
SENATE BILL 6613

State of Washington

61st Legislature

2010 Regular Session

By Senators Kastama, Shin, Kilmer, and Sheldon; by request of Governor Gregoire

Read first time 01/19/10. Referred to Committee on Economic Development, Trade & Innovation.

1 AN ACT Relating to modifying the sales and use tax deferral program
2 for investment projects in rural counties; amending RCW 82.60.010,
3 82.60.020, 82.60.030, 82.60.040, 82.60.049, 82.60.060, 82.60.070,
4 82.32.600, 82.60.100, and 82.62.010; adding new sections to chapter
5 82.60 RCW; decodifying RCW 82.60.900 and 82.60.901; repealing RCW
6 82.60.050 and 82.60.110; providing an effective date; providing
7 expiration dates; and providing a contingent effective date.

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

9 **Sec. 1.** RCW 82.60.010 and 1985 c 232 s 1 are each amended to read
10 as follows:

11 The legislature finds that there are several areas in the state
12 that are characterized by very high levels of unemployment and poverty.
13 The (~~legislative~~[legislature]) legislature further finds that
14 economic stagnation is the primary cause of this high unemployment rate
15 and poverty; that new state policies are necessary in order to promote
16 economic stimulation and new employment opportunities in these
17 distressed areas; and that policies providing incentives for economic
18 growth in these distressed areas are essential. For these reasons, the
19 legislature (~~hereby~~) reestablishes a tax deferral program to be

1 effective solely in distressed (~~areas and under circumstances where~~
2 ~~the deferred tax payments are for investments or costs that result in~~
3 ~~the creation of a specified number of jobs~~) counties. The legislature
4 declares that this limited program serves the vital public purpose of
5 creating employment opportunities and reducing poverty in the
6 distressed (~~areas~~) counties of the state.

7 **Sec. 2.** RCW 82.60.020 and 2006 c 142 s 1 are each amended to read
8 as follows:

9 Unless the context clearly requires otherwise, the definitions in
10 this section apply throughout this chapter.

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

13 (2) "Department" means the department of revenue.

14 (3) "Distressed county" means a county that has an unemployment
15 rate, as determined by the employment security department, which is at
16 least twenty percent above the state average for the three calendar
17 years immediately preceding the year in which the list of distressed
18 counties is established or updated, as the case may be, as provided in
19 section 3 of this act.

20 (4) "Eligible area" means ((a)):

21 (a) Through June 30, 2010:

22 (i) A rural county as defined in RCW 82.14.370; or

23 (ii) A designated community empowerment zone approved under RCW
24 43.31C.020 or a county containing a community empowerment zone; and

25 (b) Beginning July 1, 2010, a distressed county.

26 ((+4)) (5)(a) "Eligible investment project" means an investment
27 project that is located, as of the date the application required by RCW
28 82.60.030 is received by the department, in an eligible area as defined
29 in subsection ((+3)) (4) of this section.

30 (b) (~~The lessor or owner of a qualified building is not eligible~~
31 ~~for a deferral unless:~~

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

34 (ii)(A) ~~The lessor by written contract agrees to pass the economic~~
35 ~~benefit of the deferral to the lessee;~~

36 (B) ~~The lessee that receives the economic benefit of the deferral~~

1 ~~agrees in writing with the department to complete the annual survey~~
2 ~~required under RCW 82.60.070; and~~

3 ~~(C) The economic benefit of the deferral passed to the lessee is no~~
4 ~~less than the amount of tax deferred by the lessor and is evidenced by~~
5 ~~written documentation of any type of payment, credit, or other~~
6 ~~financial arrangement between the lessor or owner of the qualified~~
7 ~~building and the lessee.~~

8 ~~(e))~~ "Eligible investment project" does not include any portion of
9 an investment project undertaken by a light and power business as
10 defined in RCW 82.16.010(~~(+5))~~ (4), other than that portion of a
11 cogeneration project that is used to generate power for consumption
12 within the manufacturing site of which the cogeneration project is an
13 integral part, or investment projects (~~(which))~~ that have already
14 received deferrals under this chapter.

15 ~~((+5))~~ (6) "Initiation of construction" has the same meaning as in
16 RCW 82.63.010.

17 (7) "Investment project" means an investment in qualified buildings
18 or qualified machinery and equipment, including labor and services
19 rendered in the planning, installation, and construction of the
20 project.

21 ~~((+6))~~ (8) "Manufacturing" means the same as defined in RCW
22 82.04.120. "Manufacturing" also includes computer programming, the
23 production of computer software, and other computer-related services,
24 the activities performed by research and development laboratories and
25 commercial testing laboratories, and the conditioning of vegetable
26 seeds.

27 ~~((+7))~~ (9) "Person" has the meaning given in RCW 82.04.030.

28 ~~((+8))~~ (10) "Qualified buildings" means construction of new
29 structures, and expansion or renovation of existing structures for the
30 purpose of increasing floor space or production capacity used for
31 manufacturing and research and development activities, including plant
32 offices and warehouses or other facilities for the storage of raw
33 material or finished goods if such facilities are an essential or an
34 integral part of a factory, mill, plant, or laboratory used for
35 manufacturing or research and development. If a building is used
36 partly for manufacturing or research and development and partly for
37 other purposes, the applicable tax deferral shall be determined by

1 apportionment of the costs of construction under rules adopted by the
2 department.

3 ~~((9) "Qualified employment position" means a permanent full-time~~
4 ~~employee employed in the eligible investment project during the entire~~
5 ~~tax year. The term "entire tax year" means a full-time position that~~
6 ~~is filled for a period of twelve consecutive months. The term "full-~~
7 ~~time" means at least thirty-five hours a week, four hundred fifty-five~~
8 ~~hours a quarter, or one thousand eight hundred twenty hours a year.~~

9 ~~(+10))~~ (11) "Qualified machinery and equipment" means all new
10 industrial and research fixtures, equipment, and support facilities
11 that are an integral and necessary part of a manufacturing or research
12 and development operation. "Qualified machinery and equipment"
13 includes: Computers; software; data processing equipment; laboratory
14 equipment; manufacturing components such as belts, pulleys, shafts, and
15 moving parts; molds, tools, and dies; operating structures; and all
16 equipment used to control or operate the machinery.

17 ~~((+11))~~ (12) "Recipient" means a person receiving a tax deferral
18 under this chapter.

19 ~~((+12))~~ (13) "Research and development" means the development,
20 refinement, testing, marketing, and commercialization of a product,
21 service, or process before commercial sales have begun. As used in
22 this subsection, "commercial sales" excludes sales of prototypes or
23 sales for market testing if the total gross receipts from such sales of
24 the product, service, or process do not exceed one million dollars.

25 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.60 RCW
26 to read as follows:

27 The department, with the assistance of the employment security
28 department, must establish a list of distressed counties effective July
29 1, 2010. The list of distressed counties is effective for a twenty-
30 four month period and must be updated by July 1st of the year that is
31 two calendar years after the list was established or last updated, as
32 the case may be.

33 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.60 RCW
34 to read as follows:

35 The lessor or owner of a qualified building is not eligible for a
36 deferral unless:

1 (1) The underlying ownership of the buildings, machinery, and
2 equipment vests exclusively in the same person; or

3 (2)(a) The lessor by written contract agrees to pass the economic
4 benefit of the deferral to the lessee;

5 (b) The lessee that receives the economic benefit of the deferral
6 agrees in writing with the department to complete the annual survey
7 required under RCW 82.60.070; and

8 (c) The economic benefit of the deferral passed to the lessee is no
9 less than the amount of tax deferred by the lessor and is evidenced by
10 written documentation of any type of payment, credit, or other
11 financial arrangement between the lessor or owner of the qualified
12 building and the lessee.

13 **Sec. 5.** RCW 82.60.030 and 1994 sp.s. c 1 s 2 are each amended to
14 read as follows:

15 (1) Application for deferral of taxes under this chapter must be
16 made before initiation of the construction of the investment project or
17 acquisition of equipment or machinery. The application (~~(shall)~~) must
18 be made to the department in a form and manner prescribed by the
19 department. The application (~~(shall)~~) must contain information
20 regarding the location of the investment project, the applicant's
21 average employment in the state for the prior year, estimated or actual
22 new employment related to the project, estimated or actual wages of
23 employees related to the project, estimated or actual costs, time
24 schedules for completion and operation, and other information required
25 by the department. The department (~~(shall)~~) must rule on the
26 application within sixty days.

27 (2) This section expires July 1, 2020.

28 **Sec. 6.** RCW 82.60.040 and 2004 c 25 s 4 are each amended to read
29 as follows:

30 (1) The department (~~(shall)~~) must issue a sales and use tax
31 deferral certificate for state and local sales and use taxes due under
32 chapters 82.08, 82.12, and 82.14 RCW on each eligible investment
33 project (~~(that is located in an eligible area as defined in RCW~~
34 ~~82.60.020)~~).

35 (2) The department (~~(shall)~~) must keep a running total of all
36 deferrals granted under this chapter during each fiscal biennium.

1 (3) This section expires July 1, (~~(2010)~~) 2020.

2 **Sec. 7.** RCW 82.60.049 and 2004 c 25 s 5 are each amended to read
3 as follows:

4 (~~(1)~~) (~~For the purposes of this section:~~

5 (~~(a)~~) "~~Eligible area~~" also means a designated community empowerment
6 zone approved under RCW 43.31C.020 or a county containing a community
7 empowerment zone.

8 (~~(b)~~) "~~Eligible investment project~~" also means an investment project
9 in an eligible area as defined in this section.

10 (~~(2)~~) In addition to the provisions of RCW 82.60.040, the
11 department shall issue a sales and use tax deferral certificate for
12 state and local sales and use taxes due under chapters 82.08, 82.12,
13 and 82.14 RCW, on each eligible investment project that is located in
14 an eligible area as defined in RCW 82.60.020(4)(a)(ii), if the
15 applicant establishes that at the time the project is operationally
16 complete:

17 (a) The applicant will hire at least one qualified employment
18 position for each seven hundred fifty thousand dollars of investment
19 for which a deferral is requested; and

20 (b) The positions will be filled by persons who at the time of hire
21 are residents of the community empowerment zone. As used in this
22 subsection, "resident" means the person makes his or her home in the
23 community empowerment zone. A mailing address alone is insufficient to
24 establish that a person is a resident for the purposes of this section.
25 The persons must be hired after the date the application is filed with
26 the department.

27 (~~(3)~~) (2) All other provisions and eligibility requirements of
28 this chapter apply to applicants eligible under this section.

29 (~~(4)~~) (3) The qualified employment position must be filled by the
30 end of the calendar year following the year in which the project is
31 certified as operationally complete. If a person does not meet the
32 requirements for qualified employment positions by the end of the
33 second calendar year following the year in which the project is
34 certified as operationally complete, all deferred taxes are immediately
35 due.

36 (4) For purposes of this section, "qualified employment position"
37 means a permanent full-time employee employed in the eligible

1 investment project during the entire tax year. The term "entire tax
2 year" means a full-time position that is filled for a period of twelve
3 consecutive months. The term "full-time" means at least thirty-five
4 hours a week, four hundred fifty-five hours a quarter, or one thousand
5 eight hundred twenty hours a year.

6 (5) This section does not apply to applications received after June
7 30, 2010.

8 **Sec. 8.** RCW 82.60.060 and 2000 c 106 s 5 are each amended to read
9 as follows:

10 (1) The recipient (~~shall~~) must begin paying the deferred taxes in
11 the third year after the date certified by the department as the date
12 on which the (~~construction~~) investment project has been operationally
13 completed. The first payment will be due on December 31st of the third
14 calendar year after such certified date, with subsequent annual
15 payments due on December 31st of the following four years with amounts
16 of payment scheduled as follows:

17	Repayment Year	% of Deferred Tax Repaid
18	1	10%
19	2	15%
20	3	20%
21	4	25%
22	5	30%

23 (2) The department may authorize an accelerated repayment schedule
24 upon request of the recipient.

25 (3) Interest (~~shall~~) may not be charged on any taxes deferred
26 under this chapter for the period of deferral, although all other
27 penalties and interest applicable to delinquent excise taxes may be
28 assessed and imposed for delinquent payments under this chapter. The
29 debt for deferred taxes will not be extinguished by insolvency or other
30 failure of the recipient. Transfer of ownership does not terminate the
31 deferral. The deferral is transferred, subject to the successor
32 meeting the eligibility requirements of this chapter, for the remaining
33 periods of the deferral.

1 **Sec. 9.** RCW 82.60.070 and 2004 c 25 s 7 are each amended to read
2 as follows:

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

7 (b) Each recipient of a deferral granted under this chapter after
8 June 30, 1994, (~~shall~~) must complete an annual survey. If the
9 economic benefits of the deferral are passed to a lessee as provided in
10 (~~RCW 82.60.020(4)~~) section 4 of this act, the lessee (~~shall agree~~
11 ~~to~~) must complete the annual survey and the applicant is not required
12 to complete the annual survey. The survey is due by March 31st of the
13 year following the calendar year in which the investment project is
14 certified by the department as having been operationally complete and
15 the seven succeeding calendar years. The survey shall include the
16 amount of tax deferred, the number of new products or research projects
17 by general classification, and the number of trademarks, patents, and
18 copyrights associated with activities at the investment project. The
19 survey (~~shall~~) must also include the following information for
20 employment positions in Washington:

21 (i) The number of total employment positions;

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

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

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

31 (c) As part of the survey, the department may request additional
32 information necessary to measure the results of, or determine
33 eligibility for, the deferral program, to be submitted at the same time
34 as the survey.

35 (d) All information collected under this subsection, except the
36 amount of the tax deferral taken, is deemed taxpayer information under
37 RCW 82.32.330 and is not disclosable. Information on the amount of tax

1 deferral taken is not subject to the confidentiality provisions of RCW
2 82.32.330 and may be disclosed to the public upon request.

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

8 (f) The department (~~shall~~) must also use the information to study
9 the tax deferral program authorized under this chapter. The department
10 (~~shall~~) must report to the legislature by December 1, (~~2009~~) 2019.
11 The report (~~shall~~) must measure the effect of the program on job
12 creation, the number of jobs created for residents of eligible areas,
13 company growth, the introduction of new products, the diversification
14 of the state's economy, growth in research and development investment,
15 the movement of firms or the consolidation of firms' operations into
16 the state, and such other factors as the department selects.

17 (2)(a) If, on the basis of a survey under this section or other
18 information, the department finds that an investment project is not
19 eligible for tax deferral under this chapter, the amount of deferred
20 taxes outstanding for the project (~~shall~~) will be immediately due.

21 (b) If a recipient of the deferral fails to complete the annual
22 survey required under subsection (1) of this section by the date due,
23 twelve and one-half percent of the deferred tax (~~shall~~) will be
24 immediately due. If the economic benefits of the deferral are passed
25 to a lessee as provided in (~~RCW 82.60.020(4)~~) section 4 of this act,
26 the lessee (~~shall be~~) is responsible for payment to the extent the
27 lessee has received the economic benefit.

28 (3) Notwithstanding any other subsection of this section, deferred
29 taxes need not be repaid on machinery and equipment for lumber and wood
30 products industries, and sales of or charges made for labor and
31 services, of the type which qualifies for exemption under RCW
32 82.08.02565 or 82.12.02565 to the extent the taxes have not been repaid
33 before July 1, 1995.

34 (4) Notwithstanding any other subsection of this section, deferred
35 taxes on the following need not be repaid:

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

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

3 **Sec. 10.** RCW 82.32.600 and 2009 c 461 s 8 are each amended to read
4 as follows:

5 (1) Persons required to file annual surveys or annual reports under
6 RCW 82.04.4452, 82.32.5351, 82.32.545, 82.32.610, 82.32.630, 82.82.020,
7 82.32.632, 82.60.070, or 82.74.040 must electronically file with the
8 department all surveys, reports, returns, and any other forms or
9 information the department requires in an electronic format as provided
10 or approved by the department. As used in this section, "returns" has
11 the same meaning as "return" in RCW 82.32.050.

12 (2) Any survey, report, return, or any other form or information
13 required to be filed in an electronic format under subsection (1) of
14 this section is not filed until received by the department in an
15 electronic format.

16 (3) The department may waive the electronic filing requirement in
17 subsection (1) of this section for good cause shown.

18 **Sec. 11.** RCW 82.60.100 and 1987 c 49 s 1 are each amended to read
19 as follows:

20 Applications, reports, and any other information received by the
21 department under this chapter (~~shall~~), except applications not
22 approved by the department, are not (~~be~~) confidential and (~~shall~~
23 ~~be~~) are subject to disclosure.

24 **Sec. 12.** RCW 82.62.010 and 2007 c 485 s 1 are each amended to read
25 as follows:

26 Unless the context clearly requires otherwise, the definitions in
27 this section apply throughout this chapter.

28 (1) "Applicant" means a person applying for a tax credit under this
29 chapter.

30 (2) "Department" means the department of revenue.

31 (3) "Eligible area" means (~~an area~~) a "rural county" as defined
32 in RCW (~~82.60.020~~) 82.14.370.

33 (4)(a) "Eligible business project" means manufacturing or research
34 and development activities which are conducted by an applicant in an
35 eligible area at a specific facility, provided the applicant's average

1 qualified employment positions at the specific facility will be at
2 least fifteen percent greater in the four consecutive full calendar
3 quarters after the calendar quarter during which the first qualified
4 employment position is filled than the applicant's average qualified
5 employment positions at the same facility in the four consecutive full
6 calendar quarters immediately preceding the calendar quarter during
7 which the first qualified employment position is filled.

8 (b) "Eligible business project" does not include any portion of a
9 business project undertaken by a light and power business as defined in
10 RCW 82.16.010(~~(+5+)~~) (4) or that portion of a business project creating
11 qualified full-time employment positions outside an eligible area.

12 (5) "First qualified employment position" means the first qualified
13 employment position filled for which a credit under this chapter is
14 sought.

15 (6) "Manufacturing" means the same as defined in RCW 82.04.120.
16 "Manufacturing" also includes computer programming, the production of
17 computer software, and other computer-related services, and the
18 activities performed by research and development laboratories and
19 commercial testing laboratories.

20 (7) "Person" has the meaning given in RCW 82.04.030.

21 (8)(a)(i) "Qualified employment position" means a permanent full-
22 time employee employed in the eligible business project during four
23 consecutive full calendar quarters.

24 (ii) For seasonal employers, "qualified employment position" also
25 includes the equivalent of a full-time employee in work hours for four
26 consecutive full calendar quarters.

27 (b) For purposes of this subsection, "full time" means a normal
28 work week of at least thirty-five hours.

29 (c) Once a permanent, full-time employee has been employed, a
30 position does not cease to be a qualified employment position solely
31 due to periods in which the position goes vacant, as long as:

32 (i) The cumulative period of any vacancies in that position is not
33 more than one hundred twenty days in the four-quarter period; and

34 (ii) During a vacancy, the employer is training or actively
35 recruiting a replacement permanent, full-time employee for the
36 position.

37 (9) "Recipient" means a person receiving tax credits under this
38 chapter.

1 (10) "Research and development" means the development, refinement,
2 testing, marketing, and commercialization of a product, service, or
3 process before commercial sales have begun. As used in this
4 subsection, "commercial sales" excludes sales of prototypes or sales
5 for market testing if the total gross receipts from such sales of the
6 product, service, or process do not exceed one million dollars.

7 (11) "Seasonal employee" means an employee of a seasonal employer
8 who works on a seasonal basis. For the purposes of this subsection and
9 subsection (12) of this section, "seasonal basis" means a continuous
10 employment period of less than twelve consecutive months.

11 (12) "Seasonal employer" means a person who regularly hires more
12 than fifty percent of its employees to work on a seasonal basis.

13 NEW SECTION. **Sec. 13.** RCW 82.60.900 and 82.60.901 are each
14 decodified.

15 NEW SECTION. **Sec. 14.** The following acts or parts of acts are
16 each repealed:

17 (1) RCW 82.60.050 (Expiration of RCW 82.60.030 and 82.60.040) and
18 2004 c 25 s 6, 1994 sp.s. c 1 s 7, 1993 sp.s. c 25 s 404, 1988 c 41 s
19 5, & 1985 c 232 s 10; and

20 (2) RCW 82.60.110 (Competing projects--Impact study) and 1998 c 245
21 s 169 & 1994 sp.s. c 1 s 8.

22 NEW SECTION. **Sec. 15.** Sections 1, 2, 4 through 8, and 11 through
23 14 of this act take effect July 1, 2010.

24 NEW SECTION. **Sec. 16.** Sections 9 and 10 of this act take effect
25 if the legislature does not enact Substitute House Bill No. 1597 as of
26 July 1, 2010.

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