
Finance Committee

HB 1723

Brief Description: Modifying the high technology business and occupation tax credit.

Sponsors: Representatives Hunter, Orcutt, Linville, Fromhold, Tom and Ericks.

Brief Summary of Bill

- Modifies the calculation of the high technology research and development business & occupation tax credit to reflect all qualified research and development spending and the service activities tax rate of 1.5 percent.
- Authorizes an extension to file the annual survey required of businesses that take the high tech B&O tax credit if the delay was for reasons beyond the business' control.

Hearing Date: 2/11/05

Staff: Rick Peterson (786-7150).

Background:

Business and Occupation Tax. Washington's major business tax is the business and occupation (B&O) tax. The B&O tax is imposed on the gross receipts of business activities conducted within the state, without any deduction for the costs of doing business. The tax is imposed on the gross receipts from all business activities conducted within the state. Revenues are deposited in the state General Fund. A business may have more than one B&O tax rate, depending on the types of activities conducted. The tax rate for most types of businesses that provide services is 1.5 percent.

The B&O tax does not permit deductions for the costs of doing business, such as payments for raw materials and wages of employees. Nonetheless, there are many exemptions for specific types of business activities and certain deductions and credits permitted under the B&O tax statutes, including a credit under the B&O tax for certain operational research and development expenditures. The credit is provided to businesses, including qualifying nonprofit organizations, that make R&D expenditures in excess of 0.92 percent of taxable income.

Changes to the High Technology Research and Development B&O Tax Credit. In the 2004 session, the legislature modified the high technology R&D B&O tax credit. The amount of credit that may be taken pursuant to the changes is based on amounts spent on R&D in excess of 0.92 percent of a business' total taxable amount for the year; previously, the basis for the credit was the entire amount of R&D spending. In addition, calculation of the credit by for-profit firms must be

based on the average tax rate of the firm for the tax reporting period, rather than the B&O service activities rate of 1.5 percent, the requirement prior to the 2004 changes. The credit is equal to the average tax rate multiplied by the amount spent on R&D in excess of 0.92 percent of the business total taxable amount.

High Technology Research and Development Tax Incentives - Administrative Requirements. In the 2004 changes, businesses that take the high tech B&O tax credit for R&D spending must submit an annual survey. Program participants must provide information on the amount of B&O tax credit or sales tax exemption; number of new products, trademarks, patents, and copyrights; number of jobs and the percent of full-time, part-time and temporary jobs; wages by salary band; and number of jobs with employer provided health and retirement benefits. The survey is in addition to an annual report that must be submitted regarding the amount of credit claimed, the amount of qualified R&D expenditures made during the year, and the taxable amount during the year. Both the survey and report are due by March 31 of the year following the year the credits were taken. If the survey is not completed by the due date, the business is not eligible to take or assign the credit. No exceptions are allowed for failure to file even if the failure was for reasons beyond the taxpayer's control.

Waiver or Cancellation of Penalties. The Department of Revenue is authorized to waive or cancel penalties under certain circumstances if the failure to pay any excise tax was the result of circumstances beyond the control of the taxpayer. Pursuant to departmental rule, such circumstances include delinquency resulting from erroneous information provided to the taxpayer by a department employee; from the death of the taxpayer or a member of the taxpayer's family, and a number of others.

Summary of Bill:

The formula for calculating the amount of credit under the high technology R&D B&O tax credit is changed back to its status prior to the 2004 legislative changes: the credit is equal to the amount spent on qualified research and development expenditures multiplied by the service activities B&O tax rate of 1.5 percent for for-profit firms and 0.484 for non-profit firms.

The changes to the high tech R&D B&O credit are retroactive to June 10, 2004. Persons who owe additional tax as a result of the changes are liable for interest, but not penalties, if the additional taxes are paid by January 1, 2006. For payments after that, persons are also subject to penalties.

A business that fails to submit a survey for the high tech B&O tax credit as a result of circumstances beyond the control of the taxpayer may receive an extension to file of up to 30 days from the date that the Department of Revenue notifies the taxpayer of such extension. The department is allowed to use existing rule provisions concerning the waiver or cancellations of penalties as a guide in determining whether the failure to file was indeed the result of circumstances beyond the taxpayer's control. The filing extension provisions apply retroactively to surveys due after December 31, 2004.

Appropriation: None.

Fiscal Note: Requested on February 2, 2005.

Effective Date: The bill contains an emergency clause and takes effect immediately.