

CERTIFICATION OF ENROLLMENT

SECOND SUBSTITUTE HOUSE BILL 1240

Chapter 261, Laws of 2003

58th Legislature
2003 Regular Session

BIODIESEL--TAX INCENTIVES

EFFECTIVE DATE: 7/1/03 - Except sections 1 through 8, which
become effective 7/1/04

Passed by the House April 23, 2003
Yeas 97 Nays 1

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 9, 2003
Yeas 41 Nays 4

BRAD OWEN

President of the Senate

Approved May 14, 2003.

GARY F. LOCKE

Governor of the State of Washington

CERTIFICATE

I, Cynthia Zehnder, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE HOUSE BILL 1240** as passed by the House of Representatives and the Senate on the dates hereon set forth.

CYNTHIA ZEHNDER

Chief Clerk

FILED

May 14, 2003 - 10:14 a.m.

**Secretary of State
State of Washington**

SECOND SUBSTITUTE HOUSE BILL 1240

AS AMENDED BY THE SENATE

Passed Legislature - 2003 Regular Session

State of Washington 58th Legislature 2003 Regular Session

By House Committee on Finance (originally sponsored by
Representatives Sullivan, Crouse, Wood, Morris, Grant, Schoesler,
Quall, Ruderman and Schindler)

READ FIRST TIME 03/04/03.

1 AN ACT Relating to tax incentives for biodiesel and alcohol fuel
2 production; amending RCW 82.29A.135 and 82.04.260; adding a new section
3 to chapter 84.36 RCW; adding a new chapter to Title 82 RCW; creating a
4 new section; providing effective dates; providing a contingent
5 effective date; providing expiration dates; and declaring an emergency.

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

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

10 (1) "Alcohol fuel" has the same meaning as provided in RCW
11 82.29A.135.

12 (2) "Applicant" means a person applying for a tax deferral under
13 this chapter.

14 (3) "Biodiesel feedstock" means oil that is produced from an
15 agricultural crop for the sole purpose of ultimately producing
16 biodiesel fuel.

17 (4) "Biodiesel fuel" means a mono alkyl ester of long chain fatty
18 acids derived from vegetable oils or animal fats for use in

1 compression-ignition engines and that meets the requirements of the
2 American society of testing and materials specification D 6751 in
3 effect as of January 1, 2003.

4 (5) "Department" means the department of revenue.

5 (6) "Eligible area" means a county with fewer than one hundred
6 persons per square mile as determined annually by the office of
7 financial management and published by the department effective for the
8 period July 1st through June 30th, or a county that has a population of
9 less than two hundred twenty-five thousand as determined by the office
10 of financial management and has an area greater than two hundred
11 twenty-five square miles.

12 (7)(a) "Eligible investment project" means an investment project in
13 an eligible area.

14 (b) The lessor or owner of a qualified building is not eligible for
15 a deferral unless the underlying ownership of the buildings, machinery,
16 and equipment vests exclusively in the same person, or unless the
17 lessor by written contract agrees to pass the economic benefit of the
18 deferral to the lessee in the form of reduced rent payments.

19 (c) "Eligible investment project" does not include any portion of
20 an investment project undertaken by a light and power business as
21 defined in RCW 82.16.010(5), other than that portion of a cogeneration
22 project that is used to generate power for consumption within the
23 manufacturing site of which the cogeneration project is an integral
24 part, or investment projects which have already received deferrals
25 under this chapter.

26 (8) "Investment project" means an investment in qualified buildings
27 or qualified machinery and equipment, including labor and services
28 rendered in the planning, installation, and construction of the
29 project.

30 (9) "Manufacturing" means the same as defined in RCW 82.04.120.
31 "Manufacturing" also includes computer programming, the production of
32 computer software, and other computer-related services, and the
33 activities performed by research and development laboratories and
34 commercial testing laboratories.

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

36 (11) "Qualified buildings" means construction of new structures,
37 and expansion or renovation of existing structures for the purpose of
38 increasing floor space or production capacity used for manufacturing

1 and research and development activities, including plant offices and
2 warehouses or other facilities for the storage of raw material or
3 finished goods if such facilities are an essential or an integral part
4 of a factory, mill, plant, or laboratory used for manufacturing or
5 research and development. If a building is used partly for
6 manufacturing or research and development and partly for other
7 purposes, the applicable tax deferral shall be determined by
8 apportionment of the costs of construction under rules adopted by the
9 department.

10 (12) "Qualified machinery and equipment" means all new industrial
11 and research fixtures, equipment, and support facilities that are an
12 integral and necessary part of a manufacturing or research and
13 development operation. "Qualified machinery and equipment" includes:
14 Computers; software; data processing equipment; laboratory equipment;
15 manufacturing components such as belts, pulleys, shafts, and moving
16 parts; molds, tools, and dies; operating structures; and all equipment
17 used to control or operate the machinery.

18 (13) "Recipient" means a person receiving a tax deferral under this
19 chapter.

20 (14) "Research and development" means the development, refinement,
21 testing, marketing, and commercialization of a product, service, or
22 process before commercial sales have begun. As used in this
23 subsection, "commercial sales" excludes sales of prototypes or sales
24 for market testing if the total gross receipts from such sales of the
25 product, service, or process do not exceed one million dollars.

26 NEW SECTION. **Sec. 2.** (1) Application for deferral of taxes under
27 this chapter must be made before initiation of the construction of the
28 investment project or acquisition of equipment or machinery. The
29 application shall be made to the department in a form and manner
30 prescribed by the department. The application shall contain
31 information regarding the location of the investment project, the
32 applicant's average employment in the state for the prior year,
33 estimated or actual new employment related to the project, estimated or
34 actual wages of employees related to the project, estimated or actual
35 costs, time schedules for completion and operation, and other
36 information required by the department.

1 (2) The department shall rule on the application within sixty days.
2 The department shall keep a running total of all deferrals granted
3 under this chapter during each fiscal biennium.

4 NEW SECTION. **Sec. 3.** (1) The department shall issue a sales and
5 use tax deferral certificate for state and local sales and use taxes
6 due under chapters 82.08, 82.12, and 82.14 RCW on each eligible
7 investment project that is located in an eligible area as defined in
8 section 1 of this act, if the investment project is undertaken for the
9 purpose of manufacturing biodiesel, biodiesel feedstock, or alcohol
10 fuel.

11 (2) This section expires July 1, 2009.

12 NEW SECTION. **Sec. 4.** (1) For the purposes of this section:

13 (a) "Eligible area" means a designated community empowerment zone
14 approved under RCW 43.31C.020 or a county containing a community
15 empowerment zone.

16 (b) "Eligible investment project" means an investment project
17 undertaken for the purpose of manufacturing biodiesel, biodiesel
18 feedstock, or alcohol fuel that is located in an eligible area.

19 (c) "Qualified employment position" means a permanent full-time
20 employee employed in the eligible investment project during the entire
21 year.

22 (2) In addition to the provisions of section 3 of this act, the
23 department shall issue a sales and use tax deferral certificate for
24 state and local sales and use taxes due under chapters 82.08, 82.12,
25 and 82.14 RCW, on each eligible investment project that is located in
26 an eligible area, if the applicant establishes that at the time the
27 project is operationally complete:

28 (a) The applicant will hire at least one qualified employment
29 position for each seven hundred fifty thousand dollars of investment on
30 which a deferral is requested; and

31 (b) The positions will be filled by persons who at the time of hire
32 are residents of the community empowerment zone. As used in this
33 subsection, "resident" means the person makes his or her home in the
34 community empowerment zone. A mailing address alone is insufficient to
35 establish that a person is a resident for the purposes of this section.

1 The persons must be hired after the date the application is filed with
2 the department.

3 (3) All other provisions and eligibility requirements of this
4 chapter apply to applicants eligible under this section.

5 (4) The qualified employment position must be filled by the end of
6 the calendar year following the year in which the project is certified
7 as operationally complete. If a person does not meet the requirements
8 for qualified employment positions by the end of the second calendar
9 year following the year in which the project is certified as
10 operationally complete, all deferred taxes are immediately due.

11 NEW SECTION. **Sec. 5.** (1) Each recipient of a deferral granted
12 under this chapter after June 30, 2003, shall submit a report to the
13 department on December 31st of the year in which the investment project
14 is certified by the department as having been operationally completed,
15 and on December 31st of each of the seven succeeding calendar years.
16 The report shall contain information, as required by the department,
17 from which the department may determine whether the recipient is
18 meeting the requirements of this chapter. If the recipient fails to
19 submit a report or submits an inadequate report, the department may
20 declare the amount of deferred taxes outstanding to be immediately
21 assessed and payable.

22 (2) If, on the basis of a report under this section or other
23 information, the department finds that an investment project is not
24 eligible for tax deferral under this chapter, the amount of deferred
25 taxes outstanding for the project are immediately due. For any taxes
26 that are due, penalties and interest applicable to delinquent excise
27 taxes shall be assessed and imposed for delinquent payments under this
28 chapter. The debt for deferred taxes will not be extinguished by
29 insolvency or other failure of the recipient. Transfer of ownership
30 does not terminate the deferral. The deferral is transferred, subject
31 to the successor meeting the eligibility requirements of this chapter,
32 for the remaining periods of the deferral.

33 (3) Deferred taxes need not be repaid if the department determines,
34 in accordance with the provisions of subsection (1) of this section,
35 that the recipient has met the requirements of this chapter for the
36 seven calendar years following the certification by the department that
37 the investment project has been operationally completed.

1 NEW SECTION. **Sec. 6.** The employment security department shall
2 make, and certify to the department of revenue, all determinations of
3 employment and wages as requested by the department under this chapter.

4 NEW SECTION. **Sec. 7.** Chapter 82.32 RCW applies to the
5 administration of this chapter.

6 NEW SECTION. **Sec. 8.** Applications, reports, and any other
7 information received by the department under this chapter shall not be
8 confidential and shall be subject to disclosure.

9 NEW SECTION. **Sec. 9.** A new section is added to chapter 84.36 RCW
10 to read as follows:

11 (1) For the purposes of this section:

12 (a) "Alcohol fuel" means any alcohol made from a product other than
13 petroleum or natural gas, which is used alone or in combination with
14 gasoline or other petroleum products for use as a fuel for motor
15 vehicles, farm implements, and machines or implements of husbandry.

16 (b) "Biodiesel feedstock" means oil that is produced from an
17 agricultural crop for the sole purpose of ultimately producing
18 biodiesel fuel.

19 (c) "Biodiesel fuel" means a mono alkyl ester of long chain fatty
20 acids derived from vegetable oils or animal fats for use in
21 compression-ignition engines and that meets the requirements of the
22 American Society of Testing and Materials specification D 6751 in
23 effect as of January 1, 2003.

24 (2)(a) All buildings, machinery, equipment, and other personal
25 property which is used primarily for the manufacturing of alcohol fuel,
26 biodiesel fuel, or biodiesel feedstock, the land upon which this
27 property is located, and land that is reasonably necessary in the
28 manufacturing of alcohol fuel, biodiesel fuel, or biodiesel feedstock,
29 but not land necessary for growing of crops, which together comprise a
30 new manufacturing facility or an addition to an existing manufacturing
31 facility, are exempt from property taxation for the six assessment
32 years following the date on which the facility or the addition to the
33 existing facility becomes operational.

34 (b) For manufacturing facilities which produce products in addition
35 to alcohol fuel, biodiesel fuel, or biodiesel feedstock, the amount of

1 the property tax exemption shall be based upon the annual percentage of
2 the total value of all products manufactured that is the value of the
3 alcohol fuel, biodiesel fuel, and biodiesel feedstock manufactured.

4 (3) Claims for exemptions authorized by this section shall be filed
5 with the county assessor on forms prescribed by the department of
6 revenue and furnished by the assessor. Once filed, the exemption is
7 valid for six years and shall not be renewed. The assessor shall
8 verify and approve claims as the assessor determines to be justified
9 and in accordance with this section. No claims may be filed after
10 December 31, 2009.

11 The department of revenue may promulgate such rules, pursuant to
12 chapter 34.05 RCW, as necessary to properly administer this section.

13 **Sec. 10.** RCW 82.29A.135 and 1985 c 371 s 3 are each amended to
14 read as follows:

15 (1) For the purposes of this section(~~(7)~~):

16 (a) "Alcohol fuel" means any alcohol made from a product other than
17 petroleum or natural gas, which is used alone or in combination with
18 gasoline or other petroleum products for use as a fuel for motor
19 vehicles, farm implements, and machines or implements of husbandry.

20 (b) "Biodiesel feedstock" means oil that is produced from an
21 agricultural crop for the sole purpose of ultimately producing
22 biodiesel fuel.

23 (c) "Biodiesel fuel" means a mono alkyl ester of long chain fatty
24 acids derived from vegetable oils or animal fats for use in
25 compression-ignition engines and that meets the requirements of the
26 American Society of Testing and Materials specification D 6751 in
27 effect as of January 1, 2003.

28 (2)(a) All leasehold interests in buildings, machinery, equipment,
29 and other personal property which is used primarily for the
30 manufacturing of alcohol fuel, biodiesel fuel, or biodiesel feedstock,
31 the land upon which (~~such~~) this property is located, and land that is
32 reasonably necessary in the manufacturing of alcohol fuel, biodiesel
33 fuel, or biodiesel feedstock, but not land necessary for growing of
34 crops, which together comprise a new (~~alcohol~~) manufacturing facility
35 or an addition to an existing (~~alcohol~~) manufacturing facility, are
36 exempt from leasehold taxes for a period of six years from the date on

1 which the facility or the addition to the existing facility becomes
2 operational.

3 (b) For ~~((alcohol))~~ manufacturing facilities which produce
4 ~~((alcohol for use as))~~ products in addition to alcohol fuel ~~((and~~
5 ~~alcohol used for other purposes))~~, biodiesel fuel, or biodiesel
6 feedstock, the amount of the leasehold tax exemption shall be based
7 upon ~~((an annually determined percentage of the total gallons of~~
8 ~~alcohol produced that is sold and used as alcohol fuel))~~ the annual
9 percentage of the total value of all products manufactured that is the
10 value of the alcohol fuel, biodiesel fuel, and biodiesel feedstock
11 manufactured.

12 (3) Claims for exemptions authorized by this section shall be filed
13 with the department of revenue on forms prescribed by the department of
14 revenue and furnished by the department of revenue. Once filed, the
15 exemption is valid for six years and shall not be renewed. The
16 department of revenue shall verify and approve ~~((such))~~ claims as the
17 department of revenue determines to be justified and in accordance with
18 this section. No claims may be filed after December 31, ~~((1992))~~ 2009.

19 The department of revenue may promulgate such rules, pursuant to
20 chapter 34.05 RCW, as are necessary to properly administer this
21 section.

22 **Sec. 11.** RCW 82.04.260 and 2001 2nd sp.s. c 25 s 2 are each
23 amended to read as follows:

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

26 (a) Wheat into flour, barley into pearl barley, soybeans into
27 soybean oil, canola into canola oil, canola meal, or canola byproducts,
28 or sunflower seeds into sunflower oil; as to such persons the amount of
29 tax with respect to such business shall be equal to the value of the
30 flour, pearl barley, oil, canola meal, or canola byproduct
31 manufactured, multiplied by the rate of 0.138 percent;

32 (b) Seafood products which remain in a raw, raw frozen, or raw
33 salted state at the completion of the manufacturing by that person; as
34 to such persons the amount of tax with respect to such business shall
35 be equal to the value of the products manufactured, multiplied by the
36 rate of 0.138 percent;

1 (c) By canning, preserving, freezing, processing, or dehydrating
2 fresh fruits and vegetables, or selling at wholesale fresh fruits and
3 vegetables canned, preserved, frozen, processed, or dehydrated by the
4 seller and sold to purchasers who transport in the ordinary course of
5 business the goods out of this state; as to such persons the amount of
6 tax with respect to such business shall be equal to the value of the
7 products canned, preserved, frozen, processed, or dehydrated multiplied
8 by the rate of 0.138 percent. As proof of sale to a person who
9 transports in the ordinary course of business goods out of this state,
10 the seller shall annually provide a statement in a form prescribed by
11 the department and retain the statement as a business record; (~~and~~)

12 (d) Dairy products that as of September 20, 2001, are identified in
13 21 C.F.R., chapter 1, parts 131, 133, and 135, including byproducts
14 from the manufacturing of the dairy products such as whey and casein;
15 or selling the same to purchasers who transport in the ordinary course
16 of business the goods out of state; as to such persons the tax imposed
17 shall be equal to the value of the products manufactured multiplied by
18 the rate of 0.138 percent. As proof of sale to a person who transports
19 in the ordinary course of business goods out of this state, the seller
20 shall annually provide a statement in a form prescribed by the
21 department and retain the statement as a business record; and

22 (e) Alcohol fuel, biodiesel fuel, or biodiesel feedstock, as those
23 terms are defined in RCW 82.29A.135; as to such persons the amount of
24 tax with respect to the business shall be equal to the value of alcohol
25 fuel, biodiesel fuel, or biodiesel feedstock manufactured, multiplied
26 by the rate of 0.138 percent. This subsection (1)(e) expires July 1,
27 2009.

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 shall be equal to the value of the
31 peas 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 shall be equal to the gross income derived from such
36 activities 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 shall be equal to the gross proceeds derived
3 from such sales multiplied by the rate of 0.138 percent.

4 (5) Upon every person engaging within this state in the business of
5 making sales, at retail or wholesale, of nuclear fuel assemblies
6 manufactured by that person, as to such persons the amount of tax with
7 respect to such business shall be equal to the gross proceeds of sales
8 of the assemblies multiplied by the rate of 0.275 percent.

9 (6) Upon every person engaging within this state in the business of
10 manufacturing nuclear fuel assemblies, as to such persons the amount of
11 tax with respect to such business shall be equal to the value of the
12 products manufactured multiplied by the rate of 0.275 percent.

13 (7) Upon every person engaging within this state in the business of
14 acting as a travel agent or tour operator; as to such persons the
15 amount of the tax with respect to such activities shall be equal to the
16 gross income derived from such activities multiplied by the rate of
17 0.275 percent.

18 (8) Upon every person engaging within this state in business as an
19 international steamship agent, international customs house broker,
20 international freight forwarder, vessel and/or cargo charter broker in
21 foreign commerce, and/or international air cargo agent; as to such
22 persons the amount of the tax with respect to only international
23 activities shall be equal to the gross income derived from such
24 activities multiplied by the rate of 0.275 percent.

25 (9) Upon every person engaging within this state in the business of
26 stevedoring and associated activities pertinent to the movement of
27 goods and commodities in waterborne interstate or foreign commerce; as
28 to such persons the amount of tax with respect to such business shall
29 be equal to the gross proceeds derived from such activities multiplied
30 by the rate of 0.275 percent. Persons subject to taxation under this
31 subsection shall be exempt from payment of taxes imposed by chapter
32 82.16 RCW for that portion of their business subject to taxation under
33 this subsection. Stevedoring and associated activities pertinent to
34 the conduct of goods and commodities in waterborne interstate or
35 foreign commerce are defined as all activities of a labor, service or
36 transportation nature whereby cargo may be loaded or unloaded to or
37 from vessels or barges, passing over, onto or under a wharf, pier, or
38 similar structure; cargo may be moved to a warehouse or similar holding

1 or storage yard or area to await further movement in import or export
2 or may move to a consolidation freight station and be stuffed,
3 unstuffed, containerized, separated or otherwise segregated or
4 aggregated for delivery or loaded on any mode of transportation for
5 delivery to its consignee. Specific activities included in this
6 definition are: Wharfage, handling, loading, unloading, moving of
7 cargo to a convenient place of delivery to the consignee or a
8 convenient place for further movement to export mode; documentation
9 services in connection with the receipt, delivery, checking, care,
10 custody and control of cargo required in the transfer of cargo;
11 imported automobile handling prior to delivery to consignee; terminal
12 stevedoring and incidental vessel services, including but not limited
13 to plugging and unplugging refrigerator service to containers,
14 trailers, and other refrigerated cargo receptacles, and securing ship
15 hatch covers.

16 (10) Upon every person engaging within this state in the business
17 of disposing of low-level waste, as defined in RCW 43.145.010; as to
18 such persons the amount of the tax with respect to such business shall
19 be equal to the gross income of the business, excluding any fees
20 imposed under chapter 43.200 RCW, multiplied by the rate of 3.3
21 percent.

22 If the gross income of the taxpayer is attributable to activities
23 both within and without this state, the gross income attributable to
24 this state shall be determined in accordance with the methods of
25 apportionment required under RCW 82.04.460.

26 (11) Upon every person engaging within this state as an insurance
27 agent, insurance broker, or insurance solicitor licensed under chapter
28 48.17 RCW; as to such persons, the amount of the tax with respect to
29 such licensed activities shall be equal to the gross income of such
30 business multiplied by the rate of 0.484 percent.

31 (12) Upon every person engaging within this state in business as a
32 hospital, as defined in chapter 70.41 RCW, that is operated as a
33 nonprofit corporation or by the state or any of its political
34 subdivisions, as to such persons, the amount of tax with respect to
35 such activities shall be equal to the gross income of the business
36 multiplied by the rate of 0.75 percent through June 30, 1995, and 1.5
37 percent thereafter. The moneys collected under this subsection shall

1 be deposited in the health services account created under RCW
2 43.72.900.

3 NEW SECTION. **Sec. 12.** Section 9 of this act applies to taxes
4 levied for collection in 2004 and thereafter.

5 NEW SECTION. **Sec. 13.** (1) Sections 9 through 15 of this act are
6 necessary for the immediate preservation of the public peace, health,
7 or safety, or support of state government and its existing public
8 institutions, and take effect July 1, 2003.

9 (2) Sections 1 through 8 of this act take effect July 1, 2004.

10 NEW SECTION. **Sec. 14.** Sections 1 through 8 of this act are null
11 and void if the legislature passes and the governor signs any bill into
12 law before July 1, 2004, that extends the termination date in RCW
13 82.60.050.

14 NEW SECTION. **Sec. 15.** Sections 1 through 8, 13, and 14 of this
15 act constitute a new chapter in Title 82 RCW.

Passed by the House April 23, 2003.

Passed by the Senate April 9, 2003.

Approved by the Governor May 14, 2003.

Filed in Office of Secretary of State May 14, 2003.