
Finance Committee

HB 1734

Brief Description: Improving consistency among tax incentives enacted during the 2003-2005 biennium.

Sponsors: Representatives McIntire and Chase; by request of Department of Revenue.

Brief Summary of Bill

- Makes changes to reporting requirements for several tax incentives enacted in the 2003-2005 fiscal biennium to provide more consistency with respect to survey detail and disclosure, submission timing, and penalties and interest.

Hearing Date: 2/22/05

Staff: Mark Matteson (786-7145).

Background:

Tax Incentives. In the 2003-2005 fiscal biennium, the Legislature enacted, extended, or reauthorized a number of business tax incentives for the purposes of economic development or providing tax relief to certain industries. The incentives ("2003-2005 tax incentives with reporting requirements") include the following:

- high-tech business and occupation (B&O) tax credit for research and development (R&D) spending;
- sales tax and use tax deferral/waiver program for high-tech construction projects;
- sales and use tax deferral/waiver program for construction projects for certain businesses in rural counties and community empowerment zones ("rural county sales/use tax deferral");
- aerospace incentive program;
- semiconductor incentive program;
- aluminum smelter program;
- electrolytic processor public utility tax (PUT) tax incentive;
- business and occupation (B&O) tax credit for businesses in rural counties that provide information technology help desk services to third parties; and
- business and occupation (B&O) tax credit for businesses engaged in computer software manufacturing or programming in rural counties that create new jobs.

With the passage of the incentives, the Legislature included a number of administrative provisions relating to accountability. In several instances, these provisions are not consistent between

incentive programs, particularly with respect to survey, penalties, and tax deferral repayment requirements.

Tax Incentive Survey Requirements. A number of the 2003-2005 tax incentives with survey requirements have somewhat inconsistent survey provision. In some cases the reference is to a "report", while in others to a "survey". Certain incentives require program participants to provide certain detailed economic information relating to the incentive; in other incentives, such as the B&O help desk credit for information technology services, the amount of statutorily required information is minimal and the discretion for which information to collect is left in some instances to the Department of Revenue.

For most of the incentives, the survey is mandatory, and failure to submit a survey results in a requirement to pay an amount equal to the tax for which the incentive was claimed. This is not the case for the B&O tax credits for rural county businesses that provide information technology help desk services or that conduct computer programming; surveys for these credits are voluntary. Most of the incentives also require that interest be assessed on tax that must be repaid when a report is not submitted timely, although interest is not required with respect to the rural county construction sales and use tax deferral program.

Most of the incentive survey responses are due by March 31 following the year in which the incentives were claimed, but for three of the incentives the due date is late January. No allowance is provided for late surveys under any circumstance. Survey responses may be transmitted in electronic or hard copy format.

Sales/Use Tax Deferral Programs for Construction Projects. Two programs exist that allow for the deferral and/or waiver of sales and use tax on building-related construction: the high-technology deferral for research and development projects, and the rural county and community empowerment zone deferral for manufacturers and certain other industries. In 2004 legislation, the Legislature modified the high-tech program to require that an application for the program be filed before the initiation of construction, defined to be the date that a building permit is issued. However, no such provision applies to the rural county deferral, for which the Department has interpreted "initiation of construction" to mean the date on which on-site construction commences.

For the two deferral programs, deferred taxes are waived under certain circumstances, but in different approaches. For the high tech program, sales tax on construction projects is deferred and then waived in 12.5 percent increments over the course of eight years so long as the project is used in a qualifying activity. In the rural county program, sales tax is deferred and then waived after the third year of operation in increments of 10 percent, 15 percent, 20 percent, 25 percent, and 30 percent over the course of five years.

Neither deferral program explicitly addresses deferral of taxes on the construction of parking facilities connected to buildings where the qualifying activity is conducted. However, the high-technology R&D program eligibility includes facilities that are an integral part of the qualified research and development. By rule, the Department has interpreted this to include parking lots and garages that are connected to the research building. The rural county manufacturing deferral does not include a parallel provision.

Waiver or Cancellation of Penalties. The Department of Revenue is authorized to waive or cancel penalties under certain circumstances if the failure to pay any excise tax was the result of circumstances beyond the control of the taxpayer. Examples of such circumstances include delinquency resulting from erroneous information provided to the taxpayer by a department employee and the death of the taxpayer or a member of the taxpayer's family, and a number of others.

Summary of Bill:

A number of changes are made to the 2003-2005 tax incentives with survey requirements to provide greater consistency.

The instruments used to collect information for accountability or eligibility purposes are changed to "survey" unless already referred to as such.

If surveys are submitted to the Department late for reasons beyond the taxpayer's control, the Department is provided the authority to allow an extension; this authority applies retroactively to surveys due after December 31, 2004. The Department is allowed to use existing rule provisions concerning the waiver or cancellations of penalties as a guide in determining whether the failure to file was indeed the result of circumstances beyond the taxpayer's control.

Starting in January 2006, all surveys and other forms must be filed with the Department in electronic format, unless the taxpayer's cumulative tax relief from all tax incentives for which surveys are required is less than \$1,000.

Concerning the B&O credits for rural county information technology help desk services and for computer software programming or manufacturing, participating taxpayers are required to provide the same detailed information as part of the annual survey that is required of other incentive programs: number of jobs; the percent of jobs that are full-time, part-time or temporary; the number of jobs by wage band; and number of jobs with employer provided health and retirement benefits. As with other incentive programs, the surveys are mandatory and must be submitted to the Department by March 31 of each year. The Department is required to prepare summary statistical reports to the Legislature each year. In addition, the amount of credit claimed by an individual taxpayer is not subject to confidentiality protections, unless the amount of credit claimed for the year is less than \$10,000.

For failure to submit a complete and timely survey, explicit tax repayment and interest provisions are provided for the incentives without such requirements. Under the rural county deferral program, if a taxpayer fails to submit a survey on time, interest accrues on the portion of deferred taxes that must be repaid until the debt is repaid. Under the B&O credit programs for rural businesses, the amount of tax on which the credit was based from the previous calendar year is due, and interest accrues until the debt is repaid.

As with the high technology incentives for research and development, any interest that is due on taxes that must be repaid under the other incentives is applied retroactively to the date the incentive was claimed and accrues until the debt is repaid.

The rural county sales and use tax deferral/waiver is modified such that the application for the program is due on the date the building permit is issued. In addition, for projects under the rural program requesting deferrals after July 1, 2005, sales tax is deferred and then waived in 12.5

percent increments over the course of eight years as long as the project is used in a qualifying activity.

Both deferral programs are modified to explicitly allow deferral of taxes on the construction of a parking facility in connection with qualifying buildings.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause with respect to the provisions concerning the changes survey requirements in existing tax incentives (sections 3 through 19) and concerning the authorization to allow an extension for survey filing (section 1), and these sections take effect immediately. Section 2 of the bill concerning the requirement to file the4 surveys electronically takes effect January 1, 2006.