

SB 6635 - S AMD 324

By Senators Murray, Zarelli

ADOPTED AS AMENDED 04/11/2012

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

3 "PART I

4 **LIMITING THE FIRST INTEREST MORTGAGE B&O DEDUCTION TO COMMUNITY BANKS**

5 NEW SECTION. **Sec. 101.** A new section is added to chapter 82.04
6 RCW to read as follows:

7 (1) Amounts received as interest on loans originated by a person
8 located in more than ten states, or an affiliate of such person, and
9 primarily secured by first mortgages or trust deeds on nontransient
10 residential properties are subject to tax under RCW 82.04.290(2)(a).

11 (2) For the purposes of this subsection, a person is located in a
12 state if:

13 (a) The person or an affiliate of the person maintains a branch,
14 office, or one or more employees or representatives in the state; and

15 (b) Such in-state presence allows borrowers or potential borrowers
16 to contact the branch, office, employee, or representative concerning
17 the acquiring, negotiating, renegotiating, or restructuring of, or
18 making payments on, mortgages issued or to be issued by the person or
19 an affiliate of the person.

20 (3) For purposes of this section:

21 (a) "Affiliate" means a person is affiliated with another person,
22 and "affiliated" has the same meaning as in RCW 82.04.645; and

23 (b) "Interest" has the same meaning as in RCW 82.04.4292 and also
24 includes servicing fees described in RCW 82.04.4292(4).

25 **Sec. 102.** RCW 82.04.4292 and 2010 1st sp.s. c 23 s 301 are each
26 amended to read as follows:

27 (1) In computing tax there may be deducted from the measure of tax
28 by those engaged in banking, loan, security or other financial

1 businesses, interest received on investments or loans primarily secured
2 by first mortgages or trust deeds on nontransient residential
3 properties.

4 (2) Interest deductible under this section includes the portion of
5 fees charged to borrowers, including points and loan origination fees,
6 that is recognized over the life of the loan as an adjustment to yield
7 in the taxpayer's books and records according to generally accepted
8 accounting principles.

9 (3) Subsections (1) and (2) of this section notwithstanding, the
10 following is a nonexclusive list of items that are not deductible under
11 this section:

12 (a) Fees for specific services such as: Document preparation fees;
13 finder fees; brokerage fees; title examination fees; fees for credit
14 checks; notary fees; loan application fees; interest lock-in fees if
15 the loan is not made; servicing fees; and similar fees or amounts;

16 (b) Fees received in consideration for an agreement to make funds
17 available for a specific period of time at specified terms, commonly
18 referred to as commitment fees;

19 (c) Any other fees, or portion of a fee, that is not recognized
20 over the life of the loan as an adjustment to yield in the taxpayer's
21 books and records according to generally accepted accounting
22 principles;

23 (d) Gains on the sale of valuable rights such as service release
24 premiums, which are amounts received when servicing rights are sold;
25 and

26 (e) Gains on the sale of loans, except deferred loan origination
27 fees and points deductible under subsection (2) of this section, are
28 not to be considered part of the proceeds of sale of the loan.

29 (4) Notwithstanding subsection (3) of this section, in computing
30 tax there may be deducted from the measure of tax by those engaged in
31 banking, loan, security, or other financial businesses, amounts
32 received for servicing loans primarily secured by first mortgages or
33 trust deeds on nontransient residential properties, including such
34 loans that secure mortgage-backed or mortgage-related securities, but
35 only if:

36 (a)(i) The loans were originated by the person claiming a deduction
37 under this subsection (4) and that person either sold the loans on the

1 secondary market or securitized the loans and sold the securities on
2 the secondary market; or

3 (ii)(A) The person claiming a deduction under this subsection (4)
4 acquired the loans from the person that originated the loans through a
5 merger or acquisition of substantially all of the assets of the person
6 who originated the loans, or the person claiming a deduction under this
7 subsection (4) is affiliated with the person that originated the loans.
8 For purposes of this subsection, "affiliated" means under common
9 control. "Control" means the possession, directly or indirectly, of
10 more than fifty percent of the power to direct or cause the direction
11 of the management and policies of a person, whether through the
12 ownership of voting shares, by contract, or otherwise; and

13 (B) Either the person who originated the loans or the person
14 claiming a deduction under this subsection (4) sold the loans on the
15 secondary market or securitized the loans and sold the securities on
16 the secondary market; and

17 (b) The amounts received for servicing the loans are determined by
18 a percentage of the interest paid by the borrower and are only received
19 if the borrower makes interest payments.

20 (5) The deductions provided in this section do not apply to persons
21 subject to tax under section 101 of this act.

22 (6) By June 30, 2015, the joint legislative audit and review
23 committee must review the deductions provided in this section in
24 accordance with RCW 43.136.055 and make a recommendation as to whether
25 the deductions should be continued without modification, modified, or
26 terminated immediately.

27 **PART II**

28 **EXTENDING THE B&O TAX EXEMPTION FOR FRUIT, VEGETABLE, DAIRY, AND**
29 **SEAFOOD BUSINESSES**

30 **Sec. 201.** RCW 82.04.4266 and 2011 c 2 s 202 (Initiative Measure
31 No. 1107) are each amended to read as follows:

32 (1) This chapter does not apply to the value of products or the
33 gross proceeds of sales derived from:

34 (a) Manufacturing fruits or vegetables by canning, preserving,
35 freezing, processing, or dehydrating fresh fruits or vegetables; or

1 (b) Selling at wholesale fruits or vegetables manufactured by the
2 seller by canning, preserving, freezing, processing, or dehydrating
3 fresh fruits or vegetables and sold to purchasers who transport in the
4 ordinary course of business the goods out of this state. A person
5 taking an exemption under this subsection (1)(b) must keep and preserve
6 records for the period required by RCW 82.32.070 establishing that the
7 goods were transported by the purchaser in the ordinary course of
8 business out of this state.

9 (2) A person claiming the exemption provided in this section must
10 file a complete annual survey with the department under RCW 82.32.585.

11 (3) This section expires July 1, (~~2012~~) 2017.

12 **Sec. 202.** RCW 82.04.4268 and 2010 c 114 s 112 are each amended to
13 read as follows:

14 (1) This chapter does not apply to the value of products or the
15 gross proceeds of sales derived from:

16 (a) Manufacturing dairy products; or

17 (b) Selling manufactured dairy products to purchasers who transport
18 in the ordinary course of business the goods out of this state. A
19 person taking an exemption under this subsection (1)(b) must keep and
20 preserve records for the period required by RCW 82.32.070 establishing
21 that the goods were transported by the purchaser in the ordinary course
22 of business out of this state.

23 (2) "Dairy products" means dairy products that as of September 20,
24 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135,
25 including byproducts from the manufacturing of the dairy products such
26 as whey and casein.

27 (3) A person claiming the exemption provided in this section must
28 file a complete annual survey with the department under RCW 82.32.585.

29 (4) This section expires July 1, (~~2012~~) 2017.

30 **Sec. 203.** RCW 82.04.4269 and 2010 c 114 s 113 are each amended to
31 read as follows:

32 (1) This chapter does not apply to the value of products or the
33 gross proceeds of sales derived from:

34 (a) Manufacturing seafood products that remain in a raw, raw
35 frozen, or raw salted state at the completion of the manufacturing by
36 that person; or

1 (b) Selling manufactured seafood products that remain in a raw, raw
2 frozen, or raw salted state to purchasers who transport in the ordinary
3 course of business the goods out of this state. A person taking an
4 exemption under this subsection (1)(b) must keep and preserve records
5 for the period required by RCW 82.32.070 establishing that the goods
6 were transported by the purchaser in the ordinary course of business
7 out of this state.

8 (2) A person claiming the exemption provided in this section must
9 file a complete annual survey with the department under RCW 82.32.585.

10 (3) This section expires July 1, (~~2012~~) 2017.

11 **Sec. 204.** RCW 82.04.260 and 2011 c 2 s 203 (Initiative Measure No.
12 1107) are each amended to read as follows:

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

15 (a) Wheat into flour, barley into pearl barley, soybeans into
16 soybean oil, canola into canola oil, canola meal, or canola by-
17 products, or sunflower seeds into sunflower oil; as to such persons the
18 amount of tax with respect to such business is equal to the value of
19 the flour, pearl barley, oil, canola meal, or canola by-product
20 manufactured, multiplied by the rate of 0.138 percent;

21 (b) Beginning July 1, (~~2012~~) 2017, seafood products that remain
22 in a raw, raw frozen, or raw salted state at the completion of the
23 manufacturing by that person; or selling manufactured seafood products
24 that remain in a raw, raw frozen, or raw salted state at the completion
25 of the manufacturing, to purchasers who transport in the ordinary
26 course of business the goods out of this state; as to such persons the
27 amount of tax with respect to such business is equal to the value of
28 the products manufactured or the gross proceeds derived from such
29 sales, multiplied by the rate of 0.138 percent. Sellers must keep and
30 preserve records for the period required by RCW 82.32.070 establishing
31 that the goods were transported by the purchaser in the ordinary course
32 of business out of this state;

33 (c) Beginning July 1, (~~2012~~) 2017, dairy products that as of
34 September 20, 2001, are identified in 21 C.F.R., chapter 1, parts 131,
35 133, and 135, including by-products from the manufacturing of the dairy
36 products such as whey and casein; or selling the same to purchasers who
37 transport in the ordinary course of business the goods out of state; as

1 to such persons the tax imposed is equal to the value of the products
2 manufactured or the gross proceeds derived from such sales multiplied
3 by the rate of 0.138 percent. Sellers must keep and preserve records
4 for the period required by RCW 82.32.070 establishing that the goods
5 were transported by the purchaser in the ordinary course of business
6 out of this state;

7 (d) Beginning July 1, (~~2012~~) 2017, fruits or vegetables by
8 canning, preserving, freezing, processing, or dehydrating fresh fruits
9 or vegetables, or selling at wholesale fruits or vegetables
10 manufactured by the seller by canning, preserving, freezing,
11 processing, or dehydrating fresh fruits or vegetables and sold to
12 purchasers who transport in the ordinary course of business the goods
13 out of this state; as to such persons the amount of tax with respect to
14 such business is equal to the value of the products manufactured or the
15 gross proceeds derived from such sales multiplied by the rate of 0.138
16 percent. Sellers must keep and preserve records for the period
17 required by RCW 82.32.070 establishing that the goods were transported
18 by the purchaser in the ordinary course of business out of this state;

19 (e) Until July 1, 2009, alcohol fuel, biodiesel fuel, or biodiesel
20 feedstock, as those terms are defined in RCW 82.29A.135; as to such
21 persons the amount of tax with respect to the business is equal to the
22 value of alcohol fuel, biodiesel fuel, or biodiesel feedstock
23 manufactured, multiplied by the rate of 0.138 percent; and

24 (f) Wood biomass fuel as defined in RCW 82.29A.135; as to such
25 persons the amount of tax with respect to the business is equal to the
26 value of wood biomass fuel manufactured, multiplied by the rate of
27 0.138 percent.

28 (2) Upon every person engaging within this state in the business of
29 splitting or processing dried peas; as to such persons the amount of
30 tax with respect to such business is equal to the value of the peas
31 split or processed, multiplied by the rate of 0.138 percent.

32 (3) Upon every nonprofit corporation and nonprofit association
33 engaging within this state in research and development, as to such
34 corporations and associations, the amount of tax with respect to such
35 activities is equal to the gross income derived from such activities
36 multiplied by the rate of 0.484 percent.

37 (4) Upon every person engaging within this state in the business of
38 slaughtering, breaking and/or processing perishable meat products

1 and/or selling the same at wholesale only and not at retail; as to such
2 persons the tax imposed is equal to the gross proceeds derived from
3 such sales multiplied by the rate of 0.138 percent.

4 (5) Upon every person engaging within this state in the business of
5 acting as a travel agent or tour operator; as to such persons the
6 amount of the tax with respect to such activities is equal to the gross
7 income derived from such activities multiplied by the rate of 0.275
8 percent.

9 (6) Upon every person engaging within this state in business as an
10 international steamship agent, international customs house broker,
11 international freight forwarder, vessel and/or cargo charter broker in
12 foreign commerce, and/or international air cargo agent; as to such
13 persons the amount of the tax with respect to only international
14 activities is equal to the gross income derived from such activities
15 multiplied by the rate of 0.275 percent.

16 (7) Upon every person engaging within this state in the business of
17 stevedoring and associated activities pertinent to the movement of
18 goods and commodities in waterborne interstate or foreign commerce; as
19 to such persons the amount of tax with respect to such business is
20 equal to the gross proceeds derived from such activities multiplied by
21 the rate of 0.275 percent. Persons subject to taxation under this
22 subsection are exempt from payment of taxes imposed by chapter 82.16
23 RCW for that portion of their business subject to taxation under this
24 subsection. Stevedoring and associated activities pertinent to the
25 conduct of goods and commodities in waterborne interstate or foreign
26 commerce are defined as all activities of a labor, service or
27 transportation nature whereby cargo may be loaded or unloaded to or
28 from vessels or barges, passing over, onto or under a wharf, pier, or
29 similar structure; cargo may be moved to a warehouse or similar holding
30 or storage yard or area to await further movement in import or export
31 or may move to a consolidation freight station and be stuffed,
32 unstuffed, containerized, separated or otherwise segregated or
33 aggregated for delivery or loaded on any mode of transportation for
34 delivery to its consignee. Specific activities included in this
35 definition are: Wharfage, handling, loading, unloading, moving of
36 cargo to a convenient place of delivery to the consignee or a
37 convenient place for further movement to export mode; documentation
38 services in connection with the receipt, delivery, checking, care,

1 custody and control of cargo required in the transfer of cargo;
2 imported automobile handling prior to delivery to consignee; terminal
3 stevedoring and incidental vessel services, including but not limited
4 to plugging and unplugging refrigerator service to containers,
5 trailers, and other refrigerated cargo receptacles, and securing ship
6 hatch covers.

7 (8) Upon every person engaging within this state in the business of
8 disposing of low-level waste, as defined in RCW 43.145.010; as to such
9 persons the amount of the tax with respect to such business is equal to
10 the gross income of the business, excluding any fees imposed under
11 chapter 43.200 RCW, multiplied by the rate of 3.3 percent.

12 If the gross income of the taxpayer is attributable to activities
13 both within and without this state, the gross income attributable to
14 this state must be determined in accordance with the methods of
15 apportionment required under RCW 82.04.460.

16 (9) Upon every person engaging within this state as an insurance
17 producer or title insurance agent licensed under chapter 48.17 RCW or
18 a surplus line broker licensed under chapter 48.15 RCW; as to such
19 persons, the amount of the tax with respect to such licensed activities
20 is equal to the gross income of such business multiplied by the rate of
21 0.484 percent.

22 (10) Upon every person engaging within this state in business as a
23 hospital, as defined in chapter 70.41 RCW, that is operated as a
24 nonprofit corporation or by the state or any of its political
25 subdivisions, as to such persons, the amount of tax with respect to
26 such activities is equal to the gross income of the business multiplied
27 by the rate of 0.75 percent through June 30, 1995, and 1.5 percent
28 thereafter.

29 (11)(a) Beginning October 1, 2005, upon every person engaging
30 within this state in the business of manufacturing commercial
31 airplanes, or components of such airplanes, or making sales, at retail
32 or wholesale, of commercial airplanes or components of such airplanes,
33 manufactured by the seller, as to such persons the amount of tax with
34 respect to such business is, in the case of manufacturers, equal to the
35 value of the product manufactured and the gross proceeds of sales of
36 the product manufactured, or in the case of processors for hire, equal
37 to the gross income of the business, multiplied by the rate of:

38 (i) 0.4235 percent from October 1, 2005, through June 30, 2007; and

1 (ii) 0.2904 percent beginning July 1, 2007.

2 (b) Beginning July 1, 2008, upon every person who is not eligible
3 to report under the provisions of (a) of this subsection (11) and is
4 engaging within this state in the business of manufacturing tooling
5 specifically designed for use in manufacturing commercial airplanes or
6 components of such airplanes, or making sales, at retail or wholesale,
7 of such tooling manufactured by the seller, as to such persons the
8 amount of tax with respect to such business is, in the case of
9 manufacturers, equal to the value of the product manufactured and the
10 gross proceeds of sales of the product manufactured, or in the case of
11 processors for hire, be equal to the gross income of the business,
12 multiplied by the rate of 0.2904 percent.

13 (c) For the purposes of this subsection (11), "commercial airplane"
14 and "component" have the same meanings as provided in RCW 82.32.550.

15 (d) In addition to all other requirements under this title, a
16 person reporting under the tax rate provided in this subsection (11)
17 must file a complete annual report with the department under RCW
18 82.32.534.

19 (e) This subsection (11) does not apply on and after July 1, 2024.

20 (12)(a) Until July 1, 2024, upon every person engaging within this
21 state in the business of extracting timber or extracting for hire
22 timber; as to such persons the amount of tax with respect to the
23 business is, in the case of extractors, equal to the value of products,
24 including by-products, extracted, or in the case of extractors for
25 hire, equal to the gross income of the business, multiplied by the rate
26 of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904
27 percent from July 1, 2007, through June 30, 2024.

28 (b) Until July 1, 2024, upon every person engaging within this
29 state in the business of manufacturing or processing for hire: (i)
30 Timber into timber products or wood products; or (ii) timber products
31 into other timber products or wood products; as to such persons the
32 amount of the tax with respect to the business is, in the case of
33 manufacturers, equal to the value of products, including by-products,
34 manufactured, or in the case of processors for hire, equal to the gross
35 income of the business, multiplied by the rate of 0.4235 percent from
36 July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1,
37 2007, through June 30, 2024.

1 (c) Until July 1, 2024, upon every person engaging within this
2 state in the business of selling at wholesale: (i) Timber extracted by
3 that person; (ii) timber products manufactured by that person from
4 timber or other timber products; or (iii) wood products manufactured by
5 that person from timber or timber products; as to such persons the
6 amount of the tax with respect to the business is equal to the gross
7 proceeds of sales of the timber, timber products, or wood products
8 multiplied by the rate of 0.4235 percent from July 1, 2006, through
9 June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30,
10 2024.

11 (d) Until July 1, 2024, upon every person engaging within this
12 state in the business of selling standing timber; as to such persons
13 the amount of the tax with respect to the business is equal to the
14 gross income of the business multiplied by the rate of 0.2904 percent.
15 For purposes of this subsection (12)(d), "selling standing timber"
16 means the sale of timber apart from the land, where the buyer is
17 required to sever the timber within thirty months from the date of the
18 original contract, regardless of the method of payment for the timber
19 and whether title to the timber transfers before, upon, or after
20 severance.

21 (e) For purposes of this subsection, the following definitions
22 apply:

23 (i) "Biocomposite surface products" means surface material products
24 containing, by weight or volume, more than fifty percent recycled paper
25 and that also use nonpetroleum-based phenolic resin as a bonding agent.

26 (ii) "Paper and paper products" means products made of interwoven
27 cellulosic fibers held together largely by hydrogen bonding. "Paper
28 and paper products" includes newsprint; office, printing, fine, and
29 pressure-sensitive papers; paper napkins, towels, and toilet tissue;
30 kraft bag, construction, and other kraft industrial papers; paperboard,
31 liquid packaging containers, containerboard, corrugated, and solid-
32 fiber containers including linerboard and corrugated medium; and
33 related types of cellulosic products containing primarily, by weight or
34 volume, cellulosic materials. "Paper and paper products" does not
35 include books, newspapers, magazines, periodicals, and other printed
36 publications, advertising materials, calendars, and similar types of
37 printed materials.

1 (iii) "Recycled paper" means paper and paper products having fifty
2 percent or more of their fiber content that comes from postconsumer
3 waste. For purposes of this subsection (12)(e)(iii), "postconsumer
4 waste" means a finished material that would normally be disposed of as
5 solid waste, having completed its life cycle as a consumer item.

6 (iv) "Timber" means forest trees, standing or down, on privately or
7 publicly owned land. "Timber" does not include Christmas trees that
8 are cultivated by agricultural methods or short-rotation hardwoods as
9 defined in RCW 84.33.035.

10 (v) "Timber products" means:

11 (A) Logs, wood chips, sawdust, wood waste, and similar products
12 obtained wholly from the processing of timber, short-rotation hardwoods
13 as defined in RCW 84.33.035, or both;

14 (B) Pulp, including market pulp and pulp derived from recovered
15 paper or paper products; and

16 (C) Recycled paper, but only when used in the manufacture of
17 biocomposite surface products.

18 (vi) "Wood products" means paper and paper products; dimensional
19 lumber; engineered wood products such as particleboard, oriented strand
20 board, medium density fiberboard, and plywood; wood doors; wood
21 windows; and biocomposite surface products.

22 (f) Except for small harvesters as defined in RCW 84.33.035, a
23 person reporting under the tax rate provided in this subsection (12)
24 must file a complete annual survey with the department under RCW
25 82.32.585.

26 (13) Upon every person engaging within this state in inspecting,
27 testing, labeling, and storing canned salmon owned by another person,
28 as to such persons, the amount of tax with respect to such activities
29 is equal to the gross income derived from such activities multiplied by
30 the rate of 0.484 percent.

31 (14)(a) Upon every person engaging within this state in the
32 business of printing a newspaper, publishing a newspaper, or both, the
33 amount of tax on such business is equal to the gross income of the
34 business multiplied by the rate of 0.2904 percent.

35 (b) A person reporting under the tax rate provided in this
36 subsection (14) must file a complete annual report with the department
37 under RCW 82.32.534.

1 PART III

2 AMENDING THE SALES AND USE TAX EXEMPTION FOR CERTAIN EQUIPMENT USED IN
3 COMPUTER DATA CENTERS

4 NEW SECTION. **Sec. 301.** (1) It is the legislature's intent to
5 encourage immediate investments in technology facilities that can
6 provide an economic stimulus, sustain long-term jobs that provide
7 living wages, and help build the digital infrastructure that can enable
8 the state to be competitive for additional technology investment and
9 jobs.

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

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

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

26 **Sec. 302.** RCW 82.08.986 and 2010 1st sp.s. c 23 s 1601 are each
27 amended to read as follows:

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

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

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

14 (3)(a) Within six years of the date that the department issued an
15 exemption certificate under this section to a qualifying business or a
16 qualifying tenant with respect to an eligible computer data center, the
17 qualifying business or qualifying tenant must establish that net
18 employment at the eligible computer data center has increased by a
19 minimum of:

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

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

29 (b) In calculating the net increase in family wage employment
30 positions:

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

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

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

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

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

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

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

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

29 (ii)(A) Family wage employment positions include positions filled
30 by employees of the owner of the eligible computer data center and by
31 employees of qualifying (~~businesses leasing space from the owner of~~
32 ~~the eligible computer data center~~) tenants.

33 (B) Family wage employment positions also include individuals
34 performing work at an eligible computer data center as an independent
35 contractor hired by the owner of the eligible computer data center or
36 as an employee of an independent contractor hired by the owner of the
37 eligible computer data center, if the work is necessary for the

1 operation of the computer data center, such as security and building
2 maintenance, and provided that all of the requirements in (c)(i) of
3 this subsection (3) are met.

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

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

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

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

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

19 (b) If a person claims an exemption under this section and
20 subsequently receives the benefit of the deferral program under chapter
21 82.60 RCW on either the construction, renovation, or expansion of a
22 structure or structures used as a computer data center or machinery or
23 equipment used in a computer data center, the person must repay the
24 amount of taxes exempted under this section. Interest as provided in
25 chapter 82.32 RCW applies to amounts due under this section until paid
26 in full.

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

29 (a) "Affiliated" means that one person has a direct or indirect
30 ownership interest of at least twenty percent in another person.

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

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

36 (B) sophisticated fire suppression and prevention systems; and (C)

37 enhanced physical security, such as: Restricted access to the facility

38 to selected personnel; permanent security guards; video camera

1 surveillance; an electronic system requiring passcodes, keycards, or
2 biometric scans, such as hand scans and retinal or fingerprint
3 recognition; or similar security features.

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

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

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

19 ~~((e))~~ (d)(i) "Eligible computer data center" means a computer
20 data center:

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

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

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

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

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

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

1 ~~((+ii))~~ (iii) With respect to facilities in existence on April 1,
2 2010, that are expanded, renovated, or otherwise improved after March
3 31, 2010, or facilities in existence on April 1, 2012, that are
4 expanded, renovated, or otherwise improved after March 31, 2012, an
5 eligible computer data center includes only the portion of the computer
6 data center meeting the requirements in ~~((+e))~~ (d)(i)(B) of this
7 subsection (6).

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

17 ~~((+e))~~ (f) "Eligible server equipment" means:

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

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

27 ~~((+ii))~~ (B) Is installed and put into regular use before April 1,
28 2018.

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

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

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

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

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

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

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

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

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

36 (h) "Qualifying tenant" means a business entity that exists for the
37 primary purpose of engaging in commercial activity for profit and that
38 leases space from a qualifying business within an eligible computer

1 data center. The term does not include the state or federal government
2 or any of their departments, agencies, and institutions; tribal
3 governments; political subdivisions of this state; or any municipal,
4 quasi-municipal, public, or other corporation created by the state or
5 federal government, tribal government, municipality, or political
6 subdivision of the state. The term also does not include a lessee of
7 space in an eligible computer data center under (d)(i)(C)(I) of this
8 subsection (6), if the lessee and lessor are affiliated and:

9 (i) That space will be used by the lessee to house server equipment
10 that replaces server equipment previously installed and operated in
11 that eligible computer data center by the lessor or another person
12 affiliated with the lessee; or

13 (ii) Prior to the effective date of this section, the primary use
14 of the server equipment installed in that eligible computer data center
15 was to provide electronic data storage and data management services for
16 the business purposes of either the lessor, persons affiliated with the
17 lessor, or both.

18 (i) "Server equipment" means the computer hardware located in an
19 eligible computer data center and used exclusively to provide
20 electronic data storage and data management services for internal use
21 by the owner or lessee of the computer data center, for clients of the
22 owner or lessee of the computer data center, or both. "Server
23 equipment" also includes computer software necessary to operate the
24 computer hardware. "Server equipment" does not include personal
25 computers, the racks upon which the server equipment is installed, and
26 computer peripherals such as keyboards, monitors, printers, and mice.

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

28 **Sec. 303.** RCW 82.08.986 and 2010 1st sp.s. c 23 s 1601 are each
29 amended to read as follows:

30 (1) An exemption from the tax imposed by RCW 82.08.020 is provided
31 for sales to qualifying businesses and to qualifying tenants of
32 eligible server equipment to be installed, without intervening use, in
33 an eligible computer data center, and to charges made for labor and
34 services rendered in respect to installing eligible server equipment.
35 The exemption also applies to sales to qualifying businesses and to
36 qualifying tenants of eligible power infrastructure, including labor

1 and services rendered in respect to constructing, installing,
2 repairing, altering, or improving eligible power infrastructure.

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

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

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

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

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

31 (b) In calculating the net increase in family wage employment
32 positions:

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

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

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

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

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

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

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

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

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

35 (B) Family wage employment positions also include individuals
36 performing work at an eligible computer data center as an independent
37 contractor hired by the owner of the eligible computer data center or
38 as an employee of an independent contractor hired by the owner of the

1 eligible computer data center, if the work is necessary for the
2 operation of the computer data center, such as security and building
3 maintenance, and provided that all of the requirements in (c)(i) of
4 this subsection (3) are met.

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

8 (4) A qualifying business or a qualifying tenant claiming an
9 exemption under this section or RCW 82.12.986 must complete an annual
10 ~~((report))~~ survey with the department as required under RCW
11 ~~((82.32.534))~~ 82.32.585.

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

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

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

21 (b) If a person claims an exemption under this section and
22 subsequently receives the benefit of the deferral program under chapter
23 82.60 RCW on either the construction, renovation, or expansion of a
24 structure or structures used as a computer data center or machinery or
25 equipment used in a computer data center, the person must repay the
26 amount of taxes exempted under this section. Interest as provided in
27 chapter 82.32 RCW applies to amounts due under this section until paid
28 in full.

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

31 (a) "Affiliated" means that one person has a direct or indirect
32 ownership interest of at least twenty percent in another person.

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

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

38 (B) sophisticated fire suppression and prevention systems; and (C)

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

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

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

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

21 ~~((e))~~ (d)(i) "Eligible computer data center" means a computer
22 data center:

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

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

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

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

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

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

1 before the issuance of a building permit for the construction of the
2 foundation of a computer data center.

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

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

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

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

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

31 (ii) For a qualifying business whose computer data center qualifies
32 as an eligible computer data center under (d)(i)(C)(II) of this
33 subsection (6), "eligible server equipment" means the original server
34 equipment installed in an eligible computer data center on or after
35 April 1, 2012, and replacement server equipment. For purposes of this
36 subsection (6)(f)(ii), "replacement server equipment" means server
37 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)(f)(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))~~ (g) "Qualifying business" means a business entity that
16 exists for the primary purpose of engaging in commercial activity for
17 profit and that is the owner of an eligible computer data center (~~or~~
18 ~~the lessee of at least twenty thousand square feet within an eligible~~
19 ~~computer data center dedicated to housing working servers, where the~~
20 ~~server space has not previously been dedicated to housing working~~
21 ~~servers)). The term does not include the state or federal government~~
22 ~~or any of their departments, agencies, and institutions; tribal~~
23 ~~governments; political subdivisions of this state; or any municipal,~~
24 ~~quasi-municipal, public, or other corporation created by the state or~~
25 ~~federal government, tribal government, municipality, or political~~
26 ~~subdivision 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 (h) "Qualifying tenant" means a business entity that exists for the
2 primary purpose of engaging in commercial activity for profit and that
3 leases space from a qualifying business within an eligible computer
4 data center. The term does not include the state or federal government
5 or 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. The term also does not include a lessee of
10 space in an eligible computer data center under (d)(i)(C)(I) of this
11 subsection (6), if the lessee and lessor are affiliated and:

12 (i) That space will be used by the lessee to house server equipment
13 that replaces server equipment previously installed and operated in
14 that eligible computer data center by the lessor or another person
15 affiliated with the lessee; or

16 (ii) Prior to the effective date of this section, the primary use
17 of the server equipment installed in that eligible computer data center
18 was to provide electronic data storage and data management services for
19 the business purposes of either the lessor, persons affiliated with the
20 lessor, or both.

21 (i) "Server equipment" means the computer hardware located in an
22 eligible computer data center and used exclusively to provide
23 electronic data storage and data management services for internal use
24 by the owner or lessee of the computer data center, for clients of the
25 owner or lessee of the computer data center, or both. "Server
26 equipment" also includes computer software necessary to operate the
27 computer hardware. "Server equipment" does not include personal
28 computers, the racks upon which the server equipment is installed, and
29 computer peripherals such as keyboards, monitors, printers, and mice.

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

31 **Sec. 304.** RCW 82.12.986 and 2010 1st sp.s. c 23 s 1602 are each
32 amended to read as follows:

33 (1) An exemption from the tax imposed by RCW 82.12.020 is provided
34 for the use by qualifying businesses or qualifying tenants of eligible
35 server equipment to be installed, without intervening use, in an
36 eligible computer data center, and to the use of labor and services
37 rendered in respect to installing such server equipment. The exemption

1 also applies to the use ~~((of))~~ by a qualifying business or qualifying
2 tenant of eligible power infrastructure, including labor and services
3 rendered in respect to installing, repairing, altering, or improving
4 such infrastructure.

5 (2) A qualifying business or a qualifying tenant is not eligible
6 for the exemption under this section unless the department issued an
7 exemption certificate to the qualifying business or a qualifying tenant
8 for the exemption provided in RCW 82.08.986.

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

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

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

18 (b) If a person has received the benefit of the exemption under
19 this section and subsequently receives the benefit of the deferral
20 program under chapter 82.60 RCW on either the construction, renovation,
21 or expansion of a structure or structures used as a computer data
22 center or machinery or equipment used in a computer data center, the
23 person must repay the amount of taxes exempted under this section.
24 Interest as provided in chapter 82.32 RCW applies to amounts due under
25 this subsection (3)(b) until paid in full. A person is not required to
26 repay taxes under this subsection with respect to property and services
27 for which the person is required to repay taxes under RCW 82.08.986(5).

28 (4) The definitions and requirements in RCW 82.08.986 apply to this
29 section.

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

31 PART IV

32 EXEMPTING CRAFT DISTILLERIES FROM CERTAIN LICENSE ISSUANCE FEES

33 **Sec. 401.** RCW 66.24.630 and 2012 c 2 s 103 (Initiative Measure No.
34 1183) are each amended to read as follows:

35 (1) There is a spirits retail license to: Sell spirits in original
36 containers to consumers for consumption off the licensed premises and

1 to permit holders; sell spirits in original containers to retailers
2 licensed to sell spirits for consumption on the premises, for resale at
3 their licensed premises according to the terms of their licenses,
4 although no single sale may exceed twenty-four liters, unless the sale
5 is by a licensee that was a contract liquor store manager of a contract
6 liquor store at the location of its spirits retail licensed premises
7 from which it makes such sales; and export spirits.

8 (2) For the purposes of this title, a spirits retail license is a
9 retail license, and a sale by a spirits retailer is a retail sale only
10 if not for resale. Nothing in this title authorizes sales by on-sale
11 licensees to other retail licensees. The board must establish by rule
12 an obligation of on-sale spirits retailers to:

13 (a) Maintain a schedule by stock-keeping unit of all their
14 purchases of spirits from spirits retail licensees, indicating the
15 identity of the seller and the quantities purchased; and

16 (b) Provide, not more frequently than quarterly, a report for each
17 scheduled item containing the identity of the purchasing on-premise
18 licensee and the quantities of that scheduled item purchased since any
19 preceding report to:

20 (i) A distributor authorized by the distiller to distribute a
21 scheduled item in the on-sale licensee's geographic area; or

22 (ii) A distiller acting as distributor of the scheduled item in the
23 area.

24 (3)(a) Except as otherwise provided in (c) of this subsection (~~(c) of this section~~), the board may issue spirits retail licenses only for
25 premises comprising at least ten thousand square feet of fully enclosed
26 retail space within a single structure, including storerooms and other
27 interior auxiliary areas but excluding covered or fenced exterior
28 areas, whether or not attached to the structure, and only to applicants
29 that the board determines will maintain systems for inventory
30 management, employee training, employee supervision, and physical
31 security of the product substantially as effective as those of stores
32 currently operated by the board with respect to preventing sales to or
33 pilferage by underage or inebriated persons.

34 (b) License issuances and renewals are subject to RCW 66.24.010 and
35 the regulations promulgated thereunder, including without limitation
36 rights of cities, towns, county legislative authorities, the public,
37 churches, schools, and public institutions to object to or prevent
38

1 issuance of local liquor licenses. However, existing grocery premises
2 licensed to sell beer and/or wine are deemed to be premises "now
3 licensed" under RCW 66.24.010(9)(a) for the purpose of processing
4 applications for spirits retail licenses.

5 (c) The board may not deny a spirits retail license to an otherwise
6 qualified contract liquor store at its contract location or to the
7 holder of former state liquor store operating rights sold at auction
8 under RCW 66.24.620 on the grounds of location, nature, or size of the
9 premises to be licensed. The board (~~shall~~) may not deny a spirits
10 retail license to applicants that are not contract liquor stores or
11 operating rights holders on the grounds of the size of the premises to
12 be licensed, if such applicant is otherwise qualified and the board
13 determines that:

14 (i) There is no retail spirits license holder in the trade area
15 that the applicant proposes to serve;

16 (ii) The applicant meets, or upon licensure will meet, the
17 operational requirements established by the board by rule; and

18 (iii) The licensee has not committed more than one public safety
19 violation within the three years preceding application.

20 (d) A retailer authorized to sell spirits for consumption on or off
21 the licensed premises may accept delivery of spirits at its licensed
22 premises or at one or more warehouse facilities registered with the
23 board, which facilities may also warehouse and distribute nonliquor
24 items, and from which the retailer may deliver to its own licensed
25 premises and, pursuant to sales permitted under subsection (1) of this
26 section:

27 (i) To other retailer premises licensed to sell spirits for
28 consumption on the licensed premises;

29 (ii) To other registered facilities; or

30 (iii) To lawful purchasers outside the state. The facilities may
31 be registered and utilized by associations, cooperatives, or comparable
32 groups of retailers, including at least one retailer licensed to sell
33 spirits.

34 (4)(a) Except as otherwise provided in (b) of this subsection, each
35 spirits retail licensee must pay to the board, for deposit into the
36 liquor revolving fund, a license issuance fee equivalent to seventeen
37 percent of all spirits sales revenues under the license, exclusive of
38 taxes collected by the licensee and of sales of items on which a

1 license fee payable under this section has otherwise been incurred.
2 The board must establish rules setting forth the timing of such
3 payments and reporting of sales dollar volume by the licensee, with
4 payments required quarterly in arrears. The first payment is due
5 October 1, 2012.

6 (b) This subsection (4) does not apply to craft distilleries.

7 (5) In addition to the payment required under subsection (4) of
8 this section, each licensee must pay an annual license renewal fee of
9 one hundred sixty-six dollars. The board must periodically review and
10 adjust the renewal fee as may be required to maintain it as comparable
11 to annual license renewal fees for licenses to sell beer and wine not
12 for consumption on the licensed premises. If required by law at the
13 time, any increase of the annual renewal fee becomes effective only
14 upon ratification by the legislature.

15 (6) As a condition to receiving and renewing a retail spirits
16 license the licensee must provide training as prescribed by the board
17 by rule for individuals who sell spirits or who manage others who sell
18 spirits regarding compliance with laws and regulations regarding sale
19 of spirits, including without limitation the prohibitions against sale
20 of spirits to individuals who are underage or visibly intoxicated. The
21 training must be provided before the individual first engages in the
22 sale of spirits and must be renewed at least every five years. The
23 licensee must maintain records documenting the nature and frequency of
24 the training provided. An employee training program is presumptively
25 sufficient if it incorporates a "responsible vendor program"
26 promulgated by the board.

27 (7) The maximum penalties prescribed by the board in WAC 314-29-020
28 through 314-29-040 relating to fines and suspensions are doubled for
29 violations relating to the sale of spirits by retail spirits licensees.

30 (8)(a) The board must promulgate regulations concerning the
31 adoption and administration of a compliance training program for
32 spirits retail licensees, to be known as a "responsible vendor
33 program," to reduce underage drinking, encourage licensees to adopt
34 specific best practices to prevent sales to minors, and provide
35 licensees with an incentive to give their employees ongoing training in
36 responsible alcohol sales and service.

37 (b) Licensees who join the responsible vendor program under this

1 section and maintain all of the program's requirements are not subject
2 to the doubling of penalties provided in this section for a single
3 violation in any period of twelve calendar months.

4 (c) The responsible vendor program must be free, voluntary, and
5 self-monitoring.

6 (d) To participate in the responsible vendor program, licensees
7 must submit an application form to the board. If the application
8 establishes that the licensee meets the qualifications to join the
9 program, the board must send the licensee a membership certificate.

10 (e) A licensee participating in the responsible vendor program must
11 at a minimum:

12 (i) Provide ongoing training to employees;

13 (ii) Accept only certain forms of identification for alcohol sales;

14 (iii) Adopt policies on alcohol sales and checking identification;

15 (iv) Post specific signs in the business; and

16 (v) Keep records verifying compliance with the program's
17 requirements.

18 **PART V**

19 **CLARIFYING THE DEFINITION OF LEASEHOLD INTEREST**

20 **Sec. 501.** RCW 82.29A.020 and 1999 c 220 s 2 are each amended to
21 read as follows:

22 ~~((As used in this chapter the following terms shall be defined as
23 follows,))~~ The definitions in this section apply throughout this
24 chapter unless the context ((otherwise)) requires((+)) otherwise.

25 (1) "Leasehold interest" ~~((shall))~~ means an interest in publicly
26 owned real or personal property which exists by virtue of any lease,
27 permit, license, or any other agreement, written or verbal, between the
28 public owner of the property and a person who would not be exempt from
29 property taxes if that person owned the property in fee, granting
30 possession and use, to a degree less than fee simple ownership(~~(+
31 PROVIDED, That))~~). However, no interest in personal property (excluding
32 land or buildings) which is owned by the United States, whether or not
33 as trustee, or by any foreign government ~~((shall))~~ may constitute a
34 leasehold interest hereunder when the right to use such property is
35 granted pursuant to a contract solely for the manufacture or production
36 of articles for sale to the United States or any foreign government.

1 The term "leasehold interest" (~~shall~~) includes the rights of use or
2 occupancy by others of property which is owned in fee or held in trust
3 by a public corporation, commission, or authority created under RCW
4 35.21.730 or 35.21.660 if the property is listed on or is within a
5 district listed on any federal or state register of historical sites.
6 The term "leasehold interest" (~~shall~~) does not include road or
7 utility easements, rights of access, occupancy, or use granted solely
8 for the purpose of removing materials or products purchased from a
9 public owner or the lessee of a public owner, or rights of access,
10 occupancy, or use granted solely for the purpose of natural energy
11 resource exploration. "Leasehold interest" does not include the
12 preferential use of publicly owned cargo cranes and docks and
13 associated areas used in the loading and discharging of cargo located
14 at a port district marine facility. "Preferential use" means that
15 publicly owned real or personal property is used by a private party
16 under a written agreement with the public owner, but the public owner
17 or any third party maintains a right to use the property when not being
18 used by the private party.

19 (2)(a) "Taxable rent" (~~shall~~) means contract rent as defined in
20 (~~subsection (a)~~) (c) of this subsection in all cases where the lease
21 or agreement has been established or renegotiated through competitive
22 bidding, or negotiated or renegotiated in accordance with statutory
23 requirements regarding the rent payable, or negotiated or renegotiated
24 under circumstances, established by public record, clearly showing that
25 the contract rent was the maximum attainable by the lessor(~~+~~
26 ~~PROVIDED, That~~)). However, after January 1, 1986, with respect to any
27 lease which has been in effect for ten years or more without
28 renegotiation, taxable rent may be established by procedures set forth
29 in (~~subsection (b)~~) (g) of this subsection. All other leasehold
30 interests (~~shall be~~) are subject to the determination of taxable rent
31 under the terms of (~~subsection (b)~~) (g) of this subsection.

32 (b) For purposes of determining leasehold excise tax on any lands
33 on the Hanford reservation subleased to a private or public entity by
34 the department of ecology, taxable rent (~~shall~~) includes only the
35 annual cash rental payment made by such entity to the department of
36 ecology as specifically referred to as rent in the sublease agreement
37 between the parties and (~~shall~~) does not include any other fees,
38 assessments, or charges imposed on or collected by such entity

1 irrespective of whether the private or public entity pays or collects
2 such other fees, assessments, or charges as specified in the sublease
3 agreement.

4 ~~((a))~~ (c) "Contract rent" ~~((shall))~~ means the amount of
5 consideration due as payment for a leasehold interest, including: The
6 total of cash payments made to the lessor or to another party for the
7 benefit of the lessor according to the requirements of the lease or
8 agreement, including any rents paid by a sublessee; expenditures for
9 the protection of the lessor's interest when required by the terms of
10 the lease or agreement; and expenditures for improvements to the
11 property to the extent that such improvements become the property of
12 the lessor. Where the consideration conveyed for the leasehold
13 interest is made in combination with payment for concession or other
14 rights granted by the lessor, only that portion of such payment which
15 represents consideration for the leasehold interest ~~((shall-be))~~ is
16 part of contract rent.

17 (d) "Contract rent" ~~((shall))~~ does not include: (i) Expenditures
18 made by the lessee, which under the terms of the lease or agreement,
19 are to be reimbursed by the lessor to the lessee or expenditures for
20 improvements and protection made pursuant to a lease or an agreement
21 which requires that the use of the improved property be open to the
22 general public and that no profit will inure to the lessee from the
23 lease; (ii) expenditures made by the lessee for the replacement or
24 repair of facilities due to fire or other casualty including payments
25 for insurance to provide reimbursement for losses or payments to a
26 public or private entity for protection of such property from damage or
27 loss or for alterations or additions made necessary by an action of
28 government taken after the date of the execution of the lease or
29 agreement; (iii) improvements added to publicly owned property by a
30 sublessee under an agreement executed prior to January 1, 1976, which
31 have been taxed as personal property of the sublessee prior to January
32 1, 1976, or improvements made by a sublessee of the same lessee under
33 a similar agreement executed prior to January 1, 1976, and such
34 improvements ~~((shall-be))~~ are taxable to the sublessee as personal
35 property; (iv) improvements added to publicly owned property if such
36 improvements are being taxed as personal property to any person.

37 (e) Any prepaid contract rent ~~((shall-be))~~ is considered to have
38 been paid in the year due and not in the year actually paid with

1 respect to prepayment for a period of more than one year. Expenditures
2 for improvements with a useful life of more than one year which are
3 included as part of contract rent (~~(shall)~~) must be treated as prepaid
4 contract rent and prorated over the useful life of the improvement or
5 the remaining term of the lease or agreement if the useful life is in
6 excess of the remaining term of the lease or agreement. Rent prepaid
7 prior to January 1, 1976, (~~(shall)~~) must be prorated from the date of
8 prepayment.

9 (f) With respect to a "product lease", the value (~~(shall be)~~) is
10 that value determined at the time of sale under terms of the lease.

11 (~~(b)~~) (g) If it (~~(shall be)~~) is determined by the department of
12 revenue, upon examination of a lessee's accounts or those of a lessor
13 of publicly owned property, that a lessee is occupying or using
14 publicly owned property in such a manner as to create a leasehold
15 interest and that such leasehold interest has not been established
16 through competitive bidding, or negotiated in accordance with statutory
17 requirements regarding the rent payable, or negotiated under
18 circumstances, established by public record, clearly showing that the
19 contract rent was the maximum attainable by the lessor, the department
20 may establish a taxable rent computation for use in determining the tax
21 payable under authority granted in this chapter based upon the
22 following criteria: (i) Consideration (~~(shall)~~) must be given to
23 rental being paid to other lessors by lessees of similar property for
24 similar purposes over similar periods of time; (ii) consideration
25 (~~(shall)~~) must be given to what would be considered a fair rate of
26 return on the market value of the property leased less reasonable
27 deductions for any restrictions on use, special operating requirements
28 or provisions for concurrent use by the lessor, another person or the
29 general public.

30 (3) "Product lease" as used in this chapter (~~(shall)~~) means a lease
31 of property for use in the production of agricultural or marine
32 products to the extent that such lease provides for the contract rent
33 to be paid by the delivery of a stated percentage of the production of
34 such agricultural or marine products to the credit of the lessor or the
35 payment to the lessor of a stated percentage of the proceeds from the
36 sale of such products.

37 (4) "Renegotiated" means a change in the lease agreement which
38 changes the agreed time of possession, restrictions on use, the rate of

1 the cash rental or of any other consideration payable by the lessee to
2 or for the benefit of the lessor, other than any such change required
3 by the terms of the lease or agreement. In addition "renegotiated"
4 (~~shall~~) means a continuation of possession by the lessee beyond the
5 date when, under the terms of the lease agreement, the lessee had the
6 right to vacate the premises without any further liability to the
7 lessor.

8 (5) "City" means any city or town.

9 (6) "Products" includes natural resource products such as cut or
10 picked evergreen foliage, Cascara bark, wild edible mushrooms, native
11 ornamental trees and shrubs, ore and minerals, natural gas, geothermal
12 water and steam, and forage removed through the grazing of livestock.

13 **PART VI**

14 **MISCELLANEOUS PROVISIONS**

15 NEW SECTION. **Sec. 601.** This act does not affect any existing
16 right acquired or liability or obligation incurred under the sections
17 amended or repealed or under any rule or order adopted under those
18 sections, nor does it affect any proceeding instituted under those
19 sections.

20 NEW SECTION. **Sec. 602.** If any provision of this act or its
21 application to any person or circumstance is held invalid, the
22 remainder of the act or the application of the provision to other
23 persons or circumstances is not affected.

24 NEW SECTION. **Sec. 603.** (1) Parts I, II, V, and VI of this act are
25 necessary for the immediate preservation of the public peace, health,
26 or safety, or support of the state government and its existing public
27 institutions, and take effect July 1, 2012.

28 (2) Section 302 of this act does not take effect if the contingency
29 in subsection (3) of this section occurs.

30 (3) Section 303 of this act takes effect if Substitute House Bill
31 No. 2530 or any other legislation repealing RCW 82.32.534 is enacted
32 during the 2012 1st special session and signed into law.

33 (4) Parts III and IV of this act are necessary for the immediate

1 preservation of the public peace, health, or safety, or support of the
2 state government and its existing public institutions, and take effect
3 immediately."

SB 6635 - S AMD

By Senators Murray, Zarelli

ADOPTED AS AMENDED 04/11/2012

4 On page 1, line 2 of the title, after "tax" strike the remainder of
5 the title and insert "preference and license fees; amending RCW
6 82.04.4292, 82.04.4266, 82.04.4268, 82.04.4269, 82.04.260, 82.08.986,
7 82.08.986, 82.12.986, 66.24.630, and 82.29A.020; adding a new section
8 to chapter 82.04 RCW; creating new sections; providing an effective
9 date; providing a contingent effective date; providing expiration
10 dates; and declaring an emergency."

EFFECT: A financial business that is located in more than ten states may not deduct from B&O tax amounts received from interest earnings on loans secured by first mortgages or deeds of trust on residential properties. The JLARC is directed to review the first mortgage deduction by June 30, 2015, as part of its tax preference review process.

The B&O tax exemptions for manufacturing of fruits or vegetables, dairy, and seafood are extended to July 1, 2017, and are then replaced by a preferential B&O tax rate of 0.138 percent.

The time is extended for eligible data centers and qualifying tenants of data centers to qualify for the sales and use tax exemption on server equipment and power infrastructure, to those that commenced construction between April 1, 2012, and July 1, 2015. The exemption time is extended for eligible replacement server equipment placed in new data centers and for qualifying tenants until April 1, 2020.

Exempts craft distilleries from the license issuance fee of 17 percent of all spirits sales revenues under such a license.

Leasehold interests subject to LET do not include the preferential use of publicly owned cargo cranes and docks and associated areas used in loading and discharging of cargo at a port district marine facility. Preferential use means use by a private party under a written agreement with the public owner in which the public owner or a third party maintains a right to use the property when it is not being used by the

private party.

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