

---

**SUBSTITUTE SENATE BILL 5827**

---

**State of Washington**

**64th Legislature**

**2015 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Warnick, Mullet, Conway, Hobbs, Litzow, Hatfield, Rivers, Brown, Parlette, Lias, McAuliffe, Habib, Ericksen, Baumgartner, Fain, and Hewitt)

READ FIRST TIME 04/02/15.

1 AN ACT Relating to providing a sales and use tax exemption for  
2 eligible server equipment installed in certain data centers; amending  
3 RCW 82.08.986 and 82.12.986; and creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** This section is the tax preference  
6 performance statement for the sales and use tax exemption contained  
7 in RCW 82.08.986 and 82.12.986. This performance statement is only  
8 intended to be used for subsequent evaluation of the tax preference.  
9 It is not intended to create a private right of action by any party  
10 or be used to determine eligibility for preferential tax treatment.

11 (1) The legislature categorizes this sales and use tax exemption  
12 as one intended to improve industry competitiveness, as indicated in  
13 RCW 82.32.808(2)(b).

14 (2) It is the legislature's specific public policy objective to  
15 improve industry competitiveness. It is the legislature's intent to  
16 provide a sales and use tax exemption on eligible server equipment  
17 and power infrastructure installed in eligible computer data centers,  
18 charges made for labor and services rendered in respect to installing  
19 eligible server equipment, and for construction, installation,  
20 repair, alteration, or improvement of eligible power infrastructures  
21 in order to increase investment in data center construction in rural

1 Washington counties, thereby adding real and personal property to  
2 state and local property tax rolls, thereby increasing the rural  
3 county tax base.

4 (3) If a review finds that the rural county tax base is increased  
5 as a result of the construction of computer data centers eligible for  
6 the sales and use tax exemption in RCW 82.08.986 and 82.12.986, then  
7 the legislature intends to extend the expiration date of the tax  
8 preference.

9 (4) In order to obtain the data necessary to perform the review  
10 in subsection (3) of this section, the joint legislative audit and  
11 review committee may refer to data available from the department of  
12 revenue regarding rural county property tax assessments.

13 **Sec. 2.** RCW 82.08.986 and 2012 2nd sp.s. c 6 s 302 are each  
14 amended to read as follows:

15 (1) An exemption from the tax imposed by RCW 82.08.020 is  
16 provided for sales to qualifying businesses and to qualifying tenants  
17 of eligible server equipment to be installed, without intervening  
18 use, in an eligible computer data center, and to charges made for  
19 labor and services rendered in respect to installing eligible server  
20 equipment. The exemption also applies to sales to qualifying  
21 businesses and to qualifying tenants of eligible power  
22 infrastructure, including labor and services rendered in respect to  
23 constructing, installing, repairing, altering, or improving eligible  
24 power infrastructure.

25 (2)(a) In order to claim the exemption under this section, a  
26 qualifying business or a qualifying tenant must submit an application  
27 to the department for an exemption certificate. The application must  
28 include the information necessary, as required by the department, to  
29 determine that a business or tenant qualifies for the exemption under  
30 this section. The department must issue exemption certificates to  
31 qualifying businesses and qualifying tenants. The department may  
32 assign a unique identification number to each exemption certificate  
33 issued under this section.

34 (b) A qualifying business or a qualifying tenant claiming the  
35 exemption under this section must present the seller with an  
36 exemption certificate in a form and manner prescribed by the  
37 department. The seller must retain a copy of the certificate for the  
38 seller's files.

1 (c) With respect to computer data centers for which the  
2 commencement of construction occurs after July 1, 2015, but before  
3 July 1, 2019, the exemption provided in this section is limited to no  
4 more than eight computer data centers, with total eligible data  
5 centers provided under this section limited to twelve from July 1,  
6 2015, through July 1, 2025. Tenants of qualified data centers do not  
7 constitute additional data centers under the limit. The exemption is  
8 available on a first-in-time basis based on the date the application  
9 required under this section is received by the department. Exemption  
10 certificates expire two years after the date of issuance, unless  
11 construction has been commenced.

12 (3)(a) Within six years of the date that the department issued an  
13 exemption certificate under this section to a qualifying business or  
14 a qualifying tenant with respect to an eligible computer data center,  
15 the qualifying business or qualifying tenant must establish that net  
16 employment at the eligible computer data center has increased by a  
17 minimum of:

18 (i) Thirty-five family wage employment positions; or

19 (ii) Three family wage employment positions for each twenty  
20 thousand square feet of space or less that is newly dedicated to  
21 housing working servers at the eligible computer data center. For  
22 qualifying tenants, the number of family wage employment positions  
23 that must be increased under this subsection (3)(a)(ii) is based only  
24 on the space occupied by the qualifying tenant in the eligible  
25 computer data center.

26 (b) In calculating the net increase in family wage employment  
27 positions:

28 (i) The owner of an eligible computer data center, in addition to  
29 its own net increase in family wage employment positions, may  
30 include:

31 (A) The net increase in family wage employment positions employed  
32 by qualifying tenants; and

33 (B) The net increase in family wage employment positions  
34 described in (c)(ii)(B) of this subsection (3).

35 (ii)(A) Qualifying tenants, in addition to their own net increase  
36 in family wage employment positions, may include:

37 (I) A portion of the net increase in family wage employment  
38 positions employed by the owner; and

39 (II) A portion of the net increase in family wage employment  
40 positions described in (c)(ii)(B) of this subsection (3).

1 (B) The portion of the net increase in family wage employment  
2 positions to be counted under this subsection (3)(b)(ii) by each  
3 qualifying tenant must be in proportion to the amount of space in the  
4 eligible computer data center occupied by the qualifying tenant  
5 compared to the total amount of space in the eligible computer data  
6 center occupied by all qualifying tenants.

7 (c)(i) For purposes of this subsection, family wage employment  
8 positions are new permanent employment positions requiring forty  
9 hours of weekly work, or their equivalent, on a full-time basis at  
10 the eligible computer data center and receiving a wage equivalent to  
11 or greater than one hundred fifty percent of the per capita personal  
12 income of the county in which the qualified project is located. An  
13 employment position may not be counted as a family wage employment  
14 position unless the employment position is entitled to health  
15 insurance coverage provided by the employer of the employment  
16 position. For purposes of this subsection (3)(c), "new permanent  
17 employment position" means an employment position that did not exist  
18 or that had not previously been filled as of the date that the  
19 department issued an exemption certificate to the owner or qualifying  
20 tenant of an eligible computer data center, as the case may be.

21 (ii)(A) Family wage employment positions include positions filled  
22 by employees of the owner of the eligible computer data center and by  
23 employees of qualifying tenants.

24 (B) Family wage employment positions also include individuals  
25 performing work at an eligible computer data center as an independent  
26 contractor hired by the owner of the eligible computer data center or  
27 as an employee of an independent contractor hired by the owner of the  
28 eligible computer data center, if the work is necessary for the  
29 operation of the computer data center, such as security and building  
30 maintenance, and provided that all of the requirements in (c)(i) of  
31 this subsection (3) are met.

32 (d) All previously exempted sales and use taxes are immediately  
33 due and payable for a qualifying business or qualifying tenant that  
34 does not meet the requirements of this subsection.

35 (4) A qualifying business or a qualifying tenant claiming an  
36 exemption under this section or RCW 82.12.986 must complete an annual  
37 report with the department as required under RCW 82.32.534.

38 (5)(a) The exemption provided in this section does not apply to:

39 (i) Any person who has received the benefit of the deferral  
40 program under chapter 82.60 RCW on: (A) The construction, renovation,

1 or expansion of a structure or structures used as a computer data  
2 center; or (B) machinery or equipment used in a computer data center;  
3 and

4 (ii) Any person affiliated with a person within the scope of  
5 (a)(i) of this subsection (5).

6 (b) If a person claims an exemption under this section and  
7 subsequently receives the benefit of the deferral program under  
8 chapter 82.60 RCW on either the construction, renovation, or  
9 expansion of a structure or structures used as a computer data center  
10 or machinery or equipment used in a computer data center, the person  
11 must repay the amount of taxes exempted under this section. Interest  
12 as provided in chapter 82.32 RCW applies to amounts due under this  
13 section until paid in full.

14 (6) (~~For purposes of this section the following definitions~~  
15 ~~apply~~) The definitions in this subsection apply throughout this  
16 section unless the context clearly requires otherwise((+)).

17 (a) "Affiliated" means that one person has a direct or indirect  
18 ownership interest of at least twenty percent in another person.

19 (b) "Building" means a fully enclosed structure with a weather  
20 resistant exterior wall envelope or concrete or masonry walls  
21 designed in accordance with the requirements for structures under  
22 chapter 19.27 RCW. This definition of "building" only applies to  
23 computer data centers for which commencement of construction occurs  
24 on or after July 1, 2015.

25 (c)(i) "Computer data center" means a facility comprised of one  
26 or more buildings, which may be comprised of multiple businesses,  
27 constructed or refurbished specifically, and used primarily, to house  
28 working servers, where the facility has the following  
29 characteristics: (A) Uninterruptible power supplies, generator backup  
30 power, or both; (B) sophisticated fire suppression and prevention  
31 systems; and (C) enhanced physical security, such as: Restricted  
32 access to the facility to selected personnel; permanent security  
33 guards; video camera surveillance; an electronic system requiring  
34 passcodes, keycards, or biometric scans, such as hand scans and  
35 retinal or fingerprint recognition; or similar security features.

36 (ii) For a computer data center comprised of multiple buildings,  
37 each separate building constructed or refurbished specifically, and  
38 used primarily, to house working servers is considered a computer  
39 data center if it has all of the characteristics listed in ~~((b))~~  
40 (c)(i)(A) through (C) of this subsection (6).

1 (iii) A facility comprised of one building or more than one  
2 building must have a combined square footage of at least one hundred  
3 thousand square feet.

4 ~~((e))~~ (d) "Electronic data storage and data management  
5 services" include, but are not limited to: Providing data storage and  
6 backup services, providing computer processing power, hosting  
7 enterprise software applications, and hosting web sites. The term  
8 also includes providing services such as e-mail, web browsing and  
9 searching, media applications, and other online services, regardless  
10 of whether a charge is made for such services.

11 ~~((d))~~ (e)(i) "Eligible computer data center" means a computer  
12 data center:

13 (A) Located in a rural county as defined in RCW 82.14.370;

14 (B) Having at least twenty thousand square feet dedicated to  
15 housing working servers, where the server space has not previously  
16 been dedicated to housing working servers; and

17 (C) For which the commencement of construction occurs:

18 (I) After March 31, 2010, and before July 1, 2011; ~~((e))~~

19 (II) After March 31, 2012, and before July 1, 2015; or

20 (III) After June 30, 2015, and before July 1, 2025.

21 (ii) For purposes of this section, "commencement of construction"  
22 means the date that a building permit is issued under the building  
23 code adopted under RCW 19.27.031 for construction of the computer  
24 data center. The construction of a computer data center includes the  
25 expansion, renovation, or other improvements made to existing  
26 facilities, including leased or rented space. "Commencement of  
27 construction" does not include soil testing, site clearing and  
28 grading, site preparation, or any other related activities that are  
29 initiated before the issuance of a building permit for the  
30 construction of the foundation of a computer data center.

31 (iii) With respect to facilities in existence on April 1, 2010,  
32 that are expanded, renovated, or otherwise improved after March 31,  
33 2010, or facilities in existence on April 1, 2012, that are expanded,  
34 renovated, or otherwise improved after March 31, 2012, or facilities  
35 in existence on July 1, 2015, that are expanded, renovated, or  
36 otherwise improved after June 30, 2015, an eligible computer data  
37 center includes only the portion of the computer data center meeting  
38 the requirements in ~~((d))~~ (e)(i)(B) of this subsection (6).

39 ~~((e))~~ (f) "Eligible power infrastructure" means all fixtures  
40 and equipment owned by a qualifying business or qualifying tenant and

1 necessary for the transformation, distribution, or management of  
2 electricity that is required to operate eligible server equipment  
3 within an eligible computer data center. The term includes  
4 generators; wiring; cogeneration equipment; and associated fixtures  
5 and equipment, such as electrical switches, batteries, and  
6 distribution, testing, and monitoring equipment. The term does not  
7 include substations.

8 ((+f+)) (g) "Eligible server equipment" means:

9 (i) For a qualifying business whose computer data center  
10 qualifies as an eligible computer data center under ((+d+)) (e)  
11 (i)(C)(I) of this subsection (6), the original server equipment  
12 installed in an eligible computer data center on or after April 1,  
13 2010, and replacement server equipment. For purposes of this  
14 subsection (6)((+f+)) (g)(i), "replacement server equipment" means  
15 server equipment that:

16 (A) Replaces existing server equipment, if the sale or use of the  
17 server equipment to be replaced qualified for an exemption under this  
18 section or RCW 82.12.986; and

19 (B) Is installed and put into regular use before April 1, 2018.

20 (ii) For a qualifying business whose computer data center  
21 qualifies as an eligible computer data center under ((+d+)) (e)  
22 (i)(C)(II) of this subsection (6), "eligible server equipment" means  
23 the original server equipment installed in an eligible computer data  
24 center on or after April 1, 2012, and replacement server equipment.  
25 For purposes of this subsection (6)((+f+)) (g)(ii), "replacement  
26 server equipment" means server equipment that:

27 (A) Replaces existing server equipment, if the sale or use of the  
28 server equipment to be replaced qualified for an exemption under this  
29 section or RCW 82.12.986; and

30 (B) Is installed and put into regular use before April 1, 2020.

31 (iii)(A) For a qualifying business whose computer data center  
32 qualifies as an eligible computer data center under (e)(i)(C)(III) of  
33 this subsection (6), "eligible server equipment" means the original  
34 server equipment installed in a building within an eligible computer  
35 data center on or after July 1, 2015, and replacement server  
36 equipment. Server equipment installed in movable or fixed stand-  
37 alone, prefabricated, or modular units, including intermodal shipping  
38 containers, is not "directly installed in a building." For purposes  
39 of this subsection (6)(g)(iii)(A), "replacement server equipment"  
40 means server equipment that replaces existing server equipment, if

1 the sale or use of the server equipment to be replaced qualified for  
2 an exemption under this section or RCW 82.12.986; and

3 (B) Is installed and put into regular use no later than eight  
4 years after the date of the certificate of occupancy.

5 (iv) For a qualifying tenant who leases space within an eligible  
6 computer data center, "eligible server equipment" means the original  
7 server equipment installed within the space it leases from an  
8 eligible computer data center on or after April 1, 2010, and  
9 replacement server equipment. For purposes of this subsection (6)  
10 ~~((f)(iii))~~ (g)(iv), "replacement server equipment" means server  
11 equipment that:

12 (A) Replaces existing server equipment, if the sale or use of the  
13 server equipment to be replaced qualified for an exemption under this  
14 section or RCW 82.12.986; ~~((and))~~

15 (B) Is installed and put into regular use before April 1, 2020;  
16 and

17 (C) For tenants leasing space in an eligible computer data center  
18 built after July 1, 2015, is installed and put into regular use no  
19 later than eight years after the date of the certificate of  
20 occupancy.

21 ~~((g))~~ (h) "Qualifying business" means a business entity that  
22 exists for the primary purpose of engaging in commercial activity for  
23 profit and that is the owner of an eligible computer data center. The  
24 term does not include the state or federal government or any of their  
25 departments, agencies, and institutions; tribal governments;  
26 political subdivisions of this state; or any municipal, quasi-  
27 municipal, public, or other corporation created by the state or  
28 federal government, tribal government, municipality, or political  
29 subdivision of the state.

30 ~~((h))~~ (i) "Qualifying tenant" means a business entity that  
31 exists for the primary purpose of engaging in commercial activity for  
32 profit and that leases space from a qualifying business within an  
33 eligible computer data center. The term does not include the state or  
34 federal government or any of their departments, agencies, and  
35 institutions; tribal governments; political subdivisions of this  
36 state; or any municipal, quasi-municipal, public, or other  
37 corporation created by the state or federal government, tribal  
38 government, municipality, or political subdivision of the state. The  
39 term also does not include a lessee of space in an eligible computer



1 data center under ~~((d))~~ (e)(i)(C)(I) of this subsection (6), if the  
2 lessee and lessor are affiliated and:

3 (i) That space will be used by the lessee to house server  
4 equipment that replaces server equipment previously installed and  
5 operated in that eligible computer data center by the lessor or  
6 another person affiliated with the lessee; or

7 (ii) Prior to May 2, 2012, the primary use of the server  
8 equipment installed in that eligible computer data center was to  
9 provide electronic data storage and data management services for the  
10 business purposes of either the lessor, persons affiliated with the  
11 lessor, or both.

12 ~~((i))~~ (j) "Server equipment" means the computer hardware  
13 located in an eligible computer data center and used exclusively to  
14 provide electronic data storage and data management services for  
15 internal use by the owner or lessee of the computer data center, for  
16 clients of the owner or lessee of the computer data center, or both.  
17 "Server equipment" also includes computer software necessary to  
18 operate the computer hardware. "Server equipment" does not include  
19 personal computers, the racks upon which the server equipment is  
20 installed, and computer peripherals such as keyboards, monitors,  
21 printers, and mice.

22 ~~((7) This section expires April 1, 2020.)~~

23 **Sec. 3.** RCW 82.12.986 and 2012 2nd sp.s. c 6 s 304 are each  
24 amended to read as follows:

25 (1) An exemption from the tax imposed by RCW 82.12.020 is  
26 provided for the use by qualifying businesses or qualifying tenants  
27 of eligible server equipment to be installed, without intervening  
28 use, in an eligible computer data center, and to the use of labor and  
29 services rendered in respect to installing such server equipment. The  
30 exemption also applies to the use by a qualifying business or  
31 qualifying tenant of eligible power infrastructure, including labor  
32 and services rendered in respect to installing, repairing, altering,  
33 or improving such infrastructure.

34 (2) A qualifying business or a qualifying tenant is not eligible  
35 for the exemption under this section unless the department issued an  
36 exemption certificate to the qualifying business or a qualifying  
37 tenant for the exemption provided in RCW 82.08.986.

38 (3)(a) The exemption provided in this section does not apply to:

1 (i) Any person who has received the benefit of the deferral  
2 program under chapter 82.60 RCW on: (A) The construction, renovation,  
3 or expansion of a structure or structures used as a computer data  
4 center; or (B) machinery or equipment used in a computer data center;  
5 and

6 (ii) Any person affiliated with a person within the scope of  
7 (a)(i) of this subsection (3).

8 (b) If a person has received the benefit of the exemption under  
9 this section and subsequently receives the benefit of the deferral  
10 program under chapter 82.60 RCW on either the construction,  
11 renovation, or expansion of a structure or structures used as a  
12 computer data center or machinery or equipment used in a computer  
13 data center, the person must repay the amount of taxes exempted under  
14 this section. Interest as provided in chapter 82.32 RCW applies to  
15 amounts due under this subsection (3)(b) until paid in full. A person  
16 is not required to repay taxes under this subsection with respect to  
17 property and services for which the person is required to repay taxes  
18 under RCW 82.08.986(5).

19 (4) The definitions and requirements in RCW 82.08.986 apply to  
20 this section.

21 (~~(5) This section expires April 1, 2020.~~)

--- END ---