



EXPEDITED RULE MAKING

CR-105 (December 2017) (Implements RCW 34.05.353)

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FILED

DATE: December 22, 2021

TIME: 8:20 AM

WSR 22-01-214

Agency: Department of Revenue

Title of rule and other identifying information: (describe subject) WAC 458-20-261: Commute trip reduction incentives.

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The department is amending WAC 458-20-261 to incorporate 2021 legislation SHB 1514 (2021) and its new statutory requirements for certain commute trip reduction incentives.

Reasons supporting proposal: The rule is being updated to implement new statutorily required terms relating to various commute trip reduction tax incentives including preferences for business and occupation (B&O) tax, public utility tax (PUT), retail sales tax (RST), and use tax.

Statutory authority for adoption: RCW 82.01.060

Statute being implemented: RCW 46.74.010, 82.04.355, 82.08.0287, 82.12.0282, 82.16.047, 82.44.015, and 82.70.010

Is rule necessary because of a:

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

Name of proponent: (person or organization) Department of Revenue

Private
 Public
 Governmental

Name of agency personnel responsible for:

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Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Expedited Adoption - Which of the following criteria was used by the agency to file this notice:

- Relates only to internal governmental operations that are not subject to violation by a person;
- Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;
- Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect;
- Content is explicitly and specifically dictated by statute;
- Have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or
- Is being amended after a review under RCW 34.05.328.

Expedited Repeal - Which of the following criteria was used by the agency to file notice:

- The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;
- The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;
- The rule is no longer necessary because of changed circumstances; or
- Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

Explanation of the reason the agency believes the expedited rule-making process is appropriate pursuant to RCW 34.05.353(4): The expedited rule-making process is appropriate for these rule updates because the Department is incorporating changes resulting from 2021 legislation.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO

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AND RECEIVED BY (date) February 22, 2022

Date: December 22, 2021

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AMENDATORY SECTION (Amending WSR 20-22-093, filed 11/3/20, effective 12/4/20)

WAC 458-20-261 Commute trip reduction incentives. (1) **Introduction.** This rule explains the various commute trip reduction incentives (~~that are available~~). RCW 82.04.355 and 82.16.047 (~~provide exemptions~~) exempt amounts received from providing ride sharing, or ride sharing for persons with special transportation needs, from business and occupation (B&O) tax and public utility tax (PUT) (~~on amounts received from providing commuter ride sharing and ride sharing for persons with special transportation needs~~). RCW 82.08.0287 and 82.12.0282 provide sales and use tax exemptions for sales or use of passenger motor vehicles as (~~ride sharing~~) ride sharing vehicles. Finally, chapter 82.70 RCW provides commute trip reduction incentives in the form of B&O tax or PUT credits in connection with ride sharing, public transportation, car sharing, and nonmotorized commuting.

(2) **Definitions.** For the purposes of this rule, the following definitions apply:

(a) **"Car sharing"** means a membership program intended to offer an alternative to car ownership under which persons or entities that become members are permitted to use vehicles from a fleet on an hourly basis. RCW 82.70.010.

(b) **"Nonmotorized commuting"** means commuting to and from the workplace by an employee, by walking or running, or by riding a bicycle or other device not powered by a motor. "Nonmotorized commuting" does not include teleworking, which is a program where work functions normally performed at a traditional workplace are instead performed by an employee at his or her home, at least one day a week for the purpose of reducing the number of trips to the employee's workplace. RCW 82.70.010.

(c) **"Public transportation"** means the transportation of packages, passengers, and their incidental baggage, by means other than by charter bus or sight-seeing bus, together with the necessary passenger terminals and parking facilities or other properties necessary for passenger and vehicular access to and from such people moving systems. "Public transportation" includes passenger services of the Washington state ferries and passenger-only ferry services for those public transportation benefit areas eligible to provide passenger-only ferry service under RCW 36.57A.200. RCW 82.70.010.

(d) (i) **"Ride sharing"** means a carpool or vanpool arrangement whereby one or more groups not exceeding 15 persons each, including the drivers, and not fewer than three persons, including the drivers, are transported in a passenger motor vehicle with a gross vehicle weight not exceeding 10,000 pounds. RCW 46.74.010(2). See subsection (4)(b) of this rule for increased minimum group size requirements in some circumstances. "Ride sharing" includes ride sharing on Washington state ferries. RCW 82.70.010(6).

(ii) Ride sharing does not include transportation provided in the normal course of business by entities subject to chapters 46.72A (limousines), 48.177 (commercial transportation services), 81.66 (private, nonprofit transportation providers that receive compensation for transporting persons with special transportation needs), 81.68 (auto transportation companies), 81.70 (passenger charter and excursion carriers), and 81.72 (taxicabs) RCW, or offer peer-to-peer car sharing. "Peer-to-peer car sharing" means motor vehicle owners making their motor vehicles available for persons to rent for short periods of time.

(e) "Ride sharing for persons with special transportation needs" means an arrangement, whereby a group of persons with special transportation needs, and their attendants, is transported by a public social service agency or a private, nonprofit transportation provider, in a passenger motor vehicle as defined by the department of licensing to include small buses, cutaways, and modified vans not more than 28 feet long. The driver need not be a person with special transportation needs. RCW 46.74.010.

(i) "Private, nonprofit transportation provider" means any private, nonprofit corporation providing transportation services for compensation solely to persons with special transportation needs. RCW 81.66.010.

(ii) "Persons with special transportation needs" means those persons, including their personal attendants, who because of physical or mental disability, income status, or age, are unable to transport themselves or to purchase appropriate transportation. RCW 81.66.010.

(3) B&O tax and PUT exemptions for providing ((commuter)) ride sharing or ride sharing for persons with special transportation needs. RCW 82.04.355 and 82.16.047 provide B&O tax and PUT exemptions for amounts received in the course of ((commuter)) ride sharing or ride sharing for persons with special transportation needs.

((a) What is "commuter ride sharing"? "Commuter ride sharing" means a carpool or vanpool arrangement, whereby one or more fixed groups:

(i) Not exceeding fifteen persons each, including the drivers; and

(ii) Either:

(A) Not fewer than five persons, including the drivers; or

(B) Not fewer than four persons, including the drivers, where at least two of those persons are confined to wheelchairs when riding; are transported in a passenger motor vehicle with a gross vehicle weight not exceeding ten thousand pounds, excluding any special rider equipment. The transportation must be between their places of residence or near such places of residence, and their places of employment or educational or other institutions. Each group must be in a single daily round trip where the drivers are also on the way to or from their places of employment or educational or other institutions. RCW 46.74.010.

(b) What is "ride sharing for persons with special transportation needs"? "Ride sharing for persons with special transportation needs" means an arrangement, whereby a group of persons with special transportation needs, and their attendants, is transported by a public social service agency or a private, nonprofit transportation provider, in a passenger motor vehicle as defined by the department of licensing to include small buses, cutaways, and modified vans not more than twenty-eight feet long. The driver need not be a person with special transportation needs. RCW 46.74.010.

(i) What is a "private, nonprofit transportation provider"? A "private, nonprofit transportation provider" is any private, nonprofit corporation providing transportation services for compensation solely to persons with special transportation needs. RCW 81.66.010.

(ii) Who are "persons with special transportation needs"? "Persons with special transportation needs" are those persons, including their personal attendants, who because of physical or mental disability, income status, or age, are unable to transport themselves or to purchase appropriate transportation. RCW 81.66.010.

~~(3))~~ **(4) Retail sales tax and use tax exemptions on sales or use of passenger motor vehicles as ~~((ride-sharing))~~ ride sharing vehicles.** RCW 82.08.0287 and 82.12.0282 provide retail sales tax and use tax exemptions for sales and use of passenger motor vehicles as ride-sharing vehicles. The following conditions apply to qualify for these exemptions:

~~(a) ((What are the requirements? To qualify for these exemptions,))~~ **Minimum duration of usage.** The passenger motor vehicles must be used ~~((=~~

~~(i))~~ primarily for ~~((commuter))~~ ride sharing or ride sharing for persons with special transportation needs ~~((; and~~

~~(ii) As ride-sharing vehicles for thirty-six))~~ for 36 consecutive months beginning from the date of purchase (retail sales tax exemption) and the date of first use (use tax exemption). If the vehicle is used as a ~~((ride-sharing))~~ ride sharing vehicle for less than ~~((thirty-six))~~ 36 consecutive months, the registered owner must pay the retail sales tax or use tax.

~~(b) ((Additional requirements in certain cases.))~~ **Increased passenger requirements for vehicles not operated by a public transportation agency.** If a vehicle is not operated by a public transportation agency, the minimum group size is increased from three persons each to five persons each including the driver. RCW 82.08.0287 (2)(b) and 82.12.0282 (2)(b).

~~(c) Qualifying jurisdictions.~~ Vehicles ~~((used primarily for commuter ride sharing))~~ must be operated within:

~~(i) A county, or a city or town within that county, which has a commute trip reduction plan under chapter 70A.94 RCW ((in order to be exempt from retail sales tax or use tax. In addition, for the exemptions to apply, at least one of the following conditions must apply:~~

~~(i) The vehicle is)); or~~

~~(ii) In other counties, where the vehicle is registered with, or operated by, a public transportation agency.~~

~~(d) Ownership and operation.~~ The vehicle must be:

~~(i) Operated by a public transportation agency for the benefit of the general public;~~

~~(ii) ((The vehicle is))~~ Used by a major employer, as defined in RCW ((70A.94.524)) 70A.15.4010, as an element of its commute trip reduction program for their employees; or

~~(iii) ((The vehicle is))~~ Owned and operated by individual employees and ((must be)) registered either with the employer as part of its commute trip reduction program or with a public transportation agency ((serving the area where the employees live or work. Individual employee)).

~~(e) Certification.~~

~~(i) Individual employee owned and operated motor vehicles require certification that the vehicle is registered with a major employer or a public transportation agency((-)); and~~

~~(ii) Major employers who own and operate motor vehicles for their employees must certify that the commute ((ride-sharing)) ride sharing arrangement conforms to a carpool or vanpool element contained within their commute trip reduction program.~~

~~((4))~~ **(5) B&O tax or PUT credit for ride sharing, public transportation, car sharing, or nonmotorized commuting.** RCW 82.70.020 provides a credit against B&O tax or PUT liability for amounts paid to or on behalf of employees for ride sharing ~~((in vehicles carrying two or more persons)),~~ for using public transportation, for using car sharing, or for using nonmotorized commuting. The credit is equal to the

amount paid to or on behalf of each employee multiplied by ~~((fifty))~~ 50 percent, but may not exceed ~~((sixty-dollars))~~ \$60 per employee per fiscal year. No refunds will be granted for unused credits.

(a) **Who is eligible for this credit?**

(i) Employers in Washington are eligible for this credit, for amounts paid to or on behalf of their own or other employees, as financial incentives to such employees for ride sharing, for using public transportation, for using car sharing, or for using nonmotorized commuting.

(ii) Property managers who manage worksites in Washington are eligible for this credit, for amounts paid to or on behalf of persons employed at those worksites, as financial incentives to such persons for ride sharing, for using public transportation, for using car sharing, or for using nonmotorized commuting.

~~(b) **What is "ride sharing"?** "Ride sharing" means a carpool or vanpool arrangement, whereby a group of at least two but not exceeding fifteen persons, including the driver, is transported in a passenger motor vehicle with a gross vehicle weight not exceeding ten thousand pounds, excluding any special rider equipment. The transportation must be between their places of residence or near such places of residence, and their places of employment or educational or other institutions. The driver must also be on the way to or from his or her place of employment or educational or other institution. "Ride sharing" includes ride sharing on Washington state ferries. RCW 82.70.010.~~

~~(c) **What is "public transportation"?** "Public transportation" means the transportation of packages, passengers, and their incidental baggage, by means other than by charter bus or sight-seeing bus, together with the necessary passenger terminals and parking facilities or other properties necessary for passenger and vehicular access to and from such people moving systems. "Public transportation" includes passenger services of the Washington state ferries. RCW 82.70.010.~~

~~(d) **What is "car sharing"?** "Car sharing" means a membership program intended to offer an alternative to car ownership under which persons or entities that become members are permitted to use vehicles from a fleet on an hourly basis. RCW 82.70.010.~~

~~(e) **What is "nonmotorized commuting"?** "Nonmotorized commuting" means commuting to and from the workplace by an employee, by walking or running or by riding a bicycle or other device not powered by a motor. "Nonmotorized commuting" does not include teleworking, which is a program where work functions normally performed at a traditional workplace are instead performed by an employee at his or her home, at least one day a week for the purpose of reducing the number of trips to the employee's workplace. RCW 82.70.010.~~

~~(f)) **What is the credit amount?** The amount of the credit is equal to the amount paid to or on behalf of each employee multiplied by ~~((fifty))~~ 50 percent, but may not exceed ~~((sixty-dollars))~~ \$60 per employee per fiscal year. RCW 82.70.020.~~

~~((g)) (c) **What is a "fiscal year"?** A "fiscal year" begins ~~((at))~~ on July 1st of one year and ends on June 30th of the following year.~~

~~((h)) (d) **When will the credit expire?** The credit program is scheduled to expire July 1, 2024. No credit may be claimed after June 30, 2024.~~

~~((i)) (e) **What are the limitations of the credit?**~~

(i) The credit may not exceed the amount of B&O tax or PUT that would otherwise be due for the same fiscal year.

(ii) A person may not receive credit for amounts paid to or on behalf of the same employee under both B&O tax and PUT.

(iii) A person may not take a credit for amounts claimed for credit by other persons.

(iv) The total credit granted to a person under both B&O tax and PUT may not exceed (~~one hundred thousand dollars~~) \$100,000 for a fiscal year.

(v) The total credit granted to all persons under both B&O tax and PUT may not exceed (~~two million seven hundred fifty thousand dollars~~) \$2,750,000 in any fiscal year.

(vi) No credit or portion of a credit denied, because of exceeding the limitations in (i), (iv), or (v) of this subsection, may be used against tax liability for other fiscal years.

(vii) No person is eligible for tax credits under RCW 82.70.020 if the additional revenues for the multimodal transportation account (RCW 47.66.070) created by chapter 361, Laws of 2003 are terminated.

~~((j))~~ **(f) What are the credit procedures?**

(i) Persons applying for the credit must complete the commute trip reduction credit annual application. The application must be electronically filed and received by the department between January 1st and January 31st, following the calendar year in which the applicant made incentive payments. The commute trip reduction credit annual application is available through the business's "My DOR" account on the department's website at dor.wa.gov.

(ii) The department must (~~make a determination on an~~) approve or deny a completed application within (~~sixty~~) 60 days of the January 31st deadline. The department must (~~disapprove~~) deny an application not received by the January 31st deadline, except (~~that~~) the department may accept applications received up to (~~fifteen~~) 15 calendar days after the deadline if the application was not received because of circumstances beyond the control of the taxpayer. For what is considered circumstances beyond the control of a taxpayer, see WAC 458-20-228 Returns, payments, penalties, extensions, interest, stays of collection. Once the application is approved and the tax credit is granted, the department is not allowed to increase the credit.

(iii) If the total amount of credit applied for by all approved applicants in a fiscal year exceeds the limitation as provided in (i)(v) of this subsection, the amount of credit allowed for all applicants must be proportionally reduced so as not to exceed the limit. The amount reduced may not be carried forward and claimed in subsequent fiscal years.

(iv) To claim a commute trip reduction tax credit, a person must file all returns, forms, and other information the department requires in an electronic format as provided or approved by the department. Any return, form, or information required to be filed in an electronic format is not filed until received by the department in an electronic format. (~~For the purpose of this subsection,~~) "Returns" has the same meaning as "return" in RCW 82.32.050.

~~((k))~~ **(g) Examples.** The following examples identify (~~a number of~~) facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(i) **Example 1.** An employer pays (~~one hundred eighty dollars~~) \$180 for a yearly bus pass for one employee. For another employee, the employer buys a bicycle helmet and bicycle lock for a total of (~~fifty dollars~~) \$50. (~~These are~~) The sum of these two amounts, \$230, is the total expenditure(s) during a fiscal year of amounts paid to, or

on behalf of, employees in support of ride sharing, using public transportation, using car sharing, and using nonmotorized commuting. The employer may claim a credit of ~~((sixty dollars))~~ \$60 for the amount spent for the employee using the bus pass. Fifty percent of ~~((one hundred eighty dollars is ninety dollars))~~ \$180 is \$90, but the credit is limited to ~~((sixty dollars))~~ \$60 per employee. The employer may claim a credit of ~~((twenty five dollars (fifty percent of fifty dollars))~~ \$25 (50 percent of \$50) for the amount spent for the employee who bicycles to work. Even though ~~((fifty))~~ 50 percent of ~~((two hundred thirty dollars,))~~ \$230 (the total amount spent on both employees), works out to be less than ~~((sixty dollars))~~ \$60 per employee, the credit is computed by looking at actual spending for each employee and not by averaging the spending for both employees.

(ii) **Example 2.** An employer provides parking spaces for the exclusive use of ~~((ride-sharing))~~ ride sharing vehicles. Amounts spent for signs, painting, or other costs related to the parking spaces do not qualify for the credit. This is because the credit is for financial incentives paid to or on behalf of employees. While the parking spaces support the use of ~~((ride-sharing))~~ ride sharing vehicles, they are not financial incentives and do not involve amounts paid to or on behalf of employees.

(iii) ~~((Example 3.~~ As part of its commute trip reduction program, an employer pays the cab fare for an employee who has an emergency and must leave the workplace but has no vehicle available because he or she commutes by ride-sharing vehicle. The cab fare qualifies for the credit but is subject to the maximum credit limit of sixty dollars per employee.

~~((iv))~~) **Example ((4)) 3.** An employer pays the property manager for a yearly bus pass for one employee who works at the worksite managed by the property manager. The property manager in turn pays the amount received from the employer to a public transportation agency to purchase the bus pass. Either the employer or the property manager, but not both, may take the credit for this expenditure.