



RULE-MAKING ORDER PERMANENT RULE ONLY

CR-103P (December 2017) (Implements RCW 34.05.360)

CODE REVISER USE ONLY

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STATE OF WASHINGTON
FILED

DATE: April 30, 2019

TIME: 7:45 AM

WSR 19-10-057

Agency: Department of Revenue

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: The rule is being amended to reflect the expiration of the partial retail sales and use tax exemption on September 30, 2017, for systems generating at least 1 kilowatt but less than 500 kilowatts of electricity.

Citation of rules affected by this order:

New:
Repealed:
Amended: WAC 458-20-263
Suspended:

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

Other authority:

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 19-05-068 on February 19, 2019 (date).
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: N/A
Address:
Phone:
Fax:
TTY:
Email:
Web site:
Other:

**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	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Federal rules or standards:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Recently enacted state statutes:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

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

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted on the agency's own initiative:

New	<u>0</u>	Amended	<u>1</u>	Repealed	<u>0</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted using:

Negotiated rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Pilot rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Other alternative rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

Date Adopted: April 30, 2019

Name: Kevin Dixon

Title: Program Manager

Signature:



AMENDATORY SECTION (Amending WSR 19-02-057, filed 12/27/18, effective 1/27/19)

WAC 458-20-263 Exemptions from retail sales and use taxes for qualifying electric generating systems using renewable energy sources. RCW 82.08.962 and 82.12.962 provide exemptions from the "retail sales tax" described in chapter 82.08 RCW and the "use tax" described in chapter 82.12 RCW paid with respect to the sale or use of machinery and equipment used directly in generating electricity using qualified renewable energy sources. This rule explains how these exemptions apply and is divided into three parts as follows:

PART 1: Exemptions as Applied to Qualified Solar Systems;

PART 2: Exemptions as Applied to Qualified Nonsolar Renewable Energy Systems; and

PART 3: General Provisions.

PART 1

Exemptions as Applied to Qualified Solar Systems

(101) Solar systems that generate (~~one kilowatt or~~) more than 500 kilowatts.

(a) **Partial exemptions.** RCW 82.08.962 and 82.12.962 provide an exemption, in the form of a remittance (refund) from the department, equal to seventy-five percent of the retail sales and use taxes paid with respect to the sale or use of machinery and equipment used directly in solar energy systems capable of generating (~~at least 1000 watts (one kilowatt)~~) more than 500 kilowatts of electricity. The exemption also applies to amounts paid for labor and services rendered in respect to installing such machinery and equipment. The nameplate DC power rating of a system, which is an industry standard, is used to determine whether the solar energy system is capable of generating (~~1000 watts (one kilowatt) or~~) more than 500 kilowatts of electricity. The buyer must pay the total amount of the retail sales or use taxes due with the respect to the sale or use of the qualifying 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 retail sales and use taxes paid. This partial exemption is effective beginning July 1, 2011, and expires January 1, 2020.

(b) **Required annual tax performance report.** Beginning January 1, 2018, buyers applying for a refund must complete and submit an annual tax performance report. The annual tax performance report must be filed with the department by May 31st of the year immediately following the year for which the refund is claimed. For more information see Part 3, subsection (301)(c) of this rule.

(102)(a) Solar systems that generate at least one kilowatt and no more than 500 kilowatts.

(b) Partial exemptions. RCW 82.08.962 and 82.12.962 provide an exemption, in the form of a remittance (refund) from the department, equal to seventy-five percent of the retail sales and use taxes paid with respect to the sale or use of machinery and equipment used directly in solar energy systems capable of generating at least one kilowatt and no more than 500 kilowatts of electricity. The exemption also applies to amounts paid for labor and services rendered in respect to installing such machinery and equipment. The nameplate DC power rating of a system, which is an industry standard, is used to determine whether the solar energy system is capable of generating at

least one kilowatt and no more than 500 kilowatts of electricity. The buyer must pay the total amount of the retail sales or use taxes due with the respect to the sale or use of the qualifying 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 retail sales and use taxes paid. This partial exemption is effective beginning July 1, 2011, and expired September 30, 2017.

PART 2

Exemptions as Applied to Qualified Nonsolar Renewable Energy Systems

(201) **Qualified nonsolar renewable energy systems generating one kilowatt or more.**

(a) **Partial exemptions.** RCW 82.08.962 and 82.12.962 provide an exemption equal to seventy-five percent of the retail sales and use taxes paid with respect to the sale or use of machinery and equipment used directly in a renewable energy system employing a qualified power source that generates at least 1000 watts (one kilowatt) or more of electricity. This exemption also applies to amounts paid for labor and services rendered in respect to installing such machinery and equipment. The buyer is eligible for the exemption in the form of a remittance (refund) from the department and must have paid to the seller or to the department the total amount of retail sales or use taxes due with respect to the sale or use of the machinery, equipment, and labor charges to install the same. To claim the exemption, the buyer must apply to the department for a refund. See Part 3, subsection (301) of this rule for instructions on how to file a claim for refund. This partial exemption is effective beginning July 1, 2011, and expires January 1, 2020.

(b) **Refund procedure.** Beginning July 1, 2011, the buyer is eligible for the exemption in the form of a remittance (refund) from the department. The buyer must pay the total amount of the retail sales or use taxes due with the respect to the sale or use 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 retail sales and use taxes paid. These exemptions expire on January 1, 2020.

(c) **Required tax performance report.** Beginning January 1, 2018, buyers applying for a refund must complete and submit an annual tax performance report. The annual tax performance report must be filed with the department by May 31st of the year immediately following the year for which the refund is claimed. For more information see Part 3, subsection (301)(c) of this rule.

(202) **Qualified power sources.** The partial exemption permitted under Part 2, subsection (201)(a) of this rule applies only with respect to a renewable energy system that employs one of the following qualified power sources:

- Fuel cells;
- Wind;
- Biomass energy;
- Tidal or wave energy;
- Geothermal resources; and
- Technology that converts otherwise lost energy from exhaust.

(203) **Definitions for these power sources.** For purposes of Part 2 of this rule, 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.

PART 3 General Provisions

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

(a) **Required application.** This exemption, in the form of a remittance (refund) from the department, equals seventy-five percent of the retail sales and use taxes paid with respect to the sale or use of the qualifying machinery and equipment. The form that the buyer must submit to the department is the *Application for Sales Tax Refund on Purchases & Installation of Qualified Renewable Energy Equipment*. This form 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 on the form.

(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 performance report.** Effective January 1, 2018, any person claiming a seventy-five percent refund must electronically file an annual tax performance report with the department each year. This applies to buyers of solar systems generating electricity of more than ten kilowatts and other qualified renewable energy systems generating electricity of one kilowatt or more.

(d) **Separate tax performance report for each system.** The buyer must file a separate tax performance report for each system owned or operated in Washington. The annual tax performance report is due by May 31st of the year immediately following the year for which the exemption is claimed. (Systems installed in 2017 require a tax performance report to be completed by May 31, 2018.)

(e) **Limitation on frequency for claiming exemption.** A buyer may not apply to the department for a remittance (refund) more frequently than once per quarter.

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

(302) **What is "machinery and equipment"?** For purposes of RCW 82.08.962 and 82.12.962, "machinery and equipment" means fixtures, de-

vices, and support facilities that are integral and necessary to the generation of electricity from qualifying sources of power.

A "support facility" is a part of a building, structure, or improvement used to contain or steady a fixture or device. A support facility must be specially designed and necessary for the proper functioning of the fixture or device and must perform a function beyond being a building, structure, or improvement. It must have a function relative to a fixture or a device. To determine if some portion of a building is a support facility, the department examines those parts of the building. 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 a 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.

(303) When is machinery and equipment "used directly" in generating electricity? Machinery and equipment is used directly to generate electricity when it is used to:

- (a) Capture the energy of the qualifying source of power;
- (b) Convert that energy to electricity; and
- (c) Store, transform, or transmit that electricity for entry into or operation in parallel with electric transmission and distribution systems.

(304) Examples of qualifying machinery and equipment. This section provides examples of machinery and equipment that may be used directly in generating electricity and could qualify for the exemptions from retail sales and use taxes. 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) **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.

(305) **Installation charges.** The exemptions from retail sales and use taxes addressed in this rule apply to installation charges for qualifying machinery and equipment, including charges for labor and services. There are no exemptions from retail sales and use taxes for:

(a) 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;

(b) Tangible personal property, such as a crane or forklift, purchased or rented by the buyer, the contractor, or the installer to be used to install qualifying machinery and equipment; or

(c) Services that were included in the construction contract for design, planning, studies, project management, or other charges not directly related to the actual labor for installing the qualifying machinery and equipment.