
SUBSTITUTE HOUSE BILL 1404

State of Washington

57th Legislature

2001 Regular Session

By House Committee on Technology, Telecommunications & Energy (originally sponsored by Representatives Casada, Poulsen, Crouse, Ogden, Linville, Kagi, Hatfield, Van Luven, Cooper, Dickerson, O'Brien, Campbell, Conway, Roach, Bush, Lisk, Berkey, Miloscia and Kessler; by request of Governor Locke)

Read first time . Referred to Committee on .

1 AN ACT Relating to tax credits for new facilities that provide
2 electricity for direct service industrial customers; adding a new
3 section to chapter 82.04 RCW; adding a new section to chapter 82.12
4 RCW; and adding a new section to chapter 82.16 RCW.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 82.04 RCW
7 to read as follows:

8 (1) Unless the context clearly requires otherwise, the definitions
9 in this subsection apply throughout this section.

10 (a) "Direct service industrial customer" means a person who is an
11 industrial customer that contracts for the purchase of power from the
12 Bonneville Power Administration for direct consumption as of the
13 effective date of this section. "Direct service industrial customer"
14 includes a person who is a subsidiary that is more than fifty percent
15 owned by a direct service industrial customer and who receives power
16 from the Bonneville Power Administration pursuant to the parent's
17 contract for power.

18 (b) "Facility" means a gas turbine electrical generation facility
19 that does not exist on the effective date of this section and is owned

1 by a direct service industrial customer for the purpose of producing
2 electricity to be consumed by the direct service industrial customer.

3 (c) "Average annual employment" means the total employment in this
4 state for a calendar year at the direct service industrial customer's
5 location where electricity from the facility will be consumed.

6 (2) Effective July 1, 2004, a credit is allowed against the tax due
7 under this chapter to a direct service industrial customer who
8 purchases natural or manufactured gas from a gas distribution business
9 subject to the public utility tax under chapter 82.16 RCW. The credit
10 is equal to the value of natural or manufactured gas purchased from a
11 gas distribution business and used to generate electricity at the
12 facility multiplied by the rate in effect for the public utility tax on
13 gas distribution businesses under RCW 82.16.020. This credit may be
14 used each reporting period for sixty months following the first month
15 natural or manufactured gas was purchased from a gas distribution
16 business by a direct service industrial customer who constructs a
17 facility.

18 (3) This credit is available only to a person who meets the
19 requirements for diversification of resources, as required in a
20 legislative act enacted in the 2001 legislative session. If such a
21 requirement is not enacted, this subsection (3) has no effect.

22 (4) Application for credit shall be made by the direct service
23 industrial consumer before the first purchase of natural or
24 manufactured gas. The application shall be in a form and manner
25 prescribed by the department and shall include but is not limited to
26 information regarding the location of the facility, the projected date
27 of first purchase of natural or manufactured gas to generate
28 electricity at the facility, the date construction is projected to
29 begin or did begin, the applicant's average annual employment in the
30 state for the six calendar years immediately preceding the year in
31 which the application is made, and affirm the applicant's status as a
32 direct service industrial customer. The department shall rule on the
33 application within thirty days of receipt.

34 (5) Credit under this section is limited to the amount of tax
35 imposed under this chapter. Refunds shall not be given in place of
36 credits and credits may not be carried over to subsequent calendar
37 years.

38 (6) All or part of the credit shall be disallowed and must be paid
39 if the average of the direct service industrial customer's average

1 annual employment for the five calendar years subsequent to the
 2 calendar year containing the first month of purchase of natural or
 3 manufactured gas to generate electricity at a facility is less than the
 4 six-year average annual employment stated on the application for credit
 5 under this section. The direct service industrial customer will
 6 certify to the department by June 1st of the sixth calendar year
 7 following the calendar year in which the month of first purchase of gas
 8 occurs the average annual employment for each of the five prior
 9 calendar years. All or part of the credit that shall be disallowed and
 10 must be paid is commensurate with the decrease in the five-year average
 11 of average annual employment as follows:

<u>Decrease in Average Annual</u>	<u>% of Credit to be Paid</u>
<u>Employment Over</u>	
<u>Five-Year Period</u>	
Less than 10%	10%
10% or more but less than 25%	25%
25% or more but less than 50%	50%
50% or more but less than 75%	75%
75% or more	100%

20 (7)(a) The direct service industrial customer shall begin paying
 21 the credit that is disallowed and is to be paid in the sixth calendar
 22 year following the calendar year in which the month following the month
 23 of first purchase of natural or manufactured gas to generate
 24 electricity at the facility occurs. The first payment will be due on
 25 or before December 31st with subsequent annual payments due on or
 26 before December 31st of the following four years according to the
 27 following schedule:

<u>Payment Year</u>	<u>% of Credit to be Paid</u>
1	10%
2	15%
3	20%
4	25%
5	30%

34 (b) The department may authorize an accelerated payment schedule
 35 upon request of the taxpayer.

36 (c) Interest shall not be charged on the credit that is disallowed
 37 for the sixty-month period the credit may be taken, although all other

1 penalties and interest applicable to delinquent excise taxes may be
2 assessed and imposed. The debt for credit that is disallowed and must
3 be paid will not be extinguished by insolvency or other failure of the
4 direct service industrial customer. Transfer of ownership of the
5 facility does not affect eligibility for this credit. However, the
6 credit is available to the successor only if the eligibility conditions
7 of this section are met.

8 (8) The employment security department shall make, and certify to
9 the department of revenue, all determinations of employment under this
10 section as requested by the department.

11 (9) A person claiming this credit shall supply to the department
12 quarterly reports containing information necessary to document the
13 total volume of natural or manufactured gas purchased in the quarter,
14 the value of that total volume, and the percentage of the total volume
15 used to generate electricity at the facility.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.12 RCW
17 to read as follows:

18 (1) Unless the context clearly requires otherwise, the definitions
19 in this subsection apply throughout this section.

20 (a) "Direct service industrial customer" means a person who is an
21 industrial customer that contracts for the purchase of power from the
22 Bonneville power administration for direct consumption as of the
23 effective date of this section. "Direct service industrial customer"
24 includes a person who is a wholly owned subsidiary of a direct service
25 industrial customer if the subsidiary and parent are entitled to file
26 a consolidated tax return in accordance with 26 U.S.C. Sec. 1501 and
27 who receives power from the Bonneville Power Administration pursuant to
28 the parent's contract for power.

29 (b) "Facility" means a gas turbine electrical generation facility
30 that does not exist on the effective date of this section and is owned
31 by a direct service industrial customer for the purpose of producing
32 electricity to be consumed by the direct service industrial customer.

33 (c) "Average annual employment" means the total employment in this
34 state for a calendar year at the direct service industrial customer's
35 location where electricity from the facility will be consumed.

36 (2) Effective July 1, 2004, the tax levied in RCW 82.12.022 on the
37 first sixty months' use of natural or manufactured gas by a direct
38 service industrial customer that owns a facility shall be deferred.

1 This deferral is limited to the tax on natural or manufactured gas used
2 or consumed to generate electricity at the facility.

3 (3) This deferral is available only to a person who meets the
4 requirements for diversification of resources, as required in a
5 legislative act enacted in the 2001 legislative session. If such a
6 requirement is not enacted, this subsection (3) has no effect.

7 (4) Application for deferral shall be made by the direct service
8 industrial customer before the first use of natural or manufactured
9 gas. The application shall be in a form and manner prescribed by the
10 department and shall include but is not limited to information
11 regarding the location of the facility, the projected date of first use
12 of natural or manufactured gas to generate electricity at the facility,
13 the date construction is projected to begin or did begin, the
14 applicant's average annual employment in the state for the six calendar
15 years immediately preceding the year in which the application is made,
16 and shall affirm the applicant's status as a direct service industrial
17 customer. The department shall rule on the application within thirty
18 days of receipt.

19 (5)(a) The direct service industrial customer shall begin paying
20 the deferred tax in the sixth calendar year following the calendar year
21 in which the month of first use of natural or manufactured gas to
22 generate electricity at the facility occurs. The first payment will be
23 due on or before December 31st with subsequent annual payments due on
24 or before December 31st of the following four years according to the
25 following schedule:

26	<u>Payment Year</u>	<u>% of Deferred Tax to be Paid</u>
27	1	10%
28	2	15%
29	3	20%
30	4	25%
31	5	30%

32 (b) The department may authorize an accelerated payment schedule
33 upon request of the taxpayer.

34 (c) Interest shall not be charged on the tax deferred under this
35 section for the period of deferral, although all other penalties and
36 interest applicable to delinquent excise taxes may be assessed and
37 imposed. The debt for deferred tax will not be extinguished by
38 insolvency or other failure of the direct service industrial customer.

1 Transfer of ownership of the facility does not affect deferral
2 eligibility. However, the deferral is available to the successor only
3 if the eligibility conditions of this section are met.

4 (6)(a) If the average of the direct service industrial customer's
5 average annual employment for the five calendar years subsequent to the
6 calendar year containing the first month of use of natural or
7 manufactured gas to generate electricity at a facility is equal to or
8 exceeds the six-year average annual employment stated on the
9 application for deferral under this section, the tax deferred need not
10 be paid. The direct service industrial customer shall certify to the
11 department by June 1st of the sixth calendar year following the
12 calendar year in which the month of first use of gas occurs the average
13 annual employment for each of the five prior calendar years.

14 (b) If the five-year average calculated in (a) of this subsection
15 is less than the average annual employment stated on the application
16 for deferral under this section, the tax deferred under this section
17 shall be paid in the amount as follows:

18	<u>Decrease in Average Annual</u>	
19	<u>Employment Over</u>	<u>% of Deferred</u>
20	<u>Five-Year Period</u>	<u>Tax to be Paid</u>
21	Less than 10%	10%
22	10% or more but less than 25%	25%
23	25% or more but less than 50%	50%
24	50% or more but less than 75%	75%
25	75% or more	100%

26 (c) Tax paid under this subsection shall be paid according to the
27 schedule in subsection (5)(a) of this section and under the terms and
28 conditions of subsection (5)(b) and (c) of this section.

29 (7) The employment security department shall make, and certify to
30 the department of revenue, all determinations of employment under this
31 section as requested by the department.

32 (8) A person claiming this deferral shall supply to the department
33 quarterly reports containing information necessary to document the
34 total volume of natural or manufactured gas purchased in the quarter,
35 the value of that total volume, and the percentage of the total volume
36 used to generate electricity at the facility.

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.16 RCW
2 to read as follows:

3 (1) Unless the context clearly requires otherwise, the definitions
4 in this subsection apply throughout this section.

5 (a) "Direct service industrial customer" means a person who is an
6 industrial customer that contracts for the purchase of power from the
7 Bonneville Power Administration for direct consumption as of the
8 effective date of this section. "Direct service industrial customer"
9 includes a person who is a wholly owned subsidiary of a direct service
10 industrial customer if the subsidiary and parent are entitled to file
11 a consolidated tax return in accordance with 26 U.S.C. Sec. 1501 and
12 who receives power from the Bonneville Power Administration pursuant to
13 the parent's contract for power.

14 (b) "Facility" means a gas turbine electrical generation facility
15 that does not exist on the effective date of this section.

16 (c) "Average annual employment" means the total employment in this
17 state for a calendar year at the direct service industrial customer's
18 location where electricity from the facility will be consumed.

19 (2) Effective July 1, 2004, a credit is allowed against the tax due
20 under this chapter on sales of electricity made from a facility to a
21 direct service industrial customer if the contract for sale of
22 electricity to a direct service industrial customer contains the
23 following terms:

24 (a) Sales of electricity from the facility to the direct service
25 industrial customer will be made for ten consecutive years or more;

26 (b) The price charged for the electricity will be reduced by an
27 amount equal to the tax credit; and

28 (c) Disallowance of all or part of the credit under subsection (6)
29 of this section is a breach of contract and the damages to be paid by
30 the direct service industrial customer to the facility are the amount
31 of tax credit disallowed.

32 (3) The credit is equal to the gross proceeds from the sale of the
33 electricity to a direct service industrial customer multiplied by the
34 rate in effect at the time of the sale for the public utility tax on
35 light and power businesses under RCW 82.16.020. The credit may be used
36 each reporting period for sixty months following the first month
37 electricity is sold from a facility to a direct service industrial
38 customer. Credit under this section is limited to the amount of tax
39 imposed under this chapter. Refunds shall not be given in place of

1 credits and credits may not be carried over to subsequent calendar
2 years.

3 (4) This credit is available only to a person who meets the
4 requirements for diversification of resources, as required in a
5 legislative act enacted in the 2001 legislative session. If such a
6 requirement is not enacted, this subsection (4) has no effect.

7 (5) Application for credit shall be made before the first sale of
8 electricity from a facility to a direct service industrial customer.
9 The application shall be in a form and manner prescribed by the
10 department and shall include but is not limited to information
11 regarding the location of the facility, identification of the direct
12 service industrial customer who will receive electricity from the
13 facility, the projected date of the first sale of electricity to a
14 direct service industrial customer, the date construction is projected
15 to begin or did begin, and the average annual employment in the state
16 of the direct service industrial customer who will receive electricity
17 from the facility for the six calendar years immediately preceding the
18 year in which the application is made. A copy of the contract for sale
19 of electricity must be attached to the application. The department
20 shall rule on the application within thirty days of receipt.

21 (6) All or part of the credit shall be disallowed and must be paid
22 if the average of the direct service industrial customer's average
23 annual employment for the five calendar years subsequent to the
24 calendar year containing the first month of sale of electricity from a
25 facility to a direct service industrial customer is less than the six-
26 year average annual employment stated on the application for credit
27 under this section. The direct service industrial customer shall
28 certify to the department and to the facility by June 1st of the sixth
29 calendar year following the calendar year in which the month of first
30 sale occurs the average annual employment for each of the five prior
31 calendar years. All or part of the credit that shall be disallowed and
32 must be paid is commensurate with the decrease in the five-year average
33 of average annual employment as follows:

<u>Decrease in Average Annual</u>	
<u>Employment Over</u>	
<u>Five-Year Period</u>	<u>% of Credit to be Paid</u>
Less than 10%	10%
10% or more but less than 25%	25%
25% or more but less than 50%	50%

1	50% or more but less than 75%	75%
2	75% or more	100%

3 (7)(a) Payments on credit that is disallowed shall begin in the
4 sixth calendar year following the calendar year in which the month
5 following the first month of sale of electricity from a facility to a
6 direct service industrial customer occurs. The first payment will be
7 due on or before December 31st with subsequent annual payments due on
8 or before December 31st of the following four years according to the
9 schedule in this subsection.

10	<u>Payment Year</u>	<u>% of Credit to be Paid</u>
11	1	10%
12	2	15%
13	3	20%
14	4	25%
15	5	30%

16 (b) The department may authorize an accelerated payment schedule
17 upon request of the taxpayer.

18 (c) Interest shall not be charged on the credit that is disallowed
19 for the sixty-month period the credit may be taken, although all other
20 penalties and interest applicable to delinquent excise taxes may be
21 assessed and imposed. The debt for credit that is disallowed and must
22 be paid will not be extinguished by insolvency or other failure of the
23 taxpayer. Transfer of ownership of the facility does not affect
24 eligibility for this credit. However, the credit is available to the
25 successor only if the eligibility conditions of this section are met.

26 (8) The employment security department shall make, and certify to
27 the department of revenue, all determinations of employment under this
28 section as requested by the department.

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