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SECOND SUBSTITUTE HOUSE BILL 2339

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State of Washington

58th Legislature

2004 Regular Session

By House Committee on Finance (originally sponsored by Representatives Morris, Ericksen, Linville, Quall, Condotta, Wood, Conway, Sullivan, Mielke, Armstrong, Boldt, Orcutt, Newhouse, Hinkle and Hudgins)

READ FIRST TIME 02/06/04.

1 AN ACT Relating to tax relief for aluminum smelters; amending RCW  
2 82.04.240, 82.04.270, 82.04.280, 82.04.440, and 82.12.022; adding new  
3 sections to chapter 82.04 RCW; adding a new section to chapter 82.08  
4 RCW; adding a new section to chapter 82.12 RCW; adding a new section to  
5 chapter 82.16 RCW; adding a new section to chapter 82.32 RCW; creating  
6 a new section; providing an expiration date; and declaring an  
7 emergency.

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

9 NEW SECTION. **Sec. 1.** The legislature recognizes that the loss of  
10 domestic manufacturing jobs has become a national concern. Washington  
11 state has lost one out of every six manufacturing jobs since July 2000.  
12 The aluminum industry has long been an important component of  
13 Washington state's manufacturing base, providing family-wage jobs often  
14 in rural communities where unemployment rates are very high. The  
15 aluminum industry is electricity intensive and was greatly affected by  
16 the dramatic increase in electricity prices which began in 2000 and  
17 which continues to affect the Washington economy. Before the energy  
18 crisis, aluminum smelters provided about 5,000 direct jobs. Today they  
19 provide fewer than 1,000 direct jobs. For every job lost in that

1 industry, almost three additional jobs are estimated to be lost  
2 elsewhere in the state's economy. It is the legislature's intent to  
3 preserve and restore family wage jobs by providing tax relief to the  
4 state's aluminum industry.

5 The electric loads of aluminum smelters provide a unique benefit to  
6 the infrastructure of the electric power system. Under the  
7 transmission tariff of the Bonneville Power Administration, aluminum  
8 smelter loads, whether served with federal or nonfederal power, are  
9 subject to short-term interruptions that allow a higher import  
10 capability on the transmission interconnection between the northwest  
11 and California. These stability reserves allow more power to be  
12 imported in winter months, reducing the need for additional generation  
13 in the northwest, and would be used to prevent a widespread  
14 transmission collapse and blackout if there were a failure in the  
15 transmission interconnection between California and the northwest. It  
16 is the legislature's intent to retain these benefits for the people of  
17 the state.

18 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.04 RCW,  
19 to be codified between RCW 82.04.020 and 82.04.220, to read as follows:

20 (1) "Direct service industrial customer" means the same as in RCW  
21 82.16.0495.

22 (2) "Aluminum smelter" means the manufacturing facility of any  
23 direct service industrial customer that processes alumina into  
24 aluminum.

25 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.04 RCW  
26 to read as follows:

27 (1) Upon every person who is an aluminum smelter engaging within  
28 this state in the business of manufacturing aluminum; as to such  
29 persons the amount of tax with respect to such business shall, in the  
30 case of manufacturers, be equal to the value of the product  
31 manufactured, or in the case of processors for hire, be equal to the  
32 gross income of the business, multiplied by the rate of .2904 percent.

33 (2) Upon every person who is an aluminum smelter engaging within  
34 this state in the business of making sales at wholesale of aluminum  
35 manufactured by that person, as to such persons the amount of tax with

1 respect to such business shall be equal to the gross proceeds of sales  
2 of the aluminum multiplied by the rate of .2904 percent.

3 (3) This section expires January 1, 2007.

4 **Sec. 4.** RCW 82.04.240 and 1998 c 312 s 3 are each amended to read  
5 as follows:

6 Upon every person (~~((except persons taxable under RCW 82.04.260 (1),~~  
7 ~~(2), (4), (5), or (6)))~~) engaging within this state in business as a  
8 manufacturer, except persons taxable as manufacturers under other  
9 provisions of this chapter; as to such persons the amount of the tax  
10 with respect to such business shall be equal to the value of the  
11 products, including byproducts, manufactured, multiplied by the rate of  
12 0.484 percent.

13 The measure of the tax is the value of the products, including  
14 byproducts, so manufactured regardless of the place of sale or the fact  
15 that deliveries may be made to points outside the state.

16 **Sec. 5.** RCW 82.04.270 and 2003 2nd sp.s. c 1 s 5 are each amended  
17 to read as follows:

18 Upon every person (~~((except persons taxable under RCW 82.04.260 (5)~~  
19 ~~or (13), 82.04.298, or 82.04.272))~~) engaging within this state in the  
20 business of making sales at wholesale, except persons taxable as  
21 wholesalers under other provisions of this chapter; as to such persons  
22 the amount of tax with respect to such business shall be equal to the  
23 gross proceeds of sales of such business multiplied by the rate of  
24 0.484 percent.

25 **Sec. 6.** RCW 82.04.280 and 1998 c 343 s 3 are each amended to read  
26 as follows:

27 Upon every person engaging within this state in the business of:  
28 (1) Printing, and of publishing newspapers, periodicals, or magazines;  
29 (2) building, repairing or improving any street, place, road, highway,  
30 easement, right of way, mass public transportation terminal or parking  
31 facility, bridge, tunnel, or trestle which is owned by a municipal  
32 corporation or political subdivision of the state or by the United  
33 States and which is used or to be used, primarily for foot or vehicular  
34 traffic including mass transportation vehicles of any kind and  
35 including any readjustment, reconstruction or relocation of the

1 facilities of any public, private or cooperatively owned utility or  
2 railroad in the course of such building, repairing or improving, the  
3 cost of which readjustment, reconstruction, or relocation, is the  
4 responsibility of the public authority whose street, place, road,  
5 highway, easement, right of way, mass public transportation terminal or  
6 parking facility, bridge, tunnel, or trestle is being built, repaired  
7 or improved; (3) extracting for hire or processing for hire, except  
8 persons taxable as processors for hire under another section of this  
9 chapter; (4) operating a cold storage warehouse or storage warehouse,  
10 but not including the rental of cold storage lockers; (5) representing  
11 and performing services for fire or casualty insurance companies as an  
12 independent resident managing general agent licensed under the  
13 provisions of RCW 48.05.310; (6) radio and television broadcasting,  
14 excluding network, national and regional advertising computed as a  
15 standard deduction based on the national average thereof as annually  
16 reported by the Federal Communications Commission, or in lieu thereof  
17 by itemization by the individual broadcasting station, and excluding  
18 that portion of revenue represented by the out-of-state audience  
19 computed as a ratio to the station's total audience as measured by the  
20 100 micro-volt signal strength and delivery by wire, if any; (7)  
21 engaging in activities which bring a person within the definition of  
22 consumer contained in RCW 82.04.190(6); as to such persons, the amount  
23 of tax on such business shall be equal to the gross income of the  
24 business multiplied by the rate of 0.484 percent.

25 As used in this section, "cold storage warehouse" means a storage  
26 warehouse used to store fresh and/or frozen perishable fruits or  
27 vegetables, meat, seafood, dairy products, or fowl, or any combination  
28 thereof, at a desired temperature to maintain the quality of the  
29 product for orderly marketing.

30 As used in this section, "storage warehouse" means a building or  
31 structure, or any part thereof, in which goods, wares, or merchandise  
32 are received for storage for compensation, except field warehouses,  
33 fruit warehouses, fruit packing plants, warehouses licensed under  
34 chapter 22.09 RCW, public garages storing automobiles, railroad freight  
35 sheds, docks and wharves, and "self-storage" or "mini storage"  
36 facilities whereby customers have direct access to individual storage  
37 areas by separate entrance. "Storage warehouse" does not include a

1 building or structure, or that part of such building or structure, in  
2 which an activity taxable under RCW 82.04.272 is conducted.

3 As used in this section, "periodical or magazine" means a printed  
4 publication, other than a newspaper, issued regularly at stated  
5 intervals at least once every three months, including any supplement or  
6 special edition of the publication.

7 **Sec. 7.** RCW 82.04.440 and 2003 2nd sp.s. c 1 s 6 are each amended  
8 to read as follows:

9 (1) Every person engaged in activities which are within the purview  
10 of the provisions of two or more of sections RCW 82.04.230 to  
11 82.04.290, inclusive, shall be taxable under each paragraph applicable  
12 to the activities engaged in.

13 (2) Persons taxable under section 3(2) of this act, RCW 82.04.250,  
14 82.04.270, or 82.04.260 (4) or (13) with respect to selling products in  
15 this state shall be allowed a credit against those taxes for any (a)  
16 manufacturing taxes paid with respect to the manufacturing of products  
17 so sold in this state, and/or (b) extracting taxes paid with respect to  
18 the extracting of products so sold in this state or ingredients of  
19 products so sold in this state. Extracting taxes taken as credit under  
20 subsection (3) of this section may also be taken under this subsection,  
21 if otherwise allowable under this subsection. The amount of the credit  
22 shall not exceed the tax liability arising under this chapter with  
23 respect to the sale of those products.

24 (3) Persons taxable under RCW 82.04.240 or 82.04.260(1)(b) shall be  
25 allowed a credit against those taxes for any extracting taxes paid with  
26 respect to extracting the ingredients of the products so manufactured  
27 in this state. The amount of the credit shall not exceed the tax  
28 liability arising under this chapter with respect to the manufacturing  
29 of those products.

30 (4) Persons taxable under RCW 82.04.230, 82.04.240, section 3(1) of  
31 this act, or 82.04.260 (1), (2), (4), (6), or (13) with respect to  
32 extracting or manufacturing products in this state shall be allowed a  
33 credit against those taxes for any (i) gross receipts taxes paid to  
34 another state with respect to the sales of the products so extracted or  
35 manufactured in this state, (ii) manufacturing taxes paid with respect  
36 to the manufacturing of products using ingredients so extracted in this  
37 state, or (iii) manufacturing taxes paid with respect to manufacturing

1 activities completed in another state for products so manufactured in  
2 this state. The amount of the credit shall not exceed the tax  
3 liability arising under this chapter with respect to the extraction or  
4 manufacturing of those products.

5 (5) For the purpose of this section:

6 (a) "Gross receipts tax" means a tax:

7 (i) Which is imposed on or measured by the gross volume of  
8 business, in terms of gross receipts or in other terms, and in the  
9 determination of which the deductions allowed would not constitute the  
10 tax an income tax or value added tax; and

11 (ii) Which is also not, pursuant to law or custom, separately  
12 stated from the sales price.

13 (b) "State" means (i) the state of Washington, (ii) a state of the  
14 United States other than Washington, or any political subdivision of  
15 such other state, (iii) the District of Columbia, and (iv) any foreign  
16 country or political subdivision thereof.

17 (c) "Manufacturing tax" means a gross receipts tax imposed on the  
18 act or privilege of engaging in business as a manufacturer, and  
19 includes (i) the taxes imposed in RCW 82.04.240, section 3(1) of this  
20 act, and 82.04.260 (1), (2), (4), and (13), and (ii) similar gross  
21 receipts taxes paid to other states.

22 (d) "Extracting tax" means a gross receipts tax imposed on the act  
23 or privilege of engaging in business as an extractor, and includes the  
24 tax imposed in RCW 82.04.230 and similar gross receipts taxes paid to  
25 other states.

26 (e) "Business", "manufacturer", "extractor", and other terms used  
27 in this section have the meanings given in RCW 82.04.020 through  
28 82.04.212, notwithstanding the use of those terms in the context of  
29 describing taxes imposed by other states.

30 NEW SECTION. **Sec. 8.** A new section is added to chapter 82.04 RCW  
31 to read as follows:

32 (1) In computing the tax imposed under this chapter, a credit is  
33 allowed for all property taxes paid during the calendar year on  
34 property owned by a direct service industrial customer and reasonably  
35 necessary for the purposes of an aluminum smelter.

36 (2) A person taking the credit under this section is subject to all  
37 the requirements of chapter 82.32 RCW. A credit earned during one

1 calendar year may be carried over to be credited against taxes incurred  
2 in the subsequent calendar year, but may not be carried over a second  
3 year. Credits carried over must be applied to tax liability before new  
4 credits. No refunds may be granted for credits under this section.

5 (3) Credits may not be claimed under this section for property  
6 taxes levied for collection in 2007 and thereafter.

7 NEW SECTION. **Sec. 9.** A new section is added to chapter 82.04 RCW  
8 to read as follows:

9 (1) A person who is subject to tax under this chapter on gross  
10 income from sales of electricity, natural gas, or manufactured gas made  
11 to an aluminum smelter is eligible for an exemption from the tax in the  
12 form of a credit, if the contract for sale of electricity or gas to the  
13 aluminum smelter specifies that the price charged for the electricity  
14 or gas will be reduced by an amount equal to the credit.

15 (2) The credit is equal to the gross income from the sale of the  
16 electricity or gas to an aluminum smelter multiplied by the  
17 corresponding rate in effect at the time of the sale under this  
18 chapter.

19 NEW SECTION. **Sec. 10.** A new section is added to chapter 82.08 RCW  
20 to read as follows:

21 (1) A person who has paid tax under RCW 82.08.020 for tangible  
22 personal property used at an aluminum smelter, tangible personal  
23 property that will be incorporated as an ingredient or component of  
24 buildings or other structures at an aluminum smelter, or for labor and  
25 services rendered with respect to such buildings, structures, or  
26 tangible personal property, is eligible for an exemption from the state  
27 share of the tax in the form of a credit, as provided in this section.  
28 A person claiming an exemption must pay the tax and may then take a  
29 credit equal to the state share of retail sales tax paid under RCW  
30 82.08.020. The person shall submit information, in a form and manner  
31 prescribed by the department, specifying the amount of qualifying  
32 purchases or acquisitions for which the exemption is claimed and the  
33 amount of exempted tax.

34 (2) For the purposes of this section, "aluminum smelter" has the  
35 same meaning as provided in section 2 of this act.

1 (3) Credits may not be claimed under this section for taxable  
2 events occurring on or after January 1, 2007.

3 NEW SECTION. **Sec. 11.** A new section is added to chapter 82.12 RCW  
4 to read as follows:

5 (1) A person who is subject to tax under RCW 82.12.020 for tangible  
6 personal property used at an aluminum smelter, or for tangible personal  
7 property that will be incorporated as an ingredient or component of  
8 buildings or other structures at an aluminum smelter, or for labor and  
9 services rendered with respect to such buildings, structures, or  
10 tangible personal property, is eligible for an exemption from the state  
11 share of the tax in the form of a credit, as provided in this section.  
12 The amount of the credit shall be equal to the state share of use tax  
13 computed to be due under RCW 82.12.020. The person shall submit  
14 information, in a form and manner prescribed by the department,  
15 specifying the amount of qualifying purchases or acquisitions for which  
16 the exemption is claimed and the amount of exempted tax.

17 (2) For the purposes of this section, "aluminum smelter" has the  
18 same meaning as provided in section 2 of this act.

19 (3) Credits may not be claimed under this section for taxable  
20 events occurring on or after January 1, 2007.

21 **Sec. 12.** RCW 82.12.022 and 1994 c 124 s 9 are each amended to read  
22 as follows:

23 (1) There is hereby levied and there shall be collected from every  
24 person in this state a use tax for the privilege of using natural gas  
25 or manufactured gas within this state as a consumer.

26 (2) The tax shall be levied and collected in an amount equal to the  
27 value of the article used by the taxpayer multiplied by the rate in  
28 effect for the public utility tax on gas distribution businesses under  
29 RCW 82.16.020. The "value of the article used" does not include any  
30 amounts that are paid for the hire or use of a gas distribution  
31 business as defined in RCW 82.16.010(7) in transporting the gas subject  
32 to tax under this subsection if those amounts are subject to tax under  
33 that chapter.

34 (3) The tax levied in this section shall not apply to the use of  
35 natural or manufactured gas delivered to the consumer by other means  
36 than through a pipeline.



1 (4) The tax levied in this section shall not apply to the use of  
2 natural or manufactured gas if the person who sold the gas to the  
3 consumer has paid a tax under RCW 82.16.020 with respect to the gas for  
4 which exemption is sought under this subsection.

5 (5) The tax levied in this section shall not apply to the use of  
6 natural or manufactured gas by an aluminum smelter as that term is  
7 defined in section 2 of this act before January 1, 2007.

8 (6) There shall be a credit against the tax levied under this  
9 section in an amount equal to any tax paid by:

10 (a) The person who sold the gas to the consumer when that tax is a  
11 gross receipts tax similar to that imposed pursuant to RCW 82.16.020 by  
12 another state with respect to the gas for which a credit is sought  
13 under this subsection; or

14 (b) The person consuming the gas upon which a use tax similar to  
15 the tax imposed by this section was paid to another state with respect  
16 to the gas for which a credit is sought under this subsection.

17 ~~((+6))~~ (7) The use tax hereby imposed shall be paid by the  
18 consumer to the department.

19 ~~((+7))~~ (8) There is imposed a reporting requirement on the person  
20 who delivered the gas to the consumer to make a quarterly report to the  
21 department. Such report shall contain the volume of gas delivered,  
22 name of the consumer to whom delivered, and such other information as  
23 the department shall require by rule.

24 ~~((+8))~~ (9) The department may adopt rules under chapter 34.05 RCW  
25 for the administration and enforcement of sections 1 through 6, chapter  
26 384, Laws of 1989.

27 NEW SECTION. Sec. 13. A new section is added to chapter 82.16 RCW  
28 to read as follows:

29 (1) A person who is subject to tax under this chapter on gross  
30 income from sales of electricity, natural gas, or manufactured gas made  
31 to an aluminum smelter is eligible for an exemption from the tax in the  
32 form of a credit, if the contract for sale of electricity or gas to the  
33 aluminum smelter specifies that the price charged for the electricity  
34 or gas will be reduced by an amount equal to the credit.

35 (2) The credit is equal to the gross income from the sale of the  
36 electricity or gas to an aluminum smelter multiplied by the

1 corresponding rate in effect at the time of the sale for the public  
2 utility tax under RCW 82.16.020.

3 (3) For the purposes of this section, "aluminum smelter" has the  
4 same meaning as provided in section 2 of this act.

5 NEW SECTION. **Sec. 14.** A new section is added to chapter 82.32 RCW  
6 to read as follows:

7 (1) For the purposes of this section, "smelter tax incentive" means  
8 the preferential tax rate under section 3 of this act, or an exemption  
9 or credit under sections 8, 10, and 11 of this act or RCW 82.12.022(5).

10 (2) The legislature finds that accountability and effectiveness are  
11 important aspects of setting tax policy. In order to make policy  
12 choices regarding the best use of limited state resources the  
13 legislature needs information to evaluate whether the stated goals of  
14 legislation were achieved.

15 (3) The goals of the smelter tax incentives are to retain family  
16 wage jobs in rural areas by:

17 (a) Enabling the aluminum industry to maintain production of  
18 aluminum at a level that will preserve at least 75 percent of the jobs  
19 that were on the payroll effective January 1, 2004, as adjusted for  
20 employment reductions publicly announced before November 30, 2003; and

21 (b) Allowing the aluminum industry to continue producing aluminum  
22 in this state through 2006 so that the industry will be positioned to  
23 preserve and create new jobs when the anticipated reduction of energy  
24 costs occurs.

25 (4)(a) A person who receives the benefit of a smelter tax incentive  
26 shall make an annual report to the department detailing employment,  
27 wages, and employer-provided health and retirement benefits per job at  
28 the manufacturing site. The report is due by March 31st following any  
29 year in which a tax incentive is claimed or used. The report shall not  
30 include names of employees. The report shall detail employment by the  
31 total number of full-time, part-time, and temporary positions. The  
32 report shall indicate the quantity of aluminum smelted at the plant  
33 during the time period covered by the report. The first report filed  
34 under this subsection shall include employment, wage, and benefit  
35 information for the twelve-month period immediately before first use of  
36 a tax incentive. Employment reports shall include data for actual  
37 levels of employment and identification of the number of jobs affected

1 by any employment reductions that have been publicly announced at the  
2 time of the report. Information in a report under this section is not  
3 subject to the confidentiality provisions of RCW 82.32.330 and may be  
4 disclosed to the public upon request.

5 (b) If a person fails to submit an annual report under (a) of this  
6 subsection by the due date of the report, the department shall declare  
7 the amount of taxes exempted or credited, or reduced in the case of the  
8 preferential business and occupation tax rate, for that year to be  
9 immediately due and payable. Excise taxes payable under this  
10 subsection are subject to interest but not penalties, as provided under  
11 this chapter. This information is not subject to the confidentiality  
12 provisions of RCW 82.32.330 and may be disclosed to the public upon  
13 request.

14 (5) By December 1, 2005, and by December 1, 2006, the fiscal  
15 committees of the house of representatives and the senate, in  
16 consultation with the department, shall report to the legislature on  
17 the effectiveness of the smelter tax incentives. The report shall  
18 measure the effect of the smelter tax incentives on job retention for  
19 Washington residents, and other factors as the committees select.

20 NEW SECTION. **Sec. 15.** This act is necessary for the immediate  
21 preservation of the public peace, health, or safety, or support of the  
22 state government and its existing public institutions, and takes effect  
23 immediately.

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