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HOUSE BILL 2146

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State of Washington

58th Legislature

2003 Regular Session

By Representatives Tom, Sullivan and Eickmeyer

Read first time 02/26/2003. Referred to Committee on Technology, Telecommunications & Energy.

1 AN ACT Relating to tax incentives for wood biomass fuel production,  
2 distribution, and retail sale; amending RCW 82.29A.135 and 82.04.260;  
3 adding a new section to chapter 84.36 RCW; adding a new section to  
4 chapter 82.04 RCW; adding a new section to chapter 82.08 RCW; adding a  
5 new section to chapter 82.12 RCW; adding a new chapter to Title 82 RCW;  
6 creating new sections; providing effective dates; providing expiration  
7 dates; and declaring an emergency.

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

9 NEW SECTION. **Sec. 1.** Unless the context clearly requires  
10 otherwise, the definitions in this section apply throughout this  
11 chapter.

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

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

15 (3) "Eligible area" means a county with fewer than one hundred  
16 persons per square mile as determined annually by the office of  
17 financial management and published by the department effective for the  
18 period July 1st through June 30th, or a county that has a population of

1 less than two hundred twenty-five thousand as determined by the office  
2 of financial management and has an area greater than two hundred  
3 twenty-five square miles.

4 (4)(a) "Eligible investment project" means an investment project in  
5 an eligible area.

6 (b) The lessor or owner of a qualified building is not eligible for  
7 a deferral unless the underlying ownership of the buildings, machinery,  
8 and equipment vests exclusively in the same person, or unless the  
9 lessor by written contract agrees to pass the economic benefit of the  
10 deferral to the lessee in the form of reduced rent payments.

11 (c) "Eligible investment project" does not include any portion of  
12 an investment project undertaken by a light and power business as  
13 defined in RCW 82.16.010(5), other than that portion of a cogeneration  
14 project that is used to generate power for consumption within the  
15 manufacturing site of which the cogeneration project is an integral  
16 part, or investment projects which have already received deferrals  
17 under this chapter.

18 (5) "Investment project" means an investment in qualified buildings  
19 or qualified machinery and equipment, including labor and services  
20 rendered in the planning, installation, and construction of the  
21 project.

22 (6) "Manufacturing" means the same as defined in RCW 82.04.120.  
23 "Manufacturing" also includes computer programming, the production of  
24 computer software, and other computer-related services, and the  
25 activities performed by research and development laboratories and  
26 commercial testing laboratories.

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

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

1 apportionment of the costs of construction under rules adopted by the  
2 department.

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

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

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

19 (12) "Wood biomass fuel" means a pyrolytic liquid fuel or synthesis  
20 gas-derived liquid fuel, comprised primarily of carbon monoxide and  
21 hydrogen, produced from wood, and used in internal combustion engines.

22 NEW SECTION. **Sec. 2.** (1) Application for deferral of taxes under  
23 this chapter must be made before initiation of the construction of the  
24 investment project or acquisition of equipment or machinery. The  
25 application shall be made to the department in a form and manner  
26 prescribed by the department. The application shall contain  
27 information regarding the location of the investment project, the  
28 applicant's average employment in the state for the prior year,  
29 estimated or actual new employment related to the project, estimated or  
30 actual wages of employees related to the project, estimated or actual  
31 costs, time schedules for completion and operation, and other  
32 information required by the department.

33 (2) The department shall rule on the application within sixty days.  
34 The department shall keep a running total of all deferrals granted  
35 under this chapter during each fiscal biennium.

1        NEW SECTION.    **Sec. 3.**    (1) The department shall issue a sales and  
2 use tax deferral certificate for state and local sales and use taxes  
3 due under chapters 82.08, 82.12, and 82.14 RCW on each eligible  
4 investment project that is located in an eligible area as defined in  
5 section 1 of this act, if the investment project is undertaken for the  
6 purpose of manufacturing wood biomass fuel.

7        (2) This section expires July 1, 2009.

8        NEW SECTION.    **Sec. 4.**    (1) For the purposes of this section:

9        (a) "Eligible area" means a designated community empowerment zone  
10 approved under RCW 43.31C.020 or a county containing a community  
11 empowerment zone.

12        (b) "Eligible investment project" means an investment project  
13 undertaken for the purpose of manufacturing wood biomass fuel that is  
14 located in an eligible area.

15        (c) "Qualified employment position" means a permanent full-time  
16 employee employed in the eligible investment project during the entire  
17 year.

18        (2) In addition to the provisions of section 3 of this act, the  
19 department shall issue a sales and use tax deferral certificate for  
20 state and local sales and use taxes due under chapters 82.08, 82.12,  
21 and 82.14 RCW, on each eligible investment project that is located in  
22 an eligible area, if the applicant establishes that at the time the  
23 project is operationally complete:

24        (a) The applicant will hire at least one qualified employment  
25 position for each seven hundred fifty thousand dollars of investment on  
26 which a deferral is requested; and

27        (b) The positions will be filled by persons who at the time of hire  
28 are residents of the community empowerment zone. As used in this  
29 subsection, "resident" means the person makes his or her home in the  
30 community empowerment zone. A mailing address alone is insufficient to  
31 establish that a person is a resident for the purposes of this section.  
32 The persons must be hired after the date the application is filed with  
33 the department.

34        (3) All other provisions and eligibility requirements of this  
35 chapter apply to applicants eligible under this section.

36        (4) The qualified employment position must be filled by the end of  
37 the calendar year following the year in which the project is certified

1 as operationally complete. If a person does not meet the requirements  
2 for qualified employment positions by the end of the second calendar  
3 year following the year in which the project is certified as  
4 operationally complete, all deferred taxes are immediately due.

5 NEW SECTION. **Sec. 5.** (1) Each recipient of a deferral granted  
6 under this chapter after June 30, 2003, shall submit a report to the  
7 department on December 31st of the year in which the investment project  
8 is certified by the department as having been operationally completed,  
9 and on December 31st of each of the seven succeeding calendar years.  
10 The report shall contain information, as required by the department,  
11 from which the department may determine whether the recipient is  
12 meeting the requirements of this chapter. If the recipient fails to  
13 submit a report or submits an inadequate report, the department may  
14 declare the amount of deferred taxes outstanding to be immediately  
15 assessed and payable.

16 (2) If, on the basis of a report under this section or other  
17 information, the department finds that an investment project is not  
18 eligible for tax deferral under this chapter, the amount of deferred  
19 taxes outstanding for the project are immediately due. For any taxes  
20 that are due, penalties and interest applicable to delinquent excise  
21 taxes shall be assessed and imposed for delinquent payments under this  
22 chapter. The debt for deferred taxes will not be extinguished by  
23 insolvency or other failure of the recipient. Transfer of ownership  
24 does not terminate the deferral. The deferral is transferred, subject  
25 to the successor meeting the eligibility requirements of this chapter,  
26 for the remaining periods of the deferral.

27 (3) Deferred taxes need not be repaid if the department determines,  
28 in accordance with the provisions of subsection (1) of this section,  
29 that the recipient has met the requirements of this chapter for the  
30 seven calendar years following the certification by the department that  
31 the investment project has been operationally completed.

32 NEW SECTION. **Sec. 6.** The employment security department shall  
33 make, and certify to the department of revenue, all determinations of  
34 employment and wages as requested by the department under this chapter.

1        NEW SECTION.    **Sec. 7.** Chapter 82.32 RCW applies to the  
2 administration of this chapter.

3        NEW SECTION.    **Sec. 8.** Applications, reports, and any other  
4 information received by the department under this chapter shall not be  
5 confidential and shall be subject to disclosure.

6        NEW SECTION.    **Sec. 9.** A new section is added to chapter 84.36 RCW  
7 to read as follows:

8            (1) For the purposes of this section, "wood biomass fuel" means a  
9 pyrolytic liquid fuel or synthesis gas-derived liquid fuel, comprised  
10 primarily of carbon monoxide and hydrogen, produced from wood, and used  
11 in internal combustion engines.

12            (2)(a) All buildings, machinery, equipment, and other personal  
13 property which is used primarily for the manufacturing of wood biomass  
14 fuel, the land upon which this property is located, and land that is  
15 reasonably necessary in the manufacturing of wood biomass fuel, but not  
16 land necessary for growing of crops, which together comprise a new  
17 manufacturing facility or an addition to an existing manufacturing  
18 facility, are exempt from property taxation for the six assessment  
19 years following the date on which the facility or the addition to the  
20 existing facility becomes operational.

21            (b) For manufacturing facilities which produce products in addition  
22 to wood biomass fuel, the amount of the property tax exemption shall be  
23 based upon the annual percentage of the total value of all products  
24 manufactured that is the value of the wood biomass fuel manufactured.

25            (3) Claims for exemptions authorized by this section shall be filed  
26 with the county assessor on forms prescribed by the department of  
27 revenue and furnished by the assessor. Once filed, the exemption is  
28 valid for six years and shall not be renewed. The assessor shall  
29 verify and approve claims as the assessor determines to be justified  
30 and in accordance with this section. No claims may be filed after  
31 December 31, 2009.

32            The department of revenue may promulgate such rules, pursuant to  
33 chapter 34.05 RCW, as necessary to properly administer this section.

34        **Sec. 10.** RCW 82.29A.135 and 1985 c 371 s 3 are each amended to  
35 read as follows:

1 (1) For the purposes of this section((7)):

2 (a) "Alcohol fuel" means any alcohol made from a product other than  
3 petroleum or natural gas, which is used alone or in combination with  
4 gasoline or other petroleum products for use as a fuel for motor  
5 vehicles, farm implements, and machines or implements of husbandry.

6 (b) "Wood biomass fuel" means a pyrolytic liquid fuel or synthesis  
7 gas-derived liquid fuel, comprised primarily of carbon monoxide and  
8 hydrogen, produced from wood, and used in internal combustion engines.

9 (2)(a) All leasehold interests in buildings, machinery, equipment,  
10 and other personal property which is used primarily for the  
11 manufacturing of alcohol fuel, wood biomass fuel, the land upon which  
12 ((such)) this property is located, and land that is reasonably  
13 necessary in the manufacturing of alcohol fuel, wood biomass fuel, but  
14 not land necessary for growing of crops, which together comprise a new  
15 ((~~alcohol~~)) manufacturing facility or an addition to an existing  
16 ((~~alcohol~~)) manufacturing facility, are exempt from leasehold taxes for  
17 a period of six years from the date on which the facility or the  
18 addition to the existing facility becomes operational.

19 (b) For ((~~alcohol~~)) manufacturing facilities which produce  
20 ((~~alcohol for use as~~)) products in addition to alcohol fuel ((and  
21 alcohol used for other purposes)), wood biomass fuel, the amount of the  
22 leasehold tax exemption shall be based upon ((~~an annually determined~~  
23 ~~percentage of the total gallons of alcohol produced that is sold and~~  
24 ~~used as alcohol fuel~~)) the annual percentage of the total value of all  
25 products manufactured that is the value of the alcohol fuel or wood  
26 biomass fuel manufactured.

27 (3) Claims for exemptions authorized by this section shall be filed  
28 with the department of revenue on forms prescribed by the department of  
29 revenue and furnished by the department of revenue. Once filed, the  
30 exemption is valid for six years and shall not be renewed. The  
31 department of revenue shall verify and approve ((such)) claims as the  
32 department of revenue determines to be justified and in accordance with  
33 this section. No claims may be filed after December 31, ((1992)) 2009.

34 The department of revenue may promulgate such rules, pursuant to  
35 chapter 34.05 RCW, as are necessary to properly administer this  
36 section.

1           **Sec. 11.** RCW 82.04.260 and 2001 2nd sp.s. c 25 s 2 are each  
2 amended to read as follows:

3           (1) Upon every person engaging within this state in the business of  
4 manufacturing:

5           (a) Wheat into flour, barley into pearl barley, soybeans into  
6 soybean oil, canola into canola oil, canola meal, or canola byproducts,  
7 or sunflower seeds into sunflower oil; as to such persons the amount of  
8 tax with respect to such business shall be equal to the value of the  
9 flour, pearl barley, oil, canola meal, or canola byproduct  
10 manufactured, multiplied by the rate of 0.138 percent;

11           (b) Seafood products which remain in a raw, raw frozen, or raw  
12 salted state at the completion of the manufacturing by that person; as  
13 to such persons the amount of tax with respect to such business shall  
14 be equal to the value of the products manufactured, multiplied by the  
15 rate of 0.138 percent;

16           (c) By canning, preserving, freezing, processing, or dehydrating  
17 fresh fruits and vegetables, or selling at wholesale fresh fruits and  
18 vegetables canned, preserved, frozen, processed, or dehydrated by the  
19 seller and sold to purchasers who transport in the ordinary course of  
20 business the goods out of this state; as to such persons the amount of  
21 tax with respect to such business shall be equal to the value of the  
22 products canned, preserved, frozen, processed, or dehydrated multiplied  
23 by the rate of 0.138 percent. As proof of sale to a person who  
24 transports in the ordinary course of business goods out of this state,  
25 the seller shall annually provide a statement in a form prescribed by  
26 the department and retain the statement as a business record; (~~and~~)

27           (d) Dairy products that as of September 20, 2001, are identified in  
28 21 C.F.R., chapter 1, parts 131, 133, and 135, including byproducts  
29 from the manufacturing of the dairy products such as whey and casein;  
30 or selling the same to purchasers who transport in the ordinary course  
31 of business the goods out of state; as to such persons the tax imposed  
32 shall be equal to the value of the products manufactured multiplied by  
33 the rate of 0.138 percent. As proof of sale to a person who transports  
34 in the ordinary course of business goods out of this state, the seller  
35 shall annually provide a statement in a form prescribed by the  
36 department and retain the statement as a business record; and

37           (e) Alcohol fuel or wood biomass fuel, as those terms are defined



1 in RCW 82.29A.135; as to such persons the amount of tax with respect to  
2 the business shall be equal to the value of alcohol fuel or wood  
3 biomass fuel manufactured, multiplied by the rate of 0.138 percent.

4 (2) Upon every person engaging within this state in the business of  
5 splitting or processing dried peas; as to such persons the amount of  
6 tax with respect to such business shall be equal to the value of the  
7 peas split or processed, multiplied by the rate of 0.138 percent.

8 (3) Upon every nonprofit corporation and nonprofit association  
9 engaging within this state in research and development, as to such  
10 corporations and associations, the amount of tax with respect to such  
11 activities shall be equal to the gross income derived from such  
12 activities multiplied by the rate of 0.484 percent.

13 (4) Upon every person engaging within this state in the business of  
14 slaughtering, breaking and/or processing perishable meat products  
15 and/or selling the same at wholesale only and not at retail; as to such  
16 persons the tax imposed shall be equal to the gross proceeds derived  
17 from such sales multiplied by the rate of 0.138 percent.

18 (5) Upon every person engaging within this state in the business of  
19 making sales, at retail or wholesale, of nuclear fuel assemblies  
20 manufactured by that person, as to such persons the amount of tax with  
21 respect to such business shall be equal to the gross proceeds of sales  
22 of the assemblies multiplied by the rate of 0.275 percent.

23 (6) Upon every person engaging within this state in the business of  
24 manufacturing nuclear fuel assemblies, as to such persons the amount of  
25 tax with respect to such business shall be equal to the value of the  
26 products manufactured multiplied by the rate of 0.275 percent.

27 (7) Upon every person engaging within this state in the business of  
28 acting as a travel agent or tour operator; as to such persons the  
29 amount of the tax with respect to such activities shall be equal to the  
30 gross income derived from such activities multiplied by the rate of  
31 0.275 percent.

32 (8) Upon every person engaging within this state in business as an  
33 international steamship agent, international customs house broker,  
34 international freight forwarder, vessel and/or cargo charter broker in  
35 foreign commerce, and/or international air cargo agent; as to such  
36 persons the amount of the tax with respect to only international  
37 activities shall be equal to the gross income derived from such  
38 activities multiplied by the rate of 0.275 percent.

1 (9) Upon every person engaging within this state in the business of  
2 stevedoring and associated activities pertinent to the movement of  
3 goods and commodities in waterborne interstate or foreign commerce; as  
4 to such persons the amount of tax with respect to such business shall  
5 be equal to the gross proceeds derived from such activities multiplied  
6 by the rate of 0.275 percent. Persons subject to taxation under this  
7 subsection shall be exempt from payment of taxes imposed by chapter  
8 82.16 RCW for that portion of their business subject to taxation under  
9 this subsection. Stevedoring and associated activities pertinent to  
10 the conduct of goods and commodities in waterborne interstate or  
11 foreign commerce are defined as all activities of a labor, service or  
12 transportation nature whereby cargo may be loaded or unloaded to or  
13 from vessels or barges, passing over, onto or under a wharf, pier, or  
14 similar structure; cargo may be moved to a warehouse or similar holding  
15 or storage yard or area to await further movement in import or export  
16 or may move to a consolidation freight station and be stuffed,  
17 unstuffed, containerized, separated or otherwise segregated or  
18 aggregated for delivery or loaded on any mode of transportation for  
19 delivery to its consignee. Specific activities included in this  
20 definition are: Wharfage, handling, loading, unloading, moving of  
21 cargo to a convenient place of delivery to the consignee or a  
22 convenient place for further movement to export mode; documentation  
23 services in connection with the receipt, delivery, checking, care,  
24 custody and control of cargo required in the transfer of cargo;  
25 imported automobile handling prior to delivery to consignee; terminal  
26 stevedoring and incidental vessel services, including but not limited  
27 to plugging and unplugging refrigerator service to containers,  
28 trailers, and other refrigerated cargo receptacles, and securing ship  
29 hatch covers.

30 (10) Upon every person engaging within this state in the business  
31 of disposing of low-level waste, as defined in RCW 43.145.010; as to  
32 such persons the amount of the tax with respect to such business shall  
33 be equal to the gross income of the business, excluding any fees  
34 imposed under chapter 43.200 RCW, multiplied by the rate of 3.3  
35 percent.

36 If the gross income of the taxpayer is attributable to activities  
37 both within and without this state, the gross income attributable to

1 this state shall be determined in accordance with the methods of  
2 apportionment required under RCW 82.04.460.

3 (11) Upon every person engaging within this state as an insurance  
4 agent, insurance broker, or insurance solicitor licensed under chapter  
5 48.17 RCW; as to such persons, the amount of the tax with respect to  
6 such licensed activities shall be equal to the gross income of such  
7 business multiplied by the rate of 0.484 percent.

8 (12) Upon every person engaging within this state in business as a  
9 hospital, as defined in chapter 70.41 RCW, that is operated as a  
10 nonprofit corporation or by the state or any of its political  
11 subdivisions, as to such persons, the amount of tax with respect to  
12 such activities shall be equal to the gross income of the business  
13 multiplied by the rate of 0.75 percent through June 30, 1995, and 1.5  
14 percent thereafter. The moneys collected under this subsection shall  
15 be deposited in the health services account created under RCW  
16 43.72.900.

17 NEW SECTION. **Sec. 12.** A new section is added to chapter 82.04 RCW  
18 to read as follows:

19 (1) In computing tax there may be deducted from the measure of tax  
20 amounts received from the retail sale, or for the distribution, of wood  
21 biomass fuel.

22 (2) For the purposes of this act, the following definitions apply:

23 (a) "Wood biomass fuel" means a pyrolytic liquid fuel or synthesis  
24 gas-derived liquid fuel, comprised primarily of carbon monoxide and  
25 hydrogen, produced from wood, and used in internal combustion engines.

26 (b) "Distribution" means any of the actions specified in RCW  
27 82.36.020(2).

28 (3) This section expires July 1, 2009.

29 NEW SECTION. **Sec. 13.** A new section is added to chapter 82.08 RCW  
30 to read as follows:

31 (1) The tax levied by RCW 82.08.020 does not apply to purchases of  
32 qualifying investment projects by persons who sell wood biomass fuel at  
33 retail or distribute wood biomass fuel.

34 (2)(a) The department of revenue must provide an exemption  
35 certificate to an eligible person upon application by that person. The

1 application must be in a form and manner prescribed by the department  
2 and must contain information regarding the location of the facility and  
3 other information as the department may require.

4 (b) The exemption is available only when the buyer provides the  
5 seller with an exemption certificate in a form and manner prescribed by  
6 the department. The seller must retain a copy of the certificate for  
7 the seller's files.

8 (3) For the purposes of this section, the definitions in section 1  
9 of this act and this subsection (3) apply.

10 (a) "Wood biomass fuel refueling" means refueling with, and "wood  
11 biomass fuel distribution" means the distribution of, fuel that  
12 contains at least twenty percent wood biomass fuel by volume.

13 (b) "Qualifying investment project" means:

14 (i) Tangible personal property, and labor and services related to  
15 the construction or installation of the personal property, acquired  
16 after the effective date of this act and to be used for wood biomass  
17 fuel refueling; or

18 (ii) Motorized vehicles and other tangible personal property  
19 directly related to motorized vehicular transportation, acquired after  
20 the effective date of this act and to be used for wood biomass fuel  
21 distribution.

22 (4) This section expires July 1, 2009.

23 NEW SECTION. **Sec. 14.** A new section is added to chapter 82.12 RCW  
24 to read as follows:

25 (1) The provisions of this chapter do not apply in respect to the  
26 use of qualifying investment projects by persons who sell wood biomass  
27 fuel at retail or distribute wood biomass fuel.

28 (2) The exemption certificate and recordkeeping requirements of  
29 section 13 of this act apply to this section.

30 (3) For the purposes of this section, the definitions in sections  
31 12 and 13 of this act apply.

32 (4) This section expires July 1, 2009.

33 NEW SECTION. **Sec. 15.** Section 9 of this act applies to taxes  
34 levied for collection in 2004 and thereafter.

1        NEW SECTION.    **Sec. 16.**    (1) Sections 9 through 15 of this act are  
2 necessary for the immediate preservation of the public peace, health,  
3 or safety, or support of the state government and its existing public  
4 institutions, and take effect July 1, 2003.

5        (2) Sections 1 through 8 of this act take effect July 1, 2004.

6        NEW SECTION.    **Sec. 17.**    Sections 1 through 8 of this act are null  
7 and void if the legislature passes and the governor signs any bill into  
8 law before July 1, 2004, that extends the expiration date in RCW  
9 82.60.050.

10       NEW SECTION.    **Sec. 18.**    Sections 1 through 8 of this act constitute  
11 a new chapter in Title 82 RCW.

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