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**SENATE BILL 5761**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Senator Boehnke

AN ACT Relating to sales to a broadband communications services provider of machinery and equipment used in a communication network; amending RCW 82.08.02565 and 82.12.02565; and creating a new section.

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

NEW SECTION. **Sec.**  (1) This section is the tax preference performance statement for the tax preferences contained in sections 2 and 3, chapter . . ., Laws of 2023 (sections 2 and 3 of this act). This performance statement is only intended to be used for subsequent evaluation of the tax preferences. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes these tax preferences as one intended to induce certain designated behavior by taxpayers and reduce structural inefficiencies in the tax code, as indicated in RCW 82.32.808(2) (a) and (d).

(3) It is the legislature's specific public policy objective to reduce tax pyramiding during the manufacturing of broadband networks thereby enhancing industry competitiveness thereby improving structural inefficiencies in the tax structure. The legislature finds that pyramiding can cause inefficiencies by encouraging firms to move away from more heavily taxed goods, and increases the effective tax rate in a nontransparent way.

(4) To measure the effectiveness of the sales and use tax exemptions created in sections 2 and 3 of this act in achieving the public policy objectives described in this section, the joint legislative audit and review committee must evaluate the number of businesses that claim the exemptions in sections 2 and 3 of this act for sales to a broadband communications services provider of machinery and equipment used in a communication network.

(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may access and use any relevant data collected by the state and any other data it deems necessary in performing the evaluation under subsection (4) of this section.

**Sec.**  RCW 82.08.02565 and 2022 c 16 s 146 are each amended to read as follows:

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

(ii) Beginning January 1, 2024, and until January 1, 2035, the tax levied by RCW 82.08.020 does not apply to sales to a broadband communications services provider of machinery and equipment used in a communication network.

A broadband communications services provider may not apply the exemption under this subsection (1)(a)(ii) to more than $40,000,000 of purchases of machinery and equipment used in a communication network per calendar year.

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

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

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

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

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

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

(a) ((~~"Machinery~~)) Except as provided in (n) of this subsection, "machinery and equipment" means industrial fixtures, devices, and support facilities, and tangible personal property that becomes an ingredient or component thereof, including repair parts and replacement parts. "Machinery and equipment" includes pollution control equipment installed and used in a manufacturing operation, testing operation, or research and development operation to prevent air pollution, water pollution, or contamination that might otherwise result from the manufacturing operation, testing operation, or research and development operation. "Machinery and equipment" also includes digital goods.

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

(i) Hand-powered tools;

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Prints newspapers or other materials; or

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

(e) "Manufacturing" means only those activities that come within the definition of "to manufacture" in RCW 82.04.120 and are taxed as manufacturing or processing for hire under chapter 82.04 RCW, or would be taxed as such if such activity were conducted in this state or if not for an exemption or deduction. "Manufacturing" also includes printing newspapers or other materials. An activity is not taxed as manufacturing or processing for hire under chapter 82.04 RCW if the activity is within the purview of chapter 82.16 RCW.

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

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

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

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

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

(k) "Broadband communications service" means internet access service, telecommunications service, video programming service, or any combination thereof.

(l) "Broadband communications services provider" means a person who is engaged in the provision of broadband communications service or an affiliate of such person.

(m) "Internet access service" has the same meaning as in the internet tax freedom act, 47 U.S.C. Sec. 151.

(n) "Machinery and equipment used in a communication network" means tangible personal property used, in whole or in part, by a broadband communications services provider or its affiliate to furnish broadband communications services in this state, including tangible personal property used by a provider to transmit, convey, amplify, or route information such as images, text, voice, video programming, other video content, or data. The term includes, but is not limited to, cable modem termination system components and wifi equipment, headend and hub equipment, monitoring equipment, fiber optic cable, coaxial cable, conduit, distribution plant, customer connection equipment, telecommunications radio, routing and switching equipment, software, equipment enclosures above and below ground, towers, poles, mounts, electricity, transmitters, power equipment, diagnostic equipment, storage devices, servers, multiplexers, amplifiers, antennas, and related property and equipment and includes charges to apply, install, maintain, operate, or repair such tangible personal property.

(o) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term includes the transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether the service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value added.

(p) "Video programming service" means the sale, offering, transmission, conveyance, or routing of video programming or other video content for purchase by subscribers or customers, regardless of the medium, technology, or method of display and regardless of the payment schedule or storage method used to purchase or access such video programming or video content. The term includes, but is not limited to, cable service as defined in 47 U.S.C. Sec. 522(6) and video programming services delivered by commercial mobile radio service providers as defined in 47 C.F.R. Sec. 20.3 and any substantially equivalent successor technology.

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

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

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

(i) Affiliated as defined in RCW 82.32.655; or

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

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

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

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

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

**Sec.**  RCW 82.12.02565 and 2022 c 16 s 156 are each amended to read as follows:

(1) The provisions of this chapter do not apply in respect to the use by a manufacturer or processor for hire of machinery and equipment used directly in a manufacturing operation or research and development operation, to the use by a person engaged in testing for a manufacturer or processor for hire of machinery and equipment used directly in a testing operation, or to the use of labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the machinery and equipment. Beginning January 1, 2024, and until January 1, 2035, this chapter does not apply to use by a broadband communications services provider of machinery and equipment used in a communication network.

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

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

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

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