
HOUSE BILL 2640

State of Washington

59th Legislature

2006 Regular Session

By Representatives B. Sullivan, McCoy, O'Brien, Haler, Sells, Morris, Ericks, Strow and Dunn

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1 AN ACT Relating to biotechnology product and medical device
2 manufacturing tax incentives; amending RCW 82.04.440 and 82.32.600;
3 adding a new section to chapter 82.32 RCW; adding new sections to
4 chapter 82.04 RCW; adding a new chapter to Title 82 RCW; providing an
5 effective date; and providing expiration dates.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that the state's
8 economy is increasingly dependent on the expansion of knowledge-based
9 sectors, including the life sciences. The legislature also finds that
10 commercial enterprises in the life sciences create high-wage,
11 high-skilled jobs that are part of the state's effort to encourage
12 economic diversification and stability. However, the legislature also
13 finds that commercial life sciences businesses, particularly in
14 biotechnology product and medical device manufacturing, incur
15 significant costs associated with capital infrastructure and job
16 training often years before a product is licensed for marketing or a
17 facility is licensed for manufacturing by governmental agencies in the
18 United States and abroad. The legislature also finds that current
19 state tax policy discourages the growth of these companies in two ways:

1 (1) Washington state's higher rate of taxation compared with other
2 states and nations encourages the export of intellectual property and
3 commercial operations out of Washington; and (2) taxing these
4 businesses before facilities, or products produced therein, are
5 licensed for marketing by regulatory agencies.

6 The legislature further finds that targeted tax incentives may
7 encourage the formation, expansion, and retention of commercial
8 operations within the life sciences sector. The legislature also finds
9 that tax incentives should be subject to the same rigorous requirements
10 for efficiency and accountability as are other expenditure programs,
11 and that tax incentives should therefore be focused to provide the
12 greatest possible return on the state's investment.

13 For these reasons, the legislature hereby establishes a program of
14 business and occupation tax credits for qualified biotechnology product
15 and medical device commercial expenditures. The legislature also
16 hereby establishes a tax deferral program for commercial manufacturing
17 facilities in this sector. The legislature also hereby provides
18 preferential tax rates for retailing, wholesaling, and manufacturing
19 activities related to biotechnology products and medical devices. The
20 legislature declares that these limited programs serve the vital public
21 purposes of incenting expenditures in commercial life science
22 operations and the development of employment opportunities in this
23 state. The legislature further declares its intent to create a
24 contract within the meaning of Article I, section 23 of the state
25 Constitution as to those businesses that make capital investments in
26 consideration of the tax deferral program established in this chapter.

27 NEW SECTION. **Sec. 2.** Unless the context clearly requires
28 otherwise, the definitions in this section apply throughout this
29 chapter.

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

32 (2) "Biotechnology" means a technology based on the science of
33 biology, microbiology, molecular biology, cellular biology,
34 biochemistry, or biophysics, or any combination of these, and includes,
35 but is not limited to, recombinant DNA techniques, genetics and genetic
36 engineering, cell fusion techniques, and new bioprocesses, using living
37 organisms, or parts of organisms.

1 (3) "Biotechnology product" means any virus, therapeutic serum,
2 antibody, protein, toxin, antitoxin, vaccine, blood, blood component or
3 derivative, allergenic product, or analogous product produced through
4 the application of biotechnology that is used in the prevention,
5 treatment, or cure of diseases or injuries to humans.

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

7 (5)(a) "Eligible investment project" means an investment in
8 qualified buildings or qualified machinery and equipment, including
9 labor and services rendered in the planning, installation, and
10 construction of the project.

11 (b) The lessor or owner of a qualified building is not eligible for
12 a deferral unless:

13 (i) The underlying ownership of the buildings, machinery, and
14 equipment vests exclusively in the same person; or

15 (ii)(A) The lessor by written contract agrees to pass the economic
16 benefit of the deferral to the lessee;

17 (B) The lessee that receives the economic benefit of the deferral
18 agrees in writing with the department to complete the annual survey
19 required under section 8 of this act; and

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

25 (6)(a) "Initiation of construction" means the date that a building
26 permit is issued under the building code adopted under RCW 19.27.031
27 for:

28 (i) Construction of the qualified building, if the underlying
29 ownership of the building vests exclusively with the person receiving
30 the economic benefit of the deferral;

31 (ii) Construction of the qualified building, if the economic
32 benefits of the deferral are passed to a lessee as provided in
33 subsection (5)(b)(ii)(A) of this section; or

34 (iii) Tenant improvements for a qualified building, if the economic
35 benefits of the deferral are passed to a lessee as provided in
36 subsection (5)(b)(ii)(A) of this section.

37 (b) "Initiation of construction" does not include soil testing,

1 site clearing and grading, site preparation, or any other related
2 activities that are initiated before the issuance of a building permit
3 for the construction of the foundation of the building.

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

6 (7) "Manufacturing" has the meaning provided in RCW 82.04.120.

7 (8) "Medical device" means an instrument, apparatus, implement,
8 machine, contrivance, implant, in vitro reagent, or other similar or
9 related article, including any component, part, or accessory, that is
10 designed or developed and:

11 (a) Recognized in the national formulary, or the United States
12 pharmacopeia, or any supplement to them;

13 (b) Intended for use in the diagnosis of disease, or in the cure,
14 mitigation, treatment, or prevention of disease or other conditions in
15 human beings or other animals; or

16 (c) Intended to affect the structure or any function of the body of
17 man or other animals, and which does not achieve any of its primary
18 intended purposes through chemical action within or on the body of man
19 or other animals and which is not dependent upon being metabolized for
20 the achievement of any of its principal intended purposes.

21 (9) "Person" has the meaning provided in RCW 82.04.030.

22 (10) "Qualified buildings" means construction of new structures,
23 and expansion or renovation of existing structures for the purpose of
24 increasing floor space or production capacity used for biotechnology
25 product manufacturing or medical device manufacturing activities,
26 including plant offices, commercial laboratories for process
27 development, quality assurance and quality control, and warehouses or
28 other facilities for the storage of raw material or finished goods if
29 the facilities are an essential or an integral part of a factory,
30 plant, or laboratory used for biotechnology product manufacturing or
31 medical device manufacturing. If a building is used partly for
32 biotechnology product manufacturing or medical device manufacturing and
33 partly for other purposes, the applicable tax deferral shall be
34 determined by apportionment of the costs of construction under rules
35 adopted by the department.

36 (11) "Qualified machinery and equipment" means all new industrial
37 and research fixtures, equipment, and support facilities that are an
38 integral and necessary part of a biotechnology product manufacturing or

1 medical device manufacturing operation. "Qualified machinery and
2 equipment" includes: Computers; software; data processing equipment;
3 laboratory equipment; manufacturing components such as belts, pulleys,
4 shafts, and moving parts; molds, tools, and dies; operating structures;
5 and all equipment used to control or operate the machinery.

6 (12) "Recipient" means a person receiving a tax deferral under this
7 chapter.

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

20 NEW SECTION. **Sec. 4.** (1) The department shall issue a sales and
21 use tax deferral certificate for state and local sales and use taxes
22 due under chapters 82.08, 82.12, and 82.14 RCW for each eligible
23 investment project.

24 (2) No certificate shall be issued for an eligible investment
25 project under this chapter and chapter 82.60 or 82.63 RCW.

26 (3) The department shall keep a running total of all deferrals
27 granted under this chapter during each fiscal biennium.

28 (4) This section expires January 1, 2017.

29 NEW SECTION. **Sec. 5.** (1) Except as provided in subsection (2) of
30 this section and section 8 of this act, taxes deferred under this
31 chapter need not be repaid.

32 (2)(a) If, on the basis of the survey under section 8 of this act
33 or other information, the department finds that an investment project
34 is used for purposes other than qualified biotechnology product
35 manufacturing or medical device manufacturing activities at any time

1 during the calendar year in which the eligible investment project is
2 certified by the department as having been operationally completed, or
3 at any time during any of the seven succeeding calendar years, a
4 portion of deferred taxes shall be immediately due and payable
5 according to the following schedule:

6	Year in which use occurs	% of deferred taxes due
7	1	100%
8	2	87.5%
9	3	75%
10	4	62.5%
11	5	50%
12	6	37.5%
13	7	25%
14	8	12.5%

15 (b) If a recipient of the deferral fails to complete the annual
16 survey required under section 8 of this act by the date due, the amount
17 of deferred tax specified in section 8(6) of this act shall be
18 immediately due and payable. If the economic benefits of the deferral
19 are passed to a lessee as provided in section 2 of this act, the lessee
20 is responsible for payment to the extent the lessee has received the
21 economic benefit.

22 (3) For a violation of subsection (2)(a) of this section, the
23 department shall assess interest at the rate provided for delinquent
24 taxes, but not penalties, retroactively to the date of deferral. The
25 debt for deferred taxes shall not be extinguished by insolvency or
26 other failure of the recipient. Transfer of ownership does not
27 terminate the deferral. The deferral is transferred, subject to the
28 successor meeting the eligibility requirements of this chapter, for the
29 remaining periods of the deferral.

30 (4) Notwithstanding subsection (2) of this section, deferred taxes
31 on the following need not be repaid:

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

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

1 NEW SECTION. **Sec. 6.** Chapter 82.32 RCW applies to the
2 administration of this chapter.

3 NEW SECTION. **Sec. 7.** Applications, surveys, and any other
4 information received by the department under this chapter are not
5 confidential and are subject to disclosure.

6 NEW SECTION. **Sec. 8.** A new section is added to chapter 82.32 RCW
7 to read as follows:

8 (1) For the purposes of this section, "biotechnology product and
9 medical device business tax incentive" or "tax incentive" means the
10 sales and use tax deferrals under chapter 82.-- RCW (sections 1 through
11 7 of this act), the preferential tax rates under section 9 of this act,
12 or the tax credit under section 10 of this act.

13 (2) The legislature finds that accountability and effectiveness are
14 important aspects of setting tax policy. In order to make policy
15 choices regarding the best use of limited state resources, the
16 legislature needs information to evaluate whether the stated goals of
17 legislation were achieved.

18 (3) The goals of the biotechnology product and medical device
19 business tax incentives are to:

20 (a) Encourage the creation, expansion, and retention of commercial
21 biotechnology product and medical device manufacturing operations and
22 related job opportunities; and

23 (b) Fully mature the life sciences industry by creating a
24 sustainable commercial sector.

25 (4)(a) A person who receives the benefit of a biotechnology product
26 and medical device business tax incentive shall provide an annual
27 survey to the department. The survey is due by March 31st following
28 any year in which a tax incentive is claimed or used. The survey shall
29 not include names of employees. The survey shall include the amount of
30 the tax incentives claimed or used for the reporting year. The survey
31 shall also include the following information for employment positions
32 in Washington:

33 (i) The number of total employment positions;

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

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

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

8 (b) The department may request additional information necessary to
9 measure the results of the tax incentive, to be submitted at the same
10 time as the survey.

11 (c) All information collected under this subsection, except the
12 amount of the tax incentive claimed or used, is deemed taxpayer
13 information under RCW 82.32.330 and is not disclosable. Information on
14 the amount of tax incentive claimed or used is not subject to the
15 confidentiality provisions of RCW 82.32.330 and may be disclosed to the
16 public upon request.

17 (5) The department shall use the information from this section to
18 prepare summary descriptive statistics by category. No fewer than
19 three taxpayers shall be included in any category. The department
20 shall report these statistics to the legislature each year by September
21 1st.

22 (6) If a person fails to submit an annual survey under subsection
23 (4)(a) of this section by the due date of the survey, the department
24 shall declare the amount of taxes credited as provided in section 10 of
25 this act, or reduced in the case of a preferential business and
26 occupation tax rate in section 9 of this act, for that year to be
27 immediately due and payable, and for taxes deferred under chapter 82.--
28 RCW (sections 1 through 7 of this act) 12.5 percent of the deferred tax
29 from the date of deferral shall be immediately due and payable. Excise
30 taxes payable under this subsection are subject to interest but not
31 penalties, as provided under this chapter. This information is not
32 subject to the confidentiality provisions of RCW 82.32.330 and may be
33 disclosed to the public upon request.

34 (7) The department shall use the information to study the tax
35 specified in subsection (1) of this section. The department shall
36 report to the legislature by December 1, 2009, and December 1, 2015.
37 The reports shall measure the number of new biotechnology product and
38 medical device manufacturing facilities established in Washington, the

1 amount of investment in biotechnology product and medical device
2 manufacturing facilities, the number of facilities and investment by
3 firms that utilized the biotechnology product and medical device
4 business tax incentive, the number of biotechnology product and medical
5 device manufacturing jobs in these facilities, the wages and benefits
6 paid for biotechnology product and medical device manufacturing jobs,
7 and the wages and benefits of biotechnology product and medical device
8 manufacturing jobs compared to wages and benefits of other
9 manufacturing jobs and jobs in other economic sectors.

10 NEW SECTION. **Sec. 9.** A new section is added to chapter 82.04 RCW,
11 to be codified between RCW 82.04.230 and 82.04.298, to read as follows:

12 (1) Upon every person engaging within this state in the business of
13 biotechnology product manufacturing or medical device manufacturing; as
14 to such persons the amount of tax with respect to such business shall,
15 in the case of manufacturers be equal to the value of the product
16 manufactured, or in the case of processors for hire be equal to the
17 gross proceeds of sales, multiplied by the rate of 0.138 percent.

18 (2) Upon every person engaging within this state in the business of
19 making sales at wholesale or sales at retail of biotechnology products
20 or medical devices manufactured by that person; as to such persons the
21 amount of tax with respect to such business shall be equal to the gross
22 proceeds of sales of biotechnology products or medical devices,
23 multiplied by the rate of 0.138 percent.

24 (3) The definitions in section 2 of this act apply to this section.

25 (4) This section expires January 1, 2017.

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

28 (1) There may be credited against the tax imposed by this chapter,
29 the value of state-approved, employer-provided or sponsored job
30 training services designed to enhance the job-related performance of
31 employees, for those businesses engaged in biotechnology product
32 manufacturing or medical device manufacturing.

33 (2) The value of the state-approved job training services provided
34 by the employer to the employee, without charge, shall be determined by
35 the allocation of the cost method using generally accepted accounting
36 standards.

1 (3) The credit allowed under this section shall be limited to an
2 amount equal to twenty percent of the value of the state-approved job
3 training services determined under subsection (2) of this section.

4 (4) Prior to claiming the credit under this section, the business
5 must obtain approval of the proposed job training service from the
6 local work force investment board. The employer's request for approval
7 must include a description of the proposed job training service, how
8 the job training will enhance the employee's performance, and the cost
9 of the proposed job training.

10 (5) A credit earned during one calendar year may be carried forward
11 to subsequent calendar years until used. No refunds shall be granted
12 for credits under this section.

13 (6) Credit may not be claimed under this section if the business is
14 taking the credit under RCW 82.04.4333.

15 (7) This section only applies to training for which an application
16 is approved on or after July 1, 2006.

17 (8) "Biotechnology product," "manufacturing," and "medical device"
18 have the meanings provided in section 2 of this act.

19 (9) This section expires January 1, 2017.

20 **Sec. 11.** RCW 82.04.440 and 2005 c 301 s 3 are each amended to read
21 as follows:

22 (1) Every person engaged in activities which are within the purview
23 of the provisions of two or more of sections RCW 82.04.230 to
24 82.04.298, inclusive, shall be taxable under each paragraph applicable
25 to the activities engaged in.

26 (2) Persons taxable under RCW 82.04.2909(2), 82.04.250, 82.04.270,
27 82.04.294(2), ~~((or))~~ 82.04.260 (4), ~~or ((+13))~~ section 9(2) of this
28 act with respect to selling products in this state shall be allowed a
29 credit against those taxes for any (a) manufacturing taxes paid with
30 respect to the manufacturing of products so sold in this state, and/or
31 (b) extracting taxes paid with respect to the extracting of products so
32 sold in this state or ingredients of products so sold in this state.
33 Extracting taxes taken as credit under subsection (3) of this section
34 may also be taken under this subsection, if otherwise allowable under
35 this subsection. The amount of the credit shall not exceed the tax
36 liability arising under this chapter with respect to the sale of those
37 products.

1 (3) Persons taxable under RCW 82.04.240 or 82.04.260(1)(b) shall be
2 allowed a credit against those taxes for any extracting taxes paid with
3 respect to extracting the ingredients of the products so manufactured
4 in this state. The amount of the credit shall not exceed the tax
5 liability arising under this chapter with respect to the manufacturing
6 of those products.

7 (4) Persons taxable under RCW 82.04.230, 82.04.240, 82.04.2909(1),
8 82.04.294(1), (~~(or)~~) 82.04.260 (1), (2), (4), (~~((6))~~) or (~~((13))~~)
9 (11), or section 9(1) of this act with respect to extracting or
10 manufacturing products in this state shall be allowed a credit against
11 those taxes for any (i) gross receipts taxes paid to another state with
12 respect to the sales of the products so extracted or manufactured in
13 this state, (ii) manufacturing taxes paid with respect to the
14 manufacturing of products using ingredients so extracted in this state,
15 or (iii) manufacturing taxes paid with respect to manufacturing
16 activities completed in another state for products so manufactured in
17 this state. The amount of the credit shall not exceed the tax
18 liability arising under this chapter with respect to the extraction or
19 manufacturing of those products.

20 (5) For the purpose of this section:

21 (a) "Gross receipts tax" means a tax:

22 (i) Which is imposed on or measured by the gross volume of
23 business, in terms of gross receipts or in other terms, and in the
24 determination of which the deductions allowed would not constitute the
25 tax an income tax or value added tax; and

26 (ii) Which is also not, pursuant to law or custom, separately
27 stated from the sales price.

28 (b) "State" means (i) the state of Washington, (ii) a state of the
29 United States other than Washington, or any political subdivision of
30 such other state, (iii) the District of Columbia, and (iv) any foreign
31 country or political subdivision thereof.

32 (c) "Manufacturing tax" means a gross receipts tax imposed on the
33 act or privilege of engaging in business as a manufacturer, and
34 includes (i) the taxes imposed in RCW 82.04.240, 82.04.2909(1),
35 82.04.260 (1), (2), (4), and (~~((13))~~) (11), (~~(and)~~) 82.04.294(1), and
36 section 9(1) of this act; and (ii) similar gross receipts taxes paid to
37 other states.

1 (d) "Extracting tax" means a gross receipts tax imposed on the act
2 or privilege of engaging in business as an extractor, and includes the
3 tax imposed in RCW 82.04.230 and similar gross receipts taxes paid to
4 other states.

5 (e) "Business", "manufacturer", "extractor", and other terms used
6 in this section have the meanings given in RCW 82.04.020 through
7 82.04.212, notwithstanding the use of those terms in the context of
8 describing taxes imposed by other states.

9 **Sec. 12.** RCW 82.32.600 and 2005 c 514 s 1002 are each amended to
10 read as follows:

11 (1) Persons required to file surveys under RCW 82.04.4452 must
12 electronically file with the department all surveys, returns, and any
13 other forms or information the department requires in an electronic
14 format as provided or approved by the department, unless the department
15 grants relief under subsection (2) of this section. As used in this
16 section, "returns" has the same meaning as "return" in RCW 82.32.050.

17 (2) Upon request, the department may relieve a person of the
18 obligations in subsection (1) of this section if the person's taxes
19 have been reduced a cumulative total of less than one thousand dollars
20 from all of the credits, exemptions, or preferential business and
21 occupation tax rates, for which a person is required to file an annual
22 survey under RCW 82.04.4452, 82.32.535, 82.32.545, 82.32.570,
23 82.32.560, 82.60.070, (~~(or)~~) 82.63.020, or section 8 of this act.

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

28 (4) Any survey, return, or any other form or information required
29 to be filed in an electronic format under subsection (1) of this
30 section is not filed until received by the department in an electronic
31 format.

32 NEW SECTION. **Sec. 13.** This act takes effect July 1, 2006.

33 NEW SECTION. **Sec. 14.** Sections 1 through 7 of this act constitute
34 a new chapter in Title 82 RCW.

1 NEW SECTION. **Sec. 15.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

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