

RCW 82.08.9861 Exemptions—Eligible server equipment—Eligible power infrastructure in counties with populations over 800,000.

(Expires July 1, 2038.) (1) (a) An exemption from the tax imposed by RCW 82.08.020 is provided for sales to qualifying businesses and to qualifying tenants of eligible server equipment to be installed, without intervening use, in an eligible computer data center to which a valid exemption certificate applies, and to charges made for labor and services rendered in respect to installing eligible server equipment.

(b) The exemption also applies to sales to qualifying businesses and to qualifying tenants of eligible power infrastructure, including labor, material, equipment, and services rendered in respect to constructing, installing, repairing, altering, or improving eligible power infrastructure at an eligible computer data center for which an exemption certificate has been issued.

(c) No new exemption certificates may be issued on or after July 1, 2028.

(d) The exemptions provided in this section expire July 1, 2038.

(2) (a) (i) In order to obtain an exemption, a qualifying business must be located in a county with a population over 800,000, as determined by the April 1, 2021, office of financial management population estimates and must submit an application to the department for an exemption certificate. The application must include the information necessary, as required by the department, to determine that a business or tenant qualifies for the exemption under this section. The department must issue exemption certificates to qualifying businesses and qualifying tenants. The department may assign a unique identification number to each exemption certificate issued under this section.

(ii) For the purposes of demonstrating that the requirements of this subsection (2) (a) are met, a qualifying business must submit records of available power for customers at the time of the application for the exemption under this section. The qualifying business must demonstrate that it has a minimum of 1.5 megawatts of available power. The qualifying business must provide requests for proposals, pricing offered, and marketing materials associated with the requirements of this subsection, as required by the department, as supporting documentation that the requirements of this subsection (2) (a) have been met.

(b) A qualifying business or a qualifying tenant claiming the exemption under this section must present 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.

(c) (i) The exemptions provided in this section are limited to qualifying businesses or tenants, and the department is authorized to approve:

(A) Six applications to obtain the exemptions for qualifying businesses in the first calendar year of the exemption; and

(B) Six applications to obtain the exemptions for qualifying businesses in each year, calendar year three through calendar year six, of the exemption.

(ii) The exemption is available on a first-in-time basis based on the date the application required under this section is received by the department.

(d) The exemption certificate is effective on the date the application is received by the department, which is deemed to be the

date of issuance. Only purchases on or after the date of issuance qualify for the exemption under this section. No tax refunds are authorized for purchases made before the effective date of the exemption certificate.

(e) Exemption certificates expire two years after the date of issuance, unless construction has been commenced.

(f) A qualifying tenant must contract for a minimum electrical capacity of 150 kilowatts for server and computer equipment in a qualifying business. Tenants that previously qualified under RCW 82.08.986 or 82.12.986 must reapply if they intend to expand into a qualifying business.

(3) (a) (i) Within six years of the date that the department issued an exemption certificate under this section to a qualifying business or a qualifying tenant with respect to an eligible computer data center, the qualifying business or qualifying tenant must establish that net employment assigned to an eligible computer data center has increased by a minimum of three family wage employment positions for each incremental increase of 20,000 square feet of space that is newly dedicated to housing working servers at the eligible computer data center. For qualifying tenants, the number of family wage employment positions that must be increased under this subsection (3) (a) (i) is based only on the space occupied by the qualifying tenant in the eligible computer data center.

(ii) After the minimum number of family wage employment positions as required under (a) (i) of this subsection (3) is established, a qualifying business or a qualifying tenant must maintain the minimum family wage employment positions required under (a) (i) of this subsection (3) while the exemption certificate is valid.

(b) In calculating the number of family wage employment positions:

(i) The owner of an eligible computer data center, in addition to its own net increase in family wage employment positions, may include:

(A) The net increase, since the date of issuance of the qualifying business's exemption certificate, in family wage employment positions employed by qualifying tenants; and

(B) The net increase in family wage employment positions described in (c) (ii) (B) of this subsection (3).

(ii) (A) Qualifying tenants, in addition to their own net increase in family wage employment positions, may include:

(I) A portion of the net increase in family wage employment positions employed by the owner; and

(II) A portion of the net increase in family wage employment positions described in (c) (ii) (B) of this subsection (3).

(B) The portion of the net increase in family wage employment positions to be counted under this subsection (3) (b) (ii) by each qualifying tenant is equal to the net increase in family wage employment positions assigned to an eligible computer data center as described in (b) (ii) (A) (I) and (II) of this subsection (3), multiplied by the percentage of total space within the eligible computer data center occupied by the qualifying tenant. Any combination of qualifying business and qualifying tenant family wage employment positions may meet this requirement.

(c) (i) For purposes of this subsection:

(A) For exemption certificates issued on or after June 9, 2022, family wage employment positions are new permanent employment positions requiring 40 hours of weekly work, or their equivalent, on a full-time basis assigned to an eligible computer data center and

receiving a wage equivalent to or greater than 125 percent of the per capita personal income of the county in which the qualified project is located as published by the employment security department. The per capita personal income to be used to determine qualification for any year is the amount that was established for the immediate prior year.

(B) An employment position may not be counted as a family wage employment position unless the employment position is entitled to health insurance coverage provided by the employer of the employment position.

(C) "New permanent employment position" means an employment position that did not exist or that had not previously been filled as of the date that the department issued an exemption certificate to the qualifying business or qualifying tenant of an eligible computer data center, as the case may be.

(ii)(A) Family wage employment positions include positions filled by employees of the qualifying business and by employees of qualifying tenants.

(B) Family wage employment positions also include individuals performing work at an eligible computer data center as an independent contractor hired by the owner of the eligible computer data center or as an employee of an independent contractor hired by the owner of the eligible computer data center, if the work is necessary for the operation of the computer data center, such as security and building maintenance, and provided that all of the requirements in (c)(i) of this subsection (3) are met.

(d)(i) For a qualifying business or qualifying tenant that does not meet the requirements of this subsection (3), all previously exempted sales and use taxes immediately due and payable, and any exemption certificate issued to that qualifying business or qualifying tenant under this section is canceled, except as described in (d)(iii) of this subsection (3).

(ii) The department of labor and industries must, at the request of the department, assist in determining whether the requirements of this subsection (3) have been met.

(iii) If the department, with the assistance of the department of labor and industries, finds that a failure to meet the requirements of this subsection (3) is due to circumstances beyond the control of the qualifying business or qualifying tenant including, but not limited to, a declaration of an economic recession, pandemic, or natural disaster affecting data center operations, the department may provide exceptions or extensions to the requirements of this subsection (3).

(iv) Any repayment of taxes triggered by the failure of a qualifying business or qualifying tenant to meet the requirements of this subsection (3) must be calculated in proportion to the duration of time for which any applicable requirement was not met.

(v) If the department is notified that a qualifying business or qualifying tenant fails to meet the requirements of this subsection (3), the department may require a qualifying business or qualifying tenant to submit records necessary to determine whether the requirements have been met.

(4) For exemption certificates issued on or after June 9, 2022:

(a) Within three years after being placed in service, the qualifying business operating a newly constructed data center must certify to the department that it has attained certification under one or more of the following sustainable design or green building standards:

(i) BREEAM for new construction or BREEAM in-use;

- (ii) Energy star;
- (iii) Envision;
- (iv) ISO 50001-energy management;
- (v) LEED for building design and construction or LEED for operations and maintenance;
- (vi) Green globes for new construction or green globes for existing buildings;
- (vii) UL 3223; or
- (viii) Other reasonable standards approved by the department.

(b) The department may require qualifying businesses and qualifying tenants to submit records necessary to verify the requirements under this subsection (4) have been met.

(c) (i) For a qualifying business or qualifying tenant that does not meet the requirements of this subsection (4), all previously exempted sales and use taxes are immediately due and payable, any exemption certificate issued to that qualifying business or qualifying tenant under this section is canceled, and an additional 10 percent penalty is assessed, except as described in (c) (ii) of this subsection (4).

(ii) If the department finds that a failure to meet the requirements of this subsection (4) is due to circumstances beyond the control of the qualifying business or qualifying tenant including, but not limited to, a declaration of an economic recession, pandemic, or natural disaster affecting data center operations, the department may, at its discretion, provide exceptions or extensions to the requirements of this subsection (4). The department may, at its discretion, coordinate with agencies with relevant expertise to assist in determining whether the requirements of this subsection (4) have been met.

(5) A qualifying business or a qualifying tenant claiming the exemption under this section is encouraged to take direct steps to adopt practices to mitigate negative environmental impacts resulting from expanded use of data centers, including through:

(a) Coordinating with the industrial waste coordination program established under RCW 43.31.625 to identify and provide technical assistance in implementing industrial symbiosis projects;

(b) To the extent possible, procuring or contracting for power from renewable sources;

(c) Adopting practices to improve the energy efficiency of existing data centers, including through upgrading and consolidating technology, managing data center airflow, and adjusting and improving heating, ventilation, and air conditioning systems; and

(d) Taking actions to conserve, reuse, and replace water. This includes using water efficient fixtures and practices; treating, infiltrating, and harvesting rainwater; recycling water before discharging; partnering with local water utilities to use discharged water for irrigation and other water conservation purposes; using reclaimed water where possible for data center operations; and supporting water restoration in local watersheds.

(6) Qualifying businesses and tenants must claim an exemption under this section in the current tax year when the taxes would have been due unless an extension is filed with the department.

(7) A qualifying business or a qualifying tenant claiming an exemption under this section must complete an annual tax performance report as required in RCW 82.32.534. The report must identify construction firm names and employment levels used for constructing, renovating, refurbishing, or remodeling the data centers.

(8) (a) The certificate holder may not at any time assign or transfer a certificate without the prior written consent of the department. The department must allow certificate transfers if the certificate holder meets the following requirements:

(i) The certificate assignee or transferee is qualified to do business in the state;

(ii) The assignee or transferee acknowledges the transfer of the certificate in writing;

(iii) The assignee or transferee agrees to keep and perform all the terms of the certificates; and

(iv) An assignment or transfer of the certificate is to an entity that:

(A) Controls, is controlled by, or under common control with, the certificate holder;

(B) Acquires all or substantially all of the stock or assets of the certificate holder; or

(C) Is the resulting entity of a merger or consolidation with the certificate holder.

(b) Information submitted on the tax performance report is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request, except as provided otherwise in RCW 82.32.330.

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

(a) "Affiliated" means that one person has a direct or indirect ownership interest of at least 20 percent in another person.

(b) "Building" means a fully enclosed structure with a weather resistant exterior wall envelope or concrete or masonry walls designed in accordance with the requirements for structures under chapter 19.27 RCW.

(c) "Certificate of occupancy" means:

(i) For a newly constructed eligible computer data center, the certificate of occupancy issued by a local governing authority for the structure or structures which comprise the eligible computer data center; or

(ii) For renovations of an eligible computer data center, the certificate of occupancy issued by a local governing authority for the renovated structure or structures that comprise the eligible computer data center.

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

(ii) For a computer data center comprised of multiple buildings, each separate building constructed or refurbished specifically, and used primarily, to house working servers is considered a computer data center if it has all of the characteristics listed in (d) (i) (A) through (C) of this subsection (9).

(iii) A facility comprised of one building or more than one building must have a combined square footage of at least 100,000 square feet.

(e) "Electronic data storage and data management services" includes, but is not limited to: Providing data storage and backup services, providing computer processing power, hosting enterprise software applications, and hosting websites. The term also includes providing services such as email, web browsing and searching, media applications, and other online services, regardless of whether a charge is made for such services.

(f) "Eligible computer data center" means a computer data center having at least 20,000 square feet dedicated for housing working servers. Movable or fixed stand-alone, prefabricated, or modular units, including intermodal shipping containers, do not qualify as "eligible computer data centers."

(g) "Eligible power infrastructure" means all fixtures and equipment owned by a qualifying business or qualifying tenant and necessary for the transformation, distribution, or management of electricity that is required to operate eligible server equipment within an eligible computer data center. The term includes generators; wiring; cogeneration equipment; and associated fixtures and equipment, such as electrical switches, batteries, and distribution, testing, and monitoring equipment. The term does not include substations.

(h) (i) "Eligible server equipment" means for a qualifying business whose computer data center qualifies as an eligible computer data center, the original server equipment installed in an eligible computer data center on or after June 9, 2022, and replacement server equipment.

(ii) For purposes of this subsection (9) (h), "replacement server equipment" means server equipment that:

(A) Replaces existing server equipment, if the sale or use of the server equipment to be replaced qualified for an exemption under this section or RCW 82.12.9861; and

(B) Is installed and put into regular use within 10 years of June 9, 2022.

(iii) For a qualifying tenant who leases space within an eligible computer data center, "eligible server equipment" means the original server equipment installed within the space it leases from an eligible computer data center with an exemption certificate on or within 10 years of June 9, 2022, and replacement server equipment. For purposes of this subsection (9) (h) (iii), "replacement server equipment" means server equipment that:

(A) (I) Replaces existing server equipment, if the sale or use of the server equipment to be replaced qualified for an exemption under this section or RCW 82.12.9861 and is installed and put into regular use before July 1, 2027; or

(II) Replaces existing server equipment in a computer data center that meets the following requirements: Was ineligible before June 9, 2022, for the exemptions provided under this section and RCW 82.12.9861; has been refurbished; and to which a valid exemption certificate applies; and

(B) Is installed and put into regular use no later than 12 years after the date of the certificate of occupancy or completion of refurbishment of the computer data center.

(i) "Qualifying business" means a business entity that exists for the primary purpose of engaging in commercial activity for profit and that is the owner of an eligible computer data center. The term does

not include the state or federal government or any of their departments, agencies, and institutions; tribal governments; political subdivisions of this state; or any municipal, quasi-municipal, public, or other corporation created by the state or federal government, tribal government, municipality, or political subdivision of the state.

(j) "Qualifying tenant" means a business entity that exists for the primary purpose of engaging in commercial activity for profit and that leases space from a qualifying business within an eligible computer data center. The term does not include the state or federal government or any of their departments, agencies, and institutions; tribal governments; political subdivisions of this state; or any municipal, quasi-municipal, public, or other corporation created by the state or federal government, tribal government, municipality, or political subdivision of the state.

(k) (i) "Refurbished" or "refurbishment" means a substantial improvement to an eligible computer data center for which a certificate of occupancy is not issued. Such an improvement must update or modernize servers, server space, ventilation, or power infrastructure in an eligible computer data center.

(ii) For a qualifying computer data center to be considered refurbished, the qualifying business must certify, in a form and manner prescribed by the department, that the refurbishment of an eligible computer data center is complete. The refurbishment is considered complete on the date that the improved portion of the computer data center is operationally complete and able to be used for its intended purpose.

(l) "Server equipment" means the computer hardware located in an eligible computer data center and used exclusively to provide electronic data storage and data management services for internal use by the owner or lessee of the computer data center, for clients of the owner. For the purposes of this subsection, "electronic data storage and data management services" include, but are not limited to: Providing data storage and backup services, providing computer processing power, hosting enterprise software applications, and hosting websites. The term also includes providing services such as email, web browsing and searching, media applications, and other online services, regardless of whether a charge is made for such services. "Server equipment" also includes computer software necessary to operate the computer hardware. "Server equipment" does not include personal computers, the racks upon which the server equipment is installed, and computer peripherals such as keyboards, monitors, printers, and mice, unless used within the eligible computer data center.

(10) This section expires July 1, 2038. [2022 c 267 § 5.]

Tax preference performance statement—2022 c 267 §§ 3-6: See note following RCW 82.08.986.

Findings—Intent—2022 c 267: See note following RCW 82.08.986.