and 458-20-235.

**Example.** Craig makes a down payment toward the purchase of a new qualifying vehicle on November 7, 2010 but does not actually take possession of the vehicle at the dealership lot until January 2, 2011. The vehicle is titled and registered on January 11, 2011. The down payment is subject to retail sales tax.