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**SECOND SUBSTITUTE HOUSE BILL 1693**

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**State of Washington**

**63rd Legislature**

**2013 Regular Session**

**By** House Finance (originally sponsored by Representatives Habib, Magendanz, Morris, Tarleton, and Ryu)

READ FIRST TIME 03/01/13.

1       AN ACT Relating to providing tax relief for new businesses in high  
2 growth business sectors; amending RCW 82.32.585; adding a new section  
3 to chapter 82.04 RCW; adding a new section to chapter 43.136 RCW;  
4 creating a new section; providing an expiration date; and declaring an  
5 emergency.

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

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

1 inside and outside of the state to start new businesses here, in a  
2 climate that can help them grow.

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

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

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

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

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

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

- 28 (i) Computers, mobile devices, and related peripherals;  
29 (ii) Software, excluding computer system design and services  
30 related to networks and custom software;  
31 (iii) Biotechnology, as defined in RCW 82.75.010(2);  
32 (iv) Biotechnology products, as defined in RCW 82.75.010(3);  
33 (v) Electronic medical or navigational testing, measurement, or  
34 control instruments;  
35 (vi) Pharmaceuticals;  
36 (vii) Environmental technology, as defined in RCW 82.63.010(8);  
37 (viii) Aerospace products, as defined in RCW 82.08.975;

- 1 (ix) Solar energy system components, as defined in RCW 82.04.294;  
2 (x) Semiconductor materials and other electronic components;  
3 (xi) Internet-based data storage technologies and search  
4 technologies;  
5 (xii) Industrial machinery for use in research, development,  
6 design, engineering, manufacturing, or production of any of (c)(i)  
7 through (xi) of this subsection; and  
8 (xiii) Interactive gaming software and providing related digital  
9 automated services.

10 (d) A business engaged in one or more of the activities of  
11 research, development, design, engineering, or manufacturing of  
12 products or technology in the areas identified in (c) of this  
13 subsection may sell or license such products or technology, or provide  
14 digital automated services related to interactive gaming software under  
15 (c)(xiii) of this subsection, and still meet the requirement of  
16 engaging exclusively in those activities in (c) of this subsection.

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

20 (a) Has been reincorporated, restructured, reorganized, or  
21 transferred, in whole or in part, from a business previously engaging  
22 in activities that are substantially similar to those engaged in by the  
23 new business;

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

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

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

35 (5) An eligible new business must file an application, in the form  
36 and manner required by the department, to qualify for the deduction  
37 under this section. The department must rule on the application within

1 thirty days. The application is not limited to, but must include, the  
2 following information:

3 (a) The name, tax registration number, and unified business  
4 identifier number of the business;

5 (b) The name, tax registration number, and the unified business  
6 identifier number, if any, of all direct and indirect beneficial owners  
7 of the business;

8 (c) The physical address in zip code order of each facility owned  
9 or operated by the business;

10 (d) The number of permanent full-time employees who were residents  
11 of this state at the time of hiring and the number of permanent full-  
12 time employees who were residents of this state at the time of  
13 application for the deduction; and

14 (e) A sworn statement, under penalty of perjury, that the applicant  
15 believes the business to be a new business eligible for the credit and  
16 that the business seeking to claim the deduction is not a business  
17 that:

18 (i) Has been reincorporated, restructured, reorganized, or  
19 transferred, in whole or in part, from a business previously engaging  
20 in activities that are substantially similar to those engaged in by the  
21 new business;

22 (ii) Is a new branch location or other facility of an existing  
23 business, whether or not the new branch or facility is established as  
24 a separate entity; or

25 (iii) Is substantially similar to a business currently operated, or  
26 a business that has been operated within the past five years, when the  
27 majority of the beneficial ownership is the same.

28 (6) Subject to the application requirements of subsections (5) and  
29 (7) of this section, an eligible new business filing on a monthly or  
30 quarterly basis may claim a deduction under this section for tax  
31 reporting periods beginning on or after July 1, 2013. Businesses  
32 paying on an annual basis may claim a deduction under this section for  
33 tax reporting periods beginning on or after January 1, 2013.

34 (7) No deduction is allowed under this section until after the  
35 application required under subsection (5) of this section is filed and  
36 approved by the department. The annual taxpayer savings available  
37 statewide as a result of the deduction created under this section may  
38 not exceed two million dollars per fiscal year.

1 (8) The legislature finds that accountability and the effectiveness  
2 of attempts to foster job creation and retention are important aspects  
3 of setting tax policy. In order to make policy choices regarding the  
4 best use of limited state resources, the legislature needs to know how  
5 the incentives are used, and the degree to which they meet the  
6 legislature's intent. All persons claiming a tax preference under this  
7 section must complete the annual survey with the department under RCW  
8 82.32.585 for each year in which the tax preference is claimed, and for  
9 three consecutive years after the last year in which the tax preference  
10 is claimed. If a person fails to submit the required annual surveys  
11 under this section, the department must declare the amount of the tax  
12 preference claimed in the last calendar year in which the tax  
13 preference was claimed to be immediately due with interest as required  
14 under RCW 82.32.585.

15 (9) Unless earlier terminated as provided under subsection (7) of  
16 this section, the tax preference created in this section expires on  
17 December 31, 2018. No deduction may be claimed for any tax period  
18 after December 31, 2018.

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

21 By December 31, 2019, the joint legislative audit and review  
22 committee must submit a report to the legislature and the governor that  
23 details the use, value, economic impact, and employment impact of the  
24 new business tax preference created under section 2 of this act. The  
25 report must include information for all preferences granted under  
26 section 2 of this act through December 31, 2018, as well as information  
27 for all businesses continuing to report data through the annual survey  
28 as required under section 2(8) of this act. The department must  
29 provide the joint legislative audit and review committee any  
30 information requested in preparation of the report. As requested by  
31 the committee, other agencies must also provide wage, employment,  
32 benefits, and other information related to the economic impact of the  
33 tax preference. The report is not limited to, but must include, an  
34 analysis of:

35 (1) Growth of businesses that have received or are continuing to  
36 receive the tax preference under section 2 of this act, as measured by  
37 the following:

1 (a) The total capitalization of the businesses, and, for businesses  
2 claiming the tax preference in multiple years, year-to-year changes in  
3 the reported capitalization;

4 (b) The total number of employees of the businesses, and, for  
5 businesses claiming the tax preference in multiple years, year-to-year  
6 changes in the reported employment;

7 (c) The mean and median wages of employees of the businesses, and,  
8 for businesses claiming the tax preference in multiple years, year-to-  
9 year changes in the reported mean and median wages; and

10 (d) The type and estimated economic value of other benefits  
11 received by employees of the businesses;

12 (2) The relative success of the businesses receiving the tax  
13 preference, as measured by the following:

14 (a) The failure rate of businesses receiving the tax preference  
15 under section 2 of this act in comparison to the general business  
16 failure rate for businesses in their first three years of operation in  
17 the state;

18 (b) The growth of businesses claiming the tax preference under  
19 section 2 of this act, as measured by the indicators set forth in  
20 subsection (1) of this section, in comparison to comparable businesses  
21 in other states and the nation;

22 (c) The rate of growth in industry sectors qualifying for the tax  
23 preference under section 2 of this act, as compared to the historic  
24 rate of growth in these industry sectors; and

25 (d) The rate of growth in industry sectors qualifying for the tax  
26 preference under section 2 of this act in comparison to the rate of  
27 growth in industry sectors not eligible for the tax preference under  
28 section 2 of this act;

29 (3) The direct and indirect economic impact of businesses claiming  
30 the tax preference on surrounding areas. The committee may contract  
31 with innovate Washington or another entity capable of developing a  
32 methodology and implementing it to determine the direct and indirect  
33 economic impacts of the tax preference. This study should quantify, to  
34 the greatest extent feasible, the state's return on investment for the  
35 tax preference provided to start-ups under section 2 of this act, for  
36 each dollar invested.

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

3       (1)(a) Every person claiming a tax preference that requires a  
4 survey under this section must file a complete annual survey with the  
5 department.

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

10       (ii) If the tax preference is a deferral of tax, the first survey  
11 must be filed by April 30th of the calendar year following the calendar  
12 year in which the investment project is certified by the department as  
13 operationally complete, and a survey must be filed by April 30th of  
14 each of the seven succeeding calendar years.

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

17       (2)(a) The survey must include the amount of the tax preference  
18 claimed for the calendar year covered by the survey. For a person that  
19 claimed an exemption provided in RCW 82.08.025651 or 82.12.025651, the  
20 survey must include the amount of tax exempted under those sections in  
21 the prior calendar year for each general area or category of research  
22 and development for which exempt machinery and equipment and labor and  
23 services were acquired in the prior calendar year.

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

27       (i) The number of total employment positions;

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

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

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

37       (c) For persons claiming the tax preference provided under chapter  
38 82.60 or 82.63 RCW, the survey must also include the number of new

1 products or research projects by general classification, and the number  
2 of trademarks, patents, and copyrights associated with activities at  
3 the investment project.

4 (d) For persons claiming the credit provided under RCW 82.04.4452,  
5 the survey must also include the qualified research and development  
6 expenditures during the calendar year for which the credit was claimed,  
7 the taxable amount during the calendar year for which the credit was  
8 claimed, the number of new products or research projects by general  
9 classification, the number of trademarks, patents, and copyrights  
10 associated with the research and development activities for which the  
11 credit was claimed, and whether the tax preference has been assigned,  
12 and who assigned the credit. The definitions in RCW 82.04.4452 apply  
13 to this subsection (2)(d).

14 (e) For persons claiming the tax exemption in RCW 82.08.025651 or  
15 82.12.025651, the survey must also include the general areas or  
16 categories of research and development for which machinery and  
17 equipment and labor and services were acquired, exempt from tax under  
18 RCW 82.08.025651 or 82.12.025651, in the prior calendar year.

19 (f) For persons claiming the tax preference provided in section 2  
20 of this act, the survey must also include the amount of initial and  
21 ongoing capital investments in the business inside and outside the  
22 state. Capital investment means land, structures, and depreciable  
23 property.

24 (g) If the person filing a survey under this section did not file  
25 a survey with the department in the previous calendar year, the survey  
26 filed under this section must also include the employment, wage, and  
27 benefit information required under (b)(i) through (iv) of this  
28 subsection for the calendar year immediately preceding the calendar  
29 year for which a tax preference was claimed.

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

33 (4) All information collected under this section, except the  
34 information required in subsection (2)(a) of this section, is deemed  
35 taxpayer information under RCW 82.32.330. Information required in  
36 subsection (2)(a) of this section is not subject to the confidentiality  
37 provisions of RCW 82.32.330 and may be disclosed to the public upon  
38 request, except as provided in subsection (5) of this section. If the



1 amount of the tax preference claimed as reported on the survey is  
2 different than the amount actually claimed or otherwise allowed by the  
3 department based on the taxpayer's excise tax returns or other  
4 information known to the department, the amount actually claimed or  
5 allowed may be disclosed.

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

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

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

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

32 (8) For the purposes of this section:

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

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

1        NEW SECTION.    **Sec. 5.**    If any provision of this act or its  
2 application to any person or circumstance is held invalid, the  
3 remainder of the act or the application of the provision to other  
4 persons or circumstances is not affected.

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

9        NEW SECTION.    **Sec. 7.**    This act expires December 31, 2020.

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