

# HOUSE BILL REPORT

## HB 1422

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**As Reported by House Committee On:**  
Finance

**Title:** An act relating to the taxation of brokered natural gas and manufactured gas.

**Brief Description:** Concerning the taxation of brokered natural gas and manufactured gas.

**Sponsors:** Representatives Conway, Hasegawa, Springer, Santos and Kenney.

**Brief History:**

**Committee Activity:**

Finance: 2/5/09, 3/2/09 [DP].

**Brief Summary of Bill**

- Specifies that use taxes on natural and manufactured gas are triggered in the jurisdiction where the gas is burned or stored.

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**HOUSE COMMITTEE ON FINANCE**

**Majority Report:** Do pass. Signed by 6 members: Representatives Hunter, Chair; Hasegawa, Vice Chair; Conway, Ericks, Santos and Springer.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Orcutt, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Condotta.

**Staff:** Jeffrey Mitchell (786-7139)

**Background:**

Retail sales and use taxes are imposed by the state, most cities, and all counties. Retail sales taxes are imposed on retail sales of most articles of tangible personal property and some services. If retail sales taxes were not collected when the property or services were acquired by the user, then use taxes are applied to the value of most tangible personal property and some services when used in this state. Use tax rates are the same as retail sales tax rates. The state tax rate is 6.5 percent. Local tax rates vary from 0.5 percent to 2.4 percent,

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depending on the location. The average local tax rate is 2 percent, for an average combined state and local tax rate of 8.5 percent.

Use tax on tangible personal property is imposed at the location where the taxpayer first assumes dominion or control over the property.

Washington imposes a separate and distinct use tax on the use of natural gas or manufactured gas. This tax is referred to as the brokered natural gas (BNG) use tax. Cities may impose a local version of the BNG use tax. The purpose of BNG use taxes is to eliminate differential tax treatment for natural gas purchased from gas companies, which is subject to state and local utility taxes, and gas purchased directly from producers by large, commercial users, which is not subject to utility taxes. The BNG use tax rates are identical to state and local utility tax rates.

On May 20, 2008, Division II of the Washington Court of Appeals rendered a decision addressing the location where natural gas is first used for the purposes of imposing BNG use taxes. The appellant in the case, G-P Gypsum Corporation, consumed natural gas during the process of manufacturing wallboard in Tacoma. Gypsum purchased the natural gas near both Sumas and Sumner. The City of Tacoma imposed a local BNG use tax. The city argued that while Gypsum took control of the gas at a location outside the city, Gypsum first "used" the gas inside the city. The court held that, for purposes of the local use tax on BNG, the place of first use is where the taxpayer initially exercises dominion and control over the gas, and not the location where it is burned or stored by the taxpayer.

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**Summary of Bill:**

With respect to natural gas or manufactured gas, the BNG use taxes are imposed at the location where the gas is burned by the taxpayer or stored in a facility of the taxpayer for later consumption. This change applies both prospectively as well as retroactively. Other use taxes will continue to be imposed at the location where a taxpayer first assumes dominion or control over a product.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) This bill represents good tax policy. It restores tax equity with respect to natural gas purchased from a utility or a broker. Taxes should not distort how a buyer purchases gas. If the appellate court decision is upheld by the Washington State Supreme Court, there would

be a large fiscal impact to cities. There is no fiscal impact because this bill codifies the existing tax treatment for local BNG taxes.

(Opposed) Businesses need to be able to purchase gas in a way that is most efficient for them. The proposed changes create administrative problems, lowers state revenue, and shifts revenue among cities. The proposed changes to the wording of the statute are unconstitutional because the tax will be imposed on a different event, at a different time, and have a slightly different measure. In other words, the BNG tax would not be a substantially equivalent tax to the public utility tax under the bill. The retroactivity provision is also unconstitutional. Taxpayers have a vested right to seek a refund. Retroactivity is only constitutional for a relatively short timeframe, where as this change goes back in time without limitation. Retroactivity provisions create a chilling effect on paying taxes up front and then seeking a refund because there is a concern that a business may never get its money back. A public utility purchasing gas delivered within a city will pass on the tax increase to all customers, both those within the city limits and those in the unincorporated areas. This would be a hidden tax.

**Persons Testifying:** (In support) Representative Conway, prime sponsor; Drew Shirk, Department of Revenue; Jim Justin, Association of Washington Cities; and Mel McDonald, City of Seattle.

(Opposed) Amber Carter, Association of Washington Business; Frank Dinces, Northwest Industrial Gas Users; and Robin Appleford and Rich Dyer, Clark County Public Utility District.

**Persons Signed In To Testify But Not Testifying:** None.