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ENGROSSED SUBSTITUTE HOUSE BILL 2689

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State of Washington

58th Legislature

2004 Regular Session

By House Committee on Finance (originally sponsored by Representatives Eickmeyer, Buck, Miloscia, Schoesler, Hatfield, Armstrong, Haigh, Skinner, Kessler, Orcutt, Grant, Pearson, Ruderman, Campbell, Blake, Fromhold, Kenney, Woods, Linville and Rockefeller; by request of Governor Locke)

READ FIRST TIME 02/10/04.

1 AN ACT Relating to extending tax incentives in rural counties  
2 expiring in 2003 or 2004; amending RCW 82.60.020, 82.60.040, 82.60.049,  
3 82.60.050, and 82.60.070; adding new sections to chapter 82.04 RCW;  
4 providing an effective date; providing expiration dates; and declaring  
5 an emergency.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 82.04 RCW  
8 to read as follows:

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

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

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

4 (b) If an activity is conducted both from a rural county and  
5 outside of a rural county, the credit is available if at least ninety  
6 percent of the qualifying activity is conducted within a rural county.  
7 If the qualifying activity is a service taxable activity, the place  
8 where the work is performed is the place at which the activity is  
9 conducted.

10 (4)(a) The credit under this section shall equal one thousand  
11 dollars for each new qualified employment position created after  
12 January 1, 2004, in an eligible area. A credit is earned for the  
13 calendar year the person is hired to fill the position. Additionally  
14 a credit is earned for each year the position is maintained over the  
15 subsequent consecutive years, up to four years. The county must meet  
16 the definition of a rural county at the time the position is filled.  
17 If the county does not have a rural county status the following year or  
18 years, the position is still eligible for the remaining years if all  
19 other conditions are met.

20 (b) Participants who claimed credit under RCW 82.04.4456 for  
21 qualified employment positions created before December 31, 2003, are  
22 eligible to earn credit for each year the position is maintained over  
23 the subsequent consecutive years, for up to four years, which four  
24 years include any years claimed under RCW 82.04.4456 Those persons who  
25 did not receive a credit under RCW 82.04.4456 before December 31, 2003,  
26 are not eligible to earn credit for qualified employment positions  
27 created before December 31, 2003.

28 (c) Credit is authorized for new employees hired for new qualified  
29 employment positions created on or after January 1, 2004. New  
30 qualified employment positions filled by existing employees are  
31 eligible for the credit under this section only if the position vacated  
32 by the existing employee is filled by a new hire. A business that is  
33 a sole proprietorship without any employees is equivalent to one  
34 employee position and this type of business is eligible to receive  
35 credit for one position.

36 (d) If a position is filled before July 1st, the position is  
37 eligible for the full yearly credit for that calendar year. If it is

1 filled after June 30th, the position is eligible for half of the credit  
2 for that calendar year.

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

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

18 (7) The credit under this section may be used against any tax due  
19 under this chapter, but in no case may a credit earned during one  
20 calendar year be carried over to be credited against taxes incurred in  
21 a subsequent calendar year. A person is not eligible to receive a  
22 credit under this section if the person is receiving credit for the  
23 same position under chapter 82.62 RCW or RCW 82.04.44525 or is taking  
24 a credit under this chapter for information technology help desk  
25 services conducted from a rural county. No refunds may be granted for  
26 credits under this section.

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

31 (9) A person taking tax credits under this section shall make an  
32 annual report to the department. The report shall be in a letter form  
33 and shall include the following information: Number of positions for  
34 which credit is being claimed, type of position for which credit is  
35 being claimed, type of activity in which the person is engaged in the  
36 county, how long the person has been located in the county, and  
37 taxpayer name and registration number. The report must be filed by  
38 January 30th of each year for which credit was claimed during the

1 previous year. Failure to file a report will not result in the loss of  
2 eligibility under this section. However, the department, through its  
3 research division, shall contact taxpayers who have not filed the  
4 report and obtain the data from the taxpayer or assist the taxpayer in  
5 the filing of the report, so that the data and information necessary to  
6 measure the program's effectiveness is maintained.

7 (10) As used in this section:

8 (a) "Computer software" has the meaning as defined in RCW 82.04.215  
9 after June 30, 2004, and includes "software" as defined in RCW  
10 82.04.215 before July 1, 2004.

11 (b) "Manufacturing" means the same as "to manufacture" under RCW  
12 82.04.120. Manufacturing includes the activities of both manufacturers  
13 and processors for hire.

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

18 (d) "Qualifying activity" means manufacturing of computer software  
19 or programming.

20 (e) "Qualified employment position" means a permanent full-time  
21 position doing programming of computer software or manufacturing of  
22 computer software. This excludes administrative, professional,  
23 service, executive, and other similar positions. If an employee is  
24 either voluntarily or involuntarily separated from employment, the  
25 employment position is considered filled on a full-time basis if the  
26 employer is either training or actively recruiting a replacement  
27 employee. Full-time means a position for at least thirty-five hours a  
28 week.

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

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

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

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

35 (1) Subject to the limits and provisions of this section, a credit  
36 is authorized against the tax otherwise due under this chapter for

1 persons engaged in a rural county in the business of providing  
2 information technology help desk services to third parties.

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

5 (3) The amount of the tax credit for persons engaged in the  
6 activity of providing information technology help desk services in  
7 rural counties shall be equal to one hundred percent of the amount of  
8 tax due under this chapter that is attributable to providing the  
9 services from the rural county. In order to qualify for the credit  
10 under this subsection, the county must meet the definition of rural  
11 county at the time the person begins to conduct qualifying business in  
12 the county.

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

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

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

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

33 (8) A person taking tax credits under this section shall make an  
34 annual report to the department. The report shall be in a letter form  
35 and shall include the following information: Type of activity in which  
36 the person is engaged in the county, number of employees in the rural  
37 county, how long the person has been located in the county, and  
38 taxpayer name and registration number. The report must be filed by

1 January 30th of each year for which credit was claimed during the  
2 previous year. Failure to file a report will not result in the loss of  
3 eligibility under this section. However, the department, through its  
4 research division, shall contact taxpayers who have not filed the  
5 report and obtain the data from the taxpayer or assist the taxpayer in  
6 the filing of the report, so that the data and information necessary to  
7 measure the program's effectiveness is maintained.

8 (9) As used in this section:

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

- 11 (i) Software and hardware maintenance;
- 12 (ii) Software and hardware diagnostics and troubleshooting;
- 13 (iii) Software and hardware installation;
- 14 (iv) Software and hardware repair;
- 15 (v) Software and hardware information and training; and
- 16 (vi) Software and hardware upgrade.

17 (b) "Rural county" means the same as in RCW 82.14.370.

18 (10) This section expires January 1, 2011.

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

21 Unless the context clearly requires otherwise, the definitions in  
22 this section apply throughout this chapter.

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

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

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

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

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

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

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

4        (B) The lessee that receives the economic benefit of the deferral  
5 agrees in writing with the department to complete the annual report  
6 required under RCW 82.60.070; and

7        (C) The economic benefit of the deferral passed to the lessee is no  
8 less than the amount of tax deferred by the lessor and is evidenced by  
9 written documentation of any type of payment, credit, or other  
10 financial arrangement between the lessor or owner of the qualified  
11 building and the lessee.

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

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

23        (6) "Manufacturing" means the same as defined in RCW 82.04.120.  
24 "Manufacturing" also includes computer programming, the production of  
25 computer software, and other computer-related services, and the  
26 activities performed by research and development laboratories and  
27 commercial testing laboratories.

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

29        (8) "Qualified buildings" means construction of new structures, and  
30 expansion or renovation of existing structures for the purpose of  
31 increasing floor space or production capacity used for manufacturing  
32 and research and development activities, including plant offices and  
33 warehouses or other facilities for the storage of raw material or  
34 finished goods if such facilities are an essential or an integral part  
35 of a factory, mill, plant, or laboratory used for manufacturing or  
36 research and development. If a building is used partly for  
37 manufacturing or research and development and partly for other

1 purposes, the applicable tax deferral shall be determined by  
2 apportionment of the costs of construction under rules adopted by the  
3 department.

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

10 (10) "Qualified machinery and equipment" means all new industrial  
11 and research fixtures, equipment, and support facilities that are an  
12 integral and necessary part of a manufacturing or research and  
13 development operation. "Qualified machinery and equipment" includes:  
14 Computers; software; data processing equipment; laboratory equipment;  
15 manufacturing components such as belts, pulleys, shafts, and moving  
16 parts; molds, tools, and dies; operating structures; and all equipment  
17 used to control or operate the machinery.

18 ((+10+)) (11) "Recipient" means a person receiving a tax deferral  
19 under this chapter.

20 ((+11+)) (12) "Research and development" means the development,  
21 refinement, testing, marketing, and commercialization of a product,  
22 service, or process before commercial sales have begun. As used in  
23 this subsection, "commercial sales" excludes sales of prototypes or  
24 sales for market testing if the total gross receipts from such sales of  
25 the product, service, or process do not exceed one million dollars.

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

28 (1) The department shall issue a sales and use tax deferral  
29 certificate for state and local sales and use taxes due under chapters  
30 82.08, 82.12, and 82.14 RCW on each eligible investment project that is  
31 located in an eligible area as defined in RCW 82.60.020.

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

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

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



1 (1) For the purposes of this section:

2 (a) "Eligible area" also means a designated community empowerment  
3 zone approved under RCW ((43.63A.700)) 43.31C.020 or a county  
4 containing a community empowerment zone.

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

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

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

16 (a) The applicant will hire at least one qualified employment  
17 position for each seven hundred fifty thousand dollars of investment  
18 ((~~on~~)) for which a deferral is requested; and

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

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

28 (4) The qualified employment position must be filled by the end of  
29 the calendar year following the year in which the project is certified  
30 as operationally complete. If a person does not meet the requirements  
31 for qualified employment positions by the end of the second calendar  
32 year following the year in which the project is certified as  
33 operationally complete, all deferred taxes are immediately due.

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

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

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

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

7       (b) Each recipient of a deferral granted under this chapter after  
8 June 30, 1994, shall ((submit a report to the department on December  
9 31st of the year in which the investment project is certified by the  
10 department as having been operationally completed, and on December 31st  
11 of each of the seven succeeding calendar years. The report shall  
12 contain information, as required by the department, from which the  
13 department may determine whether the recipient is meeting the  
14 requirements of this chapter. If the recipient fails to submit a  
15 report or submits an inadequate report, the department may declare the  
16 amount of deferred taxes outstanding to be immediately assessed and  
17 payable)) complete an annual survey. If the economic benefits of the  
18 deferral are passed to a lessee as provided in RCW 82.63.010(7), the  
19 lessee shall agree to complete the annual survey and the applicant is  
20 not required to complete the annual survey. The survey is due by March  
21 31st of the year following the calendar year in which the investment  
22 project is certified by the department as having been operationally  
23 complete and the seven succeeding calendar years. The survey shall  
24 include the amount of tax deferred, the number of new products or  
25 research projects by general classification, and the number of  
26 trademarks, patents, and copyrights associated with activities at the  
27 investment project. The survey shall also include the following  
28 information for employment positions in Washington:

29       (i) The number of total employment positions;

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

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

37       (iv) The number of employment positions that have employer-provided  
38 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 deferral 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 deferral taken, is deemed taxpayer information under  
6 RCW 82.32.330 and is not disclosable. Information on the amount of tax  
7 deferral taken is not subject to the confidentiality provisions of RCW  
8 82.32.330 and may be disclosed to the public upon request.

9       (e) The department shall use the information from this section to  
10 prepare summary descriptive statistics by category. No fewer than  
11 three taxpayers shall be included in any category. The department  
12 shall report these statistics to the legislature each year by September  
13 1st.

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

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

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.

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