

CERTIFICATION OF ENROLLMENT

SECOND ENGROSSED SUBSTITUTE SENATE BILL 5201

54th Legislature
1995 First Special Session

Passed by the Senate May 22, 1995
YEAS 45 NAYS 1

President of the Senate

Passed by the House May 23, 1995
YEAS 92 NAYS 5

**Speaker of the
House of Representatives**

Approved

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SECOND ENGROSSED SUBSTITUTE SENATE BILL 5201** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

Governor of the State of Washington

**Secretary of State
State of Washington**

SECOND ENGROSSED SUBSTITUTE SENATE BILL 5201

Passed Legislature - 1995 First Special Session

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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