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**Finance Committee**

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**HB 2499**

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

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

**Brief Summary of Bill**

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

**Hearing Date:** 1/20/04

**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 2001, 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.