
Finance Committee

HB 1422

Brief Description: Concerning the taxation of brokered natural gas and manufactured gas.

Sponsors: Representatives Conway, Hasegawa, Springer, Santos and Kenney.

Brief Summary of Bill

- Specifies that use taxes on natural and manufactured gas are triggered in the jurisdiction where the gas is burned or stored.

Hearing Date: 2/5/09

Staff: Jeff Mitchell (786-7139)

Background:

Retail sales and use taxes are imposed by the state, most cities, and all counties. Retail sales taxes are imposed on retail sales of most articles of tangible personal property and some services. If retail sales taxes were not collected when the property or services were acquired by the user, then use taxes are applied to the value of most tangible personal property and some services when used in this state. Use tax rates are the same as retail sales tax rates. The state tax rate is 6.5 percent. Local tax rates vary from 0.5 percent to 2.4 percent, depending on the location. The average local tax rate is 2 percent, for an average combined state and local tax rate of 8.5 percent.

Use tax on tangible personal property is imposed at the location where the taxpayer first assumes dominion or control over the property.

Washington imposes a separate and distinct use tax on the use of natural gas or manufactured gas. This tax is referred to as the brokered natural gas (BNG) use tax. Cities may impose a local version of the BNG use tax. The purpose of BNG use taxes is to eliminate differential tax treatment for natural gas purchased from gas companies, which is subject to state and local utility

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taxes, and gas purchased directly from producers by large, commercial users, which is not subject to utility taxes. The BNG use tax rates are identical to state and local utility tax rates.

On May 20, 2008, Division II of the Washington Court of Appeals rendered a decision addressing the location where natural gas is first used for the purposes of imposing BNG use taxes. The appellant in the case, G-P Gypsum Corporation, consumed natural gas during the process of manufacturing wallboard in Tacoma. Gypsum purchased the natural gas near both Sumas and Sumner. The City of Tacoma imposed a local BNG use tax. The City argued that while Gypsum took control of the gas at a location outside the city, Gypsum first "used" the gas inside the City. The Court held that, for purposes of the local use tax on BNG, the place of first use is where the taxpayer initially exercises dominion and control over the gas, and not the location where it is burned or stored by the taxpayer.

Summary of Bill:

With respect to natural gas or manufactured gas, BNG use taxes are imposed at the location where the gas is burned by the taxpayer or stored in a facility of the taxpayer for later consumption. This change applies both prospectively as well as retroactively. Other use taxes will continue to be imposed at the location where a taxpayer first assumes dominion or control over a product.

Appropriation: None.

Fiscal Note: Requested on 2/2/09.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.