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HOUSE BILL 2546

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State of Washington

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By Representatives McIntire, Morris, Hunter, Ruderman, Kessler, Lovick, Hunt, Grant, Hatfield, Fromhold and Clibborn; by request of Governor Locke

Read first time 01/15/2004. Referred to Committee on Finance.

1 AN ACT Relating to high technology and research and development tax  
2 incentives; amending RCW 82.04.4452, 82.63.010, 82.63.020, 82.63.030,  
3 82.63.045, and 82.63.070; adding new sections to chapter 82.04 RCW;  
4 providing an effective date; and providing expiration dates.

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

6 **Sec. 1.** RCW 82.04.4452 and 2000 c 103 s 7 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 is equal to the greater of the amount of qualified  
13 research and development expenditures of a person or eighty percent of  
14 amounts received by a person other than a public educational or  
15 research institution in compensation for the conduct of qualified  
16 research and development, multiplied by the rate provided in RCW  
17 82.04.260(3) in the case of a nonprofit corporation or nonprofit  
18 association engaging within this state in research and development, and  
19 the rate provided in RCW 82.04.290(2) for every other person.

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

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

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

26 (6) Any person claiming the credit, and any person assigning a  
27 credit as provided in subsection (3) of this section, shall file an  
28 ~~((affidavit))~~ annual report in a form prescribed by the department  
29 which shall include the amount of the credit claimed, ~~((an estimate~~  
30 ~~of))~~ the ~~((anticipated))~~ qualified research and development  
31 expenditures during the calendar year for which the credit is claimed,  
32 ~~((an estimate of))~~ and the taxable amount during the calendar year for  
33 which the credit is claimed, and such additional information as the  
34 department may prescribe. The report is due by March 31st following  
35 any year a credit is taken.

36 (7)(a) A person claiming the credit shall agree to ~~((supply the~~  
37 ~~department with information necessary to measure the results of the tax~~  
38 ~~credit program for qualified research and development expenditures))~~

1 complete an annual survey. The annual survey is in addition to the  
2 annual report due under subsection (6) of this section. The survey may  
3 include questions pertaining to job creation, job retention, the number  
4 of full-time equivalent positions created for Washington residents,  
5 wage and benefit levels of the jobs, company growth, introduction of  
6 new products, the diversification of the state's economy, growth in  
7 research and development investment, movement of firms or the  
8 consolidation of firms' operations into the state, and any additional  
9 information the department may prescribe. The survey is due by March  
10 31st following any year a credit is taken. The survey information is  
11 deemed taxpayer information under RCW 82.32.330 and is not disclosable.

12 (b) 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) The department shall use the information (~~required under~~)  
18 from subsection (7) of this section to (~~perform three assessments on~~)  
19 study the tax credit program authorized under this section. (~~The~~  
20 ~~assessments will take place in 1997, 2000, and 2003. The department~~  
21 ~~shall prepare reports on each assessment and deliver their reports by~~  
22 ~~September 1, 1997, September 1, 2000, and September 1, 2003. The~~  
23 ~~assessments)) The department shall report to the legislature by  
24 December 1, 2009. The report shall measure the effect of the program  
25 on job creation, the number of jobs created for Washington residents,  
26 company growth, the introduction of new products, the diversification  
27 of the state's economy, growth in research and development investment,  
28 the movement of firms or the consolidation of firms' operations into  
29 the state, and such other factors as the department selects.~~

30 (9) For the purpose of this section:

31 (a) "Qualified research and development expenditures" means  
32 operating expenses, including wages, compensation of a proprietor or a  
33 partner in a partnership as determined under rules adopted by the  
34 department, benefits, supplies, and computer expenses, directly  
35 incurred in qualified research and development by a person claiming the  
36 credit provided in this section. The term does not include amounts  
37 paid to a person other than a public educational or research

1 institution to conduct qualified research and development. Nor does  
2 the term include capital costs and overhead, such as expenses for land,  
3 structures, or depreciable property.

4 (b) "Qualified research and development" shall have the same  
5 meaning as in RCW 82.63.010.

6 (c) "Research and development spending" means qualified research  
7 and development expenditures plus eighty percent of amounts paid to a  
8 person other than a public educational or research institution to  
9 conduct qualified research and development.

10 (d) "Taxable amount" means the taxable amount subject to the tax  
11 imposed in this chapter required to be reported on the person's  
12 combined excise tax returns during the year in which the credit is  
13 claimed, less any taxable amount for which a credit is allowed under  
14 RCW 82.04.440.

15 (10) This section expires (~~December 31, 2004~~) January 1, 2011.

16 **Sec. 2.** RCW 82.63.010 and 1995 1st sp.s. c 3 s 12 are each amended  
17 to read as follows:

18 Unless the context clearly requires otherwise, the definitions in  
19 this section apply throughout this chapter.

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

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

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

30 (4) "Biotechnology" means the application of technologies, such as  
31 recombinant DNA techniques, biochemistry, molecular and cellular  
32 biology, genetics and genetic engineering, cell fusion techniques, and  
33 new bioprocesses, using living organisms, or parts of organisms, to  
34 produce or modify products, to improve plants or animals, to develop  
35 microorganisms for specific uses, to identify targets for small  
36 molecule pharmaceutical development, or to transform biological systems

1 into useful processes and products or to develop microorganisms for  
2 specific uses.

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

4 (6) "Electronic device technology" means technologies involving  
5 microelectronics; semiconductors; electronic equipment and  
6 instrumentation; radio frequency, microwave, and millimeter  
7 electronics; optical and optic-electrical devices; and data and digital  
8 communications and imaging devices.

9 (7) "Eligible investment project" means an investment project which  
10 either initiates a new operation, or expands or diversifies a current  
11 operation by expanding, renovating, or equipping an existing facility.  
12 The lessor or owner of the qualified building is not eligible for a  
13 deferral unless the underlying ownership of the buildings, machinery,  
14 and equipment vests exclusively in the same person, or unless the  
15 lessor by written contract agrees to pass the economic benefit of the  
16 deferral to the lessee in the form of reduced rent payments.

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  
38 offices and other facilities that are an essential or an integral part

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

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

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

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

31 (16) "Research and development" means activities performed to  
32 discover technological information, and technical and nonroutine  
33 activities concerned with translating technological information into  
34 new or improved products, processes, techniques, formulas, inventions,  
35 or software. The term includes exploration of a new use for an  
36 existing drug, device, or biological product if the new use requires  
37 separate licensing by the federal food and drug administration under  
38 chapter 21, C.F.R., as amended. The term does not include adaptation

1 or duplication of existing products where the products are not  
2 substantially improved by application of the technology, nor does the  
3 term include surveys and studies, social science and humanities  
4 research, market research or testing, quality control, sale promotion  
5 and service, computer software developed for internal use, and research  
6 in areas such as improved style, taste, and seasonal design.

7 **Sec. 3.** RCW 82.63.020 and 1994 sp.s. c 5 s 4 are each amended to  
8 read as follows:

9 (1) Application for deferral of taxes under this chapter must be  
10 made before initiation of construction of, or acquisition of equipment  
11 or machinery for the investment project. The application shall be made  
12 to the department in a form and manner prescribed by the department.  
13 The application shall contain information regarding the location of the  
14 investment project, the applicant's average employment in the state for  
15 the prior year, estimated or actual new employment related to the  
16 project, estimated or actual wages of employees related to the project,  
17 estimated or actual costs, time schedules for completion and operation,  
18 and other information required by the department. The department shall  
19 rule on the application within sixty days.

20 (2) Applicants for deferral of taxes under this chapter shall agree  
21 to ~~((supply))~~ complete an annual survey, supplying the department with  
22 nonproprietary information necessary to measure the results of the tax  
23 deferral program for high-technology research and development and pilot  
24 scale manufacturing facilities. The survey may include questions  
25 pertaining to job creation, job retention, the number of full-time  
26 equivalent positions created for Washington residents, wage and benefit  
27 levels of the jobs, company growth, introduction of new products, the  
28 diversification of the state's economy, growth in research and  
29 development investment, movement of firms or the consolidation of  
30 firms' operations into the state, and any additional information the  
31 department may prescribe. The survey is due by March 31st the year  
32 following the calendar year in which the investment project is  
33 certified by the department as having been operationally complete. The  
34 survey information is deemed taxpayer information under RCW 82.32.330  
35 and is not disclosable.

36 (3) The department shall use the information to ~~((perform three~~  
37 ~~assessments on))~~ study the tax deferral program authorized under this

1 chapter. (~~The assessments will take place in 1997, 2000, and 2003.~~)  
2 The department shall (~~prepare reports on each assessment and deliver~~  
3 ~~their reports by September 1, 1997, September 1, 2000, and September 1,~~  
4 ~~2003~~) report to the legislature by December 1, 2009. The  
5 (~~assessments~~) report shall measure the effect of the program on job  
6 creation, the number of jobs created for Washington residents, company  
7 growth, the introduction of new products, the diversification of the  
8 state's economy, growth in research and development investment, the  
9 movement of firms or the consolidation of firms' operations into the  
10 state, and such other factors as the department selects.

11 **Sec. 4.** RCW 82.63.030 and 1994 sp.s. c 5 s 5 are each amended to  
12 read as follows:

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

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

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

24 **Sec. 5.** RCW 82.63.045 and 2000 c 106 s 10 are each amended to read  
25 as follows:

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

28 (2)(a) If, on the basis of (~~a report~~) survey under RCW 82.63.020  
29 or other information, the department finds that an investment project  
30 is used for purposes other than qualified research and development or  
31 pilot scale manufacturing at any time during the calendar year in which  
32 the investment project is certified by the department as having been  
33 operationally completed, or at any time during any of the seven  
34 succeeding calendar years, a portion of deferred taxes shall be  
35 immediately due according to the following schedule:



	Year in which use occurs	% of deferred taxes due
1		
2	1	100%
3	2	87.5%
4	3	75%
5	4	62.5%
6	5	50%
7	6	37.5%
8	7	25%
9	8	12.5%

10 (b) If a recipient of the deferral fails to complete the annual  
11 survey required under RCW 82.63.020 by the date due, 12.5 percent of  
12 the deferred tax shall be immediately due.

13 (c) If an investment project is used for purposes other than  
14 qualified research and development or pilot scale manufacturing at any  
15 time during the calendar year in which the investment project is  
16 certified as having been operationally complete and the recipient of  
17 the deferral fails to complete the annual survey due under RCW  
18 82.63.020, the portion of deferred taxes immediately due is the amount  
19 on the schedule in (a) of this subsection.

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

27 ~~((3))~~ (4) Notwithstanding subsection (2) of this section,  
28 deferred taxes on the following need not be repaid:

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

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

34 **Sec. 6.** RCW 82.63.070 and 1994 sp.s. c 5 s 9 are each amended to  
35 read as follows:

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

3 NEW SECTION. **Sec. 7.** A new section is added to chapter 82.04 RCW  
4 to read as follows:

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

8 NEW SECTION. **Sec. 8.** A new section is added to chapter 82.04 RCW  
9 to read as follows:

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

13 NEW SECTION. **Sec. 9.** Sections 7 and 8 of this act take effect  
14 July 1, 2004.

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