
SUBSTITUTE HOUSE BILL 1693

State of Washington

63rd Legislature

2013 Regular Session

By House Technology & Economic Development (originally sponsored by Representatives Habib, Magendanz, Morris, Tarleton, and Ryu)

READ FIRST TIME 02/21/13.

1 AN ACT Relating to providing tax relief for new businesses in high
2 growth business sectors; amending RCW 82.32.585; adding new sections to
3 chapter 82.04 RCW; creating a new section; providing an expiration
4 date; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** New start-up businesses in high-growth
7 economic sectors have significant potential to be future economic
8 engines for the state, positioning Washington to be a national leader
9 in the new knowledge economy. However, during the first few years of
10 development, start-ups can be stunted by the imposition of the business
11 and occupation tax. This tax, which is imposed on gross receipts,
12 tends to have a disproportionately negative impact on new businesses
13 that have yet to achieve profitability. The intent of the legislature
14 in exempting new businesses in certain key sectors of the knowledge
15 economy from the business and occupation tax is to create an economic
16 development tool that will encourage and facilitate the location and
17 development of start-ups in Washington, encouraging entrepreneurs
18 inside and outside of the state to start new businesses here, in a
19 climate that can help them grow.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.04 RCW
2 to read as follows:

3 (1) A new business, in computing the tax due under this chapter,
4 may deduct from the measure of the tax up to one million dollars in
5 each full calendar year, and a prorated portion for each partial
6 calendar year. The deduction is only allowed within the first thirty-
7 six months of operation and after all other deductions have been
8 applied.

9 (2) A business is a new business eligible for the deduction
10 provided in subsection (1) of this section if all of the following
11 conditions are met:

12 (a) The business has not been in operation for longer than thirty-
13 six months and has timely registered with the department as required
14 under RCW 82.32.030. For purposes of this section, a business begins
15 operating on the first day of the first month in which it has gross
16 income of the business, whether or not that income is taxable or
17 subject to tax in Washington;

18 (b) During the entire tax period in which any portion of the
19 deduction is claimed, the business has at least four permanent full-
20 time employees who were residents of this state at the time of hiring;
21 and

22 (c) During the entire tax period in which any portion of the
23 deduction is claimed, the business is exclusively engaged in research,
24 development, design, engineering, or manufacturing of one or more of
25 the following:

26 (i) Computers, mobile devices, and related peripherals;

27 (ii) Software and interactive gaming development, excluding
28 computer system design and services related to setting up networks and
29 custom software;

30 (iii) Biotechnology, as defined in RCW 82.75.010(2);

31 (iv) Biotechnology products, as defined in RCW 82.75.010(3);

32 (v) Electronic medical or navigational testing, measurement, or
33 control instruments;

34 (vi) Pharmaceuticals;

35 (vii) Environmental technology, as defined in RCW 82.63.010(8);

36 (viii) Aerospace products, as defined in RCW 82.08.975;

37 (ix) Solar energy system components, as defined in RCW 82.04.294;

38 (x) Semiconductor materials and other electronic components;

1 (xi) Internet-based data storage and search technologies; and
2 (xii) Industrial machinery for use in research, development,
3 design, engineering, manufacturing, or production of any of (c)(i)
4 through (xi) of this subsection.

5 (3) A business eligible for the deduction provided in this section
6 must be a new business enterprise in Washington, which does not include
7 a business that:

8 (a) Has been reincorporated, restructured, reorganized, or
9 transferred, in whole or in part, from a business previously engaging
10 in activities that are substantially similar to those engaged in by the
11 new business;

12 (b) Is a new branch location or other facility of an existing
13 business, whether or not the new branch or facility is established as
14 a separate entity; or

15 (c) Is substantially similar to a business currently operated, or
16 a business that has been operated within the past five years, when the
17 majority of the beneficial ownership is the same.

18 (4) For purposes of this section, businesses or business activities
19 are presumed to be "substantially similar" if the businesses or
20 business activities are within the same North American industry
21 classification system group. The department may by rule provide
22 additional guidance consistent with the purpose of this section.

23 (5)(a) An eligible new business must file an application, in the
24 form and manner required by the department, to qualify for the
25 deduction under this section. The department must rule on the
26 application within thirty days. The application is not limited to, but
27 must include, the following information:

28 (i) The name, tax registration number, and unified business
29 identifier number of the business;

30 (ii) The name, tax registration number, and the unified business
31 identifier number, if any, of all direct and indirect beneficial owners
32 of the business;

33 (iii) The physical address in zip code order of each facility owned
34 or operated by the business; and

35 (iv) The number of permanent full-time employees who were residents
36 of this state at the time of hiring and the number of permanent full-
37 time employees who were residents of this state at the time of
38 application for the deduction.

1 (b) A new business may file the application at any time within its
2 first three years of operation, as described in subsection (2) of this
3 section. The business may claim the deduction provided under this
4 section for taxes paid for periods prior to filing the application and
5 seek any refunds due, within the time limitation provided in RCW
6 82.32.060. In order to qualify for a refund of taxes paid prior to
7 filing the application, the business must, for the prior periods, meet
8 all eligibility requirements, including the annual survey filing
9 requirements in subsection (7) of this section.

10 (6) An eligible new business filing on a monthly or quarterly basis
11 may claim a deduction under this section for tax reporting periods
12 beginning on or after July 1, 2013. Businesses paying on an annual
13 basis may claim a deduction under this section for tax reporting
14 periods beginning on or after January 1, 2013.

15 (7) The legislature finds that accountability and the effectiveness
16 of attempts to foster job creation and retention are important aspects
17 of setting tax policy. In order to make policy choices regarding the
18 best use of limited state resources, the legislature needs to know how
19 the incentives are used, and the degree to which they meet the
20 legislature's intent.

21 (a) All persons claiming a tax preference under this section must
22 complete the annual survey with the department under RCW 82.32.585.

23 (b) Notwithstanding the filing deadlines provided in RCW 82.32.585,
24 if an eligible new business files an initial application under
25 subsection (5) of this section after the filing deadline for an annual
26 survey for tax preferences claimed for the prior calendar year, the
27 business must file a complete annual survey within thirty days of
28 filing the initial application.

29 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.04 RCW
30 to read as follows:

31 By June 1, 2019, and in compliance with RCW 43.01.036, the joint
32 legislative audit and review committee must submit a report to the
33 legislature and the governor that details the use, value, economic
34 impact, and employment impact of the new business tax preference
35 created under section 2 of this act. The report must include
36 information for all preferences granted under section 2 of this act
37 through December 31, 2018. The department must provide the joint

1 legislative audit and review committee any information requested in
2 preparation of the report. As requested by the committee, other
3 agencies must also provide wage, employment, benefits, and other
4 information related to the economic impact of the tax preference. The
5 report is not limited to, but must include, an analysis of:

6 (1) Growth of eligible businesses, measured in terms of
7 capitalization as well as in terms of the number of Washington
8 residents employed by the businesses, and including:

9 (a) How the businesses claiming the tax preference under section 2
10 of this act are growing in comparison to comparable businesses in other
11 states and the nation;

12 (b) Historic growth of businesses in eligible industry sectors
13 compared to growth in these sectors in years during which the tax
14 preference was available; and

15 (c) How eligible industry sectors are growing in comparison to
16 industry sectors not eligible for the tax preference under section 2 of
17 this act;

18 (2) The direct and indirect economic impact of businesses claiming
19 the tax preference on surrounding areas. The committee may contract
20 with innovate Washington or another entity capable of developing a
21 methodology and implementing it to determine the direct and indirect
22 economic impacts of the tax preference.

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

25 (1)(a) Every person claiming a tax preference that requires a
26 survey under this section must file a complete annual survey with the
27 department.

28 (i) Except as provided in section 2 of this act or (a)(ii) of this
29 subsection, the survey is due by April 30th of the year following any
30 calendar year in which a person becomes eligible to claim the tax
31 preference that requires a survey under this section.

32 (ii) If the tax preference is a deferral of tax, the first survey
33 must be filed by April 30th of the calendar year following the calendar
34 year in which the investment project is certified by the department as
35 operationally complete, and a survey must be filed by April 30th of
36 each of the seven succeeding calendar years.

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

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

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

13 (i) The number of total employment positions;

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

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

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

23 (c) For persons claiming the tax preference provided under chapter
24 82.60 or 82.63 RCW, the survey must also include the number of new
25 products or research projects by general classification, and the number
26 of trademarks, patents, and copyrights associated with activities at
27 the investment project.

28 (d) For persons claiming the credit provided under RCW 82.04.4452,
29 the survey must also include the qualified research and development
30 expenditures during the calendar year for which the credit was claimed,
31 the taxable amount during the calendar year for which the credit was
32 claimed, the number of new products or research projects by general
33 classification, the number of trademarks, patents, and copyrights
34 associated with the research and development activities for which the
35 credit was claimed, and whether the tax preference has been assigned,
36 and who assigned the credit. The definitions in RCW 82.04.4452 apply
37 to this subsection (2)(d).

1 (e) For persons claiming the tax exemption in RCW 82.08.025651 or
2 82.12.025651, the survey must also include the general areas or
3 categories of research and development for which machinery and
4 equipment and labor and services were acquired, exempt from tax under
5 RCW 82.08.025651 or 82.12.025651, in the prior calendar year.

6 (f) For persons claiming the tax preference provided in section 2
7 of this act, the survey must also include the amount of initial and
8 ongoing capital investments in the business inside and outside the
9 state. Capital investment means land, structures, and depreciable
10 property.

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

17 (3) As part of the annual survey, the department may request
18 additional information necessary to measure the results of, or
19 determine eligibility for, the tax preference.

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

31 (5) Persons for whom the actual amount of the tax reduced or saved
32 is less than ten thousand dollars during the period covered by the
33 survey may request the department to treat the amount of the tax
34 reduction or savings as confidential under RCW 82.32.330.

35 (6)(a) Except as otherwise provided by law, if a person claims a
36 tax preference that requires an annual survey under this section but
37 fails to submit a complete annual survey by the due date of the survey
38 or any extension under RCW 82.32.590, the department must declare the

1 amount of the tax preference claimed for the previous calendar year to
2 be immediately due. If the tax preference is a deferral of tax, twelve
3 and one-half percent of the deferred tax is immediately due. If the
4 economic benefits of the deferral are passed to a lessee, the lessee is
5 responsible for payment to the extent the lessee has received the
6 economic benefit.

7 (b) The department must assess interest, but not penalties, on the
8 amounts due under this subsection. The interest must be assessed at
9 the rate provided for delinquent taxes under this chapter,
10 retroactively to the date the tax preference was claimed, and accrues
11 until the taxes for which the tax preference was claimed are repaid.
12 Amounts due under this subsection are not subject to the
13 confidentiality provisions of RCW 82.32.330 and may be disclosed to the
14 public upon request.

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

19 (8) For the purposes of this section:

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

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

25 NEW SECTION. **Sec. 5.** If any provision of this act or its
26 application to any person or circumstance is held invalid, the
27 remainder of the act or the application of the provision to other
28 persons or circumstances is not affected.

29 NEW SECTION. **Sec. 6.** This act is necessary for the immediate
30 preservation of the public peace, health, or safety, or support of the
31 state government and its existing public institutions, and takes effect
32 immediately.

33 NEW SECTION. **Sec. 7.** This act expires December 31, 2023.

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