
ENGROSSED SUBSTITUTE HOUSE BILL 3014

State of Washington

61st Legislature

2010 Regular Session

By House Finance (originally sponsored by Representatives Kessler, Morrell, and Van De Wege; by request of Governor Gregoire)

READ FIRST TIME 02/09/10.

1 AN ACT Relating to modifying the sales and use tax deferral program
2 for investment projects in rural counties; amending RCW 82.60.010,
3 82.60.020, 82.60.030, 82.60.040, 82.60.049, 82.60.060, 82.60.070,
4 82.60.100, and 82.62.010; adding new sections to chapter 82.60 RCW;
5 creating a new section; decodifying RCW 82.60.900 and 82.60.901;
6 repealing RCW 82.60.050 and 82.60.110; providing an effective date; and
7 providing expiration dates.

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

9 **Sec. 1.** RCW 82.60.010 and 1985 c 232 s 1 are each amended to read
10 as follows:

11 The legislature finds that there are several areas in the state
12 that are characterized by very high levels of unemployment and poverty.
13 The (~~legislative—{legislature}~~) legislature further finds that
14 economic stagnation is the primary cause of this high unemployment rate
15 and poverty; that new state policies are necessary in order to promote
16 economic stimulation and new employment opportunities in these
17 distressed areas; and that policies providing incentives for economic
18 growth in these distressed areas are essential. For these reasons, the
19 legislature (~~hereby~~) reestablishes a tax deferral program to be

1 effective solely in distressed (~~areas and under circumstances where~~
2 ~~the deferred tax payments are for investments or costs that result in~~
3 ~~the creation of a specified number of jobs~~) counties. The legislature
4 declares that this limited program serves the vital public purpose of
5 creating employment opportunities and reducing poverty in the
6 distressed (~~areas~~) counties of the state.

7 **Sec. 2.** RCW 82.60.020 and 2006 c 142 s 1 are each amended to read
8 as follows:

9 Unless the context clearly requires otherwise, the definitions in
10 this section apply throughout this chapter.

11 (1) "Applicant" means a person applying for a tax deferral under
12 this chapter.

13 (2) "Department" means the department of revenue.

14 (3) "Distressed county" means a county that has an unemployment
15 rate, as determined by the employment security department, which is at
16 least twenty percent above the state average for the three calendar
17 years immediately preceding the year in which the list of distressed
18 counties is established or updated, as the case may be, as provided in
19 section 3 of this act.

20 (4) "Eligible area" means:

21 (a) Through June 30, 2010, a rural county as defined in RCW
22 82.14.370; and

23 (b) Beginning July 1, 2010, a distressed county.

24 (~~(4)~~) (5)(a) "Eligible investment project" means an investment
25 project that is located, as of the date the application required by RCW
26 82.60.030 is received by the department, in an eligible area as defined
27 in subsection (~~(3)~~) (4) of this section.

28 (b) (~~The lessor or owner of a qualified building is not eligible~~
29 ~~for a deferral unless:~~

30 (i) ~~The underlying ownership of the buildings, machinery, and~~
31 ~~equipment vests exclusively in the same person; or~~

32 (ii)(A) ~~The lessor by written contract agrees to pass the economic~~
33 ~~benefit of the deferral to the lessee;~~

34 (B) ~~The lessee that receives the economic benefit of the deferral~~
35 ~~agrees in writing with the department to complete the annual survey~~
36 ~~required under RCW 82.60.070; and~~

1 ~~(C) The economic benefit of the deferral passed to the lessee is no~~
2 ~~less than the amount of tax deferred by the lessor and is evidenced by~~
3 ~~written documentation of any type of payment, credit, or other~~
4 ~~financial arrangement between the lessor or owner of the qualified~~
5 ~~building and the lessee.~~

6 (e)) "Eligible investment project" does not include any portion of
7 an investment project undertaken by a light and power business as
8 defined in RCW 82.16.010((+5)) (4), other than that portion of a
9 cogeneration project that is used to generate power for consumption
10 within the manufacturing site of which the cogeneration project is an
11 integral part, or investment projects ((which)) that have already
12 received deferrals under this chapter.

13 ((+5)) (6) "Initiation of construction" has the same meaning as in
14 RCW 82.63.010.

15 (7) "Investment project" means an investment in qualified buildings
16 or qualified machinery and equipment, including labor and services
17 rendered in the planning, installation, and construction of the
18 project.

19 ((+6)) (8) "Manufacturing" means the same as defined in RCW
20 82.04.120. "Manufacturing" also includes:

21 (a) Before July 1, 2010: (i) Computer programming, the production
22 of computer software, and other computer-related services, but only
23 when the computer programming, production of computer software, or
24 other computer-related services are performed by a manufacturer as
25 defined in RCW 82.04.110 and contribute to the production of a new,
26 different, or useful substance or article of tangible personal property
27 for sale; (ii) the activities performed by research and development
28 laboratories and commercial testing laboratories((7)); and (iii) the
29 conditioning of vegetable seeds; and

30 (b) Beginning July 1, 2010: (i) The activities performed by
31 research and development laboratories and commercial testing
32 laboratories; and (ii) the conditioning of vegetable seeds.

33 ((+7)) (9) "Person" has the meaning given in RCW 82.04.030.

34 ((+8)) (10) "Qualified buildings" means construction of new
35 structures, and expansion or renovation of existing structures for the
36 purpose of increasing floor space or production capacity used for
37 manufacturing ((and)) or research and development activities, including
38 plant offices and warehouses or other facilities for the storage of raw

1 material or finished goods if such facilities are an essential or an
2 integral part of a factory, mill, plant, or laboratory used for
3 manufacturing or research and development. If a building is used
4 partly for manufacturing or research and development and partly for
5 other purposes, the applicable tax deferral (~~(shall)~~) must be
6 determined by apportionment of the costs of construction under rules
7 adopted by the department.

8 ~~((+9))~~ (11) "Qualified employment position" means a permanent
9 full-time employee employed in the eligible investment project during
10 the entire tax year. The term "entire tax year" means a full-time
11 position that is filled for a period of twelve consecutive months. The
12 term "full-time" means at least thirty-five hours a week, four hundred
13 fifty-five hours a quarter, or one thousand eight hundred twenty hours
14 a year.

15 ~~((+10))~~ (12) "Qualified machinery and equipment" means all new
16 industrial and research fixtures, equipment, and support facilities
17 that are an integral and necessary part of a manufacturing or research
18 and development operation. "Qualified machinery and equipment"
19 includes: Computers; software; data processing equipment; laboratory
20 equipment; manufacturing components such as belts, pulleys, shafts, and
21 moving parts; molds, tools, and dies; operating structures; and all
22 equipment used to control or operate the machinery.

23 ~~((+11))~~ (13) "Recipient" means a person receiving a tax deferral
24 under this chapter.

25 ~~((+12))~~ (14) "Research and development" means the development,
26 refinement, testing, marketing, and commercialization of a product,
27 service, or process before commercial sales have begun, but only when
28 such activities are intended to ultimately result in the production of
29 a new, different, or useful substance or article of tangible personal
30 property for sale. As used in this subsection, "commercial sales"
31 excludes sales of prototypes or sales for market testing if the total
32 gross receipts from such sales of the product, service, or process do
33 not exceed one million dollars.

34 NEW SECTION. Sec. 3. A new section is added to chapter 82.60 RCW
35 to read as follows:

36 The department, with the assistance of the employment security
37 department, must establish a list of distressed counties effective July

1 1, 2010. The list of distressed counties is effective for a twenty-
2 four month period and must be updated by July 1st of the year that is
3 two calendar years after the list was established or last updated, as
4 the case may be.

5 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.60 RCW
6 to read as follows:

7 The lessor or owner of a qualified building is not eligible for a
8 deferral unless:

9 (1) The underlying ownership of the buildings, machinery, and
10 equipment vests exclusively in the same person; or

11 (2)(a) The lessor by written contract agrees to pass the economic
12 benefit of the deferral to the lessee;

13 (b) The lessee that receives the economic benefit of the deferral
14 agrees in writing with the department to complete the annual survey
15 required under RCW 82.60.070; and

16 (c) The economic benefit of the deferral passed to the lessee is no
17 less than the amount of tax deferred by the lessor and is evidenced by
18 written documentation of any type of payment, credit, or other
19 financial arrangement between the lessor or owner of the qualified
20 building and the lessee.

21 **Sec. 5.** RCW 82.60.030 and 1994 sp.s. c 1 s 2 are each amended to
22 read as follows:

23 (1) Application for deferral of taxes under this chapter must be
24 made before initiation of the construction of the investment project or
25 acquisition of equipment or machinery. The application (~~shall~~) must
26 be made to the department in a form and manner prescribed by the
27 department. The application (~~shall~~) must contain information
28 regarding the location of the investment project, the applicant's
29 average employment in the state for the prior year, estimated or actual
30 new employment related to the project, estimated or actual wages of
31 employees related to the project, estimated or actual costs, time
32 schedules for completion and operation, and other information required
33 by the department. The department (~~shall~~) must rule on the
34 application within sixty days.

35 (2) This section expires July 1, 2020.

1 **Sec. 6.** RCW 82.60.040 and 2004 c 25 s 4 are each amended to read
2 as follows:

3 (1) The department (~~shall~~) must issue a sales and use tax
4 deferral certificate for state and local sales and use taxes due under
5 chapters 82.08, 82.12, and 82.14 RCW on each eligible investment
6 project (~~that is located in an eligible area as defined in RCW~~
7 ~~82.60.020~~)).

8 (2) The department (~~shall~~) must keep a running total of all
9 deferrals granted under this chapter during each fiscal biennium.

10 (3) This section expires July 1, (~~2010~~) 2020.

11 **Sec. 7.** RCW 82.60.049 and 2004 c 25 s 5 are each amended to read
12 as follows:

13 (1) For the purposes of this section:

14 (a) "Eligible area" also means: Through June 30, 2010, a
15 designated community empowerment zone approved under RCW 43.31C.020 or
16 a county containing a community empowerment zone; and beginning July 1,
17 2010, a designated community empowerment zone approved under RCW
18 43.31C.020.

19 (b) "Eligible investment project" also means an investment project
20 in an eligible area as defined in this section.

21 (2) In addition to the provisions of RCW 82.60.040, the department
22 (~~shall~~) must issue a sales and use tax deferral certificate for state
23 and local sales and use taxes due under chapters 82.08, 82.12, and
24 82.14 RCW, on each eligible investment project that is located in an
25 eligible area, if the applicant establishes that at the time the
26 project is operationally complete:

27 (a) The applicant will hire at least one qualified employment
28 position for each seven hundred fifty thousand dollars of investment
29 for which a deferral is requested; and

30 (b) The positions will be filled by persons who at the time of hire
31 are residents of the community empowerment zone. As used in this
32 subsection, "resident" means the person makes his or her home in the
33 community empowerment zone. A mailing address alone is insufficient to
34 establish that a person is a resident for the purposes of this section.
35 The persons must be hired after the date the application is filed with
36 the department.

1 (3) All other provisions and eligibility requirements of this
2 chapter apply to applicants eligible under this section.

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

9 **Sec. 8.** RCW 82.60.060 and 2000 c 106 s 5 are each amended to read
10 as follows:

11 (1) The recipient (~~shall~~) must begin paying the deferred taxes in
12 the third year after the date certified by the department as the date
13 on which the (~~construction~~) investment project has been operationally
14 completed. The first payment will be due on December 31st of the third
15 calendar year after such certified date, with subsequent annual
16 payments due on December 31st of the following four years with amounts
17 of payment scheduled as follows:

18	Repayment Year	% of Deferred Tax Repaid
19	1	10%
20	2	15%
21	3	20%
22	4	25%
23	5	30%

24 (2) The department may authorize an accelerated repayment schedule
25 upon request of the recipient.

26 (3) Interest (~~shall~~) may not be charged on any taxes deferred
27 under this chapter for the period of deferral, although all other
28 penalties and interest applicable to delinquent excise taxes may be
29 assessed and imposed for delinquent payments under this chapter. The
30 debt for deferred taxes will not be extinguished by insolvency or other
31 failure of the recipient. Transfer of ownership does not terminate the
32 deferral. The deferral is transferred, subject to the successor
33 meeting the eligibility requirements of this chapter, for the remaining
34 periods of the deferral.

1 **Sec. 9.** RCW 82.60.070 and 2004 c 25 s 7 are each amended to read
2 as follows:

3 (1)(a) The legislature finds that accountability and effectiveness
4 are important aspects of setting tax policy. In order to make policy
5 choices regarding the best use of limited state resources the
6 legislature needs information on how a tax incentive is used.

7 (b) Each recipient of a deferral granted under this chapter after
8 June 30, 1994, (~~shall~~) must complete an annual survey. If the
9 economic benefits of the deferral are passed to a lessee as provided in
10 (~~RCW 82.60.020(4)~~) section 4 of this act, the lessee (~~shall agree~~
11 ~~to~~) must complete the annual survey and the applicant is not required
12 to complete the annual survey. The survey is due by March 31st of the
13 year following the calendar year in which the investment project is
14 certified by the department as having been operationally complete and
15 the seven succeeding calendar years. The survey (~~shall~~) must include
16 the amount of tax deferred, the number of new products or research
17 projects by general classification, and the number of trademarks,
18 patents, and copyrights associated with activities at the investment
19 project. The survey (~~shall~~) must also include the following
20 information for employment positions in Washington:

21 (i) The number of total employment positions;

22 (ii) Full-time, part-time, and temporary employment positions as a
23 percent of total employment;

24 (iii) The number of employment positions according to the following
25 wage bands: Less than thirty thousand dollars; thirty thousand dollars
26 or greater, but less than sixty thousand dollars; and sixty thousand
27 dollars or greater. A wage band containing fewer than three
28 individuals may be combined with another wage band; and

29 (iv) The number of employment positions that have employer-provided
30 medical, dental, and retirement benefits, by each of the wage bands.

31 (c) As part of the survey, the department may request additional
32 information necessary to measure the results of, or determine
33 eligibility for, the deferral program, to be submitted at the same time
34 as the survey.

35 (d) All information collected under this subsection, except the
36 amount of the tax deferral taken, is deemed taxpayer information under
37 RCW 82.32.330 and is not disclosable. Information on the amount of tax

1 deferral taken is not subject to the confidentiality provisions of RCW
2 82.32.330 and may be disclosed to the public upon request.

3 (e) The department (~~shall~~) must use the information from this
4 section to prepare summary descriptive statistics by category. No
5 fewer than three taxpayers (~~shall~~) may be included in any category.
6 The department (~~shall~~) must report these statistics to the
7 legislature each year by September 1st.

8 (f) The department (~~shall~~) must also use the information to study
9 the tax deferral program authorized under this chapter. The department
10 (~~shall~~) must report to the legislature by December 1, (~~2009~~) 2019.
11 The report (~~shall~~) must measure the effect of the program on job
12 creation, the number of jobs created for residents of eligible areas,
13 company growth, the introduction of new products, the diversification
14 of the state's economy, growth in research and development investment,
15 the movement of firms or the consolidation of firms' operations into
16 the state, and such other factors as the department selects.

17 (2)(a) If, on the basis of a survey under this section or other
18 information, the department finds that an investment project is not
19 eligible for tax deferral under this chapter, the amount of deferred
20 taxes outstanding for the project (~~shall be immediately due~~).

21 (b) If a recipient of the deferral fails to complete the annual
22 survey required under subsection (1) of this section by the date due,
23 twelve and one-half percent of the deferred tax (~~shall~~) will be
24 immediately due. If the economic benefits of the deferral are passed
25 to a lessee as provided in (~~RCW 82.60.020(4)~~) section 4 of this act,
26 the lessee (~~shall be~~) is responsible for payment to the extent the
27 lessee has received the economic benefit.

28 (3) Notwithstanding any other subsection of this section, deferred
29 taxes need not be repaid on machinery and equipment for lumber and wood
30 products industries, and sales of or charges made for labor and
31 services, of the type which qualifies for exemption under RCW
32 82.08.02565 or 82.12.02565 to the extent the taxes have not been repaid
33 before July 1, 1995.

34 (4) Notwithstanding any other subsection of this section, deferred
35 taxes on the following need not be repaid:

36 (a) Machinery and equipment, and sales of or charges made for labor
37 and services, which at the time of purchase would have qualified for
38 exemption under RCW 82.08.02565; and

1 (b) Machinery and equipment which at the time of first use would
2 have qualified for exemption under RCW 82.12.02565.

3 NEW SECTION. **Sec. 10.** A new section is added to chapter 82.60 RCW
4 to read as follows:

5 (1) Subject to the conditions in this section, a person is not
6 liable for the amount of deferred taxes outstanding for an investment
7 project when the person temporarily ceases to use its qualified
8 buildings and qualified machinery and equipment for manufacturing or
9 research and development activities in a county with a population of
10 less than twenty thousand persons for a period not to exceed twenty-
11 four months from the date that the department sent its assessment for
12 the amount of outstanding deferred taxes to the taxpayer.

13 (2) The relief from repayment of deferred taxes under this section
14 does not apply unless the number of qualified employment positions
15 maintained at the investment project after manufacturing or research
16 and development activities are temporarily ceased is at least ten
17 percent of the number of qualified employment positions employed at the
18 investment project at the time the deferral was approved by the
19 department. If a person has been approved for more than one deferral
20 under this chapter, relief from repayment of deferred taxes under this
21 section does not apply unless the number of qualified employment
22 positions maintained at the investment project after manufacturing or
23 research and development activities are temporarily ceased is at least
24 ten percent of the highest number of qualified employment positions at
25 the investment project at the time any of the deferrals were approved
26 by the department. If, at any time during the twenty-four month period
27 after the department has sent the taxpayer an assessment for
28 outstanding deferred taxes resulting from the person temporarily
29 ceasing to use its qualified buildings and qualified machinery and
30 equipment for manufacturing or research and development activities, the
31 number of qualified employment positions falls below the ten percent
32 threshold in this subsection, the amount of deferred taxes outstanding
33 for the project is immediately due.

34 (3) The lessor of an investment project for which a deferral has
35 been granted under this chapter who has passed the economic benefits of
36 the deferral to the lessee is not eligible for relief from the payment
37 of deferred taxes under this section.

1 (4) A person seeking relief from the payment of deferred taxes
2 under this section must apply to the department in a form and manner
3 prescribed by the department. The application required under this
4 subsection must be received by the department within thirty days of the
5 date that the department sent its assessment for outstanding deferred
6 taxes resulting from the person temporarily ceasing to use its
7 qualified buildings and qualified machinery and equipment for
8 manufacturing or research and development activities. The department
9 must approve applications that meet the requirements in this section
10 for relief from the payment of deferred taxes.

11 (5) A person is entitled to relief under this section only once.

12 (6) A person whose application for relief from the payment of
13 deferred taxes has been approved under this section must continue to
14 file an annual survey as required under RCW 82.60.070(1) or any
15 successor statute. In addition, the person must file, in a form and
16 manner prescribed by the department, a report on the status of the
17 business and the outlook for commencing manufacturing or research and
18 development activities.

19 **Sec. 11.** RCW 82.60.100 and 1987 c 49 s 1 are each amended to read
20 as follows:

21 Applications, reports, and any other information received by the
22 department under this chapter (~~shall~~), except applications not
23 approved by the department, are not (~~be~~) confidential and (~~shall~~
24 ~~be~~) are subject to disclosure.

25 **Sec. 12.** RCW 82.62.010 and 2007 c 485 s 1 are each amended to read
26 as follows:

27 Unless the context clearly requires otherwise, the definitions in
28 this section apply throughout this chapter.

29 (1) "Applicant" means a person applying for a tax credit under this
30 chapter.

31 (2) "Department" means the department of revenue.

32 (3) "Eligible area" means (~~an area~~) a "rural county" as defined
33 in RCW (~~82.60.020~~) 82.14.370.

34 (4)(a) "Eligible business project" means manufacturing or research
35 and development activities which are conducted by an applicant in an
36 eligible area at a specific facility, provided the applicant's average

1 qualified employment positions at the specific facility will be at
2 least fifteen percent greater in the four consecutive full calendar
3 quarters after the calendar quarter during which the first qualified
4 employment position is filled than the applicant's average qualified
5 employment positions at the same facility in the four consecutive full
6 calendar quarters immediately preceding the calendar quarter during
7 which the first qualified employment position is filled.

8 (b) "Eligible business project" does not include any portion of a
9 business project undertaken by a light and power business as defined in
10 RCW 82.16.010(~~(+5)~~) (4) or that portion of a business project creating
11 qualified full-time employment positions outside an eligible area.

12 (5) "First qualified employment position" means the first qualified
13 employment position filled for which a credit under this chapter is
14 sought.

15 (6) "Manufacturing" means the same as defined in RCW 82.04.120.
16 "Manufacturing" also includes:

17 (a) Before July 1, 2010: (i) Computer programming, the production
18 of computer software, and other computer-related services, but only
19 when the computer programming, production of computer software, or
20 other computer-related services are performed by a manufacturer as
21 defined in RCW 82.04.110 and contribute to the production of a new,
22 different, or useful substance or article of tangible personal property
23 for sale; and (ii) the activities performed by research and development
24 laboratories and commercial testing laboratories; and

25 (b) Beginning July 1, 2010, the activities performed by research
26 and development laboratories and commercial testing laboratories.

27 (7) "Person" has the meaning given in RCW 82.04.030.

28 (8)(a)(i) "Qualified employment position" means a permanent full-
29 time employee employed in the eligible business project during four
30 consecutive full calendar quarters.

31 (ii) For seasonal employers, "qualified employment position" also
32 includes the equivalent of a full-time employee in work hours for four
33 consecutive full calendar quarters.

34 (b) For purposes of this subsection, "full time" means a normal
35 work week of at least thirty-five hours.

36 (c) Once a permanent, full-time employee has been employed, a
37 position does not cease to be a qualified employment position solely
38 due to periods in which the position goes vacant, as long as:

1 (i) The cumulative period of any vacancies in that position is not
2 more than one hundred twenty days in the four-quarter period; and

3 (ii) During a vacancy, the employer is training or actively
4 recruiting a replacement permanent, full-time employee for the
5 position.

6 (9) "Recipient" means a person receiving tax credits under this
7 chapter.

8 (10) "Research and development" means the development, refinement,
9 testing, marketing, and commercialization of a product, service, or
10 process before commercial sales have begun, but only when such
11 activities are intended to ultimately result in the production of a
12 new, different, or useful substance or article of tangible personal
13 property for sale. As used in this subsection, "commercial sales"
14 excludes sales of prototypes or sales for market testing if the total
15 gross receipts from such sales of the product, service, or process do
16 not exceed one million dollars.

17 (11) "Seasonal employee" means an employee of a seasonal employer
18 who works on a seasonal basis. For the purposes of this subsection and
19 subsection (12) of this section, "seasonal basis" means a continuous
20 employment period of less than twelve consecutive months.

21 (12) "Seasonal employer" means a person who regularly hires more
22 than fifty percent of its employees to work on a seasonal basis.

23 NEW SECTION. **Sec. 13.** RCW 82.60.900 and 82.60.901 are each
24 decodified.

25 NEW SECTION. **Sec. 14.** The following acts or parts of acts are
26 each repealed:

27 (1) RCW 82.60.050 (Expiration of RCW 82.60.030 and 82.60.040) and
28 2004 c 25 s 6, 1994 sp.s. c 1 s 7, 1993 sp.s. c 25 s 404, 1988 c 41 s
29 5, & 1985 c 232 s 10; and

30 (2) RCW 82.60.110 (Competing projects--Impact study) and 1998 c 245
31 s 169 & 1994 sp.s. c 1 s 8.

32 NEW SECTION. **Sec. 15.** The amendments to the definitions of
33 "manufacturing" and "research and development" in sections 2 and 12 of
34 this act apply retroactively as well as prospectively.

1 NEW SECTION. **Sec. 16.** Except for section 3 of this act, this act
2 takes effect July 1, 2010.

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