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HOUSE BILL 1911

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State of Washington                      61st Legislature                      2009 Regular Session

By Representatives Probst, Morris, Ericks, Jacks, Kelley, Conway, and Orcutt

Read first time 02/02/09. Referred to Committee on Technology, Energy & Communications.

1            AN ACT Relating to modifying the business and occupation tax on  
2 wholesalers of solar energy systems and sales and use tax treatment of  
3 semiconductor materials; amending RCW 82.04.294, 82.08.965, 82.08.9651,  
4 and 82.12.9651; and amending 2006 c 300 s 12 (uncodified).

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

6            **Sec. 1.** RCW 82.04.294 and 2007 c 54 s 8 are each amended to read  
7 as follows:

8            (1)(a) Beginning October 1, 2005, upon every person engaging within  
9 this state in the business of manufacturing solar energy systems using  
10 photovoltaic modules, or of manufacturing solar grade silicon to be  
11 used exclusively in components of such systems; as to such persons the  
12 amount of tax with respect to such business shall, in the case of  
13 manufacturers, be equal to the value of the product manufactured, or in  
14 the case of processors for hire, be equal to the gross income of the  
15 business, multiplied by the rate of 0.2904 percent.

16            (b) Beginning October 1, 2009, upon every person engaging within  
17 this state in the business of manufacturing solar energy systems using  
18 photovoltaic modules, or of manufacturing solar grade silicon, silicon  
19 solar wafers, silicon solar cells, thin film solar devices, or compound

1 semiconductor solar wafers to be used exclusively in components of such  
2 systems; as to such persons the amount of tax with respect to such  
3 business is, in the case of manufacturers, equal to the value of the  
4 product manufactured, or in the case of processors for hire, equal to  
5 the gross income of the business, multiplied by the rate of 0.275  
6 percent.

7 (2)(a) Beginning October 1, 2005, upon every person engaging within  
8 this state in the business of making sales at wholesale of solar energy  
9 systems using photovoltaic modules, or of solar grade silicon to be  
10 used exclusively in components of such systems, manufactured by that  
11 person; as to such persons the amount of tax with respect to such  
12 business shall be equal to the gross proceeds of sales of the solar  
13 energy systems using photovoltaic modules, or of the solar grade  
14 silicon to be used exclusively in components of such systems,  
15 multiplied by the rate of 0.2904 percent.

16 (b) Beginning October 1, 2009, upon every person engaging within  
17 this state in the business of making sales at wholesale of solar energy  
18 systems using photovoltaic modules, or of solar grade silicon, silicon  
19 solar wafers, silicon solar cells, thin film solar devices, or compound  
20 semiconductor solar wafers to be used exclusively in components of such  
21 systems, manufactured by that person; as to such persons the amount of  
22 tax with respect to such business is equal to the gross proceeds of  
23 sales of the solar energy systems using photovoltaic modules, or of the  
24 solar grade silicon to be used exclusively in components of such  
25 systems, multiplied by the rate of 0.275 percent.

26 (3) Beginning October 1, 2009, silicon solar wafers, silicon solar  
27 cells, thin film solar devices, or compound semiconductor solar wafers  
28 are "semiconductor materials" for the purposes of RCW 82.08.965,  
29 82.08.9651, 82.12.965, and 82.12.9651.

30 (4) The definitions in this subsection apply throughout this  
31 section.

32 (a) "Compound semiconductor solar wafers" means a semiconductor  
33 solar wafer composed of elements from two or more different groups of  
34 the periodic table.

35 (b) "Module" means the smallest nondivisible self-contained  
36 physical structure housing interconnected photovoltaic cells and  
37 providing a single direct current electrical output.

1       (~~(b)~~) (c) "Photovoltaic cell" means a device that converts light  
2 directly into electricity without moving parts.

3       (~~(e)~~) (d) "Silicon solar cells" means a photovoltaic cell  
4 manufactured from a silicon solar wafer.

5       (e) "Silicon solar wafers" means a silicon wafer manufactured for  
6 solar conversion purposes.

7       (f) "Solar energy system" means any device or combination of  
8 devices or elements that rely upon direct sunlight as an energy source  
9 for use in the generation of electricity.

10       (~~(d)~~) (g) "Solar grade silicon" means high-purity silicon used  
11 exclusively in components of solar energy systems using photovoltaic  
12 modules to capture direct sunlight. "Solar grade silicon" does not  
13 include silicon used in semiconductors.

14       (~~(4)~~) (h) "Thin film solar devices" means a nonparticipating  
15 substrate on which various semiconducting materials are deposited to  
16 produce a photovoltaic cell that is used to generate electricity.

17       (5) This section expires June 30, 2014.

18       **Sec. 2.** RCW 82.08.965 and 2003 c 149 s 5 are each amended to read  
19 as follows:

20       (1) The tax levied by RCW 82.08.020 (~~shall~~) does not apply to  
21 charges made for labor and services rendered in respect to the  
22 constructing of new buildings used for the manufacturing of  
23 semiconductor materials, to sales of tangible personal property that  
24 will be incorporated as an ingredient or component of such buildings  
25 during the course of the constructing, or to labor and services  
26 rendered in respect to installing, during the course of constructing,  
27 building fixtures not otherwise eligible for the exemption under RCW  
28 82.08.02565(2)(b). The exemption is available only when the buyer  
29 provides the seller with an exemption certificate in a form and manner  
30 prescribed by the department. The seller shall retain a copy of the  
31 certificate for the seller's files.

32       (2) To be eligible under this section the manufacturer or processor  
33 for hire must meet the following requirements for an eight-year period,  
34 such period beginning the day the new building commences commercial  
35 production, or a portion of tax otherwise due shall be immediately due  
36 and payable pursuant to subsection (3) of this section:

1 (a) The manufacturer or processor for hire must maintain at least  
2 seventy-five percent of full employment at the new building for which  
3 the exemption under this section is claimed.

4 (b) Before commencing commercial production at a new facility the  
5 manufacturer or processor for hire must meet with the department to  
6 review projected employment levels in the new buildings. The  
7 department, using information provided by the taxpayer, shall make a  
8 determination of the number of positions that would be filled at full  
9 employment. This number shall be used throughout the eight-year period  
10 to determine whether any tax is to be repaid. This information is not  
11 subject to the confidentiality provisions of RCW 82.32.330 and may be  
12 disclosed to the public upon request.

13 (c) In those situations where a production building in existence on  
14 the effective date of this section will be phased out of operation  
15 during which time employment at the new building at the same site is  
16 increased, the manufacturer or processor for hire shall maintain  
17 seventy-five percent of full employment at the manufacturing site  
18 overall.

19 (d) No application is necessary for the tax exemption. The person  
20 is subject to all the requirements of chapter 82.32 RCW. A person  
21 taking the exemption under this section must report as required under  
22 RCW 82.32.535.

23 (3) If the employment requirement is not met for any one calendar  
24 year, one-eighth of the exempt sales and use taxes shall be due and  
25 payable by April 1st of the following year. The department shall  
26 assess interest to the date the tax was imposed, but not penalties, on  
27 the taxes for which the person is not eligible.

28 (4) The exemption applies to new buildings, or parts of buildings,  
29 that are used exclusively in the manufacturing of semiconductor  
30 materials, including the storage of raw materials and finished product.

31 (5) For the purposes of this section:

32 (a) "Commencement of commercial production" is deemed to have  
33 occurred when the equipment and process qualifications in the new  
34 building are completed and production for sale has begun; and

35 (b) "Full employment" is the number of positions required for full  
36 capacity production at the new building, for positions such as line  
37 workers, engineers, and technicians.

1 (c) "Semiconductor materials" has the same meaning as provided in  
2 RCW 82.04.240(2) and 82.04.294(3).

3 (6) No exemption may be taken after twelve years after the  
4 effective date of this act, however all of the eligibility criteria and  
5 limitations are applicable to any exemptions claimed before that date.

6 (7) This section expires twelve years after the effective date of  
7 this act.

8 **Sec. 3.** RCW 82.08.9651 and 2006 c 84 s 3 are each amended to read  
9 as follows:

10 (1) The tax levied by RCW 82.08.020 shall not apply to sales of  
11 gases and chemicals used by a manufacturer or processor for hire in the  
12 production of semiconductor materials. This exemption is limited to  
13 gases and chemicals used in the production process to grow the product,  
14 deposit or grow permanent or sacrificial layers on the product, to etch  
15 or remove material from the product, to anneal the product, to immerse  
16 the product, to clean the product, and other such uses whereby the  
17 gases and chemicals come into direct contact with the product during  
18 the production process, or uses of gases and chemicals to clean the  
19 chambers and other like equipment in which such processing takes place.  
20 For the purposes of this section, "semiconductor materials" has the  
21 meaning provided in RCW 82.04.2404 and 82.04.294(3).

22 (2) A person taking the exemption under this section must report  
23 under RCW 82.32.5351. No application is necessary for the tax  
24 exemption. The person is subject to all of the requirements of chapter  
25 82.32 RCW.

26 (3) This section expires twelve years after December 1, 2006.

27 **Sec. 4.** RCW 82.12.9651 and 2006 c 84 s 4 are each amended to read  
28 as follows:

29 (1) The provisions of this chapter do not apply with respect to the  
30 use of gases and chemicals used by a manufacturer or processor for hire  
31 in the production of semiconductor materials. This exemption is  
32 limited to gases and chemicals used in the production process to grow  
33 the product, deposit or grow permanent or sacrificial layers on the  
34 product, to etch or remove material from the product, to anneal the  
35 product, to immerse the product, to clean the product, and other such  
36 uses whereby the gases and chemicals come into direct contact with the

1 product during the production process, or uses of gases and chemicals  
2 to clean the chambers and other like equipment in which such processing  
3 takes place. For purposes of this section, "semiconductor materials"  
4 has the meaning provided in RCW 82.04.2404 and 82.04.294(3).

5 (2) A person taking the exemption under this section must report  
6 under RCW 82.32.5351. No application is necessary for the tax  
7 exemption. The person is subject to all of the requirements of chapter  
8 82.32 RCW.

9 (3) This section expires twelve years after December 1, 2006.

10 **Sec. 5.** 2006 c 300 s 12 (uncodified) is amended to read as  
11 follows:

12 (1)(a) (~~(This act and)~~) Section 2, chapter . . ., Laws of 2009  
13 (section 2 of this act), section 7, chapter 300, Laws of 2006, and  
14 section 4, chapter 149, Laws of 2003 are contingent upon the siting and  
15 commercial operation of a significant semiconductor microchip  
16 fabrication facility in the state of Washington.

17 (b) For the purposes of this section:

18 (i) "Commercial operation" means the same as "commencement of  
19 commercial production" as used in RCW 82.08.965.

20 (ii) "Semiconductor microchip fabrication" means "manufacturing  
21 semiconductor microchips" as defined in RCW 82.04.426.

22 (iii) "Significant" means the combined investment of new buildings  
23 and new machinery and equipment in the buildings, at the commencement  
24 of commercial production, will be at least one billion dollars.

25 (2) (~~(This act)~~) Chapter 149, Laws of 2003 takes effect the first  
26 day of the month in which a contract for the construction of a  
27 significant semiconductor fabrication facility is signed, as determined  
28 by the director of the department of revenue.

29 (3)(a) The department of revenue (~~(shall)~~) must provide notice of  
30 the effective date of this act to affected taxpayers, the legislature,  
31 and others as deemed appropriate by the department.

32 (b) If, after making a determination that a contract has been  
33 signed and (~~(this act)~~) chapter 149, Laws of 2003 is effective, the  
34 department discovers that commencement of commercial production did not  
35 take place within three years of the date the contract was signed, the  
36 department (~~(shall)~~) must make a determination that (~~(this act)~~)  
37 chapter 149, Laws of 2003 is no longer effective, and all taxes that

1 would have been otherwise due (~~shall be~~) are deemed deferred taxes  
2 and are immediately assessed and payable from any person reporting tax  
3 under RCW 82.04.240(2) or claiming an exemption or credit under section  
4 2 or 5 through 10 (~~of this act~~), chapter 149, Laws of 2003. The  
5 department is not authorized to make a second determination regarding  
6 the effective date of (~~this act~~) chapter 149, Laws of 2003.

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