

Chapter 82.90 RCW
TAX DEFERRALS FOR SOLAR CANOPIES

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RCW 82.90.010 Findings—Intent. (1) The legislature finds that while Washington state has significant solar resources and increasing electricity generation from solar installations, these are concentrated in rooftop installations and in utility-scale solar projects on rural lands that could otherwise be devoted to crop lands, grazing lands, or other productive uses. A recent study estimates that in the United States about 51 percent of utility-scale solar facilities are in deserts, 33 percent are on croplands, 10 percent are in grasslands and forests, and only 2.5 percent of solar power comes from urban areas.

(2) The legislature further finds that in urbanized areas the land devoted to transportation, both moving and parking vehicles, is substantial and becomes unavailable for additional uses. Surface parking lots that serve large commercial, industrial, and residential institutional developments present an opportunity for solar power on parking lot canopies to gain added benefits for the use of this land. Solar canopies would significantly contribute to the state's goals of reducing greenhouse gas emissions from the electricity sector and boost overall electricity supplies as the state increases the electrification of transportation and powering and heating buildings. Additionally, solar canopies provide weather protection in summer and winter to both the vehicles under the canopies and people moving from their cars into the buildings served by the parking lot.

(3) The legislature further finds that the initial capital costs of installing solar generation on parking lot canopies will in most cases be fully amortized over time with the power generated and sold into the electricity system, but that initial capital costs may deter incorporation of installations into new projects. For these reasons, the legislature intends to provide for a deferral of state and local sales and use taxes for eligible costs of the construction of a solar canopy at qualifying commercial centers. [2022 c 161 § 1.]

Tax preference performance statement—Automatic tax preference expiration—Exception—2022 c 161: See notes following RCW 82.90.040.

RCW 82.90.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Eligible area" means a qualifying commercial center.

(3) "Eligible investment project" means an investment project that is located, as of the date the application required by RCW 82.90.030 is received by the department, in an eligible area.

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

(i) Construction of the eligible investment project, if the underlying ownership of the building vests exclusively with the person receiving the economic benefit of the deferral;

(ii) Construction of the eligible investment project, if the economic benefits of the deferral are passed to a lessee as provided in RCW 82.90.080; or

(iii) Tenant improvements for the eligible investment project, if the economic benefits of the deferral are passed to a lessee as provided in RCW 82.90.080.

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

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

(5) "Investment project" means an investment in a qualified solar canopy including labor and services rendered in the planning, installation, and construction of the project.

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

(7) "Operationally complete" means the solar canopy has received its final electrical inspection and is connected to the electrical grid.

(8) "Person" has the meaning given in RCW 82.04.030.

(9) "Qualified solar canopy" means construction of a new solar canopy that has an area of at least 50,000 square feet.

(10) "Qualifying commercial center" means a property currently used for retail, industrial, office, or other commercial purposes, containing a parking area or other area dedicated for both vehicle use and placement of a solar canopy.

(11) "Recipient" means a person receiving a tax deferral under this chapter.

(12) (a) "Solar canopy" means an elevated structure, or multiple structures, containing a solar energy system, as defined in RCW 82.16.110, with a nameplate capacity of at least one megawatt of alternating current.

(b) "Solar canopy" includes the solar energy system, power lines, and any equipment required to connect the solar canopy to the electrical grid. [2022 c 161 § 2.]

Tax preference performance statement—Automatic tax preference expiration—Exception—2022 c 161: See notes following RCW 82.90.040.

RCW 82.90.030 Applications. (1) Application for deferral of taxes under this chapter must be made before initiation of the construction of the investment project. The application must be made to the department in a form and manner prescribed by the department. The application must contain information regarding the location of the investment project, estimated or actual costs, time schedules for completion and operation, anticipated nameplate capacity and use of the electricity produced by the solar canopy, and other information required by the department. The department must rule on the application within 60 days. The department must compile this information for use by the joint legislative audit and review committee in its evaluation of the tax preference under section 9, chapter 161, Laws of 2022.

(2) The department may not accept applications for the deferral under this chapter after June 30, 2032. [2022 c 161 § 3.]

Tax preference performance statement—Automatic tax preference expiration—Exception—2022 c 161: See notes following RCW 82.90.040.

RCW 82.90.040 Tax deferral certificates. The department must issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW on each eligible investment project. [2022 c 161 § 4.]

Tax preference performance statement—2022 c 161: "This section is the tax preference performance statement for the sales and use tax deferral program created in sections 4 and 7, chapter 161, Laws of 2022. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(1) The legislature categorizes the tax preference created in this act as one intended to induce certain designated behavior by taxpayers, as indicated in RCW 82.32.808(2)(a).

(2) It is the legislature's specific public policy objective to incentivize the construction of solar canopies in the state of Washington in order to reduce greenhouse gas emissions from the electricity sector and boost overall electricity supplies as the state increases the electrification of transportation and powering and heating buildings.

(3) Pursuant to chapter 43.136 RCW, the joint legislative audit and review committee must review the sales and use tax deferral created in this act by December 31, 2030. The review must specifically evaluate:

(a) The number of solar canopies constructed in the state subject to a sales and use tax deferral under this act;

(b) The average and total electric output of solar canopies subject to a sales and use tax deferral under this act;

(c) The total beneficiary savings from the tax preference created in this act;

(d) The estimated reduction in greenhouse gas emissions resulting from energy produced from solar canopies assuming an equivalent amount of energy would have otherwise been generated through the combustion of fossil fuels; and

(e) Any other metrics the committee finds relevant to the evaluation of the tax preference created in this act in meeting its public policy objective.

(4) In order to obtain the data necessary to perform the review in subsection (3) of this section, the joint legislative audit and review committee shall use information collected, compiled, and provided by the department of revenue. The committee may also contact recipients of the sales and use tax deferral under this act to confirm details of solar canopies." [2022 c 161 § 9.]

Automatic tax preference expiration—Exception—2022 c 161: "The automatic expiration date for tax preferences in RCW 82.32.805 does not apply to this act." [2022 c 161 § 11.]

RCW 82.90.050 Requirements for recipients—Meaningful construction. (1) The recipient of a deferral certificate under RCW 82.90.040 must begin meaningful construction on an eligible investment project within one year of receiving a deferral certificate, unless construction was delayed due to circumstances beyond the recipient's control. Lack of funding is not considered a circumstance beyond the recipient's control.

(2) If the recipient does not begin meaningful construction on an eligible investment project within one year of receiving a deferral certificate, the deferral certificate issued under RCW 82.90.040 is invalid and taxes deferred under this chapter are due immediately.

(3) A recipient of a deferral certificate under RCW 82.90.040 must notify the department and update the information originally provided in the application if the solar canopy, at the time of completion, will produce an amount of electricity that is less than 85 percent of the nameplate capacity originally assumed.

(4) Each recipient of a deferral of taxes under this chapter must file a complete annual tax performance report with the department under RCW 82.32.534 for the year the solar canopy is certified as operationally complete and for the subsequent seven years. If the solar canopy ceases to be connected to the electrical grid, the annual tax performance report is no longer required beginning on the date the solar canopy was disconnected from the electrical grid. [2022 c 161 § 5.]

Tax preference performance statement—Automatic tax preference expiration—Exception—2022 c 161: See notes following RCW 82.90.040.

RCW 82.90.060 Tax reduction—Rules. (1) Except as otherwise provided in this chapter, the recipient of the deferral under this chapter must receive a reduction of the amount of state and local sales and use tax to be repaid under chapter 161, Laws of 2022 as follows:

(a) Fifty percent of the sales and use tax deferred, if the department of labor and industries certifies that the eligible investment 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 eligible

investment project is being constructed. In the event that an eligible investment 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 one or more standards;

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

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

(2) (a) The department of labor and industries must adopt emergency and permanent rules to:

(i) Define and set minimum requirements for all labor standards identified in subsection (1) of this section as well as documentation requirements and a certification process. The certification process and timeline must be designed to prevent undue delay to project development; and

(ii) Set requirements for all good faith efforts under subsection (1) (a) and (b) of this section. Requirements for all good faith efforts must be designed to maximize the likelihood that the project is completed with the standards, and include: Proactive outreach to women, minority, and veteran-owned businesses; advertising in local community publications and publications appropriate to identified firms and with the office of minority and women's business enterprises; participating in community job fairs, conferences, and trade shows; and other measures.

(b) The standards for procurement from and contracts with women or minority-owned businesses under subsection (1) (a) of this section must include a requirement that the recipient of the deferral consult with the office of minority and women's business enterprises to develop a plan to meet the standards or good faith efforts. The requirements for good faith efforts must include the office of minority and women's business enterprises review to determine compliance with the plan.

(c) The labor standard for procurement from and contracts with veteran-owned businesses under subsection (1) (a) of this section must include a requirement that the recipient of the deferral consult with the department of veterans affairs to develop a plan to meet the standards or good faith efforts. The requirements for good faith efforts must include the department of veterans affairs review to determine compliance with the plan.

(d) The department of labor and industries must consult with the office of minority and women's business enterprises, the department of veterans affairs, and the Washington apprenticeship and training council in setting standards and good faith efforts. [2022 c 161 § 6.]

Tax preference performance statement—Automatic tax preference expiration—Exception—2022 c 161: See notes following RCW 82.90.040.

RCW 82.90.070 Repayment schedule—Interest, penalties, and insolvency—Transfer of ownership. (1) Except as otherwise provided in this chapter, the recipient must begin paying the deferred taxes in the second year after the date certified by the department as the date on which the eligible investment project has been operationally completed. The first payment of 12.5 percent of the deferred taxes is due on December 31st of the second calendar year after the certified date, with subsequent annual payments of 12.5 percent of the deferred taxes due on December 31st for each of the following seven years.

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

(3) If the investment project is not operationally complete within two calendar years from the issuance of the tax deferral certificate, or if, on the basis of the tax performance report under RCW 82.32.534 or other information, the department finds that an investment project is not connected to the electrical grid and producing solar energy at any time during the calendar year in which the investment project is certified by the department as having been operationally completed, or at any time during any of the seven succeeding calendar years, a portion of deferred taxes is immediately due according to the following schedule:

Year in which use occurs	Percent of deferred taxes due
1	100
2	100
3	87.5
4	75
5	62.5
6	50
7	37.5
8	25
9	12.5

(4) The department must assess interest at the rate provided for delinquent taxes, but not penalties, retroactively to the date of deferral for a recipient who must repay deferred taxes under this chapter because the department has found that an investment project is not eligible for tax deferral. The debt for deferred taxes is not extinguished by insolvency or other failure of the recipient.

(5) Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral. [2022 c 161 § 7.]

Tax preference performance statement—Automatic tax preference expiration—Exception—2022 c 161: See notes following RCW 82.90.040.

RCW 82.90.080 Conditions for lessors. A lessor or owner of an eligible investment project is not eligible for a deferral under this chapter unless:

(1) The underlying ownership of the qualified solar canopy vests exclusively in the same person; or

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

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

(c) The economic benefit of the deferral passed to the lessee is no less than the amount of tax deferred by the lessor and is evidenced by written documentation of any type of payment, credit, or other financial arrangement between the lessor or owner of the eligible investment project and the lessee. [2023 c 374 § 20; 2022 c 161 § 8.]

Tax preference performance statement—Automatic tax preference expiration—Exception—2022 c 161: See notes following RCW 82.90.040.

RCW 82.90.900 Effective date—2022 c 161. This act takes effect July 1, 2022. [2022 c 161 § 12.]