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**SUBSTITUTE SENATE BILL 6646**

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**State of Washington**

**61st Legislature**

**2010 Regular Session**

**By** Senate Economic Development, Trade & Innovation (originally sponsored by Senators Kilmer, Zarelli, Kastama, Marr, Hobbs, Tom, McAuliffe, Shin, and Haugen; by request of Governor Gregoire)

READ FIRST TIME 02/05/10.

1       AN ACT Relating to business and occupation tax credits for job  
2 creation; amending RCW 82.62.010, 82.62.045, 82.62.050, and 82.32.650;  
3 adding a new section to chapter 82.04 RCW; creating a new section; and  
4 providing an effective date.

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

6       **Sec. 1.** RCW 82.62.010 and 2007 c 485 s 1 are each amended to read  
7 as follows:

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

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

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

13       (3) "Eligible area" means an area as defined in RCW 82.60.020.

14       (4)(a) "Eligible business project" means manufacturing or research  
15 and development activities which are conducted by an applicant in an  
16 eligible area at a specific facility, provided the applicant's average  
17 qualified employment positions at the specific facility will be at  
18 least (~~fifteen~~) ten percent greater in the four consecutive full  
19 calendar quarters after the calendar quarter during which the first

1 qualified employment position is filled than the applicant's average  
2 qualified employment positions at the same facility in the four  
3 consecutive full calendar quarters immediately preceding the calendar  
4 quarter during which the first qualified employment position is filled.

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

9 (5) "First qualified employment position" means the first qualified  
10 employment position filled for which a credit under this chapter is  
11 sought.

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

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

18 (8)(a)(i) "Qualified employment position" means a permanent full-  
19 time employee who had been a resident of an eligible area for the  
20 twelve months preceding the date of hire and is employed in the  
21 eligible business project during four consecutive full calendar  
22 quarters.

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

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

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

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

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

36 (9) "Recipient" means a person receiving tax credits under this  
37 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 **Sec. 2.** RCW 82.62.045 and 2007 c 485 s 4 are each amended to read  
14 as follows:

15 (1) For the purposes of this section "eligible area" also means a  
16 designated community empowerment zone approved under RCW 43.31C.020.

17 (2) An eligible business project located within an eligible area as  
18 defined in this section qualifies for a credit under this chapter for  
19 those employees who at the time of hire are residents of the community  
20 empowerment zone in which the project is located, if the (~~fifteen~~  
21 ~~percent—threshold~~) employment increase required under RCW  
22 82.62.010(4)(a) is met. As used in this subsection, "resident" means  
23 the person makes his or her home in the community empowerment zone or  
24 in the county in which the zone is located. A mailing address alone is  
25 insufficient to establish that a person is a resident for the purposes  
26 of this section.

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

29 **Sec. 3.** RCW 82.62.050 and 2007 c 485 s 5 are each amended to read  
30 as follows:

31 (1) Each recipient (~~shall~~) must submit a report to the department  
32 by the last day of the month immediately following the end of the four  
33 consecutive full calendar quarter period for which a credit under this  
34 chapter is earned. The report (~~shall~~) must contain information, as  
35 required by the department, from which the department may determine  
36 whether the recipient is meeting the requirements of this chapter. If

1 the recipient fails to submit a report or submits an inadequate report,  
2 the department may declare the amount of taxes for which a credit has  
3 been used to be immediately assessed and payable. The recipient must  
4 keep records, such as payroll records showing the date of hire and  
5 employment security reports, to verify eligibility under this section.

6 (2) If, on the basis of a report under this section or other  
7 information, the department finds that a (~~business project~~) recipient  
8 is not eligible for tax credit under this chapter for reasons other  
9 than failure to (~~create the required number of~~) increase the  
10 recipient's average qualified employment positions as required in RCW  
11 82.62.010(4)(a), the amount of taxes for which a credit has been used  
12 for the project (~~shall be~~) are immediately due.

13 (3) If, on the basis of a report under this section or other  
14 information, the department finds that a (~~business project~~) recipient  
15 has failed to (~~create the specified number of~~) increase the  
16 recipient's average qualified employment positions as required in RCW  
17 82.62.010(4)(a), the department (~~shall~~) must assess interest, but not  
18 penalties, on the credited taxes for which a credit has been used for  
19 the project. The interest (~~shall be~~) is assessed at the rate  
20 provided for delinquent excise taxes, (~~shall be~~) is assessed  
21 retroactively to the date of the tax credit, and (~~shall~~) accrues  
22 until the taxes for which a credit has been used are repaid.

23 NEW SECTION. Sec. 4. A new section is added to chapter 82.04 RCW  
24 to read as follows:

25 (1) Subject to the requirements and limits in this section,  
26 eligible small businesses are entitled to a credit against the tax due  
27 under this chapter. The credit equals two thousand dollars for each  
28 new qualified employment position that is maintained continually for a  
29 period of at least twelve consecutive months.

30 (2)(a) Except as otherwise provided in this subsection, a credit  
31 under this section may be claimed against taxes due under this chapter  
32 for the reporting period in which the new qualified employment position  
33 is initially filled, even if the person claiming the credit will not be  
34 able to determine whether it is an eligible small business until after  
35 the new qualified employment position is filled.

36 (b) Credit earned for new qualified employment positions initially

1 filled between July 1, 2010, and December 31, 2010, may not be claimed  
2 before January 1, 2011.

3 (c) Except as otherwise provided in this section, the credit may be  
4 carried over to subsequent reporting periods until used.

5 (3)(a) New qualified employment positions filled by a new hire are  
6 not eligible for the credit under this section if the new hire has  
7 been, during the twelve months preceding the date of hire, an  
8 independent contractor providing essentially the same work for which  
9 they were hired. Persons claiming the credit must maintain records  
10 sufficient to show that the eligibility requirement in this subsection  
11 (3)(a) has been complied with.

12 (b) New qualified employment positions filled by existing employees  
13 are eligible for the credit under this section only if the position  
14 vacated by the existing employee is filled by a new hire.

15 (c) Once a new qualified employment position has been filled, a  
16 position does not cease to be a new qualified employment position  
17 solely due to periods in which the position goes vacant, as long as:

18 (i) The cumulative period of any vacancies in that position is not  
19 more than one hundred twenty days in the twelve consecutive month  
20 period for which the position must be filled; and

21 (ii) During any vacancy, the employer is training or actively  
22 recruiting a replacement permanent, full-time employee for the  
23 position.

24 (4)(a) The credit may be claimed and applied only on tax returns  
25 due between January 1st and June 30th of each year.

26 (b) The credit may only be claimed on a return filed electronically  
27 with the department using the department's online tax filing service,  
28 unless the department grants a waiver for good cause shown. For  
29 purposes of this subsection, "good cause" has the same meaning as in  
30 RCW 82.32.080(8) (a) (i), (ii), (iii), and (vi), and (b).

31 (c) No refunds may be granted for credits under this section.

32 (d) New qualified employment positions are not eligible for a  
33 credit under this section if any other statute provides a credit to the  
34 employer for the filling of such employment positions.

35 (5) No application is necessary for the credit. The eligible  
36 business must keep records necessary for the department to verify  
37 eligibility under this section.

1           (6) Credits are available on a first-in-time basis. The department  
2 must disallow any credit, or portion of a credit, that would cause the  
3 total cumulative amount of credit claimed under this section by all  
4 eligible small businesses during any fiscal year to exceed ten million  
5 dollars. If this limitation is reached, the department must provide  
6 written notice to any person who has claimed tax credits in excess of  
7 the ten million dollar limitation in this subsection. The notice must  
8 indicate the amount of tax due and provide that the tax be paid within  
9 thirty days from the date of such notice. The department may not  
10 assess any penalties or interest on the amount due in the notice.  
11 However, if the full amount of tax due is not paid by the due date, the  
12 department must assess penalties and interest as provided in chapter  
13 82.32 RCW on the amount of unpaid tax. Interest must be assessed  
14 retroactively to the date the tax credit was claimed and accrues until  
15 the amount of tax due is paid.

16           (7)(a) A person must repay credit claimed under this section (i)  
17 for any new qualified employment position that was not maintained  
18 continually for a period of at least twelve consecutive months, except  
19 as provided in subsection (3)(c) of this section, or (ii) if, with  
20 respect to the credit, the person was not an eligible small business.

21           (b)(i) Except as provided in (b)(ii) of this subsection (7),  
22 interest as provided in chapter 82.32 RCW applies to taxes due under  
23 this subsection from the date the tax credit was claimed until the  
24 amount of tax due is paid.

25           (ii) Interest will not apply to taxes due under this subsection if  
26 (A) the taxpayer reports the amount due under this subsection on an  
27 amended return or as otherwise instructed by the department, (B) the  
28 amount due is paid in full by the taxpayer without having been assessed  
29 for such amount by the department, and (C) at the time the taxpayer  
30 reported the tax due under this subsection to the department, the  
31 taxpayer was not under audit by the department or had not previously  
32 been notified of an audit by the department, unless the amount due  
33 under this subsection is not within the scope of the ongoing or pending  
34 audit.

35           (c) Except as otherwise provided in this subsection (7)(c), no  
36 penalties apply to taxes due under this subsection.

37           (i) If the full amount of tax due under this subsection is not paid

1 by the due date of any notice issued by the department, or any  
2 extension of the due date granted by the department, penalties as  
3 provided in chapter 82.32 RCW apply to the amount of tax due.

4 (ii) If a penalty was imposed under RCW 82.32.090(1) on the  
5 original return for which the credit being repaid under this subsection  
6 was claimed, the amount due under this subsection is subject to the  
7 same penalty as was imposed on the original return.

8 (8) The employment security department must provide to the  
9 department such information needed by the department to verify  
10 eligibility under this section.

11 (9) A person claiming credit under this section must report to the  
12 department as provided in RCW 82.32.650.

13 (10) No credit under this section may be claimed after June 30,  
14 2013.

15 (11) For purposes of this section, the following definitions apply:

16 (a) "Eligible small business" means:

17 (i) A person whose gross income of the business from business  
18 conducted everywhere in the world is five million dollars or less for  
19 the calendar year immediately preceding the calendar year in which the  
20 new qualified employment position was initially filled, if the person  
21 engaged in business during the entire calendar year immediately  
22 preceding the calendar year in which the new qualified employment  
23 position was initially filled; or

24 (ii) A person whose gross income of the business from business  
25 conducted everywhere in the world is five million dollars or less for  
26 the twelve-month period beginning with the month immediately following  
27 the date that the new qualified employment position was initially  
28 filled, if the person did not engage in business during the entire  
29 calendar year immediately preceding the calendar year in which the new  
30 qualified employment position was initially filled.

31 (b) "New qualified employment position" means a permanent, full-  
32 time employment position that did not previously exist, which is  
33 initially filled on or after July 1, 2010, but before January 1, 2013.  
34 For purposes of this subsection (11)(b), "full time" means a normal  
35 work week of at least thirty-five hours.

36 **Sec. 5.** RCW 82.32.650 and 2006 c 112 s 6 are each amended to read  
37 as follows:

1 (1) The legislature finds that accountability and effectiveness are  
2 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 (2) Each person claiming a tax credit under RCW 82.04.449 (~~shall~~)  
6 or section 4 of this act must report information to the department by  
7 filing a complete annual survey. The survey is due by March 31st of  
8 the year following any calendar year in which a tax credit under RCW  
9 82.04.449 or section 4 of this act is taken. The department may extend  
10 the due date for timely filing of annual surveys under this section as  
11 provided in RCW 82.32.590. The survey (~~shall~~) must include the  
12 amount of tax credit taken. The survey (~~shall~~) must also include the  
13 following information for employment positions in Washington:

14 (a) The number of total employment positions;

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

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

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

24 The first survey filed under this subsection (~~shall~~) must also  
25 include information for the twelve-month period immediately before  
26 first use of a (~~tax incentive~~) credit under RCW 82.04.449 or section  
27 4 of this act.

28 (3) The department may request additional information necessary to  
29 measure the results of the credit programs, to be submitted at the same  
30 time as the survey.

31 (4) All information collected under this section, except the amount  
32 of the tax credit taken, is deemed taxpayer information under RCW  
33 82.32.330. Information on the amount of tax credit taken is not  
34 subject to the confidentiality provisions of RCW 82.32.330.

35 (5) If a person fails to submit an annual survey under subsection  
36 (2) of this section by the due date of the report or any extension  
37 under RCW 82.32.590, the department (~~shall~~) must declare the amount  
38 of taxes credited for the previous calendar year to be immediately due



1 and payable. The department (~~shall~~) must assess interest, but not  
2 penalties, on the amounts due under this section. The interest (~~shall~~  
3 ~~be~~) is assessed at the rate provided for delinquent taxes under this  
4 chapter, retroactively to the date the credit was claimed, and  
5 (~~shall~~) accrues until the taxes for which the credit was claimed are  
6 repaid. This information is not subject to the confidentiality  
7 provisions of RCW 82.32.330.

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

13 (7) The department (~~shall~~) must study the tax credit authorized  
14 in RCW 82.04.449. The department (~~shall~~) must submit a report to the  
15 finance committee of the house of representatives and the ways and  
16 means committee of the senate by December 1, 2011. The report  
17 (~~shall~~) must measure the effect of the credit on job creation, job  
18 retention, company growth, the movement of firms or the consolidation  
19 of firms' operations into the state, and such other factors as the  
20 department selects. No study by the department is required for the tax  
21 credit authorized in section 4 of this act.

22 NEW SECTION. Sec. 6. Sections 1 through 3 of this act apply with  
23 respect to applications for credit under chapter 82.62 RCW received by  
24 the department of revenue on or after July 1, 2010.

25 NEW SECTION. Sec. 7. This act takes effect July 1, 2010.

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