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**SENATE BILL 5744**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** Senators Nguyen, Carlyle, Conway, Das, Kuderer, Mullet, Nobles, Pedersen, Saldaña, and Trudeau; by request of Office of Financial Management

AN ACT Relating to tax deferrals for investment projects in clean technology manufacturing, clean alternative fuels production, and renewable energy storage; amending RCW 82.08.816 and 82.12.816; adding a new chapter to Title 82 RCW; creating a new section; providing an effective date; and providing expiration dates.

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

NEW SECTION. **Sec.**  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 investment project" means an investment project of at least $2,000,000 in either qualified buildings or qualified machinery and equipment, or both, for any of the following new, renovated, or expanded:

(a) Manufacturing operations;

(b) Facilities to produce clean fuels, subject to the limitations in subsection (7)(d) of this section, or renewable and green electrolytic hydrogen; or

(c) Facilities to store electricity generated from renewable resources.

(3) **"**Green electrolytic hydrogen**"** means hydrogen produced through electrolysis and does not include hydrogen manufactured using steam reforming or any other conversion technology that produces hydrogen from a fossil fuel feedstock.

(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 qualified building, if the underlying ownership of the building vests exclusively with the person receiving the economic benefit of the deferral;

(ii) Construction of the qualified building, if the economic benefits of the deferral are passed to a lessee as provided in section 2 of this act; or

(iii) Tenant improvements for a qualified building, if the economic benefits of the deferral are passed to a lessee as provided in section 2 of this act.

(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 eligible investment project is a phased project, "initiation of construction" applies separately to each phase.

(5) "Investment project" means an investment in either qualified buildings or qualified machinery and equipment, or both, including labor and services rendered in the planning, installation, and construction of the project.

(6) "Manufacturing" has the same meaning as "to manufacture" in RCW 82.04.120.

(7) "Manufacturing operation" means manufacturing tangible personal property exclusively incorporated as an ingredient or component of or used in the generation of:

(a) Passenger cars, light duty trucks, medium duty passenger vehicles, buses, commercial vehicles as defined in RCW 46.04.140, or motorcycles that emits no exhaust gas from the onboard source of power, other than water vapor;

(b) Charging and fueling infrastructure for electric, hydrogen, or other vehicle types that emits no exhaust gas from the onboard source of power, other than water vapor;

(c) Renewable and green electrolytic hydrogen, including preparing renewable and green electrolytic hydrogen for distribution;

(d) Clean fuel with associated greenhouse gas emissions not exceeding 80 percent of the 2017 levels established under RCW 70A.535.020;

(e) Electricity from renewable resources; or

(f) Equipment used directly in the storage of electricity generated by renewable resources.

(8) "Meaningful construction" means an active construction site, where excavation of a building site, laying of a building 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, does not constitute "meaningful construction."

(9) "Operationally complete" means the eligible investment project is capable of being used for its intended purpose as described in the application.

(10) "Person" has the same meaning as in RCW 82.04.030.

(11) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity, used for manufacturing, including plant offices and warehouses or other buildings for the storage of raw materials or finished goods if the facilities are an essential or an integral part of a factory, mill, plant, or laboratory used for manufacturing. If a qualified building is used partly for manufacturing and partly for other purposes, the applicable tax deferral must be determined by apportionment of the costs of construction under rules adopted by the department.

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

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

(14) "Renewable resource" has the same meaning as in RCW 82.08.816.

NEW SECTION. **Sec.**  The lessor or owner of a qualified building is not eligible for a deferral under this chapter unless:

(1) The underlying ownership of the building, machinery, and equipment 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 qualified building and the lessee.

NEW SECTION. **Sec.**  (1) Applications for deferral of taxes under this chapter must be made before initiation of the construction of the eligible investment project or acquisition of equipment or machinery. 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 eligible investment project, the applicant's average employment in the state for the prior year, estimated or actual new employment related to the eligible investment project, estimated or actual wages of employees related to the eligible investment project, estimated or actual costs, time schedules for completion and operation, and other information required by the department. The department must rule on the application within 60 days.

(2) The department may not accept applications for the deferral under this chapter after June 30, 2032.

(3) This section expires January 1, 2033.

NEW SECTION. **Sec.**  (1) 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, 82.14, and 81.104 RCW on each eligible investment project. The certificate may only be used to make purchases of materials and equipment, labor, or services to be incorporated in the eligible investment project at the location listed on the certificate.

(2) No certificate may be issued for an investment project that has already received a deferral under this chapter or chapter 82.60 or 82.85 RCW.

(3) No certificate may be issued for an eligible investment project that has not had an application approved by the department as provided in section 3 of this act.

(4) The department must keep a running total of all deferrals granted under this chapter during each fiscal biennium.

(5) This section expires January 1, 2033.

NEW SECTION. **Sec.**  (1) The recipient of a deferral certificate under section 4 of this act must begin meaningful construction on an eligible investment project within two years 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 two years of receiving a deferral certificate, the deferral certificate issued under section 4 of this act is invalid and taxes deferred under this chapter are due immediately.

NEW SECTION. **Sec.**  (1) 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 10 percent of the deferred taxes is due on December 31st of the second calendar year after the certified date, with subsequent annual payments of 10 percent of the deferred taxes due on December 31st for each of the following nine years.

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

(3) Interest may not be charged on any taxes deferred under this chapter for the period of deferral, although all other penalties and interest applicable to delinquent excise taxes may be assessed and imposed for delinquent payments under this chapter.

(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 a purchase is not eligible for tax deferral.

(5) The debt for deferred taxes are not extinguished by insolvency or other failure of the recipient.

(6) 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.

NEW SECTION. **Sec.**  (1) The recipient of the deferral under this chapter must receive a reduction of the amount of state sales and use tax to be repaid under section 6 of this act only as follows:

(a) Fifty percent of the state 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 that standard;

(b) Seventy-five percent of the state 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 determined by local collective bargaining as determined by the department of labor and industries; or

(c) One hundred percent of the state 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) Nothing in this section reduces the amount of local sales and use taxes to be repaid under section 6 of this act. The recipient must repay all local sales and use taxes due under chapters 82.14 and 81.104 RCW as provided in section 6 of this act.

NEW SECTION. **Sec.**  (1) Each recipient of a deferral of taxes granted under this chapter must file a complete annual tax performance report with the department under RCW 82.32.534. Reports must be filed for the first calendar year after the eligible investment project is operationally complete and continue through the end of the calendar year in which the final repayment occurs. If the economic benefits of the deferral are passed to a lessee, as provided in section 2 of this act, the lessee must file a complete annual tax performance report and the applicant is not required to file a complete annual tax performance report.

(2) If the eligible investment project is not operationally complete within five 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 eligible investment project is used for purposes other than those listed in section 1(2) of this act at any time during the calendar year in which the investment is certified by the department as having been operationally completed, or at any time during any of the repayment period, 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 | 100 |
| 4 | 90 |
| 5 | 80 |
| 6 | 70 |
| 7 | 60 |
| 8 | 50 |
| 9 | 40 |
| 10 | 30 |
| 11 | 20 |
| 12 | 10 |

(3) If the economic benefits of a tax deferral under this chapter are passed to a lessee as provided in section 2 of this act, the lessee is responsible for payment to the extent the lessee has received the economic benefit.

NEW SECTION. **Sec.**  To the extent not inconsistent with the provisions of this chapter, chapter 82.32 RCW applies to the administration of this chapter.

**Sec.**  RCW 82.08.816 and 2019 c 287 s 11 are each amended to read as follows:

(1) The tax imposed by RCW 82.08.020 does not apply to:

(a) The sale of batteries or fuel cells for electric vehicles, including batteries or fuel cells sold as a component of an electric bus at the time of the vehicle's sale;

(b) The sale of or charge made for labor and services rendered in respect to installing, repairing, altering, or improving electric vehicle batteries or fuel cells;

(c) The sale of or charge made for labor and services rendered in respect to installing, constructing, repairing, or improving battery or fuel cell electric vehicle infrastructure, including hydrogen fueling stations;

(d) The sale of tangible personal property that will become a component of battery or fuel cell electric vehicle infrastructure during the course of installing, constructing, repairing, or improving battery or fuel cell electric vehicle infrastructure; and

(e) The sale of zero emissions buses.

(2) Sellers may make tax exempt sales under this section only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(3) On the last day of January, April, July, and October of each year, the state treasurer, based upon information provided by the department, must transfer from the multimodal transportation account to the general fund a sum equal to the dollar amount that would otherwise have been deposited into the general fund during the prior calendar quarter but for the exemption provided in this section. Information provided by the department to the state treasurer must be based on the best available data, except that the department may provide estimates of taxes exempted under this section until such time as retailers are able to report such exempted amounts on their tax returns.

(4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Battery charging station" means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(b) "Battery exchange station" means a fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(c) "Electric vehicle infrastructure" means structures, machinery, and equipment necessary and integral to support a battery or fuel cell electric vehicle, including battery charging stations, rapid charging stations, battery exchange stations, and fueling stations that provide hydrogen for fuel cell electric vehicles((~~, and renewable hydrogen production facilities~~)).

(d) "Rapid charging station" means an industrial grade electrical outlet that allows for faster recharging of electric vehicle batteries through higher power levels, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(e) "Renewable hydrogen" means hydrogen produced using renewable resources both as the source for hydrogen and the source for the energy input into the production process.

(f) "Renewable resource" means (i) water; (ii) wind; (iii) solar energy; (iv) geothermal energy; (v) renewable natural gas; (vi) renewable hydrogen; (vii) wave, ocean, or tidal power; (viii) biodiesel fuel that is not derived from crops raised on land cleared from old growth or first growth forests; or (ix) biomass energy.

(g) "Zero emissions bus" means a bus that emits no exhaust gas from the onboard source of power, other than water vapor.

(5) This section expires July 1, 2025.

**Sec.**  RCW 82.12.816 and 2019 c 287 s 12 are each amended to read as follows:

(1) The tax imposed by RCW 82.12.020 does not apply to the use of:

(a) Electric vehicle batteries or fuel cells, including batteries or fuel cells sold as a component of an electric bus at the time of the vehicle's sale;

(b) Labor and services rendered in respect to installing, repairing, altering, or improving electric vehicle batteries or fuel cells;

(c) Tangible personal property that will become a component of battery or fuel cell electric vehicle infrastructure during the course of installing, constructing, repairing, or improving battery or fuel cell electric vehicle infrastructure; and

(d) Zero emissions buses.

(2) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Battery charging station" means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(b) "Battery exchange station" means a fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(c) "Electric vehicle infrastructure" means structures, machinery, and equipment necessary and integral to support a battery or fuel cell electric vehicle, including battery charging stations, rapid charging stations, battery exchange stations, and fueling stations that provide hydrogen for fuel cell electric vehicles((~~, and renewable hydrogen production facilities~~)).

(d) "Rapid charging station" means an industrial grade electrical outlet that allows for faster recharging of electric vehicle batteries through higher power levels, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(e) "Renewable hydrogen" means hydrogen produced using renewable resources both as the source for hydrogen and the source for the energy input into the production process.

(f) "Renewable resource" means (i) water; (ii) wind; (iii) solar energy; (iv) geothermal energy; (v) renewable natural gas; (vi) renewable hydrogen; (vii) wave, ocean, or tidal power; (viii) biodiesel fuel that is not derived from crops raised on land cleared from old growth or first growth forests; or (ix) biomass energy.

(g) "Zero emissions bus" means a bus that emits no exhaust gas from the onboard source of power, other than water vapor.

(3) On the last day of January, April, July, and October of each year, the state treasurer, based upon information provided by the department, must transfer from the multimodal transportation account to the general fund a sum equal to the dollar amount that would otherwise have been deposited into the general fund during the prior calendar quarter but for the exemption provided in this section. Information provided by the department to the state treasurer must be based on the best available data, except that the department may provide estimates of taxes exempted under this section until such time as retailers are able to report such exempted amounts on their tax returns.

(4) This section expires July 1, 2025.

NEW SECTION. **Sec.**  The provisions of RCW 82.32.805 and 82.32.808 do not apply to this act.

NEW SECTION. **Sec.**  Sections 1 through 9 of this act constitute a new chapter in Title 82 RCW.

NEW SECTION. **Sec.**  This act takes effect July 1, 2022.

**--- END ---**