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SENATE BILL 5873

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State of Washington

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By Senators Prentice, Parlette, Hewitt, Murray, Harper, Holmquist Newbry, Chase, Zarelli, Hobbs, King, Fain, Honeyford, Tom, Kilmer, and McAuliffe

Read first time 03/11/11. Referred to Committee on Ways & Means.

1 AN ACT Relating to the sales and use tax exemption for qualifying  
2 businesses of eligible server equipment; amending RCW 82.08.986 and  
3 82.12.986; providing an effective date; providing expiration dates; and  
4 declaring an emergency.

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

6 **Sec. 1.** RCW 82.08.986 and 2010 1st sp.s. c 23 s 1601 are each  
7 amended to read as follows:

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

17 (2)(a) In order to claim the exemption under this section, a  
18 qualifying business must submit an application to the department for an  
19 exemption certificate. The application must include the information

1 necessary, as required by the department, to determine that a business  
2 qualifies for the exemption under this section. The department must  
3 issue exemption certificates to qualifying businesses. The department  
4 may assign a unique identification number to each exemption certificate  
5 issued under this section.

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

10 (3)(a) Within six years of the date that the department issued an  
11 exemption certificate under this section to a qualifying business with  
12 respect to an eligible computer data center, the qualifying business  
13 must establish that net employment at the eligible computer data center  
14 has increased by a minimum of:

15 (i) Thirty-five family wage employment positions; or

16 (ii) Three family wage employment positions for each twenty  
17 thousand square feet of space or less that is newly dedicated to  
18 housing working servers at the eligible computer data center. For  
19 qualifying businesses that lease space at an eligible computer data  
20 center, the number of family wage employment positions that must be  
21 increased under this subsection (3)(a)(ii) is based only on the space  
22 occupied by the lessee in the eligible computer data center.

23 (b) In calculating the net increase in family wage employment  
24 positions:

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

27 (A) The net increase in family wage employment positions employed  
28 by qualifying businesses leasing space within the eligible computer  
29 data center from the owner; and

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

32 (ii)(A) Lessees of the owner of an eligible computer data center,  
33 in addition to their own net increase in family wage employment  
34 positions, may include:

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

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

1 (B) The portion of the net increase in family wage employment  
2 positions to be counted under this subsection (3)(b)(ii) by each lessee  
3 must be in proportion to the amount of space in the eligible computer  
4 data center occupied by the lessee compared to the total amount of  
5 space in the eligible computer data center occupied by all lessees that  
6 are qualifying businesses.

7 (c)(i) For purposes of this subsection, family wage employment  
8 positions are new permanent employment positions requiring forty hours  
9 of weekly work, or their equivalent, on a full-time basis at the  
10 eligible computer data center and receiving a wage equivalent to or  
11 greater than one hundred fifty percent of the per capita personal  
12 income of the county in which the qualified project is located. An  
13 employment position may not be counted as a family wage employment  
14 position unless the employment position is entitled to health insurance  
15 coverage provided by the employer of the employment position. For  
16 purposes of this subsection (3)(c), "new permanent employment position"  
17 means an employment position that did not exist or that had not  
18 previously been filled as of the date that the department issued an  
19 exemption certificate to the owner or lessee of an eligible computer  
20 data center, as the case may be.

21 (ii)(A) Family wage employment positions include positions filled  
22 by employees of the owner of the eligible computer data center and by  
23 employees of qualifying businesses leasing space from the owner of the  
24 eligible computer data center.

25 (B) Family wage employment positions also include individuals  
26 performing work at an eligible computer data center as an independent  
27 contractor hired by the owner of the eligible computer data center or  
28 as an employee of an independent contractor hired by the owner of the  
29 eligible computer data center, if the work is necessary for the  
30 operation of the computer data center, such as security and building  
31 maintenance, and provided that all of the requirements in (c)(i) of  
32 this subsection (3) are met.

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

36 (e) For purposes of this subsection (3), "qualifying business"  
37 refers only to a qualifying business as defined in subsection  
38 (6)(f)(i)(A) of this section.

1 (4) A qualifying business as defined in subsection (6)(f)(i)(A) of  
2 this section claiming an exemption under this section or RCW 82.12.986  
3 must complete an annual report with the department as required under  
4 RCW 82.32.534.

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

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

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

14 (b) If a person claims an exemption under this section and  
15 subsequently receives the benefit of the deferral program under chapter  
16 82.60 RCW on either the construction, renovation, or expansion of a  
17 structure or structures used as a computer data center or machinery or  
18 equipment used in a computer data center, the person must repay the  
19 amount of taxes exempted under this section. Interest as provided in  
20 chapter 82.32 RCW applies to amounts due under this section until paid  
21 in full.

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

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

35 (ii) For a computer data center comprised of multiple buildings,  
36 each separate building constructed or refurbished specifically, and  
37 used primarily, to house working servers is considered a computer data

1 center if it has all of the characteristics listed in (a)(i)(A) through  
2 (C) of this subsection (6).

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

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

13 (c)(i) "Eligible computer data center" means a computer data  
14 center:

15 (A) Located in a rural county as defined in RCW 82.14.370;

16 (B) Having at least twenty thousand square feet dedicated to  
17 housing working servers, where the server space has not previously been  
18 dedicated to housing working servers; and

19 (C) For which the commencement of construction occurs after March  
20 31, 2010, and before July 1, (~~(2011)~~) 2016. For purposes of this  
21 section, "commencement of construction" means the date that a building  
22 permit is issued under the building code adopted under RCW 19.27.031  
23 for construction of the computer data center. The construction of a  
24 computer data center includes the expansion, renovation, or other  
25 improvements made to existing facilities, including leased or rented  
26 space. "Commencement of construction" does not include soil testing,  
27 site clearing and grading, site preparation, or any other related  
28 activities that are initiated before the issuance of a building permit  
29 for the construction of the foundation of a computer data center.

30 (ii) With respect to facilities in existence on April 1, 2010, that  
31 are expanded, renovated, or otherwise improved after March 31, 2010, an  
32 eligible computer data center includes only the portion of the computer  
33 data center meeting the requirements in (c)(i)(B) of this subsection  
34 (6).

35 (d) "Eligible power infrastructure" means all fixtures and  
36 equipment necessary for the transformation, distribution, or management  
37 of electricity that is required to operate eligible server equipment  
38 within an eligible computer data center. The term includes electrical

1 substations(~~( )~~); generators(~~( )~~); wiring(~~( ) and~~); cogeneration  
2 equipment; and associated fixtures and equipment, such as electrical  
3 switches, batteries, and distribution, testing, and monitoring  
4 equipment.

5 (e) "Eligible server equipment" means the original server equipment  
6 installed in an eligible computer data center on or after April 1,  
7 2010, and replacement server equipment. For purposes of this  
8 subsection (6)(e), "replacement server equipment" means server  
9 equipment that: (i) Replaces existing server equipment, if the sale or  
10 use of the server equipment to be replaced qualified for an exemption  
11 under this section or RCW 82.12.986; and (ii) is installed and put into  
12 regular use before April 1, (~~(2018))~~ 2023.

13 (f)(i) "Qualifying business" means:  
14 (A) A business entity that exists for the primary purpose of  
15 engaging in commercial activity for profit and that is the owner of an  
16 eligible computer data center or the lessee of ((at least twenty  
17 thousand square feet)) server space within an eligible computer data  
18 center ((dedicated to housing working servers, where the server space  
19 has not previously been dedicated to housing working servers. The  
20 term)); or

21 (B) A consumer of eligible power infrastructure or of labor and  
22 services rendered in respect to constructing, installing, repairing,  
23 altering, or improving eligible power infrastructure, that is not  
24 otherwise a qualifying business under (f)(i)(A) of this subsection (6).

25 (ii) For purposes of (f)(i)(A) of this subsection (6) only, the  
26 term "qualifying business" does not include the state or federal  
27 government or any of their departments, agencies, and institutions;  
28 tribal governments; political subdivisions of this state; or any  
29 municipal, quasi-municipal, public, or other corporation created by the  
30 state or federal government, tribal government, municipality, or  
31 political subdivision of the state.

32 (g) (~~("Server" means blade or rack-mount server computers used in~~  
33 ~~a computer data center exclusively to provide electronic data storage~~  
34 ~~and data management services for internal use by the owner or lessee of~~  
35 ~~the computer data center, for clients of the owner or lessee of the~~  
36 ~~computer data center, or both. "Server" does not include personal~~  
37 ~~computers.~~

1       ~~(h) "Server equipment" means the server chassis and all computer~~  
2 ~~hardware contained within the server chassis. "Server equipment" also~~  
3 ~~includes computer software necessary to operate the server. "Server~~  
4 ~~equipment" does not include the racks upon which the server chassis is~~  
5 ~~installed, and computer peripherals such as keyboards, monitors,~~  
6 ~~printers, mice, and other devices that work outside of the computer.)~~  
7 "Server equipment" means the computer hardware located in an eligible  
8 computer data center and used exclusively to provide electronic data  
9 storage and data management services for internal use by the owner or  
10 lessee of the computer data center, for clients of the owner or lessee  
11 of the computer data center, or both. "Server equipment" also includes  
12 computer software necessary to operate the computer hardware. "Server  
13 equipment" does not include personal computers, the racks upon which  
14 the server equipment is installed, and computer peripherals such as  
15 keyboards, monitors, printers, and mice.

16       (7) This section expires April 1, ~~((2018))~~ 2023.

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

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

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

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

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

35       (ii) Any person affiliated with a person within the scope of (a)(i)  
36 of this subsection (3). For purposes of this subsection, "affiliated"

1 means that one person has a direct or indirect ownership interest of at  
2 least twenty percent in another person.

3 (b) If a person has received the benefit of the exemption under  
4 this section and subsequently receives the benefit of the deferral  
5 program under chapter 82.60 RCW on either the construction, renovation,  
6 or expansion of a structure or structures used as a computer data  
7 center or machinery or equipment used in a computer data center, the  
8 person must repay the amount of taxes exempted under this section.  
9 Interest as provided in chapter 82.32 RCW applies to amounts due under  
10 this subsection (3)(b) until paid in full. A person is not required to  
11 repay taxes under this subsection with respect to property and services  
12 for which the person is required to repay taxes under RCW 82.08.986(5).

13 (4) The definitions and requirements in RCW 82.08.986 apply to this  
14 section.

15 (5) This section expires April 1, (~~2018~~) 2023.

16 NEW SECTION. **Sec. 3.** This act is necessary for the immediate  
17 preservation of the public peace, health, or safety, or support of the  
18 state government and its existing public institutions, and takes effect  
19 July 1, 2011.

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