

HOUSE BILL REPORT

HB 2499

As Passed House:

February 14, 2004

Title: An act relating to exempting fuel cells from sales and use taxes.

Brief Description: Exempting fuel cells from sales and use taxes.

Sponsors: By Representatives Morris, McIntire, Nixon, Chase and Orcutt; by request of Department of Revenue and Department of General Administration.

Brief History:

Committee Activity:

Finance: 1/20/04, 1/22/04 [DP].

Floor Activity:

Passed House: 2/14/04, 96-0.

Brief Summary of Bill

- Extends the use tax exemption for the acquisition of machinery or equipment that is used to generate at least 200 watts of electricity to include fuel cells as a principal power source.

HOUSE COMMITTEE ON FINANCE

Majority Report: Do pass. Signed by 9 members: Representatives McIntire, Chair; Hunter, Vice Chair; Cairnes, Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Ahern, Conway, Morris, Roach and Santos.

Staff: Mark Matteson (786-7145).

Background:

The retail sales tax applies to the selling price of tangible personal property and of certain services purchased at retail. The tax is levied at a 6.5 percent rate by the state. Cities and counties may levy a local tax at a rate up to a maximum of 3.4 percent. As of December 2003, local rates levied range from 0.5 percent to 2.4 percent. Sales tax is paid by the purchaser and collected by the seller.

The use tax is imposed on items used in the state that were not subject to the retail sales tax, and includes purchases made in other states and purchases from sellers who do not collect Washington sales tax. The state and local rates are the same as those imposed under the retail sales tax. Use tax is paid directly to the Department of Revenue.

All retail goods and services are included in the tax base for retail sales and use taxes, unless specifically exempted. In 1996 the Legislature provided an exemption from the retail sales and use taxes for machinery and equipment used directly in generating at least 200 kilowatts of electricity using wind or solar energy, and in 1998 expanded the exemption to include landfill gas as a power source. In 2000, the Legislature amended the law to lower the electricity generation threshold to 200 watts and to include fuel cells as a power source. However, the use tax modifications in the 2001 law omitted a reference to fuel cells, and the definition of machinery and equipment for the purposes of both the sales and use tax exemption was not modified to accommodate fuel cells. As a result, although fuel cells are exempt from the retail sales tax for the purposes provided in the exemption, a person that acquires a fuel cell for such purposes owes use tax.

Summary of Bill:

The use tax exemption for machinery and equipment used directly in generating at least 200 watts of electricity is modified to include fuel cells as a principal source of power. The definition of machinery and equipment, for the purposes of the exemption under both the sales and use tax, is modified to mean industrial fixtures, devices, or facilities necessary for the generation of electricity from wind, solar power, land fill gas, or fuel cells.

Appropriation: None.

Fiscal Note: Requested on January 15, 2004.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: This is a straightforward bill that corrects an omission in a bill that we passed three years ago.

For the Department of Revenue, this has been a nagging issue, since while the sales tax exemption is in effect, retailers must collect use tax if the fuel cell is to be used within Washington State. After the passage of legislation last year directing the Department of General Administration (GA) to work with state agencies to consider the use of fuel cells in providing uninterruptible sources of power for certain applications, we saw an opportunity to work with the GA to correct the omission. The GA supports the

corrective action.

Testimony Against: None.

Persons Testifying: Julie Sexton, Department of Revenue; Martin Casey, General Administration; and Collins Sprague, Avista Corporation.

Persons Signed In To Testify But Not Testifying: None.