

This rule was adopted on December 3, 2007 and becomes effective January 3, 2008. 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.

AMENDATORY SECTION (Amending WSR 90-17-068, filed 8/16/90, effective 9/16/90)

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, 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 explains how this use tax applies and how it is reported to the department.

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

(a) "Brokered natural gas" (~~(as used in this section is)~~) 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" (~~(as used in this section shall be)~~) means the purchasing price of the gas to the consumer and generally (~~(shall)~~) must include all or part of the transportation charges as explained later.

~~((+2))~~ (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.

~~((+3))~~ (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)(c). The rate of tax applies to the value of the gas consumed or used and is imposed upon the consumer.

~~((+4))~~ (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.

~~((+5))~~ (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.

~~((6))~~ (7) Credits against the taxes.

(a) A credit is allowed against the use taxes described in this section 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 ~~((shall))~~ 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.

~~((7))~~ (8) Reporting requirements. The person who delivers the gas to the consumer ~~((shall))~~ must make and submit a report to the ~~((miscellaneous))~~ local sales and use tax section of the department's taxpayer account administration division ~~((of the department))~~ by the fifteenth day of the month following a calendar quarter. The report ~~((shall))~~ must contain the following information:

(a) The name and address of the consumer to whom gas was delivered,

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

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

~~((8))~~ (9) Collection and administration. ~~((A separate quarterly return for))~~ Use tax on brokered natural gas ~~((shall))~~ must be filed with the department by the consumer on ~~((or before the last day of the month following a calendar quarter))~~ forms and records prescribed by the department. Such forms and records must be accompanied by the remittance of the tax. ~~((The collection and administration for the cities of the use tax described in this section shall be done by the department under RCW 82.14.050.))~~ The department's authority to collect this tax is found in RCW 82.12.020 and 82.14.050.