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**SUBSTITUTE SENATE BILL 5733**

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**State of Washington**

**61st Legislature**

**2009 Regular Session**

**By** Senate Economic Development, Trade & Innovation (originally sponsored by Senator Kastama)

READ FIRST TIME 02/23/09.

1 AN ACT Relating to modifying tax credits for research and  
2 development expenditures; and amending RCW 82.04.4452.

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

4 **Sec. 1.** RCW 82.04.4452 and 2005 c 514 s 1003 are each amended to  
5 read as follows:

6 (1) In computing the tax imposed under this chapter, a credit is  
7 allowed for each person whose research and development spending during  
8 the year in which the credit is claimed exceeds 0.92 percent of the  
9 person's taxable amount during the same calendar year.

10 (2) The credit (~~shall~~) provided for in subsection (1) of this  
11 section must be calculated as follows:

12 (a) Determine the greater of the amount of qualified research and  
13 development expenditures of a person or eighty percent of amounts  
14 received by a person, other than a public educational or research  
15 institution, in compensation for the conduct of qualified research and  
16 development;

17 (b) Subtract 0.92 percent of the person's taxable amount from the  
18 amount determined under (a) of this subsection;

1 (c) Multiply the amount determined under (b) of this subsection by  
2 (~~the following:~~

3 ~~(i) For the period June 10, 2004, through December 31, 2006, the~~  
4 ~~person's average tax rate for the calendar year for which the credit is~~  
5 ~~claimed;~~

6 ~~(ii) For the calendar year ending December 31, 2007, the greater of~~  
7 ~~the person's average tax rate for that calendar year or 0.75 percent;~~

8 ~~(iii) For the calendar year ending December 31, 2008,)) the greater~~  
9 of the person's average tax rate for that calendar year or ~~((1.0))~~ 1.25  
10 percent(~~(;~~

11 ~~(iv) For the calendar year ending December 31, 2009, the greater of~~  
12 ~~the person's average tax rate for that calendar year or 1.25 percent;~~

13 ~~(v) For the calendar year ending December 31, 2010, and thereafter,~~  
14 ~~1.50 percent)).~~

15 For purposes of calculating the credit, if a person's reporting  
16 period is less than annual, the person may use an estimated average tax  
17 rate for the calendar year for which the credit is claimed by using the  
18 person's average tax rate for each reporting period. A person who uses  
19 an estimated average tax rate must make an adjustment to the total  
20 credit claimed for the calendar year using the person's actual average  
21 tax rate for the calendar year when the person files its last return  
22 for the calendar year for which the credit is claimed.

23 (3) Notwithstanding the provisions of subsection (1) of this  
24 section, in computing the tax imposed under this chapter, a credit is  
25 allowed for all amounts paid by a person to a public educational,  
26 economic development, or research institution located in this state to  
27 conduct qualified research and development. The credit is equal to the  
28 amount of such payments for qualified research and development,  
29 multiplied by the rate of 1.5 percent.

30 (4) Any person entitled to the credit provided in subsection (2) of  
31 this section as a result of qualified research and development  
32 conducted under contract may assign all or any portion of the credit to  
33 the person contracting for the performance of the qualified research  
34 and development.

35 ~~((+4))~~ (5) The credit allowed under subsections (1) and (3) of  
36 this section, including any credit assigned to a person under  
37 subsection ((+3)) (4) of this section, shall be claimed against taxes  
38 due for the same calendar year in which the qualified research and

1 development expenditures are incurred. The credit, including any  
2 credit assigned to a person under subsection ~~((+3+))~~ (4) of this  
3 section, for each calendar year ~~((shall))~~ may not exceed the lesser of  
4 two million dollars or the amount of tax otherwise due under this  
5 chapter for the calendar year.

6 ~~((+5+))~~ (6) For any person claiming the credit allowed under  
7 subsections (1) and (3) of this section, including any credit assigned  
8 to a person under subsection ~~((+3+))~~ (4) of this section, whose  
9 research and development spending during the calendar year in which the  
10 credit is claimed fails to exceed 0.92 percent of the person's taxable  
11 amount during the same calendar year or who is otherwise ineligible,  
12 the department ~~((shall))~~ must declare the taxes against which the  
13 credit was claimed to be immediately due and payable. The department  
14 ~~((shall))~~ must assess interest, but not penalties, on the taxes against  
15 which the credit was claimed. Interest ~~((shall-be))~~ is assessed at the  
16 rate provided for delinquent excise taxes under chapter 82.32 RCW,  
17 retroactively to the date the credit was claimed, and ~~((shall-accrue))~~  
18 accrues until the taxes against which the credit was claimed are  
19 repaid. Any credit assigned to a person under subsection ~~((+3+))~~ (4)  
20 of this section that is disallowed as a result of this section may be  
21 claimed by the person who performed the qualified research and  
22 development subject to the limitations set forth in subsection ~~((+4+))~~  
23 (5) of this section.

24 ~~((+6+))~~ (7)(a) The legislature finds that accountability and  
25 effectiveness are important aspects of setting tax policy. In order to  
26 make policy choices regarding the best use of limited state resources  
27 the legislature needs information on how a tax incentive is used.

28 (b) A person claiming ~~((the))~~ a credit ~~((shall))~~ under this section  
29 must file a complete annual survey with the department. The survey is  
30 due by March 31st following any year in which a credit is claimed. The  
31 department may extend the due date for timely filing of annual surveys  
32 under this section as provided in RCW 82.32.590. The survey ~~((shall))~~  
33 must include the amount of the tax credit claimed, the qualified  
34 research and development expenditures during the calendar year for  
35 which the credit is claimed, the taxable amount during the calendar  
36 year for which the credit is claimed, the number of new products or  
37 research projects by general classification, the number of trademarks,  
38 patents, and copyrights associated with the research and development

1 activities for which a credit was claimed, and whether the credit has  
2 been assigned under subsection (~~(3)~~) (4) of this section and who  
3 assigned the credit. The survey (~~shall~~) must also include the  
4 following information for employment positions in Washington:

5 (i) The number of total employment positions;

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

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

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

15 (c) The department may request additional information necessary to  
16 measure the results of the tax credit program, to be submitted at the  
17 same time as the survey.

18 (d)(i) All information collected under this subsection, except the  
19 amount of the tax credit claimed, is deemed taxpayer information under  
20 RCW 82.32.330. Information on the amount of tax credit claimed is not  
21 subject to the confidentiality provisions of RCW 82.32.330 and may be  
22 disclosed to the public upon request, except as provided in this  
23 subsection (~~(6)~~) (7)(d). If the amount of the tax credit as reported  
24 on the survey is different than the amount actually claimed on the  
25 taxpayer's tax returns or otherwise allowed by the department, the  
26 amount actually claimed or allowed may be disclosed.

27 (ii) Persons for whom the actual amount of the tax credit claimed  
28 on the taxpayer's returns or otherwise allowed by the department is  
29 less than ten thousand dollars during the period covered by the survey  
30 may request the department to treat the tax credit amount as  
31 confidential under RCW 82.32.330.

32 (e) If a person fails to file a complete annual survey required  
33 under this subsection with the department by the due date or any  
34 extension under RCW 82.32.590, the person entitled to the credit  
35 provided in subsection (2) of this section is not eligible to claim or  
36 assign the credit provided in subsection (2) of this section in the  
37 year the person failed to timely file a complete survey.

1       (~~(7)~~) (8) The department (~~(shall)~~) must use the information from  
2 subsection (~~(6)~~) (7) of this section to prepare summary descriptive  
3 statistics by category. No fewer than three taxpayers (~~(shall)~~) may be  
4 included in any category. The department shall report these statistics  
5 to the legislature each year by September 1st.

6       (~~(8)~~) (9) The department (~~(shall)~~) must use the information from  
7 subsection (~~(6)~~) (7) of this section to study the tax credit program  
8 authorized under this section. The department (~~(shall)~~) must report to  
9 the legislature by December 1, 2009, and December 1, 2013. The reports  
10 (~~(shall)~~) must measure the effect of the program on job creation, the  
11 number of jobs created for Washington residents, company growth, the  
12 introduction of new products, the diversification of the state's  
13 economy, growth in research and development investment, the movement of  
14 firms or the consolidation of firms' operations into the state, and  
15 such other factors as the department selects.

16       (~~(9)~~) (10) For the purpose of this section:

17       (a) "Average tax rate" means a person's total tax liability under  
18 this chapter for the calendar year for which the credit is claimed  
19 divided by the taxpayer's total taxable amount under this chapter for  
20 the calendar year for which the credit is claimed.

21       (b) "Qualified research and development expenditures" means:

22       (i) Operating expenses, including wages, compensation of a  
23 proprietor or a partner in a partnership as determined under rules  
24 adopted by the department, benefits, supplies, and computer expenses,  
25 directly incurred in qualified research and development by a person  
26 claiming the credit provided in this section; and

27       (ii) Amounts paid to a public educational or research institution  
28 to conduct qualified research and development. The term does not  
29 include amounts paid to a person other than a public educational or  
30 research institution to conduct qualified research and development.  
31 Nor does the term include capital costs and overhead, such as expenses  
32 for land, structures, or depreciable property.

33       (c) "Qualified research and development" (~~(shall have)~~) has the  
34 same meaning as in RCW 82.63.010.

35       (d) "Research and development spending" means qualified research  
36 and development expenditures plus eighty percent of amounts paid to a  
37 person other than a public educational or research institution to  
38 conduct qualified research and development.

1 (e) "Taxable amount" means the taxable amount subject to the tax  
2 imposed in this chapter required to be reported on the person's  
3 combined excise tax returns for the calendar year for which the credit  
4 is claimed, less any taxable amount for which a credit is allowed under  
5 RCW 82.04.440.

6 (~~(10) This section expires January 1, 2015.~~)

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