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**SENATE BILL 5439**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Senators Braun, Sheldon, Rivers, Becker, Schoesler, Bailey, Brown, Warnick, Fortunato, Honeyford, and Takko

AN ACT Relating to providing sales and use tax exemptions, in the form of a remittance of tax paid, to encourage coal-fired electric generation plants to convert to natural gas-fired plants or biomass energy facilities; amending RCW 82.14.050 and 82.14.060; adding a new section to chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; adding a new section to chapter 82.32 RCW; creating a new section; and providing expiration dates.

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

NEW SECTION. **Sec.**  This section is the tax preference performance statement for the tax preference contained in sections 2 and 3 of this act. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(1) The legislature categorizes this tax preference as one intended to create or retain jobs, as indicated in RCW 82.32.808(2)(c).

(2) It is the legislature's specific public policy objective to retain jobs at existing coal-fired electric generation facilities by providing a tax exemption to allow these facilities to convert into natural gas-fired generation plants or biomass energy facilities rather than shut down entirely. It is the legislature's intent to provide a tax exemption for the conversion of a coal-fired electric generation facility into a natural gas-fired generation plant or biomass energy facility, in order to reduce the costs recently imposed by the legislature on companies that operate coal-fired electric generation facilities, thereby increasing the ability of these companies to continue their operations in Washington state, thereby retaining jobs that otherwise would be lost if a coal-fired electric generation facility were to shut down.

(3) This tax preference is created to provide an opportunity for coal-fired electric generation facilities to convert into natural gas-fired generation plants or biomass energy facilities. This tax preference is meant to expire and, therefore, the joint legislative audit and review committee is exempt from reviewing this tax preference as required in chapter 43.136 RCW.

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

(1) Subject to the requirements in subsection (2) of this section, a taxpayer is eligible for an exemption from the tax imposed by RCW 82.08.020 on the sale of or charge made for:

(a) Labor and services rendered in respect to the constructing of new structures, and expansion or renovation of existing structures, for the purpose of converting a coal-fired electric generation facility into a natural gas-fired plant or biomass energy facility;

(b) Materials that will be incorporated as an ingredient or component of new or existing structures during the course of such constructing, expanding, or renovating; or

(c) Machinery and equipment that is required to convert a coal-fired electric generation facility into a natural gas-fired plant or biomass energy facility, including labor and services rendered in respect to installing such machinery and equipment.

(2)(a) The exemption in this section is in the form of a remittance. A purchaser claiming an exemption from the tax in the form of a remittance under this section must pay all applicable state and local sales taxes imposed under RCW 82.08.020 and chapter 82.14 RCW on all purchases qualifying for the exemption. After the conversion of a coal-fired electric generation facility into a natural gas-fired plant or biomass energy facility is operationally complete, but not earlier than April 1, 2021, the purchaser may then apply to the department for a remittance of one hundred percent of the state and local sales taxes paid under RCW 82.08.020 and chapter 82.14 RCW for purchases qualifying under subsection (1) of this section. The purchaser must specify the amount of exempted tax claimed and the qualifying purchases for which the exemption is claimed. The purchaser must retain, in adequate detail, records to enable the department to determine whether the purchaser is entitled to an exemption under this section, including: Invoices; proof of tax paid; and construction contracts.

(b) The department may not accept any application for a remittance that it does not receive by the later of July 1, 2021, or within one year after the department determines that the conversion of a coal-fired electric generation facility into a natural gas-fired plant or biomass energy facility is operationally complete.

(c) The department must determine eligibility under this section based on information provided by the purchaser, which is subject to audit verification by the department. The department must remit exempted amounts to qualifying purchasers who submitted timely applications during the previous calendar quarter. No remittances may be paid before July 1, 2021.

(3) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Biomass energy" means energy derived from solid organic fuels from wood or forest or field residues.

(b)(i) "Machinery and equipment" means industrial fixtures, devices, and support facilities that are integral and necessary to the generation of electricity using natural gas or biomass, including repair parts and replacement parts.

(ii) "Machinery and equipment" does not include: (A) Hand-powered tools; (B) property with a useful life of less than one year; (C) repair parts required to restore machinery and equipment to normal working order; (D) replacement parts that do not increase productivity, improve efficiency, or extend the useful life of machinery and equipment; (E) buildings; or (F) building fixtures that are not integral and necessary to the generation of electricity that are permanently affixed to and become a physical part of a building.

(c) "Operationally complete" means constructed or improved to the point of being functionally capable of generating electricity using natural gas or biomass.

(4) This section expires July 1, 2027.

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

(1) Subject to the requirements in subsection (2) of this section, a taxpayer is eligible for an exemption from the tax imposed by RCW 82.12.020 on the use of:

(a) Materials that will be incorporated as an ingredient or component of new or existing structures during the course of the constructing of new structures, or expansion or renovation of existing structures, for the purpose of converting a coal-fired electric generation facility into a natural gas-fired plant or biomass energy facility; and

(b) Machinery and equipment that is required to convert a coal-fired electric generation facility into a natural gas-fired plant or biomass energy facility, including labor and services rendered in respect to installing such machinery and equipment.

(2)(a) A taxpayer is exempt from the tax imposed by RCW 82.12.020 on the use of materials, machinery and equipment, or installation labor, if the taxpayer received a remittance under section 2 of this act with respect to the purchase of the materials, machinery and equipment, or installation labor.

(b) With respect to materials, machinery and equipment, or installation labor qualifying for the exemption in this section and acquired by the taxpayer without the payment of the sales tax imposed by RCW 82.08.020, the exemption in this section is in the form of a remittance of the state and local use taxes paid under RCW 82.12.020 and chapter 82.14 RCW. All of the provisions applicable to remittances under section 2 of this act apply to remittances under this section.

(3) The exemption in this section does not apply to the use of materials, machinery and equipment, and installation labor for machinery and equipment, when first use within this state of such materials, machinery and equipment, and installation labor occurred after June 30, 2027.

(4) The definitions in section 2 of this act apply to this section.

(5) This section expires July 1, 2027.

**Sec.**  RCW 82.14.050 and 2016 c 191 s 4 are each amended to read as follows:

(1) The counties, cities, and transportation authorities under RCW 82.14.045, public facilities districts under chapters 36.100 and 35.57 RCW, public transportation benefit areas under RCW 82.14.440, regional transportation investment districts, and transportation benefit districts under chapter 36.73 RCW must contract, prior to the effective date of a resolution or ordinance imposing a sales and use tax, the administration and collection to the state department of revenue, which must deduct a percentage amount, as provided by contract, not to exceed two percent of the taxes collected for administration and collection expenses incurred by the department. The remainder of any portion of any tax authorized by this chapter that is collected by the department of revenue must be deposited by the state department of revenue in the local sales and use tax account hereby created in the state treasury. Beginning January 1, 2013, the department of revenue must make deposits in the local sales and use tax account on a monthly basis on the last business day of the month in which distributions required in (a) of this subsection are due. Moneys in the local sales and use tax account may be withdrawn only for:

(a) Distribution to counties, cities, transportation authorities, public facilities districts, public transportation benefit areas, regional transportation investment districts, and transportation benefit districts imposing a sales and use tax; and

(b) Making refunds of taxes imposed under the authority of this chapter and RCW 81.104.170 and exempted under RCW 82.08.962, 82.12.962, 82.08.02565, 82.12.02565, 82.08.025661, ((~~or~~)) 82.12.025661, section 2 of this act, or section 3 of this act.

(2) All administrative provisions in chapters 82.03, 82.08, 82.12, and 82.32 RCW, as they now exist or may hereafter be amended, insofar as they are applicable to state sales and use taxes, are applicable to taxes imposed pursuant to this chapter.

(3) Counties, cities, transportation authorities, public facilities districts, and regional transportation investment districts may not conduct independent sales or use tax audits of sellers registered under the streamlined sales tax agreement.

(4) Except as provided in RCW 43.08.190 and subsection (5) of this section, all earnings of investments of balances in the local sales and use tax account must be credited to the local sales and use tax account and distributed to the counties, cities, transportation authorities, public facilities districts, public transportation benefit areas, regional transportation investment districts, and transportation benefit districts monthly.

(5) Beginning January 1, 2013, the state treasurer must determine the amount of earnings on investments that would have been credited to the local sales and use tax account if the collections had been deposited in the account over the prior month. When distributions are made under subsection (1)(a) of this section, the state treasurer must transfer this amount from the state general fund to the local sales and use tax account and must distribute such sums to the counties, cities, transportation authorities, public facilities districts, public transportation benefit areas, regional transportation investment districts, and transportation benefit districts.

**Sec.**  RCW 82.14.060 and 2016 c 191 s 5 are each amended to read as follows:

(1)(a) Monthly, the state treasurer must distribute from the local sales and use tax account to the counties, cities, transportation authorities, public facilities districts, and transportation benefit districts the amount of tax collected on behalf of each taxing authority, less:

(i) The deduction provided for in RCW 82.14.050; and

(ii) The amount of any refunds of local sales and use taxes exempted under RCW 82.08.962, 82.12.962, 82.08.02565, 82.12.02565, 82.08.025661, ((~~or~~)) 82.12.025661, section 2 of this act, or section 3 of this act, which must be made without appropriation.

(b) The state treasurer must make the distribution under this section without appropriation.

(2) In the event that any ordinance or resolution imposes a sales and use tax at a rate in excess of the applicable limits contained herein, such ordinance or resolution may not be considered void in toto, but only with respect to that portion of the rate which is in excess of the applicable limits contained herein.

NEW SECTION. **Sec.**  A new section is added to chapter 82.32 RCW to read as follows:

(1) Beginning one year after the natural gas-fired plant or biomass energy facility is operationally complete, a person must repay all sales and use taxes remitted to the person under sections 2 and 3 of this act if the number of employment positions, reported to the employment security department, at the natural gas-fired plant or biomass energy facility decreases by twenty-five percent from the previous year's employment level.

(2) If sales and use taxes must be repaid under subsection (1) of this section, the department must declare the amounts to be immediately due and payable. The department must assess interest, but not penalties, on the amounts due under this subsection. The department must assess interest at the rate provided for delinquent taxes under this chapter, retroactively to the date the tax preference was claimed, and such interest accrues until the tax preference amounts are repaid.

(3) If sales and use taxes must be repaid under subsection (1) of this section, the person may not continue to claim the sales and use tax exemptions under sections 2 and 3 of this act.

(4) This section does not apply to any changes in the number of employment positions at a natural gas-fired plant or biomass energy facility that occur on or after January 1, 2031.

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