
ENGROSSED SUBSTITUTE SENATE BILL 6430

State of Washington

63rd Legislature

2014 Regular Session

By Senate Ways & Means (originally sponsored by Senators Liiias, Fain, Hobbs, Litzow, Eide, Dammeier, McAuliffe, Baumgartner, Cleveland, Angel, and Ericksen)

READ FIRST TIME 02/11/14.

1 AN ACT Relating to extending tax preferences for high-technology
2 research and development; amending RCW 82.04.4452, 82.63.030, and
3 82.08.02565; creating new sections; and providing expiration dates.

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

5 NEW SECTION. **Sec. 1.** This section is the tax preference
6 performance statement for the tax credit and tax deferral contained in
7 sections 2 and 3 of this act. This performance statement is only
8 intended to be used for subsequent evaluation of the tax preferences.
9 It is not intended to create a private right of action by any party or
10 be used to determine eligibility for preferential tax treatment.

11 (1) The legislature categorizes these tax preferences as intended
12 to improve industry competitiveness and create or retain jobs, as
13 indicated in RCW 82.32.808(2) (b) and (c).

14 (2) It is the legislature's specific public policy objective to
15 improve industry competitiveness and create or retain more jobs. It is
16 the legislature's intent to provide a business and occupation tax
17 credit for high-technology companies performing research and
18 development and a sales and use tax deferral for certain construction
19 and equipment purchases for new and expanding high-technology companies

1 conducting research and development in the fields of advanced
2 computing, advanced materials, biotechnology, electronic device
3 technology, or environmental technology, in order to reduce the
4 business costs of performing research and development in specified
5 areas and to reduce the cost of certain construction and equipment
6 purchases used for research and development, thereby encouraging
7 investments in research and development, thereby increasing the number
8 of firms in the industry performing research and development
9 activities, thereby increasing the number of jobs performing research
10 and development in the high-technology industry.

11 (3) If a review finds that the number of businesses participating
12 in the credit and deferral programs, and the overall number of jobs for
13 businesses participating in the credit and deferral programs performing
14 research and development, have increased compared to the number at the
15 time of enactment, then the legislature intends to extend the
16 expiration date of the tax preferences.

17 (4) In order to obtain the data necessary to perform the review in
18 subsection (3) of this section, the joint legislative audit and review
19 committee may refer to: (a) Employment data available from the
20 employment security department; and (b) the North American industrial
21 code system (NAICS) from the department of revenue.

22 **Sec. 2.** RCW 82.04.4452 and 2010 c 114 s 114 are each amended to
23 read as follows:

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

28 (2) The credit is calculated as follows:

29 (a) Determine the greater of the amount of qualified research and
30 development expenditures of a person or eighty percent of amounts
31 received by a person other than a public educational or research
32 institution in compensation for the conduct of qualified research and
33 development;

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

36 (c) Multiply the amount determined under (b) of this subsection by
37 the following:

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

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

6 (iii) For the calendar year ending December 31, 2008, the greater
7 of the person's average tax rate for that calendar year or 1.0 percent;

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

10 (v) For the calendar year ending December 31, 2010, and thereafter,
11 1.50 percent.

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

20 (3) Any person entitled to the credit provided in subsection (2) of
21 this section as a result of qualified research and development
22 conducted under contract may assign all or any portion of the credit to
23 the person contracting for the performance of the qualified research
24 and development.

25 (4) The credit, including any credit assigned to a person under
26 subsection (3) of this section, must be claimed against taxes due for
27 the same calendar year in which the qualified research and development
28 expenditures are incurred. The credit, including any credit assigned
29 to a person under subsection (3) of this section, for each calendar
30 year may not exceed the lesser of two million dollars or the amount of
31 tax otherwise due under this chapter for the calendar year.

32 (5) For any person claiming the credit, including any credit
33 assigned to a person under subsection (3) of this section, whose
34 research and development spending during the calendar year in which the
35 credit is claimed fails to exceed 0.92 percent of the person's taxable
36 amount during the same calendar year or who is otherwise ineligible,
37 the department must declare the taxes against which the credit was
38 claimed to be immediately due and payable. The department must assess

1 interest, but not penalties, on the taxes against which the credit was
2 claimed. Interest must be assessed at the rate provided for delinquent
3 excise taxes under chapter 82.32 RCW, retroactively to the date the
4 credit was claimed, and accrues until the taxes against which the
5 credit was claimed are repaid. Any credit assigned to a person under
6 subsection (3) of this section that is disallowed as a result of this
7 section may be claimed by the person who performed the qualified
8 research and development subject to the limitations set forth in
9 subsection (4) of this section.

10 (6) A person claiming the credit provided in this section must file
11 a complete annual survey with the department under RCW 82.32.585.

12 (7) For the purpose of this section:

13 (a) "Average tax rate" means a person's total tax liability under
14 this chapter for the calendar year for which the credit is claimed
15 divided by the taxpayer's total taxable amount under this chapter for
16 the calendar year for which the credit is claimed.

17 (b) "Qualified research and development expenditures" means
18 operating expenses, including wages, compensation of a proprietor or a
19 partner in a partnership as determined under rules adopted by the
20 department, benefits, supplies, and computer expenses, directly
21 incurred in qualified research and development by a person claiming the
22 credit provided in this section. The term does not include amounts
23 paid to a person other than a public educational or research
24 institution to conduct qualified research and development. Nor does
25 the term include capital costs and overhead, such as expenses for land,
26 structures, or depreciable property.

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

29 (d) "Research and development spending" means qualified research
30 and development expenditures plus eighty percent of amounts paid to a
31 person other than a public educational or research institution to
32 conduct qualified research and development.

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

38 (8) This section expires (~~January~~) October 1, 2015.

1 **Sec. 3.** RCW 82.63.030 and 2008 c 15 s 4 are each amended to read
2 as follows:

3 (1) Except as provided in subsection (2) of this section, the
4 department (~~shall~~) must issue a sales and use tax deferral
5 certificate for state and local sales and use taxes due under chapters
6 82.08, 82.12, and 82.14 RCW on each eligible investment project.

7 (2) No certificate may be issued for an investment project that has
8 already received a deferral under chapter 82.60 RCW or this chapter,
9 except that an investment project for qualified research and
10 development that has already received a deferral may also receive an
11 additional deferral certificate for adapting the investment project for
12 use in pilot scale manufacturing.

13 (3) This section (~~shall~~) expires (~~January~~) October 1, 2015.

14 NEW SECTION. **Sec. 4.** (1) The high-technology research and
15 development investment work group is established. The work group
16 consists of the following members:

17 (a) One member from each of the two largest caucuses of the senate,
18 appointed by the president of the senate;

19 (b) One member from each of the two largest caucuses of the house
20 of representatives, appointed by the speaker of the house of
21 representatives;

22 (c) The director of the department of commerce who must serve as
23 chair of the work group;

24 (d) The director of the department of revenue or his or her
25 designee;

26 (e) The presidents of the University of Washington and Washington
27 State University or their designees;

28 (f)(i) One representative from each of the following industries
29 appointed by the governor:

30 (A) Advanced computing;

31 (B) Advanced materials;

32 (C) Biotechnology;

33 (D) Electronic device technology; and

34 (E) Environmental technology.

35 (ii) A statewide organization representing each of the industries
36 listed in this subsection (1)(f) must submit a list of three names to

1 the governor. The governor must make each appointment from each list
2 submitted or request the statewide organization to submit a new list
3 with up to three additional names.

4 (2)(a) The work group must develop recommendations for the
5 legislature to improve the competitiveness of the high-technology
6 research and development industry through investment strategies that
7 keep the state's tax incentives competitive and support the ongoing
8 development of a highly trained workforce. At minimum, the
9 recommendations must include provisions addressing the following:

10 (i) Ways to better align the technology transformation, research,
11 and high-demand degree production activities of higher education
12 institutions with industry spending to bolster increased development of
13 a high-technology industry within the state, including:

14 (A) Developing and integrating technology in new or enhanced
15 products and services, and launching those products and services in
16 sustainable businesses in Washington state;

17 (B) Expanding the high-technology research and development
18 activities at higher education institutions in a manner that will
19 support the development and commercialization of technology into new
20 products, processes, applications, materials, or services; and

21 (C) Expanding and improving the high-demand degree programs offered
22 at higher education institutions in a manner that supports increased
23 numbers and efficiency of high-demand degrees produced.

24 (ii) The design, size, and scope of high-technology research and
25 development tax preference programs after October 1, 2015.

26 (b) In developing these recommendations, the work group must
27 examine current resources devoted to high-technology research and
28 development tax preferences and determine the best mix of funding to
29 keep the state's high-technology research and development industry
30 competitive and to provide a highly trained workforce to support the
31 industry.

32 (c) The work group must submit its proposal to the governor and
33 fiscal committees of the legislature by December 1, 2014.

34 (3) This section expires January 1, 2015.

35 **Sec. 5.** RCW 82.08.02565 and 2011 c 23 s 2 are each amended to read
36 as follows:

37 (1)(a) The tax levied by RCW 82.08.020 does not apply to sales to

1 a manufacturer or processor for hire of machinery and equipment used
2 directly in a manufacturing operation or research and development
3 operation, to sales to a person engaged in testing for a manufacturer
4 or processor for hire of machinery and equipment used directly in a
5 testing operation, or to sales of or charges made for labor and
6 services rendered in respect to installing, repairing, cleaning,
7 altering, or improving the machinery and equipment.

8 (b) Sellers making tax-exempt sales under this section must obtain
9 from the purchaser an exemption certificate in a form and manner
10 prescribed by the department by rule. The seller must retain a copy of
11 the certificate for the seller's files.

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

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

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

23 (i) Hand-powered tools;

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

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

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

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

35 (i) Acts upon or interacts with an item of tangible personal
36 property;

37 (ii) Conveys, transports, handles, or temporarily stores an item of
38 tangible personal property at the manufacturing site or testing site;

1 (iii) Controls, guides, measures, verifies, aligns, regulates, or
2 tests tangible personal property at the site or away from the site;

3 (iv) Provides physical support for or access to tangible personal
4 property;

5 (v) Produces power for, or lubricates machinery and equipment;

6 (vi) Produces another item of tangible personal property for use in
7 the manufacturing operation, testing operation, or research and
8 development operation;

9 (vii) Places tangible personal property in the container, package,
10 or wrapping in which the tangible personal property is normally sold or
11 transported; or

12 (viii) Is integral to research and development as defined in RCW
13 82.63.010.

14 (d) "Manufacturer" means a person that qualifies as a manufacturer
15 under RCW 82.04.110. "Manufacturer" also includes a person that prints
16 newspapers or other materials.

17 (e) "Manufacturing" means only those activities that come within
18 the definition of "to manufacture" in RCW 82.04.120 and are taxed as
19 manufacturing or processing for hire under chapter 82.04 RCW, or would
20 be taxed as such if such activity were conducted in this state or if
21 not for an exemption or deduction. "Manufacturing" also includes
22 printing newspapers or other materials. An activity is not taxed as
23 manufacturing or processing for hire under chapter 82.04 RCW if the
24 activity is within the purview of chapter 82.16 RCW.

25 (f) "Manufacturing operation" means the manufacturing of articles,
26 substances, or commodities for sale as tangible personal property. A
27 manufacturing operation begins at the point where the raw materials
28 enter the manufacturing site and ends at the point where the processed
29 material leaves the manufacturing site. With respect to the production
30 of class A or exceptional quality biosolids by a wastewater treatment
31 facility, the manufacturing operation begins at the point where class
32 B biosolids undergo additional processing to achieve class A or
33 exceptional quality standards. Notwithstanding anything to the
34 contrary in this section, the term also includes that portion of a
35 cogeneration project that is used to generate power for consumption
36 within the manufacturing site of which the cogeneration project is an
37 integral part. The term does not include the preparation of food
38 products on the premises of a person selling food products at retail.

1 (g) "Cogeneration" means the simultaneous generation of electrical
2 energy and low-grade heat from the same fuel.

3 (h) "Research and development operation" means engaging in research
4 and development as defined in RCW 82.63.010 by a manufacturer or
5 processor for hire, if the research and development is integral to the
6 buyer's development of prewritten computer software for sale as a
7 product or a service described in RCW 82.04.050(6)(b), or the buyer's
8 manufacturing operation. For purposes of this section and RCW
9 82.12.02565, persons engaged in the development of prewritten computer
10 software that is not transferred to purchasers by means of a tangible
11 storage media are deemed to be manufacturers.

12 (i) "Testing" means activities performed to establish or determine
13 the properties, qualities, and limitations of tangible personal
14 property.

15 (j) "Testing operation" means the testing of tangible personal
16 property for a manufacturer or processor for hire. A testing operation
17 begins at the point where the tangible personal property enters the
18 testing site and ends at the point where the tangible personal property
19 leaves the testing site. The term also includes the testing of
20 tangible personal property for use in that portion of a cogeneration
21 project that is used to generate power for consumption within the
22 manufacturing site of which the cogeneration project is an integral
23 part. The term does not include the testing of tangible personal
24 property for use in the production of electricity by a light and power
25 business as defined in RCW 82.16.010 or the preparation of food
26 products on the premises of a person selling food products at retail.

27 (3) It is the intent of the legislature that this tax preference is
28 being amended to correct a technical inconsistency, and these
29 corrections are not intended to create a new or expanded tax preference
30 under RCW 82.32.805.

--- END ---