

ESB 5873 - S AMD 192

By Senators Holmquist Newbry, Prentice

ADOPTED 03/08/2012

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1) It is the legislature's intent to
4 encourage immediate investments in technology facilities that can
5 provide an economic stimulus, sustain long-term jobs that provide
6 living wages, and help build the digital infrastructure that can enable
7 the state to be competitive for additional technology investment and
8 jobs.

9 (2) There is currently an intense competition for data center
10 construction and operation in many states including: Oregon, Arizona,
11 North and South Carolina, North Dakota, Iowa, Virginia, Texas, and
12 Illinois. Unprecedented incentives are available as a result of the
13 desire of these states to attract investments that will serve as a
14 catalyst for additional clusters of economic activity.

15 (3) Data center technology has advanced rapidly, with marked
16 increases in energy efficiency. Large, commercial-grade data centers
17 leverage the economies of scale to reduce energy consumption.
18 Combining digitized processes with the economies of scale recognized at
19 these data centers, today's enterprises can materially reduce the
20 energy they consume and greatly improve their efficiency.

21 (4) The legislature finds that offering an exemption for server and
22 related electrical equipment and installation will act as a stimulus to
23 incent immediate investment. This investment will bring jobs, tax
24 revenues, and economic growth to some of our state's rural areas.

25 **Sec. 2.** RCW 82.08.986 and 2010 1st sp.s. c 23 s 1601 are each
26 amended to read as follows:

27 (1) An exemption from the tax imposed by RCW 82.08.020 is provided
28 for sales to qualifying businesses and to qualifying tenants of
29 eligible server equipment to be installed, without intervening use, in

1 an eligible computer data center, and to charges made for labor and
2 services rendered in respect to installing eligible server equipment.
3 The exemption also applies to sales to qualifying businesses of
4 eligible power infrastructure, including labor and services rendered in
5 respect to constructing, installing, repairing, altering, or improving
6 eligible power infrastructure.

7 (2)(a) In order to claim the exemption under this section, a
8 qualifying business or a qualifying tenant must submit an application
9 to the department for an exemption certificate. The application must
10 include the information necessary, as required by the department, to
11 determine that a business or tenant qualifies for the exemption under
12 this section. The department must issue exemption certificates to
13 qualifying businesses and qualifying tenants. The department may
14 assign a unique identification number to each exemption certificate
15 issued under this section.

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

20 (3)(a) Within six years of the date that the department issued an
21 exemption certificate under this section to a qualifying business or a
22 qualifying tenant with respect to an eligible computer data center, the
23 qualifying business or qualifying tenant must establish that net
24 employment at the eligible computer data center has increased by a
25 minimum of:

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

27 (ii) Three family wage employment positions for each twenty
28 thousand square feet of space or less that is newly dedicated to
29 housing working servers at the eligible computer data center. For
30 qualifying (~~businesses that lease space at an eligible computer data~~
31 ~~center~~) tenants, the number of family wage employment positions that
32 must be increased under this subsection (3)(a)(ii) is based only on the
33 space occupied by the (~~lessee~~) qualifying tenant in the eligible
34 computer data center.

35 (b) In calculating the net increase in family wage employment
36 positions:

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

1 (A) The net increase in family wage employment positions employed
2 by qualifying (~~businesses leasing space within the eligible computer~~
3 ~~data center from the owner~~) tenants; and

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

6 (ii)(A) (~~Lessees of the owner of an eligible computer data~~
7 ~~center~~) Qualifying tenants, in addition to their own net increase in
8 family wage employment positions, may include:

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

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

13 (B) The portion of the net increase in family wage employment
14 positions to be counted under this subsection (3)(b)(ii) by each
15 (~~lessee~~) qualifying tenant must be in proportion to the amount of
16 space in the eligible computer data center occupied by the (~~lessee~~)
17 qualifying tenant compared to the total amount of space in the eligible
18 computer data center occupied by all (~~lessees that are qualifying~~
19 ~~businesses~~) qualifying tenants.

20 (c)(i) For purposes of this subsection, family wage employment
21 positions are new permanent employment positions requiring forty hours
22 of weekly work, or their equivalent, on a full-time basis at the
23 eligible computer data center and receiving a wage equivalent to or
24 greater than one hundred fifty percent of the per capita personal
25 income of the county in which the qualified project is located. An
26 employment position may not be counted as a family wage employment
27 position unless the employment position is entitled to health insurance
28 coverage provided by the employer of the employment position. For
29 purposes of this subsection (3)(c), "new permanent employment position"
30 means an employment position that did not exist or that had not
31 previously been filled as of the date that the department issued an
32 exemption certificate to the owner or (~~lessee~~) qualifying tenant of
33 an eligible computer data center, as the case may be.

34 (ii)(A) Family wage employment positions include positions filled
35 by employees of the owner of the eligible computer data center and by
36 employees of qualifying (~~businesses leasing space from the owner of~~
37 ~~the eligible computer data center~~) tenants.

1 (B) Family wage employment positions also include individuals
2 performing work at an eligible computer data center as an independent
3 contractor hired by the owner of the eligible computer data center or
4 as an employee of an independent contractor hired by the owner of the
5 eligible computer data center, if the work is necessary for the
6 operation of the computer data center, such as security and building
7 maintenance, and provided that all of the requirements in (c)(i) of
8 this subsection (3) are met.

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

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

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

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

20 (ii) Any person affiliated with a person within the scope of (a)(i)
21 of this subsection (5). For purposes of this subsection, "affiliated"
22 means that one person has a direct or indirect ownership interest of at
23 least twenty percent in another person.

24 (b) If a person claims an exemption under this section and
25 subsequently receives the benefit of the deferral program under chapter
26 82.60 RCW on either the construction, renovation, or expansion of a
27 structure or structures used as a computer data center or machinery or
28 equipment used in a computer data center, the person must repay the
29 amount of taxes exempted under this section. Interest as provided in
30 chapter 82.32 RCW applies to amounts due under this section until paid
31 in full.

32 (6) For purposes of this section the following definitions apply
33 unless the context clearly requires otherwise:

34 (a)(i) "Computer data center" means a facility comprised of one or
35 more buildings, which may be comprised of multiple businesses,
36 constructed or refurbished specifically, and used primarily, to house
37 working servers, where the facility has the following characteristics:

38 (A) Uninterruptible power supplies, generator backup power, or both;

1 (B) sophisticated fire suppression and prevention systems; and (C)
2 enhanced physical security, such as: Restricted access to the facility
3 to selected personnel; permanent security guards; video camera
4 surveillance; an electronic system requiring passcodes, keycards, or
5 biometric scans, such as hand scans and retinal or fingerprint
6 recognition; or similar security features.

7 (ii) For a computer data center comprised of multiple buildings,
8 each separate building constructed or refurbished specifically, and
9 used primarily, to house working servers is considered a computer data
10 center if it has all of the characteristics listed in (a)(i)(A) through
11 (C) of this subsection (6).

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

15 (b) "Electronic data storage and data management services" include,
16 but are not limited to: Providing data storage and backup services,
17 providing computer processing power, hosting enterprise software
18 applications, and hosting web sites. The term also includes providing
19 services such as e-mail, web browsing and searching, media
20 applications, and other online services, regardless of whether a charge
21 is made for such services.

22 (c)(i) "Eligible computer data center" means a computer data
23 center:

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

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

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

29 (I) After March 31, 2010, and before July 1, 2011; or

30 (II) After March 31, 2012, and before July 1, 2015.

31 (ii) For purposes of this section, "commencement of construction"
32 means the date that a building permit is issued under the building code
33 adopted under RCW 19.27.031 for construction of the computer data
34 center. The construction of a computer data center includes the
35 expansion, renovation, or other improvements made to existing
36 facilities, including leased or rented space. "Commencement of
37 construction" does not include soil testing, site clearing and grading,

1 site preparation, or any other related activities that are initiated
2 before the issuance of a building permit for the construction of the
3 foundation of a computer data center.

4 ~~((+ii))~~ (iii) With respect to facilities in existence on April 1,
5 2010, that are expanded, renovated, or otherwise improved after March
6 31, 2010, or facilities in existence on April 1, 2012, that are
7 expanded, renovated, or otherwise improved after March 31, 2012, an
8 eligible computer data center includes only the portion of the computer
9 data center meeting the requirements in (c)(i)(B) of this subsection
10 (6).

11 (d) "Eligible power infrastructure" means all fixtures and
12 equipment owned by a qualifying business, or qualifying tenant and
13 necessary for the transformation, distribution, or management of
14 electricity that is required to operate eligible server equipment
15 within an eligible computer data center. The term includes
16 ~~((electrical—substations,))~~ generators~~((,))~~; wiring~~((, and))~~;
17 cogeneration equipment; and associated fixtures and equipment, such as
18 electrical switches, batteries, and distribution, testing, and
19 monitoring equipment.

20 (e) "Eligible server equipment" means:

21 (i) For a qualifying business whose computer data center qualifies
22 as an eligible computer data center under (c)(i)(C)(I) of this
23 subsection (6), the original server equipment installed in an eligible
24 computer data center on or after April 1, 2010, and replacement server
25 equipment. For purposes of this subsection (6)(e)(i), "replacement
26 server equipment" means server equipment that:

27 ~~((+i))~~ (A) Replaces existing server equipment, if the sale or use
28 of the server equipment to be replaced qualified for an exemption under
29 this section or RCW 82.12.986; and

30 ~~((+ii))~~ (B) Is installed and put into regular use before April 1,
31 2018.

32 (ii) For a qualifying business whose computer data center qualifies
33 as an eligible computer data center under (c)(i)(C)(II) of this
34 subsection (6), "eligible server equipment" means the original server
35 equipment installed in an eligible computer data center on or after
36 April 1, 2012, and replacement server equipment. For purposes of this
37 subsection (6)(e)(ii), "replacement server equipment" means server
38 equipment that:

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

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

5 (iii) For a qualifying tenant who leases space within an eligible
6 computer data center, "eligible server equipment" means the original
7 server equipment installed within the space it leases from an eligible
8 computer data center on or after April 1, 2010, and replacement server
9 equipment. For purposes of this subsection (6)(e)(iii), "replacement
10 server equipment" means server equipment that:

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

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

15 (f) "Qualifying business" means a business entity that exists for
16 the primary purpose of engaging in commercial activity for profit and
17 that is the owner of an eligible computer data center (~~(or the lessee~~
18 ~~of at least twenty thousand square feet within an eligible computer~~
19 ~~data center dedicated to housing working servers, where the server~~
20 ~~space has not previously been dedicated to housing working servers)).~~
21 The term does not include the state or federal government or any of
22 their departments, agencies, and institutions; tribal governments;
23 political subdivisions of this state; or any municipal, quasi-
24 municipal, public, or other corporation created by the state or federal
25 government, tribal government, municipality, or political subdivision
26 of the state.

27 ~~(g) ("Server" means blade or rack mount server computers used in~~
28 ~~a computer data center exclusively to provide electronic data storage~~
29 ~~and data management services for internal use by the owner or lessee of~~
30 ~~the computer data center, for clients of the owner or lessee of the~~
31 ~~computer data center, or both. "Server" does not include personal~~
32 ~~computers.~~

33 ~~(h) "Server equipment" means the server chassis and all computer~~
34 ~~hardware contained within the server chassis. "Server equipment" also~~
35 ~~includes computer software necessary to operate the server. "Server~~
36 ~~equipment" does not include the racks upon which the server chassis is~~
37 ~~installed, and computer peripherals such as keyboards, monitors,~~
38 ~~printers, mice, and other devices that work outside of the computer.)~~

1 "Qualifying tenant" means a business entity that exists for the primary
2 purpose of engaging in commercial activity for profit and that leases
3 space from a qualifying business within an eligible computer data
4 center. The term does not include the state or federal government or
5 any of their departments, agencies, and institutions; tribal
6 governments; political subdivisions of this state; or any municipal,
7 quasi-municipal, public, or other corporation created by the state or
8 federal government, tribal government, municipality, or political
9 subdivision of the state.

10 (h) "Server equipment" means the computer hardware located in an
11 eligible computer data center and used exclusively to provide
12 electronic data storage and data management services for internal use
13 by the owner or lessee of the computer data center, for clients of the
14 owner or lessee of the computer data center, or both. "Server
15 equipment" also includes computer software necessary to operate the
16 computer hardware. "Server equipment" does not include personal
17 computers, the racks upon which the server equipment is installed, and
18 computer peripherals such as keyboards, monitors, printers, and mice.

19 (7) This section expires April 1, (~~2018~~) 2020.

20 **Sec. 3.** RCW 82.08.986 and 2010 1st sp.s. c 23 s 1601 are each
21 amended to read as follows:

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

31 (2)(a) In order to claim the exemption under this section, a
32 qualifying business or a qualifying tenant must submit an application
33 to the department for an exemption certificate. The application must
34 include the information necessary, as required by the department, to
35 determine that a business or tenant qualifies for the exemption under
36 this section. The department must issue exemption certificates to

1 qualifying businesses and qualifying tenants. The department may
2 assign a unique identification number to each exemption certificate
3 issued under this section.

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

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

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

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

23 (b) In calculating the net increase in family wage employment
24 positions:

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

27 (A) The net increase in family wage employment positions employed
28 by qualifying (~~businesses leasing space within the eligible computer~~
29 ~~data center from the owner~~) tenants; and

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

32 (ii)(A) (~~Lessees of the owner of an eligible computer data~~
33 ~~center~~) Qualifying tenants, in addition to their own net increase in
34 family wage employment positions, may include:

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

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

1 (B) The portion of the net increase in family wage employment
2 positions to be counted under this subsection (3)(b)(ii) by each
3 ((lessee)) qualifying tenant must be in proportion to the amount of
4 space in the eligible computer data center occupied by the ((lessee))
5 qualifying tenant compared to the total amount of space in the eligible
6 computer data center occupied by all ((lessees that are qualifying
7 businesses)) qualifying tenants.

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

22 (ii)(A) Family wage employment positions include positions filled
23 by employees of the owner of the eligible computer data center and by
24 employees of qualifying ((businesses leasing space from the owner of
25 the eligible computer data center)) tenants.

26 (B) Family wage employment positions also include individuals
27 performing work at an eligible computer data center as an independent
28 contractor hired by the owner of the eligible computer data center or
29 as an employee of an independent contractor hired by the owner of the
30 eligible computer data center, if the work is necessary for the
31 operation of the computer data center, such as security and building
32 maintenance, and provided that all of the requirements in (c)(i) of
33 this subsection (3) are met.

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

37 (4) A qualifying business or a qualifying tenant claiming an

1 exemption under this section or RCW 82.12.986 must complete an annual
2 ((report)) survey with the department as required under RCW
3 ((82.32.534)) 82.32.585.

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

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

9 (ii) Any person affiliated with a person within the scope of (a)(i)
10 of this subsection (5). For purposes of this subsection, "affiliated"
11 means that one person has a direct or indirect ownership interest of at
12 least twenty percent in another person.

13 (b) If a person claims an exemption under this section and
14 subsequently receives the benefit of the deferral program under chapter
15 82.60 RCW on either the construction, renovation, or expansion of a
16 structure or structures used as a computer data center or machinery or
17 equipment used in a computer data center, the person must repay the
18 amount of taxes exempted under this section. Interest as provided in
19 chapter 82.32 RCW applies to amounts due under this section until paid
20 in full.

21 (6) For purposes of this section the following definitions apply
22 unless the context clearly requires otherwise:

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

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

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

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

11 (c)(i) "Eligible computer data center" means a computer data
12 center:

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

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

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

18 (I) After March 31, 2010, and before July 1, 2011; or

19 (II) After March 31, 2012, and before July 1, 2015.

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

30 ~~((+ii))~~ (iii) With respect to facilities in existence on April 1,
31 2010, that are expanded, renovated, or otherwise improved after March
32 31, 2010, or facilities in existence on April 1, 2012, that are
33 expanded, renovated, or otherwise improved after March 31, 2012, an
34 eligible computer data center includes only the portion of the computer
35 data center meeting the requirements in (c)(i)(B) of this subsection
36 (6).

37 (d) "Eligible power infrastructure" means all fixtures and
38 equipment owned by a qualifying business, or qualifying tenant and

1 necessary for the transformation, distribution, or management of
2 electricity that is required to operate eligible server equipment
3 within an eligible computer data center. The term includes
4 ~~((electrical substations,)) generators((,)) wiring((, and));~~
5 cogeneration equipment; and associated fixtures and equipment, such as
6 electrical switches, batteries, and distribution, testing, and
7 monitoring equipment.

8 (e) "Eligible server equipment" means:

9 (i) For a qualifying business whose computer data center qualifies
10 as an eligible computer data center under (c)(i)(C)(I) of this
11 subsection (6), the original server equipment installed in an eligible
12 computer data center on or after April 1, 2010, and replacement server
13 equipment. For purposes of this subsection (6)(e)(i), "replacement
14 server equipment" means server equipment that:

15 ((+i)) (A) Replaces existing server equipment, if the sale or use
16 of the server equipment to be replaced qualified for an exemption under
17 this section or RCW 82.12.986; and

18 ((+ii)) (B) Is installed and put into regular use before April 1,
19 2018.

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

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

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

31 (iii) For a qualifying tenant who leases space within an eligible
32 computer data center, "eligible server equipment" means the original
33 server equipment installed within the space it leases from an eligible
34 computer data center on or after April 1, 2010, and replacement server
35 equipment. For purposes of this subsection (6)(e)(iii), "replacement
36 server equipment" means server equipment that:

37 (A) Replaces existing server equipment, if the sale or use of the

1 server equipment to be replaced qualified for an exemption under this
2 section or RCW 82.12.986; and

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

4 (f) "Qualifying business" means a business entity that exists for
5 the primary purpose of engaging in commercial activity for profit and
6 that is the owner of an eligible computer data center (~~(or the lessee~~
7 ~~of at least twenty thousand square feet within an eligible computer~~
8 ~~data center dedicated to housing working servers, where the server~~
9 ~~space has not previously been dedicated to housing working servers)).~~

10 The term does not include the state or federal government or any of
11 their departments, agencies, and institutions; tribal governments;
12 political subdivisions of this state; or any municipal, quasi-
13 municipal, public, or other corporation created by the state or federal
14 government, tribal government, municipality, or political subdivision
15 of the state.

16 (g) (~~("Server" means blade or rack mount server computers used in~~
17 ~~a computer data center exclusively to provide electronic data storage~~
18 ~~and data management services for internal use by the owner or lessee of~~
19 ~~the computer data center, for clients of the owner or lessee of the~~
20 ~~computer data center, or both. "Server" does not include personal~~
21 ~~computers.~~

22 (h) ~~"Server equipment" means the server chassis and all computer~~
23 ~~hardware contained within the server chassis. "Server equipment" also~~
24 ~~includes computer software necessary to operate the server. "Server~~
25 ~~equipment" does not include the racks upon which the server chassis is~~
26 ~~installed, and computer peripherals such as keyboards, monitors,~~
27 ~~printers, mice, and other devices that work outside of the computer.)~~

28 "Qualifying tenant" means a business entity that exists for the primary
29 purpose of engaging in commercial activity for profit and that leases
30 space from a qualifying business within an eligible computer data
31 center. The term does not include the state or federal government or
32 any of their departments, agencies, and institutions; tribal
33 governments; political subdivisions of this state; or any municipal,
34 quasi-municipal, public, or other corporation created by the state or
35 federal government, tribal government, municipality, or political
36 subdivision of the state.

37 (h) "Server equipment" means the computer hardware located in an
38 eligible computer data center and used exclusively to provide

1 electronic data storage and data management services for internal use
2 by the owner or lessee of the computer data center, for clients of the
3 owner or lessee of the computer data center, or both. "Server
4 equipment" also includes computer software necessary to operate the
5 computer hardware. "Server equipment" does not include personal
6 computers, the racks upon which the server equipment is installed, and
7 computer peripherals such as keyboards, monitors, printers, and mice.

8 (7) This section expires April 1, (~~(2018)~~) 2020.

9 **Sec. 4.** RCW 82.12.986 and 2010 1st sp.s. c 23 s 1602 are each
10 amended to read as follows:

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

19 (2) A qualifying business or a qualifying tenant is not eligible
20 for the exemption under this section unless the department issued an
21 exemption certificate to the qualifying business or a qualifying tenant
22 for the exemption provided in RCW 82.08.986.

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

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

28 (ii) Any person affiliated with a person within the scope of (a)(i)
29 of this subsection (3). For purposes of this subsection, "affiliated"
30 means that one person has a direct or indirect ownership interest of at
31 least twenty percent in another person.

32 (b) If a person has received the benefit of the exemption under
33 this section and subsequently receives the benefit of the deferral
34 program under chapter 82.60 RCW on either the construction, renovation,
35 or expansion of a structure or structures used as a computer data
36 center or machinery or equipment used in a computer data center, the
37 person must repay the amount of taxes exempted under this section.

1 Interest as provided in chapter 82.32 RCW applies to amounts due under
2 this subsection (3)(b) until paid in full. A person is not required to
3 repay taxes under this subsection with respect to property and services
4 for which the person is required to repay taxes under RCW 82.08.986(5).

5 (4) The definitions and requirements in RCW 82.08.986 apply to this
6 section.

7 (5) This section expires April 1, (~~2018~~) 2020.

8 NEW SECTION. **Sec. 5.** (1) Except as provided in subsection (3) of
9 this section, this act is necessary for the immediate preservation of
10 the public peace, health, or safety, or support of the state government
11 and its existing public institutions, and takes effect April 1, 2012.

12 (2) Section 2 of this act does not take effect if the contingency
13 in subsection (3) of this section occurs.

14 (3) Section 3 of this act takes effect if Substitute House Bill No.
15 2530 or any other legislation repealing RCW 82.32.534 is enacted during
16 the 2012 legislative session and signed into law."

ESB 5873 - S AMD

By Senators Holmquist Newbry, Prentice

ADOPTED 03/08/2012

17 On page 1, line 1 of the title, after "Relating to" strike the
18 remainder of the title and insert "amending the sales and use tax
19 exemption for certain equipment used in computer data centers; amending
20 RCW 82.08.986, 82.08.986, and 82.12.986; creating a new section;
21 providing an effective date; providing a contingent effective date;
22 providing expiration dates; and declaring an emergency."

EFFECT: The sales tax exemption for server equipment in data
centers is extended to those data centers who commence construction
between April 2012 and July 2015. The length of time that a new

qualifying business or a qualifying tenant may take the exemption on server equipment or replacement server equipment is extended from April 2018 to April 2020. The end date for the exemption for already qualified businesses is not extended. The term "qualifying tenant" is defined as a business space in an eligible computer data center. The definition of "server equipment" is updated to be more clear.

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