
SENATE BILL 5539

State of Washington**57th Legislature****2001 Regular Session**

By Senators Honeyford, Eide, Patterson, Fraser, Regala, Hale, Oke and Winsley; by request of Governor Locke

Read first time 01/25/2001. Referred to Committee on Environment, Energy & Water.

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 wholly owned subsidiary of a direct service
15 industrial customer if the subsidiary and parent are entitled to file
16 a consolidated tax return in accordance with 26 U.S.C. Sec. 1501 and
17 who receives power from the Bonneville Power Administration pursuant to
18 the parent's contract for power.

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

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

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

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

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

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

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

<u>Decrease in Average Annual Employment Over 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%
50% or more but less than 75%	75%
75% or more	100%

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

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

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

1 (c) Interest shall not be charged on the credit that is disallowed
2 for the sixty-month period the credit may be taken, although all other
3 penalties and interest applicable to delinquent excise taxes may be
4 assessed and imposed. The debt for credit that is disallowed and must
5 be paid will not be extinguished by insolvency or other failure of the
6 direct service industrial customer. Transfer of ownership of the
7 facility does not affect eligibility for this credit. However, the
8 credit is available to the successor only if the eligibility conditions
9 of this section are met.

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

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

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

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

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

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

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

1 (2) Effective July 1, 2004, the tax levied in RCW 82.12.022 on the
2 first sixty months' use of natural or manufactured gas by a direct
3 service industrial customer that owns a facility shall be deferred.
4 This deferral is limited to the tax on natural or manufactured gas used
5 or consumed to generate electricity at the facility.

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

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

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

	<u>Payment Year</u>	<u>% of Deferred Tax to be Paid</u>
30	1	10%
31	2	15%
32	3	20%
33	4	25%
34	5	30%

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

37 (c) Interest shall not be charged on the tax deferred under this
38 section for the period of deferral, although all other penalties and

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

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

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

<u>Decrease in Average Annual</u>	<u>% of Deferred</u>
<u>Employment Over</u>	<u>Tax to be Paid</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%

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

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

35 (8) A person claiming this deferral shall supply to the department
36 quarterly reports containing information necessary to document the
37 total volume of natural or manufactured gas purchased in the quarter,

1 the value of that total volume, and the percentage of the total volume
2 used to generate electricity at the facility.

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

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

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

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

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

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

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

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

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

34 (3) The credit is equal to the gross proceeds from the sale of the
35 electricity to a direct service industrial customer multiplied by the
36 rate in effect at the time of the sale for the public utility tax on
37 light and power businesses under RCW 82.16.020. The credit may be used
38 each reporting period for sixty months following the first month

1 electricity is sold from a facility to a direct service industrial
2 customer. Credit under this section is limited to the amount of tax
3 imposed under this chapter. Refunds shall not be given in place of
4 credits and credits may not be carried over to subsequent calendar
5 years.

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

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

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

<u>Decrease in Average Annual Employment Over 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%
50% or more but less than 75%	75%
75% or more	100%

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

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

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

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

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

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