

ESB 5843 - H COMM AMD
By Committee on Finance

ADOPTED AS AMENDED 04/26/2013

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 82.32 RCW
4 to read as follows:

5 (1) Except as otherwise provided in this section, every bill
6 enacting a new tax preference expires on the first day of the calendar
7 year that is subsequent to the calendar year that is five years from
8 the effective date of the bill. With respect to any property tax
9 exemption, the exemption does not apply to taxes levied for collection
10 beginning in the calendar year that is subsequent to the calendar year
11 that is five years from the effective date of the bill.

12 (2) Subsection (1) of this section does not apply if legislation
13 creating a new tax preference includes an expiration date for the new
14 tax preference.

15 (3) Subsection (1) of this section does not apply to any existing
16 tax preference that is amended to clarify an ambiguity or correct a
17 technical inconsistency.

18 (4) For the purposes of this section, the following definitions
19 apply:

20 (a) "New tax preference" means a tax preference that initially took
21 effect after August 1, 2013, or a tax preference in effect as of August
22 1, 2013, that is expanded or extended after August 1, 2013.

23 (b) "Tax preference" has the same meaning as in RCW 43.136.021 with
24 respect to any state tax under this title and Title 84 RCW.

25 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.32 RCW
26 to read as follows:

27 (1) As provided in this section, every bill enacting a new tax
28 preference must include a tax preference performance statement.

1 (2) A tax preference performance statement must state the
2 legislative purpose for the new tax preference. The tax preference
3 performance statement must indicate one or more of the following
4 general categories, by reference to the applicable category specified
5 in this subsection, as the legislative purpose of the new tax
6 preference:

7 (a) Tax preferences intended to induce certain designated behavior
8 by taxpayers;

9 (b) Tax preferences intended to improve industry competitiveness;

10 (c) Tax preferences intended to create or retain jobs;

11 (d) Tax preferences intended to reduce structural inefficiencies in
12 the tax structure; or

13 (e) Tax preferences intended to provide tax relief for certain
14 businesses or individuals.

15 (3) In addition to identifying the general legislative purpose of
16 the tax preference under subsection (2) of this section, the tax
17 preference performance statement must provide additional detailed
18 information regarding the legislative purpose of the new tax
19 preference.

20 (4) A new tax preference performance statement must specify clear,
21 relevant, and ascertainable metrics and data requirements that allow
22 the joint legislative audit and review committee to measure the
23 effectiveness of the new tax preference in achieving the purpose
24 designated under subsection (2) of this section.

25 (5) If the tax preference performance statement for a new tax
26 preference indicates a legislative purpose described in subsection
27 (2)(b) or (c) of this section, any taxpayer claiming the new tax
28 preference must file an annual survey in accordance with RCW 82.32.585.

29 (6) Taxpayers claiming a new tax preference impacting any tax under
30 this title must report the amount of the tax preference claimed by the
31 taxpayer to the department as part of the taxpayer's regular tax
32 reporting responsibilities under this chapter. For new tax preferences
33 allowing certain types of gross income of the business to be excluded
34 from business and occupation taxation, the tax return must explicitly
35 report the amount of the exclusion, regardless of whether it is
36 structured as an exemption or deduction. For a new sales and use tax
37 exemption, the total taxable sales subject to the exemption claimed by

1 the taxpayer must be reported on an addendum to the taxpayer's tax
2 return.

3 (7) The amount claimed by a taxpayer for any new tax preference, as
4 well as the taxpayer's gross income and taxable income, is subject to
5 public disclosure and is not considered confidential tax information
6 under RCW 82.32.330. The department may waive the public disclosure
7 requirement under this subsection for good cause. Good cause may be
8 demonstrated by a reasonable showing of economic harm to a taxpayer if
9 the information specified under this subsection is disclosed.

10 (8) If a new tax preference does not include the information
11 required under subsections (2) through (4) of this section, the joint
12 legislative audit and review committee is not required to perform a tax
13 preference review under chapter 43.136 RCW, and it is legislatively
14 presumed that it is the intent of the legislature to allow the new tax
15 preference to expire upon its scheduled expiration date.

16 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.136 RCW
17 to read as follows:

18 By January 1, 2015, and in compliance with RCW 43.01.036, the joint
19 legislative audit and review committee must provide a report to the
20 appropriate fiscal committees of the legislature that makes
21 recommendations on the appropriate data and metrics that should be
22 included in a tax preference performance statement to evaluate a new
23 tax preference. The committee must consult with the department of
24 revenue and legislative fiscal staff in the preparation of the report.
25 The committee's recommendation must identify the appropriate data and
26 metrics for each of the general categories provided in section 2(2) of
27 this act.

28 **Sec. 4.** RCW 82.32.585 and 2011 c 23 s 6 are each amended to read
29 as follows:

30 (1)(a) Every person claiming a tax preference that requires a
31 survey under this section must file a complete annual survey with the
32 department.

33 (i) Except as provided in (a)(ii) of this subsection, the survey is
34 due by April 30th of the year following any calendar year in which a
35 person becomes eligible to claim the tax preference that requires a
36 survey under this section.

1 (ii) If the tax preference is a deferral of tax, the first survey
2 must be filed by April 30th of the calendar year following the calendar
3 year in which the investment project is certified by the department as
4 operationally complete, and a survey must be filed by April 30th of
5 each of the seven succeeding calendar years.

6 (b) The department may extend the due date for timely filing of
7 annual surveys under this section as provided in RCW 82.32.590.

8 (2)(a) The survey must include the amount of the tax preference
9 claimed for the calendar year covered by the survey. For a person that
10 claimed an exemption provided in RCW 82.08.025651 or 82.12.025651, the
11 survey must include the amount of tax exempted under those sections in
12 the prior calendar year for each general area or category of research
13 and development for which exempt machinery and equipment and labor and
14 services were acquired in the prior calendar year.

15 (b) The survey must also include the following information for
16 employment positions in Washington, not to include names of employees,
17 for the year that the tax preference was claimed:

18 (i) The number of total employment positions;

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

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

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

28 (c) For persons claiming the tax preference provided under chapter
29 82.60 or 82.63 RCW, the survey must also include 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.

33 (d) For persons claiming the credit provided under RCW 82.04.4452,
34 the survey must also include the qualified research and development
35 expenditures during the calendar year for which the credit was claimed,
36 the taxable amount during the calendar year for which the credit was
37 claimed, the number of new products or research projects by general
38 classification, the number of trademarks, patents, and copyrights

1 associated with the research and development activities for which the
2 credit was claimed, and whether the tax preference has been assigned,
3 and who assigned the credit. The definitions in RCW 82.04.4452 apply
4 to this subsection (2)(d).

5 (e) For persons claiming the tax exemption in RCW 82.08.025651 or
6 82.12.025651, the survey must also include the general areas or
7 categories of research and development for which machinery and
8 equipment and labor and services were acquired, exempt from tax under
9 RCW 82.08.025651 or 82.12.025651, in the prior calendar year.

10 (f) If the person filing a survey under this section did not file
11 a survey with the department in the previous calendar year, the survey
12 filed under this section must also include the employment, wage, and
13 benefit information required under (b)(i) through (iv) of this
14 subsection for the calendar year immediately preceding the calendar
15 year for which a tax preference was claimed.

16 (3) As part of the annual survey, the department may request
17 additional information necessary to measure the results of, or
18 determine eligibility for, the tax preference and include additional
19 information necessary for the joint legislative audit and review
20 committee to evaluate a new tax preference, as defined in section 1 of
21 this section.

22 (4) All information collected under this section, except the
23 information required in subsection (2)(a) of this section, is deemed
24 taxpayer information under RCW 82.32.330. Information required in
25 subsection (2)(a) of this section is not subject to the confidentiality
26 provisions of RCW 82.32.330 and may be disclosed to the public upon
27 request, except as provided in subsection (5) of this section. If the
28 amount of the tax preference claimed as reported on the survey is
29 different than the amount actually claimed or otherwise allowed by the
30 department based on the taxpayer's excise tax returns or other
31 information known to the department, the amount actually claimed or
32 allowed may be disclosed. For any new tax preference, as defined in
33 section 1 of this act, all information collected under this section may
34 be disclosed to the public upon request and is not subject to the
35 confidentiality provisions of RCW 82.32.330.

36 (5) Persons for whom the actual amount of the tax reduced or saved
37 is less than ten thousand dollars during the period covered by the

1 survey may request the department to treat (~~the amount of the tax~~
2 ~~reduction or savings~~) all information collected under this section as
3 confidential under RCW 82.32.330.

4 (6)(a) Except as otherwise provided by law, if a person claims a
5 tax preference that requires an annual survey under this section but
6 fails to submit a complete annual survey by the due date of the survey
7 or any extension under RCW 82.32.590, the department must declare the
8 amount of the tax preference claimed for the previous calendar year to
9 be immediately due. If the tax preference is a deferral of tax, twelve
10 and one-half percent of the deferred tax is immediately due. If the
11 economic benefits of the deferral are passed to a lessee, the lessee is
12 responsible for payment to the extent the lessee has received the
13 economic benefit.

14 (b) The department must assess interest, but not penalties, on the
15 amounts due under this subsection. The interest must be assessed at
16 the rate provided for delinquent taxes under this chapter,
17 retroactively to the date the tax preference was claimed, and accrues
18 until the taxes for which the tax preference was claimed are repaid.
19 Amounts due under this subsection are not subject to the
20 confidentiality provisions of RCW 82.32.330 and may be disclosed to the
21 public upon request.

22 (7) The department must use the information from this section to
23 prepare summary descriptive statistics by category. No fewer than
24 three taxpayers may be included in any category. The department must
25 report these statistics to the legislature each year by October 1st.

26 (8) For the purposes of this section:

27 (a) "Person" has the meaning provided in RCW 82.04.030 and also
28 includes the state and its departments and institutions.

29 (b) "Tax preference" has the meaning provided in RCW 43.136.021 and
30 includes only the tax preferences requiring a survey under this
31 section.

32 NEW SECTION. **Sec. 5.** A new section is added to chapter 82.04 RCW
33 to read as follows:

34 See section 1 of this act for the expiration date of new tax
35 preferences for the tax imposed under this chapter.

1 NEW SECTION. **Sec. 6.** A new section is added to chapter 82.08 RCW
2 to read as follows:

3 See section 1 of this act for the expiration date of new tax
4 preferences for the tax imposed under this chapter.

5 NEW SECTION. **Sec. 7.** A new section is added to chapter 82.12 RCW
6 to read as follows:

7 See section 1 of this act for the expiration date of new tax
8 preferences for the tax imposed under this chapter.

9 NEW SECTION. **Sec. 8.** A new section is added to chapter 82.14B RCW
10 to read as follows:

11 See section 1 of this act for the expiration date of new tax
12 preferences for the tax imposed under this chapter.

13 NEW SECTION. **Sec. 9.** A new section is added to chapter 82.18 RCW
14 to read as follows:

15 See section 1 of this act for the expiration date of new tax
16 preferences for the tax imposed under this chapter.

17 NEW SECTION. **Sec. 10.** A new section is added to chapter 82.19 RCW
18 to read as follows:

19 See section 1 of this act for the expiration date of new tax
20 preferences for the tax imposed under this chapter.

21 NEW SECTION. **Sec. 11.** A new section is added to chapter 82.21 RCW
22 to read as follows:

23 See section 1 of this act for the expiration date of new tax
24 preferences for the tax imposed under this chapter.

25 NEW SECTION. **Sec. 12.** A new section is added to chapter 82.23A
26 RCW to read as follows:

27 See section 1 of this act for the expiration date of new tax
28 preferences for the tax imposed under this chapter.

29 NEW SECTION. **Sec. 13.** A new section is added to chapter 82.23B
30 RCW to read as follows:

1 See section 1 of this act for the expiration date of new tax
2 preferences for the tax imposed under this chapter.

3 NEW SECTION. **Sec. 14.** A new section is added to chapter 82.24 RCW
4 to read as follows:

5 See section 1 of this act for the expiration date of new tax
6 preferences for the tax imposed under this chapter.

7 NEW SECTION. **Sec. 15.** A new section is added to chapter 82.26 RCW
8 to read as follows:

9 See section 1 of this act for the expiration date of new tax
10 preferences for the tax imposed under this chapter.

11 NEW SECTION. **Sec. 16.** A new section is added to chapter 82.27 RCW
12 to read as follows:

13 See section 1 of this act for the expiration date of new tax
14 preferences for the tax imposed under this chapter.

15 NEW SECTION. **Sec. 17.** A new section is added to chapter 82.29A
16 RCW to read as follows:

17 See section 1 of this act for the expiration date of new tax
18 preferences for the tax imposed under this chapter.

19 NEW SECTION. **Sec. 18.** A new section is added to chapter 82.36 RCW
20 to read as follows:

21 See section 1 of this act for the expiration date of new tax
22 preferences for the tax imposed under this chapter.

23 NEW SECTION. **Sec. 19.** A new section is added to chapter 82.38 RCW
24 to read as follows:

25 See section 1 of this act for the expiration date of new tax
26 preferences for the tax imposed under this chapter.

27 NEW SECTION. **Sec. 20.** A new section is added to chapter 82.42 RCW
28 to read as follows:

29 See section 1 of this act for the expiration date of new tax
30 preferences for the tax imposed under this chapter.

1 NEW SECTION. **Sec. 21.** A new section is added to chapter 82.45 RCW
2 to read as follows:

3 See section 1 of this act for the expiration date of new tax
4 preferences for the tax imposed under this chapter.

5 NEW SECTION. **Sec. 22.** A new section is added to chapter 82.48 RCW
6 to read as follows:

7 See section 1 of this act for the expiration date of new tax
8 preferences for the tax imposed under this chapter.

9 NEW SECTION. **Sec. 23.** A new section is added to chapter 82.49 RCW
10 to read as follows:

11 See section 1 of this act for the expiration date of new tax
12 preferences for the tax imposed under this chapter.

13 NEW SECTION. **Sec. 24.** A new section is added to chapter 82.64 RCW
14 to read as follows:

15 See section 1 of this act for the expiration date of new tax
16 preferences for the tax imposed under this chapter."

17 Correct the title.

EFFECT: Creates a 5-year expiration date for new tax preferences
that do not separately specify an expiration date.

Requires all new tax preferences to contain a tax preference
performance statement, which requires the following elements: (1) The
statement must designate a general purpose of the tax preference, as
provided in the statute; (2) the statement must provide additional
detailed information about the legislative purpose of the new tax
preference; and (3) the statement must provide metrics and data
requirements that allow JLARC and the legislature to evaluate how
effectively the tax preference is achieving its intended purpose.

Requires taxpayers claiming a new tax preference with a designated
purpose of creating jobs or improving industry competitiveness to file
an annual survey. Requires taxpayers claiming new tax preferences to
report the amount claimed to the DOR and makes the information subject
to public disclosure. Allows the DOR to waive the public disclosure
requirement for good cause, which may be demonstrated by a reasonable
showing of economic harm if the information is publicly released.
Requires JLARC, by January 1, 2015, to make recommendations on the
types of metrics and data that should be required for the various
general designated purposes for tax preferences.

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