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HOUSE BILL 2982

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State of Washington

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By Representatives Jenkins and Fey

Read first time 02/12/16. Referred to Committee on Finance.

1 AN ACT Relating to eliminating the manufacturing machinery and  
2 equipment exemption for methanol manufactured in part from liquid  
3 natural gas or compressed natural gas; and amending RCW 82.08.02565  
4 and 82.12.02565.

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

6 **Sec. 1.** RCW 82.08.02565 and 2015 3rd sp.s. c 5 s 301 are each  
7 amended to read as follows:

8 (1)(a) The tax levied by RCW 82.08.020 does not apply to sales to  
9 a manufacturer or processor for hire of machinery and equipment used  
10 directly in a manufacturing operation or research and development  
11 operation, to sales to a person engaged in testing for a manufacturer  
12 or processor for hire of machinery and equipment used directly in a  
13 testing operation, or to sales of or charges made for labor and  
14 services rendered in respect to installing, repairing, cleaning,  
15 altering, or improving the machinery and equipment.

16 (b) Except as provided in (c) of this subsection, sellers making  
17 tax-exempt sales under this section must obtain from the purchaser an  
18 exemption certificate in a form and manner prescribed by the  
19 department by rule. The seller must retain a copy of the certificate  
20 for the seller's files.

1 (c)(i) The exemption under this section is in the form of a  
2 remittance for a gas distribution business, as defined in RCW  
3 82.16.010, claiming the exemption for machinery and equipment used  
4 for the production of compressed natural gas or liquefied natural gas  
5 for use as a transportation fuel.

6 (ii) A gas distribution business claiming an exemption from state  
7 and local tax in the form of a remittance under this section must pay  
8 the tax under RCW 82.08.020 and all applicable local sales taxes.  
9 Beginning July 1, 2017, the gas distribution business may then apply  
10 to the department for remittance of state and local sales and use  
11 taxes. A gas distribution business may not apply for a remittance  
12 more frequently than once a quarter. The gas distribution business  
13 must specify the amount of exempted tax claimed and the qualifying  
14 purchases for which the exemption is claimed. The gas distribution  
15 business must retain, in adequate detail, records to enable the  
16 department to determine whether the business is entitled to an  
17 exemption under this section, including: Invoices; proof of tax paid;  
18 and documents describing the machinery and equipment.

19 (iii) The department must determine eligibility under this  
20 section based on the information provided by the gas distribution  
21 business, which is subject to audit verification by the department.  
22 The department must on a quarterly basis remit exempted amounts to  
23 qualifying businesses who submitted applications during the previous  
24 quarter.

25 (iv) Beginning July 1, 2028, a gas distribution business may not  
26 apply for a refund under this section or RCW 82.12.02565.

27 (2) For purposes of this section and RCW 82.12.02565:

28 (a) "Machinery and equipment" means industrial fixtures, devices,  
29 and support facilities, and tangible personal property that becomes  
30 an ingredient or component thereof, including repair parts and  
31 replacement parts. "Machinery and equipment" includes pollution  
32 control equipment installed and used in a manufacturing operation,  
33 testing operation, or research and development operation to prevent  
34 air pollution, water pollution, or contamination that might otherwise  
35 result from the manufacturing operation, testing operation, or  
36 research and development operation. "Machinery and equipment" also  
37 includes digital goods.

38 (b) "Machinery and equipment" does not include:

39 (i) Hand-powered tools;

40 (ii) Property with a useful life of less than one year;

1 (iii) Buildings, other than machinery and equipment that is  
2 permanently affixed to or becomes a physical part of a building; and

3 (iv) Building fixtures that are not integral to the manufacturing  
4 operation, testing operation, or research and development operation  
5 that are permanently affixed to and become a physical part of a  
6 building, such as utility systems for heating, ventilation, air  
7 conditioning, communications, plumbing, or electrical.

8 (c) Machinery and equipment is "used directly" in a manufacturing  
9 operation, testing operation, or research and development operation  
10 if the machinery and equipment:

11 (i) Acts upon or interacts with an item of tangible personal  
12 property;

13 (ii) Conveys, transports, handles, or temporarily stores an item  
14 of tangible personal property at the manufacturing site or testing  
15 site;

16 (iii) Controls, guides, measures, verifies, aligns, regulates, or  
17 tests tangible personal property at the site or away from the site;

18 (iv) Provides physical support for or access to tangible personal  
19 property;

20 (v) Produces power for, or lubricates machinery and equipment;

21 (vi) Produces another item of tangible personal property for use  
22 in the manufacturing operation, testing operation, or research and  
23 development operation;

24 (vii) Places tangible personal property in the container,  
25 package, or wrapping in which the tangible personal property is  
26 normally sold or transported; or

27 (viii) Is integral to research and development as defined in RCW  
28 82.63.010.

29 (d) "Manufacturer" means a person that qualifies as a  
30 manufacturer under RCW 82.04.110. "Manufacturer" also includes a  
31 person that:

32 (i) Prints newspapers or other materials; or

33 (ii) Is engaged in the development of prewritten computer  
34 software that is not transferred to purchasers by means of tangible  
35 storage media.

36 (e) "Manufacturing" means only those activities that come within  
37 the definition of "to manufacture" in RCW 82.04.120 and are taxed as  
38 manufacturing or processing for hire under chapter 82.04 RCW, or  
39 would be taxed as such if such activity were conducted in this state  
40 or if not for an exemption or deduction. "Manufacturing" also

1 includes printing newspapers or other materials. An activity is not  
2 taxed as manufacturing or processing for hire under chapter 82.04 RCW  
3 if the activity is within the purview of chapter 82.16 RCW.

4 (f) "Manufacturing operation" means the manufacturing of  
5 articles, substances, or commodities for sale as tangible personal  
6 property. A manufacturing operation begins at the point where the raw  
7 materials enter the manufacturing site and ends at the point where  
8 the processed material leaves the manufacturing site. With respect to  
9 the production of class A or exceptional quality biosolids by a  
10 wastewater treatment facility, the manufacturing operation begins at  
11 the point where class B biosolids undergo additional processing to  
12 achieve class A or exceptional quality standards. Notwithstanding  
13 anything to the contrary in this section, the term also includes that  
14 portion of a cogeneration project that is used to generate power for  
15 consumption within the manufacturing site of which the cogeneration  
16 project is an integral part. The term does not include the  
17 preparation of food products on the premises of a person selling food  
18 products at retail.

19 (g) "Cogeneration" means the simultaneous generation of  
20 electrical energy and low-grade heat from the same fuel.

21 (h) "Research and development operation" means engaging in  
22 research and development as defined in RCW 82.63.010 by a  
23 manufacturer or processor for hire.

24 (i) "Testing" means activities performed to establish or  
25 determine the properties, qualities, and limitations of tangible  
26 personal property.

27 (j) "Testing operation" means the testing of tangible personal  
28 property for a manufacturer or processor for hire. A testing  
29 operation begins at the point where the tangible personal property  
30 enters the testing site and ends at the point where the tangible  
31 personal property leaves the testing site. The term also includes the  
32 testing of tangible personal property for use in that portion of a  
33 cogeneration project that is used to generate power for consumption  
34 within the manufacturing site of which the cogeneration project is an  
35 integral part. The term does not include the testing of tangible  
36 personal property for use in the production of electricity by a light  
37 and power business as defined in RCW 82.16.010 or the preparation of  
38 food products on the premises of a person selling food products at  
39 retail.

1 (3) This section does not apply (a) to sales of machinery and  
2 equipment used directly in the manufacturing, research and  
3 development, or testing of marijuana, useable marijuana, or  
4 marijuana-infused products, or (b) to sales of or charges made for  
5 labor and services rendered in respect to installing, repairing,  
6 cleaning, altering, or improving such machinery and equipment.

7 (4) The exemptions in this section do not apply to an ineligible  
8 person. For purposes of this subsection, the following definitions  
9 apply:

10 (a) "Affiliated group" means a group of two or more entities that  
11 are either:

12 (i) Affiliated as defined in RCW 82.32.655; or

13 (ii) Permitted to file a consolidated return for federal income  
14 tax purposes.

15 (b) "Ineligible person" means all members of an affiliated group  
16 if all of the following apply:

17 (i) At least one member of the affiliated group was registered  
18 with the department to do business in Washington state on or before  
19 July 1, 1981;

20 (ii) As of August 1, 2015, the combined employment in this state  
21 of the affiliated group exceeds forty thousand full-time and part-  
22 time employees, based on data reported to the employment security  
23 department by the affiliated group; and

24 (iii) The business activities of the affiliated group primarily  
25 include development, sales, and licensing of computer software and  
26 services.

27 (5) The exemption in this section does not apply to the sale of  
28 machinery and equipment used to produce methanol manufactured in part  
29 from liquid natural gas or compressed natural gas.

30 **Sec. 2.** RCW 82.12.02565 and 2015 3rd sp.s. c 5 s 302 are each  
31 amended to read as follows:

32 (1) The provisions of this chapter do not apply in respect to the  
33 use by a manufacturer or processor for hire of machinery and  
34 equipment used directly in a manufacturing operation or research and  
35 development operation, to the use by a person engaged in testing for  
36 a manufacturer or processor for hire of machinery and equipment used  
37 directly in a testing operation, or to the use of labor and services  
38 rendered in respect to installing, repairing, cleaning, altering, or  
39 improving the machinery and equipment.

1           (2) The definitions, conditions, and requirements in RCW  
2 82.08.02565 apply to this section.

3           (3) This section does not apply to the use of (a) machinery and  
4 equipment used directly in the manufacturing, research and  
5 development, or testing of marijuana, useable marijuana, or  
6 marijuana-infused products, or (b) labor and services rendered in  
7 respect to installing, repairing, cleaning, altering, or improving  
8 such machinery and equipment.

9           (4) The exemptions in this section do not apply to an ineligible  
10 person as defined in RCW 82.08.02565.

11           (5) The exemption in this section does not apply to machinery and  
12 equipment used to produce methanol manufactured in part from liquid  
13 natural gas or compressed natural gas.

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