
SENATE BILL 5761

State of Washington

68th Legislature

2023 Regular Session

By Senator Boehnke

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

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

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

12 (2) The legislature categorizes these tax preferences as one
13 intended to induce certain designated behavior by taxpayers and
14 reduce structural inefficiencies in the tax code, as indicated in RCW
15 82.32.808(2) (a) and (d).

16 (3) It is the legislature's specific public policy objective to
17 reduce tax pyramiding during the manufacturing of broadband networks
18 thereby enhancing industry competitiveness thereby improving
19 structural inefficiencies in the tax structure. The legislature finds
20 that pyramiding can cause inefficiencies by encouraging firms to move

1 away from more heavily taxed goods, and increases the effective tax
2 rate in a nontransparent way.

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

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

15 **Sec. 2.** RCW 82.08.02565 and 2022 c 16 s 146 are each amended to
16 read as follows:

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

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

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

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

38 (c) (i) The exemption under this section is in the form of a
39 remittance for a gas distribution business, as defined in RCW

1 82.16.010, claiming the exemption for machinery and equipment used
2 for the production of compressed natural gas or liquefied natural gas
3 for use as a transportation fuel.

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

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

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

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

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

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

38 (i) Hand-powered tools;

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

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

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

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

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

35 (p) "Video programming service" means the sale, offering,
36 transmission, conveyance, or routing of video programming or other
37 video content for purchase by subscribers or customers, regardless of
38 the medium, technology, or method of display and regardless of the
39 payment schedule or storage method used to purchase or access such
40 video programming or video content. The term includes, but is not

1 limited to, cable service as defined in 47 U.S.C. Sec. 522(6) and
2 video programming services delivered by commercial mobile radio
3 service providers as defined in 47 C.F.R. Sec. 20.3 and any
4 substantially equivalent successor technology.

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

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

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

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

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

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

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

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

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

31 **Sec. 3.** RCW 82.12.02565 and 2022 c 16 s 156 are each amended to
32 read as follows:

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

1 improving the machinery and equipment. Beginning January 1, 2024, and
2 until January 1, 2035, this chapter does not apply to use by a
3 broadband communications services provider of machinery and equipment
4 used in a communication network.

5 (2) The definitions, conditions, and requirements in RCW
6 82.08.02565 apply to this section.

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

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

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