



EXPEDITED RULE MAKING

CR-105 (December 2017) (Implements RCW 34.05.353)

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STATE OF WASHINGTON
FILED

DATE: February 19, 2019

TIME: 10:55 AM

WSR 19-05-068

Agency: Department of Revenue

Title of rule and other identifying information: (describe subject) WAC 458-20-263, *Exemptions from retail sales and use taxes for qualifying electric generating and thermal heat producing systems using renewable energy sources.*

Purpose of the proposal and its anticipated effects, including any changes in existing rules: Being amended to reflect the changes made in 2017 ESSB 5939.

Reasons supporting proposal: To clarify only those solar systems generating 500 kilowatts of electricity or more qualify for the partial retail sales and use tax exemption when first put into use after September 30, 2017.

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

Statute being implemented: RCW 82.08.962 and 82.12.962.

Is rule necessary because of a:

- | | | |
|-------------------------|------------------------------|--|
| Federal Law? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If yes, CITATION:

Name of proponent: (person or organization) Department of Revenue

- Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
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Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None.

Expedited Adoption - Which of the following criteria was used by the agency to file this notice:

- Relates only to internal governmental operations that are not subject to violation by a person;
- Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;
- Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect;
- Content is explicitly and specifically dictated by statute;
- Have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or
- Is being amended after a review under RCW 34.05.328.

Expedited Repeal - Which of the following criteria was used by the agency to file notice:

- The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;
- The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;
- The rule is no longer necessary because of changed circumstances; or
- Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

Explanation of the reason the agency believes the expedited rule-making process is appropriate pursuant to RCW 34.05.353(4): The expedited rule-making process is applicable to this rule because the Department is correcting a typographical error that impacts the scope of the exemption provided by statute.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO

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AND RECEIVED BY (date) April 22, 2019

Date: February 19, 2019

Name: Erin T Lopez

Title: Rules Coordinator

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 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.

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