
SENATE BILL 6854

State of Washington 61st Legislature 2010 Regular Session

By Senators Honeyford, Hewitt, King, and Parlette

Read first time 02/09/10. Referred to Committee on Ways & Means.

1 AN ACT Relating to modifying the sales and use tax exemptions for
2 machinery and equipment; amending RCW 82.08.02565 and 82.12.02565;
3 adding new sections to chapter 82.08 RCW; adding new sections to
4 chapter 82.12 RCW; adding a new section to chapter 82.16 RCW; adding a
5 new section to chapter 82.63 RCW; creating new sections; and providing
6 expiration dates.

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

8 NEW SECTION. **Sec. 1.** The manufacturing sales and use tax
9 incentive has not met its full potential as an economic development
10 tool in Washington state. With manufacturing growth at risk
11 nationally, Washington needs an economic development plan to retain,
12 attract, and grow a core industry to our economy while using this model
13 to promote other industry segments. The legislature intends to affirm
14 and improve the manufacturing sales and use tax incentive as a primary
15 economic development tool for our state. The exemption for the
16 manufacturing sector from sales taxes on purchases of machinery and
17 equipment and related structures provides an important incentive to
18 invest. This investment creates additional capacity in the economy
19 which generates new final demand, household income, and tax revenue.

1 Importantly, this investment is a catalyst for job creation in all
2 sectors of the economy. The legislature intends to provide the
3 broadest application of the incentive by expanding the existing
4 machinery and equipment tax incentive to include other consumables that
5 go into business inputs and extending the sales tax exemption on
6 machinery and equipment to additional capital-intensive industries.
7 The legislature believes extending the sales tax exemption for
8 purchases of machinery and equipment to other industries, including
9 consumables in the exemption, and eliminating restrictive regulatory
10 interpretations will provide significant benefits to the Washington
11 economy in terms of increased economic output, income generation, and
12 job creation and enhanced tax revenue.

13 **Sec. 2.** RCW 82.08.02565 and 2009 c 535 s 510 are each amended to
14 read as follows:

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

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

27 (a) "Machinery and equipment" means industrial fixtures, devices,
28 and support facilities, and tangible personal property that becomes an
29 ingredient or component thereof, including repair parts and replacement
30 parts. "Machinery and equipment" includes:

31 (i) Pollution control equipment installed and used in a
32 manufacturing operation, testing operation, or research and development
33 operation to prevent air pollution, water pollution, or contamination
34 that might otherwise result from the manufacturing operation, testing
35 operation, or research and development operation(~~(. "Machinery and
36 equipment" also includes))~~);

1 (ii) Prototype equipment that produces another item of tangible
2 personal property for use in the manufacturing operation, testing
3 operation, or research and development operation; and

4 (iii) Digital goods.

5 (b) "Machinery and equipment" does not include(~~(+~~

6 ~~(i)) hand-powered tools(~~(+~~~~

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

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

10 ~~(iv) Building fixtures that are not integral to the manufacturing~~
11 ~~operation, testing operation, or research and development operation~~
12 ~~that are permanently affixed to and become a physical part of a~~
13 ~~building, such as utility systems for heating, ventilation, air~~
14 ~~conditioning, communications, plumbing, or electrical)).~~

15 (c) Machinery and equipment is "used (~~(directly))" in a~~
16 manufacturing operation, testing operation, or research and development
17 operation if the machinery and equipment(~~(+~~

18 ~~(i) Acts upon or interacts with an item of tangible personal~~
19 ~~property;~~

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

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

24 ~~(iv) Provides physical support for or access to tangible personal~~
25 ~~property;~~

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

27 ~~(vi) Produces another item of tangible personal property for use in~~
28 ~~the manufacturing operation, testing operation, or research and~~
29 ~~development operation;~~

30 ~~(vii) Places tangible personal property in the container, package,~~
31 ~~or wrapping in which the tangible personal property is normally sold or~~
32 ~~transported; or~~

33 ~~(viii) Is integral to research and development as defined in RCW~~
34 ~~82.63.010)) is involved in any part of the manufacturing operation,~~
35 ~~testing operation, or research and development operation.~~

36 (d) "Manufacturing operation" means the manufacturing of articles,
37 substances, or commodities for sale as tangible personal property or
38 when installed into or on real property. A manufacturing operation

1 begins at the point where the raw materials enter the manufacturing
2 site and ends at the point where the processed material leaves the
3 manufacturing site. The term also includes that portion of a
4 cogeneration project that is used to generate power for consumption
5 within the manufacturing site of which the cogeneration project is an
6 integral part. The term does not include the production of electricity
7 by a light and power business as defined in RCW 82.16.010 or the
8 preparation of food products on the premises of a person selling food
9 products at retail.

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

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

15 (g) "Testing" means activities performed to establish or determine
16 the properties, qualities, and limitations of tangible personal
17 property.

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

28 **Sec. 3.** RCW 82.12.02565 and 2003 c 5 s 5 are each amended to read
29 as follows:

30 The provisions of this chapter (~~(shall)~~) do not apply in respect to
31 the use by a manufacturer or processor for hire of machinery and
32 equipment used (~~(directly)~~) in a manufacturing operation or research
33 and development operation, to the use by a person engaged in testing
34 for a manufacturer or processor for hire of machinery and equipment
35 used (~~(directly)~~) in a testing operation, or to the use of labor and
36 services rendered in respect to installing, repairing, cleaning,
37 altering, or improving the machinery and equipment.

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.08 RCW
2 to read as follows:

3 (1) An exemption from the tax imposed by RCW 82.08.020 is provided
4 for sales to qualifying businesses of eligible server equipment to be
5 installed, without intervening use, in an eligible computer data
6 center, and to charges made for labor and services rendered in respect
7 to installing eligible server equipment. The exemption also applies to
8 sales to qualifying businesses of eligible power infrastructure,
9 including labor and services rendered in respect to constructing,
10 installing, repairing, altering, or improving eligible power
11 infrastructure.

12 (2)(a) In order to claim the exemption under this section, a
13 qualifying business must submit an application to the department for an
14 exemption certificate. The application must include the information
15 necessary, as required by the department, to determine that a business
16 qualifies for the exemption under this section. The department must
17 issue exemption certificates to qualifying businesses. The department
18 may assign a unique identification number to each exemption certificate
19 issued under this section.

20 (b) A qualifying business claiming the exemption under this section
21 must present the seller with an exemption certificate in a form and
22 manner prescribed by the department. The seller must retain a copy of
23 the certificate for the seller's files.

24 (3) For purposes of this section the following definitions apply
25 unless the context clearly requires otherwise:

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

1 used primarily, to house working servers is considered a computer data
2 center if it has all of the characteristics listed in (a)(i)(A) through
3 (C) of this subsection (3).

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

11 (c) "Eligible computer data center" means a computer data center:

12 (i) Located in a rural county as defined in RCW 82.14.370;

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

16 (iii) For which the commencement of construction occurs after March
17 31, 2010, and before July 1, 2011. For purposes of this section,
18 "commencement of construction" means the date that a building permit is
19 issued under the building code adopted under RCW 19.27.031 for
20 construction of the computer data center. The construction of a
21 computer data center includes the expansion, renovation, or other
22 improvements made to existing facilities, including leased or rented
23 space. "Commencement of construction" does not include soil testing,
24 site clearing and grading, site preparation, or any other related
25 activities that are initiated before the issuance of a building permit
26 for the construction of the foundation of a computer data center.

27 (d) "Eligible power infrastructure" means all fixtures and
28 equipment necessary for the transformation, distribution, or management
29 of electricity that is required to operate eligible server equipment
30 within an eligible computer data center. The term includes electrical
31 substations, generators, wiring, and cogeneration equipment.

32 (e) "Eligible server equipment" means the original server equipment
33 installed in an eligible computer data center on or after April 1,
34 2010, and replacement server equipment. For purposes of this
35 subsection (3)(e), "replacement server equipment" means server
36 equipment that: (i) Replaces existing server equipment, if the sale or
37 use of the server equipment to be replaced qualified for an exemption

1 under this section or section 5 of this act; and (ii) is installed and
2 put into regular use before April 1, 2018.

3 (f) "Qualifying business" means a business entity that exists for
4 the primary purpose of engaging in commercial activity for profit and
5 that is the owner or lessee of an eligible computer data center. The
6 term does not include the state or federal government or any of their
7 departments, agencies, and institutions; tribal governments; political
8 subdivisions of this state; or any municipal, quasi-municipal, public,
9 or other corporation created by the state or federal government, tribal
10 government, municipality, or political subdivision of the state.

11 (g) "Server" means blade or rack-mount server computers used in a
12 computer data center exclusively to provide electronic data storage and
13 data management services for internal use by the owner or lessee of the
14 computer data center, for clients of the owner or lessee of the
15 computer data center, or both. "Server" does not include personal
16 computers.

17 (h) "Server equipment" means the server chassis and all computer
18 hardware and software contained within the server chassis. "Server
19 equipment" does not include the racks upon which the server chassis is
20 installed, and computer peripherals such as keyboards, monitors,
21 printers, mice, and other devices that work outside of the computer.

22 (4) This section expires April 1, 2018.

23 NEW SECTION. **Sec. 5.** A new section is added to chapter 82.12 RCW
24 to read as follows:

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

33 (2) A qualifying business is not eligible for the exemption under
34 this section unless the department issued an exemption certificate to
35 the qualifying business for the exemption provided in section 2 of this
36 act.

37 (3) The definitions in section 4 of this act apply to this section.

1 (4) This section expires April 1, 2018.

2 NEW SECTION. **Sec. 6.** A new section is added to chapter 82.16 RCW
3 to read as follows:

4 (1) The provisions of this chapter do not apply to sales of
5 electricity made by a light and power business to an integrated
6 software developer and online service provider for use in a computer
7 data center located in a rural county as defined in RCW 82.14.370(5) or
8 a provider of competitive telecommunications service or network
9 telephone service.

10 (2) The exemption provided for in this section does not apply to
11 amounts received from the remarketing or resale of electricity
12 originally obtained by contract for operation of a computer data
13 center.

14 (3) In order to claim an exemption under this section, the
15 integrated software developer and online service provider must provide
16 the light and power business with an exemption certificate in a form
17 and manner prescribed by the department.

18 (4) The definitions in section 4 of this act apply to this section.

19 NEW SECTION. **Sec. 7.** A new section is added to chapter 82.08 RCW
20 to read as follows:

21 (1) The tax levied by RCW 82.08.020 does not apply to sales of
22 diesel fuel to an integrated software developer and online service
23 provider for use in an eligible computer data center facility or a
24 provider of competitive telecommunications service or network telephone
25 service. This exemption is available only if the buyer provides the
26 seller with an exemption certificate in a form and manner prescribed by
27 the department.

28 (2) The definitions in section 4 of this act apply to this section.

29 NEW SECTION. **Sec. 8.** A new section is added to chapter 82.12 RCW
30 to read as follows:

31 (1) The provisions of this chapter do not apply to the use of
32 diesel fuel by an integrated software developer and online service
33 provider for use in an eligible computer data center facility or a
34 provider of competitive telecommunications service or network telephone
35 service.

1 (2) The definitions in section 4 of this act apply to this section.

2 NEW SECTION. **Sec. 9.** A new section is added to chapter 82.63 RCW
3 to read as follows:

4 The department may adopt rules as may be necessary to administer
5 this chapter.

6 NEW SECTION. **Sec. 10.** No taxes may be exempted under this act
7 prior to July 1, 2010.

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