



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Department of Revenue

Permanent Rule Only

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) **(If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)**

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
 - No
- If Yes, explain:

Purpose: To amend WAC 458-20-17902 *Brokered natural gas – Use tax* to:

- Recognize provisions of ESSB 6440, Sec. 301, 304, and 305 (Chapter 216, Laws of 2014);
- Update language on filing and paying use tax on brokered natural gas electronically either monthly or quarterly; and
- Clarify language changing “section” to “rule” throughout.

Citation of existing rules affected by this order:

- Repealed:
- Amended: WAC 458-20-17902
- Suspended:

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

Other authority: RCW 82.12.022 and 82.14.230

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 14-23-056 on November 17, 2014.
Describe any changes other than editing from proposed to adopted version: None.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

- Name: _____ phone () _____
- Address: _____ fax () _____
- e-mail _____

Date adopted: January 21, 2015

NAME
Dylan Waits

SIGNATURE

TITLE
Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: January 21, 2015
TIME: 2:23 PM

WSR 15-04-001

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	Amended		Repealed
Federal rules or standards:	New	Amended		Repealed
Recently enacted state statutes:	New	Amended	1	Repealed

The number of sections adopted at the request of a nongovernmental entity:

	New	Amended		Repealed
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The number of sections adopted in the agency's own initiative:

	New	Amended	1	Repealed
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

	New	Amended	1	Repealed
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The number of sections adopted using:

Negotiated rule making:	New	Amended		Repealed
Pilot rule making:	New	Amended		Repealed
Other alternative rule making:	New	Amended		Repealed

AMENDATORY SECTION (Amending WSR 07-24-055, filed 12/3/07, effective 1/3/08)

WAC 458-20-17902 Brokered natural gas—Use tax. (1) **Introduction.** RCW 82.12.022 and 82.14.230 impose state and local use taxes on the use of natural gas or manufactured gas by a consumer, including compressed natural gas and liquefied natural gas, if the person who sold the gas to the consumer has not paid public utility tax on that sale. This use tax is imposed only for natural gas delivered to a consumer through a pipeline. The use tax is applied at the same rate as the state and city public utility taxes. This ~~((section))~~ rule explains how this use tax applies and how it is reported to the department.

(2) **Definitions.** For the purpose of this ~~((section))~~ rule:

(a) "Brokered natural gas" means natural gas purchased by a consumer from a source out of the state and delivered to the consumer in this state.

(b) "Value of gas consumed or used" means the purchasing price of the gas to the consumer and generally must include all or part of the transportation charges as explained later.

(3) **Applicability of use tax.** The distribution and sale of natural gas in this state is generally taxed under the state and city public utility taxes. With changing conditions and federal regulations, it is now possible to have natural gas brokered from out of the state and sold directly to the consumer. If this occurs and the public utility taxes have not been paid, RCW 82.12.022 (state) and RCW 82.14.230 (city) impose a use tax on the brokered natural gas at the same rate as the state and city public utility taxes.

(4) **State tax.** When the use tax applies, the rate of tax imposed is equal to the public utility tax on gas distribution business under RCW 82.16.020 ~~((1)(e))~~. The rate of tax applies to the value of the gas consumed or used and is imposed upon the consumer.

(5) **City tax.** Cities are given the authority to impose a use tax on brokered natural gas. When imposed and applicable, the rate of tax is equal to the tax on natural gas business under RCW 35.21.870 on the value of gas consumed or used and is imposed on the consumer.

(6) **Transportation charges.**

(a) If all or part of the transportation charges for the delivery of the brokered natural gas are separately subject to the state's and cities' public utility taxes (RCW 82.16.020 (1)(c) and RCW 35.21.870), those transportation charges are excluded from measure of the use tax. The transportation charges not subject to the public utility taxes are included in the value of the gas consumed or used.

(b) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. In actual practice, the tax status of a situation must be determined after a review of all of the facts and circumstances.

(i) Public university purchases natural gas from an out of the state source through a broker. The natural gas is delivered by interstate pipeline to the local gas distribution system who delivers it to the university. The university pays the supplier for the gas, the pipeline for the interstate transportation charge, and the gas distribution system for its local transportation charge. The transportation charge by the pipeline is not subject to public utility tax because it is an interstate transportation charge. The transportation charge paid

to the local gas distribution system is subject to the public utility taxes as an intrastate delivery. The value of the gas consumed or used is the purchase price paid to the supplier plus the transportation charge paid to pipeline company.

(ii) The above factual situation applies except that the natural gas is delivered directly by the interstate pipeline to the university. The university pays the supplier for the gas and the pipeline for the transportation charge. As the transportation charge is not subject to the public utility tax, it will be included in the measure of the tax. The value of the gas consumed or used is the purchase price plus the transportation charge paid to the pipeline.

(7) Credits against the taxes.

(a) A credit is allowed against the use taxes described in this ~~((section))~~ rule for any use tax paid by the consumer to another state which is similar to this use tax and is applicable to the gas subject to this tax. Any other state's use tax allowed as a credit will be prorated to the state's and cities' portion of the tax based on the relative rates of the two taxes.

(b) A credit is also allowed against the use tax imposed by the state for any gross receipts tax similar that imposed pursuant to RCW 82.16.020 (1)(c) by another state on the seller of the gas with respect to the gas consumed or used.

(c) A credit is allowed against the use tax imposed by the cities for any gross receipts tax similar to that imposed pursuant to RCW 35.21.870 by another state or political subdivision of the state on the seller of the gas with respect to the gas consumed or used.

(8) Compressed natural gas and liquefied natural gas sold or used as transportation fuel.

(a) For the purposes of this subsection, "transportation fuel" means fuel for the generation of power to propel a motor vehicle as defined in RCW 46.04.320, a vessel as defined in RCW 88.02.310, or a locomotive or railroad car.

(b) Effective July 1, 2015, RCW 82.12.022 and 82.14.230 exempt from state and local use taxes:

(i) Compressed natural gas or liquefied natural gas to be sold or used as transportation fuel; or

(ii) Natural gas used to manufacture compressed natural gas or liquefied natural gas to be sold or used as transportation fuel.

(c) The buyer must provide and the seller must retain an exemption certificate. See the department's web site dor.wa.gov for the appropriate form. Although the sale and use of natural gas, compressed natural gas, and liquefied natural gas may be exempt from PUT under RCW 82.16.310 and state and local use taxes under RCW 82.12.022 and 82.14.230, other taxes may apply.

(9) Reporting requirements. The person who delivers the gas to the consumer must make and submit a report to the local sales and use tax ~~((section))~~ unit of the department's taxpayer account administration division by the fifteenth day of the month following a calendar quarter. The report must contain the following information:

(a) The name and address of the consumer to whom gas was delivered~~((τ))~~i

(b) The volume of gas delivered to each consumer during the calendar quarter~~((τ))~~i and~~((τ))~~

(c) Service address of consumer if different from mailing address.

~~((9))~~ **(10) Collection and administration.** Use tax on brokered natural gas must be filed ~~((with))~~ and paid electronically either

This rule was adopted January 21, 2015 and becomes effective February 21, 2015. It may be used to determine tax liability on and after the effective date, until the codified version is available from the code reviser's office.

~~monthly or quarterly by consumers to the department ((by the consumer on forms and records prescribed by the department. Such forms and records must be accompanied by the remittance of the tax)).~~ The department's authority to collect this tax is found in RCW 82.12.020 and 82.14.050.