
HOUSE BILL 1884

State of Washington 59th Legislature 2005 Regular Session

By Representatives Simpson, Chase and Hasegawa

Read first time 02/09/2005. Referred to Committee on Finance.

1 AN ACT Relating to high-technology excise tax incentives for
2 pharmaceutical manufacturing companies; amending RCW 82.04.4452,
3 82.63.010, 82.63.020, 82.63.030, and 82.63.045; and declaring an
4 emergency.

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

6 **Sec. 1.** RCW 82.04.4452 and 2004 c 2 s 2 are each amended to read
7 as follows:

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

12 (2) The credit shall be calculated as follows: (a) Determine the
13 greater of the amount of qualified research and development
14 expenditures of a person or eighty percent of amounts received by a
15 person other than a public educational or research institution in
16 compensation for the conduct of qualified research and development; (b)
17 subtract 0.92 percent of the person's taxable amount from the amount
18 determined under (a) of this subsection; (c) multiply the amount
19 determined under (b) of this subsection by the rate provided in RCW

1 82.04.260(3) in the case of a nonprofit corporation or nonprofit
2 association engaging within this state in research and development, and
3 the person's average tax rate for every other person.

4 (3) Any person entitled to the credit provided in subsection (2) of
5 this section as a result of qualified research and development
6 conducted under contract may assign all or any portion of the credit to
7 the person contracting for the performance of the qualified research
8 and development.

9 (4) The credit, including any credit assigned to a person under
10 subsection (3) of this section, shall be taken against taxes due for
11 the same calendar year in which the qualified research and development
12 expenditures are incurred. The credit, including any credit assigned
13 to a person under subsection (3) of this section, for each calendar
14 year shall not exceed the lesser of two million dollars or the amount
15 of tax otherwise due under this chapter for the calendar year.

16 (5) Any person taking the credit, including any credit assigned to
17 a person under subsection (3) of this section, whose research and
18 development spending during the calendar year in which the credit is
19 claimed fails to exceed 0.92 percent of the person's taxable amount
20 during the same calendar year shall be liable for payment of the
21 additional taxes represented by the amount of credit taken together
22 with interest, but not penalties. Interest shall be due at the rate
23 provided for delinquent excise taxes retroactively to the date the
24 credit was taken until the taxes are paid. Any credit assigned to a
25 person under subsection (3) of this section that is disallowed as a
26 result of this section may be taken by the person who performed the
27 qualified research and development subject to the limitations set forth
28 in subsection (4) of this section.

29 (6) A pharmaceutical manufacturing company shall not claim credit
30 under this section if: (a) The company has reduced sales to retail
31 pharmacies in Canada within the twelve months prior to the effective
32 date of this act or at any time after the effective date of this act,
33 pursuant to a company policy issued in response to the direct and
34 indirect sales of company products to residents of the United States by
35 retail pharmacies in Canada; or (b) the average retail price of the
36 company's products in the United States exceeds the average retail
37 price of the company's products in Canada by at least ten percent, for
38 the twelve months prior to the effective date of this act or for any

1 three-month period after the effective date of this act. A
2 pharmaceutical manufacturing company shall submit an affidavit, as part
3 of the annual survey under subsection (8) of this section, stating that
4 the company is not disqualified from the credit under this subsection.

5 (7) Any person claiming the credit, and any person assigning a
6 credit as provided in subsection (3) of this section, shall file an
7 annual report in a form prescribed by the department which shall
8 include the amount of the credit claimed, the qualified research and
9 development expenditures during the calendar year for which the credit
10 is claimed, and the taxable amount during the calendar year for which
11 the credit is claimed, and such additional information as the
12 department may prescribe. The report is due by March 31st following
13 any year a credit is taken.

14 ((+7)) (8)(a) The legislature finds that accountability and
15 effectiveness are important aspects of setting tax policy. In order to
16 make policy choices regarding the best use of limited state resources
17 the legislature needs information on how a tax incentive is used.

18 (b) A person claiming the credit shall agree to complete an annual
19 survey. The annual survey is in addition to the annual report due
20 under subsection ((+6)) (7) of this section. The survey is due by
21 March 31st following any year in which a credit is taken. The survey
22 shall include the amount of the tax credit taken, the number of new
23 products or research projects by general classification, and the number
24 of trademarks, patents, and copyrights associated with the research and
25 development activities for which a credit was taken. The survey shall
26 also include the following information for employment positions in
27 Washington:

28 (i) The number of total employment positions;

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

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

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

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

4 (d) All information collected under this subsection, except the
5 amount of the tax credit taken, is deemed taxpayer information under
6 RCW 82.32.330 and is not disclosable. Information on the amount of tax
7 credit taken is not subject to the confidentiality provisions of RCW
8 82.32.330 and may be disclosed to the public upon request except that
9 persons taking less than ten thousand dollars of credit during the
10 period covered by the survey may request the department to treat the
11 tax credit amount as confidential under RCW 82.32.330.

12 (e) If a person fails to complete the survey required under this
13 subsection by the due date, the person entitled to the credit provided
14 in subsection (2) of this section is not eligible to take or assign the
15 credit provided in subsection (2) of this section in the year the
16 person failed to complete the survey.

17 ~~((+8))~~ (9) The department shall use the information from
18 subsection ~~((+7))~~ (8) of this section to prepare summary descriptive
19 statistics by category. No fewer than three taxpayers shall be
20 included in any category. The department shall report these statistics
21 to the legislature each year by September 1st.

22 ~~((+9))~~ (10) The department shall use the information from
23 subsection ~~((+7))~~ (8) of this section to study the tax credit program
24 authorized under this section. The department shall report to the
25 legislature by December 1, 2009, and December 1, 2013. The reports
26 shall measure the effect of the program on job creation, the number of
27 jobs created for Washington residents, company growth, the introduction
28 of new products, the diversification of the state's economy, growth in
29 research and development investment, the movement of firms or the
30 consolidation of firms' operations into the state, and such other
31 factors as the department selects.

32 ~~((+10))~~ (11) For the purpose of this section:

33 (a) "Average tax rate" means a person's total tax under this
34 chapter for the reporting period divided by the taxpayer's total
35 taxable income under this chapter for the reporting period.

36 (b) "Pharmaceutical manufacturing company" means an entity that is
37 engaged in the production, preparation, propagation, compounding,
38 conversion, or processing of prescription drugs, either directly or

1 indirectly by extraction from substances of natural origin, or
2 independently by means of chemical synthesis, or by a combination of
3 extraction and chemical synthesis, or any entity engaged in the
4 packaging, repackaging, labeling, relabeling, or distribution of
5 prescription drugs. This term does not include pharmacists licensed
6 under chapter 18.64 RCW, or pharmacy operations of any integrated
7 delivery system undertaken for the benefit of patients obtaining care
8 through that system.

9 (c) "Qualified research and development expenditures" means
10 operating expenses, including wages, compensation of a proprietor or a
11 partner in a partnership as determined under rules adopted by the
12 department, benefits, supplies, and computer expenses, directly
13 incurred in qualified research and development by a person claiming the
14 credit provided in this section. The term does not include amounts
15 paid to a person other than a public educational or research
16 institution to conduct qualified research and development. Nor does
17 the term include capital costs and overhead, such as expenses for land,
18 structures, or depreciable property.

19 ~~((e))~~ (d) "Qualified research and development" shall have the
20 same meaning as in RCW 82.63.010.

21 ~~((d))~~ (e) "Research and development spending" means qualified
22 research and development expenditures plus eighty percent of amounts
23 paid to a person other than a public educational or research
24 institution to conduct qualified research and development.

25 ~~((e))~~ (f) "Taxable amount" means the taxable amount subject to
26 the tax imposed in this chapter required to be reported on the person's
27 combined excise tax returns during the year in which the credit is
28 claimed, less any taxable amount for which a credit is allowed under
29 RCW 82.04.440.

30 ~~((11))~~ (12) This section expires January 1, 2015.

31 **Sec. 2.** RCW 82.63.010 and 2004 c 2 s 3 are each amended to read as
32 follows:

33 Unless the context clearly requires otherwise, the definitions in
34 this section apply throughout this chapter.

35 (1) "Advanced computing" means technologies used in the designing
36 and developing of computing hardware and software, including

1 innovations in designing the full spectrum of hardware from hand-held
2 calculators to super computers, and peripheral equipment.

3 (2) "Advanced materials" means materials with engineered properties
4 created through the development of specialized processing and synthesis
5 technology, including ceramics, high value-added metals, electronic
6 materials, composites, polymers, and biomaterials.

7 (3) "Applicant" means a person applying for a tax deferral under
8 this chapter.

9 (4) "Biotechnology" means the application of technologies, such as
10 recombinant DNA techniques, biochemistry, molecular and cellular
11 biology, genetics and genetic engineering, cell fusion techniques, and
12 new bioprocesses, using living organisms, or parts of organisms, to
13 produce or modify products, to improve plants or animals, to develop
14 microorganisms for specific uses, to identify targets for small
15 molecule pharmaceutical development, or to transform biological systems
16 into useful processes and products or to develop microorganisms for
17 specific uses.

18 (5) "Department" means the department of revenue.

19 (6) "Electronic device technology" means technologies involving
20 microelectronics; semiconductors; electronic equipment and
21 instrumentation; radio frequency, microwave, and millimeter
22 electronics; optical and optic-electrical devices; and data and digital
23 communications and imaging devices.

24 (7) "Eligible investment project" means an investment project which
25 either initiates a new operation, or expands or diversifies a current
26 operation by expanding, renovating, or equipping an existing facility.
27 The lessor or owner of the qualified building is not eligible for a
28 deferral unless:

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

31 (b)(i) The lessor by written contract agrees to pass the economic
32 benefit of the deferral to the lessee;

33 (ii) The lessee that receives the economic benefit of the deferral
34 agrees in writing with the department to complete the annual survey
35 required under RCW 82.63.020(2); and

36 (iii) The economic benefit of the deferral passed to the lessee is
37 no less than the amount of tax deferred by the lessor and is evidenced

1 by written documentation of any type of payment, credit, or other
2 financial arrangement between the lessor or owner of the qualified
3 building and the lessee.

4 (8) "Environmental technology" means assessment and prevention of
5 threats or damage to human health or the environment, environmental
6 cleanup, and the development of alternative energy sources.

7 (9) "Investment project" means an investment in qualified buildings
8 or qualified machinery and equipment, including labor and services
9 rendered in the planning, installation, and construction or improvement
10 of the project.

11 (10) "Person" has the meaning given in RCW 82.04.030 and includes
12 state universities as defined in RCW 28B.10.016.

13 (11) "Pharmaceutical manufacturing company" has the same meaning as
14 provided in RCW 82.04.4452.

15 (12) "Pilot scale manufacturing" means design, construction, and
16 testing of preproduction prototypes and models in the fields of
17 biotechnology, advanced computing, electronic device technology,
18 advanced materials, and environmental technology other than for
19 commercial sale. As used in this subsection, "commercial sale"
20 excludes sales of prototypes or sales for market testing if the total
21 gross receipts from such sales of the product, service, or process do
22 not exceed one million dollars.

23 ~~((+12+))~~ (13) "Qualified buildings" means construction of new
24 structures, and expansion or renovation of existing structures for the
25 purpose of increasing floor space or production capacity used for pilot
26 scale manufacturing or qualified research and development, including
27 plant offices and other facilities that are an essential or an integral
28 part of a structure used for pilot scale manufacturing or qualified
29 research and development. If a building is used partly for pilot scale
30 manufacturing or qualified research and development, and partly for
31 other purposes, the applicable tax deferral shall be determined by
32 apportionment of the costs of construction under rules adopted by the
33 department.

34 ~~((+13+))~~ (14) "Qualified machinery and equipment" means fixtures,
35 equipment, and support facilities that are an integral and necessary
36 part of a pilot scale manufacturing or qualified research and
37 development operation. "Qualified machinery and equipment" includes:
38 Computers; software; data processing equipment; laboratory equipment,

1 instrumentation, and other devices used in a process of experimentation
2 to develop a new or improved pilot model, plant process, product,
3 formula, invention, or similar property; manufacturing components such
4 as belts, pulleys, shafts, and moving parts; molds, tools, and dies;
5 vats, tanks, and fermenters; operating structures; and all other
6 equipment used to control, monitor, or operate the machinery. For
7 purposes of this chapter, qualified machinery and equipment must be
8 either new to the taxing jurisdiction of the state or new to the
9 certificate holder, except that used machinery and equipment may be
10 treated as qualified machinery and equipment if the certificate holder
11 either brings the machinery and equipment into Washington or makes a
12 retail purchase of the machinery and equipment in Washington or
13 elsewhere.

14 ~~((14))~~ (15) "Qualified research and development" means research
15 and development performed within this state in the fields of advanced
16 computing, advanced materials, biotechnology, electronic device
17 technology, and environmental technology.

18 ~~((15))~~ (16) "Recipient" means a person receiving a tax deferral
19 under this chapter.

20 ~~((16))~~ (17) "Research and development" means activities performed
21 to discover technological information, and technical and nonroutine
22 activities concerned with translating technological information into
23 new or improved products, processes, techniques, formulas, inventions,
24 or software. The term includes exploration of a new use for an
25 existing drug, device, or biological product if the new use requires
26 separate licensing by the federal food and drug administration under
27 chapter 21, C.F.R., as amended. The term does not include adaptation
28 or duplication of existing products where the products are not
29 substantially improved by application of the technology, nor does the
30 term include surveys and studies, social science and humanities
31 research, market research or testing, quality control, sale promotion
32 and service, computer software developed for internal use, and research
33 in areas such as improved style, taste, and seasonal design.

34 ~~((17))~~ (18)(a) "Initiation of construction" means the date that
35 a building permit is issued under the building code adopted under RCW
36 19.27.031 for:

37 (i) Construction of the qualified building, if the underlying

1 ownership of the building vests exclusively with the person receiving
2 the economic benefit of the deferral;

3 (ii) Construction of the qualified building, if the economic
4 benefits of the deferral are passed to a lessee as provided in
5 subsection (7) of this section; or

6 (iii) Tenant improvements for a qualified building, if the economic
7 benefits of the deferral are passed to a lessee as provided in
8 subsection (7) of this section.

9 (b) "Initiation of construction" does not include soil testing,
10 site clearing and grading, site preparation, or any other related
11 activities that are initiated before the issuance of a building permit
12 for the construction of the foundation of the building.

13 (c) If the investment project is a phased project, "initiation of
14 construction" shall apply separately to each phase.

15 **Sec. 3.** RCW 82.63.020 and 2004 c 2 s 4 are each amended to read as
16 follows:

17 (1) Application for deferral of taxes under this chapter must be
18 made before initiation of construction of, or acquisition of equipment
19 or machinery for the investment project. The application shall be made
20 to the department in a form and manner prescribed by the department.
21 The application shall contain information regarding the location of the
22 investment project, the applicant's average employment in the state for
23 the prior year, estimated or actual new employment related to the
24 project, estimated or actual wages of employees related to the project,
25 estimated or actual costs, time schedules for completion and operation,
26 and other information required by the department. The application
27 shall also contain an affidavit, if the applicant is a pharmaceutical
28 manufacturing company, stating that: (a) The applicant has not reduced
29 sales to retail pharmacies in Canada within the twelve months prior to
30 the effective date of this act, pursuant to a company policy issued in
31 response to the direct and indirect sales of company products to
32 residents of the United States by retail pharmacies in Canada; or (b)
33 the average retail price of the applicant's products in the United
34 States exceeds the average retail price of the applicant's products in
35 Canada by at least ten percent, for the twelve months prior to the
36 effective date of this act. The department shall rule on the
37 application within sixty days.

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

5 (b) Applicants for deferral of taxes under this chapter shall agree
6 to complete an annual survey. If the economic benefits of the deferral
7 are passed to a lessee as provided in RCW 82.63.010(7), the lessee
8 shall agree to complete the annual survey and the applicant is not
9 required to complete the annual survey. The survey is due by March
10 31st of the year following the calendar year in which the investment
11 project is certified by the department as having been operationally
12 complete and the seven succeeding calendar years. The survey shall
13 include the amount of tax deferred, the number of new products or
14 research projects by general classification, and the number of
15 trademarks, patents, and copyrights associated with activities at the
16 investment project. The survey shall also include the following
17 information for employment positions in Washington:

18 (i) The number of total employment positions;

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

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

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

28 (c) The department may request additional information necessary to
29 measure the results of the deferral program, to be submitted at the
30 same time as the survey.

31 (d) All information collected under this subsection, except the
32 amount of the tax deferral taken, is deemed taxpayer information under
33 RCW 82.32.330 and is not disclosable. Information on the amount of tax
34 deferral taken is not subject to the confidentiality provisions of RCW
35 82.32.330 and may be disclosed to the public upon request.

36 (3) The department shall use the information from this section to
37 prepare summary descriptive statistics by category. No fewer than

1 three taxpayers shall be included in any category. The department
2 shall report these statistics to the legislature each year by September
3 1st.

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

13 **Sec. 4.** RCW 82.63.030 and 2004 c 2 s 5 are each amended to read as
14 follows:

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

19 (2) No certificate may be issued for an investment project that has
20 already received a deferral under chapter 82.60 or 82.61 RCW or this
21 chapter, except that an investment project for qualified research and
22 development that has already received a deferral may also receive an
23 additional deferral certificate for adapting the investment project for
24 use in pilot scale manufacturing.

25 (3) No certificate shall be issued for an investment project if:
26 (a) The applicant is a pharmaceutical manufacturing company that has
27 reduced sales to retail pharmacies in Canada within the twelve months
28 prior to the effective date of this act, pursuant to a company policy
29 issued in response to the direct and indirect sales of company products
30 to residents of the United States by retail pharmacies in Canada; or
31 (b) the average retail price of the applicant's products in the United
32 States exceeds the average retail price of the applicant's products in
33 Canada by at least ten percent, for the twelve months prior to the
34 effective date of this act.

35 (4) This section shall expire January 1, 2015.

1 **Sec. 5.** RCW 82.63.045 and 2004 c 2 s 6 are each amended to read as
2 follows:

3 (1) Except as provided in subsection (2) of this section, taxes
4 deferred under this chapter need not be repaid.

5 (2)(a) If, on the basis of survey under RCW 82.63.020 or other
6 information, the department finds that an investment project is used
7 for purposes other than qualified research and development or pilot
8 scale manufacturing at any time during the calendar year in which the
9 investment project is certified by the department as having been
10 operationally completed, or at any time during any of the seven
11 succeeding calendar years, a portion of deferred taxes shall be
12 immediately due according to the following schedule:

Year in which use occurs	% of deferred taxes due
1	100%
2	87.5%
3	75%
4	62.5%
5	50%
6	37.5%
7	25%
8	12.5%

22 (b) If a recipient of the deferral fails to complete the annual
23 survey required under RCW 82.63.020 by the date due, 12.5 percent of
24 the deferred tax shall be immediately due. If the economic benefits of
25 the deferral are passed to a lessee as provided in RCW 82.63.010(7),
26 the lessee shall be responsible for payment to the extent the lessee
27 has received the economic benefit.

28 (c) If an investment project is used for purposes other than
29 qualified research and development or pilot scale manufacturing at any
30 time during the calendar year in which the investment project is
31 certified as having been operationally complete and the recipient of
32 the deferral fails to complete the annual survey due under RCW
33 82.63.020, the portion of deferred taxes immediately due is the amount
34 on the schedule in (a) of this subsection. If the economic benefits of
35 the deferral are passed to a lessee as provided in RCW 82.63.010(7),

1 the lessee shall be responsible for payment to the extent the lessee
2 has received the economic benefit.

3 (d) A portion of deferred taxes shall be immediately due and
4 payable according to the schedule in (a) of this subsection if the
5 department finds that a pharmaceutical manufacturing company that is a
6 recipient has: (i) Reduced sales to retail pharmacies in Canada, after
7 the effective date of this act, pursuant to a company policy issued in
8 response to the direct and indirect sales of company products to
9 residents of the United States by retail pharmacies in Canada; or (ii)
10 products sold in the United States with an average retail price that is
11 at least ten percent greater than the average retail price of the
12 recipient's products sold in Canada, for any three-month period after
13 the effective date of this act.

14 (3) The department shall assess interest at the rate provided for
15 delinquent taxes, but not penalties, retroactively to the date of
16 deferral. The debt for deferred taxes will not be extinguished by
17 insolvency or other failure of the recipient. Transfer of ownership
18 does not terminate the deferral. The deferral is transferred, subject
19 to the successor meeting the eligibility requirements of this chapter,
20 for the remaining periods of the deferral.

21 (4) Notwithstanding subsection (2) of this section, deferred taxes
22 on the following need not be repaid:

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

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

28 NEW SECTION. Sec. 6. This act is necessary for the immediate
29 preservation of the public peace, health, or safety, or support of the
30 state government and its existing public institutions, and takes effect
31 immediately.

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