

SSB 6240 - H COMM AMD
By Committee on Finance

ADOPTED 03/09/2004

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

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 82.04 RCW
4 to read as follows:

5 (1) Subject to the limits and provisions of this section, a credit
6 is authorized against the tax otherwise due under this chapter for
7 persons engaged in a rural county in the business of manufacturing
8 computer software or programming, as those terms are defined in this
9 section.

10 (2) A person who partially or totally relocates a business from one
11 rural county to another rural county is eligible for any new qualifying
12 employment positions created as a result of the relocation but is not
13 eligible to receive credit for the jobs moved from one county to the
14 other.

15 (3)(a) To qualify for the credit, the qualifying activity of the
16 person must be conducted in a rural county and the new qualified
17 employment position must be located in the rural county.

18 (b) If an activity is conducted both from a rural county and
19 outside of a rural county, the credit is available if at least ninety
20 percent of the qualifying activity is conducted within a rural county.
21 If the qualifying activity is a service taxable activity, the place
22 where the work is performed is the place at which the activity is
23 conducted.

24 (4)(a) The credit under this section shall equal one thousand
25 dollars for each new qualified employment position created after
26 January 1, 2004, in an eligible area. A credit is earned for the
27 calendar year the person is hired to fill the position. Additionally
28 a credit is earned for each year the position is maintained over the
29 subsequent consecutive years, up to four years. The county must meet
30 the definition of a rural county at the time the position is filled.

1 If the county does not have a rural county status the following year or
2 years, the position is still eligible for the remaining years if all
3 other conditions are met.

4 (b) Participants who claimed credit under RCW 82.04.4456 for
5 qualified employment positions created before December 31, 2003, are
6 eligible to earn credit for each year the position is maintained over
7 the subsequent consecutive years, for up to four years, which four
8 years include any years claimed under RCW 82.04.4456 Those persons who
9 did not receive a credit under RCW 82.04.4456 before December 31, 2003,
10 are not eligible to earn credit for qualified employment positions
11 created before December 31, 2003.

12 (c) Credit is authorized for new employees hired for new qualified
13 employment positions created on or after January 1, 2004. New
14 qualified employment positions filled by existing employees are
15 eligible for the credit under this section only if the position vacated
16 by the existing employee is filled by a new hire. A business that is
17 a sole proprietorship without any employees is equivalent to one
18 employee position and this type of business is eligible to receive
19 credit for one position.

20 (d) If a position is filled before July 1st, the position is
21 eligible for the full yearly credit for that calendar year. If it is
22 filled after June 30th, the position is eligible for half of the credit
23 for that calendar year.

24 (5) No application is necessary for the tax credit. The person
25 must keep records necessary for the department to verify eligibility
26 under this section. This information includes information relating to
27 description of qualifying activity conducted in the rural county and
28 outside the rural county by the person as well as detailed records on
29 positions and employees.

30 (6) If at any time the department finds that a person is not
31 eligible for tax credit under this section, the amount of taxes for
32 which a credit has been claimed shall be immediately due. The
33 department shall assess interest, but not penalties, on the taxes for
34 which the person is not eligible. The interest shall be assessed at
35 the rate provided for delinquent excise taxes under chapter 82.32 RCW,
36 shall be assessed retroactively to the date the tax credit was taken,

1 and shall accrue until the taxes for which a credit has been used are
2 repaid.

3 (7) The credit under this section may be used against any tax due
4 under this chapter, but in no case may a credit earned during one
5 calendar year be carried over to be credited against taxes incurred in
6 a subsequent calendar year. A person is not eligible to receive a
7 credit under this section if the person is receiving credit for the
8 same position under chapter 82.62 RCW or RCW 82.04.44525 or is taking
9 a credit under this chapter for information technology help desk
10 services conducted from a rural county. No refunds may be granted for
11 credits under this section.

12 (8) Transfer of ownership does not affect credit eligibility.
13 However, the successive credits are available to the successor for
14 remaining periods in the five years only if the eligibility conditions
15 of this section are met.

16 (9) A person taking tax credits under this section shall make an
17 annual report to the department. The report shall be in a letter form
18 and shall include the following information: Number of positions for
19 which credit is being claimed, type of position for which credit is
20 being claimed, type of activity in which the person is engaged in the
21 county, how long the person has been located in the county, and
22 taxpayer name and registration number. The report must be filed by
23 January 30th of each year for which credit was claimed during the
24 previous year. Failure to file a report will not result in the loss of
25 eligibility under this section. However, the department, through its
26 research division, shall contact taxpayers who have not filed the
27 report and obtain the data from the taxpayer or assist the taxpayer in
28 the filing of the report, so that the data and information necessary to
29 measure the program's effectiveness is maintained.

30 (10) As used in this section:

31 (a) "Computer software" has the meaning as defined in RCW 82.04.215
32 after June 30, 2004, and includes "software" as defined in RCW
33 82.04.215 before July 1, 2004.

34 (b) "Manufacturing" means the same as "to manufacture" under RCW
35 82.04.120. Manufacturing includes the activities of both manufacturers
36 and processors for hire.

1 (c) "Programming" means the activities that involve the creation or
2 modification of computer software, as that term is defined in this
3 chapter, and that are taxable as a service under RCW 82.04.290(2) or as
4 a retail sale under RCW 82.04.050.

5 (d) "Qualifying activity" means manufacturing of computer software
6 or programming.

7 (e) "Qualified employment position" means a permanent full-time
8 position doing programming of computer software or manufacturing of
9 computer software. This excludes administrative, professional,
10 service, executive, and other similar positions. If an employee is
11 either voluntarily or involuntarily separated from employment, the
12 employment position is considered filled on a full-time basis if the
13 employer is either training or actively recruiting a replacement
14 employee. Full-time means a position for at least thirty-five hours a
15 week.

16 (f) "Rural county" means the same as in RCW 82.14.370.

17 (11) No credit may be taken or accrued under this section on or
18 after January 1, 2011.

19 (12) This section expires January 1, 2011.

20 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.04 RCW
21 to read as follows:

22 (1) Subject to the limits and provisions of this section, a credit
23 is authorized against the tax otherwise due under this chapter for
24 persons engaged in a rural county in the business of providing
25 information technology help desk services to third parties.

26 (2) To qualify for the credit, the help desk services must be
27 conducted from a rural county.

28 (3) The amount of the tax credit for persons engaged in the
29 activity of providing information technology help desk services in
30 rural counties shall be equal to one hundred percent of the amount of
31 tax due under this chapter that is attributable to providing the
32 services from the rural county. In order to qualify for the credit
33 under this subsection, the county must meet the definition of rural
34 county at the time the person begins to conduct qualifying business in
35 the county.

1 (4) No application is necessary for the tax credit. The person
2 must keep records necessary for the department to verify eligibility
3 under this section. These records include information relating to
4 description of activity engaged in a rural county by the person.

5 (5) If at any time the department finds that a person is not
6 eligible for tax credit under this section, the amount of taxes for
7 which a credit has been used is immediately due. The department shall
8 assess interest, but not penalties, on the credited taxes for which the
9 person is not eligible. The interest shall be assessed at the rate
10 provided for delinquent excise taxes under chapter 82.32 RCW, shall be
11 assessed retroactively to the date the tax credit was taken, and shall
12 accrue until the taxes for which a credit has been used are repaid.

13 (6) The credit under this section may be used against any tax due
14 under this chapter, but in no case may a credit earned during one
15 calendar year be carried over to be credited against taxes incurred in
16 a subsequent calendar year. No refunds may be granted for credits
17 under this section.

18 (7) Transfer of ownership does not affect credit eligibility.
19 However, the credit is available to the successor only if the
20 eligibility conditions of this section are met.

21 (8) A person taking tax credits under this section shall make an
22 annual report to the department. The report shall be in a letter form
23 and shall include the following information: Type of activity in which
24 the person is engaged in the county, number of employees in the rural
25 county, how long the person has been located in the county, and
26 taxpayer name and registration number. The report must be filed by
27 January 30th of each year for which credit was claimed during the
28 previous year. Failure to file a report will not result in the loss of
29 eligibility under this section. However, the department, through its
30 research division, shall contact taxpayers who have not filed the
31 report and obtain the data from the taxpayer or assist the taxpayer in
32 the filing of the report, so that the data and information necessary to
33 measure the program's effectiveness is maintained.

34 (9) As used in this section:

35 (a) "Information technology help desk services" means the following
36 services performed using electronic and telephonic communication:

37 (i) Software and hardware maintenance;

- 1 (ii) Software and hardware diagnostics and troubleshooting;
2 (iii) Software and hardware installation;
3 (iv) Software and hardware repair;
4 (v) Software and hardware information and training; and
5 (vi) Software and hardware upgrade.
6 (b) "Rural county" means the same as in RCW 82.14.370.
7 (10) This section expires January 1, 2011.

8 **Sec. 3.** RCW 82.60.020 and 1999 sp.s. c 9 s 2 are each amended to
9 read as follows:

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

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

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

15 (3) "Eligible area" means a ~~((county with fewer than one hundred~~
16 ~~persons per square mile as determined annually by the office of~~
17 ~~financial management and published by the department of revenue~~
18 ~~effective for the period July 1st through June 30th)) rural county as
19 defined in RCW 82.14.370.~~

20 (4)(a) "Eligible investment project" means an investment project in
21 an eligible area as defined in subsection (3) of this section.

22 (b) The ~~((lessor/owner))~~ lessor or owner of a qualified building is
23 not eligible for a deferral unless:

24 (i) The underlying ownership of the buildings, machinery, and
25 equipment vests exclusively in the same person((~~τ~~)); or ~~((unless))~~

26 (ii)(A) The lessor by written contract agrees to pass the economic
27 benefit of the deferral to the lessee ((in the form of reduced rent
28 payments));

29 (B) The lessee that receives the economic benefit of the deferral
30 agrees in writing with the department to complete the annual survey
31 required under RCW 82.60.070; and

32 (C) The economic benefit of the deferral passed to the lessee is no
33 less than the amount of tax deferred by the lessor and is evidenced by
34 written documentation of any type of payment, credit, or other
35 financial arrangement between the lessor or owner of the qualified
36 building and the lessee.

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

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

12 (6) "Manufacturing" means the same as defined in RCW 82.04.120.
13 "Manufacturing" also includes computer programming, the production of
14 computer software, and other computer-related services, and the
15 activities performed by research and development laboratories and
16 commercial testing laboratories.

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

18 (8) "Qualified buildings" means construction of new structures, and
19 expansion or renovation of existing structures for the purpose of
20 increasing floor space or production capacity used for manufacturing
21 and research and development activities, including plant offices and
22 warehouses or other facilities for the storage of raw material or
23 finished goods if such facilities are an essential or an integral part
24 of a factory, mill, plant, or laboratory used for manufacturing or
25 research and development. If a building is used partly for
26 manufacturing or research and development and partly for other
27 purposes, the applicable tax deferral shall be determined by
28 apportionment of the costs of construction under rules adopted by the
29 department.

30 (9) "Qualified employment position" means a permanent full-time
31 employee employed in the eligible investment project during the entire
32 tax year. The term "entire tax year" means a full-time position that
33 is filled for a period of twelve consecutive months. The term "full-
34 time" means at least thirty-five hours a week, four hundred fifty-five
35 hours a quarter, or one thousand eight hundred twenty hours a year.

36 (10) "Qualified machinery and equipment" means all new industrial
37 and research fixtures, equipment, and support facilities that are an

1 integral and necessary part of a manufacturing or research and
2 development operation. "Qualified machinery and equipment" includes:
3 Computers; software; data processing equipment; laboratory equipment;
4 manufacturing components such as belts, pulleys, shafts, and moving
5 parts; molds, tools, and dies; operating structures; and all equipment
6 used to control or operate the machinery.

7 ~~((10))~~ (11) "Recipient" means a person receiving a tax deferral
8 under this chapter.

9 ~~((11))~~ (12) "Research and development" means the development,
10 refinement, testing, marketing, and commercialization of a product,
11 service, or process before commercial sales have begun. As used in
12 this subsection, "commercial sales" excludes sales of prototypes or
13 sales for market testing if the total gross receipts from such sales of
14 the product, service, or process do not exceed one million dollars.

15 **Sec. 4.** RCW 82.60.040 and 1999 c 164 s 302 are each amended to
16 read as follows:

17 (1) The department shall issue a sales and use tax deferral
18 certificate for state and local sales and use taxes due under chapters
19 82.08, 82.12, and 82.14 RCW on each eligible investment project that is
20 located in an eligible area as defined in RCW 82.60.020.

21 (2) The department shall keep a running total of all deferrals
22 granted under this chapter during each fiscal biennium.

23 (3) This section expires July 1, ~~((2004))~~ 2010.

24 **Sec. 5.** RCW 82.60.049 and 2000 c 106 s 8 are each amended to read
25 as follows:

26 (1) For the purposes of this section:

27 (a) "Eligible area" also means a designated community empowerment
28 zone approved under RCW ~~((43.63A.700))~~ 43.31C.020 or a county
29 containing a community empowerment zone.

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

32 ~~((c) "Qualified employment position" means a permanent full-time
33 employee employed in the eligible investment project during the entire
34 year.))~~

1 (2) In addition to the provisions of RCW 82.60.040, the department
2 shall issue a sales and use tax deferral certificate for state and
3 local sales and use taxes due under chapters 82.08, 82.12, and 82.14
4 RCW, on each eligible investment project that is located in an eligible
5 area, if the applicant establishes that at the time the project is
6 operationally complete:

7 (a) The applicant will hire at least one qualified employment
8 position for each seven hundred fifty thousand dollars of investment
9 ~~((or))~~ for which a deferral is requested; and

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

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

19 (4) The qualified employment position must be filled by the end of
20 the calendar year following the year in which the project is certified
21 as operationally complete. If a person does not meet the requirements
22 for qualified employment positions by the end of the second calendar
23 year following the year in which the project is certified as
24 operationally complete, all deferred taxes are immediately due.

25 **Sec. 6.** RCW 82.60.050 and 1994 sp.s. c 1 s 7 are each amended to
26 read as follows:

27 RCW 82.60.030 and 82.60.040 shall expire July 1, ~~((2004))~~ 2010.

28 **Sec. 7.** RCW 82.60.070 and 1999 c 164 s 303 are each amended to
29 read as follows:

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

34 (b) Each recipient of a deferral granted under this chapter after
35 June 30, 1994, shall ~~((submit a report to the department on December~~

1 ~~31st of the year in which the investment project is certified by the~~
2 ~~department as having been operationally completed, and on December 31st~~
3 ~~of each of the seven succeeding calendar years. The report shall~~
4 ~~contain information, as required by the department, from which the~~
5 ~~department may determine whether the recipient is meeting the~~
6 ~~requirements of this chapter. If the recipient fails to submit a~~
7 ~~report or submits an inadequate report, the department may declare the~~
8 ~~amount of deferred taxes outstanding to be immediately assessed and~~
9 ~~payable)) complete an annual survey. If the economic benefits of the~~
10 ~~deferral are passed to a lessee as provided in RCW 82.60.020(4), the~~
11 ~~lessee shall agree to complete the annual survey and the applicant is~~
12 ~~not required to complete the annual survey. The survey is due by March~~
13 ~~31st of the year following the calendar year in which the investment~~
14 ~~project is certified by the department as having been operationally~~
15 ~~complete and the seven succeeding calendar years. The survey shall~~
16 ~~include the amount of tax deferred, the number of new products or~~
17 ~~research projects by general classification, and the number of~~
18 ~~trademarks, patents, and copyrights associated with activities at the~~
19 ~~investment project. The survey shall also include the following~~
20 ~~information for employment positions in Washington:~~
21 ~~(i) The number of total employment positions;~~
22 ~~(ii) Full-time, part-time, and temporary employment positions as a~~
23 ~~percent of total employment;~~
24 ~~(iii) The number of employment positions according to the following~~
25 ~~wage bands: Less than thirty thousand dollars; thirty thousand dollars~~
26 ~~or greater, but less than sixty thousand dollars; and sixty thousand~~
27 ~~dollars or greater. A wage band containing fewer than three~~
28 ~~individuals may be combined with another wage band; and~~
29 ~~(iv) The number of employment positions that have employer-provided~~
30 ~~medical, dental, and retirement benefits, by each of the wage bands.~~
31 ~~(c) The department may request additional information necessary to~~
32 ~~measure the results of the deferral program, to be submitted at the~~
33 ~~same time as the survey.~~
34 ~~(d) All information collected under this subsection, except the~~
35 ~~amount of the tax deferral taken, is deemed taxpayer information under~~
36 ~~RCW 82.32.330 and is not disclosable. Information on the amount of tax~~

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

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

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

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

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

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

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

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

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

3 NEW SECTION. **Sec. 8.** This act is necessary for the immediate
4 preservation of the public peace, health, or safety, or support of the
5 state government and its existing public institutions, and takes effect
6 April 1, 2004."

7 Correct the title.

EFFECT: Requires that taxpayers taking the business and occupation (B&O) tax credit for either information technology help desk services or computer software development submit an annual report to the Department of Revenue. Requires that a taxpayer who received a deferral of sales and use taxes respond to an annual survey, instead of an annual report, and that the survey contain various information regarding the amount of taxes deferred, the number of new products and patents, employment, wages, and benefits. Provides that the amount of deferred taxes reported may be publicly disclosed. Requires that, to receive the sales tax deferral, an owner that leases property to a tenant must agree to pass along the savings to the tenant, evidenced in writing, and requires a tenant that receives the benefit of the deferral must submit the required annual survey. Requires the Department to summarize statistics annually and to report on the program to the Legislature by 2009. Removes the provisions that allow utilities in Island County to be eligible for the public utility tax credit for contributions made to a rural economic development revolving fund. Requires a taxpayer to pay 12.5 percent of deferred taxes for any year in which the taxpayer fails to submit a response to the survey.

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