



Special Notice

WASHINGTON STATE DEPARTMENT OF REVENUE

MAY 13, 2010

Changes to the Rural County Sales and Use Tax Deferral Program

Summary

Effective July 1, 2010, Engrossed Substitute House Bill (ESHB) 3014 (Chapter 16, Laws of 2010), modifies the Rural County Sales/Use Tax Deferral Program under Chapter 82.60 RCW. The new program will be referred to as the High Unemployment County Sales/Use Tax Deferral Program.

The deferral and ultimate waiver of sales/use tax will be available to businesses:

- Engaging in manufacturing, conditioning vegetable seeds, research and development, and commercial testing for manufacturers; and
- Locating in qualifying counties or locating in Community Empowerment Zones (CEZ's) if certain employment requirements are met
- Qualifying counties are those counties with an unemployment rate at least 20 percent higher than the statewide rate based on a three year average published by the Employment Security Department.
- The 2010 list includes 13 qualifying counties:

Clark	Klickitat	Skamania
Columbia	Lewis	Stevens
Cowlitz	Mason	Wahkiakum
Ferry	Pacific	
Grays Harbor	Pend Oreille	

- CEZ's are located in the following counties:

King	Pierce	Yakima
Kitsap	Spokane	

- o Businesses locating within a CEZ must hire one person from within the county in which the CEZ is located for every \$750,000 of investment on which sales tax is deferred/waived.

The program is extended to July 1, 2020.

In addition, beginning July 1, 2010, computer programming and computer-related services do not qualify as manufacturing activities and therefore will not qualify for the High Unemployment County Sales/Use Tax Deferral Program or the Rural County B&O Tax Credit for New Employees Program under Chapter 82.62 RCW.

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Prior to July 1, 2010, ESHB 3014 clarifies the definition of manufacturing under the expiring program to include computer programming and computer-related services only if the services provide a new, different, or useful substance or article of tangible personal property for sale. The bill makes these same clarifications under the Rural County B&O Tax Credit for New Employees provided under Chapter 82.62 RCW.

What is the deferral program?

The High Unemployment County Sales/Use Tax Deferral Program grants a deferral (and ultimate waiver) of sales/use tax on charges for construction and purchases of qualified machinery and equipment to manufacturers, research and development laboratories, commercial testing facilities, and persons conditioning vegetable seed located in qualifying counties or Community Empowerment Zones (CEZ).

The sales and/or use taxes on qualified construction and equipment costs for such businesses located in qualified counties or CEZs are waived when all program requirements have been met and verified.

These waiver requirements include:

- An annual survey covering each calendar year must be filed electronically by April 30 of the following year.
- All purchases have been verified as eligible by the Department of Revenue.
- The facility must be used for qualified activities during the year in which the investment project is certified as operationally complete by the Department and the following seven years.
- Employment requirements have been met for a business located in a CEZ.

Employment requirements are explained later in this notice.

This program expires on July 1, 2020.

What counties qualify as eligible areas?

Qualifying counties are those counties with an unemployment rate that is at least 20 percent above the state average for the three calendar years immediately preceding the year in which the list is published or updated.

The list of eligible counties was published in April 2010 by the Washington State Employment Security Department. This list will be used for applications received from July 1, 2010 – June 30, 2012.

The following is a list of qualifying counties:

Clark	Klickitat	Skamania
Columbia	Lewis	Stevens
Cowlitz	Mason	Wahkiakum
Ferry	Pacific	
Grays Harbor	Pend Oreille	

You may also access this information at:

<http://www.workforceexplorer.com/article.asp?articleId=10268&PAGEID=&SUBID>

Businesses making investment decisions should be aware that the list is updated every two years beginning July 1, 2010. A specific area may not be on the list each time it is updated. Before making a final investment decision based on this program, the business

should call the Special Programs Division at (360) 570-3265 option 6 to determine the eligibility of a particular area.

Do Community Empowerment Zones qualify as eligible areas?

Yes, an eligible area also means a designated Community Empowerment Zone (CEZ) approved under RCW 43.31C.020. CEZs have a continuous status and are not reevaluated annually. The following cities have designated community empowerment zones:

Bremerton	Spokane	White Center
Duwamish	Tacoma	Yakima

Maps of the CEZs are available on our web site at <http://dor.wa.gov> under “Quick clicks” select “Tax incentive programs.” Links to the maps are located at the bottom of the tax incentive web page.

What are the business requirements for deferral program?

A business must be located in a qualified county or a CEZ.

The business must be engaged in manufacturing activities, the conditioning of vegetable seeds, or activities performed by research and development laboratories, or commercial testing laboratories.

The business must invest in the construction of new structures, or expansion or renovation of existing structures for the purpose of increasing floor space or production capacity used for the qualifying activities listed above.

In addition, the business may invest in new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and development operation. The machinery and equipment must be new to the business or the state to qualify.

“Qualified machinery and equipment” includes:

Computers; software; data processing equipment; laboratory equipment; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; operating structures; and all equipment used to control or operate the machinery.

The lessor or owner of a qualified building can be eligible for a deferral when:

- The underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person; or
- The lessor by written contract agrees to pass the economic benefit of the deferral to the lessee;
 - o The lessee agrees in writing with the Department to complete the annual survey required under RCW 82.60.070; and
 - o The economic benefit of the deferral passed to the lessee is no less than the amount of tax deferred by the lessor and is evidenced by written documentation of any type of payment, credit or financial arrangement between the lessor or owner of the qualified building and the lessee.

All costs of the investment project, including labor and services performed in the planning, installation, and construction of the project, are used to determine the eligible portion for deferral. If the facility is used partly for qualifying activities and partly for other purposes, the tax deferral shall be determined by apportioning the costs of construction.

Cogeneration facilities that are part of a manufacturing facility qualify on the portion that is used to generate power for on-site consumption.

Are there any hiring requirements?

Businesses located in a CEZ must hire at least one permanent full-time employee for each \$750,000 of investment for which the deferral is requested. The employee must be a resident of the CEZ or the county that contains the CEZ at the time of hiring.

Eligible persons must be hired after the date the application is filed with the Department. A mailing address alone is insufficient documentation to establish that an employee is a resident.

The qualified employment position must be filled by the end of the calendar year following the year in which the project is certified as operationally complete. If a person does not meet the requirements for qualified employment positions by the end of the second calendar year following the year in which the project is certified as operationally complete, all deferred taxes are immediately due.

How do I apply?

An application must be filed with the Department of Revenue before a building permit is issued for the project or the business takes possession of the machinery or equipment.

Once the application is filed, construction or possession of machinery and equipment may begin.

The *High Unemployment County Application for Sales & Use Tax Deferral* and the *High Unemployment County Application for Lessor for Sales & Use Tax Deferral* are available on our web site at <http://dor.wa.gov> under "Get a form or publication."

The Department must approve or deny applications within 60 days. If approved, a Tax Deferral Certificate is issued to the business to provide to vendors and contractors at the time of purchase. If denied, the business may appeal the decision to the Department's Appeal Division.

How do I use the deferral certificate?

The deferral certificate allows vendors and contractors to sell to approved businesses without charging retail sales tax. Sales and use tax may be deferred on three kinds of expenditures:

1. Qualified buildings
2. Qualified machinery and equipment
3. Labor and services rendered in the planning, installation and construction of the project.

The purpose of the High Unemployment County Sales/Use Tax Deferral program is to relieve qualified firms, undertaking qualified investment projects in eligible areas, of the obligation to pay sales tax on the retail construction services and purchases of qualified machinery and equipment.

However, it is not a comprehensive sale and use tax exemption. The deferral does not extend to prime construction contractors or subcontractors. It does not relieve contractors or subcontractors of their obligation to pay tax on the purchase or rental of tools, equipment, and supplies that are not incorporated into the final project, even though the ultimate cost of the tax is passed on to the person making the investment.

Should I use the deferral certificate to purchase all my machinery and equipment?

Machinery and equipment that is used directly in the manufacturing operation can be purchased exempt from retail sales or use tax under the Manufacturer's Sales and Use Tax Exemption (M&E) provided by RCW 82.08.02565 and RCW 82.12.02565. These exemptions are separate from the deferral program and do not require an application or annual survey to be filed. Equipment that qualifies under the M&E exemption should not be included on the deferral application

For information on equipment that qualifies for the M&E exemption, see WAC 458-20-13601 or our online Manufacturing Industry Tax Guide at <http://dor.wa.gov> under "Get a form or publication," then select "Industry specific guides."

Is there an annual survey required?

Yes, an annual survey must be filed by each recipient of a deferral, including a lessee who received the benefit through a lessor. The survey must be received electronically by April 30th of the year following the calendar year in which the investment project is certified by the Department as having been operationally complete and the seven succeeding calendar years.

If a business fails to complete a survey by the due date, 12.5 percent of the deferred tax is immediately due plus applicable interest.

The Annual Survey is available from the Department through our electronic filing system, My Account.

Is there an audit of the project?

When your application is approved, a deferral certificate will be issued using the estimates from your application. Upon completion of the project, an auditor will verify that you are performing qualified activities at this facility. They will also verify that the approved percentage of your structure and 100 percent of the machinery and equipment are eligible for deferral. The auditor may adjust the allowable deferral based on his or her findings.

To minimize inconvenience and the time it takes to complete an audit, please have the following records for the audit period available for your meeting with the auditor:

- Purchase invoices (i.e., accounts payable, receipts)
- Supporting documentation for the construction, such as construction contracts
- Original Sales and Use Tax Deferral Certificate

Although most audits can be completed with the above records, additional documents may be required during the audit.

Definitions

"Manufacturing" means the same as defined in RCW 82.04.120. "Manufacturing" also includes:

Before July 1, 2010:

- Computer programming, the production of computer software, and other computer-related services, but only when the computer programming, production of computer software, or other computer-related services are performed by a manufacturer as defined in RCW 82.04.110 and contribute to the production of a new, different, or useful substance or article of tangible personal property for sale;
- the activities performed by research and development laboratories and commercial testing laboratories; and
- the conditioning of vegetable seeds.

Beginning July 1, 2010:

- The activities performed by research and development laboratories;
- commercial testing laboratories; and
- the conditioning of vegetable seeds.

“Permanent full-time employee” must be employed in the eligible investment project during the entire tax year.

“Entire tax year” means a full-time position that is filled for a period of 12 consecutive months.

“Full-time” means at least 35 hours a week, 455 hours a quarter, or 1,820 hours a year.

“Research and development” means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun, but only when such activities are intended to ultimately result in the production of a new, different, or useful substance or article of tangible personal property for sale.

“Commercial sales” excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed \$1 million dollars.

**For more
information**

For more information or questions regarding the application, contact the Department's Special Programs Division at (360) 570-3265 option 6.

You can also visit our Tax Incentives page online at <http://dor.wa.gov>. Under “Quick Clicks,” select “Tax incentive programs.”