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**HOUSE BILL 1537**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Representatives Ramel, Harris-Talley, Berry, and Macri

AN ACT Relating to terminating certain tax preferences for fossil fuel products; amending RCW 82.12.022, 82.12.022, 82.14.230, and 82.23A.030; amending 2017 3rd sp.s. c 37 s 1407 (uncodified); creating a new section; repealing RCW 82.08.910; providing a contingent effective date; and providing a contingent expiration date.

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

NEW SECTION. **Sec.**  (1) The legislature is committed to implementing a wide range of meaningful and scientifically driven policies to continue to reduce our state's greenhouse gas emissions. Natural gas remains one of the largest contributors to Washington's carbon footprint, and the emissions reduction targets established in RCW 70A.45.020 are incompatible with continuing to burn natural gas from fossil sources at present rates. The 2021 state energy strategy anticipates that in the coming years, we will take significant action to reduce natural gas use in all sectors of the economy. Additionally, given anticipated budget shortfalls in the coming years, continuing to provide subsidies to contributors to greenhouse gas emissions in the form of tax incentives is not sustainable, either economically or environmentally. Providing tax preferences to fossil fuel use runs counter to environmental and tax policy priorities. As long as the state continues to provide tax breaks that incentivize the use of natural gas, the market will be distorted and disrupted in ways that may prevent prioritization and expanded use of cleaner and renewable fuels. Therefore, the legislature intends to repeal tax exemptions for natural gas in order to move towards a cleaner, more sustainable economy and a healthier tax system.

(2) The legislature finds that the tax preference for natural gas, petroleum coke, and other fossil fuels in RCW 82.23A.030 was enacted in 1989, does not contain a tax preference performance statement or other mechanism to evaluate the success of the program compared to the cost, and has not been revisited by this body since.

(3) The legislature finds that the tax preference for gas used in chicken houses, RCW 82.08.910, does not contain a tax preference performance statement and does not have a scheduled review date, and in 2015, the legislative auditor recommended that the legislature review and clarify this tax preference.

**Sec.**  RCW 82.12.022 and 2017 3rd sp.s. c 37 s 707 are each amended to read as follows:

(1) A use tax is levied on every person in this state for the privilege of using natural gas or manufactured gas, including compressed natural gas and liquefied natural gas, within this state as a consumer.

(2) The tax must be levied and collected in an amount equal to the value of the article used by the taxpayer multiplied by the rate in effect for the public utility tax on gas distribution businesses under RCW 82.16.020. The "value of the article used" does not include any amounts that are paid for the hire or use of a gas distribution business as defined in RCW 82.16.010(2) in transporting the gas subject to tax under this subsection if those amounts are subject to tax under that chapter.

(3) The tax levied in this section does not apply to the use of natural or manufactured gas delivered to the consumer by other means than through a pipeline.

(4) The tax levied in this section does not apply to the use of natural or manufactured gas if the person who sold the gas to the consumer has paid a tax under RCW 82.16.020 with respect to the gas for which exemption is sought under this subsection.

(5)(a) The tax levied in this section does not apply to the use of natural or manufactured gas by an aluminum smelter as that term is defined in RCW 82.04.217 before January 1, 2027.

(b) A person claiming the exemption provided in this subsection (5) must file a complete annual tax performance report with the department under RCW 82.32.534.

(6) ((~~The~~)) (a) Except as provided in (b) through (d) of this subsection, the tax imposed by this section does not apply to the use of natural gas, compressed natural gas, or liquefied natural gas, if the consumer uses the gas for transportation fuel, as defined in RCW 82.16.310, before January 1, 2022.

(b) The tax imposed by this section does not apply to the use of natural gas, compressed natural gas, or liquefied natural gas by a transit agency, as defined in RCW 81.104.015, if the transit agency uses the gas for transportation fuel, as defined in RCW 82.16.310, before January 1, 2025.

(c) The tax imposed by this section does not apply to the use of renewable natural gas, as defined in RCW 19.405.020, or to the use of compressed natural gas or liquefied natural gas derived from renewable natural gas, if the consumer uses the gas for transportation fuel as defined in RCW 82.16.310.

(d) The tax imposed by this section does not apply to the use of natural gas, compressed natural gas, or liquefied natural gas, if the consumer uses the gas for transportation fuel, as defined in RCW 82.16.310, and if the consumer offsets that consumption with renewable gas credits purchased from a gas distribution business in the state.

(7) The tax levied in this section does not apply to the use of natural or manufactured gas by a silicon smelter as that term is defined in RCW 82.16.315.

(8) There is a credit against the tax levied under this section in an amount equal to any tax paid by:

(a) The person who sold the gas to the consumer when that tax is a gross receipts tax similar to that imposed pursuant to RCW 82.16.020 by another state with respect to the gas for which a credit is sought under this subsection; or

(b) The person consuming the gas upon which a use tax similar to the tax imposed by this section was paid to another state with respect to the gas for which a credit is sought under this subsection.

(9) The use tax imposed in this section must be paid by the consumer to the department.

(10) There is imposed a reporting requirement on the person who delivered the gas to the consumer to make a quarterly report to the department. Such report must contain the volume of gas delivered, name of the consumer to whom delivered, and such other information as the department may require by rule.

(11) The department may adopt rules under chapter 34.05 RCW for the administration and enforcement of sections 1 through 6, chapter 384, Laws of 1989.

**Sec.**  RCW 82.12.022 and 2017 c 135 s 27 are each amended to read as follows:

(1) A use tax is levied on every person in this state for the privilege of using natural gas or manufactured gas, including compressed natural gas and liquefied natural gas, within this state as a consumer.

(2) The tax must be levied and collected in an amount equal to the value of the article used by the taxpayer multiplied by the rate in effect for the public utility tax on gas distribution businesses under RCW 82.16.020. The "value of the article used" does not include any amounts that are paid for the hire or use of a gas distribution business as defined in RCW 82.16.010(2) in transporting the gas subject to tax under this subsection if those amounts are subject to tax under that chapter.

(3) The tax levied in this section does not apply to the use of natural or manufactured gas delivered to the consumer by other means than through a pipeline.

(4) The tax levied in this section does not apply to the use of natural or manufactured gas if the person who sold the gas to the consumer has paid a tax under RCW 82.16.020 with respect to the gas for which exemption is sought under this subsection.

(5)(a) The tax levied in this section does not apply to the use of natural or manufactured gas by an aluminum smelter as that term is defined in RCW 82.04.217 before January 1, 2027.

(b) A person claiming the exemption provided in this subsection (5) must file a complete annual tax performance report with the department under RCW 82.32.534.

(6) ((~~The~~)) (a) Except as provided in (b) through (d) of this subsection, the tax imposed by this section does not apply to the use of natural gas, compressed natural gas, or liquefied natural gas, if the consumer uses the gas for transportation fuel, as defined in RCW 82.16.310, before January 1, 2022.

(b) The tax imposed by this section does not apply to the use of natural gas, compressed natural gas, or liquefied natural gas by a transit agency, as defined in RCW 81.104.015, if the transit agency uses the gas for transportation fuel, as defined in RCW 82.16.310, before January 1, 2025.

(c) The tax imposed by this section does not apply to the use of renewable natural gas, as defined in RCW 19.405.020, or to the use of compressed natural gas or liquefied natural gas derived from renewable natural gas, if the consumer uses the gas for transportation fuel as defined in RCW 82.16.310.

(d) The tax imposed by this section does not apply to the use of natural gas, compressed natural gas, or liquefied natural gas, if the consumer uses the gas for transportation fuel, as defined in RCW 82.16.310, and if the consumer offsets that consumption with renewable gas credits purchased from a gas distribution business in the state.

(7) There is a credit against the tax levied under this section in an amount equal to any tax paid by:

(a) The person who sold the gas to the consumer when that tax is a gross receipts tax similar to that imposed pursuant to RCW 82.16.020 by another state with respect to the gas for which a credit is sought under this subsection; or

(b) The person consuming the gas upon which a use tax similar to the tax imposed by this section was paid to another state with respect to the gas for which a credit is sought under this subsection.

(8) The use tax imposed in this section must be paid by the consumer to the department.

(9) There is imposed a reporting requirement on the person who delivered the gas to the consumer to make a quarterly report to the department. Such report must contain the volume of gas delivered, name of the consumer to whom delivered, and such other information as the department may require by rule.

(10) The department may adopt rules under chapter 34.05 RCW for the administration and enforcement of sections 1 through 6, chapter 384, Laws of 1989.

**Sec.**  RCW 82.14.230 and 2014 c 216 s 305 are each amended to read as follows:

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

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

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

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

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

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

(5) The use tax imposed must be paid by the consumer. The administration and collection of the tax imposed is pursuant to RCW 82.14.050.

(6) ((~~The~~)) (a) Except as provided in (b) through (d) of this subsection, the tax authorized by this section does not apply to the use of natural gas, compressed natural gas, or liquefied natural gas, if the consumer uses the gas for transportation fuel, as defined in RCW 82.16.310, before January 1, 2022.

(b) The tax authorized by this section does not apply to the use of natural gas, compressed natural gas, or liquefied natural gas by a transit agency, as defined in RCW 81.104.015, if the transit agency uses the gas for transportation fuel, as defined in RCW 82.16.310, before January 1, 2025.

(c) The tax authorized by this section does not apply to the use of renewable natural gas, as defined in RCW 19.405.020, or to the use of compressed natural gas or liquefied natural gas derived from renewable natural gas, if the consumer uses the gas for transportation fuel as defined in RCW 82.16.310.

(d) The tax authorized by this section does not apply to the use of natural gas, compressed natural gas, or liquefied natural gas, if the consumer uses the gas for transportation fuel, as defined in RCW 82.16.310, and if the consumer offsets that consumption with renewable gas credits purchased from a gas distribution business in the state.

**Sec.**  RCW 82.23A.030 and 1989 c 383 s 17 are each amended to read as follows:

The following are exempt from the tax imposed in this chapter:

(1) Any successive possession of a previously taxed petroleum product. If tax due under this chapter has not been paid with respect to a petroleum product, the department may collect the tax from any person who has had possession of the petroleum product. If the tax is paid by any person other than the first person having taxable possession of a petroleum product, the amount of tax paid shall constitute a debt owed by the first person having taxable possession to the person who paid the tax.

(2) Any possession of a petroleum product by a natural person under circumstances where the substance is used, or is to be used, for a personal or domestic purpose (and not for any business purpose) by that person or a relative of, or person residing in the same dwelling as, that person.

(3) Persons or activities which the state is prohibited from taxing under the United States Constitution.

(4) Any persons possessing a petroleum product where such possession first occurred before July 1, 1989.

(5) ((~~Any possession of (a) natural gas, (b) petroleum coke, or (c) liquid fuel or fuel gas used in petroleum processing.~~

~~(6)~~)) Any possession of petroleum products that are exported for use or sale outside this state as fuel.

((~~(7)~~)) (6) Any possession of petroleum products packaged for sale to ultimate consumers.

NEW SECTION. **Sec.**  RCW 82.08.910 (Exemptions—Propane or natural gas to heat chicken structures) and 2001 2nd sp.s. c 25 s 3 are each repealed.

**Sec.**  2017 3rd sp.s. c 37 s 1407 (uncodified) is amended to read as follows:

(1)(a) Except as provided in (b) of this subsection, part VII of this act ((~~expires~~)) and section 2, chapter . . ., Laws of 2021 (section 2 of this act) expire July 1, 2027.

(b)(i) If a person must make repayment under section 708 of this act, part VII of this act ((~~expires~~)) and section 2, chapter . . ., Laws of 2021 (section 2 of this act) expire January 1, 2024.

(ii) Section 706 of this act expires January 1, 2018.

(2) If the contingent expiration date in subsection (1)(b) of this section occurs, the department of revenue must provide written notice of the expiration date of part VII of this act to affected parties, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the department.

(3) If the contingent expiration date in subsection (1)(b) of this section occurs, the joint legislative audit and review committee is not required to perform the evaluation required in section 701 of this act.

NEW SECTION. **Sec.**  Section 3 of this act takes effect when section 2 of this act expires.

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