
SECOND SUBSTITUTE SENATE BILL 5111

State of Washington

59th Legislature

2005 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Morton, Poulsen, Parlette, Roach, Schmidt, Oke, Hewitt, Zarelli, Finkbeiner, Stevens, Swecker, Deccio, Honeyford, Mulliken, Kline and Sheldon)

READ FIRST TIME 03/08/05.

1 AN ACT Relating to providing incentives to support the renewable
2 energy industry in Washington state; reenacting and amending RCW
3 82.04.440; adding new sections to chapter 82.04 RCW; adding a new
4 section to chapter 82.08 RCW; adding a new section to chapter 82.12
5 RCW; adding a new section to chapter 84.36 RCW; adding a new section to
6 chapter 82.32 RCW; creating a new section; providing an effective date;
7 providing expiration dates; and declaring an emergency.

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

9 NEW SECTION. **Sec. 1.** The legislature finds that the welfare of
10 the people of the state of Washington is positively impacted through
11 the encouragement and expansion of key growth industries in the state.
12 The legislature further finds that targeting tax incentives to focus on
13 key growth industries is an important strategy to enhance the state's
14 business climate.

15 A recent report by the Washington State University energy program
16 recognized the solar electric industry as one of the state's important
17 growth industries. It is of great concern that businesses in this
18 industry have been increasingly expanding and relocating their

1 operations elsewhere. The report indicates that additional incentives
2 for the solar electric industry are needed in recognition of the unique
3 forces and issues involved in business decisions in this industry.

4 Therefore, the legislature intends to enact comprehensive tax
5 incentives for the solar electric industry that address activities of
6 the manufacture of these products and to encourage these industries to
7 locate in Washington. Tax incentives for the solar electric industry
8 are important in both retention and expansion of existing business and
9 attraction of new businesses, all of which will strengthen this growth
10 industry within our state, will create jobs, and will bring many
11 indirect benefits to the state.

12 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.04 RCW
13 to read as follows:

14 (1) Upon every person engaging within this state in the business of
15 manufacturing solar energy systems using photovoltaic modules; as to
16 such persons the amount of tax with respect to such business shall, in
17 the case of manufacturers, be equal to the value of the product
18 manufactured, or in the case of processors for hire, be equal to the
19 gross income of the business, multiplied by the rate of 0.138 percent.

20 (2) Upon every person engaging within this state in the business of
21 making sales at wholesale of solar energy systems using photovoltaic
22 modules manufactured by that person; as to such persons the amount of
23 tax with respect to such business shall be equal to the gross proceeds
24 of sales of the solar energy systems using photovoltaic modules
25 multiplied by the rate of 0.138 percent.

26 (3) The definitions in this subsection apply throughout this
27 section.

28 (a) "Module" means the smallest nondivisible self-contained
29 physical structure housing interconnected photovoltaic cells and
30 providing a single direct current electrical output.

31 (b) "Photovoltaic cell" means a device that converts light directly
32 into electricity without moving parts.

33 (c) "Solar energy system" means any device or combination of
34 devices or elements that rely upon direct sunlight as an energy source
35 for use in the generation of electricity.

36 (4) This section expires June 30, 2014.

1 **Sec. 3.** RCW 82.04.440 and 2004 c 174 s 5 and 2004 c 24 s 7 are
2 each reenacted and amended to read as follows:

3 (1) Every person engaged in activities which are within the purview
4 of the provisions of two or more of sections RCW 82.04.230 to
5 82.04.298, inclusive, shall be taxable under each paragraph applicable
6 to the activities engaged in.

7 (2) Persons taxable under RCW 82.04.2909(2), 82.04.250, 82.04.270,
8 section 2(2) of this act, or 82.04.260 (4) or (13) with respect to
9 selling products in this state shall be allowed a credit against those
10 taxes for any (a) manufacturing taxes paid with respect to the
11 manufacturing of products so sold in this state, and/or (b) extracting
12 taxes paid with respect to the extracting of products so sold in this
13 state or ingredients of products so sold in this state. Extracting
14 taxes taken as credit under subsection (3) of this section may also be
15 taken under this subsection, if otherwise allowable under this
16 subsection. The amount of the credit shall not exceed the tax
17 liability arising under this chapter with respect to the sale of those
18 products.

19 (3) Persons taxable under RCW 82.04.240 or 82.04.260(1)(b) shall be
20 allowed a credit against those taxes for any extracting taxes paid with
21 respect to extracting the ingredients of the products so manufactured
22 in this state. The amount of the credit shall not exceed the tax
23 liability arising under this chapter with respect to the manufacturing
24 of those products.

25 (4) Persons taxable under RCW 82.04.230, 82.04.240, 82.04.2909(1),
26 section 2(1) of this act, or 82.04.260 (1), (2), (4), (6), or (13) with
27 respect to extracting or manufacturing products in this state shall be
28 allowed a credit against those taxes for any (i) gross receipts taxes
29 paid to another state with respect to the sales of the products so
30 extracted or manufactured in this state, (ii) manufacturing taxes paid
31 with respect to the manufacturing of products using ingredients so
32 extracted in this state, or (iii) manufacturing taxes paid with respect
33 to manufacturing activities completed in another state for products so
34 manufactured in this state. The amount of the credit shall not exceed
35 the tax liability arising under this chapter with respect to the
36 extraction or manufacturing of those products.

37 (5) For the purpose of this section:

38 (a) "Gross receipts tax" means a tax:

1 (i) Which is imposed on or measured by the gross volume of
2 business, in terms of gross receipts or in other terms, and in the
3 determination of which the deductions allowed would not constitute the
4 tax an income tax or value added tax; and

5 (ii) Which is also not, pursuant to law or custom, separately
6 stated from the sales price.

7 (b) "State" means (i) the state of Washington, (ii) a state of the
8 United States other than Washington, or any political subdivision of
9 such other state, (iii) the District of Columbia, and (iv) any foreign
10 country or political subdivision thereof.

11 (c) "Manufacturing tax" means a gross receipts tax imposed on the
12 act or privilege of engaging in business as a manufacturer, and
13 includes (i) the taxes imposed in RCW 82.04.240, 82.04.2909(1), (~~and~~)
14 82.04.260 (1), (2), (4), and (13), and section 2(1) of this act; and
15 (ii) similar gross receipts taxes paid to other states.

16 (d) "Extracting tax" means a gross receipts tax imposed on the act
17 or privilege of engaging in business as an extractor, and includes the
18 tax imposed in RCW 82.04.230 and similar gross receipts taxes paid to
19 other states.

20 (e) "Business", "manufacturer", "extractor", and other terms used
21 in this section have the meanings given in RCW 82.04.020 through
22 82.04.212, notwithstanding the use of those terms in the context of
23 describing taxes imposed by other states.

24 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.08 RCW
25 to read as follows:

26 (1) The tax levied by RCW 82.08.020 shall not apply to charges made
27 for labor and services rendered in respect to the constructing of
28 investment projects, and tangible personal property that will be
29 incorporated as an ingredient or component of investment projects
30 during the course of constructing, used for the manufacture of solar
31 energy systems using photovoltaic modules into a solar energy system
32 located in a rural county. The exemption is available only when the
33 buyer provides the seller with an exemption certificate in a form and
34 manner prescribed by the department. The seller shall retain a copy of
35 the certificate for the seller's files.

36 (2) To be eligible under this section the person must use the
37 investment project for the manufacturing of solar energy systems using

1 photovoltaic modules into a solar energy system for an eight-year
2 period, such period beginning the day the investment project commences
3 commercial production, or a portion of tax otherwise due shall be
4 immediately due and payable pursuant to subsection (3) of this section:

5 (a) Before commencing commercial production at the investment
6 project, the person must meet with the department to determine the date
7 on which commercial production commences. This date shall be used
8 throughout the eight-year period to determine whether any tax is to be
9 repaid. This information is not subject to the confidentiality
10 provisions of RCW 82.32.330.

11 (b) No application is necessary for the tax exemption. The person
12 is subject to all the requirements of chapter 82.32 RCW. A person
13 taking the exemption under this section must report as required under
14 section 8 of this act.

15 (3) If the investment project is not used for manufacturing solar
16 energy systems using photovoltaic modules for any one calendar year,
17 one-eighth of the exempt sales and use taxes shall be due and payable
18 by April 1st of the following year. The department shall assess
19 interest, but not penalties, on the taxes for which the person is not
20 eligible. The interest shall be assessed at the rate provided for
21 delinquent excise taxes under this chapter, retroactively to the date
22 the exemption was claimed, and shall accrue until the taxes for which
23 the exemption was claimed are repaid.

24 (4) The definitions in this subsection apply throughout this
25 section.

26 (a) "Commencement of commercial production" is deemed to have
27 occurred when the equipment and process qualifications in the
28 investment project are completed and production for sale has begun.

29 (b) "Investment project" means an investment in qualified buildings
30 or qualified machinery and equipment, including labor and services
31 rendered in the planning, installation, and construction of the
32 project. An investment project does not include any portion of an
33 investment project undertaken by a light and power business as defined
34 in RCW 82.16.010(5), other than that portion of a cogeneration project
35 that is used to generate power for consumption within the manufacturing
36 site of which the cogeneration project is an integral part.

37 (c) "Manufacturing" means the same as defined in RCW 82.04.120.

1 (d) "Qualified buildings" means construction of new structures
2 including parking facilities, and expansion or renovation of existing
3 structures, for the purpose of increasing floor space or production
4 capacity used for manufacturing, including plant offices and warehouses
5 or other facilities for the storage of raw material or finished goods
6 if such facilities are an essential or an integral part of a factory,
7 mill, or plant, used for manufacturing. If a building is used partly
8 for manufacturing and partly for other purposes, the applicable tax
9 exemption shall be determined by apportionment of the costs of
10 construction under rules adopted by the department.

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

17 (f) "Rural county" means a county with a population density of
18 fewer than four persons per square mile.

19 (g) "Solar energy system" has the same meaning as provided in
20 section 2 of this act.

21 (5) No exemption may be taken after June 30, 2014, however all of
22 the eligibility criteria and limitations are applicable to any
23 exemptions claimed before that date.

24 (6) This section expires June 30, 2014.

25 NEW SECTION. **Sec. 5.** A new section is added to chapter 82.12 RCW
26 to read as follows:

27 (1) The provisions of this chapter do not apply with respect to the
28 use of tangible personal property that will be incorporated as an
29 ingredient or component of investment projects used for the manufacture
30 of solar energy systems using photovoltaic modules into a solar energy
31 system located in a rural county, as defined in section 4 of this act,
32 during the course of constructing such investment projects or to labor
33 and services rendered in respect to installing, during the course of
34 constructing, building fixtures not otherwise eligible for the
35 exemption under RCW 82.08.02565(2)(b).

36 (2) The eligibility requirements, conditions, and definitions in
37 section 4 of this act apply to this section.

1 (3) No exemption may be taken after June 30, 2014, however all of
2 the eligibility criteria and limitations are applicable to any
3 exemptions claimed before that date.

4 (4) This section expires June 30, 2014.

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

7 (1) Subject to the limits and provisions of this section, a credit
8 is authorized against the tax otherwise due under section 2 of this act
9 for each full-time employment position created by persons engaged in
10 the business of manufacturing solar energy systems using photovoltaic
11 modules into a solar energy system. For the purposes of this section
12 "solar energy system" has the same meaning as provided in section 2 of
13 this act.

14 (2)(a) The credit under this section shall equal three thousand
15 dollars for each full-time employment position used in manufacturing
16 process that takes place in investment projects exempt from sales and
17 use tax under sections 4 and 5 of this act. A credit is earned for the
18 calendar year a person fills a position. Additionally a credit is
19 earned for each year the position is maintained over the subsequent
20 consecutive years, up to eight years. Those positions that are not
21 filled for the entire year are eligible for fifty percent of the credit
22 if filled less than six months, and the entire credit if filled six
23 months or more.

24 (b) To qualify for the credit, the manufacturing activity of the
25 person must be conducted at an investment project that qualifies for
26 the exemption from sales and use tax under sections 4 and 5 of this
27 act.

28 (3) No application is necessary for the tax credit. The person is
29 subject to all of the requirements of chapter 82.32 RCW. In no case
30 may a credit earned during one calendar year be carried over to be
31 credited against taxes incurred in a subsequent calendar year. No
32 refunds may be granted for credits under this section.

33 (4) If at any time the department finds that a person is not
34 eligible for tax credit under this section, the amount of taxes for
35 which a credit has been claimed shall be immediately due. The
36 department shall assess interest, but not penalties, on the taxes for
37 which the person is not eligible. The interest shall be assessed at

1 the rate provided for delinquent excise taxes under chapter 82.32 RCW,
2 shall be retroactive to the date the tax credit was taken, and shall
3 accrue until the taxes for which a credit has been used are repaid.

4 (5) A person taking the credit under this section must report under
5 section 8 of this act.

6 (6) Credits may be taken after July 1, 2005, for those investment
7 projects at which commercial production began before June 30, 2014,
8 subject to all of the eligibility criteria and limitations of this
9 section.

10 (7) This section expires June 30, 2014.

11 NEW SECTION. **Sec. 7.** A new section is added to chapter 84.36 RCW
12 to read as follows:

13 (1) Machinery and equipment exempt under RCW 82.08.02565 or
14 82.12.02565 used exclusively in the manufacture of solar energy systems
15 using photovoltaic modules into a solar energy system at an investment
16 project exempt from sales and use tax under sections 4 and 5 of this
17 act are exempt from property taxation. "Solar energy system" has the
18 same meaning as provided in section 2 of this act.

19 (2) A person seeking this exemption must make application to the
20 county assessor, on forms prescribed by the department.

21 (3) This section is effective for taxes levied for collection one
22 year after the effective date of this section and thereafter.

23 (4) This section expires December 31, 2014, for taxes levied for
24 collection in the following year.

25 NEW SECTION. **Sec. 8.** A new section is added to chapter 82.32 RCW
26 to read as follows:

27 (1) The legislature finds that accountability and effectiveness are
28 important aspects of setting tax policy. In order to make policy
29 choices regarding the best use of limited state resources the
30 legislature needs information on how a tax incentive is used.

31 (2)(a) A person who reports taxes under section 2 of this act or
32 who claims an exemption or credit under sections 4 through 6 of this
33 act, shall make an annual report to the department detailing
34 employment, wages, and employer-provided health and retirement benefits
35 per job at the manufacturing site. The report shall not include names
36 of employees. The report shall also detail employment by the total

1 number of full-time, part-time, and temporary positions. The first
2 report filed under this subsection shall include employment, wage, and
3 benefit information for the twelve-month period immediately before
4 first use of a preferential tax rate under section 2 of this act, or
5 tax exemption or credit under sections 4 through 6 of this act. The
6 report is due by March 31st following any year in which a preferential
7 tax rate under section 2 of this act is used, or tax exemption or
8 credit under sections 4 through 6 of this act is claimed. This
9 information is not subject to the confidentiality provisions of RCW
10 82.32.330.

11 (b) If a person fails to submit an annual report under (a) of this
12 subsection the department shall declare the amount of taxes exempted or
13 credited, or reduced in the case of the preferential tax rate, for the
14 previous calendar year to be immediately due and payable. Excise taxes
15 payable under this subsection are subject to interest, but not
16 penalties, at the rate provided for delinquent taxes, as provided under
17 this chapter. The department shall assess interest, retroactively to
18 the date the exemption, credit, or preferential tax rate under section
19 2 of this act, was used. The interest shall be assessed at the rate
20 provided for delinquent excise taxes under this chapter, and shall
21 accrue until the taxes for which the exemption, credit, or preferential
22 tax rate was used are repaid. This information is not subject to the
23 confidentiality provisions of RCW 82.32.330.

24 (3) By November 1, 2010, and November 1, 2013, the joint
25 legislative audit and review committee, in consultation with the
26 department, shall report to the legislature on the effectiveness of
27 chapter . . . , Laws of 2005 (this act) in regard to keeping Washington
28 competitive. The report shall measure the effect of chapter . . . ,
29 Laws of 2005 (this act) on job retention, net jobs created for
30 Washington residents, company growth, diversification of the state's
31 economy, and other factors as the committee selects. The reports shall
32 include a discussion of principles to apply in evaluating whether the
33 legislature should extend any or all of the tax preferences in chapter
34 . . . , Laws of 2005 (this act).

35 NEW SECTION. **Sec. 9.** This act is necessary for the immediate
36 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and takes effect
2 July 1, 2005.

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