
SUBSTITUTE HOUSE BILL 1094

State of Washington

59th Legislature

2005 Regular Session

By House Committee on Finance (originally sponsored by Representatives Santos, Hasegawa, Conway, Darneille, Chase, Hudgins, Dickerson, Schual-Berke, Morrell, Wood and McCoy)

READ FIRST TIME 03/07/05.

1 AN ACT Relating to accountability for tax incentives; adding a new
2 section to chapter 82.04 RCW; adding a new section to chapter 82.32
3 RCW; adding a new section to chapter 82.60 RCW; adding a new section to
4 chapter 82.63 RCW; and adding a new chapter to Title 82 RCW.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that accountability
7 and effectiveness are important aspects of setting tax policy. In
8 order to make policy choices regarding the best use of limited state
9 resources, the legislature and the public need information on
10 recipients of tax incentives, whether those tax incentives support
11 persons providing quality jobs within the state of Washington, and
12 whether the tax incentives are effective. Therefore, it is the intent
13 of the legislature to require businesses benefiting from certain tax
14 incentives to complete annual surveys to provide information necessary
15 to measure the state's return on investment in tax incentives through
16 an evaluation of the quantity and quality of employment offered by such
17 persons, the expansion and diversification of the state's economy, and
18 business growth and retention. The legislature also intends that
19 annual surveys not unduly increase the administrative burden on

1 business, and therefore, annual surveys should borrow from other state
2 and federal definitions and reporting requirements to the maximum
3 extent possible.

4 NEW SECTION. **Sec. 2.** The tax exemptions, exclusions, deductions,
5 credits, and tax rates allowed under the sections listed in this
6 section are tax incentives for the purposes of this chapter:

7 (1) RCW 82.04.2909 (Business and occupation tax rate for aluminum
8 smelters);

9 (2) RCW 82.04.4481 (Business and occupation tax credit for property
10 taxes for aluminum smelter property);

11 (3) RCW 82.08.805 and 82.12.805 (Retail sales and use tax
12 exemptions for property used at aluminum smelters);

13 (4) RCW 82.12.022(5) (Use tax exemption for the use of natural gas
14 at aluminum smelters);

15 (5) RCW 82.16.0421 (Public utility tax exemption for sales of
16 electricity to electrolytic processing businesses);

17 (6) RCW 82.04.4452 (Business and occupation tax credit provided for
18 persons engaged in qualified research and development);

19 (7) Chapter 82.63 RCW (Deferral of retail sales and use taxes for
20 investment projects by high technology businesses); and

21 (8) Chapter 82.60 RCW (Deferral of retail sales and use taxes for
22 investment projects in eligible areas).

23 NEW SECTION. **Sec. 3.** The definitions in this section apply
24 throughout this chapter, unless the context clearly requires otherwise.

25 (1) "Complete annual survey" means a survey filed on a form or in
26 a format approved by the department that substantially responds to all
27 survey questions to enable the department to provide summary statistics
28 and to study the effectiveness of the tax incentive.

29 (2) "Dental care plan" means any "employee welfare benefit plan" as
30 defined by the federal employee retirement income security act of 1974,
31 29 U.S.C. Sec. 1001 et seq., and any policy, contract, or agreement
32 with a dental care services provider, facility, or insurance carrier,
33 for the purpose of providing for its employees or their beneficiaries,
34 dental care services. For purposes of this section, "dental care
35 services" means services offered or provided by health care facilities

1 and health care providers relating to the prevention, cure, or
2 treatment of illness, injury, or disease of human teeth, alveolar
3 process, gums, or jaw.

4 (3) "Employee" means a person covered by Title 50 RCW for whom an
5 employer is making contributions.

6 (4) "Employer-provided dental care plan" means an employer offers
7 additional compensation, not paid as wages, to employees in the form of
8 a dental care plan, in which the employer pays at least eighty percent
9 of the cost of an employee's participation in the plan.

10 (5) "Employer-provided health care plan" means an employer offers
11 additional compensation, not paid as wages, to employees in the form of
12 a health care plan, in which the employer pays at least eighty percent
13 of the cost of an employee's participation in the plan.

14 (6) "Employer-provided retirement plan" means an employer offers
15 additional compensation, not paid as wages, to employees in the form of
16 a retirement plan in which the employer contributes to each employee
17 participating in the plan.

18 (7) "Full-time employment position" means a position that an
19 employer intends to be filled for at least twelve consecutive months
20 and requires the employee to work thirty-five hours per week for fifty-
21 two consecutive weeks, four hundred fifty-five hours a quarter, or one
22 thousand eight hundred twenty hours during a period of twelve
23 consecutive months.

24 (8) "Health care plan" means any "employee welfare benefit plan" as
25 defined by the federal employee retirement income security act of 1974,
26 29 U.S.C. Sec. 1001 et seq., and any "health plan" or "health benefit
27 plan" as defined in RCW 48.43.005, for the purpose of providing for its
28 employees or their beneficiaries, through the purchase of insurance or
29 otherwise, health care services. For purposes of this section, "health
30 care services" means services offered or provided by health care
31 facilities and health care providers relating to the prevention, cure,
32 or treatment of illness, injury, or disease.

33 (9) "Occupational categories" means the major groups of the United
34 States department of labor standard occupation code system as it exists
35 on the effective date of this section. The department may combine
36 similar major groups to reduce the number of occupational categories.

37 (10) "Part-time employment position" means a position that an

1 employer intends to be filled for at least twelve consecutive calendar
2 months and requires the employee to work fewer than the hours required
3 for a full-time position.

4 (11) "Retirement plan" means any "employee pension benefit plan" as
5 defined by the federal employee retirement income security act of 1974,
6 29 U.S.C. Sec. 1001 et seq., that provides for retirement income or
7 deferred income to employees for periods extending to the termination
8 of employment or beyond, excluding life insurance policies.

9 (12) "Temporary position" means a position that an employer intends
10 to be filled for fewer than twelve consecutive calendar months
11 regardless of the number of hours the employee works.

12 (13) "Temporary staffing firm" means a person engaged in staffing
13 services. For purposes of this section, "staffing services" means an
14 arrangement in which a person recruits and hires employees from the
15 labor market and assigns them on a temporary basis to perform services
16 for a customer to support, or supplement, the customer's work force, or
17 to provide assistance in special work situations such as employee
18 absences, skill shortages, and seasonal workloads, or to perform
19 special assignments or projects, all under the direction and
20 supervision of the customer. "Staffing services" does not include
21 permanent employee leasing or permanent employee placement services.

22 (14) "Wages" means hourly compensation paid to an employee for
23 personal services, whether denominated as wages, salary, commission, or
24 otherwise. Compensation in the form of overtime, tips, bonuses, stock
25 options, severance pay, and other similar fringe benefits are not
26 "wages." For employees who earn wages on an annual basis, hourly wages
27 are determined by dividing annual compensation by two thousand eighty.
28 If an employee is paid by commission, hourly wages are determined by
29 dividing the total amount of commissions paid during the calendar year
30 by two thousand eighty.

31 (15) "Wage bands" means the following groups of wage rates:

- 32 (a) The state minimum wage to \$10.00 per hour;
- 33 (b) Between \$10.01 per hour to \$15.00 per hour;
- 34 (c) Between \$15.01 per hour to \$20.00 per hour;
- 35 (d) Between \$20.01 per hour to \$30.00 per hour; and
- 36 (e) \$30.01 per hour or more.

1 NEW SECTION. **Sec. 4.** (1) A person receiving the benefit of a tax
2 incentive must file a complete annual survey with the department on a
3 form or in a format approved by the department. The survey is due by
4 March 31st of the year following any year in which a tax incentive is
5 received. The department may extend the time for filing annual surveys
6 under this section, as provided in section 7 of this act. A person
7 receiving more than one tax incentive need only file one survey with
8 the department. Annual surveys are not subject to the confidentiality
9 provisions of RCW 82.32.330. The survey shall include the following
10 information about the person:

11 (a) The person's name as registered with the department;

12 (b) The person's tax registration number;

13 (c) Type of activity in which the person is engaged;

14 (d) How long the person has been engaging in business in this
15 state;

16 (e) The tax incentives being taken;

17 (f) The amount or value of each tax incentive received in the
18 calendar year;

19 (g) The following information about employees of the person within
20 this state during the calendar quarter ending December 31st:

21 (i) Total number of employees by occupational categories;

22 (ii) The percentage of total employees earning wages according to
23 wage bands by occupational categories;

24 (iii) The percentage of total employees employed in full-time,
25 part-time, and temporary employment positions, by occupational
26 categories;

27 (iv) The percentage of total employees in full-time employment
28 positions eligible to participate in employer-provided health care
29 plans, dental care plans, and retirement plans, by occupational
30 categories;

31 (v) The percentage of total employees in full-time employment
32 positions participating in employer-provided health care plans, dental
33 care plans, and retirement plans, by occupational categories;

34 (vi) Whether part-time employees are eligible to participate in
35 employer-provided health care, dental, and retirement plans; and

36 (vii) Whether temporary employees are eligible to participate in
37 employer-provided health care, dental, and retirement plans; and

1 (h) The following information about employment positions with the
2 person filled by employees of temporary staffing firms:

3 (i) The total number of employment positions;

4 (ii) The percentage of total employment positions in each
5 occupational category;

6 (iii) The percentage of total employment positions that were full-
7 time, part-time, and temporary employment positions; and

8 (iv) The average duration of a full-time, part-time, and temporary
9 employment position.

10 (2) The department may request additional information necessary for
11 the review of the tax incentive or to determine eligibility for the tax
12 incentive, to be submitted at the same time as the survey.

13 NEW SECTION. **Sec. 5.** (1) In addition to the information required
14 in section 4 of this act, persons benefiting from the tax incentives in
15 section 2 (1) through (5) of this act must report the following:

16 (a) The quantity of product produced at the manufacturing site
17 during the time period covered by the report; and

18 (b) Actual levels of employment and identification of the number of
19 jobs affected by any employment reductions that have been publicly
20 announced at the time of the report.

21 (2) For purposes of this section, a "manufacturing site" is one or
22 more immediately adjacent parcels of real property located in
23 Washington state on which manufacturing occurs that support activities
24 qualifying for a tax adjustment. Adjacent parcels of real property
25 separated only by a public road comprise a single site.

26 NEW SECTION. **Sec. 6.** (1) If a person fails to file a complete
27 annual survey under this section by the due date of the survey or any
28 extension under section 7 of this act, the department shall declare the
29 amount of taxes against which a tax incentive was used for the calendar
30 year preceding the due date of the annual survey to be immediately due
31 and payable. The department shall notify the person by mail of the
32 amount due under this section, and payment shall be due within thirty
33 days from the date of the notice. If the amounts due under this
34 section are not received by the department by the due date, the
35 department shall assess interest and penalties on the unpaid amount due
36 in accordance with subsection (2) of this section.

1 (2) If payment of any tax the department determines to be due for
2 failing to file a complete annual survey is not received by the
3 department by the due date, there shall be assessed a total penalty of
4 five percent of the amount due. If the amount due is not received on
5 or before the thirtieth day following the due date, or any extension
6 thereof, there shall be assessed a total penalty of fifteen percent of
7 the amount due. If the amount due is not received on or before the
8 sixtieth day following the due date, or any extension thereof, there
9 shall be assessed a total penalty of twenty-five percent of the amount
10 due. No penalty so added may be less than five dollars. Interest
11 shall be assessed on the amount due, at the rate provided for
12 delinquent taxes under chapter 82.32 RCW, retroactively from the due
13 date, and shall accrue until the amount due is paid.

14 NEW SECTION. **Sec. 7.** (1) If the department finds that the failure
15 of a taxpayer to file by the due date a complete annual survey under
16 section 4 of this act was the result of circumstances beyond the
17 control of the taxpayer, the department shall extend the time for
18 filing the survey. This extension shall be for a period of thirty days
19 from the date the department issues its written notification to the
20 taxpayer that it qualifies for an extension under this section. The
21 department may grant additional extensions as it deems proper.

22 (2) In making a determination whether the failure of a taxpayer to
23 file an annual survey by the due date was the result of circumstances
24 beyond the control of the taxpayer, the department shall be guided by
25 rules adopted by the department relating to the waiver or cancellation
26 of penalties when the underpayment or untimely payment of any tax was
27 due to circumstances beyond the control of the taxpayer.

28 (3) A person who first claims a tax incentive in an application for
29 refund of overpayment of taxes or in an audit or examination of
30 taxpayer records or returns may receive a refund or credit for the
31 overpayment of taxes due from the claim of the tax incentive, if the
32 person files all annual surveys for the calendar years covered in the
33 application, audit, or examination.

34 NEW SECTION. **Sec. 8.** (1) Persons required to file annual surveys
35 with the department under this chapter must electronically file with
36 the department all surveys, returns, and any other forms or information

1 the department requires in electronic format, unless the department
2 grants relief under subsection (2) of this section. As used in this
3 section, "returns" has the same meaning as "return" in RCW 82.32.050.

4 (2) Upon request, the department may relieve a person of the
5 obligations in subsection (1) of this section if the person's taxes
6 have been reduced from all tax incentives, as defined in section 2 of
7 this act, to a cumulative total of less than one thousand dollars in
8 the previous calendar year.

9 (3) Persons who no longer qualify for relief under subsection (2)
10 of this section will be notified in writing by the department and must
11 comply with subsection (1) of this section by the date provided in the
12 notice.

13 NEW SECTION. **Sec. 9.** Except for RCW 82.32.090 (1) and (2), all of
14 chapter 82.32 RCW applies to this chapter, in addition to any other
15 provisions of law for the payment and enforcement of the tax imposed by
16 this chapter. The department shall by rule provide for the effective
17 administration of this chapter.

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

20 Beginning on the effective date of this section, the annual survey
21 required under RCW 82.04.4452 shall be filed in accordance with chapter
22 82.-- RCW (sections 1 through 9 of this act). Compliance with chapter
23 82.-- RCW (sections 1 through 9 of this act) fulfills the survey
24 requirements a person has under RCW 82.04.4452.

25 NEW SECTION. **Sec. 11.** A new section is added to chapter 82.32 RCW
26 to read as follows:

27 Beginning on the effective date of this section, the annual surveys
28 or reports required under RCW 82.32.560 and 82.32.570 shall be filed in
29 accordance with chapter 82.-- RCW (sections 1 through 9 of this act).
30 Compliance with chapter 82.-- RCW (sections 1 through 9 of this act)
31 fulfills the survey or report requirements a person receiving the
32 benefit of electrolytic processing business tax exemption has under RCW
33 82.32.560 and an aluminum smelter receiving the benefit of a smelter
34 tax incentive has under RCW 82.32.570.

1 NEW SECTION. **Sec. 12.** A new section is added to chapter 82.60 RCW
2 to read as follows:

3 Beginning on the effective date of this section, the surveys
4 required under RCW 82.60.070 shall be filed in accordance with chapter
5 82.-- RCW (sections 1 through 9 of this act). Compliance with chapter
6 82.-- RCW (sections 1 through 9 of this act) fulfills the survey
7 requirements a recipient or lessee has under RCW 82.60.070.

8 NEW SECTION. **Sec. 13.** A new section is added to chapter 82.63 RCW
9 to read as follows:

10 Beginning on the effective date of this section, the surveys
11 required under RCW 82.63.020 shall be filed in accordance with chapter
12 82.-- RCW (sections 1 through 9 of this act). Compliance with chapter
13 82.-- RCW (sections 1 through 9 of this act) fulfills the survey
14 requirements a recipient or lessee has under RCW 82.63.020.

15 NEW SECTION. **Sec. 14.** Sections 1 through 9 of this act constitute
16 a new chapter in Title 82 RCW.

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