

SHB 2546 - H AMD 762

By Representative McIntire

ADOPTED 01/30/2004

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 82.63.005 and 1994 sp.s. c 5 s 1 are each amended to
4 read as follows:

5 The legislature finds that high-wage, high-skilled jobs are vital
6 to the economic health of the state's citizens, and that targeted tax
7 incentives will encourage the formation of high-wage, high-skilled
8 jobs. The legislature also finds that tax incentives should be subject
9 to the same rigorous requirements for efficiency and accountability as
10 are other expenditure programs, and that tax incentives should
11 therefore be focused to provide the greatest possible return on the
12 state's investment.

13 The legislature also finds that high-technology businesses are a
14 vital and growing source of high-wage, high-skilled jobs in this state,
15 and that the high-technology sector is a key component of the state's
16 effort to encourage economic diversification. However, the legislature
17 finds that many high-technology businesses incur significant costs
18 associated with research and development and pilot scale manufacturing
19 many years before a marketable product can be produced, and that
20 current state tax policy discourages the growth of these companies by
21 taxing them long before they become profitable.

22 The legislature further finds that stimulating growth of high-
23 technology businesses early in their development cycle, when they are
24 turning ideas into marketable products, will build upon the state's
25 established high-technology base, creating additional research and
26 development jobs and subsequent manufacturing facilities.

27 For these reasons, the legislature hereby establishes a program of
28 business and occupation tax credits for qualified research and
29 development expenditures. The legislature also hereby establishes a
30 tax deferral program for high-technology research and development and

1 pilot scale manufacturing facilities. The legislature declares that
2 these limited programs serve the vital public purposes of incenting
3 expenditures in research and development, supporting, and sustaining as
4 they develop new technologies and products, and creating quality
5 employment opportunities in this state. The legislature further
6 declares its intent to create a contract within the meaning of Article
7 I, section 23 of the state Constitution as to those businesses that
8 make capital investments in consideration of the tax deferral program
9 established in this chapter.

10 **Sec. 2.** RCW 82.04.4452 and 2000 c 103 s 7 are each amended to read
11 as follows:

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

16 (2) The credit (~~is equal to~~) shall be calculated as follows: (a)
17 Determine the greater of the amount of qualified research and
18 development expenditures of a person or eighty percent of amounts
19 received by a person other than a public educational or research
20 institution in compensation for the conduct of qualified research and
21 development(~~(, multiplied)~~); (b) subtract 0.92 percent of the person's
22 taxable amount from the amount determined under (a) of this subsection;
23 (c) multiply the amount determined under (b) of this subsection by the
24 rate provided in RCW 82.04.260(3) in the case of a nonprofit
25 corporation or nonprofit association engaging within this state in
26 research and development, and the person's average tax rate (~~(provided~~
27 ~~in RCW 82.04.290(2))~~) for every other person.

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

33 (4) The credit, including any credit assigned to a person under
34 subsection (3) of this section, shall be taken against taxes due for
35 the same calendar year in which the qualified research and development
36 expenditures are incurred. The credit, including any credit assigned

1 to a person under subsection (3) of this section, for each calendar
2 year shall not exceed the lesser of two million dollars or the amount
3 of tax otherwise due under this chapter for the calendar year.

4 (5) Any person taking the credit, including any credit assigned to
5 a person under subsection (3) of this section, whose research and
6 development spending during the calendar year in which the credit is
7 claimed fails to exceed 0.92 percent of the person's taxable amount
8 during the same calendar year shall be liable for payment of the
9 additional taxes represented by the amount of credit taken together
10 with interest, but not penalties. Interest shall be due at the rate
11 provided for delinquent excise taxes retroactively to the date the
12 credit was taken until the taxes are paid. Any credit assigned to a
13 person under subsection (3) of this section that is disallowed as a
14 result of this section may be taken by the person who performed the
15 qualified research and development subject to the limitations set forth
16 in subsection (4) of this section.

17 (6) Any person claiming the credit, and any person assigning a
18 credit as provided in subsection (3) of this section, shall file an
19 (~~affidavit~~) annual report in a form prescribed by the department
20 which shall include the amount of the credit claimed, (~~an estimate~~
21 ~~of~~) the (~~anticipated~~) qualified research and development
22 expenditures during the calendar year for which the credit is claimed,
23 (~~an estimate of~~) and the taxable amount during the calendar year for
24 which the credit is claimed, and such additional information as the
25 department may prescribe. The report is due by March 31st following
26 any year a credit is taken.

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

31 (b) A person claiming the credit shall agree to (~~supply the~~
32 ~~department with information necessary to measure the results of the tax~~
33 ~~credit program for qualified research and development expenditures~~)
34 complete an annual survey. The annual survey is in addition to the
35 annual report due under subsection (6) of this section. The survey is
36 due by March 31st following any year in which a credit is taken. The
37 survey shall include the amount of the tax credit taken, the number of

1 new products or research projects by general classification, and the
2 number of trademarks, patents, and copyrights associated with the
3 research and development activities for which a credit was taken. The
4 survey shall also include the following information for employment
5 positions in Washington:

6 (i) The number of total employment positions;

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

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

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

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

19 (d) All information collected under this subsection, except the
20 amount of the tax credit taken, is deemed taxpayer information under
21 RCW 82.32.330 and is not disclosable. Information on the amount of tax
22 credit taken is not subject to the confidentiality provisions of RCW
23 82.32.330 and may be disclosed to the public upon request except that
24 persons taking less than ten thousand dollars of credit during the
25 period covered by the survey may request the department to treat the
26 tax credit amount as confidential under RCW 82.32.330.

27 (e) If a person fails to complete the survey required under this
28 subsection by the due date, the person entitled to the credit provided
29 in subsection (2) of this section is not eligible to take or assign the
30 credit provided in subsection (2) of this section in the year the
31 person failed to complete the survey.

32 (8) The department shall use the information from subsection (7) of
33 this section to prepare summary descriptive statistics by category. No
34 fewer than three taxpayers shall be included in any category. The
35 department shall report these statistics to the legislature each year
36 by September 1st.

1 (9) The department shall use the information ~~((required under))~~
2 ~~from~~ subsection (7) of this section to ~~((perform three assessments on))~~
3 study the tax credit program authorized under this section. ~~((The~~
4 ~~assessments will take place in 1997, 2000, and 2003. The department~~
5 ~~shall prepare reports on each assessment and deliver their reports by~~
6 ~~September 1, 1997, September 1, 2000, and September 1, 2003. The~~
7 ~~assessments))~~ The department shall report to the legislature by
8 December 1, 2009, and December 1, 2013. The reports shall measure the
9 effect of the program on job creation, the number of jobs created for
10 Washington residents, company growth, the introduction of new products,
11 the diversification of the state's economy, growth in research and
12 development investment, the movement of firms or the consolidation of
13 firms' operations into the state, and such other factors as the
14 department selects.

15 ~~((+9))~~ (10) For the purpose of this section:

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

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

29 ~~((+b))~~ (c) "Qualified research and development" shall have the
30 same meaning as in RCW 82.63.010.

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

35 ~~((+d))~~ (e) "Taxable amount" means the taxable amount subject to
36 the tax imposed in this chapter required to be reported on the person's

1 combined excise tax returns during the year in which the credit is
2 claimed, less any taxable amount for which a credit is allowed under
3 RCW 82.04.440.

4 ((~~(10)~~)) (11) This section expires ((~~December 31, 2004~~)) January 1,
5 2015.

6 **Sec. 3.** RCW 82.63.010 and 1995 1st sp.s. c 3 s 12 are each amended
7 to read as follows:

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

10 (1) "Advanced computing" means technologies used in the designing
11 and developing of computing hardware and software, including
12 innovations in designing the full spectrum of hardware from hand-held
13 calculators to super computers, and peripheral equipment.

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

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

20 (4) "Biotechnology" means the application of technologies, such as
21 recombinant DNA techniques, biochemistry, molecular and cellular
22 biology, genetics and genetic engineering, cell fusion techniques, and
23 new bioprocesses, using living organisms, or parts of organisms, to
24 produce or modify products, to improve plants or animals, to develop
25 microorganisms for specific uses, to identify targets for small
26 molecule pharmaceutical development, or to transform biological systems
27 into useful processes and products or to develop microorganisms for
28 specific uses.

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

30 (6) "Electronic device technology" means technologies involving
31 microelectronics; semiconductors; electronic equipment and
32 instrumentation; radio frequency, microwave, and millimeter
33 electronics; optical and optic-electrical devices; and data and digital
34 communications and imaging devices.

35 (7) "Eligible investment project" means an investment project which
36 either initiates a new operation, or expands or diversifies a current

1 operation by expanding, renovating, or equipping an existing facility.
2 The lessor or owner of the qualified building is not eligible for a
3 deferral unless:

4 (a) The underlying ownership of the buildings, machinery, and
5 equipment vests exclusively in the same person(~~(, or unless)~~); or

6 (b)(i) The lessor by written contract agrees to pass the economic
7 benefit of the deferral to the lessee (~~(in the form of reduced rent~~
8 payments));

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

12 (iii) The economic benefit of the deferral passed to the lessee is
13 no less than the amount of tax deferred by the lessor and is evidenced
14 by written documentation of any type of payment, credit, or other
15 financial arrangement between the lessor or owner of the qualified
16 building and the lessee.

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

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

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

26 (11) "Pilot scale manufacturing" means design, construction, and
27 testing of preproduction prototypes and models in the fields of
28 biotechnology, advanced computing, electronic device technology,
29 advanced materials, and environmental technology other than for
30 commercial sale. As used in this subsection, "commercial sale"
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 (12) "Qualified buildings" means construction of new structures,
35 and expansion or renovation of existing structures for the purpose of
36 increasing floor space or production capacity used for pilot scale
37 manufacturing or qualified research and development, including plant

1 offices and other facilities that are an essential or an integral part
2 of a structure used for pilot scale manufacturing or qualified research
3 and development. If a building is used partly for pilot scale
4 manufacturing or qualified research and development, and partly for
5 other purposes, the applicable tax deferral shall be determined by
6 apportionment of the costs of construction under rules adopted by the
7 department.

8 (13) "Qualified machinery and equipment" means fixtures, equipment,
9 and support facilities that are an integral and necessary part of a
10 pilot scale manufacturing or qualified research and development
11 operation. "Qualified machinery and equipment" includes: Computers;
12 software; data processing equipment; laboratory equipment,
13 instrumentation, and other devices used in a process of experimentation
14 to develop a new or improved pilot model, plant process, product,
15 formula, invention, or similar property; manufacturing components such
16 as belts, pulleys, shafts, and moving parts; molds, tools, and dies;
17 vats, tanks, and fermenters; operating structures; and all other
18 equipment used to control, monitor, or operate the machinery. For
19 purposes of this chapter, qualified machinery and equipment must be
20 either new to the taxing jurisdiction of the state or new to the
21 certificate holder, except that used machinery and equipment may be
22 treated as qualified machinery and equipment if the certificate holder
23 either brings the machinery and equipment into Washington or makes a
24 retail purchase of the machinery and equipment in Washington or
25 elsewhere.

26 (14) "Qualified research and development" means research and
27 development performed within this state in the fields of advanced
28 computing, advanced materials, biotechnology, electronic device
29 technology, and environmental technology.

30 (15) "Recipient" means a person receiving a tax deferral under this
31 chapter.

32 (16) "Research and development" means activities performed to
33 discover technological information, and technical and nonroutine
34 activities concerned with translating technological information into
35 new or improved products, processes, techniques, formulas, inventions,
36 or software. The term includes exploration of a new use for an
37 existing drug, device, or biological product if the new use requires

1 separate licensing by the federal food and drug administration under
2 chapter 21, C.F.R., as amended. The term does not include adaptation
3 or duplication of existing products where the products are not
4 substantially improved by application of the technology, nor does the
5 term include surveys and studies, social science and humanities
6 research, market research or testing, quality control, sale promotion
7 and service, computer software developed for internal use, and research
8 in areas such as improved style, taste, and seasonal design.

9 (17)(a) "Initiation of construction" means the date that a building
10 permit is issued under the building code adopted under RCW 19.27.031
11 for:

12 (i) Construction of the qualified building, if the underlying
13 ownership of the building vests exclusively with the person receiving
14 the economic benefit of the deferral;

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

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

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

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

27 **Sec. 4.** RCW 82.63.020 and 1994 sp.s. c 5 s 4 are each amended to
28 read as follows:

29 (1) Application for deferral of taxes under this chapter must be
30 made before initiation of construction of, or acquisition of equipment
31 or machinery for the investment project. The application shall be made
32 to the department in a form and manner prescribed by the department.
33 The application shall contain information regarding the location of the
34 investment project, the applicant's average employment in the state for
35 the prior year, estimated or actual new employment related to the
36 project, estimated or actual wages of employees related to the project,

1 estimated or actual costs, time schedules for completion and operation,
2 and other information required by the department. The department shall
3 rule on the application within sixty days.

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

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

24 (i) The number of total employment positions;

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

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

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

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

1 (d) All information collected under this subsection, except the
2 amount of the tax deferral taken, is deemed taxpayer information under
3 RCW 82.32.330 and is not disclosable. Information on the amount of tax
4 deferral taken is not subject to the confidentiality provisions of RCW
5 82.32.330 and may be disclosed to the public upon request.

6 (3) The department shall use the information from this section to
7 prepare summary descriptive statistics by category. No fewer than
8 three taxpayers shall be included in any category. The department
9 shall report these statistics to the legislature each year by September
10 1st.

11 (4) The department shall use the information to ((perform three
12 assessments on)) study the tax deferral program authorized under this
13 chapter. ((The assessments will take place in 1997, 2000, and 2003.))
14 The department shall ((prepare reports on each assessment and deliver
15 their reports by September 1, 1997, September 1, 2000, and September 1,
16 2003)) report to the legislature by December 1, 2009, and December 1,
17 2013. The ((assessments)) reports shall measure the effect of the
18 program on job creation, the number of jobs created for Washington
19 residents, company growth, the introduction of new products, the
20 diversification of the state's economy, growth in research and
21 development investment, the movement of firms or the consolidation of
22 firms' operations into the state, and such other factors as the
23 department selects.

24 **Sec. 5.** RCW 82.63.030 and 1994 sp.s. c 5 s 5 are each amended to
25 read as follows:

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

30 (2) No certificate may be issued for an investment project that has
31 already received a deferral under chapter 82.60 or 82.61 RCW or this
32 chapter, except that an investment project for qualified research and
33 development that has already received a deferral may also receive an
34 additional deferral certificate for adapting the investment project for
35 use in pilot scale manufacturing.

36 (3) This section shall expire ((July)) January 1, ((2004)) 2015.

1 **Sec. 6.** RCW 82.63.045 and 2000 c 106 s 10 are each amended to read
2 as 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 ((a-report)) survey under RCW 82.63.020
6 or other information, the department finds that an investment project
7 is used for purposes other than qualified research and development or
8 pilot scale manufacturing at any time during the calendar year in which
9 the 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:

13	Year in which use occurs	% of deferred taxes due
14	1	100%
15	2	87.5%
16	3	75%
17	4	62.5%
18	5	50%
19	6	37.5%
20	7	25%
21	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

1 the deferral are passed to a lessee as provided in RCW 82.63.010(7),
2 the lessee shall be responsible for payment to the extent the lessee
3 has received the economic benefit.

4 (3) The department shall assess interest at the rate provided for
5 delinquent taxes, but not penalties, retroactively to the date of
6 deferral. The debt for deferred taxes will not be extinguished by
7 insolvency or other failure of the recipient. Transfer of ownership
8 does not terminate the deferral. The deferral is transferred, subject
9 to the successor meeting the eligibility requirements of this chapter,
10 for the remaining periods of the deferral.

11 ((+3)) (4) Notwithstanding subsection (2) of this section,
12 deferred taxes on the following need not be repaid:

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

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

18 **Sec. 7.** RCW 82.63.070 and 1994 sp.s. c 5 s 9 are each amended to
19 read as follows:

20 Applications ((and other information)) received by the department
21 under this chapter are not confidential and are subject to disclosure.

22 **Sec. 8.** RCW 82.04.190 and 2002 c 367 s 2 are each amended to read
23 as follows:

24 "Consumer" means the following:

25 (1) Any person who purchases, acquires, owns, holds, or uses any
26 article of tangible personal property irrespective of the nature of the
27 person's business and including, among others, without limiting the
28 scope hereof, persons who install, repair, clean, alter, improve,
29 construct, or decorate real or personal property of or for consumers
30 other than for the purpose (a) of resale as tangible personal property
31 in the regular course of business or (b) of incorporating such property
32 as an ingredient or component of real or personal property when
33 installing, repairing, cleaning, altering, imprinting, improving,
34 constructing, or decorating such real or personal property of or for
35 consumers or (c) of consuming such property in producing for sale a new

1 article of tangible personal property or a new substance, of which such
2 property becomes an ingredient or component or as a chemical used in
3 processing, when the primary purpose of such chemical is to create a
4 chemical reaction directly through contact with an ingredient of a new
5 article being produced for sale or (d) purchases for the purpose of
6 consuming the property purchased in producing ferrosilicon which is
7 subsequently used in producing magnesium for sale, if the primary
8 purpose of such property is to create a chemical reaction directly
9 through contact with an ingredient of ferrosilicon;

10 (2)(a) Any person engaged in any business activity taxable under
11 RCW 82.04.290; (b) any person who purchases, acquires, or uses any
12 telephone service as defined in RCW 82.04.065, other than for resale in
13 the regular course of business; (c) any person who purchases, acquires,
14 or uses any service defined in RCW 82.04.050(2)(a) or any amusement and
15 recreation service defined in RCW 82.04.050(3)(a), other than for
16 resale in the regular course of business; and (d) any person who is an
17 end user of software;

18 (3) Any person engaged in the business of contracting for the
19 building, repairing or improving of any street, place, road, highway,
20 easement, right of way, mass public transportation terminal or parking
21 facility, bridge, tunnel, or trestle which is owned by a municipal
22 corporation or political subdivision of the state of Washington or by
23 the United States and which is used or to be used primarily for foot or
24 vehicular traffic including mass transportation vehicles of any kind as
25 defined in RCW 82.04.280, in respect to tangible personal property when
26 such person incorporates such property as an ingredient or component of
27 such publicly owned street, place, road, highway, easement, right of
28 way, mass public transportation terminal or parking facility, bridge,
29 tunnel, or trestle by installing, placing or spreading the property in
30 or upon the right of way of such street, place, road, highway,
31 easement, bridge, tunnel, or trestle or in or upon the site of such
32 mass public transportation terminal or parking facility;

33 (4) Any person who is an owner, lessee or has the right of
34 possession to or an easement in real property which is being
35 constructed, repaired, decorated, improved, or otherwise altered by a
36 person engaged in business, excluding only (a) municipal corporations
37 or political subdivisions of the state in respect to labor and services

1 rendered to their real property which is used or held for public road
2 purposes, and (b) the United States, instrumentalities thereof, and
3 county and city housing authorities created pursuant to chapter 35.82
4 RCW in respect to labor and services rendered to their real property.
5 Nothing contained in this or any other subsection of this definition
6 shall be construed to modify any other definition of "consumer";

7 (5) Any person who is an owner, lessee, or has the right of
8 possession to personal property which is being constructed, repaired,
9 improved, cleaned, imprinted, or otherwise altered by a person engaged
10 in business;

11 (6) Any person engaged in the business of constructing, repairing,
12 decorating, or improving new or existing buildings or other structures
13 under, upon, or above real property of or for the United States, any
14 instrumentality thereof, or a county or city housing authority created
15 pursuant to chapter 35.82 RCW, including the installing or attaching of
16 any article of tangible personal property therein or thereto, whether
17 or not such personal property becomes a part of the realty by virtue of
18 installation; also, any person engaged in the business of clearing land
19 and moving earth of or for the United States, any instrumentality
20 thereof, or a county or city housing authority created pursuant to
21 chapter 35.82 RCW. Any such person shall be a consumer within the
22 meaning of this subsection in respect to tangible personal property
23 incorporated into, installed in, or attached to such building or other
24 structure by such person, except that consumer does not include any
25 person engaged in the business of constructing, repairing, decorating,
26 or improving new or existing buildings or other structures under, upon,
27 or above real property of or for the United States, or any
28 instrumentality thereof, if the investment project would qualify for
29 sales and use tax deferral under chapter 82.63 RCW if undertaken by a
30 private entity;

31 (7) Any person who is a lessor of machinery and equipment, the
32 rental of which is exempt from the tax imposed by RCW 82.08.020 under
33 RCW 82.08.02565, with respect to the sale of or charge made for
34 tangible personal property consumed in respect to repairing the
35 machinery and equipment, if the tangible personal property has a useful
36 life of less than one year. Nothing contained in this or any other

1 subsection of this section shall be construed to modify any other
2 definition of "consumer";

3 (8) Any person engaged in the business of cleaning up for the
4 United States, or its instrumentalities, radioactive waste and other
5 byproducts of weapons production and nuclear research and development;
6 and

7 (9) Until July 1, 2003, any person engaged in the business of
8 conducting environmental remedial action as defined in RCW
9 82.04.2635(2).

10 NEW SECTION. **Sec. 9.** A new section is added to chapter 82.04 RCW
11 to read as follows:

12 This chapter does not apply to amounts received by any person for
13 research and development under the federal small business innovation
14 research program (114 Stat. 2763A; 15 U.S.C. Sec. 638 et seq.).

15 NEW SECTION. **Sec. 10.** A new section is added to chapter 82.04 RCW
16 to read as follows:

17 This chapter does not apply to amounts received by any person for
18 research and development under the federal small business technology
19 transfer program (115 Stat. 263; 15 U.S.C. Sec. 638 et seq.).

20 NEW SECTION. **Sec. 11.** Sections 9 and 10 of this act take effect
21 July 1, 2004."

22 Correct the title.

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