
SENATE BILL 5231

State of Washington

55th Legislature

1997 Regular Session

By Senators Hochstatter, Finkbeiner, Goings, Long, Haugen, Rasmussen and Brown

Read first time 01/20/97. Referred to Committee on Energy & Utilities.

1 AN ACT Relating to sales and use taxes on electrical energy imposed
2 by the state, cities, and towns; amending RCW 82.16.010; adding a new
3 section to chapter 82.08 RCW; adding a new section to chapter 82.12
4 RCW; adding a new section to chapter 82.14 RCW; adding a new section to
5 chapter 35.21 RCW; creating a new section; and providing an effective
6 date.

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

8 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

9 (a) Although the state and cities and towns are authorized by law
10 to impose a public utility tax upon light and power businesses, they
11 cannot impose this tax upon an electricity supplier beyond their taxing
12 jurisdictions or against a power marketing agency of the federal
13 government;

14 (b) Customers of light and power businesses in the state have been,
15 or will be, allowed to purchase electrical energy at retail from
16 alternative electrical energy suppliers, including out-of-state
17 utilities and power marketers, which cannot be taxed as a light and
18 power business by the state or cities and towns;

1 (c) The purchase of electrical energy at retail by customers of
2 light and power businesses from alternative electrical energy suppliers
3 beyond the jurisdictional boundaries of the state and cities and towns
4 has resulted in a reduction in public utility tax revenues collected by
5 the state and cities and towns;

6 (d) As more customers of light and power businesses are permitted
7 to purchase electrical energy at retail from alternative electrical
8 energy suppliers, additional public utility tax revenue reductions
9 could be realized by the state and cities and towns;

10 (e) Light and power businesses in the state are competitively
11 disadvantaged because no tax comparable to the public utility tax may
12 be levied by the state and cities and towns upon retail electrical
13 energy purchases made at retail by customers of light and power
14 businesses from alternative electrical energy suppliers; and

15 (f) As a competitive retail electrical energy market develops in
16 the state, electric utilities may be required to separate rate
17 components for electrical generation, transmission, and distribution in
18 order to properly account for expenses relating to competitive and
19 monopoly services, respectively.

20 (2) The legislature declares that:

21 (a) The method by which the state and cities and towns tax the sale
22 of electrical energy or light and power businesses should be adapted
23 to, and accommodate, the development and operation of a competitive
24 retail electrical energy market in the state;

25 (b) Changes to the method by which the state and cities and towns
26 tax the sale and use of electrical energy should be effectuated in a
27 way that treats taxpayers uniformly and does not discriminate between
28 intrastate and interstate commerce;

29 (c) The gross income of a light and power business that is subject
30 to the public utility tax should be adapted to the evolution of a
31 competitive retail electrical energy market so that the tax will no
32 longer apply to revenues deriving from the sale of electrical energy,
33 but should continue to be levied at its current rate upon residual
34 revenues;

35 (d) To ensure that purchases and sales of electrical energy in a
36 competitive retail electrical energy market are taxed uniformly and in
37 a manner that does not discriminate between purchasers or sellers of
38 electrical energy or between intrastate and interstate commerce, the
39 state and cities and towns should apply a retail sales and use tax to

1 the sale and use of electrical energy at a rate comparable to the
2 current rate imposed upon light and power businesses through the public
3 utility tax; and

4 (e) Certain exemptions from, or deductions or credits against, the
5 retail sales and use tax on electrical energy should be allowed.

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

8 (1) There is levied and there shall be collected a tax on each sale
9 of electricity equal to the value of the electrical energy multiplied
10 by the rate in effect for the public utility tax on a light and power
11 business as defined in RCW 82.16.010. For the purposes of this
12 section, "value of electrical energy" means the consideration paid,
13 given, or contracted to be paid or given by the purchaser of the
14 electrical energy to the seller of the electrical energy, but does not
15 include any amounts that are paid for the hire or use of a light and
16 power business as defined in RCW 82.16.010 in transporting the
17 electrical energy subject to tax under this subsection if those amounts
18 are subject to tax under chapter 82.16 RCW.

19 (2) The tax levied under this section does not apply to the
20 consumption of electrical energy generated by a person for that
21 person's own use. For the purposes of this subsection: (a) Electrical
22 energy is considered as generated by a person for that person's own use
23 if the person owns or leases the generating facility, or a portion of
24 the facility, that supplies electrical energy to the person, or has
25 other financial arrangements with the owner of the facility that are
26 comparable to an ownership or lease interest; and (b) "person" includes
27 the person, affiliated parties to the person, and the person's tenants.

28 (3) The tax levied under this section does not apply to the
29 consumption of electrical energy in a manufacturing process in which
30 electrical energy becomes an ingredient or component of a new article
31 produced in the manufacturing process, or is a chemical used in a
32 manufacturing process in which the primary purpose of the chemical is
33 to create a chemical reaction with an ingredient of a new article
34 produced for sale.

35 (4) There shall be a credit against the tax levied under this
36 section in an amount equal to the tax paid by the person consuming the
37 electrical energy upon which a use tax similar to the tax imposed under

1 this section was paid to another state with respect to the electrical
2 energy for which a credit is sought under this subsection.

3 (5) The use tax imposed under this section shall be paid by the
4 person consuming the electrical energy to the department.

5 (6) A light and power business subject to the tax levied under
6 chapter 82.16 RCW shall contract with the department to collect the tax
7 imposed under this section. The contract must provide for a deduction
8 of a percentage amount of the tax collected by the business under this
9 section for expenses incurred by the business for the tax collection.

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

12 (1) There is hereby levied and there shall be collected from every
13 person in this state a use tax for the privilege of consuming
14 electrical energy within this state.

15 (2) The tax shall be levied and collected in an amount equal to the
16 value of the electrical energy multiplied by the rate in effect for the
17 public utility tax on a light and power business as defined in RCW
18 82.16.010. For the purposes of this section, "value of electrical
19 energy" means the consideration paid, given, or contracted to be paid
20 or given by the purchaser of the electrical energy to the seller of the
21 electrical energy, but does not include any amounts that are paid for
22 the hire or use of a light and power business as defined in RCW
23 82.16.010 in transporting the electrical energy subject to tax under
24 this subsection if those amounts are subject to tax under chapter 82.16
25 RCW.

26 (3) The tax levied under this section does not apply to the
27 consumption of electrical energy generated by a person for that
28 person's own use. For the purposes of this subsection: (a) Electrical
29 energy is considered as generated by a person for that person's own use
30 if the person owns or leases the generating facility, or a portion of
31 the facility, that supplies electrical energy to the person, or has
32 other financial arrangements with the owner of the facility that are
33 comparable to an ownership or lease interest; and (b) "person" includes
34 the person, affiliated parties to the person, and the person's tenants.

35 (4) The tax levied under this section does not apply to the
36 consumption of electrical energy in a manufacturing process in which
37 electrical energy becomes an ingredient or component of a new article
38 produced in the manufacturing process, or is a chemical used in a

1 manufacturing process in which the primary purpose of the chemical is
2 to create a chemical reaction with an ingredient of a new article
3 produced for sale.

4 (5) There shall be a credit against the tax levied under this
5 section in an amount equal to the tax paid by the person consuming the
6 electrical energy upon which a use tax similar to the tax imposed under
7 this section was paid to another state with respect to the electrical
8 energy for which a credit is sought under this subsection.

9 (6) The use tax imposed under this section shall be paid by the
10 person consuming the electrical energy to the department.

11 (7) A light and power business subject to the tax levied under
12 chapter 82.16 RCW shall contract with the department to collect the tax
13 imposed under this section. The contract must provide for a deduction
14 of a percentage amount of the tax collected by the business under this
15 section for expenses incurred by the business for the tax collection.

16 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.14 RCW
17 to read as follows:

18 (1) The governing body of any city, while not required by
19 legislative mandate to do so, may, by resolution or ordinance for the
20 purposes authorized by this chapter, fix and impose on every person a
21 use tax for the privilege of consuming electrical energy within the
22 city.

23 (2) The tax shall be imposed in an amount equal to the value of the
24 electrical energy multiplied by the rate in effect for the tax on
25 electrical energy businesses under RCW 35.21.870 in the city in which
26 the electrical energy is consumed. The "value of the electrical
27 energy" means the consideration paid, given, or contracted to be paid
28 or given by the purchaser of the electrical energy to the seller of the
29 electrical energy, but does not include any amounts that are paid for
30 the hire or use of an electrical energy business in transporting the
31 electrical energy subject to tax under this subsection if those amounts
32 are subject to tax under RCW 35.21.870.

33 (3) The tax levied under this section does not apply to the
34 consumption of electrical energy generated by a person for that
35 person's own use. For the purposes of this subsection: (a) Electrical
36 energy is considered as generated by a person for that person's own use
37 if the person owns or leases the generating facility, or a portion of
38 the facility, that supplies electrical energy to the person, or has

1 other financial arrangements with the owner of the facility that are
2 comparable to an ownership or lease interest; and (b) "person" includes
3 the person, affiliated parties to the person, and the person's tenants.

4 (4) The tax levied under this section does not apply to the
5 consumption of electrical energy in a manufacturing process in which
6 electrical energy becomes an ingredient or component of a new article
7 produced in the manufacturing process, or is a chemical used in a
8 manufacturing process in which the primary purpose of the chemical is
9 to create a chemical reaction with an ingredient of a new article
10 produced for sale.

11 (5) There shall be a credit against the tax levied under this
12 section in an amount equal to the tax paid by the person consuming the
13 electrical energy upon which a use tax similar to the tax imposed under
14 this section was paid to another state with respect to the electrical
15 energy for which a credit is sought under this subsection.

16 (6) The use tax imposed under this section shall be paid by the
17 person consuming the electrical energy.

18 (7) A light and power business subject to the tax levied under
19 chapter 82.16 RCW shall contract with the department to collect the tax
20 imposed under this section. The contract must provide for a deduction
21 of a percentage amount of the tax collected by the business under this
22 section for expenses incurred by the business for the tax collection.

23 **Sec. 5.** RCW 82.16.010 and 1996 c 150 s 1 are each amended to read
24 as follows:

25 For the purposes of this chapter, unless otherwise required by the
26 context:

27 (1) "Railroad business" means the business of operating any
28 railroad, by whatever power operated, for public use in the conveyance
29 of persons or property for hire. It shall not, however, include any
30 business herein defined as an urban transportation business.

31 (2) "Express business" means the business of carrying property for
32 public hire on the line of any common carrier operated in this state,
33 when such common carrier is not owned or leased by the person engaging
34 in such business.

35 (3) "Railroad car business" means the business of operating stock
36 cars, furniture cars, refrigerator cars, fruit cars, poultry cars, tank
37 cars, sleeping cars, parlor cars, buffet cars, tourist cars, or any
38 other kinds of cars used for transportation of property or persons upon

1 the line of any railroad operated in this state when such railroad is
2 not owned or leased by the person engaging in such business.

3 (4) "Water distribution business" means the business of operating
4 a plant or system for the distribution of water for hire or sale.

5 (5) "Light and power business" means the business of operating a
6 plant or system for the generation, production or distribution of
7 electrical energy for hire or sale and/or for the wheeling of
8 electricity for others.

9 (6) "Telegraph business" means the business of affording
10 telegraphic communication for hire.

11 (7) "Gas distribution business" means the business of operating a
12 plant or system for the production or distribution for hire or sale of
13 gas, whether manufactured or natural.

14 (8) "Motor transportation business" means the business (except
15 urban transportation business) of operating any motor propelled vehicle
16 by which persons or property of others are conveyed for hire, and
17 includes, but is not limited to, the operation of any motor propelled
18 vehicle as an auto transportation company (except urban transportation
19 business), common carrier or contract carrier as defined by RCW
20 81.68.010 and 81.80.010: PROVIDED, That "motor transportation
21 business" shall not mean or include the transportation of logs or other
22 forest products exclusively upon private roads or private highways.

23 (9) "Urban transportation business" means the business of operating
24 any vehicle for public use in the conveyance of persons or property for
25 hire, insofar as (a) operating entirely within the corporate limits of
26 any city or town, or within five miles of the corporate limits thereof,
27 or (b) operating entirely within and between cities and towns whose
28 corporate limits are not more than five miles apart or within five
29 miles of the corporate limits of either thereof. Included herein, but
30 without limiting the scope hereof, is the business of operating
31 passenger vehicles of every type and also the business of operating
32 cartage, pickup, or delivery services, including in such services the
33 collection and distribution of property arriving from or destined to a
34 point within or without the state, whether or not such collection or
35 distribution be made by the person performing a local or interstate
36 line-haul of such property.

37 (10) "Public service business" means any of the businesses defined
38 in subdivisions (1), (2), (3), (4), (5), (6), (7), (8), and (9) or any
39 business subject to control by the state, or having the powers of

1 eminent domain and the duties incident thereto, or any business
2 hereafter declared by the legislature to be of a public service nature,
3 except telephone business as defined in RCW 82.04.065 and low-level
4 radioactive waste site operating companies as redefined in RCW
5 81.04.010. It includes, among others, without limiting the scope
6 hereof: Airplane transportation, boom, dock, ferry, pipe line, toll
7 bridge, toll logging road, water transportation and wharf businesses.

8 (11) "Tugboat business" means the business of operating tugboats,
9 towboats, wharf boats or similar vessels in the towing or pushing of
10 vessels, barges or rafts for hire.

11 (12) "Gross income" means the value proceeding or accruing from the
12 performance of the particular public service or transportation business
13 involved, including operations incidental thereto, but without any
14 deduction on account of the cost of the commodity furnished or sold,
15 the cost of materials used, labor costs, interest, discount, delivery
16 costs, taxes, or any other expense whatsoever paid or accrued and
17 without any deduction on account of losses. "Gross income" does not
18 include the value of electrical energy.

19 (13) The meaning attributed, in chapter 82.04 RCW, to the term "tax
20 year," "person," "value proceeding or accruing," "business," "engaging
21 in business," "in this state," "within this state," "cash discount" and
22 "successor" shall apply equally in the provisions of this chapter.

23 NEW SECTION. **Sec. 6.** A new section is added to chapter 35.21 RCW
24 to read as follows:

25 The following definitions apply to RCW 35.21.860, 35.21.865, and
26 35.21.870 unless the context clearly requires otherwise:

27 (1) "Electrical energy" includes the distribution of electrical
28 energy but not the selling of electrical energy.

29 (2) "Gross income" has the same meaning as in chapter 82.16 RCW.

30 (3) "Rate" means the percentage by which the gross income is
31 multiplied.

32 NEW SECTION. **Sec. 7.** If any provision of this act or its
33 application to any person or circumstance is held invalid, the
34 remainder of the act or the application of the provision to other
35 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 8.** This act takes effect August 1, 1997.

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