

Chapter 82.85 RCW
JOB CREATION AND ECONOMIC DEVELOPMENT INVESTMENT INCENTIVES—PILOT PROGRAM

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RCW 82.85.010 Findings—Tax preference performance statement.

(Expires January 1, 2026.) (1) Businesses that invest capital create jobs and generate economic activity that supports a healthy Washington economy. The legislature finds that these investments result in future revenues that support schools and our communities. Therefore, the legislature finds that a pilot program must be conducted to evaluate the effectiveness of a program that invests business taxes from new investments into workforce training programs that support manufacturing businesses in the state of Washington thereby creating jobs and capital investments in the state for the benefit of its citizens.

(2) (a) This subsection is the tax preference performance statement for the sales and use tax deferral provided in RCW 82.85.040 on expenditures made to build or expand qualified investment projects and purchases of machinery and equipment. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(b) The legislature categorizes the tax preference as one intended to create or retain jobs and to provide funding to support job readiness training, professional development, or apprenticeship programs in manufacturing or production occupations, as indicated in RCW 82.32.808(2) (c) and (f).

(c) It is the legislature's specific public policy objective to provide a pilot program that would provide a sales tax deferral on the construction and expenditure costs of up to two new manufacturing facilities per calendar year, one of which must be located in eastern Washington and one of which must be located in western Washington. When deferred taxes are repaid, the deferred taxes are reinvested to support job readiness training, professional development, or apprenticeship programs in manufacturing or production occupations.

(d) To measure the effectiveness of the deferral provided in this part in achieving the specific public policy objective described in (c) of this subsection, the joint legislative audit and review committee should refer to information available from the employment security department and department of revenue. If a review finds that each eligible investment project generated at least twenty full-time

jobs and increased training opportunities for manufacturing and production jobs, then the legislature intends for the legislative auditor to recommend extending the expiration date of the tax preference. For purposes of this subsection (2)(d), the term full-time jobs include both temporary construction jobs and permanent full-time employment positions created at the eligible investment project within one year of the date that the facility became operationally complete as determined by the department of revenue.

(3) This section expires January 1, 2026. [2017 3rd sp.s. c 37 § 801; 2015 3rd sp.s. c 6 § 401.]

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

RCW 82.85.020 Definitions. (Expires January 1, 2026.) (1) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(b) "Eligible investment project" means an investment project for qualified buildings and machinery and equipment on two new, renovated, or expanded manufacturing operations per calendar year, one of which must be located east of the crest of the Cascade mountains and one of which must be located west of the crest of the Cascade mountains. The deferral provided in this section only applies to the state and local sales and use taxes due on the first ten million dollars in costs for qualified buildings and machinery and equipment.

(c) "Initiation of construction" has the same meaning as in RCW 82.63.010.

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

(e) "Manufacturing" has the same meaning as provided in RCW 82.04.120.

(f) "Person" has the same meaning as provided in RCW 82.04.030.

(g) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity, used for manufacturing, including plant offices and warehouses or other buildings for the storage of raw material or finished goods if such facilities are an essential or an integral part of a factory, mill, plant, or laboratory used for manufacturing. If a qualified building is used partly for manufacturing and partly for other purposes, the applicable tax deferral must be determined by apportionment of the costs of construction under rules adopted by the department.

(h) "Qualified machinery and equipment" means all new industrial fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment; manufacturing components such as belts, pulleys,

shafts, and moving parts; molds, tools, and dies; operating structures; and all equipment used to control, monitor, or operate the machinery.

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

(2) This section expires January 1, 2026. [2017 3rd sp.s. c 37 § 802; 2015 3rd sp.s. c 6 § 402.]

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

RCW 82.85.030 Deferral eligibility—Lessor or owner of qualified building. The lessor or owner of a qualified building is not eligible for a deferral unless:

(1) The underlying ownership of the building, machinery, and equipment vests exclusively in the same person; or

(2) (a) The lessor by written contract agrees to pass the economic benefit of the deferral to the lessee;

(b) The lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual tax performance report required under RCW 82.32.534; and

(c) The economic benefit of the deferral passed to the lessee is no less than the amount of tax deferred by the lessor and is evidenced by written documentation of any type of payment, credit, or other financial arrangement between the lessor or owner of the qualified building and the lessee. [2020 c 139 § 47; 2015 3rd sp.s. c 6 § 403.]

Reviser's note: For information on the expiration of tax preferences, see RCW 82.32.805.

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

RCW 82.85.040 Deferral application. (Expires January 1, 2026.)

(1) Application for deferral of taxes under this chapter must be made before initiation of the construction of the investment project or acquisition of equipment or machinery. The application must be made to the department in a form and manner prescribed by the department. The deferrals are available on a first-in-time basis. The application must contain information regarding the location of the investment project, the applicant's average employment in the state for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, time schedules for completion and operation, and other information required by the department. The department must rule on the application within sixty days.

(2) The department may not approve applications for more than two eligible investment projects per calendar year.

(3) This section expires January 1, 2026. [2017 3rd sp.s. c 37 § 803; 2015 3rd sp.s. c 6 § 404.]

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

RCW 82.85.050 Deferral certificate—Issued by the department.

(1) Except as otherwise provided in subsection (2) of this section, the department must issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, 82.14, and 81.104 RCW on each eligible investment project.

(2) No certificate may be issued for an investment project that has already received a deferral under this part [chapter] or chapter 82.60 RCW.

(3) The department must keep a running total of all deferrals granted under this chapter during each fiscal biennium. [2015 3rd sp.s. c 6 § 405.]

Reviser's note: For information on the expiration of tax preferences, see RCW 82.32.805.

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

RCW 82.85.060 Repayment—Deferred taxes. (1) The recipient must begin paying the deferred taxes in the fifth year after the date certified by the department as the date on which the investment project has been operationally completed. The first payment of ten percent of the deferred taxes will be due on December 31st of the fifth calendar year after such certified date, with subsequent annual payments of ten percent of the deferred taxes due on December 31st for each of the following nine years.

(2) The department may authorize an accelerated repayment schedule upon request of the recipient.

(3) Interest may not be charged on any taxes deferred under this chapter for the period of deferral, although all other penalties and interest applicable to delinquent excise taxes may be assessed and imposed for delinquent payments under this chapter. The debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral. [2015 3rd sp.s. c 6 § 406.]

Application—2015 3rd sp.s. c 6 §§ 406-409: "The expiration provisions of RCW 82.32.805(1)(a) do not apply to sections 406 through 409 of this act." [2015 3rd sp.s. c 6 § 411.]

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

RCW 82.85.070 Invest in Washington account—Created—Funded. (1)

State taxes deferred and repaid under this chapter, including any interest or penalties on such amounts, must be deposited in the invest in Washington account created in this section. The invest in Washington account is hereby created in the state treasury [and] must be used exclusively by the state board for community and technical colleges for supporting customized training programs, job skills programs, job readiness training, workforce professional development, and to assist employers with state-approved apprenticeship programs for manufacturing and production occupations.

(2) Revenues to the invest in Washington account consist of amounts transferred by the state treasurer as provided in subsection (3) of this section.

(3) By June 1, 2016, and by June 1st of every subsequent year, the department must notify the state treasurer of the amount of tax, interest, and penalties collected under this section since September 1, 2015, through May 1, 2016, in the case of the first notification under this subsection (3), and since the previous May 1st for subsequent notifications under this subsection (3). The department may make adjustments to the annual notification under this subsection (3) as may be necessary to correct errors in the previous notification or offset previous amounts that did not qualify for deferral under this section.

(4) By July 1, 2016, and by July 1st of every subsequent year, the state treasurer must transfer the amount included in the department's most recent notification under subsection (3) of this section from the general fund to the invest in Washington account. Money in the account may only be appropriated for the purposes specified in subsection (1) of this section. [2015 3rd sp.s. c 6 § 407.]

Application—2015 3rd sp.s. c 6 §§ 406-409: See note following RCW 82.85.060.

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

RCW 82.85.080 Annual tax performance report. (1) Each recipient of a deferral of taxes granted under this chapter must file a complete annual tax performance report with the department under RCW 82.32.534. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.85.030, the lessee must file a complete annual tax performance report, and the applicant is not required to file a complete annual tax performance report.

(2) If, on the basis of a tax performance report under RCW 82.32.534 or other information, the department finds that an investment project is not eligible for tax deferral under this chapter due to the fact the investment project is no longer used for qualified activities, the amount of deferred taxes outstanding for the investment project is immediately due and payable.

(3) If the economic benefits of a tax deferral under this chapter are passed to a lessee as provided in RCW 82.85.030, the lessee is responsible for payment to the extent the lessee has received the economic benefit. [2020 c 139 § 48; 2015 3rd sp.s. c 6 § 408.]

Application—2015 3rd sp.s. c 6 §§ 406-409: See note following RCW 82.85.060.

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

RCW 82.85.900 Short title. This part [chapter] may be known and cited as the invest in Washington act. [2015 3rd sp.s. c 6 § 409.]

Application—2015 3rd sp.s. c 6 §§ 406-409: See note following RCW 82.85.060.

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.