



# Special Notice

WASHINGTON STATE DEPARTMENT OF REVENUE

MAY 11, 2010

## Brokered Natural Gas Use Tax Imposed Where the Gas is Burned or Stored

### Introduction

Engrossed Substitute House Bill (ESHB) 3179 (Chapter 127, Laws of 2010) clarifies the place of “use” for purposes of the state and local use tax on natural gas and manufactured gas.

### Current law

Washington imposes a separate and distinct use tax on the use of natural gas and manufactured gas, if the person who sold the gas to the consumer has not paid the state public utility tax. This tax is commonly referred to as the brokered natural gas (BNG) use tax. Cities may also impose a local BNG use tax. The BNG use tax rates are identical to state and local utility tax rates on the sale of natural gas and manufactured gas.

On May 20, 2008, in *G-P Gypsum Corp. v. Dept of Revenue*, 144 Wn. App. 664 (2008), the Washington Court of Appeals held that, for purposes of the BNG use tax, the place of first use is where the taxpayer initially exercises dominion and control over the gas and not the location where it is consumed by the taxpayer. This holding reversed the Department of Revenue’s longstanding interpretation that the BNG use tax is imposed at the location where the gas is consumed by the taxpayer, which is generally the place where the gas is burned.

The Department appealed the Court of Appeals’ decision and, on November 17, 2009, the Washington State Supreme Court heard oral arguments in the appeal. No final decision has been issued as of the date of publication of this notice.

### New law

Effective June 10, 2010, ESHB 3179 defines “use,” for purposes of the BNG use tax, to be the first act within this state by which the taxpayer consumes the gas by burning the gas or storing the gas in the taxpayer’s own facilities for later consumption by the taxpayer. Accordingly, for periods beginning June 10, 2010, the BNG use tax is imposed at the time and location at which the taxpayer burns the gas or stores the gas for later consumption.

For periods before June 10, 2010, the place of first use for purposes of the BNG use tax will depend on the outcome of the G-P Gypsum litigation. Depending on the holding of the Supreme Court in the G-P Gypsum appeal, refunds of local BNG tax may be required. Additional information will be made available when the G-P Gypsum decision is final.

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**How do I report?**

Taxpayers must report local BNG use tax based on the location where the gas is consumed (burned or stored at their own facility). The tax is due in the 52 cities that impose a local BNG use tax. The city rates vary and are listed on the Natural Gas Use Tax Addendum.