

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 6789

Chapter 1, Laws of 2010

61st Legislature
2010 1st Special Session

COMPUTER DATA CENTERS--SALES AND USE TAX EXEMPTION

EFFECTIVE DATE: 04/01/10

Passed by the Senate March 16, 2010
YEAS 39 NAYS 4

BRAD OWEN

President of the Senate

Passed by the House March 17, 2010
YEAS 91 NAYS 2

FRANK CHOPP

Speaker of the House of Representatives

Approved March 25, 2010, 4:16 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 6789** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

March 26, 2010

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 6789

Passed Legislature - 2010 1st Special Session

State of Washington

61st Legislature

2010 Regular Session

By Senate Ways & Means (originally sponsored by Senators Prentice, Zarelli, Murray, Hewitt, Holmquist, and Parlette; by request of Department of Revenue)

READ FIRST TIME 03/09/10.

1 AN ACT Relating to sales and use tax exemptions for certain
2 equipment and infrastructure contained in data centers; adding a new
3 section to chapter 82.08 RCW; adding a new section to chapter 82.12
4 RCW; creating a new section; providing an effective date; providing
5 expiration dates; and declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** (1) It is the legislature's intent to
8 encourage immediate investments in technology facilities that can
9 provide an economic stimulus, sustain long-term jobs that provide
10 living wages, and help build the digital infrastructure that can enable
11 the state to be competitive for additional technology investment and
12 jobs.

13 (2) There is currently an intense competition for data center
14 construction and operation in many states including: Oregon, Arizona,
15 North and South Carolina, North Dakota, Iowa, Virginia, Texas, and
16 Illinois. Unprecedented incentives are available as a result of the
17 desire of these states to attract investments that will serve as a
18 catalyst for additional clusters of economic activity.

1 (3) Since the economic downturn, Washington has not succeeded in
2 attracting any private investments in these centers after siting six
3 major data centers between 2004 and 2007.

4 (4) Data center technology has advanced rapidly, with marked
5 increases in energy efficiency. Large, commercial-grade data centers
6 leverage the economies of scale to reduce energy consumption.
7 Combining digitized processes with the economies of scale recognized at
8 these data centers, today's enterprises can materially reduce the
9 energy they consume and greatly improve their efficiency.

10 (5) The legislature finds that a fifteen-month window that offers
11 an exemption for server and related electrical equipment and
12 installation will act as a stimulus to incent immediate investment.
13 This investment will bring jobs, tax revenues, and economic growth to
14 some of our state's rural areas.

15 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.08 RCW
16 to read as follows:

17 (1) An exemption from the tax imposed by RCW 82.08.020 is provided
18 for sales to qualifying businesses of eligible server equipment to be
19 installed, without intervening use, in an eligible computer data
20 center, and to charges made for labor and services rendered in respect
21 to installing eligible server equipment. The exemption also applies to
22 sales to qualifying businesses of eligible power infrastructure,
23 including labor and services rendered in respect to constructing,
24 installing, repairing, altering, or improving eligible power
25 infrastructure.

26 (2)(a) In order to claim the exemption under this section, a
27 qualifying business must submit an application to the department for an
28 exemption certificate. The application must include the information
29 necessary, as required by the department, to determine that a business
30 qualifies for the exemption under this section. The department must
31 issue exemption certificates to qualifying businesses. The department
32 may assign a unique identification number to each exemption certificate
33 issued under this section.

34 (b) A qualifying business claiming the exemption under this section
35 must present the seller with an exemption certificate in a form and
36 manner prescribed by the department. The seller must retain a copy of
37 the certificate for the seller's files.

1 (3)(a) A qualifying business must establish within six years of the
2 first day of the calendar quarter in which the business first receives
3 an exemption under this section or section 3 of this act that it has
4 increased employment in a computer data center by a minimum of thirty-
5 five family wage jobs from the date the eligible computer data center
6 first became operational. For purposes of this subsection, family wage
7 jobs are new permanent employment positions requiring forty hours of
8 weekly work, or their equivalent, on a full-time basis and paying a
9 wage equivalent to or greater than one hundred fifty percent of the per
10 capita personal income of the county in which the qualified project is
11 located. The qualifying business must provide health insurance
12 coverage for employees.

13 (b) All previously exempted sales and use taxes are immediately due
14 and payable for a qualifying business that does not meet the
15 requirements of this subsection.

16 (4) A qualifying business claiming an exemption under this section
17 or section 3 of this act must complete an annual report with the
18 department as required under section 103, chapter . . . , Laws of 2010
19 (Substitute House Bill No. 3066).

20 (5)(a) The exemption provided in this section does not apply to:

21 (i) Any person who has received the benefit of the deferral program
22 under chapter 82.60 RCW on: (A) The construction, renovation, or
23 expansion of a structure or structures used as a computer data center;
24 or (B) machinery or equipment used in a computer data center; and

25 (ii) Any person affiliated with a person within the scope of (a)(i)
26 of this subsection (5). For purposes of this subsection, "affiliated"
27 means that one person has a direct or indirect ownership interest of at
28 least twenty percent in another person.

29 (b) If a person claims an exemption under this section and
30 subsequently receives the benefit of the deferral program under chapter
31 82.60 RCW on either the construction, renovation, or expansion of a
32 structure or structures used as a computer data center or machinery or
33 equipment used in a computer data center, the person must repay the
34 amount of taxes exempted under this section. Interest as provided in
35 chapter 82.32 RCW applies to amounts due under this section until paid
36 in full.

37 (6) For purposes of this section the following definitions apply
38 unless the context clearly requires otherwise:

1 (a)(i) "Computer data center" means a facility comprised of one or
2 more buildings, which may be comprised of multiple businesses,
3 constructed or refurbished specifically, and used primarily, to house
4 working servers, where the facility has the following characteristics:
5 (A) Uninterruptible power supplies, generator backup power, or both;
6 (B) sophisticated fire suppression and prevention systems; and (C)
7 enhanced physical security, such as: Restricted access to the facility
8 to selected personnel; permanent security guards; video camera
9 surveillance; an electronic system requiring passcodes, keycards, or
10 biometric scans, such as hand scans and retinal or fingerprint
11 recognition; or similar security features.

12 (ii) For a computer data center comprised of multiple buildings,
13 each separate building constructed or refurbished specifically, and
14 used primarily, to house working servers is considered a computer data
15 center if it has all of the characteristics listed in (a)(i)(A) through
16 (C) of this subsection (6).

17 (iii) A facility comprised of one building or more than one
18 building must have a combined square footage of at least one hundred
19 thousand square feet.

20 (b) "Electronic data storage and data management services" include,
21 but are not limited to: Providing data storage and backup services,
22 providing computer processing power, hosting enterprise software
23 applications, and hosting web sites. The term also includes providing
24 services such as e-mail, web browsing and searching, media
25 applications, and other online services, regardless of whether a charge
26 is made for such services.

27 (c)(i) "Eligible computer data center" means a computer data
28 center:

29 (A) Located in a rural county as defined in RCW 82.14.370;

30 (B) Having at least twenty thousand square feet dedicated to
31 housing working servers, where the server space has not previously been
32 dedicated to housing working servers; and

33 (C) For which the commencement of construction occurs after March
34 31, 2010, and before July 1, 2011. For purposes of this section,
35 "commencement of construction" means the date that a building permit is
36 issued under the building code adopted under RCW 19.27.031 for
37 construction of the computer data center. The construction of a
38 computer data center includes the expansion, renovation, or other

1 improvements made to existing facilities, including leased or rented
2 space. "Commencement of construction" does not include soil testing,
3 site clearing and grading, site preparation, or any other related
4 activities that are initiated before the issuance of a building permit
5 for the construction of the foundation of a computer data center.

6 (ii) With respect to facilities in existence on the effective date
7 of this act that are expanded, renovated, or otherwise improved after
8 March 31, 2010, an eligible computer data center includes only the
9 portion of the computer data center meeting the requirements in
10 (c)(i)(B) of this subsection (6).

11 (d) "Eligible power infrastructure" means all fixtures and
12 equipment necessary for the transformation, distribution, or management
13 of electricity that is required to operate eligible server equipment
14 within an eligible computer data center. The term includes electrical
15 substations, generators, wiring, and cogeneration equipment.

16 (e) "Eligible server equipment" means the original server equipment
17 installed in an eligible computer data center on or after April 1,
18 2010, and replacement server equipment. For purposes of this
19 subsection (6)(e), "replacement server equipment" means server
20 equipment that: (i) Replaces existing server equipment, if the sale or
21 use of the server equipment to be replaced qualified for an exemption
22 under this section or section 3 of this act; and (ii) is installed and
23 put into regular use before April 1, 2018.

24 (f) "Qualifying business" means a business entity that exists for
25 the primary purpose of engaging in commercial activity for profit and
26 that is the owner or lessee of an eligible computer data center. The
27 term does not include the state or federal government or any of their
28 departments, agencies, and institutions; tribal governments; political
29 subdivisions of this state; or any municipal, quasi-municipal, public,
30 or other corporation created by the state or federal government, tribal
31 government, municipality, or political subdivision of the state.

32 (g) "Server" means blade or rack-mount server computers used in a
33 computer data center exclusively to provide electronic data storage and
34 data management services for internal use by the owner or lessee of the
35 computer data center, for clients of the owner or lessee of the
36 computer data center, or both. "Server" does not include personal
37 computers.

1 (h) "Server equipment" means the server chassis and all computer
2 hardware contained within the server chassis. "Server equipment" also
3 includes computer software necessary to operate the server. "Server
4 equipment" does not include the racks upon which the server chassis is
5 installed, and computer peripherals such as keyboards, monitors,
6 printers, mice, and other devices that work outside of the computer.

7 (7) This section expires April 1, 2018.

8 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.12 RCW
9 to read as follows:

10 (1) An exemption from the tax imposed by RCW 82.12.020 is provided
11 for the use by qualifying businesses of eligible server equipment to be
12 installed, without intervening use, in an eligible computer data
13 center, and to the use of labor and services rendered in respect to
14 installing such server equipment. The exemption also applies to the
15 use of power infrastructure, including labor and services rendered in
16 respect to installing, repairing, altering, or improving such
17 infrastructure.

18 (2) A qualifying business is not eligible for the exemption under
19 this section unless the department issued an exemption certificate to
20 the qualifying business for the exemption provided in section 2 of this
21 act.

22 (3)(a) The exemption provided in this section does not apply to:

23 (i) Any person who has received the benefit of the deferral program
24 under chapter 82.60 RCW on: (A) The construction, renovation, or
25 expansion of a structure or structures used as a computer data center;
26 or (B) machinery or equipment used in a computer data center; and

27 (ii) Any person affiliated with a person within the scope of (a)(i)
28 of this subsection (3). For purposes of this subsection, "affiliated"
29 means that one person has a direct or indirect ownership interest of at
30 least twenty percent in another person.

31 (b) If a person has received the benefit of the exemption under
32 this section and subsequently receives the benefit of the deferral
33 program under chapter 82.60 RCW on either the construction, renovation,
34 or expansion of a structure or structures used as a computer data
35 center or machinery or equipment used in a computer data center, the
36 person must repay the amount of taxes exempted under this section.
37 Interest as provided in chapter 82.32 RCW applies to amounts due under

1 this subsection (3)(b) until paid in full. A person is not required to
2 repay taxes under this subsection with respect to property and services
3 for which the person is required to repay taxes under section 2(5) of
4 this act.

5 (4) The definitions in section 2 of this act apply to this section.

6 (5) This section expires April 1, 2018.

7 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
8 preservation of the public peace, health, or safety, or support of the
9 state government and its existing public institutions, and takes effect
10 April 1, 2010.

Passed by the Senate March 16, 2010.

Passed by the House March 17, 2010.

Approved by the Governor March 25, 2010.

Filed in Office of Secretary of State March 26, 2010.