

***Technology, Telecommunications
& Energy Committee***

HB 2120

Brief Description: *Providing a sales and use tax exemption for energy generating facilities.*

Sponsors: *Representatives Crouse, Carrell, Morris, Linville, Kessler, Reardon, Hatfield, Eickmeyer, Dunshee, Delvin, Quall, Doumit, Ericksen, Sump, Casada, Pennington, Cairnes, Mielke, Pflug, Esser, Edwards and Bush.*

Brief Summary of Bill

- *An exemption from the retail sales and use taxes is provided for the purchase or use of machinery and equipment used by facilities that generate electricity.*
- *The exemption is made contingent on certain criteria being met.*

Hearing Date: *2/21/01*

Staff: *Mark Matteson (786-7145).*

Background:

Retail Sales and Use Taxes

The retail sales tax applies to the selling price of tangible personal property and of certain services purchased at retail. 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 taxes are imposed at a 6.5 percent rate by the state. Cities and counties may also impose local retail sales and use taxes. As of January 2001, local rates that have been imposed range from 0.5 percent to 2.3 percent. Unless specifically exempted in statute, all items and services in the tax base are subject to the retail sales and use taxes.

Machinery and Equipment Exemption for Manufacturers

In 1995, the Legislature provided several tax exemptions for manufacturing and processing. A statewide retail sales and use tax exemption was provided for sales of new and replacement machinery and equipment, including installation labor and services, used directly in a manufacturing operation. Manufacturing operations were defined to include the portion of a cogeneration project that is used to generate power for on-site consumption, but excluded the production of electricity. In 1999, the Legislature extended the exemption to the purchase or use of machinery and equipment by businesses that perform testing of manufactured goods for manufacturers or processors for hire.

Tax Preferences, Tax Debt Forgiveness, and Reporting Requirements

One of the tax preferences that the Legislature has used in order to stimulate certain sectors of business is a tax deferral, in which tax liability is deferred for a certain period and then repaid over a graduated schedule. In certain instances, tax debts incurred under a deferral program are forgiven, if certain criteria are met. One example is the sales and use tax deferral program for businesses that undertake high technology research and development or pilot scale manufacturing. In 1999, the Legislature provided that taxes deferred under this program need not be repaid, if the facility is used for qualified activities for eight years after the facility is completed; otherwise, a prorated amount of the deferred taxes are due.

In certain cases of tax preference, the Legislature has required persons receiving the preference to provide a report to the Department of Revenue to enable the Department to verify whether the objectives of the tax preference program are being met. As in the case of the tax deferral program for high technology research and development, the Department may use the report as a basis for requiring repayment of deferred taxes if the tax preference criteria are not followed..

Summary of Bill:

The retail sales and use tax exemption provided for sales of new and replacement machinery and equipment that is used directly in a manufacturing operation is extended to all electrical generation.

If a facility that qualifies for the exemption is used to generate electricity, and if the facility sells 70 percent or more of the generated electricity to consumers based in Washington on an annual basis in the first ten years after the exemption was granted, the exemption need not be repaid.

In a case in which the Department of Revenue determines that the exempted facility is no longer used for the generation of electricity, exempt taxes must be repaid according to a graduated schedule. The graduated schedule provides that a certain percentage of exempted taxes would be due depending on the number of years elapsed. The Department is required to assess interest on any tax due.

In a case where the Department of Revenue determines that the exempted facility is selling less than 70 percent of generated electricity to Washington-based consumers, then the business must repay a percentage of taxes that would otherwise be due. The percentage that must be repaid is based on the amount of taxes exempted and on the percentage of generated electricity actually sold to in-state consumers.

Each recipient of an exemption is required to submit an annual report to the Department of Revenue for the first ten years after the exemption is granted. The report must provide information on the sales of electricity for the previous calendar year and other information necessary for the Department to determine whether the requirements are being met.

Appropriation: None.

Fiscal Note: Requested on February 18, 2001.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2001.