
ENGROSSED SENATE BILL 6116

State of Washington 52nd Legislature 1992 Regular Session

By Senators Sellar, Murray, Anderson and McMullen

Read first time 01/16/92. Referred to Committee on Energy & Utilities.

1 AN ACT Relating to the deferral of sales and use taxes for
2 cogeneration facilities; and amending RCW 82.61.010, 82.61.020, and
3 82.61.030.

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

5 **Sec. 1.** RCW 82.61.010 and 1988 c 41 s 1 are each amended to read
6 as follows:

7 Unless the context clearly requires otherwise, the definitions in
8 this section apply throughout this chapter.

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

11 (2) "Person" has the meaning given in RCW 82.04.030.

12 (3) "Department" means the department of revenue.

13 (4) "Cogeneration" means the sequential generation of two or more
14 forms of energy from a common fuel or energy source. Where these forms

1 are electricity and thermal energy, then the operating and efficiency
2 standards established by 18 C.F.R. Sec. 292.205 and the definitions
3 established by C.F.R. 292.202 (c) through (m) as of the effective date
4 of this act shall apply.

5 (5) "Electric utility" means any person, corporation, or
6 governmental subdivision authorized and operating under the
7 Constitution and laws of the state of Washington which is primarily
8 engaged in the generation or sale of electric energy.

9 (6) "Eligible investment project" means:

10 (a) Construction of new buildings and the acquisition of new
11 related machinery and equipment when the buildings, machinery, and
12 equipment are to be used for either manufacturing or research and
13 development activities, which construction is commenced prior to
14 December 31, 1994; or

15 (b) Acquisition prior to December 31, 1994, of new machinery and
16 equipment to be used for either manufacturing or research and
17 development if the machinery and equipment is housed in a new leased
18 structure: PROVIDED, That the lessor/owner of the structure is not
19 eligible for a deferral unless the underlying ownership of the
20 buildings, machinery, and equipment vests exclusively in the same
21 person; or

22 (c) Acquisition of all new or used machinery, equipment, or other
23 personal property for use in the production or casting of aluminum at
24 an aluminum smelter or at facilities related to an aluminum smelter, if
25 the plant was in operation prior to 1975 and has ceased operations or
26 is in imminent danger of ceasing operations for economic reasons, as
27 determined by the department, and if the person applying for a deferral

28 (i) has consulted with any collective bargaining unit that represented
29 employees of the plant pursuant to a collective bargaining agreement
30 that was in effect either immediately prior to the time the plant

1 ceased operations or during the period when the plant was in imminent
2 danger of ceasing operations, on the proposed operation of the plant
3 and on the terms and conditions of employment for wage and salaried
4 employees and (ii) has obtained a written concurrence from the
5 bargaining unit on the decision to apply for a deferral under this
6 chapter; or

7 (d) Modernization projects involving construction, acquisition, or
8 upgrading of equipment or machinery, including services and labor,
9 which are commenced after May 19, 1987, and are intended to increase
10 the operating efficiency of existing plants which are either aluminum
11 smelters or aluminum rolling mills or of facilities related to such
12 plants, if the plant was in operation prior to 1975, and if the person
13 applying for a deferral (i) has consulted with any collective
14 bargaining unit that represents employees of the plant on the proposed
15 operation of the plant and the terms and conditions of employment for
16 wage and salaried employees and (ii) has obtained a written concurrence
17 from the bargaining unit on the decision to apply for a deferral under
18 this chapter; or

19 (e) Acquisition or installation of any machinery, equipment,
20 structure, process, or property, or any part thereof, for the primary
21 purpose of cogeneration by a person or corporation other than an
22 electric utility.

23 ((+5)) (7) "Manufacturing" means all activities of a commercial or
24 industrial nature wherein labor or skill is applied, by hand or
25 machinery, to materials so that as a result thereof a new, different,
26 or useful substance or article of tangible personal property is
27 produced for sale or commercial or industrial use and includes the
28 production or fabrication of specially made or custom-made articles.

1 (~~(6)~~) (8) "Research and development" means the development,
2 refinement, testing, marketing, and commercialization of a product,
3 service, or process before commercial sales have begun.

4 (~~(7)~~) (9) "Buildings" means only those new structures used for
5 either manufacturing or research and development activities, including
6 plant offices and warehouses or other facilities for the storage of raw
7 materials or finished goods if such facilities are an essential or an
8 integral part of a factory, mill, plant, or laboratory used for
9 manufacturing or research and development purposes. If a building is
10 used partly for manufacturing or research and development and partly
11 for other purposes, the applicable tax deferral shall be determined by
12 apportionment of the costs of construction under rules adopted by the
13 department.

14 (~~(8)~~) (10) "Machinery and equipment" means all industrial and
15 research fixtures, equipment, and support facilities that are an
16 integral and necessary part of a manufacturing or research and
17 development operation. "Qualified machinery and equipment" includes
18 computers; software; data processing equipment; laboratory equipment;
19 manufacturing components such as belts, pulleys, shafts, and moving
20 parts; molds, tools, and dies; operating structures; and all equipment
21 used to control or operate the machinery. For purposes of this
22 chapter, new machinery and equipment means either new to the taxing
23 jurisdiction of the state or new to the certificate holder. Used
24 machinery and equipment may be treated as new equipment and machinery
25 if the certificate holder either brings the machinery and equipment
26 into Washington or makes a retail purchase of the machinery and
27 equipment in Washington or elsewhere.

28 (~~(9)~~) (11) "Qualified employment position" means a permanent
29 full-time employee employed in the eligible investment project during
30 the entire tax year.

1 (~~(10)~~) (12) "Recipient" means a person receiving a tax deferral
2 under this chapter.

3 (~~(11)~~) (13) "Certificate holder" means an applicant to whom a tax
4 deferral certificate has been issued.

5 (~~(12)~~) (14) "Operationally complete" means constructed or
6 improved to the point of being functionally useable for the intended
7 purpose.

8 (~~(13)~~) (15) "Initiation of construction" means that date upon
9 which on-site construction commences.

10 **Sec. 2.** RCW 82.61.020 and 1987 c 497 s 2 are each amended to read
11 as follows:

12 Application for deferral of taxes under this chapter shall be made
13 before initiation of the construction of the investment project or
14 acquisition of equipment or machinery or plant. Application for
15 deferral of taxes for modernization projects as defined in RCW
16 (~~(82.61.010(4)(d))~~) 82.61.010(6)(d) shall be made during the calendar
17 year in which construction begins or acquisition of equipment or
18 machinery occurs. The application shall be made to the department in
19 a form and manner prescribed by the department. The application shall
20 contain information regarding the location of the investment project,
21 estimated or actual costs, time schedules for completion and operation,
22 and other information required by the department. The department shall
23 rule on the application within sixty days. A certificate holder shall
24 initiate construction of the investment project within one hundred
25 eighty days of receiving approval from the department and issuance of
26 the tax deferral certificate.

27 **Sec. 3.** RCW 82.61.030 and 1987 c 497 s 3 are each amended to read
28 as follows:

1 Except for eligible projects within the definitions in RCW
2 82.61.010(~~(4)~~) (6) (c) (~~(e)~~), (d), or (e), a tax deferral
3 certificate shall only be issued to persons who, on June 14, 1985, are
4 not engaged in manufacturing or research and development activities
5 within this state. For purposes of this section, a person shall not be
6 considered to be engaged in manufacturing or research and development
7 activities where the only activities performed by such person in this
8 state are sales, installation, repair, or promotional activities in
9 respect to products manufactured outside this state. Any person who
10 has succeeded by merger, consolidation, incorporation or any other form
11 or change of identity to the business of a person engaged in
12 manufacturing or research and development activities in this state on
13 June 14, 1985, and any person who is a subsidiary of a person engaged
14 in manufacturing or research and development activities in this state
15 on June 14, 1985, shall also be ineligible to receive a tax deferral
16 certificate.