
**Technology, Telecommunications
& Energy Committee**

HB 1552

Brief Description: Authorizing state and local use taxes on electricity consumption.

Sponsors: Representative Kirby.

Brief Summary of Bill

- Imposes a state use tax for the privilege of consuming electricity in the state, at the same rate currently imposed under the state public utility tax for light and power businesses.
- Authorizes a municipal use tax for the privilege of consuming electricity in a city, at the same rate that the city imposed on electricity utilities within its jurisdiction.

Hearing Date: 2/11/03

Staff: Mark Matteson (786-7145).

Background:

The taxation of electricity in Washington State, at both the state and local levels, is measured by the gross receipts of the retail utility that delivers the electricity.

Washington State public utility tax (PUT)

Public and privately-owned utilities, including light and power (L&P) businesses, are subject to the state public utility tax (PUT). The PUT is applied to the gross receipts of the business. For L&P businesses, the applicable tax rate is 3.873 percent. Revenues are deposited to the State General Fund.

While L&P businesses are defined to include plants or systems that generate, produce, wheel, or distribute electrical energy, businesses that wholesale electrical energy are exempt on income derived from wholesales. Thus, with respect to taxation of electricity businesses, the PUT effectively applies to retail distribution utilities only.

Exemptions from the PUT

The state PUT does not permit deductions for the costs of doing business, such as payments for raw materials and wages of employees. Nonetheless, there are several tax preferences under the PUT for certain situations. These include deductions for amounts that the state is constitutionally prohibited from taxing, such as income derived by an agency of the United States. This provision applies to the retail sale of electricity from the Bonneville Power Administration (BPA) to direct service industrial customers, which are large industrial facilities that have historically contracted with BPA to deliver electricity. Other deductions from taxable income under the PUT include a deduction for amounts derived from the sale of electricity for consumption outside of the state and a deduction for amounts derived from the wholesale of electricity inside or outside the state. Electricity that is generated for a utility's own use is not subject to tax, since no sale is involved.

Municipal utility taxes

Cities impose taxes on the gross receipts of business activities conducted within the cities without any deduction for the cost of doing business. Cities, similarly to the state, impose utility taxes. Cities may impose utility taxes at a rate up to 6 percent of gross receipts, unless approved otherwise by the voters.

Use taxes

In general, use taxes are imposed or authorized under state law for the purpose of complimenting other taxes that are based on sales or gross receipts derived from sales. For taxes based on sales or gross receipts derived from sales, the sales transaction must occur within the boundaries of the taxing jurisdiction for the tax to apply. Under a use tax, to address the circumstance in which the sales transaction occurs outside of the boundaries of the taxing jurisdiction but the item or service sold is actually used inside the taxing jurisdiction, a jurisdiction imposes a tax on the value of the item or service used. Use taxes generally allow credits for sales taxes that have already been paid on the item or service.

Nature of delivery of electricity

Consumers in Washington State are generally obligated to purchase electricity from the investor-owned or public utility that serves customers in their geographic area. Pursuant to the settlement of a formal complaint filed by several industrial customers at the Washington Utilities and Transportation Commission (WUTC), Puget Sound Energy (PSE) filed a tariff in 2002 with the WUTC to provide approximately 10 industrial customers open-access retail service. Open access retail service means that the customer may purchase electricity from a supplier other than PSE and have PSE deliver the electricity over PSE distribution facilities for a fee. The open access service under PSE's tariff is available only to the customers who participated in the complaint and settlement at the WUTC. Customers that have the right to use this open-access service may purchase electricity from either in-state or out-of-state suppliers. PSE derives taxable income only from the payments for the electricity delivery services, and not from the purchase of the electricity itself, since that purchase is made from an in-state or out-of-state party other than PSE.

Similar open-access retail service could be offered by investor-owned or public utilities in Washington, but only with the approval of the utility's governing board, in the case of public utilities, or the WUTC, in the case of investor-owned utilities. There are few such situations. One example is Tacoma Public Utilities, which has allowed several of its large industrial customers to purchase some electricity on the open market.

Summary of Bill:

A new state use tax is imposed, and a new municipal use tax is authorized, for the use of electricity within the state.

New state use tax on electricity

A state use tax is imposed on persons or businesses for the privilege of consuming electricity within the state. The rate of tax is equal to the state public utility tax (PUT) rate on light and power (L&P) businesses. The measure of tax is the value of the electrical energy based on the amount paid or due to be paid by the buyer to the seller, less amounts received from the transmission or distribution of the electricity and that are subject to the state PUT for L&P businesses.

The new state tax includes exemptions with respect to electricity that is consumed in the following circumstances:

- The electricity is generated by a business for the business' own use;
- The electricity is consumed by a direct service industrial customer;
- The electricity is consumed by a business that transmits the electricity into the state over transmission facilities that it owns; and
- The electricity has been purchased from a seller that is subject to tax on the sale under the state PUT.

In addition, the new state tax allows credits for state gross receipts taxes paid on the sale of the electricity to other jurisdictions outside Washington State and for state use taxes paid for the use of the electricity in a jurisdiction outside Washington State.

The new state tax includes certain reporting requirements for L&P businesses that deliver electricity to consumers subject to the new tax, unless the L&P business is already registered to do business in the state.

New municipal use tax on electricity

A new municipal use tax is authorized for the privilege of consuming electricity within a city. The taxpayer is the person or business consuming the electricity. The rate of tax is equal to the rate imposed by the city under an already-imposed municipal utility tax on the gross receipts of electrical energy businesses. The measure of tax is the value of the electrical energy based on the amount paid or due to be paid by the buyer to the seller, less amounts received from the transmission or distribution of the electricity and that are subject to the existing municipal utility tax.

The new municipal use tax includes exemptions that are analogous to the new state use tax.

Exemptions are allowed with respect to electricity that is generated by a business for the business' own use, that is consumed by a direct service industrial customer, that is consumed by a business that transmits the electricity into the state over transmission facilities that it owns, or that has been purchased from a seller that is subject to tax on the sale under the existing municipal utility tax.

Similarly to the new state use tax, the new municipal use tax allows credits for municipal utility taxes paid to other jurisdictions outside Washington State on the gross receipts derived from the sale of the electricity, and for municipal use taxes paid for the use of the electricity in a jurisdiction outside Washington State.

The Department of Revenue is required to administer and collect the new municipal use tax in the same manner that it does so for other local sales and use taxes.

Appropriation: None.

Fiscal Note: Requested on February 4, 2003.

Effective Date: The bill takes effect on August 1, 2003.