

Chapter 82.89 RCW
TAX DEFERRALS FOR INVESTMENT PROJECTS

Sections

82.89.010	Definitions.
82.89.020	Conditions for lessors.
82.89.030	Applications.
82.89.040	Tax deferral certificates.
82.89.050	Requirements for recipients—Meaningful construction.
82.89.060	Repayment schedule—Interest, penalties, and insolvency— Transfer of ownership.
82.89.070	Reduction of taxes.
82.89.080	Conditions on recipients—Annual tax performance report— Immediate repayment.
82.89.900	Applicability of general administrative provisions.
82.89.901	Effective date—2022 c 185.

RCW 82.89.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Eligible investment project" means an investment project of at least \$2,000,000 in either qualified buildings or qualified machinery and equipment, or both, for any of the following new, renovated, or expanded:

(a) Manufacturing operations;

(b) Facilities to produce clean fuels, subject to the limitations in subsection (8)(d) of this section, renewable hydrogen, green electrolytic hydrogen, or green hydrogen carriers; or

(c) Storage facilities.

(3) "Green electrolytic hydrogen" means hydrogen produced through electrolysis and does not include hydrogen manufactured using steam reforming or any other conversion technology that produces hydrogen from a fossil fuel feedstock.

(4) "Green hydrogen carrier" means a chemical compound, created using electricity or renewable resources as energy input and without use of fossil fuel as a feedstock, from renewable hydrogen or green electrolytic hydrogen for the purposes of transportation, storage, and dispensing of hydrogen.

(5)(a) "Initiation of construction" means the date that a building permit is issued under the building code adopted under RCW 19.27.031 for:

(i) Construction of the qualified building, if the underlying ownership of the building vests exclusively with the person receiving the economic benefit of the deferral;

(ii) Construction of the qualified building, if the economic benefits of the deferral are passed to a lessee as provided in RCW 82.89.020; or

(iii) Tenant improvements for a qualified building, if the economic benefits of the deferral are passed to a lessee as provided in RCW 82.89.020.

(b) "Initiation of construction" does not include soil testing, site clearing and grading, site preparation, or any other related

activities that are initiated before the issuance of a building permit for the construction of the foundation of the building.

(c) If the eligible investment project is a phased project, "initiation of construction" applies separately to each phase.

(6) "Investment project" means an investment in either qualified buildings or qualified machinery and equipment, or both, including labor and services rendered in the planning, installation, and construction of the project.

(7) "Manufacturing" has the same meaning as "to manufacture" in RCW 82.04.120.

(8) "Manufacturing operation" means manufacturing tangible personal property exclusively incorporated as an ingredient or component of or used in the generation of:

(a) Passenger cars, light duty trucks, medium duty passenger vehicles, buses, commercial vehicles as defined in RCW 46.04.140, or motorcycles that emit no exhaust gas from the onboard source of power, other than water vapor;

(b) Charging and fueling infrastructure for electric, hydrogen, or other vehicle types that emits no exhaust gas from the onboard source of power, other than water vapor;

(c) Renewable and green electrolytic hydrogen, including preparing renewable and green electrolytic hydrogen for distribution or converting it to a green hydrogen carrier;

(d) Clean fuel with associated greenhouse gas emissions not exceeding 80 percent of the 2017 levels established under *RCW 70A.535.020 or its successor statute under chapter 70A.535 RCW;

(e) Electricity from renewable resources; or

(f) Storage facilities.

(9) "Meaningful construction" means an active construction site, where excavation of a building site, laying of a building foundation, or other tangible signs of construction are taking place and that clearly show a progression in the construction process at the location designated by the taxpayer in the application for deferral. Planning, permitting, or land clearing before excavation of the building site, without more, does not constitute "meaningful construction."

(10) "Operationally complete" means the eligible investment project is capable of being used for its intended purpose as described in the application.

(11) "Person" has the same meaning as in RCW 82.04.030.

(12) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity, used for manufacturing, including plant offices and warehouses or other buildings for the storage of raw materials or finished goods if the facilities are an essential or an integral part of a factory, mill, plant, or laboratory used for manufacturing. If a qualified building is used partly for manufacturing and partly for other purposes, the applicable tax deferral must be determined by apportionment of the costs of construction under rules adopted by the department.

(13) "Qualified machinery and equipment" means all new industrial fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; operating structures; and all equipment used to control, monitor, or operate the machinery.

(14) "Recipient" means a person receiving a tax deferral under this chapter.

(15) "Renewable resource" has the same meaning as in RCW 82.08.816.

(16) "Storage facility" means a facility that:

(a) Accepts electricity as an energy source and uses a chemical, thermal, mechanical, or other process to store energy for subsequent delivery or consumption in the form of electricity; or

(b) Stores renewable hydrogen, green electrolytic hydrogen, or green hydrogen carrier for subsequent delivery or consumption. [2022 c 185 s 1.]

***Reviser's note:** RCW 70A.535.020 was repealed by 2022 c 182 s 414.

Tax preference performance automatic expiration exception—Tax preference performance statement—2022 c 185: See notes following RCW 82.89.070.

RCW 82.89.020 Conditions for lessors. The lessor or owner of a qualified building is not eligible for a deferral under this chapter unless:

(1) The underlying ownership of the building, machinery, and equipment vests exclusively in the same person; or

(2) (a) The lessor by written contract agrees to pass the economic benefit of the deferral to the lessee;

(b) The lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual tax performance report required under RCW 82.32.534; and

(c) The economic benefit of the deferral passed to the lessee is no less than the amount of tax deferred by the lessor and is evidenced by written documentation of any type of payment, credit, or other financial arrangement between the lessor or owner of the qualified building and the lessee. [2022 c 185 s 2.]

Tax preference performance automatic expiration exception—Tax preference performance statement—2022 c 185: See notes following RCW 82.89.070.

RCW 82.89.030 Applications. (Expires January 1, 2033.) (1) Applications for deferral of taxes under this chapter must be made before initiation of the construction of the eligible investment project or acquisition of equipment or machinery. The application must be made to the department in a form and manner prescribed by the department. The application must contain information regarding the location of the eligible investment project, the applicant's average employment in the state for the prior year, estimated or actual new employment related to the eligible investment project, estimated or actual wages of employees related to the eligible investment project, estimated or actual costs, time schedules for completion and operation, and other information required by the department. The department must rule on the application within 60 days.

(2) The department may not accept applications for the deferral under this chapter after June 30, 2032.

(3) This section expires January 1, 2033. [2022 c 185 s 3.]

Tax preference performance automatic expiration exception—Tax preference performance statement—2022 c 185: See notes following RCW 82.89.070.

RCW 82.89.040 Tax deferral certificates. (Expires January 1, 2033.) (1) The department must issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, 82.14, and 81.104 RCW on each eligible investment project. The certificate may only be used to make purchases of materials and equipment, labor, or services to be incorporated in the eligible investment project at the location listed on the certificate.

(2) No certificate may be issued for an investment project that has already received a deferral under this chapter or chapter 82.60 or 82.85 RCW.

(3) No certificate may be issued for an eligible investment project that has not had an application approved by the department as provided in RCW 82.89.030.

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

(5) This section expires January 1, 2033. [2022 c 185 s 4.]

Tax preference performance automatic expiration exception—Tax preference performance statement—2022 c 185: See notes following RCW 82.89.070.

RCW 82.89.050 Requirements for recipients—Meaningful construction. (1) The recipient of a deferral certificate under RCW 82.89.040 must begin meaningful construction on an eligible investment project within two years of receiving a deferral certificate unless construction was delayed due to circumstances beyond the recipient's control. Lack of funding is not considered a circumstance beyond the recipient's control.

(2) If the recipient does not begin meaningful construction on an eligible investment project within two years of receiving a deferral certificate, the deferral certificate issued under RCW 82.89.040 is invalid and taxes deferred under this chapter are due immediately. [2022 c 185 s 5.]

Tax preference performance automatic expiration exception—Tax preference performance statement—2022 c 185: See notes following RCW 82.89.070.

RCW 82.89.060 Repayment schedule—Interest, penalties, and insolvency—Transfer of ownership. (1) The recipient must begin paying the deferred taxes in the second year after the date certified by the department as the date on which the eligible investment project has been operationally completed. The first payment of 10 percent of the deferred taxes is due on December 31st of the second calendar year after the certified date, with subsequent annual payments of 10 percent of the deferred taxes due on December 31st for each of the following nine years.

(2) The department may authorize an accelerated repayment schedule upon request of the recipient.

(3) Interest may not be charged on any taxes deferred under this chapter for the period of deferral, although all other penalties and interest applicable to delinquent excise taxes may be assessed and imposed for delinquent payments under this chapter.

(4) The department must assess interest at the rate provided for delinquent taxes, but not penalties, retroactively to the date of deferral for a recipient who must repay deferred taxes under this chapter because the department has found that a purchase is not eligible for tax deferral.

(5) The debt for deferred taxes are not extinguished by insolvency or other failure of the recipient.

(6) Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral. [2022 c 185 s 6.]

Tax preference performance automatic expiration exception—Tax preference performance statement—2022 c 185: See notes following RCW 82.89.070.

RCW 82.89.070 Reduction of taxes. (1) The recipient of the deferral under this chapter must receive a reduction of the amount of state sales and use tax to be repaid under RCW 82.89.060 only as follows:

(a) Fifty percent of the state sales and use tax deferred, if the department of labor and industries certifies that the eligible investment project includes procurement from and contracts with women, minority, or veteran-owned businesses; procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations; apprenticeship utilization; and preferred entry for workers living in the area where the eligible investment project is being constructed. In the event that an eligible investment project is built without one or more of these standards, and a project developer or its designated principal contractor demonstrates that it has made all good faith efforts to meet the standards but was unable to comply due to lack of availability of qualified businesses or local hires, the department of labor and industries may certify that the developer complied with that standard;

(b) Seventy-five percent of the state sales and use tax deferred, if the department of labor and industries certifies that the eligible investment project complies with (a) of this subsection and compensates workers at prevailing wage rates determined by local collective bargaining as determined by the department of labor and industries; or

(c) One hundred percent of the state sales and use tax deferred, if the department of labor and industries certifies that the eligible investment project is developed under a community workforce agreement or project labor agreement.

(2) (a) The department of labor and industries must adopt emergency and permanent rules to:

(i) Define and set minimum requirements for all labor standards identified in subsection (1) of this section as well as documentation requirements and a certification process. The certification process and timeline must be designed to prevent undue delay to project development; and

(ii) Set requirements for all good faith efforts under subsection (1)(a) and (b) of this section. Requirements for all good faith efforts must be designed to maximize the likelihood that the project is completed with the standards, and include:

(A) Proactive outreach to women, minority, and veteran-owned businesses;

(B) Advertising in local community publications and publications appropriate to identified firms and with the office of minority and women's business enterprises;

(C) Participating in community job fairs, conferences, and trade shows; and

(D) Other measures.

(b) The standards for procurement from and contracts with women and minority-owned businesses under subsection (1)(a) of this section must include a requirement that the recipient of the deferral consult with the office of minority and women's business enterprises to develop a plan to meet the standards or good faith efforts. The requirements for good faith efforts must include the office of minority and women's business enterprises review to determine compliance with the plan.

(c) The labor standard for procurement from and contracts with veteran-owned businesses under subsection (1)(a) of this section must include a requirement that the recipient of the deferral consult with the department of veterans affairs to develop a plan to meet the standards or good faith efforts. The requirements for good faith efforts must include the department of veterans affairs review to determine compliance with the plan.

(d) The department of labor and industries must consult with the office of minority and women's business enterprises, the department of veterans affairs, and the Washington apprenticeship and training council in setting standards and good faith efforts.

(3) Nothing in this section reduces the amount of local sales and use taxes to be repaid under RCW 82.89.060. The recipient must repay all local sales and use taxes due under chapters 82.08, 82.12, 82.14, and 81.104 RCW as provided in RCW 82.89.060. [2022 c 185 s 7.]

Tax preference performance automatic expiration exception—2022 c 185: "RCW 82.32.805 does not apply to this act." [2022 c 185 s 10.]

Tax preference performance statement—2022 c 185: "(1) This section is the tax preference performance statement for the tax preference contained in chapter 185, Laws of 2022. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or to be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to induce certain designated behavior by taxpayers, improve industry competitiveness, and create jobs.

(3) It is the legislature's specific public policy objective to build manufacturing capacity for carbon-free electricity and to financially incentivize the use of high labor standards.

(4)(a) To measure the effectiveness of the tax preference in this act, the joint legislative audit and review committee must evaluate at least the first five years of available data, reporting its findings

to the legislature by December 31, 2028. The review must include evaluation of:

- (i) The average construction wages for eligible projects;
- (ii) The number of jobs created in the clean technology sector;
- (iii) The use of apprenticeship programs, and women, minority, or veteran-owned businesses by eligible projects;
- (iv) The degree to which the preference encouraged manufacturing and component production for technologies that reduce greenhouse gas emissions;
- (v) Whether facilities benefiting from the preference would have been developed without the preference; and
- (vi) Any other relevant metric.

(b) The legislature does not intend to change the expiration of the preference based on the findings of the review.

(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to any data collected by the state." [2022 c 185 s 11.]

RCW 82.89.080 Conditions on recipients—Annual tax performance report—Immediate repayment.

(1) Each recipient of a deferral of taxes granted under this chapter must file a complete annual tax performance report with the department under RCW 82.32.534. Reports must be filed for the first calendar year after the eligible investment project is operationally complete and continue through the end of the calendar year in which the final repayment occurs. If the economic benefits of the deferral are passed to a lessee, as provided in RCW 82.89.020, the lessee must file a complete annual tax performance report and the applicant is not required to file a complete annual tax performance report.

(2) If the eligible investment project is not operationally complete within five calendar years from the issuance of the tax deferral certificate, or if, on the basis of the tax performance report under RCW 82.32.534 or other information, the department finds that an eligible investment project is used for purposes other than those listed in RCW 82.89.010(2) at any time during the calendar year in which the investment is certified by the department as having been operationally completed, or at any time during any of the repayment period, a portion of deferred taxes is immediately due according to the following schedule:

Year in which use occurs	Percent of deferred taxes due
1.....	100
2.....	100
3.....	100
4.....	90
5.....	80
6.....	70
7.....	60
8.....	50
9.....	40
10.....	30
11.....	20

(3) If the economic benefits of a tax deferral under this chapter are passed to a lessee as provided in RCW 82.89.020, the lessee is responsible for payment to the extent the lessee has received the economic benefit. [2022 c 185 s 8.]

Tax preference performance automatic expiration exception—Tax preference performance statement—2022 c 185: See notes following RCW 82.89.070.

RCW 82.89.900 Applicability of general administrative provisions. To the extent not inconsistent with the provisions of this chapter, chapter 82.32 RCW applies to the administration of this chapter. [2022 c 185 s 9.]

Tax preference performance automatic expiration exception—Tax preference performance statement—2022 c 185: See notes following RCW 82.89.070.

RCW 82.89.901 Effective date—2022 c 185. This act takes effect July 1, 2022. [2022 c 185 s 13.]