5116-S2.E AMH YOUN HUGH 132

**E2SSB 5116** - H AMD TO APP COMM AMD (H-2810.1/19) **626**

By Representative Young

**WITHDRAWN 04/11/2019**

On page 36, beginning on line 19 of the striking amendment, strike all of sections 18 and 19 and insert the following:

"**Sec. 18.** RCW 82.08.962 and 2018 c 164 s 5 are each amended to read as follows:

(1)(a) ((~~Except as provided in RCW 82.08.963, purchasers who have paid~~)) Subject to the requirement of this section, the tax imposed by RCW 82.08.020 ((~~on~~)) does not apply to sales of machinery and equipment used directly in generating electricity using fuel cells, wind, sun, biomass energy, tidal or wave energy, geothermal resources, or technology that converts otherwise lost energy from exhaust, as the principal source of power, or to sales of or charges made for labor and services rendered in respect to installing such machinery and equipment, ((~~are eligible for an exemption as provided in this section,~~)) but only if the purchaser develops with such machinery, equipment, and labor a facility capable of generating not less than one thousand watts AC of electricity. Except as otherwise provided in this section, the purchaser must pay the state and local sales tax on such sales and apply to the department for a remittance of the tax paid.

(b) Beginning on July 1, 2011, through ((~~January 1, 2020~~)) December 31, 2019, the amount of the exemption under this subsection (1)(b) is equal to seventy-five percent of the state and local sales tax paid. The purchaser is eligible for an exemption under this subsection (1)(b) in the form of a remittance.

(c) Beginning January 1, 2020, through December 31, 2029, the purchaser is entitled to an exemption, in the form of a remittance, under this subsection (1)(c) in an amount equal to:

(i) Ninety percent of the state and local sales tax paid, if:

(A) The exempt purchase is for machinery and equipment or labor and services rendered in respect to installing such machinery and equipment in (a) of this subsection, excluding qualified purchases under subsection (c)(i)(B) of this subsection, and the department of labor and industries certifies that the project includes: Procurement from and contracts with women, minority, or veteran-owned businesses; procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations; apprenticeship utilization; and preferred entry for workers living in the area where the project is being constructed. In the event that a project is built without one or more of these standards, and a project developer or its designated principal contractor demonstrates that it has made all good faith efforts to meet the standards but was unable to comply due to lack of availability of qualified businesses or local hires, the department of labor and industries may certify that the developer complied with that standard; or

(B) The exempt purchase is for machinery and equipment that is used directly in the generation of electricity by a solar energy system capable of generating more than one hundred kilowatts AC but no more than five hundred kilowatts AC of electricity, and labor and services rendered in respect to installing such machinery and equipment, and the department of labor and industries certifies that the project has met the requirements of (c)(i)(A) of this subsection, and the purchaser provides the following documentation to the department as part of the application for a remittance:

(I) A copy of the contractor's certificate of registration in compliance with chapter 18.27 RCW;

(II) The contractor's current state unified business identifier number;

(III) A copy of the contractor's proof of industrial insurance coverage for the contractor's employees working in Washington as required in Title 51 RCW; employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW; and

(IV) Documentation of the contractor's history of compliance with federal and state wage and hour laws and regulations; or

(ii) One hundred percent of the state and local sales tax paid, if the department of labor and industries certifies that the project is developed under a community workforce agreement or project labor agreement. This subsection (1)(c)(ii) does not apply with respect to solar energy systems described in (c)(i)(B) of this subsection.

(d) In order to qualify for the remittance under (c) of this subsection, installation of the qualifying machinery and equipment must commence no earlier than January 1, 2020, and be completed by December 31, 2029.

(e) Beginning July 1, 2019, and through December 31, 2029, the purchaser is entitled to an exemption under this subsection (1)(e) in an amount equal to one hundred percent of the state and local sales tax due on:

(i) Machinery and equipment that is used directly in the generation of electricity by a solar energy system that is capable of generating no more than one hundred kilowatts AC of electricity; or

(ii) Labor and services rendered in respect to installing machinery and equipment exempt under (e)(i) of this subsection, and the seller meets the following requirements at the time of the sale for which the exemption is claimed:

(A) Has obtained a certificate of registration in compliance with chapter 18.27 RCW;

(B) Has obtained a current state unified business identifier number;

(C) Possesses proof of industrial insurance coverage for the contractor's employees working in Washington as required in Title 51 RCW; employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW; and

(D) Has not been found by any administrative agency or court of competent jurisdiction to have violated federal and state wage and hours laws and regulations.

(f) Purchasers claiming an exemption under (e) of this subsection must provide the seller with an exemption certificate in a form and manner prescribed by the department.

(g) In order to qualify for the exemption under (e)(ii) of this subsection, installation of the qualifying machinery and equipment must commence no earlier than July 1, 2019, and be completed by December 31, 2029.

(2) The department of labor and industries must initiate an emergency rule making on the effective date of this section to be completed by December 1, 2019, to:

(a) Define and set minimum requirements for all labor standards identified in subsection (1)(c) of this section; and

(b) Set requirements for all good faith efforts under subsection (1)(c)(i) and (ii) of this section, as well as documentation requirements and a certification process. Requirements for all good faith efforts must be designed to maximize the likelihood that the project is completed with said standards and could include: Proactive outreach to firms that are women, minority, and veteran-owned businesses; advertising in local community publications and publications appropriate to identified firms; participating in community job fairs, conferences, and trade shows; and other measures. The certification process and timeline must be designed to prevent undue delay to project development.

(3) For purposes of this section and RCW 82.12.962, the following definitions apply:

(a) "Biomass energy" includes: (i) By-products of pulping and wood manufacturing process; (ii) animal waste; (iii) solid organic fuels from wood; (iv) forest or field residues; (v) wooden demolition or construction debris; (vi) food waste; (vii) liquors derived from algae and other sources; (viii) dedicated energy crops; (ix) biosolids; and (x) yard waste. "Biomass energy" does not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic; wood from old growth forests; or municipal solid waste.

(b) "Fuel cell" means an electrochemical reaction that generates electricity by combining atoms of hydrogen and oxygen in the presence of a catalyst.

(c)(i) "Machinery and equipment" means fixtures, devices, and support facilities that are integral and necessary to the generation of electricity using fuel cells, wind, sun, biomass energy, tidal or wave energy, geothermal resources, or technology that converts otherwise lost energy from exhaust.

(ii) "Machinery and equipment" does not include: (A) Hand-powered tools; (B) property with a useful life of less than one year; (C) repair parts required to restore machinery and equipment to normal working order; (D) replacement parts that do not increase productivity, improve efficiency, or extend the useful life of machinery and equipment; (E) buildings; or (F) building fixtures that are not integral and necessary to the generation of electricity that are permanently affixed to and become a physical part of a building.

((~~(3)~~)) (d) "Project labor agreement" and "community workforce agreement" means a prehire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. Sec. 158(f).

(4)(a) Machinery and equipment is "used directly" in generating electricity by wind energy, solar energy, biomass energy, tidal or wave energy, geothermal resources, or technology that converts otherwise lost energy from exhaust if it provides any part of the process that captures the energy of the wind, sun, biomass energy, tidal or wave energy, geothermal resources, or technology that converts otherwise lost energy from exhaust, converts that energy to electricity, and stores, transforms, or transmits that electricity for entry into or operation in parallel with electric transmission and distribution systems.

(b) Machinery and equipment is "used directly" in generating electricity by fuel cells if it provides any part of the process that captures the energy of the fuel, converts that energy to electricity, and stores, transforms, or transmits that electricity for entry into or operation in parallel with electric transmission and distribution systems.

((~~(4)~~)) (5)(a)(i) A purchaser claiming an exemption in the form of a remittance under subsection (1)(b) or (c) of this section must pay the tax imposed by RCW 82.08.020 and all applicable local sales taxes imposed under the authority of chapters 82.14 and 81.104 RCW. The purchaser may then apply to the department for remittance in a form and manner prescribed by the department. A purchaser may not apply for a remittance under this section more frequently than once per quarter. The purchaser must specify the amount of exempted tax claimed and the qualifying purchases for which the exemption is claimed. The purchaser must retain, in adequate detail, records to enable the department to determine whether the purchaser is entitled to an exemption under this section, including: Invoices; proof of tax paid; and documents describing the machinery and equipment.

(ii) The application for remittance must include a copy of the certificate issued for the project by the department of labor and industries as prescribed by rule under subsection (2) of this section.

(b) The department must determine eligibility under this section based on the information provided by the purchaser, which is subject to audit verification by the department. The department must on a quarterly basis remit exempted amounts to qualifying purchasers who submitted applications during the previous quarter.

((~~(5) The exemption provided by this section expires September 30, 2017, as it applies to: (a)~~)) (6)(a) Except as otherwise provided in (c) of this subsection, from October 1, 2017, through December 31, 2019, the exemption provided by this section does not apply to: (i) Machinery and equipment that is used directly in the generation of electricity using solar energy and capable of generating no more than five hundred kilowatts AC of electricity; or ((~~(b)~~)) (ii) sales of or charges made for labor and services rendered in respect to installing such machinery and equipment.

(b) The exemption provided by this section is reinstated for machinery and equipment for solar energy systems capable of generating more than one hundred kilowatts AC but no more than five hundred kilowatts AC of electricity, or sales of or charges made for labor and services rendered in respect to installing such machinery and equipment, if installation of the machinery and equipment commences on or after January 1, 2020.

(c) The exemption provided by this section is reinstated for machinery and equipment for solar energy systems capable of generating no more than one hundred kilowatts AC of electricity, or sales of or charges made for labor and services rendered in respect to installing such machinery and equipment, if installation of the machinery and equipment commences on or after July 1, 2019.

((~~(6)~~)) (7) This section expires January 1, ((~~2020~~)) 2030.

**Sec. 19.** RCW 82.12.962 and 2018 c 164 s 7 are each amended to read as follows:

(1)(a) ((~~Except as provided in RCW 82.12.963, consumers who have paid~~)) Subject to the requirements of this section, the tax imposed by RCW 82.12.020 ((~~on~~)) does not apply to machinery and equipment used directly in generating electricity using fuel cells, wind, sun, biomass energy, tidal or wave energy, geothermal resources, or technology that converts otherwise lost energy from exhaust, or to ((~~sales of or charges made for~~)) labor and services rendered in respect to installing such machinery and equipment, ((~~are eligible for an exemption as provided in this section,~~)) but only if the purchaser develops with such machinery, equipment, and labor a facility capable of generating not less than one thousand watts AC of electricity. Except as otherwise provided in this section, the consumer must pay the state and local use tax on the use of such machinery and equipment and labor and services, and apply to the department for a remittance of the tax paid.

(b) Beginning on July 1, 2011, through ((~~January 1, 2020~~)) December 31, 2019, the amount of the exemption under this subsection (1) is equal to seventy-five percent of the state and local ((~~sales~~)) use tax paid. The consumer is eligible for an exemption under this subsection (1)(b) in the form of a remittance.

((~~(2)~~)) (c) Beginning January 1, 2020, through December 31, 2029, the purchaser is entitled to an exemption, in the form of a remittance, under this subsection (1)(c) in an amount equal to:

(i) Ninety percent of the state and local use tax paid, if:

(A) The exempt purchase is for machinery and equipment or labor and services rendered in respect to installing such machinery and equipment in (a) of this subsection, excluding qualified purchases under (c)(i)(B) of this subsection, and the department of labor and industries certifies that the project includes: Procurement from and contracts with women, minority, or veteran-owned businesses; procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations; apprenticeship utilization; and preferred entry for workers living in the area where the project is being constructed. In the event that a project is built without one or more of these standards, and a project developer or its designated principal contractor demonstrates that it has made all good faith efforts to meet the standards but was unable to comply due to lack of availability of qualified businesses or local hires, the department of labor and industries may certify that the developer complied with that standard; or

(B) The exempt purchase is for machinery and equipment that is used directly in the generation of electricity by a solar energy system capable of generating more than one hundred kilowatts AC but no more than five hundred kilowatts AC of electricity, or labor and services rendered in respect to installing such machinery and equipment, and the department of labor and industries certifies that the project has met the requirements of (c)(i)(A) of this subsection, and the purchaser has provided the following documentation to the department as part of the application for a remittance:

(I) A copy of the contractor's certificate of registration in compliance with chapter 18.27 RCW;

(II) The contractor's current state unified business identifier number;

(III) A copy of the contractor's proof of industrial insurance coverage for the contractor's employees working in Washington as required in Title 51 RCW; employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW; and

(IV) Documentation of the contractor's history of compliance with federal and state wage and hour laws and regulations;

(ii) One hundred percent of the state and local use tax paid, if the department of labor and industries certifies that the project is developed under a community workforce agreement or project labor agreement. This subsection (1)(c)(ii) does not apply with respect to solar energy systems described in (c)(i)(B) of this subsection.

(d) In order to qualify for the remittance under (c) of this subsection, installation of the qualifying machinery and equipment must commence no earlier than January 1, 2020, and be completed by December 31, 2029.

(e) Beginning July 1, 2019, and through December 31, 2029, the consumer is entitled to an exemption under this subsection (1)(e) in an amount equal to one hundred percent of the state and local use tax due on:

(i) Machinery and equipment that is used directly in the generation of electricity by a solar energy system that is capable of generating no more than one hundred kilowatts AC of electricity; or

(ii) Labor and services rendered in respect to installing machinery and equipment exempt under (e)(i) of this subsection, and the seller meets the following requirements at the time of the purchase for which the exemption is claimed:

(A) Has obtained a certificate of registration in compliance with chapter 18.27 RCW;

(B) Has obtained a current state unified business identifier number;

(C) Possesses proof of industrial insurance coverage for the contractor's employees working in Washington as required in Title 51 RCW; employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW; and

(D) Has not been found by any administrative agency or court of competent jurisdiction to have violated federal and state wage and hours laws and regulations.

(f) In order to qualify for the exemption under (e)(ii) of this subsection, installation of the qualifying machinery and equipment must commence no earlier than July 1, 2019, and be completed by December 31, 2029.

(2) The department of labor and industries must initiate an emergency rule making on the effective date of this section to be completed by December 1, 2019, to:

(a) Define and set minimum requirements for all labor standards identified in subsection (1)(c) of this section; and

(b) Set requirements for all good faith efforts under subsection (1)(c)(i) and (ii) of this section, as well as documentation requirements and a certification process. Requirements for all good faith efforts must be designed to maximize the likelihood that the project is completed with said standards and could include: Proactive outreach to firms that are women, minority, and veteran-owned businesses; advertising in local community publications and publications appropriate to identified firms; participating in community job fairs, conferences, and trade shows; and other measures. The certification process and timeline must be designed to prevent undue delay to project development.

(3)(a)(i) A person claiming an exemption in the form of a remittance under subsection (1)(b) and (c) of this section must pay the tax imposed by RCW 82.12.020 and all applicable local use taxes imposed under the authority of chapters 82.14 and 81.104 RCW. The consumer may then apply to the department for remittance in a form and manner prescribed by the department. A consumer may not apply for a remittance under this section more frequently than once per quarter. The consumer must specify the amount of exempted tax claimed and the qualifying purchases or acquisitions for which the exemption is claimed. The consumer must retain, in adequate detail, records to enable the department to determine whether the consumer is entitled to an exemption under this section, including: Invoices; proof of tax paid; and documents describing the machinery and equipment.

(ii) The application for remittance must include a copy of the certificate issued for the project by the department of labor and industries under subsection (1) of this section.

(b) The department must determine eligibility for remittances under this section based on the information provided by the consumer, which is subject to audit verification by the department. The department must on a quarterly basis remit exempted amounts to qualifying consumers who submitted applications during the previous quarter.

((~~(3)~~)) (4) Purchases exempt under RCW 82.08.962 are also exempt from the tax imposed under RCW 82.12.020.

((~~(4)~~)) (5) The definitions in RCW 82.08.962 apply to this section.

((~~(5)~~)) (6) The exemption provided in subsection (1) of this section does not apply:

(a) To machinery and equipment used directly in the generation of electricity using solar energy and capable of generating no more than five hundred kilowatts AC of electricity, or to sales of or charges made for labor and services rendered in respect to installing such machinery and equipment, when first use within this state of such machinery and equipment, or labor and services, occurs after September 30, 2017, and before January 1, 2020, except as otherwise provided in subsection (7) of this section; and

(b) To any other machinery and equipment described in subsection (1)(a) of this section, or to sales of or charges made for labor and services rendered in respect to installing such machinery or equipment, when first use within this state of such machinery and equipment, or labor and services, occurs after December 31, ((~~2019~~)) 2029.

((~~(6)~~)) (7)(a) The exemption provided by this section is reinstated for machinery and equipment for solar energy systems capable of generating more than one hundred kilowatts AC but no more than five hundred kilowatts AC of electricity, or sales of or charges made for labor and services rendered in respect to installing such machinery and equipment, if first use within the state of the machinery and equipment commences on or after January 1, 2020.

(b) The exemption provided by this section is reinstated for machinery and equipment for solar energy systems capable of generating no more than one hundred kilowatts AC of electricity, or sales of or charges made for labor and services rendered in respect to installing such machinery and equipment, if first use within the state of the machinery and equipment commences on or after July 1, 2019.

(8) This section expires January 1, ((~~2020~~)) 2030."

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|  | EFFECT:  Strikes the underlying sections. Provides a sales and use tax exemption, in the form of a remittance, beginning January 1, 2020, through December 31, 2029, in an amount equal to ninety percent of the state and local sales tax paid for certain alternative energy systems and for solar energy systems greater than 100 kilowatts AC but less than 500 kilowatts AC in size, if the Department of Labor and Industries certifies that the project meets certain requirements. Provides a sales and use tax exemption in an amount equal to one hundred percent of the state and local sales tax paid if the Department of Labor and Industries certifies that the project is developed under a community workforce agreement or project labor agreement. Eliminates the sales and use tax tier pertaining to projects that compensate workers at prevailing wage rates determine by local collective bargaining, as determined by the Department of Labor and Industries. |

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