

SB 6550 - S AMD 574

By Senators Holmquist Newbry, Hobbs

ADOPTED 02/28/2014

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

3 "NEW SECTION. **Sec. 1.** This section is the tax preference
4 performance statement for the sales and use tax exemption provided in
5 RCW 82.08.986 and 82.12.986. This performance statement is only
6 intended to be used for subsequent evaluation of the tax preference.
7 It is not intended to create a private right of action by any party or
8 be used to determine eligibility for preferential tax treatment.

9 (1) The legislature categorizes this sales and use tax exemption as
10 one intended to improve industry competitiveness, as indicated in RCW
11 82.32.808(2)(b).

12 (2) It is the legislature's specific public policy objective to
13 improve industry competitiveness. It is the legislature's intent to
14 provide a sales and use tax exemption on eligible server equipment and
15 power infrastructure installed in eligible computer data centers,
16 charges made for labor and services rendered in respect to installing
17 eligible server equipment, and on construction, installation, repair,
18 alteration, or improvement of eligible power infrastructures in order
19 to increase investment in data center construction in rural Washington
20 counties, thereby adding real and personal property to state and local
21 property tax rolls, thereby increasing the state and rural county tax
22 base.

23 (3) If a review finds that rural county property tax base is
24 increased as a result of the construction of computer data centers
25 eligible for the sales and use tax exemption in RCW 82.08.986 and
26 82.12.986, then the legislature intends to extend the expiration date
27 of the tax preference.

28 (4) In order to obtain the data necessary to perform the review in
29 subsection (3) of this section, the joint legislative audit and review

1 committee may refer to data available from the department of revenue
2 regarding rural county property tax assessments.

3 **Sec. 2.** RCW 82.08.986 and 2012 2nd sp.s. c 6 s 302 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 and to qualifying tenants of
7 eligible server equipment to be installed, without intervening use, in
8 an eligible computer data center, and to charges made for labor and
9 services rendered in respect to installing eligible server equipment.
10 The exemption also applies to sales to qualifying businesses and to
11 qualifying tenants of eligible power infrastructure, including labor
12 and services rendered in respect to constructing, installing,
13 repairing, altering, or improving eligible power infrastructure.

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

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

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

- 33 (i) Thirty-five family wage employment positions; or
- 34 (ii) Three family wage employment positions for each twenty
35 thousand square feet of space or less that is newly dedicated to
36 housing working servers at the eligible computer data center. For
37 qualifying tenants, the number of family wage employment positions that

1 must be increased under this subsection (3)(a)(ii) is based only on the
2 space occupied by the qualifying tenant in the eligible computer data
3 center.

4 (b) In calculating the net increase in family wage employment
5 positions:

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

8 (A) The net increase in family wage employment positions employed
9 by qualifying tenants; and

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

12 (ii)(A) Qualifying tenants, in addition to their own net increase
13 in family wage employment positions, may include:

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

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

18 (B) The portion of the net increase in family wage employment
19 positions to be counted under this subsection (3)(b)(ii) by each
20 qualifying tenant must be in proportion to the amount of space in the
21 eligible computer data center occupied by the qualifying tenant
22 compared to the total amount of space in the eligible computer data
23 center occupied by all qualifying tenants.

24 (c)(i) For purposes of this subsection, family wage employment
25 positions are new permanent employment positions requiring forty hours
26 of weekly work, or their equivalent, on a full-time basis at the
27 eligible computer data center and receiving a wage equivalent to or
28 greater than one hundred fifty percent of the per capita personal
29 income of the county in which the qualified project is located. An
30 employment position may not be counted as a family wage employment
31 position unless the employment position is entitled to health insurance
32 coverage provided by the employer of the employment position. For
33 purposes of this subsection (3)(c), "new permanent employment position"
34 means an employment position that did not exist or that had not
35 previously been filled as of the date that the department issued an
36 exemption certificate to the owner or qualifying tenant of an eligible
37 computer data center, as the case may be.

1 (ii)(A) Family wage employment positions include positions filled
2 by employees of the owner of the eligible computer data center and by
3 employees of qualifying tenants.

4 (B) Family wage employment positions also include individuals
5 performing work at an eligible computer data center as an independent
6 contractor hired by the owner of the eligible computer data center or
7 as an employee of an independent contractor hired by the owner of the
8 eligible computer data center, if the work is necessary for the
9 operation of the computer data center, such as security and building
10 maintenance, and provided that all of the requirements in (c)(i) of
11 this subsection (3) are met.

12 (d) All previously exempted sales and use taxes are immediately due
13 and payable for a qualifying business or qualifying tenant that does
14 not meet the requirements of this subsection.

15 (4) A qualifying business or a qualifying tenant claiming an
16 exemption under this section or RCW 82.12.986 must complete an annual
17 report with the department as required under RCW 82.32.534.

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

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

23 (ii) Any person affiliated with a person within the scope of (a)(i)
24 of this subsection (5).

25 (b) If a person claims an exemption under this section and
26 subsequently receives the benefit of the deferral program under chapter
27 82.60 RCW on either the construction, renovation, or expansion of a
28 structure or structures used as a computer data center or machinery or
29 equipment used in a computer data center, the person must repay the
30 amount of taxes exempted under this section. Interest as provided in
31 chapter 82.32 RCW applies to amounts due under this section until paid
32 in full.

33 (6) (~~For purposes of this section the following definitions~~
34 ~~apply~~) The definitions in this subsection apply throughout this
35 section unless the context clearly requires otherwise((÷)).

36 (a) "Affiliated" means that one person has a direct or indirect
37 ownership interest of at least twenty percent in another person.

1 (b) Effective for computer data centers for which commencement of
2 construction occurs on or after July 1, 2014, "building" means a fully
3 enclosed structure with a weather-resistant exterior wall envelope or
4 concrete or masonry walls designed in accordance with the requirements
5 for structures under chapter 19.27 RCW.

6 (c)(i) "Computer data center" means a facility comprised of one or
7 more buildings, which may be comprised of multiple businesses,
8 constructed or refurbished specifically, and used primarily, to house
9 working servers, where the facility has the following characteristics:
10 (A) Uninterruptible power supplies, generator backup power, or both;
11 (B) sophisticated fire suppression and prevention systems; and (C)
12 enhanced physical security, such as: Restricted access to the facility
13 to selected personnel; permanent security guards; video camera
14 surveillance; an electronic system requiring passcodes, keycards, or
15 biometric scans, such as hand scans and retinal or fingerprint
16 recognition; or similar security features.

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

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

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

32 ~~((d))~~ (e)(i) "Eligible computer data center" means a computer
33 data center:

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

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

38 (C) For which the commencement of construction occurs:

1 (I) After March 31, 2010, and before July 1, 2011; ~~((e))~~

2 (II) After March 31, 2012, and before July 1, ~~((2015))~~ 2014; or

3 (III) After June 30, 2014, and before July 1, 2025.

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

14 (iii) With respect to facilities in existence on April 1, 2010,
15 that are expanded, renovated, or otherwise improved after March 31,
16 2010, or facilities in existence on April 1, 2012, that are expanded,
17 renovated, or otherwise improved after March 31, 2012, or facilities in
18 existence on July 1, 2014, that are expanded, renovated, or otherwise
19 improved after June 30, 2014, an eligible computer data center includes
20 only the portion of the computer data center meeting the requirements
21 in ~~((d))~~ (e)(i)(B) of this subsection (6).

22 ~~((e))~~ (f) "Eligible power infrastructure" means all fixtures and
23 equipment owned by a qualifying business or qualifying tenant and
24 necessary for the transformation, distribution, or management of
25 electricity that is required to operate eligible server equipment
26 within an eligible computer data center. The term includes generators;
27 wiring; cogeneration equipment; and associated fixtures and equipment,
28 such as electrical switches, batteries, and distribution, testing, and
29 monitoring equipment. The term does not include substations.

30 ~~((f))~~ (g) "Eligible server equipment" means:

31 (i) For a qualifying business whose computer data center qualifies
32 as an eligible computer data center under ~~((d))~~ (e)(i)(C)(I) of this
33 subsection (6), the original server equipment installed in an eligible
34 computer data center on or after April 1, 2010, and replacement server
35 equipment. For purposes of this subsection (6)~~((f))~~ (g)(i),
36 "replacement server equipment" means server equipment that:

37 (A) Replaces existing server equipment, if the sale or use of the

1 server equipment to be replaced qualified for an exemption under this
2 section or RCW 82.12.986; and

3 (B) Is installed and put into regular use before April 1, (~~2018~~)
4 2020.

5 (ii) For a qualifying business whose computer data center qualifies
6 as an eligible computer data center under (~~(d)~~) (e)(i)(C)(II) of this
7 subsection (6), "eligible server equipment" means the original server
8 equipment installed in an eligible computer data center on or after
9 April 1, 2012, and replacement server equipment. For purposes of this
10 subsection (6)(~~(f)~~) (g)(ii), "replacement server equipment" means
11 server equipment that:

12 (A) Replaces existing server equipment, if the sale or use of the
13 server equipment to be replaced qualified for an exemption under this
14 section or RCW 82.12.986; and

15 (B) Is installed and put into regular use before April 1, 2020.

16 (iii) For a qualifying business whose computer data center
17 qualifies as an eligible computer data center under (e)(i)(C)(III) of
18 this subsection (6), "eligible server equipment" means the original
19 server equipment directly installed in a building within an eligible
20 computer data center on or after July 1, 2014, and replacement server
21 equipment. Server equipment installed in movable or fixed stand-alone,
22 prefabricated, or modular units, including intermodal shipping
23 containers, is not "directly installed in a building." For purposes of
24 this subsection (6)(g)(iii), "replacement server equipment" means
25 server equipment that:

26 (A) Replaces existing server equipment, if the sale or use of the
27 server equipment to be replaced qualified for an exemption under this
28 section or RCW 82.12.986; and

29 (B) Is directly installed in a building and put into regular use
30 before April 1, 2025.

31 (iv) For a qualifying tenant who leases space within an eligible
32 computer data center, "eligible server equipment" means the original
33 server equipment installed within the space it leases from an eligible
34 computer data center on or after April 1, 2010, and replacement server
35 equipment. For purposes of this subsection (6)(~~(f)~~) (g)(iii),
36 "replacement server equipment" means server equipment that:

37 (A) Replaces existing server equipment, if the sale or use of the

1 server equipment to be replaced qualified for an exemption under this
2 section or RCW 82.12.986; and

3 (B) Is installed and put into regular use before April 1, (~~(2020)~~)
4 2025.

5 (~~(g)~~) (h) "Qualifying business" means a business entity that
6 exists for the primary purpose of engaging in commercial activity for
7 profit and that is the owner of an eligible computer data center. The
8 term does not include the state or federal government or any of their
9 departments, agencies, and institutions; tribal governments; political
10 subdivisions of this state; or any municipal, quasi-municipal, public,
11 or other corporation created by the state or federal government, tribal
12 government, municipality, or political subdivision of the state.

13 (~~(h)~~) (i) "Qualifying tenant" means a business entity that exists
14 for the primary purpose of engaging in commercial activity for profit
15 and that leases space from a qualifying business within an eligible
16 computer data center. The term does not include the state or federal
17 government or any of their departments, agencies, and institutions;
18 tribal governments; political subdivisions of this state; or any
19 municipal, quasi-municipal, public, or other corporation created by the
20 state or federal government, tribal government, municipality, or
21 political subdivision of the state. The term also does not include a
22 lessee of space in an eligible computer data center under (~~(d)~~)
23 (e)(i)(C)(I) of this subsection (6), if the lessee and lessor are
24 affiliated and:

25 (i) That space will be used by the lessee to house server equipment
26 that replaces server equipment previously installed and operated in
27 that eligible computer data center by the lessor or another person
28 affiliated with the lessee; or

29 (ii) Prior to May 2, 2012, the primary use of the server equipment
30 installed in that eligible computer data center was to provide
31 electronic data storage and data management services for the business
32 purposes of either the lessor, persons affiliated with the lessor, or
33 both.

34 (~~(i)~~) (j) "Server equipment" means the computer hardware located
35 in an eligible computer data center and used exclusively to provide
36 electronic data storage and data management services for internal use
37 by the owner or lessee of the computer data center, for clients of the
38 owner or lessee of the computer data center, or both. "Server

1 equipment" also includes computer software necessary to operate the
2 computer hardware. "Server equipment" does not include personal
3 computers, the racks upon which the server equipment is installed, and
4 computer peripherals such as keyboards, monitors, printers, and mice.

5 (7) Subsections (1), (2), and (5) of this section expire(~~s April~~)
6 July 1, ((2020)) 2025.

7 **Sec. 3.** RCW 82.12.986 and 2012 2nd sp.s. c 6 s 304 are each
8 amended to read as follows:

9 (1) An exemption from the tax imposed by RCW 82.12.020 is provided
10 for the use by qualifying businesses or qualifying tenants of eligible
11 server equipment to be installed, without intervening use, in an
12 eligible computer data center, and to the use of labor and services
13 rendered in respect to installing such server equipment. The exemption
14 also applies to the use by a qualifying business or qualifying tenant
15 of eligible power infrastructure, including labor and services rendered
16 in respect to installing, repairing, altering, or improving such
17 infrastructure.

18 (2) A qualifying business or a qualifying tenant is not eligible
19 for the exemption under this section unless the department issued an
20 exemption certificate to the qualifying business or a qualifying tenant
21 for the exemption provided in RCW 82.08.986.

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

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

27 (ii) Any person affiliated with a person within the scope of (a)(i)
28 of this subsection (3).

29 (b) If a person has received the benefit of the exemption under
30 this section and subsequently receives the benefit of the deferral
31 program under chapter 82.60 RCW on either the construction, renovation,
32 or expansion of a structure or structures used as a computer data
33 center or machinery or equipment used in a computer data center, the
34 person must repay the amount of taxes exempted under this section.
35 Interest as provided in chapter 82.32 RCW applies to amounts due under
36 this subsection (3)(b) until paid in full. A person is not required to

1 repay taxes under this subsection with respect to property and services
2 for which the person is required to repay taxes under RCW 82.08.986(5).

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

5 (5) Subsections (1) through (3) of this section expire((s-April))
6 July 1, ((2020)) 2025."

SB 6550 - S AMD
By Senators Holmquist Newbry, Hobbs

ADOPTED 02/28/2014

7 On page 1, line 3 of the title, after "centers;" strike the
8 remainder of the title and insert "amending RCW 82.08.986 and
9 82.12.986; creating a new section; and providing expiration dates."

EFFECT: The definition of building is amended so that intermodal
IT-PACs (preinstalled servers that operate out of shipping containers)
do not qualify as data centers. Technical corrections are made to
dates.

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