

Initiative Measure No.1355 filed April 17, 2014

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: I-2844.2/14 2nd draft

ATTY/TYPIST: JA:lcl

BRIEF DESCRIPTION:

AN ACT Relating to promoting sustainable economic development; amending RCW 82.08.020, 82.04.4451, and 82.08.0206; adding a new chapter to Title 82 RCW; repealing RCW 82.04.240, 82.04.2403, 82.04.2404, and 82.04.294; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** INTENT. The intent of this act is to encourage economic activity by a phased-in one percent reduction of the state sales tax, elimination of the business and occupation tax on manufacturing, tripling the business and occupation tax credit for small businesses, and a sales tax rebate for qualifying low-income persons, all funded by a phased-in carbon pollution tax on fossil fuels consumed in the state. The proceeds of this tax are not intended to be used for highway purposes. This chapter is not intended to exempt any person from tax liability under any other law. Sections 4 through 6 of this act create accounts in the state treasury and concern withdrawals from those accounts; sections 7 through 9 of this act concern the carbon pollution tax; section 10 of this act

repeals the business and occupation tax on manufacturers; section 11 of this act reduces the state sales tax; section 12 of this act increases the business and occupation tax credit for small businesses; and section 13 of this act increases the working families' tax exemption.

NEW SECTION. **Sec. 2.** FINDINGS AND DECLARATION OF POLICY. The people find that reduction of Washington state's high sales tax will increase commerce in this state; reduction of the business and occupation tax on manufacturers will encourage business formation by reducing the burden of this tax and encourage the expansion of existing manufacturing businesses; the funding of the working families tax rebate program will allow the execution of a policy expressed at the inception of that program; and the imposition of a fossil fuel tax to fund these actions will establish Washington state's national leadership in reducing both climate change and the acidification of the oceans.

NEW SECTION. **Sec. 3.** DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Aircraft fuel" has the same meaning as in RCW 82.42.010.

(2) "Carbon calculation" means carbon content calculations for fuels or combustible materials adopted by the energy information administration, the United States department of energy, or its successor in effect on January 1st of each year, which the department of revenue must put into effect by the following July 1st. If carbon content calculations cease to be so adopted, the last calculation effective on the last January 1st must be used.

(3) "Carbon pollution tax" means the tax created in section 7 of this act.

(4) "Coal" means coal of any kind, including anthracite coal, bituminous coal, subbituminous coal, lignite, waste coal, syncoal, and coke of any kind.

(5) "Direct service industrial customer" means a person who is an industrial customer that contracts for the purchase of electricity from outside the state or from the Bonneville power administration, in either case for direct consumption. "Direct service industrial customer" includes a person who is a subsidiary that is more than fifty percent owned by a direct service industrial customer and who receives electricity from outside the state or from the Bonneville power administration, in either case, pursuant to the parent's contract for electricity.

(6) "Fossil fuel" means petroleum products, motor vehicle fuel, special fuel, aircraft fuel, natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from these products, including without limitation still gas and petroleum residuals including bunker fuel.

(7) "Load" means the amount of kilowatt-hours of electricity delivered in the most recently completed year by a qualifying utility to its Washington retail customers.

(8) "Motor vehicle fuel" has the same meaning as provided in RCW 82.38.020.

(9) "Natural gas" means naturally occurring mixtures of hydrocarbon gases and vapors consisting principally of methane, whether in gaseous or liquid form, including methane clathrate.

(10) "Person" means any individual, division, or instrumentality of a government, business, corporation, partnership, or trust.

(11) "Petroleum product" has the same meaning as in RCW 82.23A.010.

(12) "Qualified sequestration" means sequestration qualified for credit pursuant to RCW 80.70.020 or sequestration of carbon in accordance with a method approved by the United States environmental protection agency or its successor.

(13) "Qualifying utility" means any electric utility that is:

(a) An "electrical company" as defined in RCW 80.04.010;

(b) Operating under authority of chapter 35.92 or 87.03 RCW or Title 54 RCW; or

(c) A profit, nonprofit, or mutual corporation operating within this state for the sale or distribution of electricity to others.

(14) "Rule" means a rule adopted by any agency or other entity of Washington state government to carry out the intent and purposes of this chapter.

(15) "Special fuel" has the same meaning as in RCW 82.38.020 and includes fuel that is sold or used to propel vessels.

(16) "Year" means the twelve-month period commencing January 1st and ending December 31st unless otherwise specified.

NEW SECTION. **Sec. 4.** CARBON POLLUTION TAX ACCOUNT. The carbon pollution tax account is created in the custody of the state treasury. All receipts from the collected carbon pollution tax must be deposited into this account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

NEW SECTION. **Sec. 5.** DISBURSEMENT FROM CARBON POLLUTION TAX ACCOUNT AUTHORIZED BY OFFICE OF FINANCIAL MANAGEMENT. The office of financial management must estimate the funding requirements for fulfilling anticipated expenditures from the sustainable economy working families' tax exemption account created in section 6 of this act, one hundred ten percent of which estimate must at all times be maintained as a required reserve in the sustainable economy working families' tax exemption account before disbursement of further funds from the carbon pollution tax account. Funds in excess of this required reserve in the carbon pollution tax account must be disbursed into the general fund.

NEW SECTION. **Sec. 6.** SUSTAINABLE ECONOMY WORKING FAMILIES ACCOUNT. The sustainable economy working families' tax exemption account is created in the custody of the state treasury. All expenditures from the account may be used only to provide the working families' tax exemption as specified in RCW 82.08.0206 and administrative costs incurred in its administration. The account is

subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

NEW SECTION. **Sec. 7.** CARBON POLLUTION TAX. (1) There is levied and collected a separate and independent fossil fuel carbon pollution tax upon the carbon content of fossil fuels extracted, manufactured, or introduced into this state, equal to fifteen dollars per metric ton of carbon dioxide as of July 1, 2015, increasing to twenty-five dollars per metric ton as of July 1, 2016, with automatic increases thereafter by five percent each year beginning July 1st, measured in each case by applying a carbon calculation to the particular fossil fuel, upon the sale or use in Washington of:

(a) Fossil fuels sold or used in Washington by any person (except fossil fuels used to generate electricity or to refine fossil fuels) including, but not limited to, fossil fuels sold or used for aviation or marine purposes, but excluding fossil fuels intended for export outside this state. Fuels containing fossil fuels must be taxed by the percentage of fossil-nonfossil fuel mix unless otherwise specified in this section. Export to a federally recognized Indian tribal reservation located within this state is not considered export outside this state;

(b) Fossil fuels used by a qualifying utility to generate electricity within Washington and fossil fuels intrinsically embedded in electricity by virtue of being a source of generating energy to generate electricity that:

(i) Are imported into Washington by or for the account of (by way of wheeling or otherwise) a direct service industrial customer; or

(ii) Are purchased from the Bonneville power administration by a qualifying utility or by a direct service industrial customer; and

(iii) Have carbon dioxide equivalent contents which, for purposes of this act, are determined by using the fuel mix data calculated and disclosed as provided in RCW 19.29A.060 by filing with the department;

(c) Fossil fuels used to refine fossil fuels the carbon dioxide contents of which, for purposes of this act, must be determined by using reports filed with the federal environmental protection agency

or its successor under its greenhouse gas reporting program or successor program, a duplicate of which report by each refinery must be simultaneously filed with the department together with such information as the department may require by regulation.

(2) Any tax collected under this section must be reported and collected in the following manner with respect to the following fossil fuels:

(a) Petroleum and its products, including crude oil, plant condensate, lubricating oil, gasoline, kerosene, diesel motor fuel, benzol, fuel oil, residual oil, liquefiable gases, and every other product derived from the refining of crude oil in accordance with and at the intervals provided in chapter 82.23A RCW in accordance with supplemental regulations and forms the department adopts;

(b) Motor vehicle fuel, in accordance with and at the intervals provided in chapter 82.36 RCW in accordance with supplemental regulations and forms the department adopts;

(c) Special fuel, in accordance with and at the intervals provided in chapter 82.36 RCW, and to the extent not covered therein, then in accordance with chapter 82.38 RCW, all in accordance with supplemental regulations and forms the department adopts;

(d) Aircraft fuel, in accordance with and at the intervals provided in chapter 82.42 RCW in accordance with supplemental regulations and forms the department adopts;

(e) Fossil fuels not listed in this subsection and not consumed to generate electricity, in accordance with chapters 82.08 and 82.12 RCW and supplemental regulations and forms the department adopts unless expressly provided otherwise in this section;

(f) Fossil fuels consumed to generate electricity must be reported in accordance with RCW 19.29A.060 to the department and collected in accordance with chapter 82.16 RCW with respect to light and power businesses with supplemental regulations and forms the department adopts. The department and the department of licensing may cooperate to adopt a consolidated form to be submitted to both departments; and

(g) Carbon pollution emanating into the atmosphere from refineries must be reported by each refinery operator as provided in subsection

(2) (a) of this section, and the tax on the carbon reported thereon must be paid to the department within fifteen days thereafter in accordance with regulations adopted by the department.

(3) Tax collected under this section must be based upon the same tax schedule for in-state generated electricity as for out-of-state generated electricity. In the absence of a timely and accurate filing under subsection (2) (f) of this section, the applicable fuel mix is conclusively presumed to be one hundred percent subbituminous coal for the respective month.

(4) The carbon pollution tax must be reduced for uses of fossil fuels that can be shown and verified not to contribute to increasing carbon pollution by reason of qualified sequestration. The tax reduction in such cases must be proportional to the fraction of emissions that are so sequestered. The right to carbon pollution tax reduction under this subsection may not be transferred, traded, or banked.

(5) It is the intent and purpose of this act that the tax is imposed only once and at the time and place of the first taxable event and upon the first taxable person within this state. Any person whose activities would otherwise require payment of the tax imposed by this act but are exempt from the tax has a precollection obligation for the tax that must be imposed on the first taxable event within this state. Failure to pay the tax with respect to a taxable event may not prevent tax liability from arising by reason of a subsequent taxable event.

(6) The department must adopt rules as necessary to implement the carbon pollution tax and sequestration tax credits provided for in subsection (2) of this section. The department must develop and make available worksheets and guidance documents necessary to calculate the carbon pollution produced by various fossil fuels. The department must use the carbon calculation to calculate the amount of carbon pollution produced by each type of fuel and the consequent tax rate for each fuel.

(7) Any person extracting or importing fossil fuels or importing electricity is liable for payment of the carbon pollution tax imposed under this section with respect to those fuels or that electricity.

(8) While collected in accordance with the chapters referred to above, the proceeds of this separate and independent tax collected under this section must be deposited as set forth in the following order of priority:

(a) Into the carbon pollution tax account created in section 4 of this act from which withdrawals in favor of the funds identified in this section must be made;

(b) Into the sustainable economy working families' tax exemption account created in section 6 of this act: Funds determined as provided in section 5 of this act to be sufficient to provide the working families' tax exemption in RCW 82.08.0206 including administrative costs incurred to implement this exemption;

(c) Into the general fund: All remaining funds.

NEW SECTION. **Sec. 8.** EXEMPTIONS. The tax levied under section 7 of this act does not apply to:

(1) Fossil fuels brought into this state by means of the fuel supply tank of a motor vehicle, vessel, locomotive, or aircraft.

(2) The tax levied by section 7 of this act does not apply to diesel fuel, biodiesel fuel, or aircraft fuel, used solely for agricultural purposes. This exemption is available only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department.

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

(a) "Agricultural purposes" means the performance of activities directly related to the growing, raising, or producing of agricultural products.

(b) "Agricultural purposes" does not include:

(i) Heating space for human habitation or pumping water for human consumption; or

(ii) Transportation on public roads, except when the transportation is incidental to transportation on private property.

(c) "Aircraft fuel" is defined as provided in RCW 82.42.010.

(d) "Biodiesel fuel" is defined as provided in RCW 19.112.010.

(e) "Diesel fuel" is defined as provided in 26 U.S.C. Sec. 4083, as amended or renumbered as of January 1, 2006.

(f) "Farm fossil fuel user" means: (i) A farmer; or (ii) a person who provides horticultural services for farmers, such as soil preparation services, crop cultivation services, and crop harvesting services.

(g) "Farmer" has the same meaning as provided in RCW 82.04.213.

(4) Nothing in this chapter may be construed to exempt the state or any political subdivision thereof from the payment of the tax.

NEW SECTION. **Sec. 9.** DELINQUENCY, LATE FILING PENALTY, INTEREST ON DELINQUENT TAX. The tax levied by section 7 of this act is delinquent if not paid by the applicable due date under RCW 1.12.040, after the due date, interest accrues at the higher of (1) twelve percent per annum or (2) six percentage points above the equivalent coupon issue yield (as published by the board of governors of the federal reserve system) of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted during the calendar month immediately preceding the due date, until paid.

NEW SECTION. **Sec. 10.** The following acts or parts of acts are each repealed:

(1) RCW 82.04.240 (Tax on manufacturers) and 2010 c 114 s 104, 2004 c 24 s 4, 2003 c 149 s 3, 1998 c 312 s 3, 1993 sp.s. c 25 s 102, 1981 c 172 s 1, 1979 ex.s. c 196 s 1, 1971 ex.s. c 281 s 3, 1969 ex.s. c 262 s 34, 1967 ex.s. c 149 s 8, 1965 ex.s. c 173 s 5, & 1961 c 15 s 82.04.240;

(2) RCW 82.04.2403 (Manufacturer tax not applicable to cleaning fish) and 1994 c 167 s 1;

(3) RCW 82.04.2404 (Manufacturers--Processors for hire--Semiconductor materials) and 2010 c 114 s 105 & 2006 c 84 s 2; and

(4) RCW 82.04.294 (Tax on manufacturers or wholesalers of solar energy systems) and 2013 2nd sp.s. c 13 s 902, 2011 c 179 s 1, 2010 c 114 s 109, 2009 c 469 s 501, 2007 c 54 s 8, & 2005 c 301 s 2.

Sec. 11. RCW 82.08.020 and 2014 c 140 s 12 are each amended to read as follows:

(1) Beginning July 1, 2015, there is levied and collected a tax equal to six ((and five-tenths)) percent, decreasing to five and five-tenths percent beginning July 1, 2016, of the selling price on each retail sale in this state of:

(a) Tangible personal property, unless the sale is specifically excluded from the RCW 82.04.050 definition of retail sale;

(b) Digital goods, digital codes, and digital automated services, if the sale is included within the RCW 82.04.050 definition of retail sale;

(c) Services, other than digital automated services, included within the RCW 82.04.050 definition of retail sale;

(d) Extended warranties to consumers; and

(e) Anything else, the sale of which is included within the RCW 82.04.050 definition of retail sale.

(2) There is levied and collected an additional tax on each retail car rental, regardless of whether the vehicle is licensed in this state, equal to five and nine-tenths percent of the selling price. The revenue collected under this subsection must be deposited in the multimodal transportation account created in RCW 47.66.070.

(3) Beginning July 1, 2003, there is levied and collected an additional tax of three-tenths of one percent of the selling price on each retail sale of a motor vehicle in this state, other than retail car rentals taxed under subsection (2) of this section. The revenue collected under this subsection must be deposited in the multimodal transportation account created in RCW 47.66.070.

(4) For purposes of subsection (3) of this section, "motor vehicle" has the meaning provided in RCW 46.04.320, but does not include:

(a) Farm tractors or farm vehicles as defined in RCW 46.04.180 and 46.04.181, unless the farm tractor or farm vehicle is for use in the production of marijuana;

(b) Off-road vehicles as defined in RCW 46.04.365;

(c) Nonhighway vehicles as defined in RCW 46.09.310; and

(d) Snowmobiles as defined in RCW 46.04.546.

(5) Beginning on December 8, 2005, 0.16 percent of the taxes collected under subsection (1) of this section must be dedicated to funding comprehensive performance audits required under RCW 43.09.470. The revenue identified in this subsection must be deposited in the performance audits of government account created in RCW 43.09.475.

(6) The taxes imposed under this chapter apply to successive retail sales of the same property.

(7) The rates provided in this section apply to taxes imposed under chapter 82.12 RCW as provided in RCW 82.12.020.

Sec. 12. RCW 82.04.4451 and 2010 1st sp.s. c 23 s 1102 are each amended to read as follows:

(1) In computing the tax imposed under this chapter, a credit is allowed against the amount of tax otherwise due under this chapter, as provided in this section. Except for taxpayers that report at least fifty percent of their taxable amount under RCW 82.04.255, 82.04.290(2)(a), and 82.04.285, the maximum credit for a taxpayer for a reporting period is (~~(thirty-five)~~) one hundred five dollars multiplied by the number of months in the reporting period, as determined under RCW 82.32.045. For a taxpayer that reports at least fifty percent of its taxable amount under RCW 82.04.255, 82.04.290(2)(a), and 82.04.285, the maximum credit for a reporting period is (~~(seventy)~~) two hundred ten dollars multiplied by the number of months in the reporting period, as determined under RCW 82.32.045.

(2) When the amount of tax otherwise due under this chapter is equal to or less than the maximum credit, a credit is allowed equal to the amount of tax otherwise due under this chapter.

(3) When the amount of tax otherwise due under this chapter exceeds the maximum credit, a reduced credit is allowed equal to twice the maximum credit, minus the tax otherwise due under this chapter, but not less than zero.

(4) The department may prepare a tax credit table consisting of tax ranges using increments of no more than five dollars and a corresponding tax credit to be applied to those tax ranges. The table

shall be prepared in such a manner that no taxpayer will owe a greater amount of tax by using the table than would be owed by performing the calculation under subsections (1) through (3) of this section. A table prepared by the department under this subsection must be used by all taxpayers in taking the credit provided in this section.

Sec. 13. RCW 82.08.0206 and 2008 c 325 s 2 are each amended to read as follows:

(1) A working families' tax exemption, in the form of a remittance tax due under this chapter and chapter 82.12 RCW, is provided to eligible low-income persons for sales taxes paid under this chapter after January 1, 2008.

(2) For purposes of the exemption in this section, an eligible low-income person is:

(a) An individual, or an individual and that individual's spouse if they file a federal joint income tax return;

(b) (~~((An individual who))~~) An individual who is eligible for, and is granted, the credit provided in Title 26 U.S.C. Sec. 32; and

(c) (~~((An individual who))~~) An individual who properly files a federal income tax return as a Washington resident, and has been a resident of the state of Washington more than one hundred eighty days of the year for which the exemption is claimed.

(3) For remittances made in 2009 and 2010, the working families' tax exemption for the prior year is a retail sales tax exemption equal to the greater of five percent of the credit granted as a result of Title 26 U.S.C. Sec. 32 of the federal internal revenue code in the most recent year for which data is available or twenty-five dollars. For (~~(2011 and thereafter)~~) 2015, the working families' tax exemption for the prior year is equal to the greater of (~~(ten)~~) fifteen percent of the credit granted as a result of Title 26 U.S.C. Sec. 32 of the federal internal revenue code in the most recent year for which data is available or (~~(fifty)~~) one hundred dollars. For 2016 and thereafter, the working families' tax exemption for the prior year is equal to the greater of twenty-five percent of the credit granted as a result of 26 U.S.C. Sec. 32 of the federal internal revenue code in

the most recent year for which data is available or one hundred dollars.

(4) For any fiscal period, the working families' tax exemption authorized under this section (~~(shall)~~) must be approved by the legislature in the state omnibus appropriations act before persons may claim the exemption during the fiscal period.

(5) The working families' tax exemption (~~(shall)~~) must be administered as provided in this subsection.

(a) An eligible low-income person claiming an exemption under this section must pay the tax imposed under chapters 82.08, 82.12, and 82.14 RCW in the year for which the exemption is claimed. The eligible low-income person may then apply to the department for the remittance as calculated under subsection (3) of this section.

(b) Application (~~(shall)~~) must be made to the department in a form and manner determined by the department, but the department must provide alternative filing methods for applicants who do not have access to electronic filing.

(c) Application for the exemption remittance under this section must be made in the year following the year for which the federal return was filed, but in no case may any remittance be provided for any period before January 1, 2008. The department may use the best available data to process the exemption remittance. The department shall begin accepting applications October 1, 2009.

(d) The department (~~(shall)~~) must review the application and determine eligibility for the working families' tax exemption based on information provided by the applicant and through audit and other administrative records, including, when it deems it necessary, verification through internal revenue service data.

(e) The department (~~(shall)~~) must remit the exempted amounts to eligible low-income persons who submitted applications. Remittances may be made by electronic funds transfer or other means.

(f) The department may, in conjunction with other agencies or organizations, design and implement a public information campaign to inform potentially eligible persons of the existence of and requirements for this exemption.

(g) The department may contact persons who appear to be eligible low-income persons as a result of information received from the internal revenue service under such conditions and requirements as the internal revenue service may by law require.

(6) The provisions of chapter 82.32 RCW apply to the exemption in this section.

(7) The department may adopt rules necessary to implement this section.

(8) The department (~~shall~~) must limit its costs for the exemption program to the initial start-up costs to implement the program. The state omnibus appropriations act (~~shall~~) must specify funding to be used for the ongoing administrative costs of the program. These ongoing administrative costs include, but are not limited to, costs for: The processing of internet and mail applications, verification of application claims, compliance and collections, additional full-time employees at the department's call center, processing warrants, updating printed materials and web information, media advertising, and support and maintenance of computer systems.

NEW SECTION. **Sec. 14.** The department and the department of licensing must adopt rules as necessary for the implementation of this chapter and may coordinate concerning the process, timelines, and documentation related to such rule making, as necessary.

NEW SECTION. **Sec. 15.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 16.** This chapter may be known and cited as the environmental tax reform act.

NEW SECTION. **Sec. 17.** Sections 1 through 9, 14, and 16 of this act constitute a new chapter in Title 82 RCW.

NEW SECTION. **Sec. 18.** This act takes effect July 1, 2015.