
SENATE BILL 5439

State of Washington

65th Legislature

2017 Regular Session

By Senators Braun, Sheldon, Rivers, Becker, Schoesler, Bailey, Brown, Warnick, Fortunato, Honeyford, and Takko

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1 AN ACT Relating to providing sales and use tax exemptions, in the
2 form of a remittance of tax paid, to encourage coal-fired electric
3 generation plants to convert to natural gas-fired plants or biomass
4 energy facilities; amending RCW 82.14.050 and 82.14.060; adding a new
5 section to chapter 82.08 RCW; adding a new section to chapter 82.12
6 RCW; adding a new section to chapter 82.32 RCW; creating a new
7 section; and providing expiration dates.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

9 NEW SECTION. **Sec. 1.** This section is the tax preference
10 performance statement for the tax preference contained in sections 2
11 and 3 of this act. This performance statement is only intended to be
12 used for subsequent evaluation of the tax preference. It is not
13 intended to create a private right of action by any party or be used
14 to determine eligibility for preferential tax treatment.

15 (1) The legislature categorizes this tax preference as one
16 intended to create or retain jobs, as indicated in RCW
17 82.32.808(2)(c).

18 (2) It is the legislature's specific public policy objective to
19 retain jobs at existing coal-fired electric generation facilities by
20 providing a tax exemption to allow these facilities to convert into
21 natural gas-fired generation plants or biomass energy facilities

1 rather than shut down entirely. It is the legislature's intent to
2 provide a tax exemption for the conversion of a coal-fired electric
3 generation facility into a natural gas-fired generation plant or
4 biomass energy facility, in order to reduce the costs recently
5 imposed by the legislature on companies that operate coal-fired
6 electric generation facilities, thereby increasing the ability of
7 these companies to continue their operations in Washington state,
8 thereby retaining jobs that otherwise would be lost if a coal-fired
9 electric generation facility were to shut down.

10 (3) This tax preference is created to provide an opportunity for
11 coal-fired electric generation facilities to convert into natural
12 gas-fired generation plants or biomass energy facilities. This tax
13 preference is meant to expire and, therefore, the joint legislative
14 audit and review committee is exempt from reviewing this tax
15 preference as required in chapter 43.136 RCW.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.08
17 RCW to read as follows:

18 (1) Subject to the requirements in subsection (2) of this
19 section, a taxpayer is eligible for an exemption from the tax imposed
20 by RCW 82.08.020 on the sale of or charge made for:

21 (a) Labor and services rendered in respect to the constructing of
22 new structures, and expansion or renovation of existing structures,
23 for the purpose of converting a coal-fired electric generation
24 facility into a natural gas-fired plant or biomass energy facility;

25 (b) Materials that will be incorporated as an ingredient or
26 component of new or existing structures during the course of such
27 constructing, expanding, or renovating; or

28 (c) Machinery and equipment that is required to convert a coal-
29 fired electric generation facility into a natural gas-fired plant or
30 biomass energy facility, including labor and services rendered in
31 respect to installing such machinery and equipment.

32 (2)(a) The exemption in this section is in the form of a
33 remittance. A purchaser claiming an exemption from the tax in the
34 form of a remittance under this section must pay all applicable state
35 and local sales taxes imposed under RCW 82.08.020 and chapter 82.14
36 RCW on all purchases qualifying for the exemption. After the
37 conversion of a coal-fired electric generation facility into a
38 natural gas-fired plant or biomass energy facility is operationally
39 complete, but not earlier than April 1, 2021, the purchaser may then

1 apply to the department for a remittance of one hundred percent of
2 the state and local sales taxes paid under RCW 82.08.020 and chapter
3 82.14 RCW for purchases qualifying under subsection (1) of this
4 section. The purchaser must specify the amount of exempted tax
5 claimed and the qualifying purchases for which the exemption is
6 claimed. The purchaser must retain, in adequate detail, records to
7 enable the department to determine whether the purchaser is entitled
8 to an exemption under this section, including: Invoices; proof of tax
9 paid; and construction contracts.

10 (b) The department may not accept any application for a
11 remittance that it does not receive by the later of July 1, 2021, or
12 within one year after the department determines that the conversion
13 of a coal-fired electric generation facility into a natural gas-fired
14 plant or biomass energy facility is operationally complete.

15 (c) The department must determine eligibility under this section
16 based on information provided by the purchaser, which is subject to
17 audit verification by the department. The department must remit
18 exempted amounts to qualifying purchasers who submitted timely
19 applications during the previous calendar quarter. No remittances may
20 be paid before July 1, 2021.

21 (3) The definitions in this subsection apply throughout this
22 section unless the context clearly requires otherwise.

23 (a) "Biomass energy" means energy derived from solid organic
24 fuels from wood or forest or field residues.

25 (b)(i) "Machinery and equipment" means industrial fixtures,
26 devices, and support facilities that are integral and necessary to
27 the generation of electricity using natural gas or biomass, including
28 repair parts and replacement parts.

29 (ii) "Machinery and equipment" does not include: (A) Hand-powered
30 tools; (B) property with a useful life of less than one year; (C)
31 repair parts required to restore machinery and equipment to normal
32 working order; (D) replacement parts that do not increase
33 productivity, improve efficiency, or extend the useful life of
34 machinery and equipment; (E) buildings; or (F) building fixtures that
35 are not integral and necessary to the generation of electricity that
36 are permanently affixed to and become a physical part of a building.

37 (c) "Operationally complete" means constructed or improved to the
38 point of being functionally capable of generating electricity using
39 natural gas or biomass.

40 (4) This section expires July 1, 2027.

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.12
2 RCW to read as follows:

3 (1) Subject to the requirements in subsection (2) of this
4 section, a taxpayer is eligible for an exemption from the tax imposed
5 by RCW 82.12.020 on the use of:

6 (a) Materials that will be incorporated as an ingredient or
7 component of new or existing structures during the course of the
8 constructing of new structures, or expansion or renovation of
9 existing structures, for the purpose of converting a coal-fired
10 electric generation facility into a natural gas-fired plant or
11 biomass energy facility; and

12 (b) Machinery and equipment that is required to convert a coal-
13 fired electric generation facility into a natural gas-fired plant or
14 biomass energy facility, including labor and services rendered in
15 respect to installing such machinery and equipment.

16 (2)(a) A taxpayer is exempt from the tax imposed by RCW 82.12.020
17 on the use of materials, machinery and equipment, or installation
18 labor, if the taxpayer received a remittance under section 2 of this
19 act with respect to the purchase of the materials, machinery and
20 equipment, or installation labor.

21 (b) With respect to materials, machinery and equipment, or
22 installation labor qualifying for the exemption in this section and
23 acquired by the taxpayer without the payment of the sales tax imposed
24 by RCW 82.08.020, the exemption in this section is in the form of a
25 remittance of the state and local use taxes paid under RCW 82.12.020
26 and chapter 82.14 RCW. All of the provisions applicable to
27 remittances under section 2 of this act apply to remittances under
28 this section.

29 (3) The exemption in this section does not apply to the use of
30 materials, machinery and equipment, and installation labor for
31 machinery and equipment, when first use within this state of such
32 materials, machinery and equipment, and installation labor occurred
33 after June 30, 2027.

34 (4) The definitions in section 2 of this act apply to this
35 section.

36 (5) This section expires July 1, 2027.

37 **Sec. 4.** RCW 82.14.050 and 2016 c 191 s 4 are each amended to
38 read as follows:

1 (1) The counties, cities, and transportation authorities under
2 RCW 82.14.045, public facilities districts under chapters 36.100 and
3 35.57 RCW, public transportation benefit areas under RCW 82.14.440,
4 regional transportation investment districts, and transportation
5 benefit districts under chapter 36.73 RCW must contract, prior to the
6 effective date of a resolution or ordinance imposing a sales and use
7 tax, the administration and collection to the state department of
8 revenue, which must deduct a percentage amount, as provided by
9 contract, not to exceed two percent of the taxes collected for
10 administration and collection expenses incurred by the department.
11 The remainder of any portion of any tax authorized by this chapter
12 that is collected by the department of revenue must be deposited by
13 the state department of revenue in the local sales and use tax
14 account hereby created in the state treasury. Beginning January 1,
15 2013, the department of revenue must make deposits in the local sales
16 and use tax account on a monthly basis on the last business day of
17 the month in which distributions required in (a) of this subsection
18 are due. Moneys in the local sales and use tax account may be
19 withdrawn only for:

20 (a) Distribution to counties, cities, transportation authorities,
21 public facilities districts, public transportation benefit areas,
22 regional transportation investment districts, and transportation
23 benefit districts imposing a sales and use tax; and

24 (b) Making refunds of taxes imposed under the authority of this
25 chapter and RCW 81.104.170 and exempted under RCW 82.08.962,
26 82.12.962, 82.08.02565, 82.12.02565, 82.08.025661, ((~~or~~))
27 82.12.025661, section 2 of this act, or section 3 of this act.

28 (2) All administrative provisions in chapters 82.03, 82.08,
29 82.12, and 82.32 RCW, as they now exist or may hereafter be amended,
30 insofar as they are applicable to state sales and use taxes, are
31 applicable to taxes imposed pursuant to this chapter.

32 (3) Counties, cities, transportation authorities, public
33 facilities districts, and regional transportation investment
34 districts may not conduct independent sales or use tax audits of
35 sellers registered under the streamlined sales tax agreement.

36 (4) Except as provided in RCW 43.08.190 and subsection (5) of
37 this section, all earnings of investments of balances in the local
38 sales and use tax account must be credited to the local sales and use
39 tax account and distributed to the counties, cities, transportation
40 authorities, public facilities districts, public transportation

1 benefit areas, regional transportation investment districts, and
2 transportation benefit districts monthly.

3 (5) Beginning January 1, 2013, the state treasurer must determine
4 the amount of earnings on investments that would have been credited
5 to the local sales and use tax account if the collections had been
6 deposited in the account over the prior month. When distributions are
7 made under subsection (1)(a) of this section, the state treasurer
8 must transfer this amount from the state general fund to the local
9 sales and use tax account and must distribute such sums to the
10 counties, cities, transportation authorities, public facilities
11 districts, public transportation benefit areas, regional
12 transportation investment districts, and transportation benefit
13 districts.

14 **Sec. 5.** RCW 82.14.060 and 2016 c 191 s 5 are each amended to
15 read as follows:

16 (1)(a) Monthly, the state treasurer must distribute from the
17 local sales and use tax account to the counties, cities,
18 transportation authorities, public facilities districts, and
19 transportation benefit districts the amount of tax collected on
20 behalf of each taxing authority, less:

21 (i) The deduction provided for in RCW 82.14.050; and

22 (ii) The amount of any refunds of local sales and use taxes
23 exempted under RCW 82.08.962, 82.12.962, 82.08.02565, 82.12.02565,
24 82.08.025661, (~~(e)~~) 82.12.025661, section 2 of this act, or section
25 3 of this act, which must be made without appropriation.

26 (b) The state treasurer must make the distribution under this
27 section without appropriation.

28 (2) In the event that any ordinance or resolution imposes a sales
29 and use tax at a rate in excess of the applicable limits contained
30 herein, such ordinance or resolution may not be considered void in
31 toto, but only with respect to that portion of the rate which is in
32 excess of the applicable limits contained herein.

33 NEW SECTION. **Sec. 6.** A new section is added to chapter 82.32
34 RCW to read as follows:

35 (1) Beginning one year after the natural gas-fired plant or
36 biomass energy facility is operationally complete, a person must
37 repay all sales and use taxes remitted to the person under sections 2
38 and 3 of this act if the number of employment positions, reported to

1 the employment security department, at the natural gas-fired plant or
2 biomass energy facility decreases by twenty-five percent from the
3 previous year's employment level.

4 (2) If sales and use taxes must be repaid under subsection (1) of
5 this section, the department must declare the amounts to be
6 immediately due and payable. The department must assess interest, but
7 not penalties, on the amounts due under this subsection. The
8 department must assess interest at the rate provided for delinquent
9 taxes under this chapter, retroactively to the date the tax
10 preference was claimed, and such interest accrues until the tax
11 preference amounts are repaid.

12 (3) If sales and use taxes must be repaid under subsection (1) of
13 this section, the person may not continue to claim the sales and use
14 tax exemptions under sections 2 and 3 of this act.

15 (4) This section does not apply to any changes in the number of
16 employment positions at a natural gas-fired plant or biomass energy
17 facility that occur on or after January 1, 2031.

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