



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (June 2004)
(Implements RCW 34.05.310)
Do NOT use for expedited rule making

Agency: Department of Revenue

Subject of possible rule making: This rule-making effort will be to amend WAC 458-20-263, presently entitled: "Fuel cell, wind, landfill gas, and solar energy electric generating facilities" and update the rule to include recent legislation and technology under the new title: "Sales and use tax exemptions for qualifying electrical generating and heat producing systems using renewable energy sources."

Statutes authorizing the agency to adopt rules on this subject: RCW 82.32.300 and 82.01.060(2).

Reasons why rules on this subject may be needed and what they might accomplish: 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. This rule amendment explains how these exemptions apply to present technologies and updates legislative changes, including the most recent at Chapter 13, 2013 Laws, 2nd Special Session.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies: None.

Process for developing new rule (check all that apply):

- Negotiated rule making
- Pilot rule making
- Agency study
- Other (describe) Parties interested in this rule making may contact the individual listed below. The public may also participate by providing written comments throughout this rule making or giving oral testimony at the public meeting or public hearing.

How interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication:

A preliminary draft of possible rule changes is available via the Department's online [Rules Agenda](#).

Written comments may be submitted by mail and should be directed to Mark E. Bohe at either of the following addresses: email: markbohe@dor.wa.gov, or mailing address: Mark Bohe, ITA Division, PO Box 47453, Olympia, WA 98504-7453.

Written and oral comments will be accepted at the public meeting.

Public meeting location:

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

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 meeting date. For Hearing Impaired please contact us via the Washington Relay Operator at (800) 833-6384.

Call in option can be provided upon request.

Date: February 10, 2014 **Time:** 10:00 A.M.

Date December 31, 2013

Name
Alan R. Lynn

Signature

Title
Assistant Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: December 31, 2013

TIME: 3:16 PM

WSR 14-02-109

WAC 458-20-263 Sales and use tax exemptions for qualifying electric generating and heat producing systems using renewable energy sources. 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. 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 non-solar renewable energy systems.

Part 3: Exemptions applied to qualifying solar-heat systems.

Part 4: General provisions applying to all qualified systems.

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 exempt from sales and use taxes machinery and equipment purchased and used directly in a solar energy system capable of generating ten kilowatts of electricity or less. Labor charges to install the qualified machinery and equipment are also exempt. Both state and local sales tax are exempt. These exemptions are effective from July 1, 2009, and expire June 30, 2018.

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

(c) Change for sellers that E-file. The department of revenue ("department") has added an exemption line called *Sales of Solar Machinery/Equipment; Install Labor* on the retail sales tax deduction page of E-file. Previously, sellers listed the exemption on the deduction detail under "Other" and wrote in the explanation.

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

(a) Partial Exemptions. RCW 82.08.962 and 82.12.962 provide a seventy-five percent refund of sales and use taxes paid on machinery and equipment used directly in solar energy systems capable of generating more than ten kilowatts of electricity. The buyer must pay the total amount of tax due on the purchase of the 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 sales taxes paid. This 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 sales and use taxes on the purchases and uses of qualified machinery, equipment, and labor charges to install the same at the point of sale. For documentation requirements see section (101).

(c) **Required annual survey.** Beginning July 1, 2013, buyers applying for a refund must complete and submit an annual tax incentive survey by April 30th, following the year for which the refund is claimed. For more information see subsection 401(c) below.

Part 2: Exemptions as applied to qualified non-solar renewable energy systems.

(201) Qualified non-solar renewable energy systems generating one kilowatt or greater.

(a) **Exemptions.** RCW 82.08.962 and 82.12.962 provide a seventy-five percent refund of sales and use taxes paid on machinery and equipment used directly in renewable energy systems that generate at least one kilowatt of electricity that use one of the qualified non-solar power sources listed below.

(b) **Refund procedure.** Beginning July 1, 2011, buyers must pay the total amount of the sales tax due on the purchase 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 sales 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 by April 30th, following the year for which the refund is claimed. For more information see subsection 401(c) below.

(202) Qualified power sources. The following power sources qualify for these exemptions:

- fuel cells
- wind
- biomass energy
- tidal or wave energy
- geothermal resources
- anaerobic digestion
- technology that converts otherwise lost energy from exhaust
- 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 qualified for federal tax credits under Title 26 U.S.C. Sec. 29 of the federal Internal Revenue Code, collected from a "landfill" as defined under RCW 70.95.030.

Part 3: Exemptions applied to qualifying solar-heat systems.

(301) Solar-heat systems.

Exemption. RCW 82.08.963 and 82.12.963 exempt from sales and use tax machinery and equipment purchased and 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 3 million BTU per day. These exemptions are valid July 1, 2013, and expire June 30, 2018.

(302) Records 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 *Buyer's Retail Sales Tax Exemption Certificate*. The seller or installer must keep the completed form in its records for up to 5 years.

(303) Change for sellers that E-file. The department has added an exemption line called *Sales of Solar Machinery/Equipment; Install Labor* on the retail sales tax deduction page of E-file.

Part 4: General provisions applying to all qualified systems.

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

(a) Required application. The *Application for Sales Tax Refund on Purchases & Installation of Qualified Renewable Energy Equipment* 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.

(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 over ten kilowatts and other qualified renewable energy systems one kilowatt and larger.

(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 purchaser may not apply to the department for a remittance more frequently than once a quarter. RCW 82.08.962.

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

(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

Is determined by the Washington State University extension whether 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 are used directly in generating electricity and qualify for the retail sales and use tax exemptions. 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 retail sales and use taxes exemptions addressed in this rule apply to installation charges for qualifying machinery and equipment, including charges for labor and services. 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 are not exempt. 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.