

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 2546

58th Legislature
2004 Regular Session

Passed by the House January 30, 2004
Yeas 86 Nays 12

Speaker of the House of Representatives

Passed by the Senate February 10, 2004
Yeas 40 Nays 9

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 2546** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 2546

Passed Legislature - 2004 Regular Session

State of Washington 58th Legislature 2004 Regular Session

By House Committee on Finance (originally sponsored by
Representatives McIntire, Morris, Hunter, Ruderman, Kessler, Lovick,
Hunt, Grant, Hatfield, Fromhold, Clibborn and Clements; by request of
Governor Locke)

READ FIRST TIME 01/27/04.

1 AN ACT Relating to high technology and research and development tax
2 incentives; amending RCW 82.63.005, 82.04.4452, 82.63.010, 82.63.020,
3 82.63.030, 82.63.045, 82.63.070, and 82.04.190; adding new sections to
4 chapter 82.04 RCW; providing an effective date; and providing
5 expiration dates.

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

7 **Sec. 1.** RCW 82.63.005 and 1994 sp.s. c 5 s 1 are each amended to
8 read as follows:

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

17 The legislature also finds that high-technology businesses are a
18 vital and growing source of high-wage, high-skilled jobs in this state,
19 and that the high-technology sector is a key component of the state's

1 effort to encourage economic diversification. However, the legislature
2 finds that many high-technology businesses incur significant costs
3 associated with research and development and pilot scale manufacturing
4 many years before a marketable product can be produced, and that
5 current state tax policy discourages the growth of these companies by
6 taxing them long before they become profitable.

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

12 For these reasons, the legislature hereby establishes a program of
13 business and occupation tax credits for qualified research and
14 development expenditures. The legislature also hereby establishes a
15 tax deferral program for high-technology research and development and
16 pilot scale manufacturing facilities. The legislature declares that
17 these limited programs serve the vital public purposes of incenting
18 expenditures in research and development, supporting, and sustaining as
19 they develop new technologies and products, and creating quality
20 employment opportunities in this state. The legislature further
21 declares its intent to create a contract within the meaning of Article
22 I, section 23 of the state Constitution as to those businesses that
23 make capital investments in consideration of the tax deferral program
24 established in this chapter.

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

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

31 (2) The credit (~~(is equal to)~~) shall be calculated as follows: (a)
32 Determine the greater of the amount of qualified research and
33 development expenditures of a person or eighty percent of amounts
34 received by a person other than a public educational or research
35 institution in compensation for the conduct of qualified research and
36 development(~~(, multiplied)~~); (b) subtract 0.92 percent of the person's
37 taxable amount from the amount determined under (a) of this subsection;

1 (c) multiply the amount determined under (b) of this subsection by the
2 rate provided in RCW 82.04.260(3) in the case of a nonprofit
3 corporation or nonprofit association engaging within this state in
4 research and development, and the person's average tax rate (~~provided~~
5 ~~in RCW 82.04.290(2))~~) for every other person.

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

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

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

31 (6) Any person claiming the credit, and any person assigning a
32 credit as provided in subsection (3) of this section, shall file an
33 (~~affidavit~~) annual report in a form prescribed by the department
34 which shall include the amount of the credit claimed, (~~an estimate~~
35 ~~of~~) the (~~anticipated~~) qualified research and development
36 expenditures during the calendar year for which the credit is claimed,
37 (~~an estimate of~~) and the taxable amount during the calendar year for

1 which the credit is claimed, and such additional information as the
2 department may prescribe. The report is due by March 31st following
3 any year a credit is taken.

4 (7)(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) A person claiming the credit shall agree to ((supply the
9 department with information necessary to measure the results of the tax
10 credit program for qualified research and development expenditures))
11 complete an annual survey. The annual survey is in addition to the
12 annual report due under subsection (6) of this section. The survey is
13 due by March 31st following any year in which a credit is taken. The
14 survey shall include the amount of the tax credit taken, the number of
15 new products or research projects by general classification, and the
16 number of trademarks, patents, and copyrights associated with the
17 research and development activities for which a credit was taken. The
18 survey shall also include the following information for employment
19 positions in Washington:

20 (i) The number of total employment positions;

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

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

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

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

33 (d) All information collected under this subsection, except the
34 amount of the tax credit taken, is deemed taxpayer information under
35 RCW 82.32.330 and is not disclosable. Information on the amount of tax
36 credit taken is not subject to the confidentiality provisions of RCW
37 82.32.330 and may be disclosed to the public upon request except that

1 persons taking less than ten thousand dollars of credit during the
2 period covered by the survey may request the department to treat the
3 tax credit amount as confidential under RCW 82.32.330.

4 (e) If a person fails to complete the survey required under this
5 subsection by the due date, the person entitled to the credit provided
6 in subsection (2) of this section is not eligible to take or assign the
7 credit provided in subsection (2) of this section in the year the
8 person failed to complete the survey.

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

14 (9) The department shall use the information ((required under))
15 from subsection (7) of this section to ((perform three assessments on))
16 study the tax credit program authorized under this section. ((The
17 assessments will take place in 1997, 2000, and 2003. The department
18 shall prepare reports on each assessment and deliver their reports by
19 September 1, 1997, September 1, 2000, and September 1, 2003. The
20 assessments)) The department shall report to the legislature by
21 December 1, 2009, and December 1, 2013. The reports shall measure the
22 effect of the program on job creation, the number of jobs created for
23 Washington residents, company growth, the introduction of new products,
24 the diversification of the state's economy, growth in research and
25 development investment, the movement of firms or the consolidation of
26 firms' operations into the state, and such other factors as the
27 department selects.

28 ((+9)) (10) For the purpose of this section:

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

32 (b) "Qualified research and development expenditures" means
33 operating expenses, including wages, compensation of a proprietor or a
34 partner in a partnership as determined under rules adopted by the
35 department, benefits, supplies, and computer expenses, directly
36 incurred in qualified research and development by a person claiming the
37 credit provided in this section. The term does not include amounts
38 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))~~ (c) "Qualified research and development" shall have the
5 same meaning as in RCW 82.63.010.

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

10 ~~((d))~~ (e) "Taxable amount" means the taxable amount subject to
11 the tax 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))~~ (11) This section expires ~~((December 31, 2004))~~ January 1,
16 2015.

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

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

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

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

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

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

1 molecule pharmaceutical development, or to transform biological systems
2 into useful processes and products or to develop microorganisms for
3 specific uses.

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

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

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

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

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

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

23 (iii) The economic benefit of the deferral passed to the lessee is
24 no less than the amount of tax deferred by the lessor and is evidenced
25 by written documentation of any type of payment, credit, or other
26 financial arrangement between the lessor or owner of the qualified
27 building and the lessee.

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

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

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

37 (11) "Pilot scale manufacturing" means design, construction, and
38 testing of preproduction prototypes and models in the fields of

1 biotechnology, advanced computing, electronic device technology,
2 advanced materials, and environmental technology other than for
3 commercial sale. As used in this subsection, "commercial sale"
4 excludes sales of prototypes or sales for market testing if the total
5 gross receipts from such sales of the product, service, or process do
6 not exceed one million dollars.

7 (12) "Qualified buildings" means construction of new structures,
8 and expansion or renovation of existing structures for the purpose of
9 increasing floor space or production capacity used for pilot scale
10 manufacturing or qualified research and development, including plant
11 offices and other facilities that are an essential or an integral part
12 of a structure used for pilot scale manufacturing or qualified research
13 and development. If a building is used partly for pilot scale
14 manufacturing or qualified research and development, and partly for
15 other purposes, the applicable tax deferral shall be determined by
16 apportionment of the costs of construction under rules adopted by the
17 department.

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

36 (14) "Qualified research and development" means research and
37 development performed within this state in the fields of advanced

1 computing, advanced materials, biotechnology, electronic device
2 technology, and environmental technology.

3 (15) "Recipient" means a person receiving a tax deferral under this
4 chapter.

5 (16) "Research and development" means activities performed to
6 discover technological information, and technical and nonroutine
7 activities concerned with translating technological information into
8 new or improved products, processes, techniques, formulas, inventions,
9 or software. The term includes exploration of a new use for an
10 existing drug, device, or biological product if the new use requires
11 separate licensing by the federal food and drug administration under
12 chapter 21, C.F.R., as amended. The term does not include adaptation
13 or duplication of existing products where the products are not
14 substantially improved by application of the technology, nor does the
15 term include surveys and studies, social science and humanities
16 research, market research or testing, quality control, sale promotion
17 and service, computer software developed for internal use, and research
18 in areas such as improved style, taste, and seasonal design.

19 (17)(a) "Initiation of construction" means the date that a building
20 permit is issued under the building code adopted under RCW 19.27.031
21 for:

22 (i) Construction of the qualified building, if the underlying
23 ownership of the building vests exclusively with the person receiving
24 the economic benefit of the deferral;

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

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

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

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

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

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

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

18 (b) Applicants for deferral of taxes under this chapter shall agree
19 to ((supply the department with nonproprietary information necessary to
20 measure the results of the tax deferral program for high technology
21 research and development and pilot scale manufacturing facilities))
22 complete an annual survey. If the economic benefits of the deferral
23 are passed to a lessee as provided in RCW 82.63.010(7), the lessee
24 shall agree to complete the annual survey and the applicant is not
25 required to complete the annual survey. The survey is due by March
26 31st of the year following the calendar year in which the investment
27 project is certified by the department as having been operationally
28 complete and the seven succeeding calendar years. The survey shall
29 include the amount of tax deferred, the number of new products or
30 research projects by general classification, and the number of
31 trademarks, patents, and copyrights associated with activities at the
32 investment project. The survey shall also include the following
33 information for employment positions in Washington:

34 (i) The number of total employment positions;

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

37 (iii) The number of employment positions according to the following
38 wage bands: Less than thirty thousand dollars; thirty thousand dollars

1 or greater, but less than sixty thousand dollars; and sixty thousand
2 dollars or greater. A wage band containing fewer than three
3 individuals may be combined with another wage band; and

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

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

9 (d) All information collected under this subsection, except the
10 amount of the tax deferral taken, is deemed taxpayer information under
11 RCW 82.32.330 and is not disclosable. Information on the amount of tax
12 deferral taken is not subject to the confidentiality provisions of RCW
13 82.32.330 and may be disclosed to the public upon request.

14 (3) The department shall use the information from this section to
15 prepare summary descriptive statistics by category. No fewer than
16 three taxpayers shall be included in any category. The department
17 shall report these statistics to the legislature each year by September
18 1st.

19 (4) The department shall use the information to ((perform three
20 assessments on)) study the tax deferral program authorized under this

21 chapter. ((The assessments will take place in 1997, 2000, and 2003.))
22 The department shall ((prepare reports on each assessment and deliver
23 their reports by September 1, 1997, September 1, 2000, and September 1,
24 2003)) report to the legislature by December 1, 2009, and December 1,
25 2013. The ((assessments)) reports shall measure the effect of the
26 program on job creation, the number of jobs created for Washington
27 residents, company growth, the introduction of new products, the
28 diversification of the state's economy, growth in research and
29 development investment, the movement of firms or the consolidation of
30 firms' operations into the state, and such other factors as the
31 department selects.

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

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

1 (2) No certificate may be issued for an investment project that has
2 already received a deferral under chapter 82.60 or 82.61 RCW or this
3 chapter, except that an investment project for qualified research and
4 development that has already received a deferral may also receive an
5 additional deferral certificate for adapting the investment project for
6 use in pilot scale manufacturing.

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

8 **Sec. 6.** RCW 82.63.045 and 2000 c 106 s 10 are each amended to read
9 as follows:

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

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

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

29 (b) If a recipient of the deferral fails to complete the annual
30 survey required under RCW 82.63.020 by the date due, 12.5 percent of
31 the deferred tax shall be immediately due. If the economic benefits of
32 the deferral are passed to a lessee as provided in RCW 82.63.010(7),
33 the lessee shall be responsible for payment to the extent the lessee
34 has received the economic benefit.

1 (c) If an investment project is used for purposes other than
2 qualified research and development or pilot scale manufacturing at any
3 time during the calendar year in which the investment project is
4 certified as having been operationally complete and the recipient of
5 the deferral fails to complete the annual survey due under RCW
6 82.63.020, the portion of deferred taxes immediately due is the amount
7 on the schedule in (a) of this subsection. If the economic benefits of
8 the deferral are passed to a lessee as provided in RCW 82.63.010(7),
9 the lessee shall be responsible for payment to the extent the lessee
10 has received the economic benefit.

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

18 ~~((3))~~ (4) Notwithstanding subsection (2) of this section,
19 deferred taxes on the following need not be repaid:

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

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

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

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

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

31 "Consumer" means the following:

32 (1) Any person who purchases, acquires, owns, holds, or uses any
33 article of tangible personal property irrespective of the nature of the
34 person's business and including, among others, without limiting the
35 scope hereof, persons who install, repair, clean, alter, improve,
36 construct, or decorate real or personal property of or for consumers

1 other than for the purpose (a) of resale as tangible personal property
2 in the regular course of business or (b) of incorporating such property
3 as an ingredient or component of real or personal property when
4 installing, repairing, cleaning, altering, imprinting, improving,
5 constructing, or decorating such real or personal property of or for
6 consumers or (c) of consuming such property in producing for sale a new
7 article of tangible personal property or a new substance, of which such
8 property becomes an ingredient or component or as a chemical used in
9 processing, when the primary purpose of such chemical is to create a
10 chemical reaction directly through contact with an ingredient of a new
11 article being produced for sale or (d) purchases for the purpose of
12 consuming the property purchased in producing ferrosilicon which is
13 subsequently used in producing magnesium for sale, if the primary
14 purpose of such property is to create a chemical reaction directly
15 through contact with an ingredient of ferrosilicon;

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

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

1 (4) Any person who is an owner, lessee or has the right of
2 possession to or an easement in real property which is being
3 constructed, repaired, decorated, improved, or otherwise altered by a
4 person engaged in business, excluding only (a) municipal corporations
5 or political subdivisions of the state in respect to labor and services
6 rendered to their real property which is used or held for public road
7 purposes, and (b) the United States, instrumentalities thereof, and
8 county and city housing authorities created pursuant to chapter 35.82
9 RCW in respect to labor and services rendered to their real property.
10 Nothing contained in this or any other subsection of this definition
11 shall be construed to modify any other definition of "consumer";

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

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

36 (7) Any person who is a lessor of machinery and equipment, the
37 rental of which is exempt from the tax imposed by RCW 82.08.020 under
38 RCW 82.08.02565, with respect to the sale of or charge made for

1 tangible personal property consumed in respect to repairing the
2 machinery and equipment, if the tangible personal property has a useful
3 life of less than one year. Nothing contained in this or any other
4 subsection of this section shall be construed to modify any other
5 definition of "consumer";

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

10 (9) Until July 1, 2003, any person engaged in the business of
11 conducting environmental remedial action as defined in RCW
12 82.04.2635(2).

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

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

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

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

23 NEW SECTION. **Sec. 11.** Sections 9 and 10 of this act take effect
24 July 1, 2004.

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