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AMENDATORY SECTION (Amending WSR 09-02-051, filed 12/31/08, effective 1/31/09)

**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, 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~~) retail sales and use tax exemptions provided for clean alternative fuel vehicles by RCW 82.08.809 and 82.12.809, respectively, and the exemption from the 0.3 percent retail sales tax on retail sales of motor vehicles provided for high gas mileage vehicles by RCW 82.08.020(7) ("the exemptions").

(2) **Exemption periods.** The exemption periods provided for clean alternative fuel vehicles and high gas mileage vehicles differ.

(a) **Clean alternative fuel vehicles.** The exemptions provided for new passenger cars, light duty trucks, and medium duty passenger vehicles that are exclusively powered by a clean alternative fuel apply to purchases made from January 1, 2009, through December 31, 2010.

(b) **High gas mileage vehicles.** The exemptions provided 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 apply as follows:

(i) **January 1, 2009, through July 31, 2009.** The exemptions apply to all retail sales and use taxes.

(ii) **August 1, 2009, through December 31, 2010.** The exemption is limited to the 0.3 percent retail sales tax imposed

by RCW 82.08.020(3) on retail sales of motor vehicles.

(3) 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 eight thousand five hundred pounds gross vehicle weight or less, and any other motor vehicle rated at six thousand 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 ten thousand 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 seventy-two 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 eight thousand five hundred one to fourteen thousand 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 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))~~ **(4) 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."

**(5) 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 purchases of new clean alternative fuel or new high gas mileage vehicles (~~(purchased between January 1, 2009, and December 31, 2010)~~).

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

(b) **Example 2.** Nicole purchases a new 2008 model year hybrid vehicle in July 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))~~ **(c) Example 3.** Joe purchases a new 2009 model year hybrid vehicle on August 5, 2009, from a dealer. This purchase is not exempt from all retail sales taxes but, assuming it meets the other requirements, is exempt from the 0.3 percent retail sales tax on retail sales of motor vehicles.

**(6) Conversions.** For purposes of this section, a conversion refers to the alteration of an otherwise nonqualifying vehicle exclusively powered by gasoline or diesel

into a qualifying vehicle that either:

(a) Is exclusively powered by clean alternative fuel; or

(b) Utilizes hybrid technology and has a United States environmental protection agency estimated highway gasoline mileage rating of at least forty miles per gallon.

(i) **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.

(ii) **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 subsection ~~((4))~~ (6)(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 (WAC 458-20-102A) for work completed before January 1, 2010, or a reseller permit (WAC 458-20-102) for work completed on or after January 1, 2010. Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or December 31, 2014.

(A) **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.

(B) **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))~~ (7) **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))~~ during the applicable exemption period specified in subsection (2) of this section.

(a) **Example 1.** Will, a Washington resident, purchases a new qualifying clean alternative fuel 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 hybrid 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 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))~~ (8) 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))~~ (9) 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))~~ taxes.

~~((8))~~ (10) Accessories. A qualifying vehicle includes all accessories installed or sold as part of the sale of the vehicle.

(a) **Example 1.** A dealership installs a ski rack and applies pinstriping on an otherwise qualifying vehicle on January 5, 2009, before a customer purchases the vehicle. Any separate, itemized charges for the accessories listed on the vehicle sales invoice are exempt from retail sales tax.

(b) **Example 2.** On January 5, 2009, a customer purchases an otherwise qualifying vehicle, and as a condition of the purchase requires that the seller install stereo speakers and apply paint sealant. The seller does not have the accessories in stock, but the customer takes delivery of the vehicle. The customer then brings the vehicle back to the seller, and the accessories are installed and applied on January 12, 2009. Any separate, itemized charges for the accessories listed on the vehicle sales invoice are exempt from retail sales tax.

~~((9))~~ (11) 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))~~ during the applicable exemption period specified in subsection (2) of this section, the retail sales tax exemption will apply only to amounts due ~~((between January 1, 2009, and December 31, 2010))~~ during the exemption period. 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))~~ clean alternative fuel 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))~~ **(12) 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:

(a) The vehicle sold is titled and registered on or after January 1, 2009, but before the applicable exemption expires; and

(b) The purchaser takes possession of the vehicle on or after January 1, 2009, but before the applicable exemption expires. 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 hybrid 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 purchase of the vehicle is exempt from all retail sales ~~((tax))~~ taxes.

~~((11))~~ **(13) Payments made prior to ~~((January 1, 2011))~~ the expiration date of the applicable exemption.** Any payment made toward the purchase of an otherwise qualifying vehicle prior to the expiration date of the ~~((exemptions, January 1, 2011,))~~ applicable exemption does not qualify for the exemption~~((s))~~ if:

(a) The vehicle sold is titled or registered on or after ~~((January 1, 2011,))~~ the expiration date of the exemption; or ~~((if))~~

(b) The purchaser takes possession of the vehicle on or after ~~((January 1, 2011))~~ the expiration date of the exemption. 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 clean alternative fuel 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 purchase of the vehicle is subject to retail sales tax and the 0.3 percent retail sales tax imposed by RCW 82.08.020(3) on retail sales of motor vehicles.