

SHB 1597 - S AMD 455
By Senator Tom

1 On page 109, after line 10, insert the following:

2 "NEW SECTION. **Sec. 318.** The legislature reaffirms its intent that
3 the statutes authorizing the local taxation of brokered natural gas and
4 manufactured gas as provided by chapter 384, Laws of 1989 and RCW
5 82.12.010(5) result in the fair and equitable taxation of all natural
6 and manufactured gas users, from large industrial consumers to small
7 residential users, and it is the legislature's intent that the taxation
8 of such gas by local jurisdictions be at the place of consumption.

9 **Sec. 319.** RCW 82.12.010 and 2006 c 301 s 3 are each amended to
10 read as follows:

11 For the purposes of this chapter:

12 (1) "Purchase price" means the same as sales price as defined in
13 RCW 82.08.010.

14 (2)(a) "Value of the article used" shall be the purchase price for
15 the article of tangible personal property, the use of which is taxable
16 under this chapter. The term also includes, in addition to the
17 purchase price, the amount of any tariff or duty paid with respect to
18 the importation of the article used. In case the article used is
19 acquired by lease or by gift or is extracted, produced, or manufactured
20 by the person using the same or is sold under conditions wherein the
21 purchase price does not represent the true value thereof, the value of
22 the article used shall be determined as nearly as possible according to
23 the retail selling price at place of use of similar products of like
24 quality and character under such rules as the department may prescribe.

25 (b) In case the articles used are acquired by bailment, the value
26 of the use of the articles so used shall be in an amount representing
27 a reasonable rental for the use of the articles so bailed, determined
28 as nearly as possible according to the value of such use at the places
29 of use of similar products of like quality and character under such

1 rules as the department of revenue may prescribe. In case any such
2 articles of tangible personal property are used in respect to the
3 construction, repairing, decorating, or improving of, and which become
4 or are to become an ingredient or component of, new or existing
5 buildings or other structures under, upon, or above real property of or
6 for the United States, any instrumentality thereof, or a county or city
7 housing authority created pursuant to chapter 35.82 RCW, including the
8 installing or attaching of any such articles therein or thereto,
9 whether or not such personal property becomes a part of the realty by
10 virtue of installation, then the value of the use of such articles so
11 used shall be determined according to the retail selling price of such
12 articles, or in the absence of such a selling price, as nearly as
13 possible according to the retail selling price at place of use of
14 similar products of like quality and character or, in the absence of
15 either of these selling price measures, such value may be determined
16 upon a cost basis, in any event under such rules as the department of
17 revenue may prescribe.

18 (c) In the case of articles owned by a user engaged in business
19 outside the state which are brought into the state for no more than one
20 hundred eighty days in any period of three hundred sixty-five
21 consecutive days and which are temporarily used for business purposes
22 by the person in this state, the value of the article used shall be an
23 amount representing a reasonable rental for the use of the articles,
24 unless the person has paid tax under this chapter or chapter 82.08 RCW
25 upon the full value of the article used, as defined in (a) of this
26 subsection.

27 (d) In the case of articles manufactured or produced by the user
28 and used in the manufacture or production of products sold or to be
29 sold to the department of defense of the United States, the value of
30 the articles used shall be determined according to the value of the
31 ingredients of such articles.

32 (e) In the case of an article manufactured or produced for purposes
33 of serving as a prototype for the development of a new or improved
34 product, the value of the article used shall be determined by: (i) The
35 retail selling price of such new or improved product when first offered
36 for sale; or (ii) the value of materials incorporated into the
37 prototype in cases in which the new or improved product is not offered
38 for sale.

1 (f) In the case of an article purchased with a direct pay permit
2 under RCW 82.32.087, the value of the article used shall be determined
3 by the purchase price of such article if, but for the use of the direct
4 pay permit, the transaction would have been subject to sales tax;

5 (3) "Value of the service used" means the purchase price for the
6 service, the use of which is taxable under this chapter. If the
7 service is received by gift or under conditions wherein the purchase
8 price does not represent the true value thereof, the value of the
9 service used shall be determined as nearly as possible according to the
10 retail selling price at place of use of similar services of like
11 quality and character under rules the department may prescribe;

12 (4) "Value of the extended warranty used" means the purchase price
13 for the extended warranty, the use of which is taxable under this
14 chapter. If the extended warranty is received by gift or under
15 conditions wherein the purchase price does not represent the true value
16 of the extended warranty, the value of the extended warranty used shall
17 be determined as nearly as possible according to the retail selling
18 price at place of use of similar extended warranties of like quality
19 and character under rules the department may prescribe;

20 (5) "Use," "used," "using," or "put to use" shall have their
21 ordinary meaning, and shall mean:

22 (a) With respect to tangible personal property, except for natural
23 gas and manufactured gas, the first act within this state by which the
24 taxpayer takes or assumes dominion or control over the article of
25 tangible personal property (as a consumer), and include installation,
26 storage, withdrawal from storage, distribution, or any other act
27 preparatory to subsequent actual use or consumption within this state;

28 (b) With respect to a service defined in RCW 82.04.050(2)(a), the
29 first act within this state after the service has been performed by
30 which the taxpayer takes or assumes dominion or control over the
31 article of tangible personal property upon which the service was
32 performed (as a consumer), and includes installation, storage,
33 withdrawal from storage, distribution, or any other act preparatory to
34 subsequent actual use or consumption of the article within this state;
35 ((and))

36 (c) With respect to an extended warranty, the first act within this
37 state after the extended warranty has been acquired by which the
38 taxpayer takes or assumes dominion or control over the article of

1 tangible personal property to which the extended warranty applies, and
2 includes installation, storage, withdrawal from storage, distribution,
3 or any other act preparatory to subsequent actual use or consumption of
4 the article within this state; and

5 (d) With respect to natural gas or manufactured gas, the use of
6 which is taxable under RCW 82.12.022, including gas that is also
7 taxable under the authority of RCW 82.14.230, the first act within this
8 state by which the taxpayer consumes the gas by burning the gas or
9 storing the gas in the taxpayer's own facilities for later consumption
10 by the taxpayer;

11 (6) "Taxpayer" and "purchaser" include all persons included within
12 the meaning of the word "buyer" and the word "consumer" as defined in
13 chapters 82.04 and 82.08 RCW;

14 (7)(a)(i) Except as provided in (a)(ii) of this subsection (7),
15 "retailer" means every seller as defined in RCW 82.08.010 and every
16 person engaged in the business of selling tangible personal property at
17 retail and every person required to collect from purchasers the tax
18 imposed under this chapter.

19 (ii) "Retailer" does not include a professional employer
20 organization when a covered employee coemployed with the client under
21 the terms of a professional employer agreement engages in activities
22 that constitute a sale of tangible personal property, extended
23 warranty, or a sale of any service defined as a retail sale in RCW
24 82.04.050 (2)(a) or (3)(a) that is subject to the tax imposed by this
25 chapter. In such cases, the client, and not the professional employer
26 organization, is deemed to be the retailer and is responsible for
27 collecting and remitting the tax imposed by this chapter.

28 (b) For the purposes of (a) of this subsection, the terms "client,"
29 "covered employee," "professional employer agreement," and
30 "professional employer organization" have the same meanings as in RCW
31 82.04.540;

32 (8) "Extended warranty" has the same meaning as in RCW
33 82.04.050(7);

34 (9) The meaning ascribed to words and phrases in chapters 82.04 and
35 82.08 RCW, insofar as applicable, shall have full force and effect with
36 respect to taxes imposed under the provisions of this chapter.
37 "Consumer," in addition to the meaning ascribed to it in chapters 82.04
38 and 82.08 RCW insofar as applicable, shall also mean any person who

1 distributes or displays, or causes to be distributed or displayed, any
2 article of tangible personal property, except newspapers, the primary
3 purpose of which is to promote the sale of products or services. With
4 respect to property distributed to persons within this state by a
5 consumer as defined in this subsection (9), the use of the property
6 shall be deemed to be by such consumer.

7 **Sec. 320.** RCW 82.14.230 and 1989 c 384 s 2 are each amended to
8 read as follows:

9 (1) The governing body of any city, while not required by
10 legislative mandate to do so, may, by resolution or ordinance for the
11 purposes authorized by this chapter, fix and impose on every person a
12 use tax for the privilege of using natural gas or manufactured gas in
13 the city as a consumer.

14 (2) The tax shall be imposed in an amount equal to the value of the
15 article used by the taxpayer multiplied by the rate in effect for the
16 tax on natural gas businesses under RCW 35.21.870 in the city in which
17 the article is used. The "value of the article used," does not include
18 any amounts that are paid for the hire or use of a natural gas business
19 in transporting the gas subject to tax under this subsection if those
20 amounts are subject to tax under RCW 35.21.870.

21 (3) The tax imposed under this section shall not apply to the use
22 of natural or manufactured gas if the person who sold the gas to the
23 consumer has paid a tax under RCW 35.21.870 with respect to the gas for
24 which exemption is sought under this subsection.

25 (4) There shall be a credit against the tax levied under this
26 section in an amount equal to any tax paid by:

27 (a) The person who sold the gas to the consumer when that tax is a
28 gross receipts tax similar to that imposed pursuant to RCW 35.21.870 by
29 another ((state)) municipality or other unit of local government with
30 respect to the gas for which a credit is sought under this subsection;
31 or

32 (b) The person consuming the gas upon which a use tax similar to
33 the tax imposed by this section was paid to another ((state))
34 municipality or other unit of local government with respect to the gas
35 for which a credit is sought under this subsection.

36 (5) The use tax hereby imposed shall be paid by the consumer. The

1 administration and collection of the tax hereby imposed shall be
2 pursuant to RCW 82.14.050."

3 On page 133, after line 35, insert the following:

4 "NEW SECTION. **Sec. 502.** (1) Through sections 503 and 504 of this
5 act the legislature intends to address the taxation of persons
6 manufacturing and/or selling bunker fuel. Bunker fuel is fuel intended
7 for consumption outside the waters of the United States by vessels in
8 foreign commerce. Although the state has historically collected tax
9 from bunker fuel manufacturers, recently questions have arisen whether
10 the manufacture of bunker fuel is subject to business and occupation
11 tax under RCW 82.04.240. Pursuant to sections 503 and 504 of this act,
12 the activity is taxable under RCW 82.04.240.

13 (2) The legislature finds that at the time the deduction allowed
14 under RCW 82.04.433 was enacted in 1985, it was intended to apply only
15 to the wholesaling or retailing of bunker fuel. In 1987 the
16 legislature enacted the multiple activities tax credit in RCW
17 82.04.440. Enactment of the multiple activities tax credit resulted in
18 changed tax liability for certain taxpayers. In particular, some
19 taxpayers that engaged in activities that had been exempt under the
20 prior multiple activities exemption became subject to tax on
21 manufacturing activities upon enactment of the multiple activities tax
22 credit in its place. The manufacturing of bunker fuel is one such
23 activity."

24 Renumber the remaining sections consecutively.

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25 On page 1, line 18 of the title, before "29A.36.210" insert
26 "82.12.010, 82.14.230,"

EFFECT: Specifies that use taxes on natural and manufactured gas are based on the location where the gas is burned or stored.

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