

CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE HOUSE BILL 2221

Chapter 513, Laws of 2005

59th Legislature
2005 Regular Session

EXCISE TAXATION--FRUIT AND VEGETABLES

EFFECTIVE DATE: 7/01/07 - Except sections 1 through 3, which become effective 7/01/05.

Passed by the House April 22, 2005
Yeas 96 Nays 2

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 23, 2005
Yeas 45 Nays 1

BRAD OWEN

President of the Senate

Approved May 17, 2005.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 2221** as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER

Chief Clerk

FILED

May 17, 2005 - 3:28 p.m.

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 2221

Passed Legislature - 2005 Regular Session

State of Washington 59th Legislature 2005 Regular Session

By House Committee on Finance (originally sponsored by Representatives Takko, Orcutt, Grant, Kristiansen, Williams, Strow, Blake, Bailey, Kenney, Haler and Linville)

READ FIRST TIME 04/21/05.

1 AN ACT Relating to the excise taxation of fruit and vegetable
2 processing and storage; amending RCW 82.08.820 and 82.12.820;
3 reenacting and amending RCW 82.04.260; adding a new section to chapter
4 82.04 RCW; adding a new section to chapter 82.32 RCW; adding a new
5 chapter to Title 82 RCW; providing effective dates; providing an
6 expiration date; and declaring an emergency.

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

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

10 This chapter shall not apply to amounts received from:

11 (1) Canning, preserving, freezing, processing, or dehydrating fresh
12 fruits and vegetables; or

13 (2) Selling at wholesale fresh fruits and vegetables canned,
14 preserved, frozen, processed, or dehydrated by the seller and sold to
15 purchasers who transport in the ordinary course of business the goods
16 out of this state. As proof of sale to a person who transports in the
17 ordinary course of business goods out of this state, the seller shall
18 annually provide a statement in a form prescribed by the department and
19 retain the statement as a business record.

1 **Sec. 2.** RCW 82.04.260 and 2003 2nd sp.s. c 1 s 4 and 2003 2nd
2 sp.s. c 1 s 3 are each reenacted and amended to read as follows:

3 (1) Upon every person engaging within this state in the business of
4 manufacturing:

5 (a) Wheat into flour, barley into pearl barley, soybeans into
6 soybean oil, canola into canola oil, canola meal, or canola byproducts,
7 or sunflower seeds into sunflower oil; as to such persons the amount of
8 tax with respect to such business shall be equal to the value of the
9 flour, pearl barley, oil, canola meal, or canola byproduct
10 manufactured, multiplied by the rate of 0.138 percent;

11 (b) Seafood products which remain in a raw, raw frozen, or raw
12 salted state at the completion of the manufacturing by that person; as
13 to such persons the amount of tax with respect to such business shall
14 be equal to the value of the products manufactured, multiplied by the
15 rate of 0.138 percent;

16 (c) ~~((By canning, preserving, freezing, processing, or dehydrating
17 fresh fruits and vegetables, or selling at wholesale fresh fruits and
18 vegetables canned, preserved, frozen, processed, or dehydrated by the
19 seller and sold to purchasers who transport in the ordinary course of
20 business the goods out of this state; as to such persons the amount of
21 tax with respect to such business shall be equal to the value of the
22 products canned, preserved, frozen, processed, or dehydrated multiplied
23 by the rate of 0.138 percent. As proof of sale to a person who
24 transports in the ordinary course of business goods out of this state,
25 the seller shall annually provide a statement in a form prescribed by
26 the department and retain the statement as a business record;~~

27 ~~(d))~~ Dairy products that as of September 20, 2001, are identified
28 in 21 C.F.R., chapter 1, parts 131, 133, and 135, including byproducts
29 from the manufacturing of the dairy products such as whey and casein;
30 or selling the same to purchasers who transport in the ordinary course
31 of business the goods out of state; as to such persons the tax imposed
32 shall be equal to the value of the products manufactured multiplied by
33 the rate of 0.138 percent. As proof of sale to a person who transports
34 in the ordinary course of business goods out of this state, the seller
35 shall annually provide a statement in a form prescribed by the
36 department and retain the statement as a business record;

37 ~~((e))~~ (d) Until July 1, 2009, alcohol fuel, biodiesel fuel, or
38 biodiesel feedstock, as those terms are defined in RCW 82.29A.135; as

1 to such persons the amount of tax with respect to the business shall be
2 equal to the value of alcohol fuel, biodiesel fuel, or biodiesel
3 feedstock manufactured, multiplied by the rate of 0.138 percent(~~(-~~
4 ~~This subsection (1)(e) expires July 1, 2009))~~); and

5 ~~((f))~~ (e) Alcohol fuel or wood biomass fuel, as those terms are
6 defined in RCW 82.29A.135; as to such persons the amount of tax with
7 respect to the business shall be equal to the value of alcohol fuel or
8 wood biomass fuel manufactured, multiplied by the rate of 0.138
9 percent.

10 (2) Upon every person engaging within this state in the business of
11 splitting or processing dried peas; as to such persons the amount of
12 tax with respect to such business shall be equal to the value of the
13 peas split or processed, multiplied by the rate of 0.138 percent.

14 (3) Upon every nonprofit corporation and nonprofit association
15 engaging within this state in research and development, as to such
16 corporations and associations, the amount of tax with respect to such
17 activities shall be equal to the gross income derived from such
18 activities multiplied by the rate of 0.484 percent.

19 (4) Upon every person engaging within this state in the business of
20 slaughtering, breaking and/or processing perishable meat products
21 and/or selling the same at wholesale only and not at retail; as to such
22 persons the tax imposed shall be equal to the gross proceeds derived
23 from such sales multiplied by the rate of 0.138 percent.

24 (5) Upon every person engaging within this state in the business of
25 making sales, at retail or wholesale, of nuclear fuel assemblies
26 manufactured by that person, as to such persons the amount of tax with
27 respect to such business shall be equal to the gross proceeds of sales
28 of the assemblies multiplied by the rate of 0.275 percent.

29 (6) Upon every person engaging within this state in the business of
30 manufacturing nuclear fuel assemblies, as to such persons the amount of
31 tax with respect to such business shall be equal to the value of the
32 products manufactured multiplied by the rate of 0.275 percent.

33 (7) Upon every person engaging within this state in the business of
34 acting as a travel agent or tour operator; as to such persons the
35 amount of the tax with respect to such activities shall be equal to the
36 gross income derived from such activities multiplied by the rate of
37 0.275 percent.

1 (8) Upon every person engaging within this state in business as an
2 international steamship agent, international customs house broker,
3 international freight forwarder, vessel and/or cargo charter broker in
4 foreign commerce, and/or international air cargo agent; as to such
5 persons the amount of the tax with respect to only international
6 activities shall be equal to the gross income derived from such
7 activities multiplied by the rate of 0.275 percent.

8 (9) Upon every person engaging within this state in the business of
9 stevedoring and associated activities pertinent to the movement of
10 goods and commodities in waterborne interstate or foreign commerce; as
11 to such persons the amount of tax with respect to such business shall
12 be equal to the gross proceeds derived from such activities multiplied
13 by the rate of 0.275 percent. Persons subject to taxation under this
14 subsection shall be exempt from payment of taxes imposed by chapter
15 82.16 RCW for that portion of their business subject to taxation under
16 this subsection. Stevedoring and associated activities pertinent to
17 the conduct of goods and commodities in waterborne interstate or
18 foreign commerce are defined as all activities of a labor, service or
19 transportation nature whereby cargo may be loaded or unloaded to or
20 from vessels or barges, passing over, onto or under a wharf, pier, or
21 similar structure; cargo may be moved to a warehouse or similar holding
22 or storage yard or area to await further movement in import or export
23 or may move to a consolidation freight station and be stuffed,
24 unstuffed, containerized, separated or otherwise segregated or
25 aggregated for delivery or loaded on any mode of transportation for
26 delivery to its consignee. Specific activities included in this
27 definition are: Wharfage, handling, loading, unloading, moving of
28 cargo to a convenient place of delivery to the consignee or a
29 convenient place for further movement to export mode; documentation
30 services in connection with the receipt, delivery, checking, care,
31 custody and control of cargo required in the transfer of cargo;
32 imported automobile handling prior to delivery to consignee; terminal
33 stevedoring and incidental vessel services, including but not limited
34 to plugging and unplugging refrigerator service to containers,
35 trailers, and other refrigerated cargo receptacles, and securing ship
36 hatch covers.

37 (10) Upon every person engaging within this state in the business
38 of disposing of low-level waste, as defined in RCW 43.145.010; as to

1 such persons the amount of the tax with respect to such business shall
2 be equal to the gross income of the business, excluding any fees
3 imposed under chapter 43.200 RCW, multiplied by the rate of 3.3
4 percent.

5 If the gross income of the taxpayer is attributable to activities
6 both within and without this state, the gross income attributable to
7 this state shall be determined in accordance with the methods of
8 apportionment required under RCW 82.04.460.

9 (11) Upon every person engaging within this state as an insurance
10 agent, insurance broker, or insurance solicitor licensed under chapter
11 48.17 RCW; as to such persons, the amount of the tax with respect to
12 such licensed activities shall be equal to the gross income of such
13 business multiplied by the rate of 0.484 percent.

14 (12) Upon every person engaging within this state in business as a
15 hospital, as defined in chapter 70.41 RCW, that is operated as a
16 nonprofit corporation or by the state or any of its political
17 subdivisions, as to such persons, the amount of tax with respect to
18 such activities shall be equal to the gross income of the business
19 multiplied by the rate of 0.75 percent through June 30, 1995, and 1.5
20 percent thereafter. The moneys collected under this subsection shall
21 be deposited in the health services account created under RCW
22 43.72.900.

23 (13)(a) Beginning October 1, 2005, upon every person engaging
24 within this state in the business of manufacturing commercial
25 airplanes, or components of such airplanes, as to such persons the
26 amount of tax with respect to such business shall, in the case of
27 manufacturers, be equal to the value of the product manufactured, or in
28 the case of processors for hire, be equal to the gross income of the
29 business, multiplied by the rate of:

30 (i) 0.4235 percent from October 1, 2005, through the later of June
31 30, 2007, or the day preceding the date final assembly of a
32 superefficient airplane begins in Washington state, as determined under
33 RCW 82.32.550; and

34 (ii) 0.2904 percent beginning on the later of July 1, 2007, or the
35 date final assembly of a superefficient airplane begins in Washington
36 state, as determined under RCW 82.32.550.

37 (b) Beginning October 1, 2005, upon every person engaging within
38 this state in the business of making sales, at retail or wholesale, of

1 commercial airplanes, or components of such airplanes, manufactured by
2 that person, as to such persons the amount of tax with respect to such
3 business shall be equal to the gross proceeds of sales of the airplanes
4 or components multiplied by the rate of:

5 (i) 0.4235 percent from October 1, 2005, through the later of June
6 30, 2007, or the day preceding the date final assembly of a
7 superefficient airplane begins in Washington state, as determined under
8 RCW 82.32.550; and

9 (ii) 0.2904 percent beginning on the later of July 1, 2007, or the
10 date final assembly of a superefficient airplane begins in Washington
11 state, as determined under RCW 82.32.550.

12 (c) For the purposes of this subsection (13), "commercial
13 airplane," "component," and "final assembly of a superefficient
14 airplane" have the meanings given in RCW 82.32.550.

15 (d) In addition to all other requirements under this title, a
16 person eligible for the tax rate under this subsection (13) must report
17 as required under RCW 82.32.545.

18 (e) This subsection (13) does not apply after the earlier of: July
19 1, 2024; or December 31, 2007, if assembly of a superefficient airplane
20 does not begin by December 31, 2007, as determined under RCW 82.32.550.

21 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.32 RCW
22 to read as follows:

23 (1) The legislature finds that accountability and effectiveness are
24 important aspects of setting tax policy. In order to make policy
25 choices regarding the best use of limited state resources the
26 legislature needs information on how a tax incentive is used.

27 (2) Each person claiming a tax exemption under section 1 of this
28 act shall report information to the department by filing a complete
29 annual survey. The survey is due by March 31st of the year following
30 any calendar year in which a tax exemption under section 1 of this act
31 is taken. The survey shall include the amount of tax exemption taken.
32 The survey shall also include the following information for employment
33 positions in Washington:

34 (a) The number of total employment positions;

35 (b) Full-time, part-time, and temporary employment positions as a
36 percent of total employment;

1 (c) The number of employment positions according to the following
2 wage bands: Less than thirty thousand dollars; thirty thousand dollars
3 or greater, but less than sixty thousand dollars; and sixty thousand
4 dollars or greater. A wage band containing fewer than three
5 individuals may be combined with another wage band; and

6 (d) The number of employment positions that have employer-provided
7 medical, dental, and retirement benefits, by each of the wage bands.

8 The first survey filed under this subsection shall also include
9 information for the twelve-month period immediately before first use of
10 a tax incentive.

11 (3) The department may request additional information necessary to
12 measure the results of the exemption program, to be submitted at the
13 same time as the survey.

14 (4) All information collected under this section, except the amount
15 of the tax exemption taken, is deemed taxpayer information under RCW
16 82.32.330. Information on the amount of tax exemption taken is not
17 subject to the confidentiality provisions of RCW 82.32.330.

18 (5) If a person fails to submit an annual survey under subsection
19 (2) of this section by the due date of the report, the department shall
20 declare the amount of taxes exempted for the previous calendar year to
21 be immediately due and payable. The department shall assess interest,
22 but not penalties, on the amounts due under this section. The amount
23 due shall be calculated using a rate of 0.138 percent. The interest
24 shall be assessed at the rate provided for delinquent taxes under this
25 chapter, retroactively to the date the exemption was claimed, and shall
26 accrue until the taxes for which the exemption was claimed are repaid.
27 This information is not subject to the confidentiality provisions of
28 RCW 82.32.330.

29 (6) The department shall use the information from this section to
30 prepare summary descriptive statistics by category. No fewer than
31 three taxpayers shall be included in any category. The department
32 shall report these statistics to the legislature each year by September
33 1st.

34 (7) The department shall study the tax exemption authorized in
35 section 1 of this act. The department shall submit a report to the
36 finance committee of the house of representatives and the ways and
37 means committee of the senate by December 1, 2011. The report shall
38 measure the effect of the exemption on job creation, job retention,

1 company growth, the movement of firms or the consolidation of firms'
2 operations into the state, and such other factors as the department
3 selects.

4 NEW SECTION. **Sec. 4.** Unless the context clearly requires
5 otherwise, the definitions in this section apply throughout this
6 chapter.

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

9 (2) "Cold storage warehouse" means a storage warehouse used to
10 store fresh and/or frozen perishable fruits or vegetables, or any
11 combination thereof, at a desired temperature to maintain the quality
12 of the product for orderly marketing.

13 (3) "Department" means the department of revenue.

14 (4) "Eligible investment project" means an investment in qualified
15 buildings or qualified machinery and equipment, including labor and
16 services rendered in the planning, installation, and construction of
17 the project. The lessor or owner of a qualified building is not
18 eligible for a deferral unless (a) the underlying ownership of the
19 buildings, machinery, and equipment vests exclusively in the same
20 person; or (b)(i) the lessor by written contract agrees to pass the
21 economic benefit of the deferral to the lessee in the form of reduced
22 rent payments, and (ii) the lessee that receives the economic benefit
23 of the deferral agrees in writing with the department to complete the
24 annual survey under section 7 of this act. The economic benefit of the
25 deferral to the lessee may be evidenced by any type of payment, credit,
26 or any other financial arrangement between the lessor or owner of the
27 qualified building and the lessee.

28 (5) "Fresh fruit and vegetable processing" means manufacturing as
29 defined in RCW 82.04.120 which consists of the canning, preserving,
30 freezing, processing, or dehydrating fresh fruits and/or vegetables.

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

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

1 (ii) Construction of the qualified building, if the economic
2 benefits of the deferral are passed to a lessee as provided in
3 subsection (4) of this section; or

4 (iii) Tenant improvements for a qualified building, if the economic
5 benefits of the deferral are passed to a lessee as provided in
6 subsection (4) of this section.

7 (b) "Initiation of construction" does not include soil testing,
8 site clearing and grading, site preparation, or any other related
9 activities that are initiated before the issuance of a building permit
10 for the construction of the foundation of the building.

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

13 (7) "Person" has the meaning given in RCW 82.04.030.

14 (8) "Qualified buildings" means construction of new structures, and
15 expansion or renovation of existing structures for the purpose of
16 increasing floor space or production capacity used for fresh fruit and
17 vegetable processing, cold storage warehouse, and research and
18 development activities, including plant offices and warehouses or other
19 facilities for the storage of raw material or finished goods if such
20 facilities are an essential or an integral part of a factory, plant, or
21 laboratory used for fresh fruit and vegetable processing, cold storage
22 warehousing, or research and development. If a building is used partly
23 for fresh fruit and vegetable processing, cold storage warehousing, or
24 research and development and partly for other purposes, the applicable
25 tax deferral shall be determined by apportionment of the costs of
26 construction under rules adopted by the department.

27 (9) "Qualified machinery and equipment" means all industrial and
28 research fixtures, equipment, and support facilities that are an
29 integral and necessary part of a fresh fruit and vegetable processing,
30 cold storage warehouse, or research and development operation.
31 "Qualified machinery and equipment" includes: Computers; software;
32 data processing equipment; laboratory equipment; manufacturing
33 components such as belts, pulleys, shafts, and moving parts; molds,
34 tools, and dies; operating structures; and all equipment used to
35 control or operate the machinery.

36 (10) "Recipient" means a person receiving a tax deferral under this
37 chapter.

1 (11) "Research and development" means the development, refinement,
2 testing, marketing, and commercialization of a product, service, or
3 process related to fresh fruit and vegetable processing or cold storage
4 warehousing before commercial sales have begun. As used in this
5 subsection, "commercial sales" excludes sales of prototypes or sales
6 for market testing if the total gross receipts from such sales of the
7 product, service, or process do not exceed one million dollars.

8 NEW SECTION. **Sec. 5.** (1) Application for deferral of taxes under
9 this chapter must be made before initiation of the construction of the
10 investment project or acquisition of equipment or machinery. The
11 application shall be made to the department in a form and manner
12 prescribed by the department. The application shall contain
13 information regarding the location of the investment project, the
14 applicant's average employment in the state for the prior year,
15 estimated or actual new employment related to the project, estimated or
16 actual wages of employees related to the project, estimated or actual
17 costs, time schedules for completion and operation, and other
18 information required by the department.

19 (2) The department shall rule on the application within sixty days.
20 The department shall keep a running total of all deferrals granted
21 under this chapter during each fiscal biennium.

22 (3) No application may be made under this chapter for a project for
23 which a refund is requested under RCW 82.08.820 or 82.12.820.

24 NEW SECTION. **Sec. 6.** (1) The department shall issue a sales and
25 use tax deferral certificate for state and local sales and use taxes
26 due under chapters 82.08, 82.12, and 82.14 RCW on each eligible
27 investment project if the investment project is undertaken for the
28 purpose of fresh fruit and vegetable processing, cold storage
29 warehousing, or research and development.

30 (2) This section expires July 1, 2012.

31 NEW SECTION. **Sec. 7.** (1)(a) The legislature finds that
32 accountability and effectiveness are important aspects of setting tax
33 policy. In order to make policy choices regarding the best use of
34 limited state resources the legislature needs information on how a tax
35 incentive is used.

1 (b) Each recipient of a deferral granted under this chapter shall
2 complete an annual survey. If the economic benefits of the deferral
3 are passed to a lessee as provided in section 4(4) of this act, the
4 lessee shall complete the annual survey and the applicant is not
5 required to complete the annual survey. The survey is due by March
6 31st of the year following the calendar year in which the investment
7 project is certified by the department as having been operationally
8 complete and each of the seven succeeding calendar years. The survey
9 shall include the amount of tax deferred. The survey shall also
10 include the following information for employment positions in
11 Washington:

12 (i) The number of total employment positions;

13 (ii) Full-time, part-time, and temporary employment positions as a
14 percent of total employment;

15 (iii) The number of employment positions according to the following
16 wage bands: Less than thirty thousand dollars; thirty thousand dollars
17 or greater, but less than sixty thousand dollars; and sixty thousand
18 dollars or greater. A wage band containing fewer than three
19 individuals may be combined with another wage band; and

20 (iv) The number of employment positions that have employer-provided
21 medical, dental, and retirement benefits, by each of the wage bands.

22 (c) The department may request additional information necessary to
23 measure the results of the deferral program, to be submitted at the
24 same time as the survey.

25 (d) All information collected under this subsection, except the
26 amount of the tax deferral taken, is deemed taxpayer information under
27 RCW 82.32.330. Information on the amount of tax deferral taken is not
28 subject to the confidentiality provisions of RCW 82.32.330 and may be
29 disclosed to the public upon request.

30 (e) The department shall use the information from this section to
31 prepare summary descriptive statistics by category. No fewer than
32 three taxpayers shall be included in any category. The department
33 shall report these statistics to the legislature each year by September
34 1st.

35 (f) The department shall also use the information to study the tax
36 deferral program authorized under this chapter. The department shall
37 report to the legislature by December 1, 2011. The report shall
38 measure the effect of the program on job creation, the number of jobs

1 created for residents of eligible areas, company growth, the
2 introduction of new products, the diversification of the state's
3 economy, growth in research and development investment, the movement of
4 firms or the consolidation of firms' operations into the state, and
5 such other factors as the department selects.

6 (2)(a) If a recipient of the deferral fails to complete the annual
7 survey required under subsection (1) of this section by the date due,
8 twelve and one-half percent of the deferred tax shall be immediately
9 due. If the economic benefits of the deferral are passed to a lessee
10 as provided in section 4(4) of this act, the lessee shall be
11 responsible for payment to the extent the lessee has received the
12 economic benefit. The department shall assess interest, but not
13 penalties, on the amounts due under this section. The interest shall
14 be assessed at the rate provided for delinquent taxes under chapter
15 82.32 RCW, and shall accrue until the amounts due are repaid.

16 (b) A recipient who must repay deferred taxes under section 8(2) of
17 this act because the department has found that an investment project is
18 used for purposes other than fresh fruit and vegetable processing, cold
19 storage warehousing, or research and development is no longer required
20 to file annual surveys under this section beginning on the date an
21 investment project is used for nonqualifying purposes.

22 NEW SECTION. **Sec. 8.** (1) Except as provided in subsection (2) of
23 this section, taxes deferred under this chapter need not be repaid.

24 (2) If, on the basis of survey under section 7 of this act or other
25 information, the department finds that an investment project is used
26 for purposes other than fresh fruit and vegetable processing, cold
27 storage warehousing, or research and development at any time during the
28 calendar year in which the investment project is certified by the
29 department as having been operationally completed, or at any time
30 during any of the seven succeeding calendar years, a portion of
31 deferred taxes shall be immediately due according to the following
32 schedule:

33	Year in which use occurs	% of deferred taxes due
34	1	100%
35	2	87.5%

1	3	75%
2	4	62.5%
3	5	50%
4	6	37.5%
5	7	25%
6	8	12.5%

7 (3) The department shall assess interest, but not penalties, on the
8 deferred taxes under subsection (2) of this section. The interest
9 shall be assessed at the rate provided for delinquent taxes under
10 chapter 82.32 RCW, retroactively to the date of deferral, and shall
11 accrue until the deferred taxes are repaid. The debt for deferred
12 taxes will not be extinguished by insolvency or other failure of the
13 recipient. Transfer of ownership does not terminate the deferral. The
14 deferral is transferred, subject to the successor meeting the
15 eligibility requirements of this chapter, for the remaining periods of
16 the deferral.

17 (4) Notwithstanding subsection (2) of this section, deferred taxes
18 on the following need not be repaid:

19 (a) Machinery and equipment, and sales of or charges made for labor
20 and services, which at the time of purchase would have qualified for
21 exemption under RCW 82.08.02565; and

22 (b) Machinery and equipment which at the time of first use would
23 have qualified for exemption under RCW 82.12.02565.

24 NEW SECTION. **Sec. 9.** Chapter 82.32 RCW applies to the
25 administration of this chapter.

26 NEW SECTION. **Sec. 10.** Applications received by the department
27 under this chapter are not confidential and are subject to disclosure.

28 **Sec. 11.** RCW 82.08.820 and 1997 c 450 s 2 are each amended to read
29 as follows:

30 (1) Wholesalers or third-party warehouseers who own or operate
31 warehouses or grain elevators and retailers who own or operate
32 distribution centers, and who have paid the tax levied by RCW 82.08.020
33 on:

34 (a) Material-handling and racking equipment, and labor and services

1 rendered in respect to installing, repairing, cleaning, altering, or
2 improving the equipment; or

3 (b) Construction of a warehouse or grain elevator, including
4 materials, and including service and labor costs,
5 are eligible for an exemption in the form of a remittance. The amount
6 of the remittance is computed under subsection (3) of this section and
7 is based on the state share of sales tax.

8 (2) For purposes of this section and RCW 82.12.820:

9 (a) "Agricultural products" has the meaning given in RCW 82.04.213;

10 (b) "Cold storage warehouse" means a storage warehouse used to
11 store fresh and/or frozen perishable fruits or vegetables, or any
12 combination thereof, at a desired temperature to maintain the quality
13 of the product for orderly marketing;

14 (c) "Construction" means the actual construction of a warehouse or
15 grain elevator that did not exist before the construction began.
16 "Construction" includes expansion if the expansion adds at least
17 twenty-five thousand square feet of additional space to an existing
18 cold storage warehouse, at least two hundred thousand square feet of
19 additional space to an existing warehouse other than a cold storage
20 warehouse, or additional storage capacity of at least one million
21 bushels to an existing grain elevator. "Construction" does not include
22 renovation, remodeling, or repair;

23 ((+e)) (d) "Department" means the department of revenue;

24 ((+d)) (e) "Distribution center" means a warehouse that is used
25 exclusively by a retailer solely for the storage and distribution of
26 finished goods to retail outlets of the retailer. "Distribution
27 center" does not include a warehouse at which retail sales occur;

28 ((+e)) (f) "Finished goods" means tangible personal property
29 intended for sale by a retailer or wholesaler. "Finished goods" does
30 not include agricultural products stored by wholesalers, third-party
31 warehouses, or retailers if the storage takes place on the land of the
32 person who produced the agricultural product. "Finished goods" does
33 not include logs, minerals, petroleum, gas, or other extracted products
34 stored as raw materials or in bulk;

35 ((+f)) (g) "Grain elevator" means a structure used for storage and
36 handling of grain in bulk;

37 ((+g)) (h) "Material-handling equipment and racking equipment"
38 means equipment in a warehouse or grain elevator that is primarily used

1 to handle, store, organize, convey, package, or repackage finished
2 goods. The term includes tangible personal property with a useful life
3 of one year or more that becomes an ingredient or component of the
4 equipment, including repair and replacement parts. The term does not
5 include equipment in offices, lunchrooms, restrooms, and other like
6 space, within a warehouse or grain elevator, or equipment used for
7 nonwarehousing purposes. "Material-handling equipment" includes but is
8 not limited to: Conveyers, carousels, lifts, positioners, pick-up-and-
9 place units, cranes, hoists, mechanical arms, and robots; mechanized
10 systems, including containers that are an integral part of the system,
11 whose purpose is to lift or move tangible personal property; and
12 automated handling, storage, and retrieval systems, including computers
13 that control them, whose purpose is to lift or move tangible personal
14 property; and forklifts and other off-the-road vehicles that are used
15 to lift or move tangible personal property and that cannot be operated
16 legally on roads and streets. "Racking equipment" includes, but is not
17 limited to, conveying systems, chutes, shelves, racks, bins, drawers,
18 pallets, and other containers and storage devices that form a necessary
19 part of the storage system;

20 ~~((h))~~ (i) "Person" has the meaning given in RCW 82.04.030;

21 ~~((i))~~ (j) "Retailer" means a person who makes "sales at retail"
22 as defined in chapter 82.04 RCW of tangible personal property;

23 ~~((j))~~ (k) "Square footage" means the product of the two
24 horizontal dimensions of each floor of a specific warehouse. The
25 entire footprint of the warehouse shall be measured in calculating the
26 square footage, including space that juts out from the building profile
27 such as loading docks. "Square footage" does not mean the aggregate of
28 the square footage of more than one warehouse at a location or the
29 aggregate of the square footage of warehouses at more than one
30 location;

31 ~~((k))~~ (l) "Third-party warehouse" means a person taxable under
32 RCW 82.04.280(4);

33 ~~((l))~~ (m) "Warehouse" means an enclosed building or structure in
34 which finished goods are stored. A warehouse building or structure may
35 have more than one storage room and more than one floor. Office space,
36 lunchrooms, restrooms, and other space within the warehouse and
37 necessary for the operation of the warehouse are considered part of the
38 warehouse as are loading docks and other such space attached to the

1 building and used for handling of finished goods. Landscaping and
2 parking lots are not considered part of the warehouse. A storage yard
3 is not a warehouse, nor is a building in which manufacturing takes
4 place; and

5 ~~((m))~~ (n) "Wholesaler" means a person who makes "sales at
6 wholesale" as defined in chapter 82.04 RCW of tangible personal
7 property, but "wholesaler" does not include a person who makes sales
8 exempt under 82.04.330.

9 (3)(a) A person claiming an exemption from state tax in the form of
10 a remittance under this section must pay the tax imposed by RCW
11 82.08.020. The buyer may then apply to the department for remittance
12 of all or part of the tax paid under RCW 82.08.020. For grain
13 elevators with bushel capacity of one million but less than two
14 million, the remittance is equal to fifty percent of the amount of tax
15 paid. For warehouses with square footage of two hundred thousand or
16 more, other than cold storage warehouses, and for grain elevators with
17 bushel capacity of two million or more, the remittance is equal to one
18 hundred percent of the amount of tax paid for qualifying construction,
19 materials, service, and labor, and fifty percent of the amount of tax
20 paid for qualifying material-handling equipment and racking equipment,
21 and labor and services rendered in respect to installing, repairing,
22 cleaning, altering, or improving the equipment. For cold storage
23 warehouses with square footage of twenty-five thousand or more, the
24 remittance is equal to one hundred percent of the amount of tax paid
25 for qualifying construction, materials, service, and labor, and one
26 hundred percent of the amount of tax paid for qualifying material-
27 handling equipment and racking equipment, and labor and services
28 rendered in respect to installing, repairing, cleaning, altering, or
29 improving the equipment.

30 (b) The department shall determine eligibility under this section
31 based on information provided by the buyer and through audit and other
32 administrative records. The buyer shall on a quarterly basis submit an
33 information sheet, in a form and manner as required by the department
34 by rule, specifying the amount of exempted tax claimed and the
35 qualifying purchases or acquisitions for which the exemption is
36 claimed. The buyer shall retain, in adequate detail to enable the
37 department to determine whether the equipment or construction meets the
38 criteria under this section: Invoices; proof of tax paid; documents

1 describing the material-handling equipment and racking equipment;
2 location and size of warehouses and grain elevators; and construction
3 invoices and documents.

4 (c) The department shall on a quarterly basis remit exempted
5 amounts to qualifying persons who submitted applications during the
6 previous quarter.

7 (4) Warehouses, grain elevators, and material-handling equipment
8 and racking equipment for which an exemption, credit, or deferral has
9 been or is being received under chapter 82.60, 82.61, 82.62, or 82.63
10 RCW or RCW 82.08.02565 or 82.12.02565 are not eligible for any
11 remittance under this section. Warehouses and grain elevators upon
12 which construction was initiated before May 20, 1997, are not eligible
13 for a remittance under this section.

14 (5) The lessor or owner of a warehouse or grain elevator is not
15 eligible for a remittance under this section unless the underlying
16 ownership of the warehouse or grain elevator and the material-handling
17 equipment and racking equipment vests exclusively in the same person,
18 or unless the lessor by written contract agrees to pass the economic
19 benefit of the remittance to the lessee in the form of reduced rent
20 payments.

21 **Sec. 12.** RCW 82.12.820 and 2003 c 5 s 13 are each amended to read
22 as follows:

23 (1) Wholesalers or third-party warehouse owners who own or operate
24 warehouses or grain elevators, and retailers who own or operate
25 distribution centers, and who have paid the tax levied under RCW
26 82.12.020 on:

27 (a) Material-handling equipment and racking equipment and labor and
28 services rendered in respect to installing, repairing, cleaning,
29 altering, or improving the equipment; or

30 (b) Materials incorporated in the construction of a warehouse or
31 grain elevator, are eligible for an exemption on tax paid in the form
32 of a remittance or credit against tax owed. The amount of the
33 remittance or credit is computed under subsection (2) of this section
34 and is based on the state share of use tax.

35 (2)(a) A person claiming an exemption from state tax in the form of
36 a remittance under this section must pay the tax imposed by RCW
37 82.12.020 to the department. The person may then apply to the

1 department for remittance of all or part of the tax paid under RCW
2 82.12.020. For grain elevators with bushel capacity of one million but
3 less than two million, the remittance is equal to fifty percent of the
4 amount of tax paid. For warehouses with square footage of two hundred
5 thousand or more, other than cold storage warehouses, and for grain
6 elevators with bushel capacity of two million or more, the remittance
7 is equal to one hundred percent of the amount of tax paid for
8 qualifying construction materials, and fifty percent of the amount of
9 tax paid for qualifying material-handling equipment and racking
10 equipment. For cold storage warehouses with square footage of twenty-
11 five thousand or more, the remittance is equal to one hundred percent
12 of the amount of tax paid for qualifying construction, materials,
13 service, and labor, and one hundred percent of the amount of tax paid
14 for qualifying material-handling equipment and racking equipment, and
15 labor and services rendered in respect to installing, repairing,
16 cleaning, altering, or improving the equipment.

17 (b) The department shall determine eligibility under this section
18 based on information provided by the buyer and through audit and other
19 administrative records. The buyer shall on a quarterly basis submit an
20 information sheet, in a form and manner as required by the department
21 by rule, specifying the amount of exempted tax claimed and the
22 qualifying purchases or acquisitions for which the exemption is
23 claimed. The buyer shall retain, in adequate detail to enable the
24 department to determine whether the equipment or construction meets the
25 criteria under this section: Invoices; proof of tax paid; documents
26 describing the material-handling equipment and racking equipment;
27 location and size of warehouses, if applicable; and construction
28 invoices and documents.

29 (c) The department shall on a quarterly basis remit or credit
30 exempted amounts to qualifying persons who submitted applications
31 during the previous quarter.

32 (3) Warehouse, grain elevators, and material-handling equipment and
33 racking equipment for which an exemption, credit, or deferral has been
34 or is being received under chapter 82.60, 82.61, 82.62, or 82.63 RCW or
35 RCW 82.08.02565 or 82.12.02565 are not eligible for any remittance
36 under this section. Materials incorporated in warehouses and grain
37 elevators upon which construction was initiated prior to May 20, 1997,
38 are not eligible for a remittance under this section.

1 (4) The lessor or owner of the warehouse or grain elevator is not
2 eligible for a remittance or credit under this section unless the
3 underlying ownership of the warehouse or grain elevator and material-
4 handling equipment and racking equipment vests exclusively in the same
5 person, or unless the lessor by written contract agrees to pass the
6 economic benefit of the exemption to the lessee in the form of reduced
7 rent payments.

8 (5) The definitions in RCW 82.08.820 apply to this section.

9 NEW SECTION. **Sec. 13.** Sections 4 through 10 of this act
10 constitute a new chapter in Title 82 RCW.

11 NEW SECTION. **Sec. 14.** This act takes effect July 1, 2007, except
12 for sections 1 through 3 of this act which are necessary for the
13 immediate preservation of the public peace, health, or safety, or
14 support of the state government and its existing public institutions,
15 and take effect July 1, 2005.

Passed by the House April 22, 2005.

Passed by the Senate April 23, 2005.

Approved by the Governor May 17, 2005.

Filed in Office of Secretary of State May 17, 2005.