
SENATE BILL 6630

State of Washington 60th Legislature 2008 Regular Session

By Senators Kastama, Rasmussen, Kilmer, Regala, and Kohl-Welles

Read first time 01/21/08. Referred to Committee on Ways & Means.

1 AN ACT Relating to extending the tax incentives provided for
2 qualified research and development to persons performing both phase I
3 and II clinical trials; amending RCW 82.04.4452 and 82.63.010; and
4 creating a new section.

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

6 **Sec. 1.** RCW 82.04.4452 and 2005 c 514 s 1003 are each amended to
7 read as follows:

8 (1) In computing the tax imposed under this chapter, a credit is
9 allowed for each person whose research and development spending during
10 the year in which the credit is claimed exceeds 0.92 percent of the
11 person's taxable amount during the same calendar year.

12 (2) The credit shall be calculated as follows:

13 (a) Determine the greater of the amount of qualified research and
14 development expenditures of a person or eighty 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 (b) Subtract 0.92 percent of the person's taxable amount from the
19 amount determined under (a) of this subsection;

1 (c) Multiply the amount determined under (b) of this subsection by
2 the following:

3 (i) For the period June 10, 2004, through December 31, 2006, the
4 person's average tax rate for the calendar year for which the credit is
5 claimed;

6 (ii) For the calendar year ending December 31, 2007, the greater of
7 the person's average tax rate for that calendar year or 0.75 percent;

8 (iii) For the calendar year ending December 31, 2008, the greater
9 of the person's average tax rate for that calendar year or 1.0 percent;

10 (iv) For the calendar year ending December 31, 2009, the greater of
11 the person's average tax rate for that calendar year or 1.25 percent;

12 (v) For the calendar year ending December 31, 2010, and thereafter,
13 1.50 percent.

14 For purposes of calculating the credit, if a person's reporting
15 period is less than annual, the person may use an estimated average tax
16 rate for the calendar year for which the credit is claimed by using the
17 person's average tax rate for each reporting period. A person who uses
18 an estimated average tax rate must make an adjustment to the total
19 credit claimed for the calendar year using the person's actual average
20 tax rate for the calendar year when the person files its last return
21 for the calendar year for which the credit is claimed.

22 (3) Any person entitled to the credit provided in subsection (2) of
23 this section as a result of qualified research and development
24 conducted under contract may assign all or any portion of the credit to
25 the person contracting for the performance of the qualified research
26 and development.

27 (4) The credit, including any credit assigned to a person under
28 subsection (3) of this section, shall be claimed against taxes due for
29 the same calendar year in which the qualified research and development
30 expenditures are incurred. The credit, including any credit assigned
31 to a person under subsection (3) of this section, for each calendar
32 year shall not exceed the lesser of two million dollars or the amount
33 of tax otherwise due under this chapter for the calendar year.

34 (5) For any person claiming the credit, including any credit
35 assigned to a person under subsection (3) of this section, whose
36 research and development spending during the calendar year in which the
37 credit is claimed fails to exceed 0.92 percent of the person's taxable
38 amount during the same calendar year or who is otherwise ineligible,

1 the department shall declare the taxes against which the credit was
2 claimed to be immediately due and payable. The department shall assess
3 interest, but not penalties, on the taxes against which the credit was
4 claimed. Interest shall be assessed at the rate provided for
5 delinquent excise taxes under chapter 82.32 RCW, retroactively to the
6 date the credit was claimed, and shall accrue until the taxes against
7 which the credit was claimed are repaid. Any credit assigned to a
8 person under subsection (3) of this section that is disallowed as a
9 result of this section may be claimed by the person who performed the
10 qualified research and development subject to the limitations set forth
11 in subsection (4) of this section.

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

16 (b) A person claiming the credit shall file a complete annual
17 survey with the department. The survey is due by March 31st following
18 any year in which a credit is claimed. The department may extend the
19 due date for timely filing of annual surveys under this section as
20 provided in RCW 82.32.590. The survey shall include the amount of the
21 tax credit claimed, the qualified research and development expenditures
22 during the calendar year for which the credit is claimed, the taxable
23 amount during the calendar year for which the credit is claimed, the
24 number of new products or research projects by general classification,
25 the number of trademarks, patents, and copyrights associated with the
26 research and development activities for which a credit was claimed, and
27 whether the credit has been assigned under subsection (3) of this
28 section and who assigned the credit. The survey shall also include the
29 following information for employment positions in Washington:

30 (i) The number of total employment positions;

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

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

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

3 (c) The department may request additional information necessary to
4 measure the results of the tax credit program, to be submitted at the
5 same time as the survey.

6 (d)(i) All information collected under this subsection, except the
7 amount of the tax credit claimed, is deemed taxpayer information under
8 RCW 82.32.330. Information on the amount of tax credit claimed is not
9 subject to the confidentiality provisions of RCW 82.32.330 and may be
10 disclosed to the public upon request, except as provided in this
11 subsection (6)(d). If the amount of the tax credit as reported on the
12 survey is different than the amount actually claimed on the taxpayer's
13 tax returns or otherwise allowed by the department, the amount actually
14 claimed or allowed may be disclosed.

15 (ii) Persons for whom the actual amount of the tax credit claimed
16 on the taxpayer's returns or otherwise allowed by the department is
17 less than ten thousand dollars during the period covered by the survey
18 may request the department to treat the tax credit amount as
19 confidential under RCW 82.32.330.

20 (e) If a person fails to file a complete annual survey required
21 under this subsection with the department by the due date or any
22 extension under RCW 82.32.590, the person entitled to the credit
23 provided in subsection (2) of this section is not eligible to claim or
24 assign the credit provided in subsection (2) of this section in the
25 year the person failed to timely file a complete survey.

26 (7) The department shall use the information from subsection (6) of
27 this section to prepare summary descriptive statistics by category. No
28 fewer than three taxpayers shall be included in any category. The
29 department shall report these statistics to the legislature each year
30 by September 1st.

31 (8) The department shall use the information from subsection (6) of
32 this section to study the tax credit program authorized under this
33 section. The department shall report to the legislature by December 1,
34 2009, and December 1, 2013. The reports shall measure the effect of
35 the program on job creation, the number of jobs created for Washington
36 residents, company growth, the introduction of new products, the
37 diversification of the state's economy, growth in research and

1 development investment, the movement of firms or the consolidation of
2 firms' operations into the state, and such other factors as the
3 department selects.

4 (9) For the purpose of this section:

5 (a) "Average tax rate" means a person's total tax liability under
6 this chapter for the calendar year for which the credit is claimed
7 divided by the taxpayer's total taxable amount under this chapter for
8 the calendar year for which the credit is claimed.

9 (b)(i) "Qualified research and development expenditures" means
10 operating expenses, including wages, compensation of a proprietor or a
11 partner in a partnership as determined under rules adopted by the
12 department, benefits, supplies, and computer expenses, directly
13 incurred in qualified research and development by a person claiming the
14 credit provided in this section, including amounts paid to a public
15 educational or research institute or a person that specializes in phase
16 I and II clinical trials as defined in RCW 82.63.010.

17 (ii) The term does not include:

18 (A) Amounts paid to a person to conduct qualified research and
19 development, other than amounts paid to a public educational or
20 research institution ((to conduct qualified research and development.
21 Nor does the term include)) or a person that specializes in phase I and
22 II clinical trials as defined in RCW 82.63.010;

23 (B) Amounts received by a person that specializes in phase I and II
24 clinical trials as defined in RCW 82.63.010 from a person eligible for
25 the credit provided by this section in respect to such amounts;

26 (C) Capital costs and overhead, such as expenses for land,
27 structures, or depreciable property.

28 (iii) For purposes of this subsection (9), a person specializes in
29 phase I and II clinical trials if the person is an independent research
30 facility that derives a majority of its gross income subject to tax
31 under this chapter from conducting phase I and II clinical trials.

32 (c) "Qualified research and development" shall have the same
33 meaning as in RCW 82.63.010.

34 (d) "Research and development spending" means qualified research
35 and development expenditures plus eighty percent of amounts paid to a
36 person other than a public educational or research institution or a
37 person that specializes in phase I and II clinical trials as defined in
38 RCW 82.63.010, to conduct qualified research and development.

1 (e) "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 credit
4 is claimed, less any taxable amount for which a credit is allowed under
5 RCW 82.04.440.

6 (10) This section expires January 1, 2015.

7 **Sec. 2.** RCW 82.63.010 and 2004 c 2 s 3 are each amended to read as
8 follows:

9 Unless the context clearly requires otherwise, the definitions in
10 this section apply throughout this chapter.

11 (1) "Advanced computing" means technologies used in the designing
12 and developing of computing hardware and software, including
13 innovations in designing the full spectrum of hardware from hand-held
14 calculators to super computers, and peripheral equipment.

15 (2) "Advanced materials" means materials with engineered properties
16 created through the development of specialized processing and synthesis
17 technology, including ceramics, high value-added metals, electronic
18 materials, composites, polymers, and biomaterials.

19 (3) "Applicant" means a person applying for a tax deferral under
20 this chapter.

21 (4)(a) "Biotechnology" means the application of technologies, such
22 as recombinant DNA techniques, biochemistry, molecular and cellular
23 biology, genetics and genetic engineering, cell fusion techniques, and
24 new bioprocesses, using living organisms, or parts of organisms, to
25 produce or modify products, to improve plants or animals, to develop
26 microorganisms for specific uses, to identify targets for small
27 molecule pharmaceutical development, or to transform biological systems
28 into useful processes and products or to develop microorganisms for
29 specific uses.

30 (b) The term also includes the conducting of studies of
31 investigational new drugs in humans required by a governmental entity,
32 such as the United States food and drug administration, before an
33 investigational new drug can be licensed and marketed for human use.

34 (5) "Department" means the department of revenue.

35 (6) "Electronic device technology" means technologies involving
36 microelectronics; semiconductors; electronic equipment and

1 instrumentation; radio frequency, microwave, and millimeter
2 electronics; optical and optic-electrical devices; and data and digital
3 communications and imaging devices.

4 (7) "Eligible investment project" means an investment project which
5 either initiates a new operation, or expands or diversifies a current
6 operation by expanding, renovating, or equipping an existing facility.
7 The lessor or owner of the qualified building is not eligible for a
8 deferral unless:

9 (a) The underlying ownership of the buildings, machinery, and
10 equipment vests exclusively in the same person; or

11 (b)(i) The lessor by written contract agrees to pass the economic
12 benefit of the deferral to the lessee;

13 (ii) The lessee that receives the economic benefit of the deferral
14 agrees in writing with the department to complete the annual survey
15 required under RCW 82.63.020(2); and

16 (iii) The economic benefit of the deferral passed to the lessee is
17 no less than the amount of tax deferred by the lessor and is evidenced
18 by written documentation of any type of payment, credit, or other
19 financial arrangement between the lessor or owner of the qualified
20 building and the lessee.

21 (8) "Environmental technology" means assessment and prevention of
22 threats or damage to human health or the environment, environmental
23 cleanup, and the development of alternative energy sources.

24 (9) "Investment project" means an investment in qualified buildings
25 or qualified machinery and equipment, including labor and services
26 rendered in the planning, installation, and construction or improvement
27 of the project.

28 (10) "Person" has the meaning given in RCW 82.04.030 and includes
29 state universities as defined in RCW 28B.10.016.

30 (11) "Pilot scale manufacturing" means design, construction, and
31 testing of preproduction prototypes and models in the fields of
32 biotechnology, advanced computing, electronic device technology,
33 advanced materials, and environmental technology other than for
34 commercial sale. As used in this subsection, "commercial sale"
35 excludes sales of prototypes or sales for market testing if the total
36 gross receipts from such sales of the product, service, or process do
37 not exceed one million dollars.

1 (12) "Qualified buildings" means construction of new structures,
2 and expansion or renovation of existing structures for the purpose of
3 increasing floor space or production capacity used for pilot scale
4 manufacturing or qualified research and development, including plant
5 offices and other facilities that are an essential or an integral part
6 of a structure used for pilot scale manufacturing or qualified research
7 and development. If a building is used partly for pilot scale
8 manufacturing or qualified research and development, and partly for
9 other purposes, the applicable tax deferral shall be determined by
10 apportionment of the costs of construction under rules adopted by the
11 department.

12 (13) "Qualified machinery and equipment" means fixtures, equipment,
13 and support facilities that are an integral and necessary part of a
14 pilot scale manufacturing or qualified research and development
15 operation. "Qualified machinery and equipment" includes: Computers;
16 software; data processing equipment; laboratory equipment,
17 instrumentation, and other devices used in a process of experimentation
18 to develop a new or improved pilot model, plant process, product,
19 formula, invention, or similar property; manufacturing components such
20 as belts, pulleys, shafts, and moving parts; molds, tools, and dies;
21 vats, tanks, and fermenters; operating structures; and all other
22 equipment used to control, monitor, or operate the machinery. For
23 purposes of this chapter, qualified machinery and equipment must be
24 either new to the taxing jurisdiction of the state or new to the
25 certificate holder, except that used machinery and equipment may be
26 treated as qualified machinery and equipment if the certificate holder
27 either brings the machinery and equipment into Washington or makes a
28 retail purchase of the machinery and equipment in Washington or
29 elsewhere.

30 (14) "Qualified research and development" means research and
31 development performed within this state in the fields of advanced
32 computing, advanced materials, biotechnology, electronic device
33 technology, and environmental technology.

34 (15) "Recipient" means a person receiving a tax deferral under this
35 chapter.

36 (16)(a) "Research and development" means activities performed to
37 discover technological information, and technical and nonroutine
38 activities concerned with translating technological information into

1 new or improved products, processes, techniques, formulas, inventions,
2 or software. The term includes exploration of a new use for an
3 existing drug, device, or biological product if the new use requires
4 separate licensing by the federal food and drug administration under
5 chapter 21, C.F.R., as amended. The term also includes the conducting
6 of phase I or II clinical trials to determine whether investigational
7 new drugs for use in humans are safe and effective when conducted by a
8 person that specializes in phase I and II clinical trials. For
9 purposes of this subsection (16), a person specializes in phase I and
10 II clinical trials if the person is an independent research facility
11 that derives a majority of its gross income subject to tax under
12 chapter 82.04 RCW from conducting phase I and II clinical trials. The
13 term does not include adaptation or duplication of existing products
14 where the products are not substantially improved by application of the
15 technology(~~(τ nor does)~~). The term also does not include surveys
16 ((and)); studies, other than phase I and II clinical trials; social
17 science and humanities research(~~(τ)~~); market research or testing(~~(τ)~~);
18 quality control(~~(τ)~~); sale promotion and service(~~(τ)~~); computer
19 software developed for internal use(~~(τ)~~); and research in areas such as
20 improved style, taste, and seasonal design.

21 (b) For purposes of this subsection, the following definitions
22 apply:

23 (i) "Phase I clinical trial" means initial studies in patients or
24 healthy volunteer subjects to determine the metabolism and
25 pharmacologic actions of drugs in humans, the side effects associated
26 with increasing doses, and, if possible, to gain early evidence of
27 effectiveness.

28 (ii) "Phase II clinical trial" means controlled clinical studies
29 conducted to evaluate the effectiveness of a drug for a particular
30 indication or indications in patients with the disease or condition
31 under study and to determine the common short-term side effects and
32 risks.

33 (17)(a) "Initiation of construction" means the date that a building
34 permit is issued under the building code adopted under RCW 19.27.031
35 for:

36 (i) Construction of the qualified building, if the underlying
37 ownership of the building vests exclusively with the person receiving
38 the economic benefit of the deferral;

1 (ii) Construction of the qualified building, if the economic
2 benefits of the deferral are passed to a lessee as provided in
3 subsection (7) of this section; or

4 (iii) Tenant improvements for a qualified building, if the economic
5 benefits of the deferral are passed to a lessee as provided in
6 subsection (7) of this section.

7 (b) "Initiation of construction" does not include soil testing,
8 site clearing and grading, site preparation, or any other related
9 activities that are initiated before the issuance of a building permit
10 for the construction of the foundation of the building.

11 (c) If the investment project is a phased project, "initiation of
12 construction" shall apply separately to each phase.

13 NEW SECTION. **Sec. 3.** For purposes of RCW 82.04.4452, this act
14 applies with respect to research and development spending and qualified
15 research and development expenditures incurred on or after January 1,
16 2008.

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