

WAC 458-20-121 Sales of heat or steam—Including production by cogeneration. (1) **Introduction.** This section provides tax reporting information to persons who sell heat and/or steam. Because heat and steam are often the product of a cogeneration facility, this section also provides tax information for persons operating cogeneration facilities. Persons generating electrical power should also refer to WAC 458-20-179 (Public utility tax).

(2) **Definitions.**

(a) The term "biomass fuel" means wood waste and other wood residuals, including forest derived biomass, but does not include firewood or wood pellets. "Biomass fuel" also includes partially organic by-products of pulp, paper, and wood manufacturing processes.

(b) The term "hog fuel" means wood waste and other wood residuals including forest derived biomass. "Hog fuel" does not include firewood or wood pellets.

(3) **Sale of heat or steam - Business and occupation (B&O) tax.** Persons engaging in the business of operating a plant for the production, extraction, or storage of heat or steam for distribution, for hire or sale, are taxable under the service and other business activities classification. This includes heat or steam produced by a biomass system, cogeneration, geothermal sources, fossil fuels, or any other method.

(4) **Sale or production of electricity - Cogeneration.** The production of steam, heat, or electricity is not a manufacturing activity within the definition of RCW 82.04.120. Persons who operate a plant or system for the generation, production or distribution of electrical energy for hire or sale are subject to the provisions of the public utility tax under the light and power tax classification. Persons who generate electrical energy should refer to WAC 458-20-179 (Public utility tax). A deduction may be taken for:

(a) Power generated in Washington and delivered out-of-state. (See RCW 82.16.050(6).)

(b) Amounts derived from the sale of electricity to persons who are in the business of selling electricity and are purchasing the electricity for resale. (See RCW 82.16.050(2).)

(5) **Tax incentive programs - Cogeneration.** There were tax incentive programs available for cogeneration projects begun before January 1, 1990. Sales and use tax deferrals may apply under certain conditions for power generation facilities, even though the production of power is not specifically subject to a manufacturing tax. For example, if the cogeneration facilities are part of a manufacturing plant for the production of new articles of tangible personal property and the requirements for tax deferral are met, the business may apply for tax deferral programs. These incentive programs are discussed in WAC 458-20-240 (Manufacturer's new employee tax credits), 458-20-24001 (Sales and use tax deferral—Manufacturing and research/development activities in rural counties—Applications filed after March 31, 2004), and 458-20-24002 (Sales and use tax deferral—New manufacturing and research/development facilities).

(6) **Fuel.** Persons who produce their own fuel to generate heat, steam, or electricity are subject to the manufacturing B&O tax on the value of the fuel. This includes the value of fuel which is created at the same site as a by-product of another manufacturing process, such as production of hog fuel. The taxable value should be determined based on comparable sales, or on the basis of all costs in the absence of comparable sales. Refer to WAC 458-20-112 (Value of products).

(a) Fuel does not become an ingredient or component of power, steam, or electricity. The sale of fuel to be used by the purchaser to generate heat, steam, or electricity is a retail sale. In most cases, the purchase of fuel for such purposes is subject to payment of retail sales tax to the supplier. (See (b) of this subsection for discussion of a sales and use tax exemption specific to biomass fuel.)

In the event retail sales tax is not paid to the supplier, and no exemption from retail sales tax is available, deferred sales or use tax must be paid. However, the law provides a specific exemption from the use tax for biomass fuel used by the fuel's extractor or manufacturer when used directly in the operation of the particular extractive operation or manufacturing plant which produced or manufactured the same biomass fuel. For example, if a lumber manufacturer produces wood waste which is used in the same plant to produce heat for drying lumber, the wood waste is not subject to use tax even though the manufacturing B&O tax applies to this biomass fuel. (See RCW 82.12.0263.)

(b) Effective July 1, 2009:

- Sales of hog fuel used to produce electricity, steam, heat, or biofuel are exempt from retail sales tax when the purchaser provides the seller with a properly filled out "buyer's retail sales tax exemption certificate." RCW 82.08.956.

- The use of hog fuel for production of electricity, steam, heat, or biofuel is exempt from use tax. RCW 82.12.956.

(7) **Equipment and supplies.** Persons who are in the business of producing heat, steam, or electricity are required to pay retail sales tax to suppliers of all equipment and supplies. If the supplier fails to collect retail sales tax, deferred sales or use tax must be paid.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 18-05-011, § 458-20-121, filed 2/8/18, effective 3/11/18; WSR 10-10-031, § 458-20-121, filed 4/26/10, effective 5/27/10. Statutory Authority: RCW 82.32.300. WSR 94-13-033, § 458-20-121, filed 6/6/94, effective 7/7/94; WSR 83-07-034 (Order ET 83-17), § 458-20-121, filed 3/15/83; Order ET 70-3, § 458-20-121 (Rule 121), filed 5/29/70, effective 7/1/70.]