

This draft is provided for discussion purposes only to determine what topics a possible proposed rule might address. This discussion draft is under no circumstances to be used to determine a tax liability and/or eligibility for tax exemptions.

AMENDATORY SECTION: (Amending WSR 94-13-034, filed 6/6/94, effective 7/7/94)

WAC 458-20-179 Public utility tax. (1) (~~Introduction.~~ Persons engaged in certain public service businesses are taxable under the public utility tax. (See chapter 82.16 RCW.) These businesses are exempt from the business and occupation tax on the gross receipts which are subject to the public utility tax. (See RCW 82.04.310.) However, many persons taxable under the public utility tax are also engaged in some other business activity which is taxable under the business and occupation (B&O) tax. For example, a gas distribution company engaged in operating a plant or system for distribution of natural gas for sale, may also be engaged in selling at retail various gas appliances. Such a company would be taxable under the public utility tax with respect to its distribution of natural gas to consumers, and also taxable under the business and occupation tax with respect to its sale of gas appliances. It should also be noted that some services which generally are taxable under the public utility tax are taxable under the B&O tax if the service is performed for a new customer, prior to receipt of regular utility services by the customer.

(2) **Definitions.** The following definitions apply to this section:

(a) The term "gross income" means the value proceeding or accruing from the performance of the particular public service or transportation businesses involved. It includes operations incidental to the public utility activity, but without any deduction on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

(b) The term "service charge" means those specific charges made to a customer for providing a specific service. The term includes the actual charge to a customer for the sale or distribution of water, gas, or electricity. This term does not include utility local improvement district assessments (ULID) or local improvement district assessments (LID).

(c) The term "subject to control by the state" means control by the utilities and transportation commission or any other state department required by law to exercise control of a business of a public service nature as to rates charged or services rendered.

(3) **Persons taxable under the public utility tax.** The term "public service businesses" includes any of the businesses defined in RCW 82.16.010 (1) through (9), and (11). It also includes any business subject to control by the state, or having

This draft is provided for discussion purposes only to determine what topics a possible proposed rule might address. This discussion draft is under no circumstances to be used to determine a tax liability and/or eligibility for tax exemptions.

~~the powers of eminent domain, or any business declared by the legislature to be of a public service nature, irrespective of whether the business has the powers of eminent domain or the state exercises its control over the business. It includes, among others, without limiting the scope thereof: Railroad, express, railroad car, water distribution, sewerage collection, light and power, telegraph, gas distribution, urban transportation and common carrier vessels under sixty five feet in length, motor transportation, tugboat businesses, certain airplane transportation, boom, dock, ferry, pipe line, toll bridge, toll logging road, and wharf businesses. (See WAC 458-20-251 for sewerage collection.) Persons engaged in these business activities are subject to the public utility tax even if they are not publicly recognized as providing that type of service or the amount of income from these activities is not substantial.~~

~~(a) "Light and power business" includes charges made for the "wheeling" of electricity for others. "Wheeling" is the activity of delivering or distributing electricity owned by others using power lines and equipment of the person doing the wheeling.~~

~~(b) Persons engaged in hauling for hire by motor vehicle should also refer to WAC 458-20-180.~~

~~(c) Persons hauling property, other than U.S. mail, by air transportation equipment are taxable under the other public service public utility tax. Income from the hauling of U.S. mail or passengers is not subject to the public utility tax because of specific federal law. (See 49 U.S.C. section 1301 and section 1513(a).)~~

~~(d) Persons engaged in hauling persons or property for hire by watercraft between points in Washington are taxable under the public utility tax. Income from operating tugboats of any size and income from the sale of transportation services by vessels over sixty five feet is taxable under the public service utility tax classification. Income from the sale of transportation services using vessels under sixty five feet, other than tugboats, is taxable under "vessels under sixty five feet" public utility tax classification. These classifications include businesses engaged in chartering or transporting persons by water from one location in Washington to another location within this state. This does not include sightseeing tours or activities which are in the nature of guided tours where the tour may include some water transportation. Persons engaged in providing tours should refer to WAC 458-20-258.~~

~~(e) Income from activities which are incidental to a public utility activity are generally taxable under the public utility tax when performed for an existing customer. This includes charges for line extensions, connection fees, line drop charges,~~

~~This draft is provided for discussion purposes only to determine what topics a possible proposed rule might address. This discussion draft is under no circumstances to be used to determine a tax liability and/or eligibility for tax exemptions.~~

~~start up fees, pole replacements, testing, replacing meters, line repairs, line raisings, pole contact charges, load factor charges, meter reading fees, etc. However, if any of these services are performed for a customer prior to sale of a public utility service to the customer, the income is taxable under the business and occupation tax. (See subsection (4) of this section.)~~

~~(4) **Business and occupation tax.** As indicated above, services which are incidental to a public utility activity are generally subject to the public utility tax. However, these types of charges are taxable under the service and other business activities B&O tax classification if performed for a customer prior to receipt of the utility services (gas, water, electricity) by a new customer. A "new customer" is a customer who previously has not received utility services, such as water, gas, or electricity, at the location where the charge for a specific service was provided. For example, a customer of a water supplier who currently receives water at a residence constructs a new residence a short distance from the first location. This customer will be considered a "new customer" with respect to any charges for services performed at the new location until the customer actually receives water at the new location, even though this customer may be receiving services at a different location. The charge for installing a meter or a connection charge for this customer at the new location would be taxable under the service and other activities B&O tax classification.~~

~~Amounts charged to customers as interest or penalties are generally taxable under the service and other business activities B&O tax classification. This includes interest charged for failure to timely pay for utility services or for special services which were performed prior to the customer receiving services, such as connection charges. However, any interest and/or penalty charged because of the failure to timely pay a LID or ULID assessment will not be taxable for the public utility tax or the B&O tax.~~

~~(5) **Tax rates.** The rates of tax for each business activity are imposed under RCW 82.16.020 and set forth on appropriate lines of the combined excise tax return forms.~~

~~(6) **Uniform system of accounts.** In distinguishing gross income taxable under the public utility tax from gross income taxable under the business and occupation tax, the department of revenue will be guided by the uniform system of accounts established for the specific type of utility concerned. However, because of differences in the uniform systems of accounts established for various types of utility businesses, such guides will not be deemed controlling for the purposes of classifying~~

This draft is provided for discussion purposes only to determine what topics a possible proposed rule might address. This discussion draft is under no circumstances to be used to determine a tax liability and/or eligibility for tax exemptions.

revenue under the Revenue Act.

~~(7) **Volume exemption.** Persons subject to the public utility tax are exempt from the payment of this tax if the taxable income from utility activities does not meet a minimum threshold. Prior to July 1, 1994, there was a similar exemption for the business and occupation tax with different threshold amounts. Beginning July 1, 1994, the law provides for a B&O tax credit for taxpayers who have a minimal B&O tax liability. (See WAC 458-20-104.) The volume exemption for the public utility tax applies independently of the business and occupation tax credit or exemption. The volume exemption for the public utility tax applies for any reporting period in which taxable income reported under the combined total of all public utility tax classifications does not equal or exceed the minimum taxable amount for the reporting periods assigned to such persons according to the following schedule:~~

Monthly reporting basis.....	\$500 per month
Quarterly reporting basis.....	\$1500 per quarter
Annual reporting basis.....	\$6000 per annum

~~(8) **Exemption of amounts or value paid or contributed to any county, city, town, political subdivision, or municipal corporation for capital facilities.** RCW 82.04.417 previously provided an exemption from the public utility tax and the business and occupation tax for amounts received by cities, counties, towns, political subdivisions, or municipal corporations representing contributions for capital facilities. These contributions are often referred to as "contributions in aid of construction." This law was repealed effective July 1, 1993, and this exemption is no longer available after that date. (See chapter 25, Laws of 1993 sp.s.) However, contributions in the form of equipment or facilities will not be considered as taxable income. For example, if an industrial customer purchases and installs transformers which it donates to a public utility district as a condition of receiving future service, the public utility district will not be subject to the public utility tax or B&O tax on the receipt of the donated transformers. For a water or sewerage collection business, the value of pipe, valves, pumps, or similar items donated by a developer to the utility business would not be taxable income to the utility business. Monetary payments are considered to be payments for installation of facilities so that a customer may receive the public utility commodity or service. When the facilities are installed or constructed by the customer and subsequently given to the utility business, there is no payment for installation of the facilities.~~

~~(9) **Specific deductions.** Amounts derived from the following sources may be deducted from the gross income under the public~~

This draft is provided for discussion purposes only to determine what topics a possible proposed rule might address. This discussion draft is under no circumstances to be used to determine a tax liability and/or eligibility for tax exemptions.

~~utility tax if included in the gross amounts reported:~~

~~(a) Amounts derived by municipally owned or operated public services businesses directly from taxes levied for the support thereof, but not including service charges which are spread on the property tax rolls and collected as taxes. LID and ULID assessments, including interest and penalties on such assessments, will not be considered part of the taxable income because they are exercises of the jurisdiction's taxing authority. These assessments may be composed of a share of the costs of capital facilities, installation labor, connection fees, etc. A deduction may be taken for these amounts if they are included in the LID or ULID assessments.~~

~~(b) Amounts derived from the sale of commodities to persons in the same public service business as the seller, for resale as such within this state. This deduction is allowed only with respect to water distribution, light and power, gas distribution or other public service businesses which furnish water, electrical energy, gas or any other commodity in the performance of a public service business.~~

~~(c) Amounts actually paid by a taxpayer to another person taxable under chapter 82.16 RCW as the latter's portion of the consideration due for services jointly furnished by both. This includes the amount paid to a ferry company for the transportation of a vehicle and its contents (but not amounts paid to state owned or operated ferries) when such vehicle is carrying freight or passengers for hire and is being operated by a person engaged in the business of urban transportation or motor transportation. It does not include amounts paid for the privilege of moving such vehicles over toll bridges. However, this deduction applies only to the purchases of services and does not include the purchase of commodities. The following examples show how this deduction and the deduction for sales of commodities would apply:~~

~~(i) CITY Water Department purchases water from Neighboring City Water Department. CITY sells the water to its customers. Neighboring City Water Department may take a deduction for its sales of water to CITY since this is a sale of water (commodities) to a person in the same public service business. CITY may not take a deduction for its payment to Neighboring City Water as "services jointly furnished." The service or sale of water to the end consumers was made solely by CITY and was not a jointly furnished service.~~

~~(ii) Customer A hires ABC Transport to haul goods from Tacoma, Washington to a manufacturing facility at Bellingham. ABC Transport subcontracts part of the haul to XYZ Transport and has XYZ haul the goods from Tacoma to Everett where the goods are loaded into ABC's truck. ABC may deduct the payments it makes to~~

This draft is provided for discussion purposes only to determine what topics a possible proposed rule might address. This discussion draft is under no circumstances to be used to determine a tax liability and/or eligibility for tax exemptions.

~~XYZ as a "jointly furnished service."~~

~~(d) Amounts derived from the distribution of water through an irrigation system, solely for irrigation purposes.~~

~~(e) Amounts derived from the transportation of commodities from points of origin in this state to final destination outside this state, or from points of origin outside this state to final destination in this state with respect to which the carrier grants to the shipper the privilege of stopping the shipment in transit at some point in this state for the purpose of storing, manufacturing, milling, or other processing, and thereafter forwards the same commodity, or its equivalent, in the same or converted form, under a through freight rate from point of origin to final destination.~~

~~(f) Amounts derived from the transportation of commodities from points of origin in the state to an export elevator, wharf, dock or shipside on tidewater or navigable tributaries thereto from which such commodities are forwarded, without intervening transportation, by vessel, in their original form, to an interstate or foreign destination: Provided, That no deduction will be allowed when the point of origin and the point of delivery to such export elevator, wharf, dock, or shipside are located within the corporate limits of the same city or town. The following examples show how this deduction applies:~~

~~(i) ABC Trucking delivers logs to a storage area which is adjacent to the dock from where shipments are made by vessel to a foreign country. The logs go through a peeling process at the storage area prior to being placed on the vessel. The peeling process changes the form of the original log. Because the form of the log is changed, ABC Trucking may not take a deduction for the haul to the storage area. It is immaterial that the trucker may be paid based on an "export" rate.~~

~~(ii) ABC Trucking hauls logs from the woods to a log storage area which is adjacent to the dock. The logs will be sorted prior to being placed in the hold of the vessel, but no further processing will be performed. The storage area is quite large and the logs will be moved by log stacker and will be placed alongside the ship. The logs are loaded using the ship's tackle and then transported to a foreign country. ABC Trucking may take a deduction for the amounts received for transporting the logs from the woods to the log storage area. The movement of the logs within the log storage area is not considered to be "intervening transportation," but is part of the stevedoring activity.~~

~~(iii) ABC Trucking hauls logs from the woods to a "staging area" where the logs are sorted. After sorting, XY Hauling will transport some of the logs from the staging area to local mills for lumber manufacturing and other logs to the dock which is located approximately five miles from the staging area where the~~

~~This draft is provided for discussion purposes only to determine what topics a possible proposed rule might address. This discussion draft is under no circumstances to be used to determine a tax liability and/or eligibility for tax exemptions.~~

~~logs immediately are loaded on a vessel for shipment to Japan. The dock and staging area are not within the corporate city limits of the same city. ABC Trucking may not take a deduction for amounts received for hauling logs to the staging area. Even though some of these logs ultimately will be exported, ABC Trucking is not delivering the logs directly to the dock where the logs will be loaded on a vessel.~~

~~However, XY Hauling may take a deduction for the income from hauls to the dock. Its haul was the final transportation prior to the logs being placed on the vessel for shipment to Japan. The logs remained in their original form with no additional processing. The haul also did not originate or terminate within the corporate city limits of the same city or town. All the conditions were met for XY Hauling to claim the deduction.~~

~~(g) Amounts derived from the distribution of water by a nonprofit water association which are used for capital improvements by that association.~~

~~(h) Amounts received from sales of power which is delivered by the seller out of state. A deduction may also be taken for the sale of power to a person who will resell the power outside Washington where the power is delivered in Washington. These sales of power are also not subject to the manufacturing B&O tax.~~

~~(i) Amounts received for providing commuter share riding or ride sharing for the elderly and the handicapped in accordance with RCW 46.74.010.~~

~~(j) Amounts expended to improve consumers' efficiency of energy end use or to otherwise reduce the use of electrical energy or gas by the consumer. (For details see WAC 458 20-17901.)~~

~~(k) Income from transporting persons or property by air, rail, water, or by motor transportation equipment where either the origin or destination of the haul is outside the state of Washington.~~

~~(10) **Other deductions.** In addition to the deductions discussed above there also may be deducted from the reported gross income (if included within the gross), the following:~~

~~(a) The amount of cash discount actually taken by the purchaser or customer.~~

~~(b) The amount of credit losses actually sustained.~~

~~(c) Amounts received from insurance companies in payment of losses.~~

~~(d) Amounts received from individuals and others in payment of damages caused by them to the utility's plant or equipment.~~

~~(11) **Exchanges by light and power businesses.** There is no specific exemption which applies to an "exchange" of electrical energy or the rights thereto. However, exchanges of electrical energy between light and power businesses do qualify for~~

This draft is provided for discussion purposes only to determine what topics a possible proposed rule might address. This discussion draft is under no circumstances to be used to determine a tax liability and/or eligibility for tax exemptions.

~~deduction in computing the public utility tax as being sales of power to another light and power business for resale. An exchange is a transaction which is considered to be a sale and involves a delivery or transfer of energy or the rights thereto by one party to another for which the second party agrees, subject to the terms and conditions of the agreement, to deliver electrical energy at the same or another time. Examples of deductible exchange transactions include, but are not limited to, the following:~~

~~(a) The exchange of electric power for electric power between one light and power business and another light and power business;~~

~~(b) The transmission or transfer of electric power by one light and power business to another light and power business pursuant to the agreement for coordination of operations among power systems of the Pacific Northwest executed as of September 15, 1964;~~

~~(c) The Bonneville Power Administration's acquisition of electric power for resale to its Washington customers in the light and power business;~~

~~(d) The residential exchange of electric power entered into between a light and power business and the administrator of the Bonneville Power Administration (BPA) pursuant to the Pacific Northwest Electric Power Planning and Conservation Act, P.L. 96-501, Sec. 5(c), 16 U.S.C. 839(c) (Supp. 1982). In some cases, power is not physically transferred, but the purpose of the residential exchange is for BPA to pay a "subsidy" to the exchanging utilities. For public utility tax reporting purposes, these subsidies will be treated as a nontaxable adjustment (rebate or discount) for purchases of power from BPA.~~

~~(12) **Customer billing information.** RCW 82.16.090 requires that customer billings issued by light or power businesses or gas distribution businesses serving more than twenty thousand customers shall include the following information:~~

~~(a) The rates and amounts of taxes paid directly by the customer upon products or services rendered by such businesses; and~~

~~(b) The rate, origin and approximate amount of each tax levied upon the revenue of such businesses which has been added as a component of the amount charged to the customer. This does not include taxes levied by the federal government or taxes levied under chapter 54.28, 80.24, or 82.04 RCW.~~

~~(13) **Motor or urban transportation.** For specific rules pertaining to the classifications of "urban transportation" and "motor transportation," see WAC 458-20-180.) **Introduction.** This rule explains the public utility tax as imposed by chapter 82.16 RCW. The public utility tax is a tax on the act or privilege of~~

This draft is provided for discussion purposes only to determine what topics a possible proposed rule might address. This discussion draft is under no circumstances to be used to determine a tax liability and/or eligibility for tax exemptions.

engaging in certain public service and transportation businesses within this state.

The department of revenue (department) has adopted other rules that relate to the application of public utility tax. Readers may want to refer to the following rules:

(a) WAC 458-20-121 (Sales of heat or steam—Including production by cogeneration);

(b) WAC 458-20-13501 (Timber harvest operations), which provides guidance regarding hauling of logs;

(c) WAC 458-20-175 (Persons engaged in the business of operating as a private or common carrier by air, rail or water in interstate or foreign commerce);

(d) WAC 458-20-180 (Motor transportation, urban transportation);

(e) WAC 458-20-192 (Indians - Indian country);

(f) WAC 458-20-193D (Transportation, communication, public utility activities, or other services in interstate or foreign commerce); and

(g) WAC 458-20-251 (Sewerage collection and other related activities business);

(h) WAC 458-20-263 (Fuel cell, wind, landfill gas, and solar energy electric generating facilities sales and use tax exemption).

This rule contains examples which identify a number of facts and then state a conclusion. The examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(2) **Persons subject to the public utility tax.** The public utility tax is imposed by RCW 82.16.020 on certain public service and transportation businesses including railroad, express, railroad car, water distribution, sewerage collection, light and power, telegraph, gas distribution, motor transportation, urban transportation, vessels under sixty-five feet in length operating upon the waters within the state of Washington, and tugboat businesses.

The public utility tax also applies to any other public service business subject to control by the state, or having the powers of eminent domain, or any business declared by the legislature to be of a public service nature, except telephone businesses as defined in RCW 82.04.065 and low-level radioactive waste site operating companies as redefined in RCW 81.04.010. The phrase "subject to control by the state" means control by the utilities and transportation commission or any other state agency required by law to exercise control of a business of a public service nature as to rates charged or services rendered. Examples of other public service businesses include but are not limited to airplane transportation, boom, dock, ferry, pipeline,

This draft is provided for discussion purposes only to determine what topics a possible proposed rule might address. This discussion draft is under no circumstances to be used to determine a tax liability and/or eligibility for tax exemptions.

toll bridge, water transportation, and wharf businesses.

(a) Persons engaged in the same business activities as the businesses described above are subject to the public utility tax even if they are not publicly recognized as providing that type of service or the amount of income from these activities is not substantial. For example: an industrial manufacturing company that owns and operates a well, and that sells a relatively small amount of water to its wholly-owned subsidiary, is subject to the public utility tax as a water distribution business on its sales of water.

(b) Small water, water-sewer districts, and irrigation districts are subject to the public utility tax as of July 1, 2004. Former exemptions have expired, as explained in subsection (5)(d) and (e)

(3) **Tax rates and measure of tax.** The rates of tax for each business activity subject to the public utility tax are imposed under RCW 82.16.020 and set forth on appropriate lines of the excise tax return. The measure of the public utility tax is the gross income of the business. The term "gross income" means the value proceeding or accruing from the performance of the particular public service or transportation business involved, including operations incidental to that business. No deduction may be taken on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued, nor on account of losses. RCW 82.16.010(12).

(4) **Persons subject to public utility tax may also be subject to business and occupation tax.** The business and occupation (B&O) tax does not apply to any business activities for which public utility tax is specifically imposed, including amounts derived from activities for which a deduction from the public utility tax is available under RCW 82.16.050. RCW 82.04.310(1). However, many persons engaged in business activities subject to the public utility tax are also engaged in other business activities subject to B&O tax. For example: a gas distribution company operating a plant or system for the production and sale of natural gas may also make retail sales of gas appliances. The gas distribution company is subject to the public utility tax on its distribution of natural gas to consumers. However, it is also subject to retailing B&O tax and must collect and remit retail sales tax on its retail sales of gas appliances to consumers.

In distinguishing gross income taxable under the public utility tax from gross income taxable under the business and occupation tax, the department is guided by the uniform system of accounts established for the specific type of utility concerned.

Because of differences in the uniform systems of accounts,

This draft is provided for discussion purposes only to determine what topics a possible proposed rule might address. This discussion draft is under no circumstances to be used to determine a tax liability and/or eligibility for tax exemptions.

established for various types of utility businesses, such guides are not controlling for the purposes of classifying revenue under the Revenue Act.

(a) Charges for service connections, line extensions, and other similar services for existing customers. Amounts derived from services that are incidental to a public utility activity are subject to public utility tax when performed for existing customers. Thus, amounts received for the following services performed for existing customers are subject to public utility tax:

(i) Service connection, start-up, and testing fees;
(ii) Charges for line extensions, repairs, raisings, and/or drops;

(iii) Meter or pole replacement;
(iv) Meter reading or load factor charges; and
(v) Pole contact or attachment charges. Pole attachment charges mean amounts received for rental of space on transmission facilities, i.e. municipal owned streetlights, cable companies. See chapter 80.54 RCW.

(b) Charges for service connections, line extensions, and other similar services for new customers. If any of the services noted above in subsection (4)(a) of this rule are performed for a new customer prior to sale of a public utility service to the customer, the income is subject to service and other activities B&O tax.

A "new customer" is a customer who previously has not received utility services, such as water, gas, or electricity, at the location where the charge for a specific service was provided. For example, a customer of a water supplier who currently receives water at a residence and constructs a new residence at a different location is considered a "new customer" with respect to any charges for services performed at the new location until the customer actually receives water at the new location. It is immaterial that this customer may be receiving utility services at the old residence. The charge for installing a meter or a connection charge for this customer at the new location is subject to service and other activities B&O tax.

(c) Contributions in the form of money, equipment, or facilities. Monetary payments to a utility business for the installation of equipment or facilities so that a customer may receive a utility commodity or service are income to the utility business and subject to tax. Whether the income is subject to public utility tax, or service and other B&O tax, depends on if the equipment or facility is provided to new or existing customers. However, contributions to a utility business in the form of equipment or facilities are not considered to be income to the utility business. When equipment or facilities are

This draft is provided for discussion purposes only to determine what topics a possible proposed rule might address. This discussion draft is under no circumstances to be used to determine a tax liability and/or eligibility for tax exemptions.

installed or constructed by the customer and subsequently given to the utility business, there is no payment for installation of the equipment or facilities.

For example, if an industrial customer purchases and installs transformers that it donates to a public utility district as a condition of receiving future service, the public utility district will not be subject to the public utility tax or B&O tax on the receipt of the donated transformers. For a water or sewerage collection business, the value of pipe, valves, pumps, or similar items donated by a developer to the utility business is likewise not subject to tax.

(5) **Exemptions.** This subsection describes public utility tax exemptions.

(a) **Income exemption.** Persons subject to the public utility tax are exempt from the payment of the tax if their taxable income from utility activities does not meet a minimum threshold. RCW 82.16.040. For detailed information about this exemption, refer to WAC 458-20-104 (Small business tax relief based on income of business).

(b) **Ride sharing.** RCW 82.16.047 exempts amounts received in the course of commuter ride sharing or ride sharing for persons with special transportation needs in accordance with RCW 46.74.010. For detailed information about this exemption, refer to WAC 458-20-261 (Exemptions and credits for ride sharing, public transportation, and nonmotorized commuting).

(c) **State route number 16.** RCW 82.16.046 exempts amounts received from operating state route number 16 corridor transportation systems and facilities constructed and operated under chapter 47.46 RCW.

(d) **Water services provided by small water-sewer districts and irrigation districts.** RCW 82.16.042(1) formerly exempted amounts received for water services supplied by a water-sewer district established under Title 57 RCW or by an irrigation district established under Title 87 RCW. The exemption expired July 1, 2004. To have qualified for the exemption, all of the following requirements must have been met:

(i) The water-sewer district or irrigation district must have had less than fifteen hundred (1,500) connections.

(ii) The residential water rates charged by the water-sewer district or irrigation district must have exceeded one hundred twenty-five percent (125%) of the state-wide average residential water rate. The department of health is required to publish the state-wide average residential water rate on or before July 1st of each year. This information can be obtained from the agency's Web site at <http://www.doh.wa.gov>.

(iii) The water-sewer district or irrigation district must supply to the department proof that an amount equal to at least

This draft is provided for discussion purposes only to determine what topics a possible proposed rule might address. This discussion draft is under no circumstances to be used to determine a tax liability and/or eligibility for tax exemptions.

ninety percent (90%) of the value of the exemption was expended to repair, equip, maintain, and upgrade the water system.

(e) **Water services provided by small water systems.** RCW 82.16.042(2) formerly exempted amounts received for water services supplied by a water system that was operated or owned by a qualified satellite management agency under RCW 70.116.134. The exemption expired July 1, 2004. To have qualified for the exemption, all of the following requirements must have been met:

(i) The water system must have had less than two hundred (200) connections.

(ii) The residential water rates charged by the water system must have exceeded one hundred twenty-five percent (125%) of the state-wide average residential water rate. The department of health is required to publish the state-wide average residential water rate on or before July 1st of each year. This information can be obtained from the agency's Web site at <http://www.doh.wa.gov>.

(iii) The water system must supply to the department proof that an amount equal to at least ninety percent (90%) of the value of the exemption was expended to repair, equip, maintain, and upgrade the water system.

(f) **Sales of electricity to an electrolytic processor.** Chapter 240, Laws of 2004, provided a new exemption effective July 1, 2004 for sales of electricity made by light and power businesses to chlor-alkali electrolytic processing businesses or sodium chlorate electrolytic processing businesses for the electrolytic process.

RCW 82.16.0421. The exemption does not apply to amounts received from the remarketing or resale of electricity originally obtained by contract for the electrolytic process. In order to claim the exemption, the chlor-alkali electrolytic processing business or the sodium chlorate electrolytic processing business must provide the light and power business with an exemption certificate. A certificate can be obtained from the department's Web site at <http://www.dor.wa.gov>. A business that receives the benefits of this exemption must make an annual report to the department by March 31st following any year in which a tax exemption is claimed or used. This exemption, which expires June 30, 2011, applies to sales of electricity made by December 31, 2010.

To qualify all of the following requirements must be met:

(i) The electricity used in the electrolytic process must be separately metered from the electricity used for the general operations of the business;

(ii) The price charged for the electricity used in the electrolytic process must be reduced by an amount equal to the tax exemption available to the light and power business; and

(iii) Disallowance of all or part of the exemption is a

This draft is provided for discussion purposes only to determine what topics a possible proposed rule might address. This discussion draft is under no circumstances to be used to determine a tax liability and/or eligibility for tax exemptions.

breach of contract and the damages to be paid by the chlor-alkali electrolytic processing business or the sodium chlorate electrolytic processing business is the amount of the tax exemption disallowed.

(g) Sales of electricity, natural or manufactured gas to aluminum smelters. Chapter 24, Laws of 2004, provided a new exemption effective July 1, 2004 to be taken in the form of a credit. The credit is allowed if the contract for sale of electricity or gas to an aluminum smelter specifies that the price charged for the electricity or gas will be reduced by an amount equal to the credit. The exemption does not apply to amounts received from the remarketing or resale of electricity originally obtained by contract for the smelting process. The credit allowed is the same amount as the utility tax that would otherwise have been due under RCW 82.16.020.

(6) Deductions. This subsection provides information about a number of public utility tax deductions. The deductible amounts should be included in the gross income reported on the excise tax return and then deducted on the return to determine the amount of taxable income. Deductions taken but not identified on the appropriate deduction detail page of the excise tax return may be disallowed.

(a) Cash discounts. The amount of cash discount actually taken by the purchaser or customer is deductible under RCW 82.16.050(4).

(b) Credit losses. The amount of credit losses actually sustained by taxpayers whose regular books of account are kept on an accrual basis is deductible under RCW 82.16.050(5). See WAC 458-20-196 (Credit losses, bad debts, recoveries) for additional information regarding credit losses.

(c) Taxes. Amounts derived by municipally owned or operated public service businesses directly from taxes levied for the support thereof are deductible under RCW 82.16.050(1). However, service charges that are spread on the property tax rolls and collected as taxes are not deductible.

Local improvement district and utility local improvement district assessments, including interest and penalties on such assessments, are not income because they are exercises of the jurisdiction's taxing authority. These assessments may be composed of a share of the costs of capital facilities, installation labor, connection fees, etc.

(d) Prohibitions imposed by federal law or the state or federal constitutions. Amounts derived from business that the state is prohibited from taxing under federal law or the state or federal constitutions are deductible under RCW 82.16.050(6). For example, the imposition of gross receipts taxes on the intrastate or interstate transportation of passengers, or U.S. or foreign

This draft is provided for discussion purposes only to determine what topics a possible proposed rule might address. This discussion draft is under no circumstances to be used to determine a tax liability and/or eligibility for tax exemptions.

transit mail by aircraft is prohibited by federal law. (See 49 U.S.C. § 40116(b).)

(e) **Sales of commodities for resale.** Amounts derived from the sale of commodities to persons in the same public service business as the seller for resale as such within this state are deductible under RCW 82.16.050(2). This deduction is allowed only with respect to water distribution, gas distribution, or other public service businesses that furnish water, gas, or any other commodity in the performance of a public service business. For example: income from the sale of natural gas by a gas distributing company to natural gas companies located in Washington who resell the gas to their customers is deductible from the taxpayer's gross income.

(f) **Jointly-furnished services.** Amounts actually paid by a taxpayer to another person subject to the public utility tax as the latter's portion of the consideration due for services jointly furnished by both are deductible under RCW 82.16.050(3). This includes the amount paid to a ferry company for the transportation of a vehicle and its contents (but not amounts paid to state owned or operated ferries) when such vehicle is carrying freight or passengers for hire and is being operated by a person engaged in the business of urban transportation or motor transportation. This does not include amounts paid for the privilege of moving such vehicles over toll bridges. This deduction applies only to the purchase of services and does not include the purchase of commodities.

(i) **Example.** Customer X hires ABC Transport (ABC) to haul goods from Tacoma to a manufacturing facility at Bellingham. ABC subcontracts part of the haul to XYZ Freight (XYZ) and has XYZ haul the goods from Tacoma to Everett where the goods are loaded into ABC's truck and transported to Bellingham. ABC may deduct the payments it makes to XYZ as a jointly-furnished service.

(ii) **Example.** City A's water department purchases water from City B's water department. City A sells the water to its customers. City A may not take a deduction for its payment to City B's water department as a jointly-furnished service. The service or sale of water to the end consumers was made solely by City A and was not a jointly-furnished service. City B, however, may take a deduction for its sales of water to City A since this is a sale of commodities to a person in the same public service business, for resale within this state. (See subsection (6)(e) of this rule for information on the deduction applicable to sales of commodities for resale.)

(g) **Transportation of commodities to export facilities.** Amounts derived from the transportation of commodities from points of origin in this state to an export elevator, wharf, dock, or ship side on tidewater or navigable tributaries thereto

This draft is provided for discussion purposes only to determine what topics a possible proposed rule might address. This discussion draft is under no circumstances to be used to determine a tax liability and/or eligibility for tax exemptions.

are deductible under RCW 82.16.050(8), but only when such commodities are forwarded, without intervening transportation, by vessel, in their original form, to an interstate or foreign destination. This deduction is not available, however, when the point of origin and the point of delivery to such export elevator, wharf, dock, or ship side are located within the corporate limits of the same city or town.

Example. AB Transport moves freight by tug and barge from points in Washington to terminal facilities at tidewater ports in Washington. The freight is subsequently shipped from the ports by vessel to interstate and foreign destinations. AB Transport may deduct the income from these shipments under RCW 82.16.050(8).

(h) Interstate transportation of persons or property. Amounts derived from transporting persons or property by air, rail, water, or by motor transportation equipment where either the origin or destination of the haul is outside the state of Washington.

(i) Interstate transportation of commodities. Amounts derived from the transportation of commodities from points of origin in this state to final destination outside this state, or from points of origin outside this state to final destination in this state are deductible under RCW 82.16.050(8) where the carrier grants to the shipper the privilege of stopping the shipment in transit at some point in this state for the purpose of storing, manufacturing, milling, or other processing, and thereafter forwards the same commodity, or its equivalent, in the same or converted form, under a through freight rate from point of origin to final destination.

(j) Sales of electricity for resale or for consumption outside Washington. Amounts derived from the production, sale, or transfer of electrical energy for resale within or outside the state of Washington or for consumption outside the state are deductible under RCW 82.16.050(9). These sales of electricity are also not subject to the manufacturing B&O tax. RCW 82.04.310.

(k) Water distribution by a nonprofit water association. Amounts derived from the distribution of water by a nonprofit water association and used for capital improvements, related to the water distribution service, by that association are deductible under RCW 82.16.050(10).

(l) Distribution of irrigation water. Amounts derived from the distribution of water through an irrigation system, for irrigation purposes are deductible under RCW 82.16.050(7). The phrase "for irrigation purposes" means water that is used solely for nourishing plant life. Thus, when a water distribution business supplies potable water and some of the water is

This draft is provided for discussion purposes only to determine what topics a possible proposed rule might address. This discussion draft is under no circumstances to be used to determine a tax liability and/or eligibility for tax exemptions.

segregated and separately supplied solely for the nourishing of plant life as opposed to water supplied for domestic, municipal, or industrial uses, charges for such separately supplied water may be deducted from gross income subject to public utility tax. In order to meet the "irrigation system" requirement, a water distribution business must demonstrate that its distribution system has turnouts or similar connections for irrigation purposes that are separate from service hookups or similar connections for domestic, industrial, or municipal uses. Under the appropriate circumstances, the use of separate meters and cross-connection or back flow devices may be evidence of such separate connections.

(m) **Low density light and power businesses.** RCW 82.16.053 provides a deduction for light and power businesses having seventeen or fewer customers per mile of distribution power lines with retail power rates that exceed the state average power rate.

The statute requires the department to determine the state average electric power rate each year and make this rate available to these businesses. This rate and additional information regarding this deduction are provided in Excise Tax Advisory 2002.16.179, that can be found via the department's web site at <http://dor.wa.gov>. The information may also be obtained by contacting the department's taxpayer information center at 1-800-647-7706, or by writing the department at:

Taxpayer Information and Education
Department of Revenue
PO Box 47478
Olympia, WA 98504-7478

(n) **Conservation-Electrical energy and gas.** RCW 82.16.055 provides deductions relating to the production or generation of energy from cogeneration or renewable resources, and for measures to improve the efficiency of energy end use.

(i) The deductions apply only to new facilities for the production or generation of energy from cogeneration or renewable energy resources or measures to improve the efficiency of energy end use on which construction or installation was begun after June 12, 1980, and before January 1, 1990. In addition, the measures or projects must be, at the time they are placed in service, reasonably expected to save, produce, or generate energy at a total incremental system cost per unit of energy delivered to end use which is less than or equal to the incremental system cost per unit of energy delivered to end use from similarly available conventional energy resources which utilize nuclear energy or fossil fuels and which the gas or electric utility could acquire to meet energy demand in the same time period. The following may be deducted from a taxpayer's gross income:

This draft is provided for discussion purposes only to determine what topics a possible proposed rule might address. This discussion draft is under no circumstances to be used to determine a tax liability and/or eligibility for tax exemptions.

(A) Amounts equal to the cost of production at the plant for consumption within the state of Washington of electrical energy produced or generated from cogeneration as defined in RCW 82.35.020; and

(B) Amounts equal to the cost of production at the plant for consumption within the state of Washington of electrical energy or gas produced or generated from renewable energy resources such as solar energy, wind energy, hydroelectric energy, geothermal energy, wood, wood wastes, municipal wastes, agricultural products and wastes, and end-use waste heat; and

(C) Amounts expended to improve consumers' efficiency of energy end-use or to otherwise reduce the use of electrical energy or gas by the consumer.

(ii) The deductions provided by in (A) and (B) may be taken for a period not exceeding thirty years after the project is placed in operation. Any recurring costs determined to be eligible for deduction under this rule will cease to be eligible in whole or part at the time of termination of any energy conservation measure or project which originally authorized the deduction under RCW 82.16.055.

(iii) The department will rule upon eligibility of such facilities and the attendant cost of energy production for purposes of determining deductibility from the public utility tax upon an individual project basis using the cost figures reported on the appropriate federal energy regulatory commission schedules that are required to be filed by public and private electric utilities and by private gas utilities. The allowable deductions consist of production expenses, eligible fuel costs, and book depreciation of capital costs. Eligible fuel costs are all fuels if used for cogeneration or nonfossil fuel costs if not a cogeneration facility. Plans for the construction of such facilities and pertinent details, including energy production and production costs projections relative to the planned facility or construction details and energy production costs for facilities already in service must be submitted to the department for determination of eligibility for tax deductions.

(o) **Conservation-Water.** RCW 82.16.0431 formerly provided two deductions to water distribution businesses as an incentive to help reduce their customers' use of water. Both deductions were effective May 10, 2001, through June 30, 2003. For either deduction, taxpayers must have reported the total deductions taken and the resulting tax savings to the department at the time the tax was due. Water distribution businesses were able to deduct the following:

(i) Seventy-five percent (75%) of amounts expended to improve consumers' efficiency of water use or to otherwise reduce the use of water by the consumer when the expenditures were

This draft is provided for discussion purposes only to determine what topics a possible proposed rule might address. This discussion draft is under no circumstances to be used to determine a tax liability and/or eligibility for tax exemptions.

implementing elements of the conservation plan within a state approved water system plan or a small water system management program; and

(ii) Seventy-five percent (75%) of amounts received for water services supplied by an entity that held a permit under RCW 90.46.030 when the water supplied was reclaimed water as defined in RCW 90.46.010.

(7) Credit available to light and power businesses with 12,000 or fewer customers. Light and power businesses may take a credit up to twenty five thousand dollars (\$25,000) against their public utility tax liability each fiscal year. The credit is equal to fifty percent (50%) of contributions made during a fiscal year to an electric utility rural economic development revolving fund. Prior to July 1, 2004, credits could be taken per calendar year. Expenditures from the electric utility rural economic development revolving fund must be made solely on qualifying projects. The total amount of credits available statewide on a fiscal year basis for all qualified businesses is three hundred fifty thousand dollars (\$350,000). The department will allow earned credits on a first-come, first-served basis. Unused earned credits may be carried over to subsequent years. Tax credits can be earned up to June 30, 2011. For additional information see RCW 82.16.0491.

(8) Commonly asked questions. This subsection provides answers to a number of commonly asked questions regarding the taxability of certain activities and the resulting incomes.

(a) Are amounts derived from interest and penalties taxable? Amounts charged to customers as interest or penalties are generally subject to the service and other activities B&O tax. This includes interest charged for failure to timely pay for utility services or for incidental services such as meter installation which are performed prior to the customer receiving utility services. Any interest or penalty resulting from the failure to timely pay a local improvement district or utility local improvement district assessment is not subject to public utility or B&O taxes.

(b) Are insurance proceeds and amounts received as payment of damages taxable? Amounts received from insurance companies in payment of losses and amounts received from individuals and others in payment of damages caused by them to the utility's plant or equipment are not subject to public utility or B&O tax.

(c) Is income received by a public utility district as reimbursement for moving its facilities taxable? When a public utility district moves its facilities for the benefit of a business or individual, the income received is not considered part of the gross operating revenue of the public utility. Reimbursements received from businesses or individuals are

This draft is provided for discussion purposes only to determine what topics a possible proposed rule might address. This discussion draft is under no circumstances to be used to determine a tax liability and/or eligibility for tax exemptions.

subject to service B&O tax. For example, if residents of a housing area contracted with a power company to convert overhead wiring to underground for aesthetic purposes, the income to the power company would be taxable under service and other B&O tax. When eminent domain proceedings or actions of a governmental agency result in the forced movement of the facilities of a public utility, reimbursements for such moves are considered liquidated damages and are not subject to either public utility or B&O taxes.

(d) What is the taxability of amounts received from the wheeling of electricity? Light and power businesses commonly engage in the wheeling of electricity for others. "Wheeling" is the activity of delivering or distributing electricity owned by others using power lines and equipment of the person doing the wheeling. Wholesaling wheeling is done between two utilities, and retail wheeling is when the electricity reaches an end use customer. Amounts received by light and power businesses for the wheeling of electricity for others within the state are transmission charges and subject to public utility tax. Wheeling into or out of state is exempt. (See WAC 458-20-193D.)

(e) Are exchanges of electricity subject to public utility tax? Light and power businesses also frequently enter into power exchange agreements. An exchange is a transaction that involves a delivery or transfer of electrical energy by one party to another for which the second party agrees, subject to the terms and conditions of the agreement, to deliver electrical energy at the same or another time. An exchange transaction is a sale of electricity. There is no specific exemption or deduction that applies to an exchange of electrical energy. However, exchanges of electrical energy between light and power businesses may qualify for deduction from gross income in computing the public utility tax under RCW 82.16.050(2) and 82.16.050(9) (see subsection (6)(e) and (6)(j) of this rule). Examples of deductible exchange transactions include but are not limited to the following:

(i) The exchange of electric power for electric power between one light and power business and another light and power business;

(ii) The transmission of electric power by one light and power business to another light and power business pursuant to the agreement for coordination of operations among power systems of the pacific northwest executed as of September 15, 1964;

(iii) The acquisition of electric power by the Bonneville Power Administration (BPA) for resale to its Washington customers in the light and power business;

(iv) The residential exchange of electric power entered into between a light and power business and the administrator of the

This draft is provided for discussion purposes only to determine what topics a possible proposed rule might address. This discussion draft is under no circumstances to be used to determine a tax liability and/or eligibility for tax exemptions.

BPA pursuant to the Pacific Northwest Electric Power Planning and Conservation Act, P.L. 96-501, Sec. 5(c), 16 U.S.C. § 839(c). In some cases, power is not physically transferred, but the purpose of the residential exchange is for BPA to pay a "subsidy" to the exchanging utilities. For public utility tax reporting purposes, these subsidies will be treated as a nontaxable adjustment (rebate or discount) for purchases of power from BPA.

(f) Are amounts received from energy providers attributable to energy conservation programs and services includible in gross income? For purposes of reporting public utility tax liability, utilities must include and report BPA and other providers' cash grants, reimbursements, and buy-back payments attributable to energy conservation programs as gross income of the business. "Gross income" also includes the value of electrical energy units from BPA for performing approved energy conservation services.

(g) Do ports owe public utility tax on gross income from charges for the berthing or mooring of vessels where such activity is a part of the port's functions? Charges for tying up to the dock are subject to public utility tax. These charges are for local services or operations that are part of the taxpayers' port and dock functions.