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SENATE BILL 5909

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State of Washington                      61st Legislature                      2009 Regular Session

By Senators Murray, Kohl-Welles, and Zarelli

Read first time 02/06/09. Referred to Committee on Ways & Means.

1            AN ACT Relating to clarifying the application of the high  
2 technology retail sales and use tax deferral provided by chapter 82.63  
3 RCW; amending RCW 82.63.010, 82.63.020, and 82.63.045; adding new  
4 sections to chapter 82.63 RCW; and creating new sections.

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

6            NEW SECTION.    **Sec. 1.** The legislature has long recognized that  
7 high-wage, high-skilled jobs are vital to the economic health of the  
8 state and its citizens. The legislature also recognizes that targeted  
9 tax incentives encourage the formation of high-wage, high-skilled jobs.  
10 For that and related reasons, the legislature established the tax  
11 deferral program in chapter 82.63 RCW for high-technology research and  
12 development and pilot scale manufacturing. In doing so, the  
13 legislature ensured that the deferral applies to the construction or  
14 renovation of one or more buildings by an owner who engages in  
15 qualifying research and development or pilot scale manufacturing. The  
16 legislature also ensured that the deferral applies to owners who lease  
17 newly constructed or renovated buildings to one or more lessees that  
18 conduct qualifying research and development or pilot scale  
19 manufacturing, if the owner passes on the economic benefit of the

1 deferral to the lessee or lessees. However, current language could be  
2 interpreted to deny the deferral to multiple lessors of separate  
3 buildings leasing to a single qualifying lessee under the umbrella of  
4 one project and a single deferral application, unless the lessors form  
5 a joint venture or similar entity. Because the legislature did not  
6 intend to deny the deferral for such projects, the legislature by this  
7 act, amends chapter 82.63 RCW to clarify that the deferral applies to  
8 an otherwise qualifying project involving a single deferral application  
9 covering multiple lessors leasing separate buildings to a single  
10 qualifying lessee.

11 **Sec. 2.** RCW 82.63.010 and 2004 c 2 s 3 are each amended to read as  
12 follows:

13 Unless the context clearly requires otherwise, the definitions in  
14 this section apply throughout this chapter.

15 (1) "Advanced computing" means technologies used in the designing  
16 and developing of computing hardware and software, including  
17 innovations in designing the full spectrum of hardware from hand-held  
18 calculators to super computers, and peripheral equipment.

19 (2) "Advanced materials" means materials with engineered properties  
20 created through the development of specialized processing and synthesis  
21 technology, including ceramics, high value-added metals, electronic  
22 materials, composites, polymers, and biomaterials.

23 (3) "Applicant" means a person applying for a tax deferral under  
24 this chapter.

25 (4) "Biotechnology" means the application of technologies, such as  
26 recombinant DNA techniques, biochemistry, molecular and cellular  
27 biology, genetics and genetic engineering, cell fusion techniques, and  
28 new bioprocesses, using living organisms, or parts of organisms, to  
29 produce or modify products, to improve plants or animals, to develop  
30 microorganisms for specific uses, to identify targets for small  
31 molecule pharmaceutical development, or to transform biological systems  
32 into useful processes and products or to develop microorganisms for  
33 specific uses.

34 (5) "Department" means the department of revenue.

35 (6) "Electronic device technology" means technologies involving  
36 microelectronics; semiconductors; electronic equipment and

1 instrumentation; radio frequency, microwave, and millimeter  
2 electronics; optical and optic-electrical devices; and data and digital  
3 communications and imaging devices.

4 (7) "Eligible investment project" means an investment project which  
5 either initiates a new operation, or expands or diversifies a current  
6 operation by expanding, renovating, or equipping an existing facility.  
7 The lessor or owner of the qualified building is not eligible for a  
8 deferral unless:

9 (a) The underlying ownership of the buildings, machinery, and  
10 equipment vests exclusively in the same person; or

11 (b)(i) The lessor by written contract agrees to pass the economic  
12 benefit of the deferral to the lessee;

13 (ii) The lessee that receives the economic benefit of the deferral  
14 agrees in writing with the department to complete the annual survey  
15 required under RCW 82.63.020(2); and

16 (iii) The economic benefit of the deferral passed to the lessee is  
17 no less than the amount of tax deferred by the lessor and is evidenced  
18 by written documentation of any type of payment, credit, or other  
19 financial arrangement between the lessor or owner of the qualified  
20 building and the lessee.

21 (8) "Environmental technology" means assessment and prevention of  
22 threats or damage to human health or the environment, environmental  
23 cleanup, and the development of alternative energy sources.

24 (9) "Investment project" means an investment in qualified buildings  
25 or qualified machinery and equipment, including labor and services  
26 rendered in the planning, installation, and construction or improvement  
27 of the project.

28 (10) "Multiple qualified buildings" means qualified buildings  
29 leased to the same person when such structures: (a) Are located within  
30 a five-mile radius; and (b) the initiation of construction of each  
31 building begins within a sixty-month period.

32 (11) "Person" has the meaning given in RCW 82.04.030 and includes  
33 state universities as defined in RCW 28B.10.016.

34 ~~((11))~~ (12) "Pilot scale manufacturing" means design,  
35 construction, and testing of preproduction prototypes and models in the  
36 fields of biotechnology, advanced computing, electronic device  
37 technology, advanced materials, and environmental technology other than  
38 for commercial sale. As used in this subsection, "commercial sale"

1 excludes sales of prototypes or sales for market testing if the total  
2 gross receipts from such sales of the product, service, or process do  
3 not exceed one million dollars.

4 ~~((+12))~~ (13) "Qualified buildings" means construction of new  
5 structures, and expansion or renovation of existing structures for the  
6 purpose of increasing floor space or production capacity used for pilot  
7 scale manufacturing or qualified research and development, including  
8 plant offices and other facilities that are an essential or an integral  
9 part of a structure used for pilot scale manufacturing or qualified  
10 research and development. If a building ~~((is))~~ or buildings are used  
11 partly for pilot scale manufacturing or qualified research and  
12 development, and partly for other purposes, the applicable tax deferral  
13 shall be determined by apportionment of the costs of construction under  
14 rules adopted by the department. Such rules may include provisions for  
15 determining the amount of the deferral based on apportionment of costs  
16 of construction of an investment project consisting of a building or  
17 multiple buildings, where qualified research and development or pilot  
18 scale manufacturing activities are shifted within a building or from  
19 one building to another building.

20 ~~((+13))~~ (14) "Qualified machinery and equipment" means fixtures,  
21 equipment, and support facilities that are an integral and necessary  
22 part of a pilot scale manufacturing or qualified research and  
23 development operation. "Qualified machinery and equipment" includes:  
24 Computers; software; data processing equipment; laboratory equipment,  
25 instrumentation, and other devices used in a process of experimentation  
26 to develop a new or improved pilot model, plant process, product,  
27 formula, invention, or similar property; manufacturing components such  
28 as belts, pulleys, shafts, and moving parts; molds, tools, and dies;  
29 vats, tanks, and fermenters; operating structures; and all other  
30 equipment used to control, monitor, or operate the machinery. For  
31 purposes of this chapter, qualified machinery and equipment must be  
32 either new to the taxing jurisdiction of the state or new to the  
33 certificate holder, except that used machinery and equipment may be  
34 treated as qualified machinery and equipment if the certificate holder  
35 either brings the machinery and equipment into Washington or makes a  
36 retail purchase of the machinery and equipment in Washington or  
37 elsewhere.

1           (~~(14)~~) (15) "Qualified research and development" means research  
2 and development performed within this state in the fields of advanced  
3 computing, advanced materials, biotechnology, electronic device  
4 technology, and environmental technology.

5           (~~(15)~~) (16) "Recipient" means a person receiving a tax deferral  
6 under this chapter.

7           (~~(16)~~) (17) "Research and development" means activities performed  
8 to discover technological information, and technical and nonroutine  
9 activities concerned with translating technological information into  
10 new or improved products, processes, techniques, formulas, inventions,  
11 or software. The term includes exploration of a new use for an  
12 existing drug, device, or biological product if the new use requires  
13 separate licensing by the federal food and drug administration under  
14 chapter 21, C.F.R., as amended. The term does not include adaptation  
15 or duplication of existing products where the products are not  
16 substantially improved by application of the technology, nor does the  
17 term include surveys and studies, social science and humanities  
18 research, market research or testing, quality control, sale promotion  
19 and service, computer software developed for internal use, and research  
20 in areas such as improved style, taste, and seasonal design.

21           (~~(17)~~) (18)(a) "Initiation of construction" means the date that  
22 a building permit is issued under the building code adopted under RCW  
23 19.27.031 for:

24           (i) Construction of the qualified building, if the underlying  
25 ownership of the building vests exclusively with the person receiving  
26 the economic benefit of the deferral;

27           (ii) Construction of the qualified building, if the economic  
28 benefits of the deferral are passed to a lessee as provided in  
29 subsection (7) of this section; or

30           (iii) Tenant improvements for a qualified building, if the economic  
31 benefits of the deferral are passed to a lessee as provided in  
32 subsection (7) of this section.

33           (b) "Initiation of construction" does not include soil testing,  
34 site clearing and grading, site preparation, or any other related  
35 activities that are initiated before the issuance of a building permit  
36 for the construction of the foundation of the building.

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

1       **Sec. 3.** RCW 82.63.020 and 2004 c 2 s 4 are each amended to read as  
2 follows:

3       (1) Application for deferral of taxes under this chapter must be  
4 made before initiation of construction of, or acquisition of equipment  
5 or machinery for the investment project. In the case of an investment  
6 project involving multiple qualified buildings, applications must be  
7 made for, and before the initiation of construction of, each qualified  
8 building. The application shall be made to the department in a form  
9 and manner prescribed by the department. The application shall contain  
10 information regarding the location of the investment project, the  
11 applicant's average employment in the state for the prior year,  
12 estimated or actual new employment related to the project, estimated or  
13 actual wages of employees related to the project, estimated or actual  
14 costs, time schedules for completion and operation, and other  
15 information required by the department. The department shall rule on  
16 the application within sixty days.

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

21       (b) Applicants for deferral of taxes under this chapter shall  
22 (~~agree to~~) complete an annual survey. If the economic benefits of  
23 the deferral are passed to a lessee as provided in RCW 82.63.010(7),  
24 the lessee shall (~~agree to~~) complete the annual survey and the  
25 applicant is not required to complete the annual survey. The survey is  
26 due by March 31st of the year following the calendar year in which the  
27 investment project is certified by the department as having been  
28 operationally complete and the seven succeeding calendar years. The  
29 survey shall include the amount of tax deferred, the number of new  
30 products or research projects by general classification, and the number  
31 of trademarks, patents, and copyrights associated with activities at  
32 the investment project. The survey shall also include the following  
33 information for employment 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 deferral program, to be submitted at the  
8 same time as the survey.

9 (d) All information collected under this subsection, except the  
10 amount of the tax deferral taken, is deemed taxpayer information under  
11 RCW 82.32.330 and is not disclosable. Information on the amount of tax  
12 deferral taken is not subject to the confidentiality provisions of RCW  
13 82.32.330 and may be disclosed to the public upon request.

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

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

28 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.63 RCW  
29 to read as follows:

30 (1) In the case of multiple qualified buildings, if the lessee who  
31 will conduct the qualified research and development or pilot scale  
32 manufacturing within the multiple qualified buildings desires to treat  
33 the multiple qualified buildings as a single investment project, the  
34 lessee must make a preliminary election to treat the multiple qualified  
35 buildings as a single investment project. The lessee must make the  
36 preliminary election before a temporary certificate of occupancy, or  
37 its equivalent, is issued for any of the multiple qualified buildings.

1 (2)(a) A final election whether or not to treat the multiple  
2 qualified buildings as a single investment project must be made by the  
3 date that is the earlier of:

4 (i) Sixty months following the date that the lessee made the  
5 preliminary election under subsection (1) of this section; or

6 (ii) Thirty days after the issuance of the temporary certificate of  
7 occupancy, or its equivalent, for the last qualified building to be  
8 completed and that will be included in the final election.

9 (b) All buildings included in a final election to treat multiple  
10 qualified buildings as a single investment project must have been  
11 issued a temporary certificate of occupancy or its equivalent.

12 (c) Before the final election is made, the lessee may remove one or  
13 more of the qualified buildings included in the preliminary election  
14 from the investment project.

15 (d) When a qualified building for which a preliminary election has  
16 been made under subsection (1) of this section is, for any reason, not  
17 included in a final election to treat the multiple qualified buildings  
18 as a single investment project, the qualified building will be treated  
19 as an individual investment project under the original application for  
20 that building.

21 (e) If a final election is made not to treat the multiple qualified  
22 buildings as a single investment project or a final election is not  
23 made by the deadline in (a) of this subsection, the qualified buildings  
24 will each be treated as individual investment projects under the  
25 original applications for those buildings.

26 (3) When a final election is made to treat multiple qualified  
27 buildings as a single investment project, the department must review  
28 the investment project to determine whether to certify the investment  
29 project as being operationally complete. If the department certifies  
30 that an investment project is operationally complete, the certification  
31 is deemed to have occurred in the calendar year in which the final  
32 election is made.

33 (4) The department may not certify as operationally complete an  
34 investment project consisting of multiple qualifying buildings unless  
35 the lessee furnishes the department with a bond, letter of credit, or  
36 other security acceptable to the department in an amount equal to the  
37 repayment obligation as determined by the department. The department  
38 may decrease the secured amount each year as the repayment obligation



1 decreases under the provisions of RCW 82.63.045. If the lessee does  
2 not furnish the department with a bond, letter of credit, or other  
3 security acceptable to the department equal to the amount of deferred  
4 tax, the qualified buildings will each be treated as individual  
5 investment projects under the original applications for those  
6 buildings.

7 (5) The preliminary election and final election must be made in a  
8 form and manner prescribed by the department.

9 **Sec. 5.** RCW 82.63.045 and 2004 c 2 s 6 are each amended to read as  
10 follows:

11 (1) Except as provided in subsection (2) of this section, taxes  
12 deferred under this chapter need not be repaid.

13 (2)(a) If, on the basis of survey under RCW 82.63.020 or other  
14 information, the department finds that an investment project is used  
15 for purposes other than qualified research and development or pilot  
16 scale manufacturing at any time during the calendar year in which the  
17 investment project is certified by the department as having been  
18 operationally completed, or at any time during any of the seven  
19 succeeding calendar years, a portion of deferred taxes shall be  
20 immediately due according to the following schedule:

21	Year in which use occurs	% of deferred taxes due
22	1	100%
23	2	87.5%
24	3	75%
25	4	62.5%
26	5	50%
27	6	37.5%
28	7	25%
29	8	12.5%

30 (b) If a recipient of the deferral fails to complete the annual  
31 survey required under RCW 82.63.020 by the date due, 12.5 percent of  
32 the deferred tax shall be immediately due. If the economic benefits of  
33 the deferral are passed to a lessee as provided in RCW 82.63.010(7),  
34 the lessee (~~shall be~~) is responsible for payment to the extent the  
35 lessee has received the economic benefit.

1 (c) If an investment project is used for purposes other than  
2 qualified research and development or pilot scale manufacturing at any  
3 time during the calendar year in which the investment project is  
4 certified as having been operationally complete and the recipient of  
5 the deferral fails to complete the annual survey due under RCW  
6 82.63.020, the portion of deferred taxes immediately due is the amount  
7 on the schedule in (a) of this subsection. If the economic benefits of  
8 the deferral are passed to a lessee as provided in RCW 82.63.010(7),  
9 the lessee (~~shall be~~) is responsible for payment to the extent the  
10 lessee has received the economic benefit.

11 (3)(a) Notwithstanding subsection (2) of this section, in the case  
12 of an investment project consisting of multiple qualified buildings,  
13 the lessee is solely liable for payment of any deferred tax determined  
14 by the department to be due and payable under this section beginning on  
15 the date the department certifies that the project is operationally  
16 complete.

17 (b) This subsection does not relieve the lessors of its obligation  
18 to the lessee under RCW 82.63.010(7) to pass the economic benefit of  
19 the deferral to the lessee.

20 (4) The department shall assess interest at the rate provided for  
21 delinquent taxes, but not penalties, retroactively to the date of  
22 deferral. The debt for deferred taxes will not be extinguished by  
23 insolvency or other failure of the recipient. Transfer of ownership  
24 does not terminate the deferral. The deferral is transferred, subject  
25 to the successor meeting the eligibility requirements of this chapter,  
26 for the remaining periods of the deferral.

27 ~~((+4))~~ (5) Notwithstanding subsection (2) of this section,  
28 deferred taxes on the following need not be repaid:

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

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

34 NEW SECTION. Sec. 6. A new section is added to chapter 82.63 RCW  
35 to read as follows:

36 The department may adopt rules as may be necessary to administer  
37 this chapter.

1        NEW SECTION.    **Sec. 7.**    This act applies to deferral applications  
2    received by the department of revenue after June 30, 2007.

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