
HOUSE BILL 2052

State of Washington 63rd Legislature 2013 Regular Session

By Representatives Habib and Magendanz

Read first time 04/18/13. Referred to Committee on Appropriations.

1 AN ACT Relating to promoting the start-up economy in Washington by
2 providing a business and occupation tax preference for Washington-based
3 high technology businesses during their first three years of operation
4 and directing the department of commerce to develop a comprehensive
5 strategy to facilitate the growth and development of start-ups in
6 Washington; amending RCW 82.32.585; adding new sections to chapter
7 82.04 RCW; adding a new section to chapter 43.330 RCW; adding a new
8 section to chapter 43.136 RCW; creating new sections; and providing
9 expiration dates.

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

11 NEW SECTION. **Sec. 1.** This act is known as the "start-up
12 Washington act."

13 NEW SECTION. **Sec. 2.** New start-up businesses in high-growth, high
14 technology economic sectors have significant potential to be future
15 economic engines for the state, positioning Washington to be a national
16 leader in the new knowledge economy. However, during the first few
17 years of development, start-ups can be stunted by the imposition of the
18 business and occupation tax. This tax, which is imposed on gross

1 receipts, tends to have a disproportionately negative impact on new
2 businesses that have yet to achieve profitability. The intent of the
3 legislature in exempting the first million dollars in gross receipts of
4 new businesses in certain key sectors of the knowledge economy from the
5 business and occupation tax is to promote and facilitate the location
6 and development of start-ups in Washington. The legislature also
7 intends to direct the department of commerce to develop a comprehensive
8 statewide economic development strategy to encourage entrepreneurs
9 inside and outside of the state to start new businesses here, in a
10 climate that can help them grow.

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

13 (1) A new business may claim a tax credit during its first thirty-
14 six months of operation as provided in this section. The credit is
15 equal to the amount of tax otherwise due under this chapter on up to
16 one million dollars of the business's taxable gross income each full
17 fiscal year, or up to a prorated portion of the one million dollar
18 limit for any partial fiscal year.

19 (2) A business is a new business eligible for the credit under this
20 section if all of the following conditions are met:

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

27 (b) During the entire tax period in which any portion of the credit
28 is claimed, the business has at least four permanent full-time
29 employees who were residents of this state at the time of hiring; and

30 (c)(i) During the entire tax period in which any portion of the
31 credit is claimed, the business is exclusively engaged in research,
32 development, design, engineering, manufacturing, or production of one
33 or more of the following:

34 (A) Computers, mobile devices, and related peripherals, excluding
35 custom computer system design, services related to networks, and custom
36 software;

37 (B) Biotechnology, as defined in RCW 82.75.010;

1 (C) Biotechnology products, as defined in RCW 82.75.010;
2 (D) Electronic medical or navigational testing, measurement, or
3 control instruments;
4 (E) Pharmaceuticals;
5 (F) Environmental technology, as defined in RCW 82.63.010;
6 (G) Aerospace products, as defined in RCW 82.08.975;
7 (H) Solar energy system components, as defined in RCW 82.04.294;
8 (I) Semiconductor materials and other electronic components;
9 (J) Internet-based data storage technologies and search
10 technologies;
11 (K) Industrial machinery for use in research, development, design,
12 engineering, manufacturing, or production of any of (c)(A) through (J)
13 of this subsection (2); or
14 (L) Interactive gaming software and providing related digital
15 automated services.
16 (ii) A business engaged in one or more of the activities of
17 research, development, design, engineering, manufacturing, or
18 production of products or technology in the areas identified in this
19 subsection (2)(c) may sell or license such products or technology, or
20 receive or accrue de minimis amounts of gross income from unrelated
21 activities, and still meet the requirement of engaging exclusively in
22 those activities in this subsection (2)(c). For purposes of this
23 subsection, gross income from unrelated activities is de minimis if it
24 is no more than one percent of the business's total gross income of the
25 business for any tax reporting period for which a credit under this
26 section is claimed.
27 (3)(a) A business eligible for the credit provided in this section
28 must be a new business enterprise in Washington, which does not include
29 a business that:
30 (i) Has been reincorporated, restructured, reorganized, or
31 transferred, in whole or in part, from a business previously engaging
32 in activities that are substantially similar to those engaged in by the
33 new business;
34 (ii) Is a new branch location or other facility of an existing
35 business, whether or not the new branch or facility is established as
36 a separate entity; or
37 (iii) Is substantially similar to a business currently operated, or

1 a business that has been operated within the past five years, when the
2 majority of the beneficial ownership is the same.

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

8 (4) An eligible new business must file an application, in the form
9 and manner required by the department, to qualify for the credit under
10 this section. The department must rule on the application within
11 thirty days. The application is not limited to, but must include, the
12 following information:

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

15 (b) The name, tax registration number, and the unified business
16 identifier number, if any, of all direct and indirect beneficial owners
17 of the business;

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

20 (d) The number of permanent full-time employees who were residents
21 of this state at the time of hiring and the number of permanent full-
22 time employees who were residents of this state at the time of
23 application for the credit; and

24 (e) A sworn statement, made under penalty of perjury, that the
25 applicant believes the business to be a new business eligible for the
26 credit and that the applicant is not a business that:

27 (i) Has been reincorporated, restructured, reorganized, or
28 transferred, in whole or in part, from a business previously engaging
29 in activities that are substantially similar to those engaged in by the
30 new business;

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

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

37 (5) The business must calculate the credit available for each tax
38 reporting period in the following manner:

1 (a) The business must calculate the credit available for each tax
2 reporting period, using taxable gross income received or accrued during
3 the tax reporting period that is subject to a lower tax rate before
4 using taxable gross income subject to a higher tax rate.

5 (b) The business must claim credit amounts available to it in the
6 earliest possible tax reporting period each fiscal year.

7 (c) The business may begin to claim a credit starting with the tax
8 reporting period in which the department approves the application
9 required under subsection (4) of this section.

10 (d) Credits under this section may be claimed only on returns filed
11 electronically with the department using the department's online tax
12 filing service or other method of electronic reporting as the
13 department may authorize.

14 (e) The credit may not exceed the tax otherwise due under this
15 chapter and is available only after all other credits have been
16 applied, except the small business credit under RCW 82.04.4451. No
17 refunds may be granted for unused credits.

18 (6)(a) Credits are available on a first-in-time basis determined by
19 the date of electronic filing of the return on which the credit is
20 claimed. The department must keep a running total of all credits
21 claimed under this section and must disallow any credits in excess of
22 two million dollars in any full fiscal year, and a prorated amount for
23 any partial fiscal year for which the credit is available.

24 (b) The department must notify electronically any business that has
25 claimed tax credits in excess of the limitation in this subsection as
26 required by RCW 82.32.135. The notice must state the amount of tax due
27 and provide that the tax be paid within thirty days from the date of
28 the notice. The department may not assess penalties or interest on the
29 amount due in the notice if the amount due is paid by the due date
30 specified in the notice, or any extension thereof.

31 (c) If all or part of a claim for credit is disallowed under this
32 subsection (6), the business may carry over the disallowed credit
33 amount to the next fiscal year. The carried-over credit amount is
34 available in addition to the credit otherwise available to the business
35 during the next fiscal year, but the total tax credit taken in any
36 period, including carry-over credits, may not exceed the tax otherwise
37 due under this chapter for any tax reporting period. Any credit amount

1 carried over to a subsequent fiscal year must be applied before
2 claiming the tax credit otherwise available during that subsequent
3 fiscal year.

4 (7) The following definitions apply throughout this section unless
5 the context clearly requires otherwise.

6 (a) "Fiscal year" means July 1st through June 30th.

7 (b) "Taxable gross income" means all gross income received or
8 accrued, less all available exemptions and deductions.

9 (8) The tax preference created in this section is available only
10 for tax reporting periods beginning on or after October 1, 2013, and
11 ending before October 1, 2018. No credit may be claimed under this
12 section for taxable gross income received or accrued prior to October
13 1, 2013, or after September 31, 2018.

14 (9) This section expires July 1, 2019.

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

17 (1) All persons claiming a tax preference under section 3 of this
18 act must complete the annual survey with the department required under
19 RCW 82.32.585 for each year in which the tax preference is claimed, and
20 for three consecutive years after the last year in which the tax
21 preference is claimed. If a person fails to submit the required annual
22 surveys under this section, the department must void all credits
23 claimed in the latest calendar year before the survey was due and
24 declare such amounts to be immediately due with interest as required
25 under RCW 82.32.585.

26 (2) This section expires October 1, 2021.

27 **Sec. 5.** RCW 82.32.585 and 2011 c 23 s 6 are each amended to read
28 as follows:

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

32 (i) Except as provided in section 4 of this act or (a)(ii) of this
33 subsection, the survey is due by April 30th of the year following any
34 calendar year in which a person becomes eligible to claim the tax
35 preference that requires a 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) For persons claiming the tax preference provided in section 3
11 of this act, the survey must also include the amount of initial and
12 ongoing capital investments in the business inside and outside the
13 state. "Capital investment" means land, structures, and depreciable
14 property.

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

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

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

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

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

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

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

23 (8) For the purposes of this section:

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

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

29 NEW SECTION. **Sec. 6.** A new section is added to chapter 43.330 RCW
30 to read as follows:

31 (1) The department must assist in promoting and facilitating the
32 start-up economy in the state. Subject to the availability of funding,
33 by December 1, 2013, the department must develop a comprehensive start-
34 up Washington strategy to facilitate the growth of start-ups and
35 enhance the state's competitiveness in recruiting businesses to start
36 up in Washington.

1 (a) The strategy must consider capital investment, infrastructure,
2 workforce development, and other needs of the start-up ecosystem.

3 (b) The department must examine the direct and indirect economic
4 impact of start-ups on the state's economy, using objective indicators
5 and data, including the annual survey data collected under section 4 of
6 this act and RCW 82.32.585.

7 (2) This section expires July 1, 2019.

8 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.136 RCW
9 to read as follows:

10 (1) By December 31, 2017, the joint legislative audit and review
11 committee must submit a report to the legislature and the governor that
12 details the use, value, economic impact, and employment impact of the
13 new business tax preference created under section 3 of this act. The
14 report must include information for all preferences granted under
15 section 3 of this act through March 31, 2017. The department of
16 revenue must provide the joint legislative audit and review committee
17 and the department of commerce any information requested in preparation
18 of the report, including taxpayer information that would otherwise be
19 deemed confidential but is subject to disclosure for official purposes
20 for dealing with matters of taxation, trade, or commerce under RCW
21 82.32.330(3). If requested by the joint legislative audit and review
22 committee or the department of commerce, other agencies must also
23 provide wage, employment, benefits, and other information related to
24 the economic impact of the tax preference.

25 (2) The report is not limited to, but must include, an analysis of:

26 (a) The economic impact of businesses that have received or are
27 continuing to receive the tax preference under section 3 of this act,
28 as measured by the following:

29 (i) The total capitalization of the businesses, and, for businesses
30 claiming the tax preference in multiple years, year-to-year changes in
31 the reported capitalization;

32 (ii) The total number of employees of the businesses, and, for
33 businesses claiming the tax preference in multiple years, year-to-year
34 changes in the reported employment;

35 (iii) The mean and median wages of employees of the businesses,
36 and, for businesses claiming the tax preference in multiple years,
37 year-to-year changes in the reported mean and median wages; and

1 (iv) The type and estimated economic value of other benefits
2 received by employees of the businesses;

3 (b) The relative success of the businesses receiving the tax
4 preference, as measured by the following:

5 (i) The failure rate of businesses receiving the tax preference
6 under section 3 of this act in comparison to the general business
7 failure rate for businesses in their first three years of operation in
8 the state;

9 (ii) The growth of businesses claiming the tax preference under
10 section 3 of this act, as measured by the indicators set forth in (a)
11 of this subsection, in comparison to comparable businesses in other
12 states and the nation;

13 (iii) The rate of growth in industry sectors qualifying for the tax
14 preference under section 3 of this act, as compared to the historic
15 rate of growth in these industry sectors; and

16 (iv) The rate of growth in industry sectors qualifying for the tax
17 preference under section 3 of this act in comparison to the rate of
18 growth in industry sectors not eligible for the tax preference under
19 section 3 of this act; and

20 (c) Subject to the availability of funding, quantification of the
21 state's return on investment for the tax preference provided to start-
22 ups under section 3 of this act, for each dollar invested.

23 (3) This section expires July 1, 2019.

24 NEW SECTION. **Sec. 8.** If any provision of this act or its
25 application to any person or circumstance is held invalid, the
26 remainder of the act or the application of the provision to other
27 persons or circumstances is not affected.

28 NEW SECTION. **Sec. 9.** Section 5 of this act expires October 1,
29 2021.

--- END ---