
ENGROSSED SUBSTITUTE SENATE BILL 5201

State of Washington

54th Legislature

1995 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Bauer, Cantu, McAuliffe, Haugen, Winsley, Snyder, Loveland, Sheldon, Fairley, West, Long, Palmer, Schow, Moyer, Sellar, Rasmussen, Deccio, Heavey, Quigley, C. Anderson, Oke, Roach and Hale; by request of Governor Lowry)

Read first time 03/06/95.

1 AN ACT Relating to sales and use tax on manufacturing machinery and
2 equipment, pollution control equipment, and high technology research
3 and development; amending RCW 82.04.190, 82.60.040, 82.60.045,
4 82.60.065, 82.60.070, 82.61.010, and 82.63.010; reenacting and amending
5 RCW 82.60.020; adding a new section to chapter 82.08 RCW; adding a new
6 section to chapter 82.12 RCW; adding a new section to chapter 82.63
7 RCW; creating new sections; repealing RCW 82.61.020, 82.61.040,
8 82.63.040, and 82.63.050; providing an effective date; and declaring an
9 emergency.

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

11 NEW SECTION. **Sec. 1.** The legislature finds and declares that:
12 (1) The health, safety, and welfare of the people of the state of
13 Washington are heavily dependent upon the continued encouragement,
14 development, and expansion of opportunities for family wage employment
15 in our state's private sector;
16 (2) The state's private sector must be encouraged to commit to
17 continuous improvement of process, products, and services and to
18 deliver high-quality, high-value products through technological
19 innovations and high-performance work organizations;

1 (3) The state's opportunities for increased economic dealings with
2 other states and nations of the world are dependent on supporting and
3 attracting a diverse, stable, and competitive economic base of private
4 sector employers;

5 (4) The state's current policy of applying its sales and use taxes
6 to machinery, equipment, and installation labor used in manufacturing,
7 research and development, and other activities has placed our state's
8 private sector at a competitive disadvantage with other states and
9 serves as a significant disincentive to the continuous improvement of
10 products, technology, and modernization necessary for the preservation,
11 stabilization, and expansion of employment and to ensure a stable
12 economy; and

13 (5) It is vital to the continued development of economic
14 opportunity in this state, including the development of new businesses
15 and the expansion or modernization of existing businesses, that the
16 state of Washington provide tax incentives to entities making a
17 commitment to sites and operations in this state.

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

20 (1) The tax levied by RCW 82.08.020 shall not apply to sales to a
21 manufacturer or processor for hire of machinery and equipment used
22 directly in a manufacturing operation, or to sales of or charges made
23 for labor and services rendered in respect to installing the machinery
24 and equipment, but only when the purchaser provides the seller with an
25 exemption certificate in a form and manner prescribed by the department
26 by rule, and the purchaser provides the department with a duplicate of
27 the certificate or a summary of exempt sales as the department may
28 require. The seller shall retain a copy of the certificate for the
29 seller's files.

30 (2) For purposes of this section and section 3 of this act:

31 (a) "Machinery and equipment" means industrial fixtures, devices,
32 and support facilities. "Machinery and equipment" includes pollution
33 control equipment installed and used in a manufacturing operation to
34 prevent air pollution, water pollution, or contamination that might
35 otherwise result from the manufacturing operation.

36 (b) "Machinery and equipment" does not include:

37 (i) Hand tools;

38 (ii) Property with a useful life of less than one year;

1 (iii) Repair parts required to restore machinery and equipment to
2 normal working order;

3 (iv) Replacement parts that do not increase productivity, improve
4 efficiency, or extend the useful life of the machinery and equipment;
5 or

6 (v) Building fixtures that are not integral to the manufacturing
7 operation that are permanently affixed to and become a physical part of
8 a building, such as utility systems for heating, ventilation, air
9 conditioning, communications, plumbing, or electrical.

10 (c) Machinery and equipment is "used directly" in a manufacturing
11 operation if the machinery and equipment:

12 (i) Acts upon or interacts with an item of tangible personal
13 property;

14 (ii) Conveys, transports, handles, or temporarily stores an item of
15 tangible personal property at the manufacturing site;

16 (iii) Controls, guides, measures, verifies, aligns, regulates, or
17 tests tangible personal property;

18 (iv) Provides physical support for or access to tangible personal
19 property;

20 (v) Produces steam or mechanical power for, or lubricates machinery
21 and equipment;

22 (vi) Produces another item of tangible personal property for use in
23 the manufacturing operation; or

24 (vii) Places tangible personal property in the container, package,
25 or wrapping in which the tangible personal property is normally sold or
26 transported.

27 (d) "Manufacturing operation" means the manufacturing of articles,
28 substances, or commodities for sale as tangible personal property. The
29 manufacturing operation begins at the point where the raw materials
30 enter the manufacturing site and ends at the point where the finished
31 product leaves the manufacturing site. The term does not include
32 research and development, cogeneration or the production of
33 electricity, or the preparation of food products on the premises of a
34 person selling food products at retail.

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

37 The provisions of this chapter shall not apply in respect to the
38 use by a manufacturer or processor for hire of machinery and equipment

1 used directly in a manufacturing operation, but only when the user
2 provides the department with:

3 (1) An exemption certificate in a form and manner prescribed by the
4 department within sixty days of the first use of the machinery and
5 equipment in this state; or

6 (2) An annual summary listing the machinery and equipment by
7 January 31 of the year following the calendar year in which the
8 machinery and equipment is first used in this state.

9 **Sec. 4.** RCW 82.04.190 and 1986 c 231 s 2 are each amended to read
10 as follows:

11 "Consumer" means the following:

12 (1) Any person who purchases, acquires, owns, holds, or uses any
13 article of tangible personal property irrespective of the nature of the
14 person's business and including, among others, without limiting the
15 scope hereof, persons who install, repair, clean, alter, improve,
16 construct, or decorate real or personal property of or for consumers
17 other than for the purpose (a) of resale as tangible personal property
18 in the regular course of business or (b) of incorporating such property
19 as an ingredient or component of real or personal property when
20 installing, repairing, cleaning, altering, imprinting, improving,
21 constructing, or decorating such real or personal property of or for
22 consumers or (c) of consuming such property in producing for sale a new
23 article of tangible personal property or a new substance, of which such
24 property becomes an ingredient or component or as a chemical used in
25 processing, when the primary purpose of such chemical is to create a
26 chemical reaction directly through contact with an ingredient of a new
27 article being produced for sale or (d) purchases for the purpose of
28 consuming the property purchased in producing ferrosilicon which is
29 subsequently used in producing magnesium for sale, if the primary
30 purpose of such property is to create a chemical reaction directly
31 through contact with an ingredient of ferrosilicon;

32 (2) Any person engaged in any business activity taxable under RCW
33 82.04.290 and any person who purchases, acquires, or uses any telephone
34 service as defined in RCW 82.04.065, other than for resale in the
35 regular course of business;

36 (3) Any person engaged in the business of contracting for the
37 building, repairing or improving of any street, place, road, highway,
38 easement, right of way, mass public transportation terminal or parking

1 facility, bridge, tunnel, or trestle which is owned by a municipal
2 corporation or political subdivision of the state of Washington or by
3 the United States and which is used or to be used primarily for foot or
4 vehicular traffic including mass transportation vehicles of any kind as
5 defined in RCW 82.04.280, in respect to tangible personal property when
6 such person incorporates such property as an ingredient or component of
7 such publicly owned street, place, road, highway, easement, right of
8 way, mass public transportation terminal or parking facility, bridge,
9 tunnel, or trestle by installing, placing or spreading the property in
10 or upon the right of way of such street, place, road, highway,
11 easement, bridge, tunnel, or trestle or in or upon the site of such
12 mass public transportation terminal or parking facility;

13 (4) Any person who is an owner, lessee or has the right of
14 possession to or an easement in real property which is being
15 constructed, repaired, decorated, improved, or otherwise altered by a
16 person engaged in business, excluding only (a) municipal corporations
17 or political subdivisions of the state in respect to labor and services
18 rendered to their real property which is used or held for public road
19 purposes, and (b) the United States, instrumentalities thereof, and
20 county and city housing authorities created pursuant to chapter 35.82
21 RCW in respect to labor and services rendered to their real property.
22 Nothing contained in this or any other subsection of this definition
23 shall be construed to modify any other definition of "consumer";

24 (5) Any person who is an owner, lessee, or has the right of
25 possession to personal property which is being constructed, repaired,
26 improved, cleaned, imprinted, or otherwise altered by a person engaged
27 in business;

28 (6) Any person engaged in the business of constructing, repairing,
29 decorating, or improving new or existing buildings or other structures
30 under, upon, or above real property of or for the United States, any
31 instrumentality thereof, or a county or city housing authority created
32 pursuant to chapter 35.82 RCW, including the installing or attaching of
33 any article of tangible personal property therein or thereto, whether
34 or not such personal property becomes a part of the realty by virtue of
35 installation; also, any person engaged in the business of clearing land
36 and moving earth of or for the United States, any instrumentality
37 thereof, or a county or city housing authority created pursuant to
38 chapter 35.82 RCW. Any such person shall be a consumer within the
39 meaning of this subsection in respect to tangible personal property

1 incorporated into, installed in, or attached to such building or other
2 structure by such person; and

3 (7) Any person who is a lessor of machinery and equipment, the
4 rental of which is exempt from the tax imposed by RCW 82.08.020 under
5 section 2 of this act, with respect to the sale of or charge made for
6 tangible personal property consumed and for labor and services rendered
7 in respect to repairing the machinery and equipment.

8 Nothing contained in this or any other subsection of this
9 definition shall be construed to modify any other definition of
10 "consumer."

11 **Sec. 5.** RCW 82.60.020 and 1994 sp.s. c 7 s 704 and 1994 sp.s. c 1
12 s 1 are each reenacted and amended to read as follows:

13 Unless the context clearly requires otherwise, the definitions in
14 this section apply throughout this chapter.

15 (1) "Applicant" means a person applying for a tax deferral under
16 this chapter.

17 (2) "Department" means the department of revenue.

18 (3) "Eligible area" means: (a) A county in which the average level
19 of unemployment for the three years before the year in which an
20 application is filed under this chapter exceeds the average state
21 unemployment for those years by twenty percent; (b) a metropolitan
22 statistical area, as defined by the office of federal statistical
23 policy and standards, United States department of commerce, in which
24 the average level of unemployment for the calendar year immediately
25 preceding the year in which an application is filed under this chapter
26 exceeds the average state unemployment for such calendar year by twenty
27 percent; (c) a designated community empowerment zone approved under RCW
28 43.63A.700 or a county containing such a community empowerment zone;
29 (d) a town with a population of less than twelve hundred persons in
30 those counties that are not covered under (a) of this subsection that
31 are timber impact areas as defined in RCW 43.31.601; ~~((or))~~ (e) a
32 county designated by the governor as an eligible area under RCW
33 82.60.047; or (f) a county that is contiguous to a county that
34 qualifies as an eligible area under (a) or (e) of this subsection.

35 (4)(a) "Eligible investment project" means:

36 (i) An investment project in an eligible area as defined in
37 subsection (3)(a), (b), (d), or (e) of this section; or

1 (ii) That portion of an investment project in an eligible area as
2 defined in subsection (3)(c) or (f) of this section which~~((i))~~ is
3 directly utilized to create at least one new full-time qualified
4 employment position for each three hundred thousand dollars of
5 investment on which a deferral is requested in an application approved
6 before July 1, 1994, and for each seven hundred fifty thousand dollars
7 of investment on which a deferral is requested in an application
8 approved after June 30, 1994~~((i) and~~

9 ~~((ii) Either initiates a new operation, or expands or diversifies a~~
10 ~~current operation by expanding, equipping, or renovating an existing~~
11 ~~facility with costs in excess of twenty five percent of the true and~~
12 ~~fair value of the facility prior to improvement)).~~

13 (b) The lessor/owner of a qualified building is not eligible for a
14 deferral unless the underlying ownership of the buildings, machinery,
15 and equipment vests exclusively in the same person, or unless the
16 lessor by written contract agrees to pass the economic benefit of the
17 deferral to the lessee in the form of reduced rent payments.

18 ~~((b))~~ (c) For purposes of (a)~~((i))~~ (ii) of this
19 subsection~~((7))~~:

20 (i) The department shall consider the entire investment project,
21 including any investment in machinery and equipment that otherwise
22 qualifies for exemption under section 2 or 3 of this act, for purposes
23 of determining the portion of the investment project that qualifies for
24 deferral as an eligible investment project; and

25 (ii) The number of new full-time qualified employment positions
26 created by an investment project shall be deemed to be reduced by the
27 number of full-time employment positions maintained by the recipient in
28 any other community in this state that are displaced as a result of the
29 investment project.

30 ~~((e))~~ (d) "Eligible investment project" does not include any
31 portion of an investment project undertaken by a light and power
32 business as defined in RCW 82.16.010(5), other than that portion of a
33 cogeneration project~~((s that are both an integral part of a~~
34 manufacturing facility and owned at least fifty percent by the
35 manufacturer)) that is used to generate power for consumption within
36 the manufacturing site of which the cogeneration project is an integral
37 part, or investment projects which have already received deferrals
38 under this chapter.

1 (5) "Investment project" means an investment in qualified buildings
2 or qualified machinery and equipment, including labor and services
3 rendered in the planning, installation, and construction of the
4 project.

5 (6) "Manufacturing" means all activities of a commercial or
6 industrial nature wherein labor or skill is applied, by hand or
7 machinery, to materials so that as a result thereof a new, different,
8 or useful substance or article of tangible personal property is
9 produced for sale or commercial or industrial use and shall include the
10 production or fabrication of specially made or custom made articles.
11 "Manufacturing" also includes computer programming, the production of
12 computer software, and other computer-related services, and the
13 activities performed by research and development laboratories and
14 commercial testing laboratories.

15 (7) "Person" has the meaning given in RCW 82.04.030.

16 (8) "Qualified buildings" means construction of new structures, and
17 expansion or renovation of existing structures for the purpose of
18 increasing floor space or production capacity used for manufacturing
19 and research and development activities, including plant offices and
20 warehouses or other facilities for the storage of raw material or
21 finished goods if such facilities are an essential or an integral part
22 of a factory, mill, plant, or laboratory used for manufacturing or
23 research and development. If a building is used partly for
24 manufacturing or research and development and partly for other
25 purposes, the applicable tax deferral shall be determined by
26 apportionment of the costs of construction under rules adopted by the
27 department.

28 (9) "Qualified employment position" means a permanent full-time
29 employee employed in the eligible investment project during the entire
30 tax year.

31 (10) "Qualified machinery and equipment" means all new industrial
32 and research fixtures, equipment, and support facilities that are an
33 integral and necessary part of a manufacturing or research and
34 development operation. "Qualified machinery and equipment" includes:
35 Computers; software; data processing equipment; laboratory equipment;
36 manufacturing components such as belts, pulleys, shafts, and moving
37 parts; molds, tools, and dies; operating structures; and all equipment
38 used to control or operate the machinery.

1 (11) "Recipient" means a person receiving a tax deferral under this
2 chapter.

3 (12) "Research and development" means the development, refinement,
4 testing, marketing, and commercialization of a product, service, or
5 process before commercial sales have begun. As used in this
6 subsection, "commercial sales" excludes sales of prototypes or sales
7 for market testing if the total gross receipts from such sales of the
8 product, service, or process do not exceed one million dollars.

9 **Sec. 6.** RCW 82.60.040 and 1994 sp.s. c 1 s 3 are each amended to
10 read as follows:

11 (1) The department shall issue a sales and use tax deferral
12 certificate for state and local sales and use taxes due under chapters
13 82.08, 82.12, and 82.14 RCW on each eligible investment project that:

14 (a) Is located in an eligible area (~~((other than a designated~~
15 ~~neighborhood reinvestment area approved under RCW 43.63A.700))~~ as
16 defined in RCW 82.60.020(3)(a), (b), (d), or (e);

17 (b) Is located in (~~(any county)~~) an eligible area as defined in RCW
18 82.60.020(3)(f) if seventy-five percent of the new qualified employment
19 positions are to be filled by residents of a contiguous county that
20 ((qualifies as)) is an eligible area as defined in RCW 82.60.020(3)(a)
21 or (e); or

22 (c) Is located in (~~(a designated neighborhood reinvestment area~~
23 ~~approved under RCW 43.63A.700, or in a county containing such a~~
24 ~~neighborhood reinvestment area,)) an eligible area as defined in RCW~~

25 82.60.020(3)(c) if seventy-five percent of the new qualified employment
26 positions are to be filled by residents of ((the neighborhood
27 reinvestment area)) a designated community empowerment zone approved
28 under RCW 43.63A.700 located within the county in which the eligible
29 investment project is located.

30 (2) The department shall keep a running total of all deferrals
31 granted under this chapter during each fiscal biennium.

32 **Sec. 7.** RCW 82.60.045 and 1994 sp.s. c 1 s 4 are each amended to
33 read as follows:

34 In addition to the other requirements of this chapter, a recipient
35 of a tax deferral under RCW 82.60.040(1) (b) or (c) shall meet the
36 following requirements:

1 (1) The recipient shall fill at least seventy-five percent of the
2 new qualified employment positions with residents of the contiguous
3 county or ((neighborhood reinvestment area)) community empowerment zone
4 by December 31 of the calendar year during which the department
5 certifies that the investment project is operationally completed, and
6 shall maintain the required percentage during each of the seven
7 succeeding calendar years.

8 (2) If the deferral is for expansion or diversification of an
9 existing facility, the recipient shall ensure that the percentage of
10 qualified employment positions filled by residents of the contiguous
11 county or ((neighborhood reinvestment area)) community empowerment zone
12 for periods prior to the application be maintained for seven calendar
13 years after the year during which the department certifies that the
14 investment project is operationally completed.

15 **Sec. 8.** RCW 82.60.065 and 1994 1st sp.s. c 1 s 6 are each amended
16 to read as follows:

17 Except as provided in RCW 82.60.070:

18 (1) Taxes deferred under this chapter on the sale or use of labor
19 that is directly used in the construction of an investment project for
20 which a deferral has been granted under this chapter after June 11,
21 1986, and prior to July 1, 1994, need not be repaid.

22 (2) Taxes deferred under this chapter on an investment project for
23 which a deferral has been granted under this chapter after June 30,
24 1994, need not be repaid.

25 (3) Taxes deferred under this chapter need not be repaid on
26 machinery and equipment for lumber and wood products industries, and
27 sales of or charges made for labor and services, of the type which
28 qualifies for exemption under section 2 or 3 of this act to the extent
29 the taxes have not been repaid before the effective date of this act.

30 **Sec. 9.** RCW 82.60.070 and 1994 1st sp.s. c 1 s 5 are each amended
31 to read as follows:

32 (1) Each recipient of a deferral granted under this chapter prior
33 to July 1, 1994, shall submit a report to the department on December
34 31st of each year during the repayment period until the tax deferral is
35 repaid. Each recipient of a deferral granted under this chapter after
36 June 30, 1994, shall submit a report to the department on December 31st
37 of the year in which the investment project is certified by the

1 department as having been operationally completed, and on December 31st
2 of each of the seven succeeding calendar years. The report shall
3 contain information, as required by the department, from which the
4 department may determine whether the recipient is meeting the
5 requirements of this chapter. If the recipient fails to submit a
6 report or submits an inadequate report, the department may declare the
7 amount of deferred taxes outstanding to be immediately assessed and
8 payable.

9 (2) If, on the basis of a report under this section or other
10 information, the department finds that an investment project is not
11 eligible for tax deferral under this chapter for reasons other than
12 failure to create the required number of qualified employment
13 positions, the amount of deferred taxes outstanding for the project
14 shall be immediately due.

15 (3) If, on the basis of a report under this section or other
16 information, the department finds that an investment project for which
17 a deferral has been granted under this chapter prior to July 1, 1994,
18 has been operationally complete for three years and has failed to
19 create the required number of qualified employment positions, the
20 department shall assess interest, but not penalties, on the deferred
21 taxes for the project. The interest shall be assessed at the rate
22 provided for delinquent excise taxes, shall be assessed retroactively
23 to the date of deferral, and shall accrue until the deferred taxes are
24 repaid.

25 (4) If, on the basis of a report under this section or other
26 information, the department finds that an investment project for which
27 a deferral has been granted under this chapter after June 30, 1994, has
28 been operationally complete for three years and has failed to create
29 the required number of qualified employment positions, the amount of
30 taxes not eligible for deferral shall be immediately due. The
31 department shall assess interest at the rate provided for delinquent
32 excise taxes, but not penalties, retroactively to the date of deferral.

33 (5) If, on the basis of a report under this section or other
34 information, the department finds that an investment project qualifying
35 for deferral under RCW 82.60.040(1) (b) or (c) has failed to comply
36 with any requirement of RCW 82.60.045 for any calendar year for which
37 reports are required under subsection (1) of this section, twelve and
38 one-half percent of the amount of deferred taxes shall be immediately
39 due. The department shall assess interest at the rate provided for

1 delinquent excise taxes, but not penalties, retroactively to the date
2 of deferral.

3 (6) Notwithstanding any other subsection of this section, deferred
4 taxes need not be repaid on machinery and equipment for lumber and wood
5 products industries, and sales of or charges made for labor and
6 services, of the type which qualifies for exemption under section 2 or
7 3 of this act to the extent the taxes have not been repaid before the
8 effective date of this act.

9 (7) Notwithstanding any other subsection of this section, deferred
10 taxes on the following need not be repaid:

11 (a) Machinery and equipment, and sales of or charges made for labor
12 and services, which at the time of purchase would have qualified for
13 exemption under section 2 of this act; and

14 (b) Machinery and equipment which at the time of first use would
15 have qualified for exemption under section 3 of this act.

16 **Sec. 10.** RCW 82.61.010 and 1994 c 125 s 1 are each amended to read
17 as follows:

18 Unless the context clearly requires otherwise, the definitions in
19 this section apply throughout this chapter.

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

22 (2) "Person" has the meaning given in RCW 82.04.030.

23 (3) "Department" means the department of revenue.

24 (4) "Eligible investment project" means:

25 (a) Construction of new buildings and the acquisition of new
26 related machinery and equipment when the buildings, machinery, and
27 equipment are to be used for either manufacturing or research and
28 development activities, which construction is commenced prior to
29 December 31, (~~(1998)~~) 1995; or

30 (b) Acquisition prior to December 31, (~~(1998)~~) 1995, of new
31 machinery and equipment to be used for either manufacturing or research
32 and development if the machinery and equipment is housed in a new
33 leased structure. The lessor/owner of the structure is not eligible
34 for a deferral unless the underlying ownership of the buildings,
35 machinery, and equipment vests exclusively in the same person; or

36 (c) Acquisition of all new or used machinery, equipment, or other
37 personal property for use in the production or casting of aluminum at
38 an aluminum smelter or at facilities related to an aluminum smelter, if

1 the plant was in operation prior to 1975 and has ceased operations or
2 is in imminent danger of ceasing operations for economic reasons, as
3 determined by the department, and if the person applying for a deferral
4 (i) has consulted with any collective bargaining unit that represented
5 employees of the plant pursuant to a collective bargaining agreement
6 that was in effect either immediately prior to the time the plant
7 ceased operations or during the period when the plant was in imminent
8 danger of ceasing operations, on the proposed operation of the plant
9 and on the terms and conditions of employment for wage and salaried
10 employees and (ii) has obtained a written concurrence from the
11 bargaining unit on the decision to apply for a deferral under this
12 chapter; or

13 (d) Modernization projects involving construction, acquisition, or
14 upgrading of equipment or machinery, including services and labor,
15 which are commenced after May 19, 1987, and are intended to increase
16 the operating efficiency of existing plants which are either aluminum
17 smelters or aluminum rolling mills or of facilities related to such
18 plants, if the plant was in operation prior to 1975, and if the person
19 applying for a deferral (i) has consulted with any collective
20 bargaining unit that represents employees of the plant on the proposed
21 operation of the plant and the terms and conditions of employment for
22 wage and salaried employees and (ii) has obtained a written concurrence
23 from the bargaining unit on the decision to apply for a deferral under
24 this chapter.

25 (5) "Manufacturing" means all activities of a commercial or
26 industrial nature wherein labor or skill is applied, by hand or
27 machinery, to materials so that as a result thereof a new, different,
28 or useful substance or article of tangible personal property is
29 produced for sale or commercial or industrial use and includes the
30 production or fabrication of specially made or custom-made articles.

31 (6) "Research and development" means the development, refinement,
32 testing, marketing, and commercialization of a product, service, or
33 process before commercial sales have begun.

34 (7) "Buildings" means only those new structures used for either
35 manufacturing or research and development activities, including plant
36 offices and warehouses or other facilities for the storage of raw
37 materials or finished goods if such facilities are an essential or an
38 integral part of a factory, mill, plant, or laboratory used for
39 manufacturing or research and development purposes. If a building is

1 used partly for manufacturing or research and development and partly
2 for other purposes, the applicable tax deferral shall be determined by
3 apportionment of the costs of construction under rules adopted by the
4 department.

5 (8) "Machinery and equipment" means all industrial and research
6 fixtures, equipment, and support facilities that are an integral and
7 necessary part of a manufacturing or research and development
8 operation. "Qualified machinery and equipment" includes computers;
9 software; data processing equipment; laboratory equipment;
10 manufacturing components such as belts, pulleys, shafts, and moving
11 parts; molds, tools, and dies; operating structures; and all equipment
12 used to control or operate the machinery. For purposes of this
13 chapter, new machinery and equipment means either new to the taxing
14 jurisdiction of the state or new to the certificate holder. Used
15 machinery and equipment may be treated as new equipment and machinery
16 if the certificate holder either brings the machinery and equipment
17 into Washington or makes a retail purchase of the machinery and
18 equipment in Washington or elsewhere.

19 (9) "Qualified employment position" means a permanent full-time
20 employee employed in the eligible investment project during the entire
21 tax year.

22 (10) "Recipient" means a person receiving a tax deferral under this
23 chapter.

24 (11) "Certificate holder" means an applicant to whom a tax deferral
25 certificate has been issued.

26 (12) "Operationally complete" means constructed or improved to the
27 point of being functionally useable for the intended purpose.

28 (13) "Initiation of construction" means that date upon which on-
29 site construction commences.

30 NEW SECTION. **Sec. 11.** The following acts or parts of acts are
31 each repealed:

32 (1) RCW 82.61.020 and 1987 c 497 s 2 & 1985 ex.s. c 2 s 2; and

33 (2) RCW 82.61.040 and 1993 sp.s. c 25 s 408, 1988 c 41 s 2, 1986 c
34 116 s 10, & 1985 ex.s. c 2 s 8.

35 **Sec. 12.** RCW 82.63.010 and 1994 sp.s. c 5 s 3 are each amended to
36 read as follows:

1 Unless the context clearly requires otherwise, the definitions in
2 this section apply throughout this chapter.

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

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

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

13 (4) "Biotechnology" means the application of technologies, such as
14 recombinant DNA techniques, biochemistry, molecular and cellular
15 biology, genetics and genetic engineering, cell fusion techniques, and
16 new bioprocesses, using living organisms, or parts of organisms, to
17 produce or modify products, to improve plants or animals, to develop
18 microorganisms for specific uses, to identify targets for small
19 molecule pharmaceutical development, or to transform biological systems
20 into useful processes and products or to develop microorganisms for
21 specific uses.

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

23 (6) "Electronic device technology" means technologies involving
24 microelectronics; semiconductors; electronic equipment and
25 instrumentation; radio frequency, microwave, and millimeter
26 electronics; optical and optic-electrical devices; and data and digital
27 communications and imaging devices.

28 (7) "Eligible investment project" means (~~that portion of~~) an
29 investment project which either initiates a new operation, or expands
30 or diversifies a current operation by expanding, renovating, or
31 equipping an existing facility (~~with costs in excess of twenty five
32 percent of the true and fair value of the facility prior to
33 improvement~~). The lessor or owner of the qualified building is not
34 eligible for a deferral unless the underlying ownership of the
35 buildings, machinery, and equipment vests exclusively in the same
36 person, or unless the lessor by written contract agrees to pass the
37 economic benefit of the deferral to the lessee in the form of reduced
38 rent payments.

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

4 (9) "Investment project" means an investment in qualified buildings
5 or qualified machinery and equipment, including labor and services
6 rendered in the planning, installation, and construction or improvement
7 of the project.

8 (10) "Person" has the meaning given in RCW 82.04.030.

9 (11) "Pilot scale manufacturing" means design, construction, and
10 testing of preproduction prototypes and models in the fields of
11 biotechnology, advanced computing, electronic device technology,
12 advanced materials, and environmental technology other than for
13 commercial sale. As used in this subsection, "commercial sale"
14 excludes sales of prototypes or sales for market testing if the total
15 gross receipts from such sales of the product, service, or process do
16 not exceed one million dollars.

17 (12) "Qualified buildings" means construction of new structures,
18 and expansion or renovation of existing structures for the purpose of
19 increasing floor space or production capacity used for pilot scale
20 manufacturing or qualified research and development, including plant
21 offices and other facilities that are an essential or an integral part
22 of a structure used for pilot scale manufacturing or qualified research
23 and development. If a building is used partly for pilot scale
24 manufacturing or qualified research and development, and partly for
25 other purposes, the applicable tax deferral shall be determined by
26 apportionment of the costs of construction under rules adopted by the
27 department.

28 (13) "Qualified machinery and equipment" means fixtures, equipment,
29 and support facilities that are an integral and necessary part of a
30 pilot scale manufacturing or qualified research and development
31 operation. "Qualified machinery and equipment" includes: Computers;
32 software; data processing equipment; laboratory equipment,
33 instrumentation, and other devices used in a process of experimentation
34 to develop a new or improved pilot model, plant process, product,
35 formula, invention, or similar property; manufacturing components such
36 as belts, pulleys, shafts, and moving parts; molds, tools, and dies;
37 vats, tanks, and fermenters; operating structures; and all other
38 equipment used to control, monitor, or operate the machinery. For
39 purposes of this chapter, qualified machinery and equipment must be

1 either new to the taxing jurisdiction of the state or new to the
2 certificate holder, except that used machinery and equipment may be
3 treated as qualified machinery and equipment if the certificate holder
4 either brings the machinery and equipment into Washington or makes a
5 retail purchase of the machinery and equipment in Washington or
6 elsewhere.

7 (14) "Qualified research and development" means research and
8 development performed within this state in the fields of advanced
9 computing, advanced materials, biotechnology, electronic device
10 technology, and environmental technology.

11 (15) "Recipient" means a person receiving a tax deferral under this
12 chapter.

13 (16) "Research and development" means activities performed to
14 discover technological information, and technical and nonroutine
15 activities concerned with translating technological information into
16 new or improved products, processes, techniques, formulas, inventions,
17 or software. The term includes exploration of a new use for an
18 existing drug, device, or biological product if the new use requires
19 separate licensing by the federal food and drug administration under
20 chapter 21, C.F.R., as amended. The term does not include adaptation
21 or duplication of existing products where the products are not
22 substantially improved by application of the technology, nor does the
23 term include surveys and studies, social science and humanities
24 research, market research or testing, quality control, sale promotion
25 and service, computer software developed for internal use, and research
26 in areas such as improved style, taste, and seasonal design.

27 NEW SECTION. **Sec. 13.** A new section is added to chapter 82.63 RCW
28 to read as follows:

29 (1) Except as provided in subsection (2) of this section, taxes
30 deferred under this chapter need not be repaid.

31 (2) If, on the basis of a report under RCW 82.63.020 or other
32 information, the department finds that an investment project is used
33 for purposes other than qualified research and development or pilot
34 scale manufacturing at any time during the calendar year in which the
35 investment project is certified by the department as having been
36 operationally completed, or at any time during any of the seven
37 succeeding calendar years, a portion of deferred taxes shall be
38 immediately due according to the following schedule:

1	Year in which use occurs	% of deferred taxes due
2	1	100%
3	2	87.5%
4	3	75%
5	4	62.5%
6	5	50%
7	6	37.5%
8	7	25%
9	8	12.5%

10 The department shall assess interest at the rate provided for
11 delinquent taxes, but not penalties, retroactively to the date of
12 deferral.

13 (3) Notwithstanding subsection (2) of this section, deferred taxes
14 on the following need not be repaid:

15 (a) Machinery and equipment, and sales of or charges made for labor
16 and services, which at the time of purchase would have qualified for
17 exemption under section 2 of this act; and

18 (b) Machinery and equipment which at the time of first use would
19 have qualified for exemption under section 3 of this act.

20 NEW SECTION. **Sec. 14.** The following acts or parts of acts are
21 each repealed:

22 (1) RCW 82.63.040 and 1994 sp.s. c 5 s 6; and

23 (2) RCW 82.63.050 and 1994 sp.s. c 5 s 7.

24 NEW SECTION. **Sec. 15.** The legislative fiscal committees shall
25 report to the legislature by December 1, 1999, on the economic impacts
26 of the manufacturers' tax exemption. This report shall analyze
27 employment and other relevant economic data from before and after the
28 enactment of the tax exemptions authorized under this act and shall
29 measure the effect on the creation or retention of family wage jobs and
30 diversification of the state's economy. Analytic techniques may
31 include, but not be limited to, comparisons of Washington to other
32 states that did not enact business tax changes, comparisons across
33 Washington counties based on usage of the tax exemptions, and
34 comparisons across similar firms based on their use of the tax
35 exemptions. In performing the analysis, the legislative fiscal
36 committees shall consult with business and labor interests. The
37 department or revenue, the employment security department, and other

1 agencies shall provide to the legislative fiscal committees such data
2 as the legislative fiscal committees may request in performing the
3 analysis required under this section.

4 NEW SECTION. **Sec. 16.** This act is necessary for the immediate
5 preservation of the public peace, health, or safety, or support of the
6 state government and its existing public institutions, and shall take
7 effect July 1, 1995.

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