



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)
Do NOT use for expedited rule making

Agency: Department of Revenue

- Preproposal Statement of Inquiry was filed as WSR 14-02-109; or
- Expedited Rule Making--Proposed notice was filed as WSR; or
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

- Original Notice
- Supplemental Notice to WSR
- Continuance of WSR

Title of rule and other identifying information: WAC 458-20-263, presently entitled: *Fuel cell, wind, landfill gas, and solar energy electric generating facilities sales and use tax exemption*, and proposed as *Sales and use tax exemptions for qualifying electrical generating and heat producing systems using renewable energy sources*.

Hearing location(s):

Capitol Plaza Building
Fourth Floor Executive Conference Room
1025 Union Avenue SE
Olympia, Washington

Copies of draft rules are available for viewing and printing on our website at [Rules Agenda](#)

Call in option can be provided upon request no later than 3 days before the hearing date.

Date: May 28, 2014 Time: 10:00 AM

Date of intended adoption: June 5, 2014
(Note: This is NOT the effective date)

Submit written comments to:

Name: Mark E. Bohe
Address: Post Office Box 47453
Olympia, Washington 98504-7453

E-mail: markbohe@dor.wa.gov

By: May 28, 2014

Assistance for persons with disabilities: Contact Mary Carol LaPalm (360) 725-7499 or Renee Cosare (360) 725-7514 no later than 10 days before the hearing date. For Hearing Impaired please contact us via the Washington Relay Operator at (800) 833-6384.

Purpose of the proposal and its anticipated effects, including any changes in existing rules: RCW 82.08.962, 82.08.963, 82.12.962, and 82.12.963 provide retail sales and use tax exemptions for machinery and equipment used directly in generating electricity or producing heat using qualified renewable energy sources. The Department is proposing to amend the rule to incorporate legislative changes, including Chapter 13, 2013 Laws, 2nd Special Session, recognizing new technology.

Reasons supporting proposal: These updates are necessary to incorporate legislative changes, including the most recent at Chapter 13, 2013 Laws, 2nd Special Session.

Statutory authority for adoption: RCW 82.32.300 and 82.01.060(2).

Statute being implemented: RCW 82.08.962, 82.08.963, 82.12.962, and 82.12.963.

Is rule necessary because of a:

- Federal Law? Yes No
 - Federal Court Decision? Yes No
 - State Court Decision? Yes No
- If yes, CITATION:

DATE April 14, 2014

NAME
Dylan Waits

SIGNATURE

TITLE
Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: April 14, 2014
TIME: 10:11 AM
WSR 14-09-047

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

Name of proponent:

- Private
 Public
 Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Mark Bohe	1025 Union Ave. SE. Ste #544, Olympia ,WA	(360) 534-1574
Implementation.... Dylan Waits	1025 Union Ave. SE. Ste #544, Olympia ,WA	(360) 534-1583
Enforcement..... Alan Lynn	1025 Union Ave. SE. Ste #544, Olympia ,WA	(360) 534-1599

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone ()

fax ()

e-mail

No. Explain why no statement was prepared.

This rule does not impose performance requirements or administrative burdens on any small business not required by statute or the state and/or federal constitution.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone ()

fax ()

e-mail

No: Please explain: The proposed rule is not a significant legislative rule as defined by RCW 34.05.328.

AMENDATORY SECTION (Amending WSR 05-02-036, filed 12/30/04, effective 1/30/05)

~~WAC 458-20-263 ((Fuel cell, wind, landfill gas, and solar energy electric generating facilities sales and use tax exemption.)) Exemptions from retail sales and use taxes for qualifying electric generating and thermal heat producing systems using renewable energy sources.~~

~~((1) **Introduction.** This rule explains the retail sales and use tax exemptions provided by RCW 82.08.02567 and 82.12.02567 for the sale and/or use of machinery and equipment used directly in generating electricity using fuel cells, wind, landfill gas, or solar energy as the principal source of power. These exemptions expire June 30, 2009.~~

~~(2) **Retail sales and use tax exemptions.** The following exemptions apply for retail sales and use taxes.~~

~~(a) For periods before July 1, 2001, the retail sales tax does not apply to the purchase or lease of machinery and equipment used directly in generating electricity using wind, landfill gas, or solar energy as the principal power source, but only if the purchaser develops with such machinery and equipment a facility capable of generating at least two hundred kilowatts of electricity.~~

~~For this period, RCW 82.12.02567 provided a corresponding use tax exemption for the use of machinery and equipment for these purposes.~~

~~(b) Effective July 1, 2001, the retail sales tax does not apply to the purchase or lease of machinery and equipment used directly in generating electricity using fuel cells, wind, landfill gas, or solar energy as the principal power source, but only if the purchaser develops with such machinery and equipment a facility capable of generating at least two hundred watts of electricity. See RCW 82.08.02567.~~

~~For this period, RCW 82.12.02567 provides a corresponding use tax exemption for the use of machinery and equipment for these purposes, except that no use tax exemption existed with regard to fuel cells until June 10, 2004. Between July 1, 2001, and June 10, 2004, although the purchase of machinery and equipment used directly in generating electricity using fuel cells is exempt from sales tax, the purchaser owes use tax upon the first use in this state of the machinery and equipment.~~

~~(3) **What is "machinery and equipment"?** "Machinery and equipment" means industrial fixtures, devices, and support facilities that are integral and necessary to the generation of electricity using fuel cells, wind, landfill gas, or solar energy as the principal source of power.~~

~~A "support facility" is a part of a building, or a structure or improvement, used to contain or steady an industrial fixture or device. A support facility must be specially designed and necessary for the proper functioning of the industrial fixture or device and must perform a function beyond being a building or a structure or an improvement. It must have a function relative to an industrial fixture or a device. To determine if some portion of a building is a support facility, the parts of the building are examined. For example, a highly specialized structure, like a vibration reduction slab under generators in a landfill gas generating facility, is a support facility. Without the slab, the generators would not function properly. The ceiling and walls of the building housing the generator are not support facilities if they only serve to define the space and do not have a function relative to an industrial fixture or a device.~~

~~"Machinery and equipment" does not include:~~

- ~~(a) The utility grid system;~~
- ~~(b) Hand powered tools;~~
- ~~(c) Property with a useful life of less than one year;~~
- ~~(d) Repair parts required to restore machinery and equipment to normal working order;~~
- ~~(e) Replacement parts that do not increase productivity, improve efficiency, or extend the useful life of the machinery and equipment;~~
- ~~(f) Buildings; or~~
- ~~(g) Building fixtures that:~~
- ~~(i) Are permanently affixed to and become a physical part of a building; but~~
- ~~(ii) Are not integral and necessary to the generation of electricity.~~

~~(4) **When is machinery and equipment "used directly" in generating electricity?** Machinery and equipment is used directly to generate electricity when it is used to:~~

- ~~(a) Capture the energy of fuel cells, the wind, landfill gas, or solar energy;~~
- ~~(b) Convert that energy to electricity; or~~
- ~~(c) Store, transform, or transmit that electricity for entry into or operation in parallel with electric transmission and distribution systems.~~

~~(5) **Examples of qualifying machinery and equipment.** This subsection provides examples of machinery and equipment that is used directly in generating electricity and qualifies for the retail sales tax exemption provided by RCW 82.08.02567 and the use tax exemption provided by RCW 82.12.02567. This list is illustrative only and is not intended to provide an exhaustive list of possible qualifying machinery and equipment.~~

~~(a) Where solar energy is the principal source of power: Solar modules; power conditioning equipment; batteries; transformers; power poles; power lines; and connectors to the utility grid system or point of use.~~

~~(b) Where wind is the principal source of power: Turbines; blades; generators; towers and tower pads; substations; guy wires and ground stays; power conditioning equipment; anemometers; recording meters; transmitters; power poles; power lines; and connectors to the utility grid system or point of use.~~

~~(c) Where landfill gas is the principal source of power: Turbines; blades; blowers; burners; heat exchangers; generators; towers and tower pads; substations; guy wires and ground stays; pipe; valves; power conditioning equipment; pressure control equipment; recording meters; transmitters; power poles; power lines; and connectors to the utility grid system or point of use.~~

~~(d) Where fuel cells are the principal source of power: Fuel cell assemblies; fuel storage and delivery systems; power inverters; transmitters; transformers; power poles; power lines; and connectors to the utility grid system or point of use.~~

~~(6) **Installation charges.** Retail sales and use taxes do not apply to installation charges for qualifying machinery and equipment. This includes charges for labor and services rendered to install the machinery and equipment. However, there is no exemption for charges for labor and services rendered in respect to constructing buildings or access roads that may be necessary to install or use qualifying machinery and equipment. Nor is there an exemption for tangible personal property, such as a crane or forklift, used by the buyer to install qualifying machinery and equipment.~~

(7) **Required documentation.** The prior approval of the department of revenue is not required to claim the retail sales tax exemption. The seller, at the time of sale, must retain in its records an exemption certificate completed by the buyer to document the exempt nature of the sale. This requirement may be satisfied by using the department's "buyer's retail sales tax exemption certificate," or another certificate with substantially the same information as it relates to the exemption provided by RCW 82.08.02567.

A blank exemption certificate can be obtained through the following means:

(a) From the department's internet web site at <http://dor.wa.gov/>;

(b) By facsimile by calling Fast Fax at 360-705-6705 or 800-647-7706 (using menu options); or

(c) By writing to: Taxpayer Services, Washington State Department of Revenue, P.O. Box 47478, Olympia, Washington 98504-7478.) RCW 82.08.962, 82.08.963, 82.12.962, and 82.12.963 provide exemptions from the "retail sales tax" described in chapter 82.08 RCW and the "use tax" described in chapter 82.12 RCW paid with respect to the sale or use of machinery and equipment used directly in generating electricity or producing thermal heat using qualified renewable energy sources. This rule explains how these exemptions apply and is divided into four parts as follow:

PART 1: Exemptions as applied to qualified solar systems.

PART 2: Exemptions as applied to qualified nonsolar renewable energy systems.

PART 3: Exemptions as applied to qualifying solar-heat systems.

PART 4: General provisions.

PART 1

Exemptions as applied to qualified solar systems.

(101) Solar systems that generate ten kilowatts or less.

(a) **Exemptions.** RCW 82.08.963 and 82.12.963 provide exemptions from retail sales and use taxes paid with the respect to the sale or use of machinery and equipment that is used directly in a solar energy system capable of generating ten kilowatts of electricity or less. The nameplate DC power rating of a system, which is an industry standard, is used to determine whether the energy system is capable of generating ten kilowatts of electricity or less. Labor charges to install the qualified machinery and equipment are also exempt from retail sales and use taxes. Both state and local retail sales and use taxes are exempt. These exemptions are effective from July 1, 2009, and expire June 30, 2018.

(b) **Exemption certificate required.** The buyer must document this exemption at the time of sale by providing the seller (and installer, if different from the seller), a completed *Buyers' Retail Sales Tax Exemption Certificate*. The seller or installer must keep the completed form in its records for five years.

(c) **Instructions for sellers that E-file.** For sellers that E-file, the exemption permitted under Part 1, (101)(a) of this subsection should be listed on the line entitled *Sales of Solar Machinery/Equipment; Install Labor* on the retail sales tax deduction page of E-file.

(102) Solar systems that generate more than ten kilowatts.

(a) **Partial exemptions.** For buyers that do not qualify for the full exemption described in Part 1, subsection (101)(a) of this section, there is an alternative partial exemption. RCW 82.08.962 and 82.12.962 provide an exemption, in the form of a remittance (refund)

from the department, equal to seventy-five percent of the retail sales and use taxes paid with respect to the sale or use of machinery and equipment used directly in solar energy systems capable of generating at least 1000 watts (one kilowatt) of electricity. The exemption also applies to amounts paid for labor and services rendered in respect to installing such machinery and equipment, and may only be claimed if the exemption permitted in Part 1, subsection (101)(a) of this section has not been claimed. The nameplate DC power rating of a system, which is an industry standard, is used to determine whether the solar energy system is capable of generating 1000 watts (one kilowatt) or more of electricity. The buyer must pay the total amount of the retail sales or use taxes paid with the respect to the sale or use of the qualifying machinery, equipment, and labor charges to install the same. The buyer may then apply to the department for a refund of seventy-five percent of the state and local retail sales and use taxes paid. This partial exemption is effective from July 1, 2011, and expires January 1, 2020.

(b) From July 1, 2009, through June 30, 2011, these systems qualified for a one hundred percent exemption for retail sales and use taxes paid with the respect to the sale and use of qualified machinery, equipment, and labor charges to install the same at the point of sale. For documentation requirements see subsection (101) of this section.

(c) **Required annual survey.** Beginning July 1, 2013, buyers applying for a refund must complete and submit an annual tax incentive survey. The survey must be filed with the department by April 30th, following the year for which the refund is claimed. For more information see Part 4, subsection (401)(c) of this section.

PART 2

Exemptions as applied to qualified nonsolar renewable energy systems.

(201) Qualified nonsolar renewable energy systems generating one kilowatt or more.

(a) **Partial exemptions.** RCW 82.08.962 and 82.12.962 provide an exemption equal to seventy-five percent of the retail sales and use taxes paid with respect to the sale or use of machinery and equipment used directly in a renewable energy system employing a qualified power source that generates at least 1000 watts (one kilowatt) or more of electricity. This exemption also applies to amounts paid for labor and services rendered in respect to installing such machinery and equipment. The buyer is eligible for the exemption in the form of a remittance (refund) from the department and must have paid to the seller or to the department the total amount of retail sales or use taxes paid with the respect to the sale or use of the machinery, equipment, and labor charges to install the same. To claim the exemption, the buyer must apply to the department for a refund. See Part 4, subsection (401) of this section for instructions on how to file a claim for refund. This partial exemption is effective from July 1, 2011, and expires January 1, 2020.

(b) **Refund procedure.** Beginning July 1, 2011, the buyer is eligible for the exemption in the form of a remittance (refund) from the department. The buyer must pay the total amount of the retail sales or use taxes due with the respect to the sale or use of qualifying machinery or equipment and labor charges to install the same. The buyer may then apply to the department for a refund of seventy-five percent of the state and local retail sales and use taxes paid. These exemptions expire on January 1, 2020.

(c) **Required survey.** Beginning July 1, 2013, buyers applying for a refund must complete and submit an annual tax incentive survey. The survey must be filed with the department by April 30th, following the year for which the refund is claimed. For more information see Part 4, subsection (401)(c) of this section.

(202) **Qualified power sources.** The partial exemption permitted under Part 2, subsection (201)(a) of this section applies only with respect to a renewable energy system that employs one of the following qualified power sources:

- Fuel cells;
- Wind;
- Biomass energy;
- Tidal or wave energy;
- Geothermal resources;
- Anaerobic digestion;
- Technology that converts otherwise lost energy from exhaust;

and

- Landfill gas.

(203) **Definitions for these power sources.** For purposes of Part 2, the terms below are defined as or include within their definition the following:

(a) **Biomass energy.** "Biomass energy" includes:

- (i) By-products of pulping and wood manufacturing processes;
- (ii) Animal waste;
- (iii) Solid organic fuels from wood;
- (iv) Forest or field residues;
- (v) Wooden demolition or construction debris;
- (vi) Food waste;
- (vii) Liquors derived from algae and other sources;
- (viii) Dedicated energy crops;
- (ix) Biosolids; and
- (x) Yard waste.

"Biomass energy" does not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic; wood from old growth forests; or municipal solid waste.

(b) **Fuel cell.** "Fuel cell" means an electrochemical reaction that generates electricity by combining atoms of hydrogen and oxygen in the presence of a catalyst.

(c) **Landfill gas.** "Landfill gas" means biomass fuel, of the type that qualifies for federal tax credits under Title 26 U.S.C. § 45K (formerly Title 26 U.S.C. § 29) of the federal Internal Revenue Code, collected from a "landfill" as defined in RCW 70.95.030.

PART 3

Exemptions as applied to qualifying solar-heat systems.

(301) **Solar-heat systems.**

(a) **Exemption.** RCW 82.08.963 and 82.12.963 provide exemptions from retail sales and use taxes paid with the respect to the sale and use of machinery and equipment used directly in producing thermal heat using solar energy and the labor charges to install the qualified equipment, if the buyer installs a system capable of producing no more than three million BTU per day. These exemptions are valid July 1, 2013, and expire June 30, 2018.

(b) **Exemption certificate required.** The buyer must document this exemption at the time of sale by providing the seller (and installer

if different from the seller) a completed *Buyers' Retail Sales Tax Exemption Certificate*. The seller or installer must keep the completed form in its records for five years.

(c) **Instructions for sellers that E-file.** For sellers that E-file, the exemption permitted under Part 3, (a) of this subsection should be listed on the line entitled *Sales of Solar Machinery/Equipment; Install Labor* on the retail sales tax deduction page of E-file.

PART 4 **General provisions.**

(401) Requirements for a refund from the department of taxes paid, referred to as the seventy-five percent remittance.

(a) **Required application.** This exemption, in the form of a remittance (refund) from the department, equals seventy-five percent of the retail sales and use taxes paid with respect to the sale or use of the qualifying machinery and equipment. The form that the buyer must submit to the department is the *Application for Sales Tax Refund on Purchases & Installation of Qualified Renewable Energy Equipment*. This form is available through the department's web site at dor.wa.gov under *Get a form or publication*. The application must be completed in full and mailed to the address provided on the form.

(b) **Required records.** The purchaser must provide records that will allow the department to determine whether the purchaser is entitled to a refund. The records include:

- Invoices;
- Proof of tax paid;
- Documents describing the machinery and equipment; and
- Electrical capacity of the system.

(c) **File annual tax incentive survey.** Effective July 1, 2013, any person claiming a seventy-five percent refund must electronically file an annual tax incentive survey with the department each year. This applies to buyers of solar systems generating electricity of more than ten kilowatts and other qualified renewable energy systems generating electricity of one kilowatt or more.

(d) **Separate survey for each system.** The buyer must file a separate survey for each system owned or operated in Washington. The annual survey is due April 30th, following the year for which the exemption is claimed. (Systems installed in 2013 require a survey to be completed by April 30, 2014.)

(e) **Limitation on frequency for claiming exemption.** A buyer may not apply to the department for a remittance (refund) more frequently than once a quarter.

(f) **Qualified retail sales and use taxes.** These exemptions apply to both state and local retail sales and use taxes.

(402) **What is "machinery and equipment"?** For purposes of RCW 82.08.962 and 82.12.962, "machinery and equipment" means fixtures, devices, and support facilities that are integral and necessary to the generation of electricity from qualifying sources of power. For purposes of RCW 82.08.963 and 82.12.963, "machinery and equipment" means fixtures, devices, and support facilities that are integral to the generation of electricity or production and use of thermal heat from solar energy.

A "support facility" is a part of a building, structure, or improvement used to contain or steady a fixture or device. A support facility must be specially designed and necessary for the proper functioning of the fixture or device and must perform a function beyond being a building, structure, or improvement. It must have a function

relative to a fixture or a device. To determine if some portion of a building is a support facility, the parts of the building are examined. For example, a highly specialized structure, like a vibration reduction slab under generators in a landfill gas generating facility, is a support facility. Without the slab, the generators would not function properly. The ceiling and walls of the building housing the generator are not support facilities if they only serve to define the space and do not have a function relative to a fixture or a device.

"Machinery and equipment" does not include:

- (a) The utility grid system;
- (b) Hand-powered tools;
- (c) Property with a useful life of less than one year;
- (d) Repair parts required to restore machinery and equipment to normal working order;
- (e) Replacement parts that do not increase productivity, improve efficiency, or extend the useful life of the machinery and equipment;
- (f) Buildings; or
- (g) Building fixtures that:
 - (i) Are permanently affixed to and become a physical part of a building; but
 - (ii) Are not integral and necessary to the generation of electricity.

(403)(a) **When is machinery and equipment "used directly" in generating electricity?** Machinery and equipment is used directly to generate electricity when it is used to:

- (i) Capture the energy of the qualifying source of power;
- (ii) Convert that energy to electricity; and
- (iii) Store, transform, or transmit that electricity for entry into or operation in parallel with electric transmission and distribution systems.

(b) **When is machinery and equipment "used directly" in producing thermal heat?** Machinery and equipment is "used directly" in producing thermal heat with solar energy if it uses a solar collector or a solar hot water system that:

- (i) Meets the certification standards for solar collectors and solar hot water systems developed by the solar rating and certification corporation; or
- (ii) The Washington State University extension energy program determines a solar collector or solar hot water system is an equivalent collector or system.

(404) **Examples of qualifying machinery and equipment.** This section provides examples of machinery and equipment that may be used directly in generating electricity and could qualify for the exemptions from retail sales and use taxes. This list is illustrative only and is not intended to provide an exhaustive list of possible qualifying machinery and equipment.

(a) **Solar.** Where solar energy is the principal source of power: Solar modules; inverters; Stirling converters; power conditioning equipment; batteries; transformers; power poles; power lines; and connectors to the utility grid system or point of use.

(b) **Wind.** Where wind is the principal source of power: Turbines; blades; generators; towers and tower pads; substations; guy wires and ground stays; power conditioning equipment; anemometers; recording meters; transmitters; power poles; power lines; and connectors to the utility grid system or point of use.

(c) **Landfill.** Where landfill gas is the principal source of power: Turbines; blades; blowers; burners; heat exchangers; generators;

towers and tower pads; substations; guy wires and ground stays; pipe; valves; power conditioning equipment; pressure control equipment; recording meters; transmitters; power poles; power lines; and connectors to the utility grid system or point of use.

(d) **Fuel cells.** Where fuel cells are the principal source of power: Fuel cell assemblies; fuel storage and delivery systems; power inverters; transmitters; transformers; power poles; power lines; and connectors to the utility grid system or point of use.

(405) **Installation charges.** The exemptions from retail sales and use taxes addressed in this rule apply to installation charges for qualifying machinery and equipment, including charges for labor and services. There are no exemptions from retail sales and use taxes for charges for labor and services rendered in respect to constructing buildings or access roads that may be necessary to install or use qualifying machinery and equipment. Further, there are no exemptions from retail sales and use taxes paid with respect to tangible personal property, such as a crane or forklift, purchased or rented by the buyer, the contractor, or the installer to be used to install qualifying machinery and equipment. Further, there are no exemptions from retail sales and use taxes for services that were included in the construction contract for design, planning, studies, project management, or other charges not directly related to the actual labor for installing the qualifying machinery and equipment.

DRAFT