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SENATE BILL 5697

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State of Washington                      59th Legislature                      2005 Regular Session

By Senators Prentice, Zarelli, Sheldon, Shin, Rockefeller and Rasmussen

Read first time 02/02/2005. Referred to Committee on International Trade & Economic Development.

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

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

6            **Sec. 1.** RCW 82.04.4452 and 2004 c 2 s 2 are each amended to read  
7 as follows:

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

12            (2) The credit (~~(shall be calculated as follows: (a) Determine)~~)  
13 is equal to the greater of the amount of qualified research and  
14 development expenditures of a person or eighty percent of amounts  
15 received by a person other than a public educational or research  
16 institution in compensation for the conduct of qualified research and  
17 development (~~(; (b) subtract 0.92 percent of the person's taxable amount~~  
18 ~~from the amount determined under (a) of this subsection; (c) multiply~~  
19 ~~the amount determined under (b) of this subsection)), multiplied by the~~

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

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

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

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

30 (6) Any person claiming the credit, and any person assigning a  
31 credit as provided in subsection (3) of this section, shall file an  
32 annual report in a form prescribed by the department which shall  
33 include the amount of the credit claimed, the qualified research and  
34 development expenditures during the calendar year for which the credit  
35 is claimed, and the taxable amount during the calendar year for which  
36 the credit is claimed, and such additional information as the  
37 department may prescribe. The report is due by March 31st following  
38 any year a credit is taken.

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

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

15 (i) The number of total employment positions;

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

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

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

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

28 (d) All information collected under this subsection, except the  
29 amount of the tax credit taken, is deemed taxpayer information under  
30 RCW 82.32.330 and is not disclosable. Information on the amount of tax  
31 credit taken is not subject to the confidentiality provisions of RCW  
32 82.32.330 and may be disclosed to the public upon request except that  
33 persons taking less than ten thousand dollars of credit during the  
34 period covered by the survey may request the department to treat the  
35 tax credit amount as confidential under RCW 82.32.330.

36 (e) If a person fails to complete the survey required under this  
37 subsection by the due date, the person entitled to the credit provided

1 in subsection (2) of this section is not eligible to take or assign the  
2 credit provided in subsection (2) of this section in the year the  
3 person failed to complete the survey.

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

9 (9) The department shall use the information from subsection (7) of  
10 this section to study the tax credit program authorized under this  
11 section. The department shall report to the legislature by December 1,  
12 2009, and December 1, 2013. The reports shall measure the effect of  
13 the program on job creation, the number of jobs created for Washington  
14 residents, company growth, the introduction of new products, the  
15 diversification of the state's economy, growth in research and  
16 development investment, the movement of firms or the consolidation of  
17 firms' operations into the state, and such other factors as the  
18 department selects.

19 (10) For the purpose of this section:

20 (a) (~~("Average tax rate" means a person's total tax under this~~  
21 ~~chapter for the reporting period divided by the taxpayer's total~~  
22 ~~taxable income under this chapter for the reporting period.~~

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

33 ~~((e))~~ (b) "Qualified research and development" shall have the  
34 same meaning as in RCW 82.63.010.

35 ~~((d))~~ (c) "Research and development spending" means qualified  
36 research and development expenditures plus eighty percent of amounts  
37 paid to a person other than a public educational or research  
38 institution to conduct qualified research and development.

1       (~~(e)~~) (d) "Taxable amount" means the taxable amount subject to  
2 the tax imposed in this chapter required to be reported on the person's  
3 combined excise tax returns during the year in which the credit is  
4 claimed, less any taxable amount for which a credit is allowed under  
5 RCW 82.04.440.

6       (11) This section expires January 1, 2015.

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

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

17       (2) In making a determination whether the failure of a taxpayer to  
18 file an annual survey by the due date was the result of circumstances  
19 beyond the control of the taxpayer, the department shall be guided by  
20 WAC 458-20-228 relating to the waiver or cancellation of penalties when  
21 the underpayment or untimely payment of any tax was due to  
22 circumstances beyond the control of the taxpayer.

23       NEW SECTION. **Sec. 3.** (1) A person who owes additional tax as a  
24 result of section 1 of this act and this section is liable for  
25 interest, but not penalties as provided in RCW 82.32.090 (1) and (2),  
26 if the entire additional tax liability is paid in full to the  
27 department of revenue before January 1, 2006. Interest shall be  
28 assessed at the rate provided for delinquent excise taxes under chapter  
29 82.32 RCW, retroactively to the date the credit was claimed, and shall  
30 accrue until the additional tax is repaid.

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

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

1        NEW SECTION.   **Sec. 4.**   Section 1 of this act applies retroactively  
2 to June 10, 2004.

3        NEW SECTION.   **Sec. 5.**   Section 2 of this act applies retroactively  
4 to annual surveys required under RCW 82.04.4452 that are due after  
5 December 31, 2004.

6        NEW SECTION.   **Sec. 6.**   This act is necessary for the immediate  
7 preservation of the public peace, health, or safety, or support of the  
8 state government and its existing public institutions, and takes effect  
9 immediately.

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