
SUBSTITUTE SENATE BILL 5899

State of Washington

61st Legislature

2009 Regular Session

By Senate Ways & Means (originally sponsored by Senators Kilmer, Franklin, Kastama, Shin, Marr, McAuliffe, Haugen, Brown, Berkey, Prentice, Fairley, Regala, Keiser, Eide, Rockefeller, Murray, Hatfield, Hargrove, Sheldon, Oemig, and Kline)

READ FIRST TIME 02/11/09.

1 AN ACT Relating to providing a business and occupation tax credit
2 for qualified employment positions; and adding a new section to chapter
3 82.04 RCW.

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

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

7 (1) A credit is allowed against the tax due under this chapter for
8 new qualified employment positions created as provided in this section.

9 (2) The credit equals:

10 (a) Four thousand dollars for each qualified employment position
11 with wages and benefits greater than forty thousand dollars annually,
12 and for which the business offers a health care plan, that is directly
13 created in an eligible business; or

14 (b) Two thousand dollars for each qualified employment position
15 with wages and benefits no less than one hundred fifty percent of the
16 minimum wage and no more than forty thousand dollars annually, and for
17 which the business offers a health care plan.

18 (3) For purposes of calculating the amount of credit under

1 subsection (2) of this section with respect to qualified employment
2 positions, the following applies:

3 (a) In determining the number of qualified employment positions, a
4 fractional amount is rounded down to the nearest whole number; and

5 (b) Wages and benefits for each qualified employment position are
6 equal to the quotient derived by dividing:

7 (i) The sum of the wages and benefits earned for the four
8 consecutive full calendar quarters for which a credit under this
9 section is earned by all of the person's new seasonal employees hired
10 during that period; by

11 (ii) The number of qualified employment positions plus any
12 fractional amount subject to rounding as provided under (a) of this
13 subsection.

14 (4) For purposes of this section, a credit is earned for the four
15 consecutive full calendar quarters after the calendar quarter during
16 which the first qualified employment position is filled.

17 (5) The department must keep a running total of all credits allowed
18 under this section during each fiscal year. The department may not
19 allow any credits which would cause the total to exceed five million
20 dollars in any fiscal year. If all or part of an application for
21 credit is disallowed under this subsection, the disallowed portion must
22 be carried over to the next fiscal year. However, the carryover into
23 the next fiscal year is only permitted to the extent that the cap for
24 the next fiscal year is not exceeded.

25 (6) No recipient may use the tax credits to decertify a union or to
26 displace existing jobs in any community in the state.

27 (7) The credit may be used against any tax due under this chapter,
28 and may be carried over until used. No refunds may be granted for
29 credits under this section.

30 (8) Application for tax credits under this section must be made
31 within ninety consecutive days after the first qualified employment
32 position is filled. The application must be made to the department in
33 a form and manner prescribed by the department. The application must
34 contain information regarding the location of the business, the
35 applicant's average employment, if any, at the facility for the four
36 consecutive full calendar quarters immediately preceding the earlier of
37 the calendar quarter during which the application required by this
38 section is submitted to the department or the first qualified

1 employment position is filled, estimated or actual new employment
2 related to the business, estimated or actual wages of employees related
3 to the business, estimated or actual costs, time schedules for
4 completion and operation, and other information required by the
5 department. The department must prescribe a method for calculating a
6 seasonal employer's average employment levels. The department must
7 rule on the application within sixty days.

8 (9)(a) Each recipient must submit a report to the department by the
9 last day of the month immediately following the end of the four
10 consecutive full calendar quarters for which a credit under this
11 section is earned. The report must contain information, as required by
12 the department, from which the department may determine whether the
13 recipient is meeting the requirements of this section. If the
14 recipient fails to submit a report or submits an inadequate report, the
15 department may declare the amount of taxes for which a credit has been
16 used to be immediately assessed and payable. The recipient must keep
17 records, such as payroll records showing the date of hire and
18 employment security reports, to verify eligibility under this
19 subsection (9).

20 (b) If, on the basis of a report under this section or other
21 information, the department finds that a business is not eligible for
22 tax credit under this section for reasons other than failure to create
23 the required number of qualified employment positions, the amount of
24 taxes for which a credit has been used is immediately due.

25 (c) If, on the basis of a report under this subsection (9) or other
26 information, the department finds that a business has failed to create
27 the specified number of qualified employment positions, the department
28 must assess interest, but not penalties, on the credited taxes for
29 which a credit has been used. The interest must be assessed at the
30 rate provided for delinquent excise taxes, must be assessed
31 retroactively to the date of the tax credit, and must accrue until the
32 taxes for which a credit has been used are repaid.

33 (10) The employment security department must make, and certify to
34 the department, all determinations of employment and wages requested by
35 the department under this section.

36 (11) Applications, reports, and any other information received by
37 the department under this section are not confidential and are subject
38 to disclosure.

1 (12) A person claiming credit under chapter 82.62 RCW or RCW
2 82.04.44525 or 82.04.448 cannot claim a credit under this section.

3 (13) The following definitions apply throughout this section,
4 unless the context clearly requires otherwise.

5 (a) "Applicant" means a person applying for a tax credit under this
6 section.

7 (b) "Eligible business" means a business located within the state
8 of Washington with ten or fewer employees.

9 (c) "First qualified employment position" means the first qualified
10 employment position filled for which a credit under this section is
11 sought.

12 (d) "Health care plan" means any "employee welfare benefit plan" as
13 defined by the employee retirement income security act of 1974, Title
14 29 U.S.C. Sec. 1001 et seq., and any "health plan" or "health benefit
15 plan" as defined in RCW 48.43.005, for the purpose of providing for its
16 employees or their beneficiaries, through the purchase of insurance or
17 otherwise, health care services. For the purposes of this section,
18 "health care services" means services offered or provided by health
19 care facilities and health care providers relating to the prevention,
20 cure, or treatment of illness, injury, or disease.

21 (e)(i)(A) "Qualified employment position" means a permanent full-
22 time employee employed in the eligible business in Washington during
23 four consecutive full calendar quarters.

24 (B) For seasonal employers, "qualified employment position" also
25 includes the equivalent of a full-time employee in work hours for four
26 consecutive full calendar quarters.

27 (ii) For purposes of this subsection (13)(d), "full time" means a
28 normal work week of at least thirty-five hours.

29 (iii) Once a permanent, full-time employee has been employed, a
30 position does not cease to be a qualified employment position solely
31 due to periods in which the position goes vacant, as long as:

32 (A) The cumulative period of any vacancies in that position is not
33 more than one hundred twenty days in the four quarter period; and

34 (B) During a vacancy, the employer is training or actively
35 recruiting a replacement permanent, full-time employee for the
36 position.

37 (f) "Recipient" means a person receiving tax credits under this
38 section.

1 (g) "Seasonal basis" means a continuous employment period of less
2 than twelve consecutive months, for the purposes of "seasonal employee"
3 and "seasonal employer" under this section.

4 (h) "Seasonal employee" means an employee of a seasonal employer
5 who works on a seasonal basis.

6 (i) "Seasonal employer" means a person who regularly hires more
7 than fifty percent of its employees to work on a seasonal basis.

8 (14) No applications may be accepted after June 30, 2011.

9 NEW SECTION. **Sec. 2.** If any provision of this act or its
10 application to any person or circumstance is held invalid, the
11 remainder of the act or the application of the provision to other
12 persons or circumstances is not affected.

--- END ---