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HOUSE BILL 1875

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State of Washington                      61st Legislature                      2009 Regular Session

By Representatives Eddy, Orcutt, Parker, Kelley, and Hinkle

Read first time 01/30/09. Referred to Committee on Finance.

1            AN ACT Relating to research and development tax incentives and  
2 reporting requirements for economic development purposes; amending RCW  
3 82.04.4452; and providing an effective date.

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

5            **Sec. 1.** RCW 82.04.4452 and 2005 c 514 s 1003 are each amended to  
6 read as follows:

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

11            (2) The credit (~~shall be calculated as follows:~~  
12 ~~(a) Determine~~) is equal to the greater of the amount of qualified  
13 research and development expenditures of a person or eighty percent of  
14 amounts received by a person other than a public educational or  
15 research institution in compensation for the conduct of qualified  
16 research and development( (+

17            ~~(b) Subtract 0.92 percent of the person's taxable amount from the~~  
18 ~~amount determined under (a) of this subsection;~~

1 ~~(c) Multiply the amount determined under (b) of this subsection)~~,  
2 multiplied by the following:

3 ~~((i))~~ (a) For the period June 10, 2004, through December 31,  
4 2006, the person's average tax rate for the calendar year for which the  
5 credit is claimed;

6 ~~((ii))~~ (b) For the calendar year ending December 31, 2007, the  
7 greater of the person's average tax rate for that calendar year or 0.75  
8 percent;

9 ~~((iii))~~ (c) For the calendar year ending December 31, 2008, the  
10 greater of the person's average tax rate for that calendar year or 1.0  
11 percent;

12 ~~((iv))~~ (d) For the calendar year ending December 31, 2009, the  
13 greater of the person's average tax rate for that calendar year or 1.25  
14 percent;

15 ~~((v))~~ (e) For the calendar year ending December 31, 2010, and  
16 thereafter, 1.50 percent.

17 For purposes of calculating the credit, if a person's reporting  
18 period is less than annual, the person may use an estimated average tax  
19 rate for the calendar year for which the credit is claimed by using the  
20 person's average tax rate for each reporting period. A person who uses  
21 an estimated average tax rate must make an adjustment to the total  
22 credit claimed for the calendar year using the person's actual average  
23 tax rate for the calendar year when the person files its last return  
24 for the calendar year for which the credit is claimed.

25 (3) Any person entitled to the credit provided in subsection (2) of  
26 this section as a result of qualified research and development  
27 conducted under contract may assign all or any portion of the credit to  
28 the person contracting for the performance of the qualified research  
29 and development.

30 (4) The credit, including any credit assigned to a person under  
31 subsection (3) of this section, shall be claimed against taxes due for  
32 the same calendar year in which the qualified research and development  
33 expenditures are incurred. The credit, including any credit assigned  
34 to a person under subsection (3) of this section, for each calendar  
35 year shall not exceed the lesser of two million dollars or the amount  
36 of tax otherwise due under this chapter for the calendar year.

37 (5) For any person claiming the credit, including any credit  
38 assigned to a person under subsection (3) of this section, whose

1 research and development spending during the calendar year in which the  
2 credit is claimed fails to exceed 0.92 percent of the person's taxable  
3 amount during the same calendar year or who is otherwise ineligible,  
4 the department shall declare the taxes against which the credit was  
5 claimed to be immediately due and payable. The department shall assess  
6 interest, but not penalties, on the taxes against which the credit was  
7 claimed. Interest shall be assessed at the rate provided for  
8 delinquent excise taxes under chapter 82.32 RCW, retroactively to the  
9 date the credit was claimed, and shall accrue until the taxes against  
10 which the credit was claimed are repaid. Any credit assigned to a  
11 person under subsection (3) of this section that is disallowed as a  
12 result of this section may be claimed by the person who performed the  
13 qualified research and development subject to the limitations set forth  
14 in subsection (4) of this section.

15 (6)(a) The legislature finds that accountability and effectiveness  
16 are important aspects of setting tax policy. In order to make policy  
17 choices regarding the best use of limited state resources the  
18 legislature needs information on how a tax incentive is used.

19 (b) A person claiming the credit shall file a complete annual  
20 survey with the department. The survey is due by (~~March 31st~~) April  
21 30th following any year in which a credit is claimed. The department  
22 may extend the due date for timely filing of annual surveys under this  
23 section as provided in RCW 82.32.590. The survey shall include the  
24 amount of the tax credit claimed, the qualified research and  
25 development expenditures during the calendar year for which the credit  
26 is claimed, the taxable amount during the calendar year for which the  
27 credit is claimed, the number of new products or research projects by  
28 general classification, the number of trademarks, patents, and  
29 copyrights associated with the research and development activities for  
30 which a credit was claimed, and whether the credit has been assigned  
31 under subsection (3) of this section and who assigned the credit. The  
32 survey shall also include the following information for employment  
33 positions in Washington:

34 (i) The number of total employment positions;

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

37 (iii) The number of employment positions according to the following  
38 wage bands: Less than thirty thousand dollars; thirty thousand dollars

1 or greater, but less than sixty thousand dollars; and sixty thousand  
2 dollars or greater. A wage band containing fewer than three  
3 individuals may be combined with another wage band; and

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

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

9 (d) Timely completion of the annual survey under this subsection  
10 (6) may not be used as a prerequisite by the department in determining  
11 if a person is eligible for the credit under this section.

12 (e)(i) All information collected under this subsection, except the  
13 amount of the tax credit claimed, is deemed taxpayer information under  
14 RCW 82.32.330. Information on the amount of tax credit claimed is not  
15 subject to the confidentiality provisions of RCW 82.32.330 and may be  
16 disclosed to the public upon request, except as provided in this  
17 subsection (6)((+d)) (e). If the amount of the tax credit as reported  
18 on the survey is different than the amount actually claimed on the  
19 taxpayer's tax returns or otherwise allowed by the department, the  
20 amount actually claimed or allowed may be disclosed.

21 (ii) Persons for whom the actual amount of the tax credit claimed  
22 on the taxpayer's returns or otherwise allowed by the department is  
23 less than ten thousand dollars during the period covered by the survey  
24 may request the department to treat the tax credit amount as  
25 confidential under RCW 82.32.330.

26 ~~((e) If a person fails to file a complete annual survey required~~  
27 ~~under this subsection with the department by the due date or any~~  
28 ~~extension under RCW 82.32.590, the person entitled to the credit~~  
29 ~~provided in subsection (2) of this section is not eligible to claim or~~  
30 ~~assign the credit provided in subsection (2) of this section in the~~  
31 ~~year the person failed to timely file a complete survey.)) (f) If a~~  
32 person claiming the credit under this section fails to timely file the  
33 annual survey under this section for the first time, that person is not  
34 subject to any penalty under this section.

35 (e)(i) Subject to the conditions in this subsection (6)(e), a  
36 taxpayer who fails to file an annual report or annual survey required  
37 under any of the statutes listed in RCW 82.32.590 by the due date of

1 the report or survey is entitled to an extension of the due date. A  
2 request for an extension under this subsection (6)(e) must be made in  
3 writing to the department.

4 (ii) To qualify for an extension under this subsection (6)(e), a  
5 taxpayer must have filed all annual reports and surveys, if any, due in  
6 prior years under the statutes listed in RCW 82.32.590 by their  
7 respective due dates, beginning with annual reports and surveys due in  
8 calendar year 2009.

9 (iii) An extension under this subsection (6)(e) is for ninety days  
10 from the original due date of the annual report or survey.

11 (iv) No taxpayer may be granted more than one ninety-day extension  
12 under this subsection (6)(e).

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

18 (8) The department shall use the information from subsection (6) of  
19 this section to study the tax credit program authorized under this  
20 section. The department shall report to the legislature by December 1,  
21 2009, and December 1, 2013. The reports shall measure the effect of  
22 the program on job creation, the number of jobs created for Washington  
23 residents, company growth, the introduction of new products, the  
24 diversification of the state's economy, growth in research and  
25 development investment, the movement of firms or the consolidation of  
26 firms' operations into the state, and such other factors as the  
27 department selects.

28 (9) For the purpose of this section:

29 (a) "Average tax rate" means a person's total tax liability under  
30 this chapter for the calendar year for which the credit is claimed  
31 divided by the taxpayer's total taxable amount under this chapter for  
32 the calendar year for which the credit is claimed.

33 (b) "Qualified research and development expenditures" means  
34 operating expenses, including wages, compensation of a proprietor or a  
35 partner in a partnership as determined under rules adopted by the  
36 department, benefits, supplies, and computer expenses, directly  
37 incurred in qualified research and development by a person claiming the  
38 credit provided in this section. The term does not include amounts

1 paid to a person other than a public educational or research  
2 institution to conduct qualified research and development. Nor does  
3 the term include capital costs and overhead, such as expenses for land,  
4 structures, or depreciable property.

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

7 (d) "Research and development spending" means qualified research  
8 and development expenditures plus eighty percent of amounts paid to a  
9 person other than a public educational or research institution to  
10 conduct qualified research and development.

11 (e) "Taxable amount" means the taxable amount subject to the tax  
12 imposed in this chapter required to be reported on the person's  
13 combined excise tax returns for the calendar year for which the credit  
14 is claimed, less any taxable amount for which a credit is allowed under  
15 RCW 82.04.440.

16 (~~((10) This section expires January 1, 2015.))~~)

17 NEW SECTION. **Sec. 2.** This act takes effect October 1, 2009.

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