
HOUSE BILL 1794

State of Washington **68th Legislature** **2023 Regular Session**

By Representatives Waters, Reed, Schmidt, Volz, Chapman, and Cheney

Read first time 02/08/23. Referred to Committee on Finance.

1 AN ACT Relating to research and development incentives and
2 growing Washington's economy for the long-term; adding a new section
3 to chapter 82.04 RCW; adding a new section to chapter 82.08 RCW;
4 adding a new section to chapter 82.12 RCW; creating a new section;
5 and providing an effective date.

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

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

9 (1) Subject to the limitations of this section, a credit is
10 authorized against the tax otherwise due under this chapter for
11 qualified research and development expenditures.

12 (2)(a) The credit is calculated as follows:

13 (i) The greater of the amount of qualified research and
14 development expenditures of a person or 80 percent of amounts
15 received by a person other than a public educational or research
16 institution in compensation for the conduct of qualified research and
17 development;

18 (ii) Less 0.92 percent of the person's taxable amount from the
19 amount determined under (a)(i) of this subsection;

20 (iii) Multiplied by 1.75 percent.

1 (b) For purposes of calculating the credit, if a person's
2 reporting period is less than annual, the person may use an estimated
3 average tax rate for the calendar year for which the credit is
4 claimed by using the person's average tax rate for each reporting
5 period. A person who uses an estimated average tax rate must make an
6 adjustment to the total credit claimed for the calendar year using
7 the person's actual average tax rate for the calendar year when the
8 person files its last return for the calendar year for which the
9 credit is claimed.

10 (3)(a) Except as provided in (b) of this subsection (3), a tax
11 credit may not be carried over to another calendar year.

12 (b) Any amount of tax credit otherwise allowable under this
13 section not claimed by the person in any calendar year may be carried
14 over and claimed against the person's tax liability for the next
15 succeeding calendar year. Any credit remaining unused in the next
16 succeeding calendar year may be carried over and claimed against the
17 person's tax liability for the second succeeding calendar year.
18 However, any credit not used in that second succeeding calendar year
19 may not be carried over for any calendar year thereafter.

20 (c) Credits are available on a first-in-time basis. The
21 department must disallow any credits, or portion thereof, that would
22 cause the total amount of credits claimed under this section during
23 any calendar year to exceed \$10,000,000. If this limitation is
24 reached, the department must post a notice on its website. In
25 addition, the department must provide written notice to any person
26 who has claimed tax credits in excess of the limitation in this
27 subsection (3)(c). The notice must indicate the amount of tax due and
28 provide that the tax be paid within 30 days from the date of the
29 notice. The department may not assess penalties and interest as
30 provided in chapter 82.32 RCW on the amount due in the initial notice
31 if the amount due is paid by the due date specified in the notice or
32 extension thereof.

33 (4) The amount of the credit claimed for a reporting period may
34 not exceed the tax otherwise due under this chapter for that
35 reporting period. Refunds may not be granted for unused credits.

36 (5) To claim a credit under this section, a person must
37 electronically file with the department all returns, forms, and any
38 other information required by the department, in an electronic format
39 as provided or approved by the department. Any return, form, or
40 information required to be filed in electronic format under this

1 section is not filed until received by the department in an
2 electronic format. As used in this subsection, "returns" has the same
3 meaning as in RCW 82.32.050.

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

9 (b) A person claiming the credit shall file a complete annual tax
10 performance report with the department. The report is due by March
11 31st following any year in which a credit is claimed. The department
12 may extend the due date for timely filing of annual tax performance
13 reports under this section as provided in RCW 82.32.590. The report
14 must include the amount of the tax credit claimed, the qualified
15 research and development expenditures during the calendar year for
16 which the credit is claimed, the taxable amount during the calendar
17 year for which the credit is claimed, the number of new products or
18 research projects by general classification, the number of
19 trademarks, patents, and copyrights associated with the research and
20 development activities for which a credit was claimed, and the
21 following information for employment positions in Washington:

22 (i) The number of total employment positions;

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

25 (iii) The number of employment positions according to the
26 following wage bands: Less than \$100,000; \$100,000 or greater, but
27 less than \$150,000; \$150,000 or greater. A wage band containing fewer
28 than three individuals may be combined with another wage band; and

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

32 (c) The department may request additional information necessary
33 to measure the results of the tax credit program under this section,
34 which must be submitted at the same time as the annual tax
35 performance report.

36 (d) (i) All information collected under this subsection, except
37 the amount of the tax credit claimed, is taxpayer information under
38 RCW 82.32.330. Information on the amount of tax credit claimed is not
39 subject to the confidentiality provisions of RCW 82.32.330 and may be
40 disclosed to the public upon request, except as provided in this

1 subsection (6)(d). If the amount of the tax credit as reported on the
2 survey is different than the amount actually claimed on the
3 taxpayer's tax returns or otherwise allowed by the department, the
4 amount actually claimed or allowed may be disclosed.

5 (ii) Persons for whom the actual amount of the tax credit claimed
6 on the taxpayer's returns or otherwise allowed by the department is
7 less than \$10,000 during the period covered by the survey may request
8 that the department treat the tax credit amount as confidential under
9 RCW 82.32.330.

10 (e) If a person fails to file a complete annual tax performance
11 report required under this subsection (6) with the department by the
12 due date or any extension under RCW 82.32.590, the person entitled to
13 the credit provided in this section is not eligible to claim the
14 credit provided in this section in the year the person failed to
15 timely file a complete annual tax performance report.

16 (7) The department shall use the information from subsection (6)
17 of this section to prepare summary descriptive statistics by
18 category. Categories may not contain less than three taxpayers.

19 (8) For the purposes of this section, the following definitions
20 apply unless the context clearly requires otherwise:

21 (a) "Average tax rate" means a person's total tax liability under
22 this chapter for the calendar year for which the credit is claimed
23 divided by the taxpayer's total taxable amount under this chapter for
24 the calendar year for which the credit is claimed.

25 (b) "Qualified machinery and equipment" has the same meaning as
26 in RCW 82.63.010.

27 (c) "Qualified research and development" has the same meaning as
28 in RCW 82.63.010.

29 (d)(i) "Qualified research and development expenditure" means
30 expenses incurred by a person during a calendar year on machinery,
31 equipment, and personnel used in qualified research and development.

32 (ii) In determining what is a "qualified research and development
33 expenditure," the department may consider the following:

34 (A) The place where the services are performed;

35 (B) The residence or business location of the person or persons
36 performing the services;

37 (C) The place where qualified research supplies are consumed; and

38 (D) Any other factor that the department deems relevant.

39 (e) "Research and development" has the same meaning as in RCW
40 82.63.010.

1 (f) "Taxable amount" means the taxable amount subject to the tax
2 imposed in this chapter required to be reported on the person's
3 combined excise tax returns for the calendar year for which the
4 credit is claimed, less any taxable amount for which a credit is
5 allowed under RCW 82.04.440.

6 (9) A person claiming a credit under this section must keep
7 records necessary for the department to verify eligibility under this
8 section and is subject to all the requirements of chapter 82.32 RCW.

9 (10) Credits allowed under this section may be earned for tax
10 reporting periods beginning on or after July 1, 2024, and ending on
11 or before December 31, 2042. No credit may be claimed on returns
12 filed for tax periods on or after January 1, 2045.

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

15 (1) An eligible purchaser who has paid the tax levied by RCW
16 82.08.020 on qualified research and development equipment is eligible
17 for an exemption in the form of a remittance. The total amount of the
18 remittance is limited to the amount of the tax paid or the prorated
19 amount as calculated in subsection (4) of this section, whichever is
20 less.

21 (2)(a) An eligible purchaser claiming an exemption from the tax
22 in the form of a remittance under this section must pay the tax
23 imposed by RCW 82.08.020 on such purchases eligible for the
24 remittance. The eligible purchaser may then apply to the department
25 for remittance of all or part of the tax paid under RCW 82.08.020 on
26 such purchases subject to the limitations of this section.

27 (b) An eligible purchaser may not apply for more than one
28 remittance under this section per calendar year.

29 (3)(a) Application for a tax exemption under this section must be
30 received by the department between January 1st and January 31st,
31 following the calendar year in which the eligible purchaser paid
32 state sales tax on qualified research and development equipment. The
33 application must be made to the department in the form and manner
34 prescribed by the department. The application must contain
35 information regarding the qualified research and development
36 equipment, the purchase price, and the taxes paid.

37 (b) An eligible purchaser must electronically file with the
38 department all returns, forms, and any other information required by
39 the department, in an electronic format as provided or approved by

1 the department. Any return, form, or information required to be filed
2 in electronic format under this section is not filed until received
3 by the department in an electronic format. As used in this subsection
4 (3), "returns" has the same meaning as "return" in RCW 82.32.050.

5 (4) (a) The department must keep a running total of all exemptions
6 claimed under this section and section 3 of this act for each
7 calendar year. The department may not allow any exemptions claimed
8 under this section and section 3 of this act that would cause the
9 total amounts to exceed \$10,000,000 per calendar year.

10 (b) If the total amount of exemptions applied for by all
11 applicants under this section and section 3 of this act for any
12 calendar year exceeds \$10,000,000, the department must ratably reduce
13 the amount of the exemption allowed for all qualified applicants so
14 that the limit of \$10,000,000 for this section and section 3 of this
15 act is not exceeded. If an exemption is reduced, the amount of
16 reduction may not be carried forward and claimed in subsequent
17 calendar years.

18 (5) For the purposes of this section, "qualified research and
19 development equipment" means tangible personal property that has not
20 previously been used in Washington for any purpose and is acquired by
21 the eligible purchaser for the purpose of research and development
22 activities devoted to experimental or laboratory research and
23 development for new products, new uses of existing products, or
24 improving or testing existing products.

25 (6) Equipment for which an exemption has been received under RCW
26 82.08.02565 or 82.12.02565 is not eligible for any remittance under
27 this section.

28 (7) The exemption in this section applies to purchases made on or
29 after July 1, 2024, and on or before December 31, 2044.

30 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.12
31 RCW to read as follows:

32 (1) An eligible purchaser who has paid the tax levied by RCW
33 82.12.020 on qualified research and development equipment is eligible
34 for an exemption in the form of a remittance. The total amount of the
35 remittance is limited to the amount of the tax paid or the prorated
36 amount as calculated in subsection (4) of this section, whichever is
37 less.

38 (2) (a) An eligible purchaser claiming an exemption from the tax
39 in the form of a remittance under this section must pay the tax

1 imposed by RCW 82.12.020 on purchases eligible for the remittance.
2 The eligible purchaser may then apply to the department for
3 remittance of all or part of the tax paid under RCW 82.12.020 on
4 purchases subject to the limitations of this section.

5 (b) An eligible purchaser may not apply for more than one
6 remittance under this section per calendar year.

7 (3)(a) Application for a tax exemption under this section must be
8 received by the department between January 1st and January 31st,
9 following the calendar year in which the eligible purchaser paid
10 state use tax on qualified research and development equipment. The
11 application must be made to the department in the form and manner
12 prescribed by the department. The application must contain
13 information regarding the qualified research and development
14 equipment, the purchase price, and the taxes paid.

15 (b) An eligible purchaser must electronically file with the
16 department all returns, forms, and any other information required by
17 the department, in an electronic format as provided or approved by
18 the department. Any return, form, or information required to be filed
19 in electronic format under this section is not filed until received
20 by the department in an electronic format. As used in this subsection
21 (3), "returns" has the same meaning as "return" in RCW 82.32.050.

22 (4)(a) The department must keep a running total of all exemptions
23 claimed under this section and section 2 of this act for each
24 calendar year. The department may not allow any exemptions claimed
25 under this section and section 2 of this act that would cause the
26 total amounts to exceed \$10,000,000 per calendar year.

27 (b) If the total amount of exemptions applied for by all
28 applicants under this section and section 2 of this act for any
29 calendar year exceeds \$10,000,000, the department must ratably reduce
30 the amount of the exemption allowed for all qualified applicants so
31 that the limit of \$10,000,000 for this section and section 2 of this
32 act is not exceeded. If an exemption is reduced, the amount of
33 reduction may not be carried forward and claimed in subsequent
34 calendar years.

35 (5) For the purposes of this section, "qualified research and
36 development equipment" means tangible personal property that has not
37 previously been used in Washington for any purpose and is acquired by
38 the eligible purchaser for the purpose of research and development
39 activities devoted to experimental or laboratory research and

1 development for new products, new uses of existing products, or
2 improving or testing existing products.

3 (6) Equipment for which an exemption has been received under RCW
4 82.08.02565 or 82.12.02565 is not eligible for any remittance under
5 this section.

6 (7) The exemption in this section applies to purchases made on or
7 after July 1, 2024, and on or before December 31, 2044.

8 NEW SECTION. **Sec. 4.** (1) This section is the tax preference
9 performance statement for the tax preferences contained in sections 1
10 through 3, chapter . . ., Laws of 2023 (sections 1 through 3 of this
11 act). This performance statement is only intended to be used for
12 subsequent evaluation of the tax preferences. It is not intended to
13 create a private right of action by any party or to be used to
14 determine eligibility for preferential tax treatment.

15 (2) The legislature intends that these tax preferences induce
16 increased expenditures on research and development, increase industry
17 competitiveness through innovation, increase the availability of
18 middle class jobs and upward mobility for low-income individuals, and
19 increase the rate of entrepreneurship and the formation of high
20 growth potential startups, as indicated in RCW 82.32.808(2) (a), (b),
21 (c), and (f).

22 (3) The legislature intends to measure the performance of these
23 tax preferences with two metrics. First, the state intends to measure
24 the number of jobs providing middle class wages relative to all jobs
25 in the economy against the same measure of middle class jobs relative
26 to all jobs in the state economy in the first full calendar year that
27 research and development tax credits are available. The legislature
28 also intends to measure, to the extent data is commercially
29 available, the total amount of expenditures and rate of growth of
30 expenditures in research and development by Washington state firms
31 prior to the first full calendar year that research and development
32 tax credits became available and compare these figures against the
33 rate of growth and total expenditures for each full calendar year
34 that research and development tax credits are available. If both
35 middle class jobs are growing and the rate of growth in research and
36 development spending is higher than before instituting the
37 incentives, then the legislature intends for the tax preferences to
38 be extended.

1 (4) The legislature recognizes that research regarding outcomes
2 from tax incentives shows that it may take a decade or more for state
3 research and development tax credits and remittances to have an
4 impact on the economy through entrepreneurship. Therefore, the
5 legislature intends to require evaluation and sunset review of these
6 tax preferences on a different schedule than other tax preferences.
7 The legislature intends for the joint legislative audit and review
8 committee to provide performance review in 2033 and 2043.

9 (5) In order to obtain the data necessary to perform the review
10 in subsection (4) of this section, the joint legislative audit and
11 review committee may refer to any data collected by the state.

12 NEW SECTION. **Sec. 5.** This act takes effect July 1, 2024.

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