
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 82.60.070, 82.61.010, and 82.63.010; reenacting and amending RCW
5 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(~~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 82.60.070 and 1994 sp.s. c 1 s 5 are each amended to
16 read as follows:

17 (1) Each recipient of a deferral granted under this chapter prior
18 to July 1, 1994, shall submit a report to the department on December
19 31st of each year during the repayment period until the tax deferral is
20 repaid. Each recipient of a deferral granted under this chapter after
21 June 30, 1994, shall submit a report to the department on December 31st
22 of the year in which the investment project is certified by the
23 department as having been operationally completed, and on December 31st
24 of each of the seven succeeding calendar years. The report shall
25 contain information, as required by the department, from which the
26 department may determine whether the recipient is meeting the
27 requirements of this chapter. If the recipient fails to submit a
28 report or submits an inadequate report, the department may declare the
29 amount of deferred taxes outstanding to be immediately assessed and
30 payable.

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

37 (3) If, on the basis of a report under this section or other
38 information, the department finds that an investment project for which

1 a deferral has been granted under this chapter prior to July 1, 1994,
2 has been operationally complete for three years and has failed to
3 create the required number of qualified employment positions, the
4 department shall assess interest, but not penalties, on the deferred
5 taxes for the project. The interest shall be assessed at the rate
6 provided for delinquent excise taxes, shall be assessed retroactively
7 to the date of deferral, and shall accrue until the deferred taxes are
8 repaid.

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

17 (5) If, on the basis of a report under this section or other
18 information, the department finds that an investment project qualifying
19 for deferral under RCW 82.60.040(1) (b) or (c) has failed to comply
20 with any requirement of RCW 82.60.045 for any calendar year for which
21 reports are required under subsection (1) of this section, twelve and
22 one-half percent of the amount of deferred taxes shall be immediately
23 due. The department shall assess interest at the rate provided for
24 delinquent excise taxes, but not penalties, retroactively to the date
25 of deferral.

26 (6) Notwithstanding any other subsection of this section, deferred
27 taxes on the following need not be repaid:

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

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

33 **Sec. 9.** RCW 82.61.010 and 1994 c 125 s 1 are each amended to read
34 as follows:

35 Unless the context clearly requires otherwise, the definitions in
36 this section apply throughout this chapter.

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

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

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

3 (4) "Eligible investment project" means:

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

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

15 (c) Acquisition of all new or used machinery, equipment, or other
16 personal property for use in the production or casting of aluminum at
17 an aluminum smelter or at facilities related to an aluminum smelter, if
18 the plant was in operation prior to 1975 and has ceased operations or
19 is in imminent danger of ceasing operations for economic reasons, as
20 determined by the department, and if the person applying for a deferral
21 (i) has consulted with any collective bargaining unit that represented
22 employees of the plant pursuant to a collective bargaining agreement
23 that was in effect either immediately prior to the time the plant
24 ceased operations or during the period when the plant was in imminent
25 danger of ceasing operations, on the proposed operation of the plant
26 and on the terms and conditions of employment for wage and salaried
27 employees and (ii) has obtained a written concurrence from the
28 bargaining unit on the decision to apply for a deferral under this
29 chapter; or

30 (d) Modernization projects involving construction, acquisition, or
31 upgrading of equipment or machinery, including services and labor,
32 which are commenced after May 19, 1987, and are intended to increase
33 the operating efficiency of existing plants which are either aluminum
34 smelters or aluminum rolling mills or of facilities related to such
35 plants, if the plant was in operation prior to 1975, and if the person
36 applying for a deferral (i) has consulted with any collective
37 bargaining unit that represents employees of the plant on the proposed
38 operation of the plant and the terms and conditions of employment for
39 wage and salaried employees and (ii) has obtained a written concurrence

1 from the bargaining unit on the decision to apply for a deferral under
2 this chapter.

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

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

12 (7) "Buildings" means only those new structures used for either
13 manufacturing or research and development activities, including plant
14 offices and warehouses or other facilities for the storage of raw
15 materials or finished goods if such facilities are an essential or an
16 integral part of a factory, mill, plant, or laboratory used for
17 manufacturing or research and development purposes. If a building is
18 used partly for manufacturing or research and development and partly
19 for other purposes, the applicable tax deferral shall be determined by
20 apportionment of the costs of construction under rules adopted by the
21 department.

22 (8) "Machinery and equipment" means all industrial and research
23 fixtures, equipment, and support facilities that are an integral and
24 necessary part of a manufacturing or research and development
25 operation. "Qualified machinery and equipment" includes computers;
26 software; data processing equipment; laboratory equipment;
27 manufacturing components such as belts, pulleys, shafts, and moving
28 parts; molds, tools, and dies; operating structures; and all equipment
29 used to control or operate the machinery. For purposes of this
30 chapter, new machinery and equipment means either new to the taxing
31 jurisdiction of the state or new to the certificate holder. Used
32 machinery and equipment may be treated as new equipment and machinery
33 if the certificate holder either brings the machinery and equipment
34 into Washington or makes a retail purchase of the machinery and
35 equipment in Washington or elsewhere.

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

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

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

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

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

9 NEW SECTION. **Sec. 10.** The following acts or parts of acts are
10 each repealed:

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

12 (2) RCW 82.61.040 and 1993 sp.s. c 25 s 408, 1988 c 41 s 2, 1986 c
13 116 s 10, & 1985 ex.s. c 2 s 8.

14 **Sec. 11.** RCW 82.63.010 and 1994 sp.s. c 5 s 3 are each amended to
15 read as follows:

16 Unless the context clearly requires otherwise, the definitions in
17 this section apply throughout this chapter.

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

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

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

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

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

1 (6) "Electronic device technology" means technologies involving
2 microelectronics; semiconductors; electronic equipment and
3 instrumentation; radio frequency, microwave, and millimeter
4 electronics; optical and optic-electrical devices; and data and digital
5 communications and imaging devices.

6 (7) "Eligible investment project" means ~~((that portion of))~~ an
7 investment project which either initiates a new operation, or expands
8 or diversifies a current operation by expanding, renovating, or
9 equipping an existing facility ~~((with costs in excess of twenty five
10 percent of the true and fair value of the facility prior to
11 improvement))~~. The lessor or owner of the qualified building is not
12 eligible for a deferral unless the underlying ownership of the
13 buildings, machinery, and equipment vests exclusively in the same
14 person, or unless the lessor by written contract agrees to pass the
15 economic benefit of the deferral to the lessee in the form of reduced
16 rent payments.

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

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

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

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

33 (12) "Qualified buildings" means construction of new structures,
34 and expansion or renovation of existing structures for the purpose of
35 increasing floor space or production capacity used for pilot scale
36 manufacturing or qualified research and development, including plant
37 offices and other facilities that are an essential or an integral part
38 of a structure used for pilot scale manufacturing or qualified research
39 and development. If a building is used partly for pilot scale

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

23 (14) "Qualified research and development" means research and
24 development performed within this state in the fields of advanced
25 computing, advanced materials, biotechnology, electronic device
26 technology, and environmental technology.

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

29 (16) "Research and development" means activities performed to
30 discover technological information, and technical and nonroutine
31 activities concerned with translating technological information into
32 new or improved products, processes, techniques, formulas, inventions,
33 or software. The term includes exploration of a new use for an
34 existing drug, device, or biological product if the new use requires
35 separate licensing by the federal food and drug administration under
36 chapter 21, C.F.R., as amended. The term does not include adaptation
37 or duplication of existing products where the products are not
38 substantially improved by application of the technology, nor does the
39 term include surveys and studies, social science and humanities

1 research, market research or testing, quality control, sale promotion
2 and service, computer software developed for internal use, and research
3 in areas such as improved style, taste, and seasonal design.

4 NEW SECTION. **Sec. 12.** A new section is added to chapter 82.63 RCW
5 to read as follows:

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

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

16	Year in which use occurs	% of deferred taxes due
17	1	100%
18	2	87.5%
19	3	75%
20	4	62.5%
21	5	50%
22	6	37.5%
23	7	25%
24	8	12.5%

25 The department shall assess interest at the rate provided for
26 delinquent taxes, but not penalties, retroactively to the date of
27 deferral.

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

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

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

35 NEW SECTION. **Sec. 13.** The following acts or parts of acts are
36 each repealed:

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

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

3 NEW SECTION. **Sec. 14.** The legislative fiscal committees shall
4 report to the legislature by December 1, 1999, on the economic impacts
5 of the manufacturers' tax exemption. This report shall analyze
6 employment and other relevant economic data from before and after the
7 enactment of the tax exemptions authorized under this act. Analytic
8 techniques may include, but not be limited to, comparisons of
9 Washington to other states that did not enact business tax changes,
10 comparisons across Washington counties based on usage of the tax
11 exemptions, and comparisons across similar firms based on their use of
12 the tax exemptions. The department of revenue, the employment security
13 department, and other agencies shall provide to the legislative fiscal
14 committees such data as the legislative fiscal committees may request
15 in performing the analysis required under this section.

16 NEW SECTION. **Sec. 15.** This act is necessary for the immediate
17 preservation of the public peace, health, or safety, or support of the
18 state government and its existing public institutions, and shall take
19 effect July 1, 1995.

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