

PSSB 5827
Blue paper

Effect: Removes the extension of the sales tax exemption for replacement servers in some already constructed data center.

1 AN ACT Relating to providing a sales and use tax exemption for
2 eligible server equipment installed in certain data centers; amending
3 RCW 82.08.986 and 82.12.986; creating a new section; and providing
4 expiration dates.

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

6 NEW SECTION. **Sec. 1.** This section is the tax preference
7 performance statement for the sales and use tax exemption contained
8 in RCW 82.08.986 and 82.12.986. This performance statement is only
9 intended to be used for subsequent evaluation of the tax preference.
10 It is not intended to create a private right of action by any party
11 or be used to determine eligibility for preferential tax treatment.

12 (1) The legislature categorizes this sales and use tax exemption
13 as one intended to improve industry competitiveness, as indicated in
14 RCW 82.32.808(2)(b).

15 (2) It is the legislature's specific public policy objective to
16 improve industry competitiveness. It is the legislature's intent to
17 provide a sales and use tax exemption on eligible server equipment
18 and power infrastructure installed in eligible computer data centers,
19 charges made for labor and services rendered in respect to installing
20 eligible server equipment, and for construction, installation,
21 repair, alteration, or improvement of eligible power infrastructures

1 in order to increase investment in data center construction in rural
2 Washington counties, thereby adding real and personal property to
3 state and local property tax rolls, thereby increasing the rural
4 county tax base.

5 (3) If a review finds that the rural county tax base is increased
6 as a result of the construction of computer data centers eligible for
7 the sales and use tax exemption in RCW 82.08.986 and 82.12.986, then
8 the legislature intends to extend the expiration date of the tax
9 preference.

10 (4) In order to obtain the data necessary to perform the review
11 in subsection (3) of this section, the joint legislative audit and
12 review committee may refer to data available from the department of
13 revenue regarding rural county property tax assessments.

14 **Sec. 2.** RCW 82.08.986 and 2012 2nd sp.s. c 6 s 302 are each
15 amended to read as follows:

16 (1) An exemption from the tax imposed by RCW 82.08.020 is
17 provided for sales to qualifying businesses and to qualifying tenants
18 of eligible server equipment to be installed, without intervening
19 use, in an eligible computer data center, and to charges made for
20 labor and services rendered in respect to installing eligible server
21 equipment. The exemption also applies to sales to qualifying
22 businesses and to qualifying tenants of eligible power
23 infrastructure, including labor and services rendered in respect to
24 constructing, installing, repairing, altering, or improving eligible
25 power infrastructure.

26 (2)(a) In order to claim the exemption under this section, a
27 qualifying business or a qualifying tenant must submit an application
28 to the department for an exemption certificate. The application must
29 include the information necessary, as required by the department, to
30 determine that a business or tenant qualifies for the exemption under
31 this section. The department must issue exemption certificates to
32 qualifying businesses and qualifying tenants. The department may
33 assign a unique identification number to each exemption certificate
34 issued under this section.

35 (b) A qualifying business or a qualifying tenant claiming the
36 exemption under this section must present the seller with an
37 exemption certificate in a form and manner prescribed by the
38 department. The seller must retain a copy of the certificate for the
39 seller's files.

1 (c) With respect to computer data centers for which the
2 commencement of construction occurs after July 1, 2015, but before
3 July 1, 2019, the exemption provided in this section is limited to no
4 more than eight computer data centers, with total eligible data
5 centers provided under this section limited to twelve through July 1,
6 2025. Tenants of qualified data centers do not constitute additional
7 data centers under the limit. The exemption is available on a first-
8 in-time basis based on the date the application required under this
9 section is received by the department. Exemption certificates expire
10 two years after the date of issuance, unless construction has been
11 commenced.

12 (3)(a) Within six years of the date that the department issued an
13 exemption certificate under this section to a qualifying business or
14 a qualifying tenant with respect to an eligible computer data center,
15 the qualifying business or qualifying tenant must establish that net
16 employment at the eligible computer data center has increased by a
17 minimum of:

18 (i) Thirty-five family wage employment positions; or
19 (ii) Three family wage employment positions for each twenty
20 thousand square feet of space or less that is newly dedicated to
21 housing working servers at the eligible computer data center. For
22 qualifying tenants, the number of family wage employment positions
23 that must be increased under this subsection (3)(a)(ii) is based only
24 on the space occupied by the qualifying tenant in the eligible
25 computer data center.

26 (b) In calculating the net increase in family wage employment
27 positions:

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

31 (A) The net increase in family wage employment positions employed
32 by qualifying tenants; and

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

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

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

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

1 (B) The portion of the net increase in family wage employment
2 positions to be counted under this subsection (3)(b)(ii) by each
3 qualifying tenant must be in proportion to the amount of space in the
4 eligible computer data center occupied by the qualifying tenant
5 compared to the total amount of space in the eligible computer data
6 center occupied by all qualifying tenants.

7 (c)(i) For purposes of this subsection, family wage employment
8 positions are new permanent employment positions requiring forty
9 hours of weekly work, or their equivalent, on a full-time basis at
10 the eligible computer data center and receiving a wage equivalent to
11 or greater than one hundred fifty percent of the per capita personal
12 income of the county in which the qualified project is located. An
13 employment position may not be counted as a family wage employment
14 position unless the employment position is entitled to health
15 insurance coverage provided by the employer of the employment
16 position. For purposes of this subsection (3)(c), "new permanent
17 employment position" means an employment position that did not exist
18 or that had not previously been filled as of the date that the
19 department issued an exemption certificate to the owner or qualifying
20 tenant of an eligible computer data center, as the case may be.

21 (ii)(A) Family wage employment positions include positions filled
22 by employees of the owner of the eligible computer data center and by
23 employees of qualifying tenants.

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

32 (d) All previously exempted sales and use taxes are immediately
33 due and payable for a qualifying business or qualifying tenant that
34 does not meet the requirements of this subsection.

35 (4) A qualifying business or a qualifying tenant claiming an
36 exemption under this section or RCW 82.12.986 must complete an annual
37 report with the department as required under RCW 82.32.534.

38 (5)(a) The exemption provided in this section does not apply to:

39 (i) Any person who has received the benefit of the deferral
40 program under chapter 82.60 RCW on: (A) The construction, renovation,

1 or expansion of a structure or structures used as a computer data
2 center; or (B) machinery or equipment used in a computer data center;
3 and

4 (ii) Any person affiliated with a person within the scope of
5 (a)(i) of this subsection (5).

6 (b) If a person claims an exemption under this section and
7 subsequently receives the benefit of the deferral program under
8 chapter 82.60 RCW on either the construction, renovation, or
9 expansion of a structure or structures used as a computer data center
10 or machinery or equipment used in a computer data center, the person
11 must repay the amount of taxes exempted under this section. Interest
12 as provided in chapter 82.32 RCW applies to amounts due under this
13 section until paid in full.

14 (6) (~~For purposes of this section the following definitions~~
15 ~~apply~~) The definitions in this subsection apply throughout this
16 section unless the context clearly requires otherwise((+)).

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

19 (b) "Building" means a fully enclosed structure with a weather
20 resistant exterior wall envelope or concrete or masonry walls
21 designed in accordance with the requirements for structures under
22 chapter 19.27 RCW. This definition of "building" only applies to
23 computer data centers for which commencement of construction occurs
24 on or after July 1, 2015.

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

36 (ii) For a computer data center comprised of multiple buildings,
37 each separate building constructed or refurbished specifically, and
38 used primarily, to house working servers is considered a computer
39 data center if it has all of the characteristics listed in ~~((b))~~
40 (c)(i)(A) through (C) of this subsection (6).

1 (iii) A facility comprised of one building or more than one
2 building must have a combined square footage of at least one hundred
3 thousand square feet.

4 ~~((e))~~ (d) "Electronic data storage and data management
5 services" include, but are not limited to: Providing data storage and
6 backup services, providing computer processing power, hosting
7 enterprise software applications, and hosting web sites. The term
8 also includes providing services such as e-mail, web browsing and
9 searching, media applications, and other online services, regardless
10 of whether a charge is made for such services.

11 ~~((d))~~ (e)(i) "Eligible computer data center" means a computer
12 data center:

13 (A) Located in a rural county as defined in RCW 82.14.370;

14 (B) Having at least twenty thousand square feet dedicated to
15 housing working servers, where the server space has not previously
16 been dedicated to housing working servers; and

17 (C) For which the commencement of construction occurs:

18 (I) After March 31, 2010, and before July 1, 2011; ~~((e))~~

19 (II) After March 31, 2012, and before July 1, 2015; or

20 (III) After June 30, 2015, and before July 1, 2025.

21 (ii) For purposes of this section, "commencement of construction"
22 means the date that a building permit is issued under the building
23 code adopted under RCW 19.27.031 for construction of the computer
24 data center. The construction of a computer data center includes the
25 expansion, renovation, or other improvements made to existing
26 facilities, including leased or rented space. "Commencement of
27 construction" does not include soil testing, site clearing and
28 grading, site preparation, or any other related activities that are
29 initiated before the issuance of a building permit for the
30 construction of the foundation of a computer data center.

31 (iii) With respect to facilities in existence on April 1, 2010,
32 that are expanded, renovated, or otherwise improved after March 31,
33 2010, or facilities in existence on April 1, 2012, that are expanded,
34 renovated, or otherwise improved after March 31, 2012, or facilities
35 in existence on July 1, 2015, that are expanded, renovated, or
36 otherwise improved after June 30, 2015, an eligible computer data
37 center includes only the portion of the computer data center meeting
38 the requirements in ~~((d))~~ (e)(i)(B) of this subsection (6).

39 ~~((e))~~ (f) "Eligible power infrastructure" means all fixtures
40 and equipment owned by a qualifying business or qualifying tenant and

1 necessary for the transformation, distribution, or management of
2 electricity that is required to operate eligible server equipment
3 within an eligible computer data center. The term includes
4 generators; wiring; cogeneration equipment; and associated fixtures
5 and equipment, such as electrical switches, batteries, and
6 distribution, testing, and monitoring equipment. The term does not
7 include substations.

8 ((+f+)) (g) "Eligible server equipment" means:

9 (i) For a qualifying business whose computer data center
10 qualifies as an eligible computer data center under ((+d+)) (e)
11 (i)(C)(I) of this subsection (6), the original server equipment
12 installed in an eligible computer data center on or after April 1,
13 2010, and replacement server equipment. For purposes of this
14 subsection (6)((+f+)) (g)(i), "replacement server equipment" means
15 server equipment that:

16 (A) Replaces existing server equipment, if the sale or use of the
17 server equipment to be replaced qualified for an exemption under this
18 section or RCW 82.12.986; and

19 (B) Is installed and put into regular use before April 1, 2018.

20 (ii) For a qualifying business whose computer data center
21 qualifies as an eligible computer data center under ((+d+)) (e)
22 (i)(C)(II) of this subsection (6), "eligible server equipment" means
23 the original server equipment installed in an eligible computer data
24 center on or after April 1, 2012, and replacement server equipment.
25 For purposes of this subsection (6)((+f+)) (g)(ii), "replacement
26 server equipment" means server equipment that:

27 (A) Replaces existing server equipment, if the sale or use of the
28 server equipment to be replaced qualified for an exemption under this
29 section or RCW 82.12.986; and

30 (B) Is installed and put into regular use before April 1, 2020.

31 (iii) For a qualifying business whose computer data center
32 qualifies as an eligible computer data center under (e)(i)(C)(III) of
33 this subsection (6), "eligible server equipment" means the original
34 server equipment installed in a building within an eligible computer
35 data center on or after July 1, 2015, and replacement server
36 equipment. Server equipment installed in movable or fixed stand-
37 alone, prefabricated, or modular units, including intermodal shipping
38 containers, is not "directly installed in a building." For purposes
39 of this subsection (6)(g)(iii), "replacement server equipment" means
40 server equipment that replaces existing server equipment, if the sale

1 or use of the server equipment to be replaced qualified for an
2 exemption under this section or RCW 82.12.986.

3 (iv) For a qualifying tenant who leases space within an eligible
4 computer data center, "eligible server equipment" means the original
5 server equipment installed within the space it leases from an
6 eligible computer data center on or after April 1, 2010, and
7 replacement server equipment. For purposes of this subsection (6)
8 ~~((f))~~ (g)(iii), "replacement server equipment" means server
9 equipment that:

10 (A) Replaces existing server equipment, if the sale or use of the
11 server equipment to be replaced qualified for an exemption under this
12 section or RCW 82.12.986 within eight years after the date of the
13 certificate of occupancy; and

14 (B) Is installed and put into regular use before April 1, 2020.

15 ~~((g))~~ (h) "Qualifying business" means a business entity that
16 exists for the primary purpose of engaging in commercial activity for
17 profit and that is the owner of an eligible computer data center. The
18 term does not include the state or federal government or any of their
19 departments, agencies, and institutions; tribal governments;
20 political subdivisions of this state; or any municipal, quasi-
21 municipal, public, or other corporation created by the state or
22 federal government, tribal government, municipality, or political
23 subdivision of the state.

24 ~~((h))~~ (i) "Qualifying tenant" means a business entity that
25 exists for the primary purpose of engaging in commercial activity for
26 profit and that leases space from a qualifying business within an
27 eligible computer data center. The term does not include the state or
28 federal government or any of their departments, agencies, and
29 institutions; tribal governments; political subdivisions of this
30 state; or any municipal, quasi-municipal, public, or other
31 corporation created by the state or federal government, tribal
32 government, municipality, or political subdivision of the state. The
33 term also does not include a lessee of space in an eligible computer
34 data center under ~~((d))~~ (e)(i)(C)(I) of this subsection (6), if the
35 lessee and lessor are affiliated and:

36 (i) That space will be used by the lessee to house server
37 equipment that replaces server equipment previously installed and
38 operated in that eligible computer data center by the lessor or
39 another person affiliated with the lessee; or

1 (ii) Prior to May 2, 2012, the primary use of the server
2 equipment installed in that eligible computer data center was to
3 provide electronic data storage and data management services for the
4 business purposes of either the lessor, persons affiliated with the
5 lessor, or both.

6 ((+i)) (j) "Server equipment" means the computer hardware
7 located in an eligible computer data center and used exclusively to
8 provide electronic data storage and data management services for
9 internal use by the owner or lessee of the computer data center, for
10 clients of the owner or lessee of the computer data center, or both.
11 "Server equipment" also includes computer software necessary to
12 operate the computer hardware. "Server equipment" does not include
13 personal computers, the racks upon which the server equipment is
14 installed, and computer peripherals such as keyboards, monitors,
15 printers, and mice.

16 (7) This section expires April 1, ((2020)) 2025.

17 **Sec. 3.** RCW 82.12.986 and 2012 2nd sp.s. c 6 s 304 are each
18 amended to read as follows:

19 (1) An exemption from the tax imposed by RCW 82.12.020 is
20 provided for the use by qualifying businesses or qualifying tenants
21 of eligible server equipment to be installed, without intervening
22 use, in an eligible computer data center, and to the use of labor and
23 services rendered in respect to installing such server equipment. The
24 exemption also applies to the use by a qualifying business or
25 qualifying tenant of eligible power infrastructure, including labor
26 and services rendered in respect to installing, repairing, altering,
27 or improving such infrastructure.

28 (2) A qualifying business or a qualifying tenant is not eligible
29 for the exemption under this section unless the department issued an
30 exemption certificate to the qualifying business or a qualifying
31 tenant for the exemption provided in RCW 82.08.986.

32 (3)(a) The exemption provided in this section does not apply to:

33 (i) Any person who has received the benefit of the deferral
34 program under chapter 82.60 RCW on: (A) The construction, renovation,
35 or expansion of a structure or structures used as a computer data
36 center; or (B) machinery or equipment used in a computer data center;
37 and

38 (ii) Any person affiliated with a person within the scope of
39 (a)(i) of this subsection (3).

1 (b) If a person has received the benefit of the exemption under
2 this section and subsequently receives the benefit of the deferral
3 program under chapter 82.60 RCW on either the construction,
4 renovation, or expansion of a structure or structures used as a
5 computer data center or machinery or equipment used in a computer
6 data center, the person must repay the amount of taxes exempted under
7 this section. Interest as provided in chapter 82.32 RCW applies to
8 amounts due under this subsection (3)(b) until paid in full. A person
9 is not required to repay taxes under this subsection with respect to
10 property and services for which the person is required to repay taxes
11 under RCW 82.08.986(5).

12 (4) The definitions and requirements in RCW 82.08.986 apply to
13 this section.

14 (5) This section expires April 1, (~~2020~~) 2025.

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