
SENATE BILL 6705

State of Washington

61st Legislature

2010 Regular Session

By Senator Kastama

Read first time 01/22/10. Referred to Committee on Economic Development, Trade & Innovation.

1 AN ACT Relating to modifying business and occupation tax credits;
2 amending RCW 82.04.4452, 82.04.448, 82.04.4483, and 82.62.030;
3 providing an effective date; and providing an expiration 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~~) is calculated as follows:

12 (a) Determine the greater of the amount of qualified research and
13 development expenditures of a person or eighty percent of amounts
14 received by a person other than a public educational or research
15 institution in compensation for the conduct of qualified research and
16 development;

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

1 ~~(e)~~) Multiply the amount determined under ~~((b))~~ (a) of this
2 subsection by the following:

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

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

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

10 (iv) For the calendar year ending December 31, 2009, the greater of
11 the person's average tax rate for that calendar year or 1.25 percent;

12 (v) For ~~((the calendar year ending December 31, 2010, and~~
13 ~~thereafter, 1.50 percent))~~ qualified research and development
14 expenditures conducted under contract with a public educational or
15 research institution or made in an innovation partnership zone.

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

24 ~~((3))~~ (4) Any person entitled to the credit provided in
25 subsection (2) of this section as a result of qualified research and
26 development conducted under contract may assign all or any portion of
27 the credit to the person contracting for the performance of the
28 qualified research and development.

29 ~~((4))~~ (5) The credit, including any credit assigned to a person
30 under subsection ~~((3))~~ (4) of this section, ~~((shall))~~ must be claimed
31 against taxes due for the same calendar year in which the qualified
32 research and development expenditures are incurred. The credit,
33 including any credit assigned to a person under subsection ~~((3))~~ (4)
34 of this section, for each calendar year shall not exceed the lesser of
35 two million dollars or the amount of tax otherwise due under this
36 chapter for the calendar year.

37 ~~((5))~~ (6) For any person claiming the credit, including any
38 credit assigned to a person under subsection ~~((3))~~ (4) of this

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

16 (~~(6)~~) (7)(a) The legislature finds that accountability and
17 effectiveness are important aspects of setting tax policy. In order to
18 make policy choices regarding the best use of limited state resources
19 the legislature needs information on how a tax incentive is used.

20 (b) A person claiming the credit (~~shall~~) must file a complete
21 annual survey with the department. The survey is due by March 31st
22 following any year in which a credit is claimed. The department may
23 extend the due date for timely filing of annual surveys under this
24 section as provided in RCW 82.32.590. The survey (~~shall~~) must
25 include the amount of the tax credit claimed, the qualified research
26 and development expenditures during the calendar year for which the
27 credit is claimed, the taxable amount during the calendar year for
28 which the credit is claimed, the number of new products or research
29 projects by general classification, the number of trademarks, patents,
30 and copyrights associated with the research and development activities
31 for which a credit was claimed, and whether the credit has been
32 assigned under subsection (~~(3)~~) (4) of this section and who assigned
33 the credit. The survey (~~shall~~) must also include the following
34 information for employment positions in Washington:

35 (i) The number of total employment positions;

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

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

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

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

11 (d)(i) All information collected under this subsection, except the
12 amount of the tax credit claimed, is deemed taxpayer information under
13 RCW 82.32.330. Information on the amount of tax credit claimed is not
14 subject to the confidentiality provisions of RCW 82.32.330 and may be
15 disclosed to the public upon request, except as provided in this
16 subsection (~~((+6+))~~) (7)(d). If the amount of the tax credit as reported
17 on the survey is different than the amount actually claimed on the
18 taxpayer's tax returns or otherwise allowed by the department, the
19 amount actually claimed or allowed may be disclosed.

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

25 (e) If a person fails to file a complete annual survey required
26 under this subsection with the department by the due date or any
27 extension under RCW 82.32.590, the person entitled to the credit
28 provided in subsection (2) of this section is not eligible to claim or
29 assign the credit provided in subsection (2) of this section in the
30 year the person failed to timely file a complete survey.

31 (~~((+7+))~~) (8) The department shall use the information from
32 subsection (~~((+6+))~~) (7) of this section to prepare summary descriptive
33 statistics by category. No fewer than three taxpayers (~~((shall))~~) may be
34 included in any category. The department shall report these statistics
35 to the legislature each year by September 1st.

36 (~~((+8+))~~) (9) The department (~~((shall))~~) must use the information from
37 subsection (~~((+6+))~~) (7) of this section to study the tax credit program
38 authorized under this section. The department (~~((shall))~~) must report to

1 the legislature by December 1, 2009, and December 1, 2013. The reports
2 (~~shall~~) must measure the effect of the program on job creation, the
3 number of jobs created for Washington residents, company growth, the
4 introduction of new products, the diversification of the state's
5 economy, growth in research and development investment, the movement of
6 firms or the consolidation of firms' operations into the state, and
7 such other factors as the department selects.

8 (~~(9)~~) (10) For the purpose of this section:

9 (a) "Average tax rate" means a person's total tax liability under
10 this chapter for the calendar year for which the credit is claimed
11 divided by the taxpayer's total taxable amount under this chapter for
12 the calendar year for which the credit is claimed.

13 (b) "Qualified research and development expenditures" means
14 operating expenses, including wages, compensation of a proprietor or a
15 partner in a partnership as determined under rules adopted by the
16 department, benefits, supplies, and computer expenses, directly
17 incurred in qualified research and development by a person claiming the
18 credit provided in this section. The term does not include amounts
19 paid to a person other than a public educational or research
20 institution to conduct qualified research and development. Nor does
21 the term include capital costs and overhead, such as expenses for land,
22 structures, or depreciable property.

23 (c) "Qualified research and development" (~~shall have~~) has the
24 same meaning as in RCW 82.63.010.

25 (d) "Research and development spending" means qualified research
26 and development expenditures plus eighty percent of amounts paid to a
27 person other than a public educational or research institution to
28 conduct qualified research and development.

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

34 (~~(10)~~) (11) This section expires January 1, 2015.

35 **Sec. 2.** RCW 82.04.448 and 2003 c 149 s 9 are each amended to read
36 as follows:

37 (1) Subject to the limits and provisions of this section, a credit

1 is authorized against the tax otherwise due under RCW 82.04.240(2) for
2 persons engaged in the business of manufacturing semiconductor
3 materials. For the purposes of this section "semiconductor materials"
4 has the same meaning as provided in RCW 82.04.240(2).

5 (2)(a) (~~The credit under this section shall equal three thousand~~
6 ~~dollars for each~~) For employment positions used in manufacturing
7 production that takes place in a new building exempt from sales and use
8 tax under RCW 82.08.965 and 82.12.965, the credit under this section
9 equals four thousand dollars for each employment position with wages
10 and benefits greater than fifty thousand dollars annually and two
11 thousand dollars for each employment position with wages and benefits
12 between thirty and fifty thousand dollars annually. A credit is earned
13 for the calendar year a person fills a position. Additionally a credit
14 is earned for each year the position is maintained over the subsequent
15 consecutive years, up to eight years. Those positions that are not
16 filled for the entire year are eligible for fifty percent of the credit
17 if filled less than six months, and the entire credit if filled more
18 than six months.

19 (b) To qualify for the credit, the manufacturing activity of the
20 person must be conducted at a new building that qualifies for the
21 exemption from sales and use tax under RCW 82.08.965 and 82.12.965.

22 (c) In those situations where a production building in existence on
23 the effective date of this section will be phased out of operation,
24 during which time employment at the new building at the same site is
25 increased, the person is eligible for credit for employment at the
26 existing building and new building, with the limitation that the
27 combined eligible employment not exceed full employment at the new
28 building. "Full employment" has the same meaning as in RCW 82.08.965.
29 The credit may not be earned until the commencement of commercial
30 production, as that term is used in RCW 82.08.965.

31 (3) No application is necessary for the tax credit. The person is
32 subject to all of the requirements of chapter 82.32 RCW. In no case
33 may a credit earned during one calendar year be carried over to be
34 credited against taxes incurred in a subsequent calendar year. No
35 refunds may be granted for credits under this section.

36 (4) If at any time the department finds that a person is not
37 eligible for tax credit under this section, the amount of taxes for
38 which a credit has been claimed (~~shall be~~) is immediately due. The

1 department (~~shall~~) must assess interest, but not penalties, on the
2 taxes for which the person is not eligible. The interest (~~shall be~~)
3 is assessed at the rate provided for delinquent excise taxes under
4 chapter 82.32 RCW, (~~shall be~~) is retroactive to the date the tax
5 credit was taken, and (~~shall~~) accrues until the taxes for which a
6 credit has been used are repaid.

7 (5) A person taking the credit under this section must report under
8 RCW 82.32.535.

9 (6) Credits may be taken after twelve years after the effective
10 date of this act, for those buildings at which commercial production
11 began before twelve years after the effective date of this act, subject
12 to all of the eligibility criteria and limitations of this section.

13 (7) This section expires twelve years after the effective date of
14 this act.

15 **Sec. 3.** RCW 82.04.4483 and 2004 c 25 s 1 are each amended to read
16 as follows:

17 (1) Subject to the limits and provisions of this section, a credit
18 is authorized against the tax otherwise due under this chapter for
19 persons engaged in a rural county in the business of manufacturing
20 computer software or programming, as those terms are defined in this
21 section.

22 (2) A person who partially or totally relocates a business from one
23 rural county to another rural county is eligible for any new qualifying
24 employment positions created as a result of the relocation but is not
25 eligible to receive credit for the jobs moved from one county to the
26 other.

27 (3)(a) To qualify for the credit, the qualifying activity of the
28 person must be conducted in a rural county (~~and~~), the new qualified
29 employment position must be located in the rural county, and the new
30 qualified employment position must be filled by an individual that has
31 been a resident of the rural county for a minimum of one year prior to
32 the hiring decision.

33 (b) If an activity is conducted both from a rural county and
34 outside of a rural county, the credit is available if at least ninety
35 percent of the qualifying activity is conducted within a rural county.
36 If the qualifying activity is a service taxable activity, the place

1 where the work is performed is the place at which the activity is
2 conducted.

3 (4)(a) The credit under this section (~~shall equal one thousand~~
4 ~~dollars~~) for each new qualified employment position created after
5 January 1, ((2004)) 2010, in an eligible area equals four thousand
6 dollars for positions with wages and benefits greater than fifty
7 thousand dollars annually and two thousand dollars for each qualified
8 employment position with wages and benefits between thirty and fifty
9 thousand dollars annually. A credit is earned for the calendar year
10 the person is hired to fill the position. Additionally a credit is
11 earned for each year the position is maintained over the subsequent
12 consecutive years, up to four years. The county must meet the
13 definition of a rural county at the time the position is filled. If
14 the county does not have a rural county status the following year or
15 years, the position is still eligible for the remaining years if all
16 other conditions are met.

17 (b) Participants who claimed credit under RCW 82.04.4456 for
18 qualified employment positions created before December 31, 2003, are
19 eligible to earn credit for each year the position is maintained over
20 the subsequent consecutive years, for up to four years, which four
21 years include any years claimed under RCW 82.04.4456. Those persons
22 who did not receive a credit under RCW 82.04.4456 before December 31,
23 2003, are not eligible to earn credit for qualified employment
24 positions created before December 31, 2003.

25 (c) Credit is authorized for new employees hired for new qualified
26 employment positions created on or after January 1, 2004. New
27 qualified employment positions filled by existing employees are
28 eligible for the credit under this section only if the position vacated
29 by the existing employee is filled by a new hire. A business that is
30 a sole proprietorship without any employees is equivalent to one
31 employee position and this type of business is eligible to receive
32 credit for one position.

33 (d) If a position is filled before July 1st, the position is
34 eligible for the full yearly credit for that calendar year. If it is
35 filled after June 30th, the position is eligible for half of the credit
36 for that calendar year.

37 (5) No application is necessary for the tax credit. The person
38 must keep records necessary for the department to verify eligibility

1 under this section. This information includes information relating to
2 description of qualifying activity conducted in the rural county and
3 outside the rural county by the person as well as detailed records on
4 positions and employees.

5 (6) If at any time the department finds that a person is not
6 eligible for tax credit under this section, the amount of taxes for
7 which a credit has been claimed (~~((shall be))~~) is immediately due. The
8 department (~~((shall))~~) must assess interest, but not penalties, on the
9 taxes for which the person is not eligible. The interest (~~((shall be))~~)
10 is assessed at the rate provided for delinquent excise taxes under
11 chapter 82.32 RCW, (~~((shall be))~~) is assessed retroactively to the date
12 the tax credit was taken, and (~~((shall))~~) accrues until the taxes for
13 which a credit has been used are repaid.

14 (7) The credit under this section may be used against any tax due
15 under this chapter, but in no case may a credit earned during one
16 calendar year be carried over to be credited against taxes incurred in
17 a subsequent calendar year. A person is not eligible to receive a
18 credit under this section if the person is receiving credit for the
19 same position under chapter 82.62 RCW or RCW 82.04.44525 or is taking
20 a credit under this chapter for information technology help desk
21 services conducted from a rural county. No refunds may be granted for
22 credits under this section.

23 (8) Transfer of ownership does not affect credit eligibility.
24 However, the successive credits are available to the successor for
25 remaining periods in the five years only if the eligibility conditions
26 of this section are met.

27 (9) A person taking tax credits under this section (~~((shall))~~) must
28 make an annual report to the department. The report shall be in a
29 letter form and (~~((shall))~~) must include the following information:
30 Number of positions for which credit is being claimed, type of position
31 for which credit is being claimed, type of activity in which the person
32 is engaged in the county, how long the person has been located in the
33 county, and taxpayer name and registration number. The report must be
34 filed by January 30th of each year for which credit was claimed during
35 the previous year. Failure to file a report will not result in the
36 loss of eligibility under this section. However, the department,
37 through its research division, (~~((shall))~~) must contact taxpayers who
38 have not filed the report and obtain the data from the taxpayer or

1 assist the taxpayer in the filing of the report, so that the data and
2 information necessary to measure the program's effectiveness is
3 maintained.

4 (10) As used in this section:

5 (a) "Computer software" has the meaning as defined in RCW 82.04.215
6 after June 30, 2004, and includes "software" as defined in RCW
7 82.04.215 before July 1, 2004.

8 (b) "Manufacturing" means the same as "to manufacture" under RCW
9 82.04.120. Manufacturing includes the activities of both manufacturers
10 and processors for hire.

11 (c) "Programming" means the activities that involve the creation or
12 modification of computer software, as that term is defined in this
13 chapter, and that are taxable as a service under RCW 82.04.290(2) or as
14 a retail sale under RCW 82.04.050.

15 (d) "Qualifying activity" means manufacturing of computer software
16 or programming.

17 (e) "Qualified employment position" means a permanent full-time
18 position doing programming of computer software or manufacturing of
19 computer software. This excludes administrative, professional,
20 service, executive, and other similar positions. If an employee is
21 either voluntarily or involuntarily separated from employment, the
22 employment position is considered filled on a full-time basis if the
23 employer is either training or actively recruiting a replacement
24 employee. Full-time means a position for at least thirty-five hours a
25 week.

26 (f) "Rural county" means the same as in RCW 82.14.370.

27 (11) No credit may be taken or accrued under this section on or
28 after January 1, (~~(2011)~~) 2013.

29 (12) This section expires January 1, (~~(2011)~~) 2013.

30 **Sec. 4.** RCW 82.62.030 and 2007 c 485 s 3 are each amended to read
31 as follows:

32 (1)(a) A person (~~(shall be)~~) is allowed a credit against the tax
33 due under chapter 82.04 RCW as provided in this section. The credit
34 (~~(shall)~~) equals: (i) Four thousand dollars for each qualified
35 employment position with wages and benefits greater than (~~(forty)~~)
36 fifty thousand dollars annually that is directly created in an eligible
37 business project and (ii) two thousand dollars for each qualified

1 employment position with wages and benefits (~~less than or equal to~~
2 ~~forty~~) between thirty and fifty thousand dollars annually that is
3 directly created in an eligible business project.

4 (b) For purposes of calculating the amount of credit under (a) of
5 this subsection with respect to qualified employment positions as
6 defined in RCW 82.62.010(8)(a)(ii):

7 (i) In determining the number of qualified employment positions, a
8 fractional amount is rounded down to the nearest whole number; and

9 (ii) Wages and benefits for each qualified employment position
10 (~~shall be~~) are equal to the quotient derived by dividing: (A) The
11 sum of the wages and benefits earned for the four consecutive full
12 calendar quarter period for which a credit under this chapter is earned
13 by all of the person's new seasonal employees hired during that period;
14 by (B) the number of qualified employment positions plus any fractional
15 amount subject to rounding as provided under (b)(i) of this subsection.
16 For purposes of this chapter, a credit is earned for the four
17 consecutive full calendar quarters after the calendar quarter during
18 which the first qualified employment position is filled.

19 (c) To qualify for the credit under this section, the new qualified
20 employment position must be filled by an individual that has been a
21 resident of the rural county for a minimum of one year prior to the
22 hiring decision.

23 (2) The department (~~shall~~) must keep a running total of all
24 credits allowed under this chapter during each fiscal year. The
25 department (~~shall~~) may not allow any credits which would cause the
26 total to exceed seven million five hundred thousand dollars in any
27 fiscal year. If all or part of an application for credit is disallowed
28 under this subsection, the disallowed portion (~~shall~~) must be carried
29 over to the next fiscal year. However, the carryover into the next
30 fiscal year is only permitted to the extent that the cap for the next
31 fiscal year is not exceeded.

32 (3) No recipient may use the tax credits to decertify a union or to
33 displace existing jobs in any community in the state.

34 (4) The credit may be used against any tax due under chapter 82.04
35 RCW, and may be carried over until used. No refunds may be granted for
36 credits under this section.

1 NEW SECTION. **Sec. 5.** Section 1 of this act takes effect July 1,
2 2010.

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