

**RCW 82.12.024 Deferral of use tax on certain users of natural or manufactured gas.** (1) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Direct service industrial customer" means a person who is an industrial customer that contracts for the purchase of power from the Bonneville Power Administration for direct consumption as of May 8, 2001. "Direct service industrial customer" includes a person who is a subsidiary that is more than fifty percent owned by a direct service industrial customer and who receives power from the Bonneville Power Administration pursuant to the parent's contract for power.

(b) "Facility" means a gas turbine electrical generation facility that does not exist on May 8, 2001, and is owned by a direct service industrial customer for the purpose of producing electricity to be consumed by the direct service industrial customer.

(c) "Average annual employment" means the total employment in this state for a calendar year at the direct service industrial customer's location where electricity from the facility will be consumed.

(2) Effective July 1, 2001, the tax levied in RCW 82.12.022 on the first sixty months' use of natural or manufactured gas by a direct service industrial customer that owns a facility shall be deferred. This deferral is limited to the tax on natural or manufactured gas used or consumed to generate electricity at the facility.

(3) Application for deferral shall be made by the direct service industrial customer before the first use of natural or manufactured gas. The application shall be in a form and manner prescribed by the department and shall include but is not limited to information regarding the location of the facility, the projected date of first use of natural or manufactured gas to generate electricity at the facility, the date construction is projected to begin or did begin, the applicant's average annual employment in the state for the six calendar years immediately preceding the year in which the application is made, and shall affirm the applicant's status as a direct service industrial customer. The department shall rule on the application within thirty days of receipt.

(4) (a) The direct service industrial customer shall begin paying the deferred tax in the sixth calendar year following the calendar year in which the month of first use of natural or manufactured gas to generate electricity at the facility occurs. The first payment will be due on or before December 31st with subsequent annual payments due on or before December 31st of the following four years according to the following schedule:

<u>Payment Year</u>	<u>% of Deferred Tax to be Paid</u>
1	10%
2	15%
3	20%
4	25%
5	30%

(b) The department may authorize an accelerated payment schedule upon request of the taxpayer.

(c) Interest shall not be charged on the tax deferred under this section for the period of deferral, although all other penalties and interest applicable to delinquent excise taxes may be assessed and imposed. The debt for deferred tax will not be extinguished by

insolvency or other failure of the direct service industrial customer. Transfer of ownership of the facility does not affect deferral eligibility. However, the deferral is available to the successor only if the eligibility conditions of this section are met.

(5) (a) If the average of the direct service industrial customer's average annual employment for the five calendar years subsequent to the calendar year containing the first month of use of natural or manufactured gas to generate electricity at a facility is equal to or exceeds the six-year average annual employment stated on the application for deferral under this section, the tax deferred need not be paid. The direct service industrial customer shall certify to the department by June 1st of the sixth calendar year following the calendar year in which the month of first use of gas occurs the average annual employment for each of the five prior calendar years.

(b) If the five-year average calculated in (a) of this subsection is less than the average annual employment stated on the application for deferral under this section, the tax deferred under this section shall be paid in the amount as follows:

<u>Decrease in Average Annual Employment Over Five-Year Period</u>	<u>% of Deferred Tax to be Paid</u>
Less than 10%	10%
10% or more but less than 25%	25%
25% or more but less than 50%	50%
50% or more but less than 75%	75%
75% or more	100%

(c) Tax paid under this subsection shall be paid according to the schedule in subsection (4) (a) of this section and under the terms and conditions of subsection (4) (b) and (c) of this section.

(6) The employment security department shall make, and certify to the department of revenue, all determinations of employment under this section as requested by the department.

(7) A person claiming this deferral shall supply to the department quarterly reports containing information necessary to document the total volume of natural or manufactured gas purchased in the quarter, the value of that total volume, and the percentage of the total volume used to generate electricity at the facility. [2001 c 214 s 10.]

**Severability—Effective date—2001 c 214:** See notes following RCW 80.50.010.

**Findings—2001 c 214:** See note following RCW 39.35.010.