

ESB 5873 - H COMM AMD
By Committee on Ways & Means

NOT CONSIDERED 03/25/2011

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 82.08.986 and 2010 1st sp.s. c 23 s 1601 are each
4 amended to read as follows:

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

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

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

26 (3)(a) Within six years of the date that the department issued an
27 exemption certificate under this section to a qualifying business with
28 respect to an eligible computer data center, the qualifying business
29 must establish that net employment at the eligible computer data center
30 has increased by a minimum of:

1 (i) Thirty-five family wage employment positions; or
2 (ii) Three family wage employment positions for each twenty
3 thousand square feet of space or less that is newly dedicated to
4 housing working servers at the eligible computer data center. For
5 qualifying businesses that lease or sublease space at an eligible
6 computer data center, the number of family wage employment positions
7 that must be increased under this subsection (3)(a)(ii) is based only
8 on the space occupied by the lessee or sublessee in the eligible
9 computer data center.

10 (b) In calculating the net increase in family wage employment
11 positions:

12 (i) The owner of an eligible computer data center, in addition to
13 its own net increase in family wage employment positions, may include:

14 (A) The net increase in family wage employment positions employed
15 by qualifying businesses leasing or subleasing space within the
16 eligible computer data center (~~(from the owner)~~); and

17 (B) The net increase in family wage employment positions described
18 in (c)(ii)(B) of this subsection (3).

19 (ii)(A) Lessees (~~(of the owner of)~~) and sublessees of space within
20 an eligible computer data center, in addition to their own net increase
21 in family wage employment positions, may include:

22 (I) A portion of the net increase in family wage employment
23 positions employed by the owner; and

24 (II) A portion of the net increase in family wage employment
25 positions described in (c)(ii)(B) of this subsection (3).

26 (B) The portion of the net increase in family wage employment
27 positions to be counted under this subsection (3)(b)(ii) by each lessee
28 or sublessee must be in proportion to the amount of space in the
29 eligible computer data center occupied by the lessee or sublessee
30 compared to the total amount of space in the eligible computer data
31 center occupied by all lessees and sublessees that are qualifying
32 businesses.

33 (c)(i) For purposes of this subsection, family wage employment
34 positions are new permanent employment positions requiring forty hours
35 of weekly work, or their equivalent, on a full-time basis at the
36 eligible computer data center and receiving a wage equivalent to or
37 greater than one hundred fifty percent of the per capita personal
38 income of the county in which the qualified project is located. An

1 employment position may not be counted as a family wage employment
2 position unless the employment position is entitled to health insurance
3 coverage provided by the employer of the employment position. For
4 purposes of this subsection (3)(c), "new permanent employment position"
5 means an employment position that did not exist or that had not
6 previously been filled as of the date that the department issued an
7 exemption certificate to the owner ~~((or))~~, lessee, or sublessee of an
8 eligible computer data center, as the case may be.

9 (ii)(A) Family wage employment positions include positions filled
10 by employees of the owner of the eligible computer data center and by
11 employees of qualifying businesses leasing or subleasing space ~~((from~~
12 ~~the owner of))~~ within the eligible computer data center.

13 (B) Family wage employment positions also include individuals
14 performing work at an eligible computer data center as an independent
15 contractor hired by the owner of the eligible computer data center or
16 as an employee of an independent contractor hired by the owner of the
17 eligible computer data center, if the work is necessary for the
18 operation of the computer data center, such as security and building
19 maintenance, and provided that all of the requirements in (c)(i) of
20 this subsection (3) are met.

21 (d) All previously exempted sales and use taxes are immediately due
22 and payable for a qualifying business that does not meet the
23 requirements of this subsection.

24 (4) A qualifying business claiming an exemption under this section
25 or RCW 82.12.986 must complete an annual report with the department as
26 required under RCW 82.32.534.

27 (5)(a) The exemption provided in this section does not apply to:

28 (i) Any person who has received the benefit of the deferral program
29 under chapter 82.60 RCW on: (A) The construction, renovation, or
30 expansion of a structure or structures used as a computer data center;
31 or (B) machinery or equipment used in a computer data center; and

32 (ii) Any person affiliated with a person within the scope of (a)(i)
33 of this subsection (5). For purposes of this subsection, "affiliated"
34 means that one person has a direct or indirect ownership interest of at
35 least twenty percent in another person.

36 (b) If a person claims an exemption under this section and
37 subsequently receives the benefit of the deferral program under chapter
38 82.60 RCW on either the construction, renovation, or expansion of a

1 structure or structures used as a computer data center or machinery or
2 equipment used in a computer data center, the person must repay the
3 amount of taxes exempted under this section. Interest as provided in
4 chapter 82.32 RCW applies to amounts due under this section until paid
5 in full.

6 (6) For purposes of this section the following definitions apply
7 unless the context clearly requires otherwise:

8 (a)(i) "Computer data center" means a facility comprised of one or
9 more buildings, which may be comprised of multiple businesses,
10 constructed or refurbished specifically, and used primarily, to house
11 working servers, where the facility has the following characteristics:

- 12 (A) Uninterruptible power supplies, generator backup power, or both;
- 13 (B) sophisticated fire suppression and prevention systems; and (C)
- 14 enhanced physical security, such as: Restricted access to the facility
- 15 to selected personnel; permanent security guards; video camera
- 16 surveillance; an electronic system requiring passcodes, keycards, or
- 17 biometric scans, such as hand scans and retinal or fingerprint
- 18 recognition; or similar security features.

19 (ii) For a computer data center comprised of multiple buildings,
20 each separate building constructed or refurbished specifically, and
21 used primarily, to house working servers is considered a computer data
22 center if it has all of the characteristics listed in (a)(i)(A) through
23 (C) of this subsection (6).

24 (iii) A facility comprised of one building or more than one
25 building must have a combined square footage of at least one hundred
26 thousand square feet.

27 (b) "Electronic data storage and data management services" include,
28 but are not limited to: Providing data storage and backup services,
29 providing computer processing power, hosting enterprise software
30 applications, and hosting web sites. The term also includes providing
31 services such as e-mail, web browsing and searching, media
32 applications, and other online services, regardless of whether a charge
33 is made for such services.

34 (c)(i) "Eligible computer data center" means a computer data
35 center:

- 36 (A) Located in a rural county as defined in RCW 82.14.370;
- 37 (B) Having at least twenty thousand square feet dedicated to

1 housing working servers, where the server space has not previously been
2 dedicated to housing working servers; and

3 (C) For which the commencement of construction occurs after March
4 31, 2010, and before July 1, (~~2011~~) 2014. For purposes of this
5 section, "commencement of construction" means the date that a building
6 permit is issued under the building code adopted under RCW 19.27.031
7 for construction of the computer data center. The construction of a
8 computer data center includes the expansion, renovation, or other
9 improvements made to existing facilities, including leased or rented
10 space. "Commencement of construction" does not include soil testing,
11 site clearing and grading, site preparation, or any other related
12 activities that are initiated before the issuance of a building permit
13 for the construction of the foundation of a computer data center.

14 (ii) With respect to facilities in existence on April 1, 2010, that
15 are expanded, renovated, or otherwise improved after March 31, 2010, an
16 eligible computer data center includes only the portion of the computer
17 data center meeting the requirements in (c)(i)(B) of this subsection
18 (6).

19 (d) "Eligible power infrastructure" means all fixtures and
20 equipment necessary for the transformation, distribution, or management
21 of electricity that is required to operate eligible server equipment
22 within an eligible computer data center and is purchased or put to
23 first use before April 1, 2018, or April 1, 2021, in the case of such
24 fixtures and equipment for an eligible computer data center for which
25 commencement of construction occurs after June 30, 2011. The term
26 includes electrical substations(~~()~~); generators(~~()~~); wiring(~~() and~~);
27 cogeneration equipment; and associated fixtures and equipment, such as
28 electrical switches, batteries, and distribution, testing, and
29 monitoring equipment.

30 (e) "Eligible server equipment" means the original server equipment
31 installed in an eligible computer data center on or after April 1,
32 2010, and replacement server equipment. For purposes of this
33 subsection (6)(e), "replacement server equipment" means server
34 equipment that: (i) Replaces existing server equipment, if the sale or
35 use of the server equipment to be replaced qualified for an exemption
36 under this section or RCW 82.12.986; and (ii) is installed and put into
37 regular use before April 1, 2018, or April 1, 2021, in the case of

1 server equipment for an eligible computer data center for which the
2 commencement of construction occurs after June 30, 2011.

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 of an eligible computer data center or the lessee or
6 sublessee of ~~((at least twenty thousand square feet))~~ server space
7 within an eligible computer data center ~~((dedicated to housing working~~
8 ~~servers, where the server space has not previously been dedicated to~~
9 ~~housing working servers))~~. The term does not include the state or
10 federal government or any of their departments, agencies, and
11 institutions; tribal governments; political subdivisions of this state;
12 or any municipal, quasi-municipal, public, or other corporation created
13 by the state or federal government, tribal government, municipality, or
14 political subdivision of the state.

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

21 ~~(h) "Server equipment" means the server chassis and all computer~~
22 ~~hardware contained within the server chassis. "Server equipment" also~~
23 ~~includes computer software necessary to operate the server. "Server~~
24 ~~equipment" does not include the racks upon which the server chassis is~~
25 ~~installed, and computer peripherals such as keyboards, monitors,~~
26 ~~printers, mice, and other devices that work outside of the computer.)~~
27 "Server equipment" means the computer hardware located in an eligible
28 computer data center and used exclusively to provide electronic data
29 storage and data management services for internal use by the owner,
30 lessee, or sublessee of the computer data center, for clients of the
31 owner, lessee, or sublessee of the computer data center, or both.
32 "Server equipment" also includes computer software necessary to operate
33 the computer hardware. "Server equipment" does not include personal
34 computers, the racks upon which the server equipment is installed, and
35 computer peripherals such as keyboards, monitors, printers, and mice.

36 (7) This section expires April 1, ~~((2018))~~ 2021.

1 **Sec. 2.** RCW 82.12.986 and 2010 1st sp.s. c 23 s 1602 are each
2 amended to read as follows:

3 (1) An exemption from the tax imposed by RCW 82.12.020 is provided
4 for the use by qualifying businesses of eligible server equipment to be
5 installed, without intervening use, in an eligible computer data
6 center, and to the use of labor and services rendered in respect to
7 installing such server equipment. The exemption also applies to the
8 use of power infrastructure, including labor and services rendered in
9 respect to installing, repairing, altering, or improving such
10 infrastructure.

11 (2) A qualifying business is not eligible for the exemption under
12 this section unless the department issued an exemption certificate to
13 the qualifying business for the exemption provided in RCW 82.08.986.

14 (3)(a) The exemption provided in this section does not apply to:

15 (i) Any person who has received the benefit of the deferral program
16 under chapter 82.60 RCW on: (A) The construction, renovation, or
17 expansion of a structure or structures used as a computer data center;
18 or (B) machinery or equipment used in a computer data center; and

19 (ii) Any person affiliated with a person within the scope of (a)(i)
20 of this subsection (3). For purposes of this subsection, "affiliated"
21 means that one person has a direct or indirect ownership interest of at
22 least twenty percent in another person.

23 (b) If a person has received the benefit of the exemption under
24 this section and subsequently receives the benefit of the deferral
25 program under chapter 82.60 RCW on either the construction, renovation,
26 or expansion of a structure or structures used as a computer data
27 center or machinery or equipment used in a computer data center, the
28 person must repay the amount of taxes exempted under this section.
29 Interest as provided in chapter 82.32 RCW applies to amounts due under
30 this subsection (3)(b) until paid in full. A person is not required to
31 repay taxes under this subsection with respect to property and services
32 for which the person is required to repay taxes under RCW 82.08.986(5).

33 (4) The definitions and requirements in RCW 82.08.986 apply to this
34 section.

35 (5) This section expires April 1, (~~2018~~) 2021.

36 NEW SECTION. **Sec. 3.** This act is necessary for the immediate

1 preservation of the public peace, health, or safety, or support of the
2 state government and its existing public institutions, and takes effect
3 July 1, 2011."

4 Correct the title.

EFFECT: Removes language allowing consumers, other than the owner of the data center or lessees, from claiming the sales and use tax exemption for power infrastructure equipment. Disallows the 3-year extension of the exemption for replacement servers for data centers commencing construction prior to July 1, 2011. Clarifies that an eligible business includes tenants subleasing server space.

--- END ---