

PUBLIC UTILITY TAX
Chapter 82.16 RCW

Tax Base Gross income derived from operation of public and privately owned utilities, including the general categories of transportation, communications, and the supply of energy and water. Income from utility operations is taxed under the public utility tax and is in lieu of the B&O tax; other income of the utility firm (e.g. retail sales of tangible personal property) is subject to B&O tax. Unlike the B&O tax which pyramids (i.e. different firms may be taxable on income derived from the same product), the public utility tax applies only on sales to consumers.

Tax Rate Six different rates apply, depending upon the specific utility activity. The current rates, including permanent surtaxes, are:

Distribution of water	5.029%
Generation/distribution of electrical power.....	3.873
Telegraph companies, distribution of natural gas, and collection of sewerage	3.852
Urban transportation and watercraft vessels under 65 feet in length.....	0.642
Hauling of logs on public highways (until 6/30/2013)	1.3696
Railroads, railroad car companies, motor transportation, and all other public service businesses	1.926

Motor and urban transportation include the operation of motor driven vehicles used in transporting persons or property on a for-hire basis. The urban classification applies when the origination and destination: (1) is within the same city, (2) extends no more than five miles beyond the same city, or (3) is between cities that are no more than five miles apart. Other for-hire transportation is reported under the motor classification.

Levied by State

Many cities levy similar taxes on public utilities that operate within their jurisdiction. See section on municipal business taxes.

Administration

Department of Revenue. Utility firms report either monthly, quarterly, or annually on the Public Utility Addendum to the Combined Excise Tax Return. Monthly taxpayers must file electronically and pay by electronic funds transfer.

Recent Collections (\$000)

<u>Fiscal Year</u>	<u>Collections</u>	<u>% Change</u>	<u>% of All State Taxes</u>
2009	\$386,101	1.5%	2.5%
2008	380,538	4.2	2.3
2007	365,173	7.4	2.2
2006	339,874	11.9	2.2
2005	303,778	3.7	2.2
2004	292,831	8.5	2.3
2003	269,821	(1.7)	2.2
2002	274,581	2.6	2.3
2001	267,624	8.6	2.3
2000	246,383	11.3	2.1

Based on accrued tax liability for Fiscal Year 2009, the following indicates the breakdown of tax liability by major type of utility:

Distribution of electricity	-	58.2%
Distribution of natural gas	-	19.9
Distribution of water	-	11.3
Collection of sewerage	-	2.4
Motor/rail transportation	-	6.4
Urban transportation	-	0.8
Other public service	-	1.0

Distribution of Receipts

Most of the public utility tax goes to the state general fund - 96.8 percent in Fiscal Year 2009. The remainder of the receipts are earmarked for the public works assistance account which provides financial assistance to local government for maintenance of public facilities: (1) 20 percent of the basic 4.7 percent tax on water distribution, and (2) 60 percent of the basic 3.6 percent tax on sewerage collection (both excluding the 7 percent surtax).

Exemptions, Deductions and Credits

EXAMPLES OF EXEMPTIONS AND CREDITS

- income less than \$2,000 per month;

- providing ride-sharing for commuters and transportation of elderly and handicapped persons;
- income of small irrigation districts;
- electricity sold to certain electrolytic processing businesses (expires 6/30/2019);
- electric power or natural/manufactured gas sold to aluminum smelters;
- credit for one-half of contributions made to rural electric utility economic development projects (expires 6/30/2011);
- credit for income of electric/gas utilities from sales of power to direct service industries (DSIs);
- credit for electric and natural gas utilities that provide billing discounts to low-income customers;
- credit for payments for self-generated energy (expires 6/30/2020);
- credit for investment cost recovery payments (expires 6/30/2016).

EXAMPLES OF DEDUCTIONS

- purchases for resale, cash discounts, and credit losses;
- receipts from taxes (municipal utilities pay the state utility tax but may deduct local taxes levied to support the utility);
- income from interstate transportation of persons or property;
- income from providing public transit service by a public transportation agency;
- payments by one utility to another for jointly providing the same service to customers;
- revenue derived from the distribution of water by irrigation districts;
- interstate transportation via "through freight billing" and shipments to ports for export;
- distribution of water by nonprofit water associations;
- processing and disposal of sewerage (public utility tax applies only to collection);
- costs of producing energy via cogeneration (projects begun before 1990) and expenditures for more efficient energy use;
- payments to residential builders/owners for costs of meeting the state energy code;
- payments by electric and gas utilities to customers for improved energy efficiency;
- exported power;
- a portion of the income for power companies whose customers are geographically dispersed;
- income from hauling agricultural products to marine export facilities;
- sales of power for resale, including to entities that are not subject to public utility tax.

History

Utility operations were included under the 1933 Business Activities Tax. Rates were 3 percent for most utilities, 2 percent for distribution of gas, 0.5 percent for urban transportation and vessels, and 1.5 percent for all other public services. Two years later the public utility tax was established as a separate tax, but the same rates were retained.

Surtaxes were applied in the following years: 1951 (10 percent), 1957 (increased to 20 percent); 1982 (4 percent in April, increased to 7 percent in July). Other major changes to the tax occurred as follows:

- 1971 - rate for distribution of gas increased from 2.4 to 3 percent;
- 1981 - competitive telephone service subject to sales tax instead of public utility tax;
- 1982 - lower tax rate for distribution of gas eliminated, increasing the rate to 3.6 percent;
- 1983 - telephone service is a retail sale subject to sales/B&O tax, not public utility tax;
- 1985 - funding for local public works via public utility tax: water distribution increased from 0.3852 to 0.5029 percent, collection of garbage transferred from B&O tax to 0.5029 percent public utility tax, and collection of sewerage transferred from B&O tax to 0.3852 percent public utility tax;

- 1986 - garbage collection returned to B&O tax and new refuse collection tax; warehousing transferred from public utility to B&O tax;
- 1989 - pursuant to a court decision in the Washington Water Power case, generation of electric power for sale out of state is exempt from public utility and B&O tax; rate increase from 0.3852 to 3.873 percent for power produced in Washington;
- 1993 - deduction for income that represents the cost of capital facilities received by municipal utilities from customers is repealed;
- 1994 - two new deductions established: (1) for payments by employers in conjunction with commuter trip reduction programs, and (2) a portion of the income of power companies whose customers are geographically dispersed, based on wholesale power costs and the state average electric power rate;
- 1996 - rate reduction from 3.852 to 1.926 percent for railroad/railroad car companies;
- 2001 - deduction provided for electric and natural gas companies that provide rate discounts to low-income customers; tax credit for natural gas purchased to supply direct service industries;
- 2004 - sales of electric power to aluminum smelters;
- 2005 - tax credit allowed for payments to customers that generate their own electrical power via renewable resources (expires 6/30/2020);
- 2009 - rate reduction from 1.8 to 1.28 percent (plus 7% surtax) for transporting logs on public highways (expires 6/30/2013).

Discussion/Major Issues

The public utility tax is reported by about 8,700 firms. Approximately 135 electric companies account for nearly 60 percent of the tax liability. The tax is essentially passed on to consumers for regulated utilities, since it is considered in setting rates that may be charged for utility service. Thus, the tax has the effect of being an indirect sales tax on utility services. Some utility services, such as power and water, are essential household expenditures. A consumption tax on these necessary services is quite regressive because of the proportionately heavy impact for low-income households.

The public utility tax on transportation generally applies only to trips that originate and terminate within the state. Transportation that crosses the state's boundaries is considered to be interstate commerce and not taxable under the U.S. Constitution. It is believed, however, that the state could tax the in-state portion of certain interstate transportation activities, particularly the hauling of goods, if a reasonable apportionment formula could be developed.

However, the taxation of flights that carry passengers or U.S. mail within the state is preempted by federal law as explained in Excise Tax Advisory 2006.16.179, issued on September 6, 2001. Federal law also generally preempts taxing the in-state transportation of passengers traveling in interstate commerce by motor carrier (e.g., bus) and the in-state rail transportation of passengers, mail, or express carried by Amtrak or a rail carrier subsidiary of Amtrak.