
HOUSE BILL 2769

State of Washington

63rd Legislature

2014 Regular Session

By Representatives Springer, Manweller, Goodman, Condotta, Nealey, Kirby, Haler, and Freeman

Read first time 02/05/14. Referred to Committee on Finance.

1 AN ACT Relating to providing a sales and use tax exemption for
2 sales and uses related to eligible server equipment and power
3 infrastructures installed in eligible computer data centers; amending
4 RCW 82.08.986 and 82.12.986; creating a new section; and providing
5 expiration dates.

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

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

13 (1) The legislature categorizes this sales and use tax exemption as
14 one intended to improve industry competitiveness, as indicated in RCW
15 82.32.808(2)(b).

16 (2) It is the legislature's specific public policy objective to
17 improve industry competitiveness. It is the legislature's intent to
18 provide a sales and use tax exemption on eligible server equipment and
19 power infrastructure installed in eligible computer data centers,

1 charges made for labor and services rendered in respect to installing
2 eligible server equipment, and on construction, installation, repair,
3 alteration, or improvement of eligible power infrastructures in order
4 to increase investment in data center construction in rural Washington
5 counties, thereby adding real and personal property to state and local
6 property tax rolls, thereby increasing the state and rural county tax
7 base.

8 (3) If a review finds that rural county property tax base is
9 increased as a result of the construction of computer data centers
10 eligible for the sales and use tax exemption in RCW 82.08.986 and
11 82.12.986, then the legislature intends to extend the expiration date
12 of the tax preference.

13 (4) In order to obtain the data necessary to perform the review in
14 subsection (3) of this section, the joint legislative audit and review
15 committee may refer to data available from the department of revenue
16 regarding rural county property tax assessments.

17 **Sec. 2.** RCW 82.08.986 and 2012 2nd sp.s. c 6 s 302 are each
18 amended to read as follows:

19 (1) An exemption from the tax imposed by RCW 82.08.020 is provided
20 for sales to qualifying businesses and to qualifying tenants of
21 eligible server equipment to be installed, without intervening use, in
22 an eligible computer data center, and to charges made for labor and
23 services rendered in respect to installing eligible server equipment.
24 The exemption also applies to sales to qualifying businesses and to
25 qualifying tenants of eligible power infrastructure, including labor
26 and services rendered in respect to constructing, installing,
27 repairing, altering, or improving eligible power infrastructure.

28 (2)(a) In order to claim the exemption under this section, a
29 qualifying business or a qualifying tenant must submit an application
30 to the department for an exemption certificate. The application must
31 include the information necessary, as required by the department, to
32 determine that a business or tenant qualifies for the exemption under
33 this section. The department must issue exemption certificates to
34 qualifying businesses and qualifying tenants. The department may
35 assign a unique identification number to each exemption certificate
36 issued under this section.

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

5 (3)(a) Within six years of the date that the department issued an
6 exemption certificate under this section to a qualifying business or a
7 qualifying tenant with respect to an eligible computer data center, the
8 qualifying business or qualifying tenant must establish that net
9 employment at the eligible computer data center has increased by a
10 minimum of:

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

12 (ii) Three family wage employment positions for each twenty
13 thousand square feet of space or less that is newly dedicated to
14 housing working servers at the eligible computer data center. For
15 qualifying tenants, the number of family wage employment positions that
16 must be increased under this subsection (3)(a)(ii) is based only on the
17 space occupied by the qualifying tenant in the eligible computer data
18 center.

19 (b) In calculating the net increase in family wage employment
20 positions:

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

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

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

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

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

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

33 (B) The portion of the net increase in family wage employment
34 positions to be counted under this subsection (3)(b)(ii) by each
35 qualifying tenant must be in proportion to the amount of space in the
36 eligible computer data center occupied by the qualifying tenant
37 compared to the total amount of space in the eligible computer data
38 center occupied by all qualifying tenants.

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

15 (ii)(A) Family wage employment positions include positions filled
16 by employees of the owner of the eligible computer data center and by
17 employees of qualifying tenants.

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

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

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

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

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

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

1 (b) If a person claims an exemption under this section and
2 subsequently receives the benefit of the deferral program under chapter
3 82.60 RCW on either the construction, renovation, or expansion of a
4 structure or structures used as a computer data center or machinery or
5 equipment used in a computer data center, the person must repay the
6 amount of taxes exempted under this section. Interest as provided in
7 chapter 82.32 RCW applies to amounts due under this section until paid
8 in full.

9 (~~For purposes of this section the following definitions~~
10 ~~apply~~) The definitions in this subsection apply throughout this
11 section unless the context clearly requires otherwise((÷)).

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

14 (b) Effective for computer data centers for which commencement of
15 construction occurs on or after July 1, 2014, "building" means a fully
16 enclosed structure that includes the following components:

17 (i) A centralized heating, ventilation, and air conditioning
18 system; and

19 (ii) Permanent restroom and break room facilities for employees.

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

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

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

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

8 (~~(d)~~) (e)(i) "Eligible computer data center" means a computer
9 data center:

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

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

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

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

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

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

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

28 (iii) With respect to facilities in existence on April 1, 2010,
29 that are expanded, renovated, or otherwise improved after March 31,
30 2010, or facilities in existence on April 1, 2012, that are expanded,
31 renovated, or otherwise improved after March 31, 2012, an eligible
32 computer data center includes only the portion of the computer data
33 center meeting the requirements in (~~(d)~~) (e)(i)(B) of this subsection
34 (6).

35 (~~(e)~~) (f) "Eligible power infrastructure" means all fixtures and
36 equipment owned by a qualifying business or qualifying tenant and
37 necessary for the transformation, distribution, or management of
38 electricity that is required to operate eligible server equipment

1 within an eligible computer data center. The term includes generators;
2 wiring; cogeneration equipment; and associated fixtures and equipment,
3 such as electrical switches, batteries, and distribution, testing, and
4 monitoring equipment. The term does not include substations.

5 ((+f+)) (g) "Eligible server equipment" means:

6 (i) For a qualifying business whose computer data center qualifies
7 as an eligible computer data center under ((+d+)) (e)(i)(C)(I) of this
8 subsection (6), the original server equipment installed in an eligible
9 computer data center on or after April 1, 2010, and replacement server
10 equipment. For purposes of this subsection (6)((+f+)) (g)(i),
11 "replacement server equipment" means 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, ((2018))
16 2020.

17 (ii) For a qualifying business whose computer data center qualifies
18 as an eligible computer data center under ((+d+)) (e)(i)(C)(II) of this
19 subsection (6), "eligible server equipment" means the original server
20 equipment installed in an eligible computer data center on or after
21 April 1, 2012, and replacement server equipment. For purposes of this
22 subsection (6)((+f+)) (g)(ii), "replacement server equipment" means
23 server equipment that:

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

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

28 (iii) For a qualifying business whose computer data center
29 qualifies as an eligible computer data center under (e)(i)(C)(III) of
30 this subsection (6), "eligible server equipment" means the original
31 server equipment installed in an eligible computer data center on or
32 after July 1, 2014, and replacement server equipment. For purposes of
33 this subsection (6)(g)(iii), "replacement server equipment" means
34 server equipment that:

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

38 (B) Is installed and put into regular use before April 1, 2025.

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

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

10 (B) Is installed and put into regular use before April 1, ~~(2020)~~
11 2025.

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

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

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

36 (ii) Prior to May 2, 2012, the primary use of the server equipment
37 installed in that eligible computer data center was to provide

1 electronic data storage and data management services for the business
2 purposes of either the lessor, persons affiliated with the lessor, or
3 both.

4 ~~((i))~~ (j) "Server equipment" means the computer hardware located
5 in an eligible computer data center and used exclusively to provide
6 electronic data storage and data management services for internal use
7 by the owner or lessee of the computer data center, for clients of the
8 owner or lessee of the computer data center, or both. "Server
9 equipment" also includes computer software necessary to operate the
10 computer hardware. "Server equipment" does not include personal
11 computers, the racks upon which the server equipment is installed, and
12 computer peripherals such as keyboards, monitors, printers, and mice.

13 (7) This section expires April 1, ~~((2020))~~ 2025.

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

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

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

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

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

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

36 (b) If a person has received the benefit of the exemption under
37 this section and subsequently receives the benefit of the deferral

1 program under chapter 82.60 RCW on either the construction, renovation,
2 or expansion of a structure or structures used as a computer data
3 center or machinery or equipment used in a computer data center, the
4 person must repay the amount of taxes exempted under this section.
5 Interest as provided in chapter 82.32 RCW applies to amounts due under
6 this subsection (3)(b) until paid in full. A person is not required to
7 repay taxes under this subsection with respect to property and services
8 for which the person is required to repay taxes under RCW 82.08.986(5).
9 (4) The definitions and requirements in RCW 82.08.986 apply to this
10 section.
11 (5) This section expires April 1, (~~2020~~) 2025.

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