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HOUSE BILL 2120

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State of Washington

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By Representatives Crouse, Carrell, Morris, Linville, Kessler, Reardon, Hatfield, Eickmeyer, Dunshee, Delvin, Quall, Doumit, Ericksen, Sump, Casada, Pennington and Cairnes

Read first time . Referred to Committee on .

1 AN ACT Relating to a sales and use tax exemption for energy  
2 generating facilities; amending RCW 82.08.02565; adding new sections to  
3 chapter 82.08 RCW; creating a new section; providing an effective date;  
4 and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** Washington state is facing an energy  
7 shortage that will require a combination of strategies including  
8 conservation and additional generation capacity. Since 1995,  
9 Washington state has had a policy of encouraging investment in  
10 manufacturing by exempting the sales and use tax on new equipment.

11 The legislature intends to encourage investment in all forms of  
12 additional electrical generation for the express purpose of supporting  
13 the continued growth of existing Washington state industries and the  
14 state's high-tech sector. Extending the existing exemption for  
15 manufacturing equipment to power generation is one way to encourage  
16 that investment.

17 The legislature also intends to strongly encourage the development  
18 of sufficient generating infrastructure to provide electricity for  
19 Washington state residents at stable, affordable prices.

1       **Sec. 2.** RCW 82.08.02565 and 1999 c 211 s 5 are each amended to  
2 read as follows:

3       (1) The tax levied by RCW 82.08.020 shall not apply to sales to a  
4 manufacturer or processor for hire of machinery and equipment used  
5 directly in a manufacturing operation or research and development  
6 operation, to sales to a person engaged in testing for a manufacturer  
7 or processor for hire of machinery and equipment used directly in a  
8 testing operation, or to sales of or charges made for labor and  
9 services rendered in respect to installing, repairing, cleaning,  
10 altering, or improving the machinery and equipment, but only when the  
11 purchaser provides the seller with an exemption certificate in a form  
12 and manner prescribed by the department by rule. The seller shall  
13 retain a copy of the certificate for the seller's files.

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

15       (a) "Machinery and equipment" means industrial fixtures, devices,  
16 and support facilities, and tangible personal property that becomes an  
17 ingredient or component thereof, including repair parts and replacement  
18 parts. "Machinery and equipment" includes pollution control equipment  
19 installed and used in a manufacturing operation, testing operation, or  
20 research and development operation to prevent air pollution, water  
21 pollution, or contamination that might otherwise result from the  
22 manufacturing operation, testing operation, or research and development  
23 operation.

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

25       (i) Hand-powered tools;

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

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

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

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

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

1 (ii) Conveys, transports, handles, or temporarily stores an item of  
2 tangible personal property at the manufacturing site or testing site;  
3 (iii) Controls, guides, measures, verifies, aligns, regulates, or  
4 tests tangible personal property at the site or away from the site;  
5 (iv) Provides physical support for or access to tangible personal  
6 property;  
7 (v) Produces power for, or lubricates machinery and equipment;  
8 (vi) Produces another item of tangible personal property for use in  
9 the manufacturing operation, testing operation, or research and  
10 development operation;  
11 (vii) Places tangible personal property in the container, package,  
12 or wrapping in which the tangible personal property is normally sold or  
13 transported; or  
14 (viii) Is integral to research and development as defined in RCW  
15 82.63.010.

16 (d) "Manufacturing operation" means the manufacturing of articles,  
17 substances, or commodities for sale as tangible personal property. A  
18 manufacturing operation begins at the point where the raw materials  
19 enter the manufacturing site and ends at the point where the processed  
20 material leaves the manufacturing site. The term also includes (~~that~~  
21 ~~portion of a cogeneration project that is used to generate power for~~  
22 ~~consumption within the manufacturing site of which the cogeneration~~  
23 ~~project is an integral part~~) electrical generation. The term does not  
24 include (~~the production of electricity by a light and power business~~  
25 ~~as defined in RCW 82.16.010 or~~) the preparation of food products on  
26 the premises of a person selling food products at retail.

27 (~~(e) ("Cogeneration" means the simultaneous generation of~~  
28 ~~electrical energy and low-grade heat from the same fuel.~~  
29 ~~(f))~~) "Research and development operation" means engaging in  
30 research and development as defined in RCW 82.63.010 by a manufacturer  
31 or processor for hire.

32 (~~(g))~~) (f) "Testing" means activities performed to establish or  
33 determine the properties, qualities, and limitations of tangible  
34 personal property.

35 (~~(h))~~) (g) "Testing operation" means the testing of tangible  
36 personal property for a manufacturer or processor for hire. A testing  
37 operation begins at the point where the tangible personal property  
38 enters the testing site and ends at the point where the tangible  
39 personal property leaves the testing site. (~~The term also includes~~

1 ~~that portion of a cogeneration project that is used to generate power~~  
2 ~~for consumption within the site of which the cogeneration project is an~~  
3 ~~integral part.))~~ The term does not include (~~the production of~~  
4 ~~electricity by a light and power business as defined in RCW 82.16.010~~  
5 ~~or the~~) preparation of food products on the premises of a person  
6 selling food products at retail.

7 NEW SECTION. **Sec. 3.** (1) Except as provided in subsection (2) of  
8 this section or section 4 of this act, taxes exempted under RCW  
9 82.08.02565 or 82.12.02565 need not be repaid.

10 (2) If, on the basis of a report under section 5 of this act or  
11 other information, the department finds that an electrical generation  
12 facility is no longer used for the generation of electricity, the  
13 exempted taxes under RCW 82.08.02565 or 82.12.02565 are immediately due  
14 according to the following repayment schedule.

15	Year in which facility becomes	Percent of deferred taxes due
16	ineligible for deferral	
17	1	100 percent
18	2	87.5 percent
19	3	75 percent
20	4	62.5 percent
21	5	50 percent
22	6	37.5 percent
23	7	25 percent
24	8	12.5 percent

25 The department shall assess interest at the rate provided for  
26 delinquent taxes, but not penalties, retroactively to the date of  
27 deferral.

28 NEW SECTION. **Sec. 4.** (1) Except as provided in subsection (2) of  
29 this section or section 3 of this act, taxes exempted under RCW  
30 82.08.02565 or 82.12.02565 need not be repaid.

31 (2) If, on the basis of a report under section 5 of this act or  
32 other information, the department finds that an electrical generation  
33 facility is selling less than seventy percent of its electricity to  
34 businesses domiciled in the state of Washington or end users located in  
35 the state of Washington during the calendar year in which the  
36 electrical generation facility first takes an exemption under RCW

1 82.08.02565 or 82.12.02565, or in any calendar year during the nine  
2 succeeding calendar years, ten percent of the total amount of taxes  
3 exempted under RCW 82.08.02565 or 82.12.02565 are immediately due.  
4 This amount is multiplied by one minus the ratio of the percent of  
5 sales made to businesses domiciled in the state of Washington or end  
6 users located in the state of Washington divided by seventy percent.

7 (3) The department shall assess interest at the rate provided for  
8 delinquent taxes, but not penalties, retroactively to the date of  
9 deferral.

10 NEW SECTION. **Sec. 5.** Each recipient of an exemption granted under  
11 RCW 82.08.02565 or 82.12.02565 shall submit a report to the department  
12 on December 31st of the year in which the electrical generation  
13 facility first takes an exemption under RCW 82.08.02565 or 82.12.02565,  
14 and on December 31st of each of the nine succeeding calendar years.  
15 The report shall contain information, as required by the department,  
16 from which the department may determine whether the recipient is  
17 meeting the requirements of this chapter, including information on the  
18 sales of electricity for the prior calendar year. If the recipient  
19 fails to submit a report or submits an inadequate report, the  
20 department may declare the amount of exempted taxes outstanding to be  
21 immediately assessed and payable.

22 NEW SECTION. **Sec. 6.** Sections 3 through 5 of this act are each  
23 added to chapter 82.08 RCW.

24 NEW SECTION. **Sec. 7.** If any provision of this act or its  
25 application to any person or circumstance is held invalid, the  
26 remainder of the act or the application of the provision to other  
27 persons or circumstances is not affected.

28 NEW SECTION. **Sec. 8.** This act is necessary for the immediate  
29 preservation of the public peace, health, or safety, or support of the  
30 state government and its existing public institutions, and takes effect  
31 July 1, 2001.

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