
SENATE BILL 5744

State of Washington

67th Legislature

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By Senators Nguyen, Carlyle, Conway, Das, Kuderer, Mullet, Nobles, Pedersen, Saldaña, and Trudeau; by request of Office of Financial Management

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1 AN ACT Relating to tax deferrals for investment projects in clean
2 technology manufacturing, clean alternative fuels production, and
3 renewable energy storage; amending RCW 82.08.816 and 82.12.816;
4 adding a new chapter to Title 82 RCW; creating a new section;
5 providing an effective date; and providing expiration dates.

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

7 NEW SECTION. **Sec. 1.** The definitions in this section apply
8 throughout this chapter unless the context clearly requires
9 otherwise.

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

12 (2) "Eligible investment project" means an investment project of
13 at least \$2,000,000 in either qualified buildings or qualified
14 machinery and equipment, or both, for any of the following new,
15 renovated, or expanded:

16 (a) Manufacturing operations;

17 (b) Facilities to produce clean fuels, subject to the limitations
18 in subsection (7)(d) of this section, or renewable and green
19 electrolytic hydrogen; or

20 (c) Facilities to store electricity generated from renewable
21 resources.

1 (3) "Green electrolytic hydrogen" means hydrogen produced through
2 electrolysis and does not include hydrogen manufactured using steam
3 reforming or any other conversion technology that produces hydrogen
4 from a fossil fuel feedstock.

5 (4) (a) "Initiation of construction" means the date that a
6 building permit is issued under the building code adopted under
7 RCW 19.27.031 for:

8 (i) Construction of the qualified building, if the underlying
9 ownership of the building vests exclusively with the person receiving
10 the economic benefit of the deferral;

11 (ii) Construction of the qualified building, if the economic
12 benefits of the deferral are passed to a lessee as provided in
13 section 2 of this act; or

14 (iii) Tenant improvements for a qualified building, if the
15 economic benefits of the deferral are passed to a lessee as provided
16 in section 2 of this act.

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

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

23 (5) "Investment project" means an investment in either qualified
24 buildings or qualified machinery and equipment, or both, including
25 labor and services rendered in the planning, installation, and
26 construction of the project.

27 (6) "Manufacturing" has the same meaning as "to manufacture" in
28 RCW 82.04.120.

29 (7) "Manufacturing operation" means manufacturing tangible
30 personal property exclusively incorporated as an ingredient or
31 component of or used in the generation of:

32 (a) Passenger cars, light duty trucks, medium duty passenger
33 vehicles, buses, commercial vehicles as defined in RCW 46.04.140, or
34 motorcycles that emits no exhaust gas from the onboard source of
35 power, other than water vapor;

36 (b) Charging and fueling infrastructure for electric, hydrogen,
37 or other vehicle types that emits no exhaust gas from the onboard
38 source of power, other than water vapor;

39 (c) Renewable and green electrolytic hydrogen, including
40 preparing renewable and green electrolytic hydrogen for distribution;

1 (d) Clean fuel with associated greenhouse gas emissions not
2 exceeding 80 percent of the 2017 levels established under RCW
3 70A.535.020;

4 (e) Electricity from renewable resources; or

5 (f) Equipment used directly in the storage of electricity
6 generated by renewable resources.

7 (8) "Meaningful construction" means an active construction site,
8 where excavation of a building site, laying of a building foundation,
9 or other tangible signs of construction are taking place and that
10 clearly show a progression in the construction process at the
11 location designated by the taxpayer in the application for deferral.
12 Planning, permitting, or land clearing before excavation of the
13 building site, without more, does not constitute "meaningful
14 construction."

15 (9) "Operationally complete" means the eligible investment
16 project is capable of being used for its intended purpose as
17 described in the application.

18 (10) "Person" has the same meaning as in RCW 82.04.030.

19 (11) "Qualified buildings" means construction of new structures,
20 and expansion or renovation of existing structures for the purpose of
21 increasing floor space or production capacity, used for
22 manufacturing, including plant offices and warehouses or other
23 buildings for the storage of raw materials or finished goods if the
24 facilities are an essential or an integral part of a factory, mill,
25 plant, or laboratory used for manufacturing. If a qualified building
26 is used partly for manufacturing and partly for other purposes, the
27 applicable tax deferral must be determined by apportionment of the
28 costs of construction under rules adopted by the department.

29 (12) "Qualified machinery and equipment" means all new industrial
30 fixtures, equipment, and support facilities that are an integral and
31 necessary part of a manufacturing operation. "Qualified machinery and
32 equipment" includes: Computers; software; data processing equipment;
33 laboratory equipment; manufacturing components such as belts,
34 pulleys, shafts, and moving parts; molds, tools, and dies; operating
35 structures; and all equipment used to control, monitor, or operate
36 the machinery.

37 (13) "Recipient" means a person receiving a tax deferral under
38 this chapter.

39 (14) "Renewable resource" has the same meaning as in
40 RCW 82.08.816.

1 NEW SECTION. **Sec. 2.** The lessor or owner of a qualified
2 building is not eligible for a deferral under this chapter unless:

3 (1) The underlying ownership of the building, machinery, and
4 equipment vests exclusively in the same person; or

5 (2) (a) The lessor by written contract agrees to pass the economic
6 benefit of the deferral to the lessee;

7 (b) The lessee that receives the economic benefit of the deferral
8 agrees in writing with the department to complete the annual tax
9 performance report required under RCW 82.32.534; and

10 (c) The economic benefit of the deferral passed to the lessee is
11 no less than the amount of tax deferred by the lessor and is
12 evidenced by written documentation of any type of payment, credit, or
13 other financial arrangement between the lessor or owner of the
14 qualified building and the lessee.

15 NEW SECTION. **Sec. 3.** (1) Applications for deferral of taxes
16 under this chapter must be made before initiation of the construction
17 of the eligible investment project or acquisition of equipment or
18 machinery. The application must be made to the department in a form
19 and manner prescribed by the department. The application must contain
20 information regarding the location of the eligible investment
21 project, the applicant's average employment in the state for the
22 prior year, estimated or actual new employment related to the
23 eligible investment project, estimated or actual wages of employees
24 related to the eligible investment project, estimated or actual
25 costs, time schedules for completion and operation, and other
26 information required by the department. The department must rule on
27 the application within 60 days.

28 (2) The department may not accept applications for the deferral
29 under this chapter after June 30, 2032.

30 (3) This section expires January 1, 2033.

31 NEW SECTION. **Sec. 4.** (1) The department must issue a sales and
32 use tax deferral certificate for state and local sales and use taxes
33 due under chapters 82.08, 82.12, 82.14, and 81.104 RCW on each
34 eligible investment project. The certificate may only be used to make
35 purchases of materials and equipment, labor, or services to be
36 incorporated in the eligible investment project at the location
37 listed on the certificate.

1 (2) No certificate may be issued for an investment project that
2 has already received a deferral under this chapter or chapter 82.60
3 or 82.85 RCW.

4 (3) No certificate may be issued for an eligible investment
5 project that has not had an application approved by the department as
6 provided in section 3 of this act.

7 (4) The department must keep a running total of all deferrals
8 granted under this chapter during each fiscal biennium.

9 (5) This section expires January 1, 2033.

10 NEW SECTION. **Sec. 5.** (1) The recipient of a deferral
11 certificate under section 4 of this act must begin meaningful
12 construction on an eligible investment project within two years of
13 receiving a deferral certificate unless construction was delayed due
14 to circumstances beyond the recipient's control. Lack of funding is
15 not considered a circumstance beyond the recipient's control.

16 (2) If the recipient does not begin meaningful construction on an
17 eligible investment project within two years of receiving a deferral
18 certificate, the deferral certificate issued under section 4 of this
19 act is invalid and taxes deferred under this chapter are due
20 immediately.

21 NEW SECTION. **Sec. 6.** (1) The recipient must begin paying the
22 deferred taxes in the second year after the date certified by the
23 department as the date on which the eligible investment project has
24 been operationally completed. The first payment of 10 percent of the
25 deferred taxes is due on December 31st of the second calendar year
26 after the certified date, with subsequent annual payments of 10
27 percent of the deferred taxes due on December 31st for each of the
28 following nine years.

29 (2) The department may authorize an accelerated repayment
30 schedule upon request of the recipient.

31 (3) Interest may not be charged on any taxes deferred under this
32 chapter for the period of deferral, although all other penalties and
33 interest applicable to delinquent excise taxes may be assessed and
34 imposed for delinquent payments under this chapter.

35 (4) The department must assess interest at the rate provided for
36 delinquent taxes, but not penalties, retroactively to the date of
37 deferral for a recipient who must repay deferred taxes under this

1 chapter because the department has found that a purchase is not
2 eligible for tax deferral.

3 (5) The debt for deferred taxes are not extinguished by
4 insolvency or other failure of the recipient.

5 (6) Transfer of ownership does not terminate the deferral. The
6 deferral is transferred, subject to the successor meeting the
7 eligibility requirements of this chapter, for the remaining periods
8 of the deferral.

9 NEW SECTION. **Sec. 7.** (1) The recipient of the deferral under
10 this chapter must receive a reduction of the amount of state sales
11 and use tax to be repaid under section 6 of this act only as follows:

12 (a) Fifty percent of the state sales and use tax deferred, if the
13 department of labor and industries certifies that the eligible
14 investment project includes procurement from and contracts with
15 women, minority, or veteran-owned businesses; procurement from and
16 contracts with entities that have a history of complying with federal
17 and state wage and hour laws and regulations; apprenticeship
18 utilization; and preferred entry for workers living in the area where
19 the eligible investment project is being constructed. In the event
20 that an eligible investment project is built without one or more of
21 these standards, and a project developer or its designated principal
22 contractor demonstrates that it has made all good faith efforts to
23 meet the standards but was unable to comply due to lack of
24 availability of qualified businesses or local hires, the department
25 of labor and industries may certify that the developer complied with
26 that standard;

27 (b) Seventy-five percent of the state sales and use tax deferred,
28 if the department of labor and industries certifies that the eligible
29 investment project complies with (a) of this subsection and
30 compensates workers at prevailing wage rates determined by local
31 collective bargaining as determined by the department of labor and
32 industries; or

33 (c) One hundred percent of the state sales and use tax deferred,
34 if the department of labor and industries certifies that the eligible
35 investment project is developed under a community workforce agreement
36 or project labor agreement.

37 (2) Nothing in this section reduces the amount of local sales and
38 use taxes to be repaid under section 6 of this act. The recipient

1 must repay all local sales and use taxes due under chapters 82.14 and
2 81.104 RCW as provided in section 6 of this act.

3 NEW SECTION. **Sec. 8.** (1) Each recipient of a deferral of taxes
4 granted under this chapter must file a complete annual tax
5 performance report with the department under RCW 82.32.534. Reports
6 must be filed for the first calendar year after the eligible
7 investment project is operationally complete and continue through the
8 end of the calendar year in which the final repayment occurs. If the
9 economic benefits of the deferral are passed to a lessee, as provided
10 in section 2 of this act, the lessee must file a complete annual tax
11 performance report and the applicant is not required to file a
12 complete annual tax performance report.

13 (2) If the eligible investment project is not operationally
14 complete within five calendar years from the issuance of the tax
15 deferral certificate, or if, on the basis of the tax performance
16 report under RCW 82.32.534 or other information, the department finds
17 that an eligible investment project is used for purposes other than
18 those listed in section 1(2) of this act at any time during the
19 calendar year in which the investment is certified by the department
20 as having been operationally completed, or at any time during any of
21 the repayment period, a portion of deferred taxes is immediately due
22 according to the following schedule:

	Year in which use occurs	Percent of deferred taxes due
23		
24		
25	1.....	100
26	2.....	100
27	3.....	100
28	4.....	90
29	5.....	80
30	6.....	70
31	7.....	60
32	8.....	50
33	9.....	40
34	10.....	30
35	11.....	20

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(3) If the economic benefits of a tax deferral under this chapter are passed to a lessee as provided in section 2 of this act, the lessee is responsible for payment to the extent the lessee has received the economic benefit.

NEW SECTION. **Sec. 9.** To the extent not inconsistent with the provisions of this chapter, chapter 82.32 RCW applies to the administration of this chapter.

Sec. 10. RCW 82.08.816 and 2019 c 287 s 11 are each amended to read as follows:

- (1) The tax imposed by RCW 82.08.020 does not apply to:
 - (a) The sale of batteries or fuel cells for electric vehicles, including batteries or fuel cells sold as a component of an electric bus at the time of the vehicle's sale;
 - (b) The sale of or charge made for labor and services rendered in respect to installing, repairing, altering, or improving electric vehicle batteries or fuel cells;
 - (c) The sale of or charge made for labor and services rendered in respect to installing, constructing, repairing, or improving battery or fuel cell electric vehicle infrastructure, including hydrogen fueling stations;
 - (d) The sale of tangible personal property that will become a component of battery or fuel cell electric vehicle infrastructure during the course of installing, constructing, repairing, or improving battery or fuel cell electric vehicle infrastructure; and
 - (e) The sale of zero emissions buses.
- (2) Sellers may make tax exempt sales under this section only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(3) On the last day of January, April, July, and October of each year, the state treasurer, based upon information provided by the department, must transfer from the multimodal transportation account to the general fund a sum equal to the dollar amount that would otherwise have been deposited into the general fund during the prior calendar quarter but for the exemption provided in this section. Information provided by the department to the state treasurer must be

1 based on the best available data, except that the department may
2 provide estimates of taxes exempted under this section until such
3 time as retailers are able to report such exempted amounts on their
4 tax returns.

5 (4) The definitions in this subsection apply throughout this
6 section unless the context clearly requires otherwise.

7 (a) "Battery charging station" means an electrical component
8 assembly or cluster of component assemblies designed specifically to
9 charge batteries within electric vehicles, which meet or exceed any
10 standards, codes, and regulations set forth by chapter 19.28 RCW and
11 consistent with rules adopted under RCW 19.27.540.

12 (b) "Battery exchange station" means a fully automated facility
13 that will enable an electric vehicle with a swappable battery to
14 enter a drive lane and exchange the depleted battery with a fully
15 charged battery through a fully automated process, which meets or
16 exceeds any standards, codes, and regulations set forth by chapter
17 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

18 (c) "Electric vehicle infrastructure" means structures,
19 machinery, and equipment necessary and integral to support a battery
20 or fuel cell electric vehicle, including battery charging stations,
21 rapid charging stations, battery exchange stations, and fueling
22 stations that provide hydrogen for fuel cell electric vehicles (~~(, and~~
23 ~~renewable hydrogen production facilities)~~).

24 (d) "Rapid charging station" means an industrial grade electrical
25 outlet that allows for faster recharging of electric vehicle
26 batteries through higher power levels, which meets or exceeds any
27 standards, codes, and regulations set forth by chapter 19.28 RCW and
28 consistent with rules adopted under RCW 19.27.540.

29 (e) "Renewable hydrogen" means hydrogen produced using renewable
30 resources both as the source for hydrogen and the source for the
31 energy input into the production process.

32 (f) "Renewable resource" means (i) water; (ii) wind; (iii) solar
33 energy; (iv) geothermal energy; (v) renewable natural gas; (vi)
34 renewable hydrogen; (vii) wave, ocean, or tidal power; (viii)
35 biodiesel fuel that is not derived from crops raised on land cleared
36 from old growth or first growth forests; or (ix) biomass energy.

37 (g) "Zero emissions bus" means a bus that emits no exhaust gas
38 from the onboard source of power, other than water vapor.

39 (5) This section expires July 1, 2025.

1 **Sec. 11.** RCW 82.12.816 and 2019 c 287 s 12 are each amended to
2 read as follows:

3 (1) The tax imposed by RCW 82.12.020 does not apply to the use
4 of:

5 (a) Electric vehicle batteries or fuel cells, including batteries
6 or fuel cells sold as a component of an electric bus at the time of
7 the vehicle's sale;

8 (b) Labor and services rendered in respect to installing,
9 repairing, altering, or improving electric vehicle batteries or fuel
10 cells;

11 (c) Tangible personal property that will become a component of
12 battery or fuel cell electric vehicle infrastructure during the
13 course of installing, constructing, repairing, or improving battery
14 or fuel cell electric vehicle infrastructure; and

15 (d) Zero emissions buses.

16 (2) The definitions in this subsection apply throughout this
17 section unless the context clearly requires otherwise.

18 (a) "Battery charging station" means an electrical component
19 assembly or cluster of component assemblies designed specifically to
20 charge batteries within electric vehicles, which meet or exceed any
21 standards, codes, and regulations set forth by chapter 19.28 RCW and
22 consistent with rules adopted under RCW 19.27.540.

23 (b) "Battery exchange station" means a fully automated facility
24 that will enable an electric vehicle with a swappable battery to
25 enter a drive lane and exchange the depleted battery with a fully
26 charged battery through a fully automated process, which meets or
27 exceeds any standards, codes, and regulations set forth by chapter
28 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

29 (c) "Electric vehicle infrastructure" means structures,
30 machinery, and equipment necessary and integral to support a battery
31 or fuel cell electric vehicle, including battery charging stations,
32 rapid charging stations, battery exchange stations, and fueling
33 stations that provide hydrogen for fuel cell electric vehicles(~~(, and~~
34 ~~renewable hydrogen production facilities)~~).

35 (d) "Rapid charging station" means an industrial grade electrical
36 outlet that allows for faster recharging of electric vehicle
37 batteries through higher power levels, which meets or exceeds any
38 standards, codes, and regulations set forth by chapter 19.28 RCW and
39 consistent with rules adopted under RCW 19.27.540.

1 (e) "Renewable hydrogen" means hydrogen produced using renewable
2 resources both as the source for hydrogen and the source for the
3 energy input into the production process.

4 (f) "Renewable resource" means (i) water; (ii) wind; (iii) solar
5 energy; (iv) geothermal energy; (v) renewable natural gas; (vi)
6 renewable hydrogen; (vii) wave, ocean, or tidal power; (viii)
7 biodiesel fuel that is not derived from crops raised on land cleared
8 from old growth or first growth forests; or (ix) biomass energy.

9 (g) "Zero emissions bus" means a bus that emits no exhaust gas
10 from the onboard source of power, other than water vapor.

11 (3) On the last day of January, April, July, and October of each
12 year, the state treasurer, based upon information provided by the
13 department, must transfer from the multimodal transportation account
14 to the general fund a sum equal to the dollar amount that would
15 otherwise have been deposited into the general fund during the prior
16 calendar quarter but for the exemption provided in this section.
17 Information provided by the department to the state treasurer must be
18 based on the best available data, except that the department may
19 provide estimates of taxes exempted under this section until such
20 time as retailers are able to report such exempted amounts on their
21 tax returns.

22 (4) This section expires July 1, 2025.

23 NEW SECTION. **Sec. 12.** The provisions of RCW 82.32.805 and
24 82.32.808 do not apply to this act.

25 NEW SECTION. **Sec. 13.** Sections 1 through 9 of this act
26 constitute a new chapter in Title 82 RCW.

27 NEW SECTION. **Sec. 14.** This act takes effect July 1, 2022.

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