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SECOND ENGROSSED SUBSTITUTE SENATE BILL 5201

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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 power for, or lubricates machinery and equipment;

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

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

26 (d) "Manufacturing operation" means the manufacturing of articles,  
27 substances, or commodities for sale as tangible personal property. The  
28 manufacturing operation begins at the point where the raw materials  
29 enter the manufacturing site and ends at the point where the finished  
30 product leaves the manufacturing site. The term also includes that  
31 portion of a cogeneration project that is used to generate power for  
32 consumption within the manufacturing site of which the cogeneration  
33 project is an integral part. The term does not include research and  
34 development, the production of electricity by a light and power  
35 business as defined in RCW 82.16.010, or the preparation of food  
36 products on the premises of a person selling food products at retail.

37 (e) "Cogeneration" means the simultaneous generation of electrical  
38 energy and low-grade heat from the same fuel.

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

3        The provisions of this chapter shall not apply in respect to the  
4 use by a manufacturer or processor for hire of machinery and equipment  
5 used directly in a manufacturing operation, but only when the user  
6 provides the department with:

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

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

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

15       "Consumer" means the following:

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

36       (2) Any person engaged in any business activity taxable under RCW  
37 82.04.290 and any person who purchases, acquires, or uses any telephone

1 service as defined in RCW 82.04.065, other than for resale in the  
2 regular course of business;

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

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

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

33 (6) Any person engaged in the business of constructing, repairing,  
34 decorating, or improving new or existing buildings or other structures  
35 under, upon, or above real property of or for the United States, any  
36 instrumentality thereof, or a county or city housing authority created  
37 pursuant to chapter 35.82 RCW, including the installing or attaching of  
38 any article of tangible personal property therein or thereto, whether  
39 or not such personal property becomes a part of the realty by virtue of

1 installation; also, any person engaged in the business of clearing land  
2 and moving earth of or for the United States, any instrumentality  
3 thereof, or a county or city housing authority created pursuant to  
4 chapter 35.82 RCW. Any such person shall be a consumer within the  
5 meaning of this subsection in respect to tangible personal property  
6 incorporated into, installed in, or attached to such building or other  
7 structure by such person; and

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

13 Nothing contained in this or any other subsection of this  
14 definition shall be construed to modify any other definition of  
15 "consumer."

16 **Sec. 5.** RCW 82.60.020 and 1994 sp.s. c 7 s 704 and 1994 sp.s. c 1  
17 s 1 are each reenacted and amended to read 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) "Department" means the department of revenue.

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

1 82.60.047; or (f) a county that is contiguous to a county that  
2 qualifies as an eligible area under (a) or (e) of this subsection.

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

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

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

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

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

23 ~~((b))~~ (c) For purposes of (a)(~~(i)~~) (ii) of this  
24 subsection(~~(7)~~):

25 (i) The department shall consider the entire investment project,  
26 including any investment in machinery and equipment that otherwise  
27 qualifies for exemption under section 2 or 3 of this act, for purposes  
28 of determining the portion of the investment project that qualifies for  
29 deferral as an eligible investment project; and

30 (ii) The number of new full-time qualified employment positions  
31 created by an investment project shall be deemed to be reduced by the  
32 number of full-time employment positions maintained by the recipient in  
33 any other community in this state that are displaced as a result of the  
34 investment project.

35 ~~((e))~~ (d) "Eligible investment project" does not include any  
36 portion of an investment project undertaken by a light and power  
37 business as defined in RCW 82.16.010(5), other than that portion of a  
38 cogeneration project(~~s that are both an integral part of a~~  
39 manufacturing facility and owned at least fifty percent by the

1 manufacturer)) that is used to generate power for consumption within  
2 the manufacturing site of which the cogeneration project is an integral  
3 part, or investment projects which have already received deferrals  
4 under this chapter.

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

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

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

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

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

35 (10) "Qualified machinery and equipment" means all new industrial  
36 and research fixtures, equipment, and support facilities that are an  
37 integral and necessary part of a manufacturing or research and  
38 development operation. "Qualified machinery and equipment" includes:  
39 Computers; software; data processing equipment; laboratory equipment;



1 manufacturing components such as belts, pulleys, shafts, and moving  
2 parts; molds, tools, and dies; operating structures; and all equipment  
3 used to control or operate the machinery.

4 (11) "Recipient" means a person receiving a tax deferral under this  
5 chapter.

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

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

14 (1) The department shall issue a sales and use tax deferral  
15 certificate for state and local sales and use taxes due under chapters  
16 82.08, 82.12, and 82.14 RCW on each eligible investment project that:

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

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

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

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

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

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

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

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

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

20 Except as provided in RCW 82.60.070:

21 (1) Taxes deferred under this chapter on the sale or use of labor  
22 that is directly used in the construction of an investment project for  
23 which a deferral has been granted under this chapter after June 11,  
24 1986, and prior to July 1, 1994, need not be repaid.

25 (2) Taxes deferred under this chapter on an investment project for  
26 which a deferral has been granted under this chapter after June 30,  
27 1994, need not be repaid.

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

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

36 (1) Each recipient of a deferral granted under this chapter prior  
37 to July 1, 1994, shall submit a report to the department on December

1 31st of each year during the repayment period until the tax deferral is  
2 repaid. Each recipient of a deferral granted under this chapter after  
3 June 30, 1994, shall submit a report to the department on December 31st  
4 of the year in which the investment project is certified by the  
5 department as having been operationally completed, and on December 31st  
6 of each of the seven succeeding calendar years. The report shall  
7 contain information, as required by the department, from which the  
8 department may determine whether the recipient is meeting the  
9 requirements of this chapter. If the recipient fails to submit a  
10 report or submits an inadequate report, the department may declare the  
11 amount of deferred taxes outstanding to be immediately assessed and  
12 payable.

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

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

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

37 (5) If, on the basis of a report under this section or other  
38 information, the department finds that an investment project qualifying  
39 for deferral under RCW 82.60.040(1) (b) or (c) has failed to comply

1 with any requirement of RCW 82.60.045 for any calendar year for which  
2 reports are required under subsection (1) of this section, twelve and  
3 one-half percent of the amount of deferred taxes shall be immediately  
4 due. The department shall assess interest at the rate provided for  
5 delinquent excise taxes, but not penalties, retroactively to the date  
6 of deferral.

7 (6) Notwithstanding any other subsection of this section, deferred  
8 taxes need not be repaid on machinery and equipment for lumber and wood  
9 products industries, and sales of or charges made for labor and  
10 services, of the type which qualifies for exemption under section 2 or  
11 3 of this act to the extent the taxes have not been repaid before the  
12 effective date of this section.

13 (7) Notwithstanding any other subsection of this section, deferred  
14 taxes 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 **Sec. 10.** RCW 82.61.010 and 1994 c 125 s 1 are each amended to read  
21 as follows:

22 Unless the context clearly requires otherwise, the definitions in  
23 this section apply throughout this chapter.

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

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

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

28 (4) "Eligible investment project" means:

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

34 (b) Acquisition prior to December 31, (~~(1998)~~) 1995, of new  
35 machinery and equipment to be used for either manufacturing or research  
36 and development if the machinery and equipment is housed in a new  
37 leased structure. The lessor/owner of the structure is not eligible

1 for a deferral unless the underlying ownership of the buildings,  
2 machinery, and equipment vests exclusively in the same person; or

3 (c) Acquisition of all new or used machinery, equipment, or other  
4 personal property for use in the production or casting of aluminum at  
5 an aluminum smelter or at facilities related to an aluminum smelter, if  
6 the plant was in operation prior to 1975 and has ceased operations or  
7 is in imminent danger of ceasing operations for economic reasons, as  
8 determined by the department, and if the person applying for a deferral  
9 (i) has consulted with any collective bargaining unit that represented  
10 employees of the plant pursuant to a collective bargaining agreement  
11 that was in effect either immediately prior to the time the plant  
12 ceased operations or during the period when the plant was in imminent  
13 danger of ceasing operations, on the proposed operation of the plant  
14 and on the terms and conditions of employment for wage and salaried  
15 employees and (ii) has obtained a written concurrence from the  
16 bargaining unit on the decision to apply for a deferral under this  
17 chapter; or

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

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

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

1 (7) "Buildings" means only those new structures used for either  
2 manufacturing or research and development activities, including plant  
3 offices and warehouses or other facilities for the storage of raw  
4 materials or finished goods if such facilities are an essential or an  
5 integral part of a factory, mill, plant, or laboratory used for  
6 manufacturing or research and development purposes. If a building is  
7 used partly for manufacturing or research and development and partly  
8 for other purposes, the applicable tax deferral shall be determined by  
9 apportionment of the costs of construction under rules adopted by the  
10 department.

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

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

28 (10) "Recipient" means a person receiving a tax deferral under this  
29 chapter.

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

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

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

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

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

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

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

5 Unless the context clearly requires otherwise, the definitions in  
6 this section apply throughout this chapter.

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

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

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

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

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

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

32 (7) "Eligible investment project" means ~~((that portion of))~~ an  
33 investment project which either initiates a new operation, or expands  
34 or diversifies a current operation by expanding, renovating, or  
35 equipping an existing facility ~~((with costs in excess of twenty five  
36 percent of the true and fair value of the facility prior to  
37 improvement))~~. The lessor or owner of the qualified building is not  
38 eligible for a deferral unless the underlying ownership of the

1 buildings, machinery, and equipment vests exclusively in the same  
2 person, or unless the lessor by written contract agrees to pass the  
3 economic benefit of the deferral to the lessee in the form of reduced  
4 rent payments.

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

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

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

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

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

32 (13) "Qualified machinery and equipment" means fixtures, equipment,  
33 and support facilities that are an integral and necessary part of a  
34 pilot scale manufacturing or qualified research and development  
35 operation. "Qualified machinery and equipment" includes: Computers;  
36 software; data processing equipment; laboratory equipment,  
37 instrumentation, and other devices used in a process of experimentation  
38 to develop a new or improved pilot model, plant process, product,  
39 formula, invention, or similar property; manufacturing components such



1 as belts, pulleys, shafts, and moving parts; molds, tools, and dies;  
2 vats, tanks, and fermenters; operating structures; and all other  
3 equipment used to control, monitor, or operate the machinery. For  
4 purposes of this chapter, qualified machinery and equipment must be  
5 either new to the taxing jurisdiction of the state or new to the  
6 certificate holder, except that used machinery and equipment may be  
7 treated as qualified machinery and equipment if the certificate holder  
8 either brings the machinery and equipment into Washington or makes a  
9 retail purchase of the machinery and equipment in Washington or  
10 elsewhere.

11 (14) "Qualified research and development" means research and  
12 development performed within this state in the fields of advanced  
13 computing, advanced materials, biotechnology, electronic device  
14 technology, and environmental technology.

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

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

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

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

35 (2) If, on the basis of a report under RCW 82.63.020 or other  
36 information, the department finds that an investment project is used  
37 for purposes other than qualified research and development or pilot  
38 scale manufacturing at any time during the calendar year in which the

1 investment project is certified by the department as having been  
2 operationally completed, or at any time during any of the seven  
3 succeeding calendar years, a portion of deferred taxes shall be  
4 immediately due according to the following schedule:

5	Year in which use occurs	% of deferred taxes due
6	1	100%
7	2	87.5%
8	3	75%
9	4	62.5%
10	5	50%
11	6	37.5%
12	7	25%
13	8	12.5%

14 The department shall assess interest at the rate provided for  
15 delinquent taxes, but not penalties, retroactively to the date of  
16 deferral.

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

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

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

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

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

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

28 NEW SECTION. **Sec. 15.** The legislative fiscal committees shall  
29 report to the legislature by December 1, 1999, on the economic impacts  
30 of the manufacturers' tax exemption. This report shall analyze  
31 employment and other relevant economic data from before and after the  
32 enactment of the tax exemptions authorized under this act and shall  
33 measure the effect on the creation or retention of family wage jobs and  
34 diversification of the state's economy. Analytic techniques may  
35 include, but not be limited to, comparisons of Washington to other  
36 states that did not enact business tax changes, comparisons across

1 Washington counties based on usage of the tax exemptions, and  
2 comparisons across similar firms based on their use of the tax  
3 exemptions. In performing the analysis, the legislative fiscal  
4 committees shall consult with business and labor interests. The  
5 department or revenue, the employment security department, and other  
6 agencies shall provide to the legislative fiscal committees such data  
7 as the legislative fiscal committees may request in performing the  
8 analysis required under this section.

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

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