
SENATE BILL 6029

State of Washington 61st Legislature 2009 Regular Session

By Senators Pridemore, Kline, Oemig, Regala, Fraser, and Shin

Read first time 02/16/09. Referred to Committee on Ways & Means.

1 AN ACT Relating to modifying tax incentives; amending RCW
2 82.08.02565, 82.08.02567, 82.12.02567, 82.16.055, 82.60.020, and
3 82.04.4493; repealing RCW 84.36.487, 82.08.811, and 82.12.811;
4 repealing 2008 c 284 s 4 (uncodified); providing an effective date;
5 providing expiration dates; and declaring an emergency.

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

7 **Sec. 1.** RCW 82.08.02565 and 1999 c 211 s 5 are each amended to
8 read as follows:

9 (1) The tax levied by RCW 82.08.020 (~~shall~~) does not apply to
10 sales to a manufacturer or processor for hire of machinery and
11 equipment used directly in a manufacturing operation or research and
12 development operation, to sales to a person engaged in testing for a
13 manufacturer or processor for hire of machinery and equipment used
14 directly in a testing operation, or to sales of or charges made for
15 labor and services rendered in respect to installing, repairing,
16 cleaning, altering, or improving the machinery and equipment, but only
17 when the purchaser provides the seller with an exemption certificate in
18 a form and manner prescribed by the department by rule. The seller
19 (~~shall~~) must retain a copy of the certificate for the seller's files.

1 (2) For purposes of this section and RCW 82.12.02565:

2 (a) "Machinery and equipment" means industrial fixtures, devices,
3 and support facilities, and tangible personal property that becomes an
4 ingredient or component thereof, including repair parts and replacement
5 parts. "Machinery and equipment" includes pollution control equipment
6 installed and used in a manufacturing operation, testing operation, or
7 research and development operation to prevent air pollution, water
8 pollution, or contamination that might otherwise result from the
9 manufacturing operation, testing operation, or research and development
10 operation.

11 (b) "Machinery and equipment" does not include:

12 (i) Hand-powered tools;

13 (ii) Property with a useful life of less than one year;

14 (iii) Buildings, other than machinery and equipment that is
15 permanently affixed to or becomes a physical part of a building; and

16 (iv) Building fixtures that are not integral to the manufacturing
17 operation, testing operation, or research and development operation
18 that are permanently affixed to and become a physical part of a
19 building, such as utility systems for heating, ventilation, air
20 conditioning, communications, plumbing, or electrical.

21 (c) Machinery and equipment is "used directly" in a manufacturing
22 operation, testing operation, or research and development operation if
23 the machinery and equipment:

24 (i) Acts upon or interacts with an item of tangible personal
25 property;

26 (ii) Conveys, transports, handles, or temporarily stores an item of
27 tangible personal property at the manufacturing site or testing site;

28 (iii) Controls, guides, measures, verifies, aligns, regulates, or
29 tests tangible personal property at the site or away from the site;

30 (iv) Provides physical support for or access to tangible personal
31 property;

32 (v) Produces power for, or lubricates machinery and equipment;

33 (vi) Produces another item of tangible personal property for use in
34 the manufacturing operation, testing operation, or research and
35 development operation;

36 (vii) Places tangible personal property in the container, package,
37 or wrapping in which the tangible personal property is normally sold or
38 transported; or

1 (viii) Is integral to research and development as defined in RCW
2 82.63.010.

3 (d) "Manufacturing operation" means the manufacturing of articles,
4 substances, or commodities for sale as tangible personal property. A
5 manufacturing operation begins at the point where the raw materials
6 enter the manufacturing site and ends at the point where the processed
7 material leaves the manufacturing site. The term also includes that
8 portion of a cogeneration project that is used to generate power for
9 consumption within the manufacturing site of which the cogeneration
10 project is an integral part. The term does not include: (i) The
11 production of electricity by a light and power business as defined in
12 RCW 82.16.010 ((or)); (ii) the preparation of food products on the
13 premises of a person selling food products at retail; or (iii) the
14 production of petroleum-based fuels that are not biodiesel fuels.

15 (e) "Cogeneration" means the simultaneous generation of electrical
16 energy and low-grade heat from the same fuel.

17 (f) "Research and development operation" means engaging in research
18 and development as defined in RCW 82.63.010 by a manufacturer or
19 processor for hire.

20 (g) "Testing" means activities performed to establish or determine
21 the properties, qualities, and limitations of tangible personal
22 property.

23 (h) "Testing operation" means the testing of tangible personal
24 property for a manufacturer or processor for hire. A testing operation
25 begins at the point where the tangible personal property enters the
26 testing site and ends at the point where the tangible personal property
27 leaves the testing site. The term also includes that portion of a
28 cogeneration project that is used to generate power for consumption
29 within the site of which the cogeneration project is an integral part.
30 The term does not include the production of electricity by a light and
31 power business as defined in RCW 82.16.010 or the preparation of food
32 products on the premises of a person selling food products at retail.

33 **Sec. 2.** RCW 82.08.02567 and 2004 c 152 s 1 are each amended to
34 read as follows:

35 (1) The tax levied by RCW 82.08.020 (~~shall~~) does not apply to
36 sales of machinery and equipment used directly in generating
37 electricity using fuel cells, wind, sun, tidal or wave energy,

1 geothermal resources, or landfill gas as the principal source of power,
2 or to sales of or charges made for labor and services rendered in
3 respect to installing such machinery and equipment, but only if the
4 purchaser develops with such machinery, equipment, and labor a facility
5 capable of generating not less than two hundred watts of electricity
6 and provides the seller with an exemption certificate in a form and
7 manner prescribed by the department. The seller (~~shall~~) must retain
8 a copy of the certificate for the seller's files.

9 (2) For purposes of this section and RCW 82.12.02567:

10 (a) "Landfill gas" means biomass fuel of the type qualified for
11 federal tax credits under 26 U.S.C. Sec. 29 collected from a landfill.
12 "Landfill" means a landfill as defined under RCW 70.95.030;

13 (b) "Machinery and equipment" means industrial fixtures, devices,
14 and support facilities that are integral and necessary to the
15 generation of electricity using fuel cells, wind, sun, or landfill gas
16 as the principal source of power;

17 (c) "Machinery and equipment" does not include: (i) Hand-powered
18 tools; (ii) property with a useful life of less than one year; (iii)
19 repair parts required to restore machinery and equipment to normal
20 working order; (iv) replacement parts that do not increase
21 productivity, improve efficiency, or extend the useful life of
22 machinery and equipment; (v) buildings; or (vi) building fixtures that
23 are not integral and necessary to the generation of electricity that
24 are permanently affixed to and become a physical part of a building;

25 (d) Machinery and equipment is "used directly" in generating
26 electricity with fuel cells or by wind energy, solar energy, or
27 landfill gas power if it provides any part of the process that captures
28 the energy of the wind, sun, or landfill gas, converts that energy to
29 electricity, and stores, transforms, or transmits that electricity for
30 entry into or operation in parallel with electric transmission and
31 distribution systems;

32 (e) "Fuel cell" means an electrochemical reaction that generates
33 electricity by combining atoms of hydrogen and oxygen in the presence
34 of a catalyst.

35 (3) This section expires June 30, (~~2009~~) 2019.

36 **Sec. 3.** RCW 82.12.02567 and 2004 c 152 s 2 are each amended to
37 read as follows:

1 (1) The provisions of this chapter shall not apply with respect to
2 machinery and equipment used directly in generating not less than two
3 hundred watts of electricity using fuel cells, wind, sun, tidal or wave
4 energy, geothermal resources, or landfill gas as the principal source
5 of power, or to the use of labor and services rendered in respect to
6 installing such machinery and equipment.

7 (2) The definitions in RCW 82.08.02567 apply to this section.

8 (3) This section expires June 30, (~~(2009)~~) 2019.

9 **Sec. 4.** RCW 82.16.055 and 1980 c 149 s 3 are each amended to read
10 as follows:

11 (1) In computing tax under this chapter there (~~(shall be)~~) is
12 deducted from the gross income:

13 (a) An amount equal to the cost of production at the plant for
14 consumption within the state of Washington of:

15 (i) Electrical energy produced or generated from cogeneration (~~(as~~
16 ~~defined in RCW 82.35.020)~~); and

17 (ii) Electrical energy or gas produced or generated from renewable
18 energy resources such as solar energy, tidal or wave energy, geothermal
19 resources, wind energy, hydroelectric energy, geothermal energy, wood,
20 wood wastes, municipal wastes, agricultural products and wastes, and
21 end-use waste heat; and

22 (b) Those amounts expended to improve consumers' efficiency of
23 energy end use or to otherwise reduce the use of electrical energy or
24 gas by the consumer.

25 (2) (a) Except for tidal and wave energy and geothermal facilities,
26 this section applies only to new facilities for the production or
27 generation of energy from cogeneration or renewable energy resources or
28 measures to improve the efficiency of energy end use on which
29 construction or installation is begun after June 12, 1980, and before
30 January 1, 1990.

31 (b) This section applies to new facilities for the production and
32 generation of energy from tidal and wave energy, and from geothermal
33 resources, on which construction or installation is begun after January
34 1, 2009, and before January 1, 2019.

35 (3) Deductions under subsection (1)(a) of this section shall be
36 allowed for a period not to exceed thirty years after the project is
37 placed in operation.

1 ~~(4) ((Measures or projects encouraged under this section shall at~~
2 ~~the time they are placed in service be reasonably expected to save,~~
3 ~~produce, or generate energy at a total incremental system cost per unit~~
4 ~~of energy delivered to end use which is less than or equal to the~~
5 ~~incremental system cost per unit of energy delivered to end use from~~
6 ~~similarly available conventional energy resources which utilize nuclear~~
7 ~~energy or fossil fuels and which the gas or electric utility could~~
8 ~~acquire to meet energy demand in the same time period.~~

9 ~~(5))~~ The department ~~((of revenue))~~, after consultation with the
10 utilities and transportation commission ~~((in the case of investor-owned~~
11 ~~utilities))~~ and the governing bodies of locally regulated utilities,
12 shall determine the eligibility of individual projects and measures for
13 deductions under this section.

14 **Sec. 5.** RCW 82.60.020 and 2006 c 142 s 1 are each amended to read
15 as follows:

16 Unless the context clearly requires otherwise, the definitions in
17 this section apply throughout this chapter.

18 (1) "Applicant" means a person applying for a tax deferral under
19 this chapter.

20 (2) "Department" means the department of revenue.

21 (3) "Eligible area" means a rural county as defined in RCW
22 82.14.370.

23 (4)(a) "Eligible investment project" means an investment project in
24 an eligible area as defined in subsection (3) of this section.

25 (b) The lessor or owner of a qualified building is not eligible for
26 a deferral unless:

27 (i) The underlying ownership of the buildings, machinery, and
28 equipment vests exclusively in the same person; or

29 (ii)(A) The lessor by written contract agrees to pass the economic
30 benefit of the deferral to the lessee;

31 (B) The lessee that receives the economic benefit of the deferral
32 agrees in writing with the department to complete the annual survey
33 required under RCW 82.60.070; and

34 (C) The economic benefit of the deferral passed to the lessee is no
35 less than the amount of tax deferred by the lessor and is evidenced by
36 written documentation of any type of payment, credit, or other

1 financial arrangement between the lessor or owner of the qualified
2 building and the lessee.

3 (c) "Eligible investment project" does not include any portion of
4 an investment project undertaken by:

5 (i) A light and power business as defined in RCW 82.16.010(5),
6 other than that portion of a cogeneration project that is used to
7 generate power for consumption within the manufacturing site of which
8 the cogeneration project is an integral part, or investment projects
9 which have already received deferrals under this chapter; nor

10 (ii) A person engaged in manufacturing petroleum-based products,
11 other than that portion of an investment project that is used to
12 produce biodiesel fuels or investment projects that have already
13 received deferrals under this chapter.

14 (5) "Investment project" means an investment in qualified buildings
15 or qualified machinery and equipment, including labor and services
16 rendered in the planning, installation, and construction of the
17 project.

18 (6) "Manufacturing" means the same as defined in RCW 82.04.120.
19 "Manufacturing" also includes computer programming, the production of
20 computer software, and other computer-related services, the activities
21 performed by research and development laboratories and commercial
22 testing laboratories, and the conditioning of vegetable seeds.

23 (7) "Person" has the meaning given in RCW 82.04.030.

24 (8) "Qualified buildings" means construction of new structures, and
25 expansion or renovation of existing structures for the purpose of
26 increasing floor space or production capacity used for manufacturing
27 and research and development activities, including plant offices and
28 warehouses or other facilities for the storage of raw material or
29 finished goods if such facilities are an essential or an integral part
30 of a factory, mill, plant, or laboratory used for manufacturing or
31 research and development. If a building is used partly for
32 manufacturing or research and development and partly for other
33 purposes, the applicable tax deferral shall be determined by
34 apportionment of the costs of construction under rules adopted by the
35 department.

36 (9) "Qualified employment position" means a permanent full-time
37 employee employed in the eligible investment project during the entire
38 tax year. The term "entire tax year" means a full-time position that

1 is filled for a period of twelve consecutive months. The term "full-
2 time" means at least thirty-five hours a week, four hundred fifty-five
3 hours a quarter, or one thousand eight hundred twenty hours a year.

4 (10) "Qualified machinery and equipment" means all new industrial
5 and research fixtures, equipment, and support facilities that are an
6 integral and necessary part of a manufacturing or research and
7 development operation. "Qualified machinery and equipment" includes:
8 Computers; software; data processing equipment; laboratory equipment;
9 manufacturing components such as belts, pulleys, shafts, and moving
10 parts; molds, tools, and dies; operating structures; and all equipment
11 used to control or operate the machinery.

12 (11) "Recipient" means a person receiving a tax deferral under this
13 chapter.

14 (12) "Research and development" means the development, refinement,
15 testing, marketing, and commercialization of a product, service, or
16 process before commercial sales have begun. As used in this
17 subsection, "commercial sales" excludes sales of prototypes or sales
18 for market testing if the total gross receipts from such sales of the
19 product, service, or process do not exceed one million dollars.

20 **Sec. 6.** RCW 82.04.4493 and 2008 c 284 s 2 are each amended to read
21 as follows:

22 (1) In computing the tax imposed under this chapter, a credit is
23 allowed in an amount equal to eight and eight-tenths percent multiplied
24 by the purchase price, as defined in RCW 82.12.010, of the following
25 items:

26 (a) Commercial freezers and refrigerators meeting consortium for
27 energy efficiency tier 2 specifications dated January 1, 2006;

28 (b) High efficiency commercial clothes washers meeting consortium
29 for energy efficiency specifications dated November 14, 2007;

30 (c) Commercial ice makers meeting consortium for energy efficiency
31 specifications dated January 1, 2006;

32 (d) Commercial full-sized gas convection ovens with interior
33 measurements of six cubic feet or larger;

34 (e) Commercial deep fat fryers which are rated energy star as of
35 August 2003;

36 (f) Commercial hot food holding cabinets which are rated energy
37 star as of August 2003; and

1 (g) Commercial electric and gas steam cookers, also known as
2 compartment cookers, which are rated energy star as of August 2003.

3 (2) A person may not take the credit under this section if the
4 person's gross income of the business in the prior calendar year
5 exceeded seven hundred fifty thousand dollars.

6 (3) A credit earned during one calendar year may be carried over to
7 be credited against taxes incurred in the subsequent calendar year.
8 Credit may not be claimed against taxes due for any tax reporting
9 period ending before the credit was earned. No refunds shall be
10 granted for credits under this section.

11 (4) Credits are available on a first-in-time basis. The department
12 shall disallow any credits, or portion thereof, that would cause the
13 total amount of credits claimed statewide under this section in any
14 year to exceed (~~seven hundred fifty thousand~~) five million dollars.
15 If the (~~seven hundred fifty thousand~~) five million dollar limitation
16 is reached, the department (~~shall~~) must provide written notice to any
17 person that has claimed tax credits after the (~~seven hundred fifty~~
18 ~~thousand~~) five million dollar limitation in this subsection has been
19 met. The notice shall indicate the amount of tax due and shall provide
20 that the tax be paid within thirty days from the date of such notice.
21 The department may not assess penalties and interest as provided in
22 chapter 82.32 RCW on the amount due in the initial notice if the amount
23 due is paid by the due date specified in the notice, or any extension
24 thereof.

25 (5) The department of community, trade, and economic development
26 must prepare and deliver a report to the legislature no later than
27 December 30, 2010, assessing the overall energy and cost saving impacts
28 of this section.

29 (6) Credit may not be claimed under this section for the purchase
30 of an item, listed in subsection (1) of this section, before July 1,
31 2008.

32 (7) Credit may not be claimed under this section for the purchase
33 of an item, listed in subsection (1) of this section, after June 30,
34 2010.

35 (8) The definitions in this subsection apply throughout this
36 section unless the context clearly requires otherwise.

37 (a)(i) "Commercial refrigerators and freezers" means refrigerators,
38 freezers, or refrigerator-freezers designed for use by commercial or

1 institutional facilities for the purpose of storing or merchandising
2 food products, beverages, or ice at specified temperatures that: (A)
3 Incorporate most components involved in the vapor-compression cycle and
4 the refrigerated compartment in a single cabinet; and (B) may be
5 configured with either solid or transparent doors as a reach-in
6 cabinet, pass-through cabinet, roll-in cabinet, or roll-through
7 cabinet.

8 (ii) "Commercial refrigerators and freezers" does not include: (A)
9 Products with eighty-five cubic feet or more of internal volume; (B)
10 walk-in refrigerators or freezers; (C) consumer products that are
11 federally regulated pursuant to Title 42 U.S.C. Sec. 6291 et seq.; (D)
12 products without doors; or (E) freezers specifically designed for ice
13 cream.

14 (b) "Commercial clothes washer" means a soft mount horizontal or
15 vertical-axis clothes washer that: (i) Has a clothes container
16 compartment no greater than three and one-half cubic feet in the case
17 of a horizontal-axis product or no greater than four cubic feet in the
18 case of a vertical-axis product; and (ii) is designed for use by more
19 than one household, such as in multifamily housing, apartments, or coin
20 laundries.

21 (c) "Commercial hot food holding cabinet" means an appliance that
22 is designed to hold hot food at a specified temperature, which has been
23 cooked using a separate appliance.

24 (d) "Commercial ice maker" means a factory-made assembly, not
25 necessarily shipped in one package, consisting of a condensing unit and
26 ice-making section operating as an integrated unit with means for
27 making and harvesting ice. It may also include integrated components
28 for storing or dispensing ice, or both.

29 (e) "Commercial open, deep-fat fryer" means an appliance, including
30 a cooking vessel, in which oil is placed to such a depth that the
31 cooking food is essentially supported by displacement of the cooking
32 fluid rather than by the bottom of the vessel. Heat is delivered to
33 the cooking fluid by means of an immersed electric element or band-
34 wrapped vessel (electric fryers), or by heat transfer from gas burners
35 through either the walls of the fryer or through tubes passing through
36 the cooking fluid (gas fryers).

37 (f) "Consortium" means the consortium for energy efficiency, a
38 United States nonprofit public benefits corporation that promotes the

1 manufacture and purchase of energy efficient products and services.
2 The consortium's members include utilities, statewide and regional
3 market transformation administrators, environmental groups, research
4 organizations, and state energy offices in the United States and
5 Canada.

6 (g) "Energy star" is an energy efficient product that meets the
7 federal environmental protection agency's and federal department of
8 energy's criteria for use of the energy star trademark label, or is in
9 the upper twenty-five percent of efficiency for all similar products as
10 designated by the federal energy management program. Energy star is a
11 voluntary labeling program designed to identify and promote energy
12 efficient products to reduce greenhouse gas emissions.

13 (h) "Steam cooker" means a device with one or more food steaming
14 compartments, in which the energy in the steam is transferred to the
15 food by direct contact. Models may include countertop models, wall-
16 mounted models, and floor models mounted on a stand, pedestal, or
17 cabinet-style base.

18 NEW SECTION. **Sec. 7.** The following acts or parts of acts are each
19 repealed:

20 (1) RCW 84.36.487 (Air pollution control equipment in thermal
21 electric generation facilities--Records--Payments on cessation of
22 operation) and 1997 c 368 s 11;

23 (2) RCW 82.08.811 (Exemptions--Coal used at coal-fired thermal
24 electric generation facility--Application--Demonstration of progress in
25 air pollution control--Notice of emissions violations--Reapplication--
26 Payments on cessation of operation) and 1997 c 368 s 4; and

27 (3) RCW 82.12.811 (Exemptions--Coal used at coal-fired thermal
28 electric generation facility--Application--Demonstration of progress in
29 air pollution control--Notice of emissions violations--Reapplication--
30 Payments on cessation of operation) and 1997 c 368 s 6.

31 NEW SECTION. **Sec. 8.** 2008 c 284 s 4 (uncodified) is repealed.

32 NEW SECTION. **Sec. 9.** This act is necessary for the immediate
33 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and takes effect
2 July 1, 2009.

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