
SENATE BILL 5673

State of Washington

59th Legislature

2005 Regular Session

By Senators Prentice, Zarelli, Shin, Benton and Rasmussen; by request of Department of Revenue

Read first time 02/02/2005. Referred to Committee on Ways & Means.

1 AN ACT Relating to the high technology business and occupation tax
2 credit; amending RCW 82.04.4452; adding new sections to chapter 82.32
3 RCW; creating new sections; providing an effective date; providing an
4 expiration date; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 82.32 RCW
7 to read as follows:

8 (1) If the department finds that the failure of a taxpayer to file
9 an annual survey under RCW 82.04.4452 by the due date was the result of
10 circumstances beyond the control of the taxpayer, the department shall
11 extend the time for filing the survey. Such extension shall be for a
12 period of thirty days from the date the department issues its written
13 notification to the taxpayer that it qualifies for an extension under
14 this section. The department may grant additional extensions as it
15 deems proper.

16 (2) In making a determination whether the failure of a taxpayer to
17 file an annual survey by the due date was the result of circumstances
18 beyond the control of the taxpayer, the department shall be guided by

1 WAC 458-20-228 relating to the waiver or cancellation of penalties when
2 the underpayment or untimely payment of any tax was due to
3 circumstances beyond the control of the taxpayer.

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.32 RCW
5 to read as follows:

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

12 (2) Upon request, the department may relieve a person of the
13 obligations in subsection (1) of this section if the person's taxes
14 have been reduced a cumulative total of less than one thousand dollars
15 from all of the credits, exemptions, or preferential business and
16 occupation tax rates, for which a person is required to file an annual
17 survey under RCW 82.04.4452, 82.04.4483, 82.04.4484, 82.32.535,
18 82.32.545, 82.32.570, 82.32.560, 82.60.070, 82.62.050, or 82.63.020.

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

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

27 **Sec. 3.** RCW 82.04.4452 and 2004 c 2 s 2 are each amended to read
28 as follows:

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

33 (2) The credit shall be calculated as follows: (a) Determine the
34 greater of the amount of qualified research and development
35 expenditures of a person or eighty percent of amounts received by a
36 person other than a public educational or research institution in

1 compensation for the conduct of qualified research and development; (b)
2 subtract 0.92 percent of the person's taxable amount from the amount
3 determined under (a) of this subsection; (c) multiply the amount
4 determined under (b) of this subsection by (~~the rate provided in RCW~~
5 ~~82.04.260(3)~~ ~~in the case of a nonprofit corporation or nonprofit~~
6 ~~association engaging within this state in research and development,~~
7 ~~and~~) the person's average tax rate for (~~every other person~~) the
8 calendar year for which the credit is claimed. For purposes of
9 calculating the credit, if a person's reporting period is less than
10 annual, the person may use an estimated average tax rate for the
11 calendar year for which the credit is claimed by using the person's
12 average tax rate for each reporting period. A person who uses an
13 estimated average tax rate must make an adjustment to the total credit
14 claimed for the calendar year using the person's actual average tax
15 rate for the calendar year when the person files its last return for
16 the calendar year for which the credit is claimed.

17 (3) Any person entitled to the credit provided in subsection (2) of
18 this section as a result of qualified research and development
19 conducted under contract may assign all or any portion of the credit to
20 the person contracting for the performance of the qualified research
21 and development.

22 (4) The credit, including any credit assigned to a person under
23 subsection (3) of this section, shall be (~~taken~~) claimed against
24 taxes due for the same calendar year in which the qualified research
25 and development expenditures are incurred. The credit, including any
26 credit assigned to a person under subsection (3) of this section, for
27 each calendar year shall not exceed the lesser of two million dollars
28 or the amount of tax otherwise due under this chapter for the calendar
29 year.

30 (5) For any person (~~taking~~) claiming the credit, including any
31 credit assigned to a person under subsection (3) of this section, whose
32 research and development spending during the calendar year in which the
33 credit is claimed fails to exceed 0.92 percent of the person's taxable
34 amount during the same calendar year (~~shall be liable for payment of~~
35 ~~the additional~~), the department shall declare the taxes (~~represented~~
36 ~~by the amount of~~) against which the credit (~~taken together with~~) was
37 claimed to be immediately due and payable. The department shall assess
38 interest, but not penalties, on the taxes against which the credit was

1 claimed. Interest shall be ~~((due))~~ assessed at the rate provided for
2 delinquent excise taxes under chapter 82.32 RCW, retroactively to the
3 date the credit was ~~((taken until the taxes are paid))~~ claimed, and
4 shall accrue until the taxes against which the credit was claimed are
5 repaid. Any credit assigned to a person under subsection (3) of this
6 section that is disallowed as a result of this section may be ~~((taken))~~
7 claimed by the person who performed the qualified research and
8 development subject to the limitations set forth in subsection (4) of
9 this section.

10 ~~(6) ((Any person claiming the credit, and any person assigning a~~
11 ~~credit as provided in subsection (3) of this section, shall file an~~
12 ~~annual report in a form prescribed by the department which shall~~
13 ~~include the amount of the credit claimed, the qualified research and~~
14 ~~development expenditures during the calendar year for which the credit~~
15 ~~is claimed, and the taxable amount during the calendar year for which~~
16 ~~the credit is claimed, and such additional information as the~~
17 ~~department may prescribe. The report is due by March 31st following~~
18 ~~any year a credit is taken.~~

19 ~~(7))~~(a) The legislature finds that accountability and
20 effectiveness are important aspects of setting tax policy. In order to
21 make policy choices regarding the best use of limited state resources
22 the legislature needs information on how a tax incentive is used.

23 (b) A person claiming the credit shall ~~((agree to))~~ file a complete
24 ~~((an))~~ annual survey with the department. ~~((The annual survey is in~~
25 ~~addition to the annual report due under subsection (6) of this~~
26 ~~section.))~~ The survey is due by March 31st following any year in which
27 a credit is ~~((taken))~~ claimed. The department may extend the due date
28 for timely filing of annual surveys under this section as provided in
29 section 1 of this act. The survey shall include the amount of the tax
30 credit ~~((taken))~~ claimed, the qualified research and development
31 expenditures during the calendar year for which the credit is claimed,
32 the taxable amount during the calendar year for which the credit is
33 claimed, the number of new products or research projects by general
34 classification, ~~((and))~~ the number of trademarks, patents, and
35 copyrights associated with the research and development activities for
36 which a credit was ~~((taken))~~ claimed, and whether the credit has been
37 assigned under subsection (3) of this section and who assigned the

1 credit. The survey shall also include the following information for
2 employment positions in Washington:

3 (i) The number of total employment positions;

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

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

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

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

16 (d) All information collected under this subsection, except the
17 amount of the tax credit (~~((taken))~~) claimed, is deemed taxpayer
18 information under RCW 82.32.330 (~~((and is not disclosable))~~).
19 Information on the amount of tax credit (~~((taken))~~) claimed is not
20 subject to the confidentiality provisions of RCW 82.32.330 and may be
21 disclosed to the public upon request except that persons (~~((taking))~~)
22 claiming less than ten thousand dollars of credit during the period
23 covered by the survey may request the department to treat the
24 tax credit amount as confidential under RCW 82.32.330.

25 (e) If a person fails to file a complete (~~((the))~~) annual survey
26 required under this subsection with the department by the due date or
27 any extension under section 1 of this act, the person entitled to the
28 credit provided in subsection (2) of this section is not eligible to
29 (~~((take))~~) claim or assign the credit provided in subsection (2) of this
30 section in the year the person failed to timely file a complete (~~((the))~~)
31 survey.

32 (~~((+8))~~) (7) The department shall use the information from
33 subsection (~~((+7))~~) (6) of this section to prepare summary descriptive
34 statistics by category. No fewer than three taxpayers shall be
35 included in any category. The department shall report these statistics
36 to the legislature each year by September 1st.

37 (~~((+9))~~) (8) The department shall use the information from
38 subsection (~~((+7))~~) (6) of this section to study the tax credit program

1 authorized under this section. The department shall report to the
2 legislature by December 1, 2009, and December 1, 2013. The reports
3 shall measure the effect of the program on job creation, the number of
4 jobs created for Washington residents, company growth, the introduction
5 of new products, the diversification of the state's economy, growth in
6 research and development investment, the movement of firms or the
7 consolidation of firms' operations into the state, and such other
8 factors as the department selects.

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

10 (a) "Average tax rate" means a person's total tax liability under
11 this chapter for the ~~((reporting period))~~ calendar year for which the
12 credit is claimed divided by the taxpayer's total taxable ~~((income))~~
13 amount under this chapter for the ~~((reporting period))~~ calendar year
14 for which the credit is claimed.

15 (b) "Qualified research and development expenditures" means
16 operating expenses, including wages, compensation of a proprietor or a
17 partner in a partnership as determined under rules adopted by the
18 department, benefits, supplies, and computer expenses, directly
19 incurred in qualified research and development by a person claiming the
20 credit provided in this section. The term does not include amounts
21 paid to a person other than a public educational or research
22 institution to conduct qualified research and development. Nor does
23 the term include capital costs and overhead, such as expenses for land,
24 structures, or depreciable property.

25 (c) "Qualified research and development" shall have the same
26 meaning as in RCW 82.63.010.

27 (d) "Research and development spending" means qualified research
28 and development expenditures plus eighty percent of amounts paid to a
29 person other than a public educational or research institution to
30 conduct qualified research and development.

31 (e) "Taxable amount" means the taxable amount subject to the tax
32 imposed in this chapter required to be reported on the person's
33 combined excise tax returns ~~((during))~~ for the calendar year ~~((in))~~ for
34 which the credit is claimed, less any taxable amount for which a credit
35 is allowed under RCW 82.04.440.

36 ~~((+11+))~~ (10) This section expires January 1, 2015.

1 NEW SECTION. **Sec. 4.** (1) A person who owes additional tax as a
2 result of section 3(9)(a), chapter ..., Laws of 2005 (section 3(9)(a)
3 of this act) is liable for interest, but not penalties as provided in
4 RCW 82.32.090 (1) and (2), if the entire additional tax liability is
5 paid in full to the department of revenue before January 1, 2006.
6 Interest shall be assessed at the rate provided for delinquent excise
7 taxes under chapter 82.32 RCW, retroactively to the date the credit was
8 claimed, and shall accrue until the additional tax is repaid.

9 (2) Persons who fail to repay the full amount of additional tax
10 owed as a result of section 3(9)(a), chapter ..., Laws of 2005 (section
11 3(9)(a) of this act) before January 1, 2006, are subject to all
12 applicable penalties and interest as provided in chapter 82.32 RCW on
13 the additional tax owing after December 31, 2005.

14 (3) This section expires December 31, 2010.

15 NEW SECTION. **Sec. 5.** Section 3 of this act applies retroactively
16 to June 10, 2004.

17 NEW SECTION. **Sec. 6.** Section 1 of this act applies retroactively
18 to annual surveys required under RCW 82.04.4452 that are due after
19 December 31, 2004.

20 NEW SECTION. **Sec. 7.** Section 2 of this act takes effect January
21 1, 2006.

22 NEW SECTION. **Sec. 8.** Sections 1 and 3 through 5 of this act are
23 necessary for the immediate preservation of the public peace, health,
24 or safety, or support of the state government and its existing public
25 institutions, and take effect immediately.

--- END ---