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SENATE BILL 6610

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State of Washington

62nd Legislature

2012 Regular Session

By Senators Chase, Prentice, Kline, Nelson, Conway, McAuliffe, Kohl-Welles, and Benton

Read first time 02/24/12. Referred to Committee on Ways & Means.

1 AN ACT Relating to increasing accountability for the tax  
2 preferences for manufacturing machinery and equipment by requiring a  
3 net benefit to the state and deferring sales and use tax; adding a new  
4 chapter to Title 82 RCW; repealing RCW 82.08.02565 and 82.12.02565; and  
5 providing an effective date.

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

7 NEW SECTION. **Sec. 1.** (1)(a) The state and local sales and use  
8 taxes due under chapters 82.08, 82.12, and 82.14 RCW may be deferred  
9 for sales to a manufacturer or processor for hire of machinery and  
10 equipment used directly in a manufacturing operation or research and  
11 development operation, to sales to a person engaged in testing for a  
12 manufacturer or processor for hire of machinery and equipment used  
13 directly in a testing operation, or to sales of or charges made for  
14 labor and services rendered in respect to installing, repairing,  
15 cleaning, altering, or improving the machinery and equipment only when  
16 the person claiming the exemption can demonstrate that there is a net  
17 benefit to the state.

18 (b) Sellers making tax-exempt sales under this section must obtain

1 from the purchaser the exemption certificate issued under section 3 of  
2 this act. The seller must retain a copy of the certificate for the  
3 seller's files.

4 (2) For purposes of this section:

5 (a) "Applicant" means a person applying for a tax deferral under  
6 this chapter.

7 (b) "Cogeneration" means the simultaneous generation of electrical  
8 energy and low-grade heat from the same fuel.

9 (c) "Department" means the department of revenue.

10 (d)(i) "Machinery and equipment" means industrial fixtures,  
11 devices, and support facilities, and tangible personal property that  
12 becomes an ingredient or component thereof, including repair parts and  
13 replacement parts. "Machinery and equipment" includes pollution  
14 control equipment installed and used in a manufacturing operation,  
15 testing operation, or research and development operation to prevent air  
16 pollution, water pollution, or contamination that might otherwise  
17 result from the manufacturing operation, testing operation, or research  
18 and development operation. "Machinery and equipment" also includes  
19 digital goods.

20 (ii) "Machinery and equipment" does not include:

21 (A) Hand-powered tools;

22 (B) Property with a useful life of less than one year;

23 (C) Buildings, other than machinery and equipment that is  
24 permanently affixed to or becomes a physical part of a building; and

25 (D) Building fixtures that are not integral to the manufacturing  
26 operation, testing operation, or research and development operation  
27 that are permanently affixed to and become a physical part of a  
28 building, such as utility systems for heating, ventilation, air  
29 conditioning, communications, plumbing, or electrical.

30 (e) Machinery and equipment is "used directly" in a manufacturing  
31 operation, testing operation, or research and development operation if  
32 the machinery and equipment:

33 (i) Acts upon or interacts with an item of tangible personal  
34 property;

35 (ii) Conveys, transports, handles, or temporarily stores an item of  
36 tangible personal property at the manufacturing site or testing site;

37 (iii) Controls, guides, measures, verifies, aligns, regulates, or  
38 tests tangible personal property at the site or away from the site;

1 (iv) Provides physical support for or access to tangible personal  
2 property;

3 (v) Produces power for or lubricates machinery and equipment;

4 (vi) Produces another item of tangible personal property for use in  
5 the manufacturing operation, testing operation, or research and  
6 development operation;

7 (vii) Places tangible personal property in the container, package,  
8 or wrapping in which the tangible personal property is normally sold or  
9 transported; or

10 (viii) Is integral to research and development as defined in RCW  
11 82.63.010.

12 (f) "Manufacturer" means a person that qualifies as a manufacturer  
13 under RCW 82.04.110. "Manufacturer" also includes a person that prints  
14 newspapers or other materials.

15 (g) "Manufacturing" means only those activities that come within  
16 the definition of "to manufacture" in RCW 82.04.120 and are taxed as  
17 manufacturing or processing for hire under chapter 82.04 RCW, or would  
18 be taxed as such if such activity were conducted in this state or if  
19 not for an exemption or deduction. "Manufacturing" also includes  
20 printing newspapers or other materials. An activity is not taxed as  
21 manufacturing or processing for hire under chapter 82.04 RCW if the  
22 activity is within the purview of chapter 82.16 RCW.

23 (h) "Manufacturing operation" means the manufacturing of articles,  
24 substances, or commodities for sale as tangible personal property. A  
25 manufacturing operation begins at the point where the raw materials  
26 enter the manufacturing site and ends at the point where the processed  
27 material leaves the manufacturing site. With respect to the production  
28 of class A or exceptional quality biosolids by a wastewater treatment  
29 facility, the manufacturing operation begins at the point where class  
30 B biosolids undergo additional processing to achieve class A or  
31 exceptional quality standards. Notwithstanding anything to the  
32 contrary in this section, the term also includes that portion of a  
33 cogeneration project that is used to generate power for consumption  
34 within the manufacturing site of which the cogeneration project is an  
35 integral part. The term does not include the preparation of food  
36 products on the premises of a person selling food products at retail.

37 (i) "Person" has the meaning given in RCW 82.04.030.

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

3 (k) "Research and development operation" means engaging in research  
4 and development as defined in RCW 82.63.010 by a manufacturer or  
5 processor for hire.

6 (l) "Testing" means activities performed to establish or determine  
7 the properties, qualities, and limitations of tangible personal  
8 property.

9 (m) "Testing operation" means the testing of tangible personal  
10 property for a manufacturer or processor for hire. A testing operation  
11 begins at the point where the tangible personal property enters the  
12 testing site and ends at the point where the tangible personal property  
13 leaves the testing site. The term also includes the testing of  
14 tangible personal property for use in that portion of a cogeneration  
15 project that is used to generate power for consumption within the  
16 manufacturing site of which the cogeneration project is an integral  
17 part. The term does not include the testing of tangible personal  
18 property for use in the production of electricity by a light and power  
19 business as defined in RCW 82.16.010 or the preparation of food  
20 products on the premises of a person selling food products at retail.

21 NEW SECTION. **Sec. 2.** (1) For purposes of this chapter, "net  
22 benefit to the state" means the amount of economic benefit to the state  
23 in jobs created or retained, plus the amount of increased economic  
24 activity directly related to the deferral provided by this section  
25 which was claimed, measured by the amount of taxes paid by the  
26 increased economic activity claimed, minus the annual amount of  
27 taxpayer savings.

28 (2) For purposes of this section, the amount of economic benefit to  
29 the state in jobs created or retained must be measured by state and  
30 local taxes paid by an employee, which must be calculated as a  
31 percentage of the annual wage for each employment position as follows:

32 (a) For an annual wage of less than twenty thousand dollars, the  
33 percentage is 17.3 percent;

34 (b) For an annual wage of more than twenty thousand dollars and  
35 less than thirty-seven thousand dollars, the percentage is 12.7  
36 percent;

1 (c) For an annual wage of more than thirty-seven thousand dollars  
2 and less than sixty-two thousand dollars, the percentage is 11.2  
3 percent;

4 (d) For an annual wage of more than sixty-two thousand dollars and  
5 less than ninety-nine thousand dollars, the percentage is 9.5 percent;  
6 and

7 (e) For an annual wage of more than ninety-nine thousand dollars,  
8 the percentage is 7.6 percent.

9 (3) For purposes of this section, the amount of increased economic  
10 activity directly related to the deferral provided in this section  
11 claimed must be measured by the increased taxes paid by the taxpayer  
12 annually on the activity directly related to this exemption minus the  
13 annual amount of taxpayer savings.

14 NEW SECTION. **Sec. 3.** (1) The department must issue a sales and  
15 use tax deferral certificate for state and local sales and use taxes  
16 due under chapters 82.08, 82.12, and 82.14 RCW to a manufacturer or  
17 processor for hire meeting the qualifications in section 1(1)(a) of  
18 this act for machinery and equipment used for the purposes specified in  
19 section 1(1)(a) of this act.

20 (2) The department must keep a running total of all deferrals  
21 granted under this chapter during each fiscal biennium.

22 NEW SECTION. **Sec. 4.** (1) Application for deferral of taxes under  
23 this chapter must be made before the acquisition of equipment or  
24 machinery. The application must be made to the department in a form  
25 and manner prescribed by the department. The application must contain  
26 information regarding the potential net benefit to the state from the  
27 public investment of the deferral, with factors provided in section 2  
28 of this act, as well as any other information required by the  
29 department. The department must rule on the application within sixty  
30 days.

31 (2) Recipients of a tax deferral under this chapter must file an  
32 annual report providing information pursuant to demonstrating a net  
33 benefit to the state in a form and manner prescribed by the department.  
34 The report is due by January 31st following the calendar year in which  
35 the qualifying machinery and equipment is purchased and the tax is

1 deferred, and through the subsequent nineteen calendar years. Failure  
2 to file the report constitutes failure to demonstrate a net benefit to  
3 the state.

4 NEW SECTION. **Sec. 5.** (1) The recipient must repay the taxes  
5 deferred under this chapter:

6 (a) At the rate of five percent of the deferred amount for any  
7 calendar year in which the recipient fails to demonstrate a net benefit  
8 to the state, commencing with the calendar year in which the qualifying  
9 machinery and equipment is purchased and the tax is deferred, and  
10 through the subsequent nineteen calendar years. Payment is due on  
11 January 31st of the year following the calendar year in which the  
12 recipient fails to show a net benefit to the state; or

13 (b) Pursuant to the following schedule if the machinery and  
14 equipment for which tax was deferred is sold by the recipient. Payment  
15 is due within thirty days of the date the machinery and equipment is  
16 sold:

17	Disqualification Year	% of Deferred Tax Repaid
18	1	100%
19	2	95%
20	3	90%
21	4	85%
22	5	80%
23	6	75%
24	7	70%
25	8	65%
26	9	60%
27	10	55%
28	11	50%
29	12	45%
30	13	40%
31	14	35%
32	15	30%
33	16	25%
34	17	20%
35	18	15%

1	19	10%
2	20	5%

3 (2) Interest may not be charged on any taxes deferred under this  
4 chapter for the period of deferral, although all other penalties and  
5 interest applicable to delinquent excise taxes may be assessed and  
6 imposed for delinquent payments under this chapter. The debt for  
7 deferred taxes is not extinguished by insolvency or other failure of  
8 the recipient. Transfer of ownership terminates the deferral.

9 (3) Unless repayment is required by subsection (1) of this section,  
10 taxes deferred under this chapter on the sale or use of machinery and  
11 equipment need not be repaid.

12 NEW SECTION. **Sec. 6.** Chapter 82.32 RCW applies to the  
13 administration of this chapter.

14 NEW SECTION. **Sec. 7.** The following acts or parts of acts are each  
15 repealed:

16 (1) RCW 82.08.02565 (Exemptions--Sales of machinery and equipment  
17 for manufacturing, research and development, or a testing operation--  
18 Labor and services for installation--Exemption certificate--Rules) and  
19 2011 c 23 s 2, 2009 c 535 s 510, 1999 c 211 s 5, 1999 c 211 s 3, & 1998  
20 c 330 s 1; and

21 (2) RCW 82.12.02565 (Exemptions--Machinery and equipment used for  
22 manufacturing, research and development, or a testing operation) and  
23 2003 c 5 s 5, 1999 c 211 s 6, 1998 c 330 s 2, 1996 c 247 s 3, & 1995  
24 1st sp.s. c 3 s 3.

25 NEW SECTION. **Sec. 8.** This act does not affect any existing right  
26 acquired or liability or obligation incurred under the sections amended  
27 or repealed or under any rule or order adopted under those sections,  
28 nor does it affect any proceeding instituted under those sections.

29 NEW SECTION. **Sec. 9.** Sections 1 through 6, 8, and 10 of this act  
30 constitute a new chapter in Title 82 RCW.

1        NEW SECTION.   **Sec. 10.**   This act takes effect July 1, 2012.

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