
SENATE BILL 6764

State of Washington**59th Legislature****2006 Regular Session****By** Senators Shin, Berkey, Rockefeller, Sheldon, Doumit and Deccio

Read first time 01/20/2006. Referred to Committee on International Trade & Economic Development.

1 AN ACT Relating to the administration of tax incentive programs;
2 amending RCW 82.62.020, 82.32.545, 82.32.590, 82.32.600, 82.04.4452,
3 82.32.560, 82.32.570, 82.32.610, 82.32.620, and 82.32.330; reenacting
4 and amending RCW 82.32.330; adding a new chapter to Title 82 RCW;
5 creating new sections; repealing RCW 82.60.010, 82.60.020, 82.60.030,
6 82.60.040, 82.60.049, 82.60.050, 82.60.060, 82.60.065, 82.60.070,
7 82.60.080, 82.60.090, 82.60.100, 82.60.110, 82.60.900, 82.60.901,
8 82.63.005, 82.63.010, 82.63.020, 82.63.030, 82.63.045, 82.63.060,
9 82.63.070, 82.63.900, 82.74.010, 82.74.020, 82.74.030, 82.74.040,
10 82.74.050, 82.74.060, and 82.74.070; providing effective dates;
11 providing an expiration date; and declaring an emergency.

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

PART I**TAX DEFERRALS FOR INVESTMENT PROJECTS IN QUALIFIED ACTIVITIES**

15 NEW SECTION. **Sec. 101.** (1) The legislature finds that the state's
16 retail sales tax on construction discourages capital investment by new
17 and existing Washington businesses. Without relief from the state's
18 retail sales tax on construction, Washington businesses in certain

1 sectors and areas will be adversely impacted. The legislature
2 recognizes the importance of such businesses for employment and
3 economic development in Washington state.

4 (2) In 1985 and 2004, the legislature found that there were several
5 areas in the state that are characterized by very high levels of
6 unemployment and poverty. The legislature further found that economic
7 stagnation was the primary cause of this high unemployment rate and
8 poverty. The legislature reaffirms that policies providing tax
9 incentives for manufacturing and research and development businesses in
10 these distressed areas are essential to promote economic stimulation,
11 economic growth, and new employment opportunities in these distressed
12 areas.

13 (3) In 1994 and 2004, the legislature found that high-wage,
14 high-skilled jobs were vital to the economic health of the state's
15 citizens. The legislature reaffirms that high-technology businesses
16 are a vital and growing source of high-wage, high-skilled jobs in this
17 state, and that the high-technology sector is a key component of the
18 state's effort to encourage economic diversification. The legislature
19 found that many high-technology businesses incur significant costs
20 associated with research and development and pilot scale manufacturing
21 many years before a marketable product can be produced, and that
22 current state tax policy discourages the growth of these companies by
23 taxing them long before they become profitable. The legislature
24 reaffirms that stimulating growth of high-technology businesses early
25 in their development cycle, when they are turning ideas into marketable
26 products, will build upon the state's established high-technology base,
27 creating additional research and development jobs and subsequent
28 manufacturing facilities.

29 (4) In 2005, the legislature found that the fruit and vegetable
30 processing industry was important to the Washington state economy. The legislature
31 further found that businesses engaged in fruit and
32 vegetable processing are often located in areas in need of economic
33 stimulation and new employment opportunities. The legislature
34 reaffirms that state policies providing tax incentives for economic
35 growth in the fruit and vegetable processing industry are essential.

36 (5) For these reasons, the legislature established tax incentive
37 programs to defer retail sales and use tax on investments in buildings
38 and machinery and equipment used by the businesses in this section. To

1 further encourage investments, the legislature subsequently modified
2 the deferral programs to authorize the waiver of the deferred sales and
3 use tax if the business fulfilled certain requirements, to recapture
4 the deferred sales and use tax if the business failed to meet those
5 requirements, and to clarify definitions. These subsequent
6 modifications to the deferral programs have led to inconsistencies
7 between programs that confuse taxpayers and complicate administration.
8 Therefore, the legislature declares that these programs must be
9 consolidated and simplified to ensure that taxpayers receive consistent
10 treatment and benefits under these tax deferral programs.

11 (6) The legislature further declares that tax incentives should be
12 subject to the same rigorous requirements for efficiency and
13 accountability as are other expenditure programs, and that tax
14 incentives should therefore be focused to provide the greatest possible
15 return on the state's investment.

16 **NEW SECTION.** **Sec. 102.** The definitions in this section apply
17 throughout this chapter unless the context clearly requires otherwise.

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

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

21 (3)(a) "Eligible investment project" means an investment project
22 used in qualified activities.

23 (i) The lessor or owner of a qualified building is not eligible for
24 a deferral unless the underlying ownership of the buildings, machinery,
25 and equipment vests exclusively in the same person; or

26 (ii)(A) The lessee that receives the economic benefit of the
27 deferral agrees in writing with the department to file the complete
28 annual survey under section 106 of this act; and

29 (B) The economic benefit of the deferral is passed to the lessee,
30 is no less than the amount of tax deferred by the lessor, and is
31 evidenced by any type of payment, credit, or any other financial
32 arrangement between the lessor or owner of the qualified building and
33 the lessee.

34 (b) "Eligible investment project" does not include: (i) Any
35 portion of an investment project undertaken by a light and power
36 business as defined in RCW 82.16.010(5), other than that portion of a
37 cogeneration project that is used to generate power for consumption

1 within the manufacturing site of which the cogeneration project is an
2 integral part; or (ii) investment projects to replace qualified
3 machinery and equipment that have already received deferrals under this
4 chapter or chapters 82.60, 82.63, or 82.74 RCW.

5 (4)(a) "Initiation of construction" means the date that a building
6 permit is issued under the building code adopted under RCW 19.27.031
7 for:

8 (i) Construction of the qualified building, if the underlying
9 ownership of the building vests exclusively with the person receiving
10 the economic benefit of the deferral;

11 (ii) Construction of the qualified building, if the economic
12 benefits of the deferral are passed to a lessee as provided in
13 subsection (3)(a)(ii)(B) of this section; or

14 (iii) Tenant improvements for a qualified building, if the economic
15 benefits of the deferral are passed to a lessee as provided in
16 subsection (3)(a)(ii)(B) of this section.

17 (b) "Initiation of construction" does not include soil testing,
18 site clearing and grading, site preparation, or any other related
19 activities that are initiated before the issuance of a building permit
20 for the construction of the foundation of the building.

21 (c) If the investment project includes more than one qualified
22 building, initiation of construction applies separately to each
23 qualified building.

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

28 (6) "Operationally complete" means that the investment project is
29 capable of being used for its intended purpose as described in the
30 application.

31 (7) "Person" has the meaning given in RCW 82.04.030. For the
32 purpose of the qualified activities of high-technology research and
33 development as defined in subsection (8)(b) of this section, "person"
34 also includes state universities as defined in RCW 28B.10.016.

35 (8) "Qualified activities" means the activities described in (a),
36 (b), and (c) of this subsection only.

37 (a)(i) "Qualified activities" includes manufacturing or research
38 and development in an eligible area.

1 (ii) For purposes of (a) of this subsection, the following
2 definitions apply:

3 (A) "Eligible area" means a rural county as defined in RCW
4 82.14.370. "Eligible area" also means a designated community
5 empowerment zone approved under RCW 43.31C.020 or a county containing
6 a community empowerment zone, if, in addition to all other provisions
7 and requirements of this chapter, the applicant establishes that at the
8 time the project is operationally complete:

9 (I) The applicant will hire at least one qualified employment
10 position for each seven hundred fifty thousand dollars of investment
11 for which a deferral is requested;

12 (II) The positions will be filled by persons who at the time of
13 hire are residents of the community empowerment zone. As used in this
14 subsection (8)(a)(ii)(A), "resident" means the person makes his or her
15 home in the community empowerment zone. A mailing address alone is
16 insufficient to establish that a person is a resident for the purposes
17 of this subsection (8)(a)(ii)(A). The persons must be hired after the
18 date the application is filed with the department; and

19 (III) The qualified employment position must be filled by the end
20 of the calendar year following the year in which the project is
21 certified as operationally complete. If a person does not meet the
22 requirements for qualified employment positions by the end of the
23 second calendar year following the year in which the project is
24 certified as operationally complete, all deferred taxes are immediately
25 due. The department shall assess interest, but not penalties, on
26 amounts due under this subsection (8)(a)(ii)(A). The interest shall be
27 assessed at the rate provided for delinquent taxes under chapter 82.32
28 RCW, retroactively to the date of deferral, and shall accrue until the
29 deferred taxes due are repaid.

30 (B) "Manufacturing" means the same as defined in RCW 82.04.120.
31 "Manufacturing" also includes computer programming, the production of
32 computer software, and other computer-related services, and the
33 activities performed by research and development laboratories and
34 commercial testing laboratories.

35 (C) "Research and development" means the development, refinement,
36 testing, marketing, and commercialization of a product, service, or
37 process before commercial sales have begun. As used in this subsection

1 (8)(a)(ii)(C), "commercial sales" excludes sales of prototypes or sales
2 for market testing if the total gross receipts from such sales of the
3 product, service, or process do not exceed one million dollars.

4 (D) "Qualified employment position" means a permanent full-time
5 employee employed in the eligible investment project during the entire
6 tax year. The term "entire tax year" means a full-time position that
7 is filled for a period of twelve consecutive months. The term
8 "full-time" means at least thirty-five hours a week, four hundred
9 fifty-five hours a quarter, or one thousand eight hundred twenty hours
10 a year.

11 (b)(i) "Qualified activities" includes high-technology research and
12 development and pilot scale manufacturing.

13 (ii) For purposes of (b) of this subsection, the following
14 definitions apply:

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

29 (B) "High technology" means technology in the fields of advanced
30 computing, advanced materials, biotechnology, electronic device
31 technology, and environmental technology.

32 (C) "Advanced computing" means technologies used in the designing
33 and developing of computing hardware and software, including
34 innovations in designing the full spectrum of hardware from hand-held
35 calculators to super computers, and peripheral equipment.

36 (D) "Advanced materials" means materials with engineered properties
37 created through the development of specialized processing and synthesis

1 technology, including ceramics, high value-added metals, electronic
2 materials, composites, polymers, and biomaterials.

3 (E) "Biotechnology" means the application of technologies, such as
4 recombinant DNA techniques, biochemistry, molecular and cellular
5 biology, genetics and genetic engineering, cell fusion techniques, and
6 new bioprocesses, using living organisms, or parts of organisms, to
7 produce or modify products, to improve plants or animals, to develop
8 microorganisms for specific uses, to identify targets for small
9 molecule pharmaceutical development, or to transform biological systems
10 into useful processes and products or to develop microorganisms for
11 specific uses.

12 (F) "Electronic device technology" means technologies involving
13 microelectronics; semiconductors; electronic equipment and
14 instrumentation; radio frequency, microwave, and millimeter
15 electronics; optical and optic-electrical devices; and data and digital
16 communications and imaging devices.

17 (G) "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 (H) "Pilot scale manufacturing" means design, construction, and
21 testing of preproduction prototypes and models in the fields of
22 biotechnology, advanced computing, electronic device technology,
23 advanced materials, and environmental technology other than for
24 commercial sale. As used in this subsection (8)(b)(ii)(H), "commercial
25 sale" excludes sales of prototypes or sales for market testing if the
26 total gross receipts from such sales of the product, service, or
27 process do not exceed one million dollars.

28 (c)(i) "Qualified activities" includes fresh fruit and vegetable
29 processing, cold storage warehousing as related to fresh fruit and
30 vegetable processing, and research and development activities as
31 related to fresh fruit and vegetable processing or cold storage
32 warehousing.

33 (ii) For purposes of (c) of this subsection, the following
34 definitions apply:

35 (A) "Fresh fruit and vegetable processing" means manufacturing as
36 defined in RCW 82.04.120 which consists of the canning, preserving,
37 freezing, processing, or dehydrating fresh fruits and/or vegetables.

1 (B) "Cold storage warehouse" means a storage warehouse owned or
2 operated by a wholesaler or third-party warehouser as those terms are
3 defined in RCW 82.08.820 to store fresh and/or frozen perishable fruits
4 or vegetables, or any combination thereof, at a desired temperature to
5 maintain the quality of the product for orderly marketing.

6 (C) "Research and development" has the same meaning as in
7 (a)(ii)(C) of this subsection (8).

8 (9)(a) "Qualified buildings" means:

9 (i) Construction of new buildings used for qualified activities.

10 (ii) Expansion or renovation of existing buildings for the purpose
11 of increasing floor space or production capacity used for qualified
12 activities.

13 (iii) Construction of new warehouses, or the expansion or
14 renovation of existing warehouses, used to support qualified activities
15 located at a manufacturing operation or research and development
16 operation.

17 (iv) Construction of new offices exclusively occupied by employees
18 of a recipient, or a lessee as provided in subsection (3)(a)(ii) of
19 this section, whose job responsibilities exclusively support qualified
20 activities or employees performing qualified activities. Offices must
21 be located within or adjacent to a qualified building under (a)(i) or
22 (ii) of this subsection. Employees engaged in sales, marketing, and
23 similar activities do not support qualified activities or employees
24 performing qualified activities.

25 (v) Construction of new parking facilities located within or
26 adjacent to a qualified building under (a)(i) or (ii) of this
27 subsection. New parking facilities must be constructed under the same
28 tax deferral certificate used to construct, expand, or renovate the
29 building in which the parking facility supports.

30 (b) If a qualified building is used partly for qualified activities
31 and partly for other purposes, the applicable tax deferral shall be
32 determined by apportionment of the costs of construction under rules
33 adopted by the department.

34 (c) For the purposes of this subsection, the following definitions
35 apply:

36 (i) "Warehouse" means a building, structure, or storage yard in
37 which raw materials or finished goods are stored. A warehouse may have
38 more than one storage room and more than one floor.

1 (ii) "Manufacturing operation" has the same meaning as in RCW
2 82.08.02565(2)(d).

3 (iii) "Research and development operation" has the same meaning as
4 in RCW 82.08.02565(2)(f).

5 (10) "Qualified machinery and equipment" means:

6 (a) All industrial and research fixtures, equipment, and support
7 facilities, not otherwise eligible for exemption under RCW 82.08.02565
8 or 82.12.02565, that are used primarily in qualified activities; and

9 (b) Computers; software; data processing equipment; laboratory
10 equipment; manufacturing components such as belts, pulleys, shafts, and
11 moving parts; molds, tools, and dies; operating structures; and all
12 equipment used to control or operate the machinery, that are used
13 primarily in qualified activities.

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

16 NEW SECTION. **Sec. 103.** (1) Application for deferral of taxes
17 under this chapter must be made before the initiation of construction
18 of the qualified buildings or acquisition of qualified machinery or
19 equipment. The application shall be made to the department in a form
20 and manner prescribed by the department. The application shall contain
21 information regarding the location of the investment project, the
22 applicant's average employment in the state for the prior year,
23 estimated or actual new employment related to the project, estimated or
24 actual wages of employees related to the project, estimated or actual
25 costs, time schedules for completion and operation, and other
26 information required by the department.

27 (2) The department shall rule on the application within sixty days.
28 The department shall track, by type of qualified activities, the amount
29 of all deferrals granted under this chapter during each fiscal
30 biennium.

31 NEW SECTION. **Sec. 104.** (1) The department shall issue a sales and
32 use tax deferral certificate for state and local sales and use taxes
33 imposed or authorized under chapters 82.08, 82.12, and 82.14 RCW for
34 the following eligible investment projects.

35 (a) Until July 1, 2010, investment projects in the qualified
36 activities described in section 102(8)(a) of this act;

1 (b) Until July 1, 2015, investment projects in the qualified
2 activities described in section 102(8)(b) of this act;

3 (c) From July 1, 2007, through June 30, 2012, investment projects
4 in the qualified activities described in section 102(8)(c) of this act;

5 (2) Use of a sales and use tax deferral certificate by the
6 recipient is deemed a waiver under RCW 82.32.050(3)(c) of the period of
7 limitations under RCW 82.32.050(3) for sales and use taxes deferred
8 under this chapter.

9 NEW SECTION. **Sec. 105.** (1) Except as provided in subsection (2)
10 of this section, section 102(8)(a)(ii)(A)(III) of this act, and section
11 106 of this act, taxes deferred under this chapter need not be repaid.

12 (2) If, on the basis of a survey under section 106 of this act or
13 other information, the department finds that an investment project is
14 not eligible for tax deferral under this chapter, a portion of deferred
15 taxes shall be immediately due and payable according to the following
16 schedule:

Year in Which	% of Deferred
Ineligibility	Taxes Due
Occurs	
1	100%
2	87.5%
3	75%
4	62.5%
5	50%
6	37.5%
7	25%
8	12.5%

28 (3) The department shall assess interest, but not penalties, on
29 amounts due under subsection (2) of this section. The interest shall
30 be assessed at the rate provided for delinquent taxes under chapter
31 82.32 RCW, retroactively to the date of deferral, and shall accrue
32 until the deferred taxes due are repaid. The debt for deferred taxes
33 is not extinguished by insolvency or other failure of the recipient.
34 Transfer of ownership does not terminate the deferral. The deferral is
35 transferred, subject to the new owner meeting the eligibility

1 requirements of this chapter and agreeing in writing to assume
2 liability for payment of any deferred taxes under subsection (2) of
3 this section, for the remaining periods of the deferral. The original
4 recipient of a deferral that is transferred is not responsible for
5 payment of any deferred tax under subsection (2) of this section for
6 periods subsequent to the transfer.

7 **NEW SECTION.** **Sec. 106.** (1) The legislature finds that
8 accountability and effectiveness are important aspects of setting tax
9 policy. In order to make policy choices regarding the best use of
10 limited state resources the legislature needs information on how a tax
11 incentive is used.

12 (2) Recipients for deferral of taxes under this chapter and persons
13 subject to this chapter by reason of section 110 of this act shall file
14 a complete annual survey with the department. If the economic benefits
15 of the deferral are passed to a lessee as provided in section
16 102(3)(a)(ii)(B) of this act, the lessee shall agree to file the annual
17 survey and the applicant is not required to file the annual survey.
18 The annual survey is due by April 30th of the year following the
19 calendar year in which the investment project is certified by the
20 department as having been operationally complete and the seven
21 succeeding calendar years. The department may extend the due date for
22 timely filing annual surveys under this section as provided in RCW
23 82.32.590. The annual survey shall include the amount of tax deferred,
24 the number of new products or research projects by general
25 classification, and the number of trademarks, patents, and copyrights
26 associated with activities at the investment project. The survey shall
27 also include the following information for employment positions in
28 Washington:

29 (a) The number of total employment positions;

30 (b) Full-time, part-time, and temporary employment positions as a
31 percent of total employment;

32 (c) The number of employment positions according to the following
33 wage bands: Less than thirty thousand dollars; thirty thousand dollars
34 or greater, but less than sixty thousand dollars; and sixty thousand
35 dollars or greater. A wage band containing fewer than three
36 individuals may be combined with another wage band; and

1 (d) The number of employment positions that have employer-provided
2 medical, dental, and retirement benefits, by each of the wage bands.

3 (3) The department may request additional information necessary to
4 measure the results of the deferral program, to be submitted at the
5 same time as the survey.

6 (4)(a) If a recipient of the deferral fails to file a complete
7 annual survey required under this subsection by the date due or any
8 extension under RCW 82.32.590, the portion of deferred taxes that need
9 not be repaid for the previous calendar year according to the schedule
10 in section 105 of this act shall be immediately due and payable. If
11 the economic benefits of the deferral are passed to a lessee as
12 provided in section 102(3)(a)(ii)(B) of this act, the lessee is
13 responsible for payment to the extent the lessee has received the
14 economic benefit. The department shall assess interest, but not
15 penalties, on the deferred taxes payable under this subsection. The
16 interest shall be assessed at the rate provided for delinquent excise
17 taxes under chapter 82.32 RCW, retroactively to the date of deferral,
18 and shall accrue until the deferred taxes are repaid.

19 (b) A recipient who must repay deferred taxes under section 105 of
20 this act because the department has found that an investment project is
21 used for purposes other than qualified activities is no longer required
22 to file annual surveys under this section beginning on the date an
23 investment project is used for nonqualified activities.

24 (5) For purposes of this section, "complete annual survey" means a
25 survey that is filed on a form or in a format required by the
26 department by the due date and substantially responds to all survey
27 questions to enable the department to provide summary statistics and to
28 study the effectiveness of the tax deferral program.

29 (6) All information collected under this section, except the amount
30 of the total tax deferred, is deemed taxpayer information under RCW
31 82.32.330. Information on the amount of tax deferred is not subject to
32 the confidentiality provisions of RCW 82.32.330 and may be disclosed to
33 the public upon request. If the amount of the total tax deferred as
34 reported on the survey is different than the amount actually deferred
35 or otherwise allowed by the department, the amount actually deferred or
36 allowed may be disclosed.

37 (7) The department shall use the information from this section to
38 prepare summary descriptive statistics by category. No fewer than

1 three taxpayers shall be included in any category. The department
2 shall report these statistics to the legislature each year by September
3 1st.

4 (8) The department shall use the information to study the tax
5 deferral program authorized under this chapter. The department shall
6 report to the legislature by December 1, 2009, December 1, 2011, and
7 December 1, 2013. The reports shall measure the effect of the program
8 on job creation, job retention, net jobs for Washington residents,
9 company growth, diversification of the state's economy, cluster
10 dynamics, and such other factors as the department selects.

11 (9) A person who is subject to the requirements in RCW 82.32.535,
12 82.32.545, 82.32.560, or 82.32.570 is not required to file a complete
13 annual survey under this section if the person timely files the annual
14 report required by RCW 82.32.535, 82.32.545, 82.32.560, or 82.32.570.

15 NEW SECTION. **Sec. 107.** Chapter 82.32 RCW applies to the
16 administration of this chapter.

17 NEW SECTION. **Sec. 108.** Applications received by the department
18 under this chapter are not subject to the confidentiality provisions of
19 RCW 82.32.330 and may be disclosed to the public upon request.

20 NEW SECTION. **Sec. 109.** The employment security department shall
21 make, and certify to the department of revenue, all determinations of
22 employment and wages as requested by the department under this chapter.

23 NEW SECTION. **Sec. 110.** Persons who have received a sales and use
24 tax deferral certificate from the department under chapter 82.60,
25 82.63, or 82.74 RCW are subject to the provisions of chapter 82.-- RCW
26 (sections 101 through 110 of this act). This act does not apply to, or
27 authorize refunds for, investment projects that are not eligible as of
28 December 31, 2006, for tax deferrals granted under chapter 82.60 or
29 82.63 RCW before January 1, 2007.

30 NEW SECTION. **Sec. 111.** Sections 101 through 110 of this act
31 constitute a new chapter in Title 82 RCW.

1 NEW SECTION. **SEC. 112.** The following acts or parts of acts are
2 each repealed:

3 (1) RCW 82.60.010 (Legislative findings and declaration) and 1985
4 c 232 s 1;

5 (2) RCW 82.60.020 (Definitions) and 2004 c 25 s 3, 1999 sp.s. c 9
6 s 2, 1999 c 164 s 301, 1996 c 290 s 4, & 1995 1st sp.s. c 3 s 5;

7 (3) RCW 82.60.030 (Application for deferral--Contents) and 1994
8 sp.s. c 1 s 2 & 1985 c 232 s 3;

9 (4) RCW 82.60.040 (Issuance of tax deferral certificate) and 2004
10 c 25 s 4, 1999 c 164 s 302, 1997 c 156 s 5, 1995 1st sp.s. c 3 s 6,
11 1994 sp.s. c 1 s 3, 1986 c 116 s 13, & 1985 c 232 s 4;

12 (5) RCW 82.60.049 (Additional eligible projects) and 2004 c 25 s 5,
13 2000 c 106 s 8, & 1999 c 164 s 304;

14 (6) RCW 82.60.050 (Expiration of RCW 82.60.030 and 82.60.040) and
15 2004 c 25 s 6, 1994 sp.s. c 1 s 7, 1993 sp.s. c 25 s 404, 1988 c 41 s
16 5, & 1985 c 232 s 10;

17 (7) RCW 82.60.060 (Repayment schedule) and 2000 c 106 s 5 & 1985 c
18 232 s 5;

19 (8) RCW 82.60.065 (Tax deferral on construction labor and
20 investment projects--Repayment forgiven) and 1995 1st sp.s. c 3 s 8,
21 1994 sp.s. c 1 s 6, & 1986 c 116 s 14;

22 (9) RCW 82.60.070 (Annual survey by recipients--Assessment of
23 taxes, interest) and 2004 c 25 s 7, 1999 c 164 s 303, 1995 1st sp.s. c
24 3 s 9, 1994 sp.s. c 1 s 5, & 1985 c 232 s 6;

25 (10) RCW 82.60.080 (Employment and wage determinations) and 2000 c
26 106 s 6 & 1985 c 232 s 7;

27 (11) RCW 82.60.090 (Applicability of general administrative
28 provisions) and 1985 c 232 s 8;

29 (12) RCW 82.60.100 (Applications, reports, and information subject
30 to disclosure) and 1987 c 49 s 1;

31 (13) RCW 82.60.110 (Competing projects--Impact study) and 1998 c
32 245 s 169 & 1994 sp.s. c 1 s 8;

33 (14) RCW 82.60.900 (Effective date, applicability--1985 c 232) and
34 1985 c 232 s 11;

35 (15) RCW 82.60.901 (Effective date--1994 sp.s. c 1) and 1994 sp.s.
36 c 1 s 10;

37 (16) RCW 82.63.005 (Findings--Intent to create a contract) and 2004
38 c 2 s 1 & 1994 sp.s. c 5 s 1;

- (17) RCW 82.63.010 (Definitions) and 2004 c 2 s 3, 1995 1st sp.s. c 3 s 12, & 1994 sp.s. c 5 s 3;
- (18) RCW 82.63.020 (Application--Annual survey--Reports) and 2004 c 2 s 4 & 1994 sp.s. c 5 s 4;
- (19) RCW 82.63.030 (Sales and use tax deferral certificate--Eligible investment projects and pilot scale manufacturing) and 2004 c 2 s 5 & 1994 sp.s. c 5 s 5;
- (20) RCW 82.63.045 (Repayment not required--Repayment schedule for unqualified investment project--Exceptions) and 2004 c 2 s 6, 2000 c 106 s 10, & 1995 1st sp.s. c 3 s 13;
- (21) RCW 82.63.060 (Administration) and 1994 sp.s. c 5 s 8;
- (22) RCW 82.63.070 (Public disclosure) and 2004 c 2 s 7 & 1994 sp.s. c 5 s 9;
- (23) RCW 82.63.900 (Effective date--1994 sp.s. c 5) and 1994 sp.s. c 5 s 12;
- (24) RCW 82.74.010 (Definitions) and 2005 c 513 s 4;
- (25) RCW 82.74.020 (Application for tax deferral) and 2005 c 513 s 5;
- (26) RCW 82.74.030 (Issuance of certificate) and 2005 c 513 s 6;
- (27) RCW 82.74.040 (Annual survey) and 2005 c 513 s 7;
- (28) RCW 82.74.050 (Repayment of deferred taxes) and 2005 c 513 s 8;
- (29) RCW 82.74.060 (Application of chapter 82.32 RCW) and 2005 c 513 s 9; and
- (30) RCW 82.74.070 (Confidentiality of applications) and 2005 c 513 s 10.

PART II

TAX CREDITS FOR NEW JOBS IN RURAL AREAS

29 **Sec. 201.** RCW 82.62.020 and 1986 c 116 s 16 are each amended to
30 read as follows:

31 Application for tax credits under this chapter must be made
32 ((before)) within ninety consecutive days after the actual hiring of
33 qualified employment positions. The application shall be made to the
34 department in a form and manner prescribed by the department. The
35 application shall contain information regarding the location of the
36 business project, the applicant's average employment, if any, at the

1 facility for the prior year, estimated or actual new employment related
2 to the project, estimated or actual wages of employees related to the
3 project, estimated or actual costs, time schedules for completion and
4 operation, and other information required by the department. The
5 department shall rule on the application within sixty days.

6

PART III

7 **TAX INCENTIVES ACCOUNTABILITY**

8 **Sec. 301.** RCW 82.32.545 and 2003 2nd sp.s. c 1 s 16 are each
9 amended to read as follows:

10 (1) The legislature finds that accountability and effectiveness are
11 important aspects of setting tax policy. In order to make policy
12 choices regarding the best use of limited state resources the
13 legislature needs information on how a tax incentive is used.

14 (2)(a) A person who reports taxes under RCW 82.04.260((+13)) (11)
15 or who claims an exemption or credit under RCW 82.04.4461, 82.08.980,
16 82.12.980, 82.29A.137, 84.36.655, and 82.04.4463 shall make an annual
17 report to the department detailing employment, wages, and employer-
18 provided health and retirement benefits per job at the manufacturing
19 site. The report shall not include names of employees. The report
20 shall also detail employment by the total number of full-time, part-
21 time, and temporary positions. The first report filed under this
22 subsection shall include employment, wage, and benefit information for
23 the twelve-month period immediately before first use of a preferential
24 tax rate under RCW 82.04.260((+13)) (11), or tax exemption or credit
25 under RCW 82.04.4461, 82.08.980, 82.12.980, 82.29A.137, 84.36.655, and
26 82.04.4463. The report is due by ((March 31st)) April 30th following
27 any year in which a preferential tax rate under RCW 82.04.260((+13))
28 (11) is used, or tax exemption or credit under RCW 82.04.4461,
29 82.08.980, 82.12.980, 82.29A.137, 84.36.655, and 82.04.4463 is taken.
30 The department may extend the due date for timely filing annual reports
31 under this section as provided in RCW 82.32.590. This information is
32 not subject to the confidentiality provisions of RCW 82.32.330 and may
33 be disclosed to the public upon request.

34 (b) If a person fails to submit an annual report under (a) of this
35 subsection by the due date of the report or any extension under RCW
36 82.32.590, the department shall declare the amount of taxes exempted or

1 credited, or reduced in the case of the preferential business and
2 occupation tax rate, for that year to be immediately due and payable.
3 Excise taxes payable under this subsection are subject to interest but
4 not penalties, as provided under this chapter. This information is not
5 subject to the confidentiality provisions of RCW 82.32.330 and may be
6 disclosed to the public upon request.

7 (3) By November 1, 2010, and by November 1, 2023, the fiscal
8 committees of the house of representatives and the senate, in
9 consultation with the department, shall report to the legislature on
10 the effectiveness of chapter 1, Laws of 2003 2nd sp. sess. in regard to
11 keeping Washington competitive. The report shall measure the effect of
12 chapter 1, Laws of 2003 2nd sp. sess. on job retention, net jobs
13 created for Washington residents, company growth, diversification of
14 the state's economy, cluster dynamics, and other factors as the
15 committees select. The reports shall include a discussion of
16 principles to apply in evaluating whether the legislature should
17 reenact any or all of the tax preferences in chapter 1, Laws of 2003
18 2nd sp. sess.

19 **Sec. 302.** RCW 82.32.590 and 2005 c 514 s 1001 are each amended to
20 read as follows:

21 (1) If the department finds that the failure of a taxpayer to file
22 an annual survey or annual report under RCW 82.04.4452, 82.32.545,
23 82.32.560, 82.32.570, 82.32.610, 82.32.620, or section 106 of this act,
24 by the due date was the result of circumstances beyond the control of
25 the taxpayer, the department shall extend the time for filing the
26 survey or report. Such extension shall be for a period of thirty days
27 from the date the department issues its written notification to the
28 taxpayer that it qualifies for an extension under this section. The
29 department may grant additional extensions as it deems proper.

30 (2) In making a determination whether the failure of a taxpayer to
31 file an annual survey or annual report by the due date was the result
32 of circumstances beyond the control of the taxpayer, the department
33 shall be guided by rules adopted by the department for the waiver or
34 cancellation of penalties when the underpayment or untimely payment of
35 any tax was due to circumstances beyond the control of the taxpayer.

1 **Sec. 303.** RCW 82.32.600 and 2005 c 514 s 1002 are each amended to
2 read as follows:

3 (1) Persons required to file annual surveys or annual reports under
4 RCW 82.04.4452, 82.32.545, 82.32.560, 82.32.570, 82.32.610, 82.32.620,
5 or section 106 of this act, must electronically file with the
6 department all surveys, reports, returns, and any other forms or
7 information the department requires in an electronic format as provided
8 or approved by the department((, unless the department grants relief
9 under subsection (2) of this section)). As used in this section,
10 "returns" has the same meaning as "return" in RCW 82.32.050.

11 (2) ((Upon request, the department may relieve a person of the
12 obligations in subsection (1) of this section if the person's taxes
13 have been reduced a cumulative total of less than one thousand dollars
14 from all of the credits, exemptions, or preferential business and
15 occupation tax rates, for which a person is required to file an annual
16 survey under RCW 82.04.4452, 82.32.535, 82.32.545, 82.32.570,
17 82.32.560, 82.60.070, or 82.63.020.)

18 (3) Persons who no longer qualify for relief under subsection (2)
19 of this section will be notified in writing by the department and must
20 comply with subsection (1) of this section by the date provided in the
21 notice.

22 (4)) Any survey, report, return, or any other form or information
23 required to be filed in an electronic format under subsection (1) of
24 this section is not filed until received by the department in an
25 electronic format.

26 (3) The department may waive the electronic filing requirement in
27 subsection (1) of this section for good cause shown.

28 **Sec. 304.** RCW 82.04.4452 and 2005 c 514 s 1003 are each amended to
29 read as follows:

30 (1) In computing the tax imposed under this chapter, a credit is
31 allowed for each person whose research and development spending during
32 the year in which the credit is claimed exceeds 0.92 percent of the
33 person's taxable amount during the same calendar year.

34 (2) The credit shall be calculated as follows:

35 (a) Determine the greater of the amount of qualified research and
36 development expenditures of a person or eighty percent of amounts

1 received by a person other than a public educational or research
2 institution in compensation for the conduct of qualified research and
3 development;

4 (b) Subtract 0.92 percent of the person's taxable amount from the
5 amount determined under (a) of this subsection;

6 (c) Multiply the amount determined under (b) of this subsection by
7 the following:

8 (i) For the period June 10, 2004, through December 31, 2006, the
9 person's average tax rate for the calendar year for which the credit is
10 claimed;

11 (ii) For the calendar year ending December 31, 2007, the greater of
12 the person's average tax rate for that calendar year or 0.75 percent;

13 (iii) For the calendar year ending December 31, 2008, the greater
14 of the person's average tax rate for that calendar year or 1.0 percent;

15 (iv) For the calendar year ending December 31, 2009, the greater of
16 the person's average tax rate for that calendar year or 1.25 percent;

17 (v) For the calendar year ending December 31, 2010, and thereafter,
18 1.50 percent.

19 For purposes of calculating the credit, if a person's reporting
20 period is less than annual, the person may use an estimated average tax
21 rate for the calendar year for which the credit is claimed by using the
22 person's average tax rate for each reporting period. A person who uses
23 an estimated average tax rate must make an adjustment to the total
24 credit claimed for the calendar year using the person's actual average
25 tax rate for the calendar year when the person files its last return
26 for the calendar year for which the credit is claimed.

27 (3) Any person entitled to the credit provided in subsection (2) of
28 this section as a result of qualified research and development
29 conducted under contract may assign all or any portion of the credit to
30 the person contracting for the performance of the qualified research
31 and development.

32 (4) The credit, including any credit assigned to a person under
33 subsection (3) of this section, shall be claimed against taxes due for
34 the same calendar year in which the qualified research and development
35 expenditures are incurred. The credit, including any credit assigned
36 to a person under subsection (3) of this section, for each calendar
37 year shall not exceed the lesser of two million dollars or the amount
38 of tax otherwise due under this chapter for the calendar year.

1 (5) For any person claiming the credit, including any credit
2 assigned to a person under subsection (3) of this section, whose
3 research and development spending during the calendar year in which the
4 credit is claimed fails to exceed 0.92 percent of the person's taxable
5 amount during the same calendar year or who is otherwise ineligible,
6 the department shall declare the taxes against which the credit was
7 claimed to be immediately due and payable. The department shall assess
8 interest, but not penalties, on the taxes against which the credit was
9 claimed. Interest shall be assessed at the rate provided for
10 delinquent excise taxes under chapter 82.32 RCW, retroactively to the
11 date the credit was claimed, and shall accrue until the taxes against
12 which the credit was claimed are repaid. Any credit assigned to a
13 person under subsection (3) of this section that is disallowed as a
14 result of this section may be claimed by the person who performed the
15 qualified research and development subject to the limitations set forth
16 in subsection (4) of this section.

17 (6)(a) The legislature finds that accountability and effectiveness
18 are important aspects of setting tax policy. In order to make policy
19 choices regarding the best use of limited state resources the
20 legislature needs information on how a tax incentive is used.

21 (b) A person claiming the credit shall file a complete annual
22 survey with the department. The survey is due by ((March 31st)) April
23 30th following any year in which a credit is claimed. The department
24 may extend the due date for timely filing of annual surveys under this
25 section as provided in RCW 82.32.590. The survey shall include the
26 amount of the tax credit claimed, the qualified research and
27 development expenditures during the calendar year for which the credit
28 is claimed, the taxable amount during the calendar year for which the
29 credit is claimed, the number of new products or research projects by
30 general classification, the number of trademarks, patents, and
31 copyrights associated with the research and development activities for
32 which a credit was claimed, and whether the credit has been assigned
33 under subsection (3) of this section and who assigned the credit. The
34 survey shall also include the following information for employment
35 positions in Washington:

- 36 (i) The number of total employment positions;
37 (ii) Full-time, part-time, and temporary employment positions as a
38 percent of total employment;

1 (iii) The number of employment positions according to the following
2 wage bands: Less than thirty thousand dollars; thirty thousand dollars
3 or greater, but less than sixty thousand dollars; and sixty thousand
4 dollars or greater. A wage band containing fewer than three
5 individuals may be combined with another wage band; and

6 (iv) The number of employment positions that have employer-provided
7 medical, dental, and retirement benefits, by each of the wage bands.

8 (c) The department may request additional information necessary to
9 measure the results of the tax credit program, to be submitted at the
10 same time as the survey.

11 (d)(i) All information collected under this subsection, except the
12 amount of the tax credit claimed, is deemed taxpayer information under
13 RCW 82.32.330. Information on the amount of tax credit claimed is not
14 subject to the confidentiality provisions of RCW 82.32.330 and may be
15 disclosed to the public upon request, except as provided in this
16 subsection (6)(d). If the amount of the tax credit as reported on the
17 survey is different than the amount actually claimed on the taxpayer's
18 tax returns or otherwise allowed by the department, the amount actually
19 claimed or allowed may be disclosed.

20 (ii) Persons for whom the actual amount of the tax credit claimed
21 on the taxpayer's returns or otherwise allowed by the department is
22 less than ten thousand dollars during the period covered by the survey
23 may request the department to treat the tax credit amount as
24 confidential under RCW 82.32.330.

25 (e) If a person fails to file a complete annual survey required
26 under this subsection with the department by the due date or any
27 extension under RCW 82.32.590, the person entitled to the credit
28 provided in subsection (2) of this section is not eligible to claim or
29 assign the credit provided in subsection (2) of this section in the
30 year the person failed to timely file a complete survey.

31 (7) The department shall use the information from subsection (6) of
32 this section to prepare summary descriptive statistics by category. No
33 fewer than three taxpayers shall be included in any category. The
34 department shall report these statistics to the legislature each year
35 by September 1st.

36 (8) The department shall use the information from subsection (6) of
37 this section to study the tax credit program authorized under this
38 section. The department shall report to the legislature by December 1,

1 2009, and December 1, 2013. The reports shall measure the effect of
2 the program on job creation, ((the number of)) job retention, net jobs
3 ((created)) for Washington residents, company growth, ((the
4 introduction of new products,)) the diversification of the state's
5 economy, ((growth in research and development investment, the movement
6 of firms or the consolidation of firms' operations into the state))
7 cluster dynamics, and such other factors as the department selects.

8 (9) For the purpose of this section:

9 (a) "Average tax rate" means a person's total tax liability under
10 this chapter for the calendar year for which the credit is claimed
11 divided by the taxpayer's total taxable amount under this chapter for
12 the calendar year for which the credit is claimed.

13 (b) "Complete annual survey" means a survey that is filed on a form
14 or in a format required by the department by the due date, or any
15 extension under RCW 82.32.590, and substantially responds to all survey
16 questions to enable the department to provide summary statistics and to
17 study the effectiveness of the tax credit.

18 (c) "Qualified research and development expenditures" means
19 operating expenses, including wages, compensation of a proprietor or a
20 partner in a partnership as determined under rules adopted by the
21 department, benefits, supplies, and computer expenses, directly
22 incurred in qualified research and development by a person claiming the
23 credit provided in this section. The term does not include amounts
24 paid to a person other than a public educational or research
25 institution to conduct qualified research and development. Nor does
26 the term include capital costs and overhead, such as expenses for land,
27 structures, or depreciable property.

28 ((+e))) (d) "Qualified research and development" shall have the
29 same meaning as high technology research and development in ((RCW
30 82.63.010)) section 102(8)(b) of this act.

31 ((+d))) (e) "Research and development spending" means qualified
32 research and development expenditures plus eighty percent of amounts
33 paid to a person other than a public educational or research
34 institution to conduct qualified research and development.

35 ((+e))) (f) "Taxable amount" means the taxable amount subject to
36 the tax imposed in this chapter required to be reported on the person's
37 combined excise tax returns for the calendar year for which the credit

1 is claimed, less any taxable amount for which a credit is allowed under
2 RCW 82.04.440.

3 (10) This section expires January 1, 2015.

4 **Sec. 305.** RCW 82.32.560 and 2004 c 240 s 2 are each amended to
5 read as follows:

6 (1) For the purposes of this section, "electrolytic processing
7 business tax exemption" means the exemption ((and preferential tax rate
8 under)) in RCW 82.16.0421.

9 (2) The legislature finds that accountability and effectiveness are
10 important aspects of setting tax policy. In order to make policy
11 choices regarding the best use of limited state resources, the
12 legislature needs information to evaluate whether the stated goals of
13 legislation were achieved.

14 (3) The goals of the electrolytic processing business tax exemption
15 are:

16 (a) To retain family wage jobs by enabling electrolytic processing
17 businesses to maintain production of chlor-alkali and sodium chlorate
18 at a level that will preserve at least seventy-five percent of the jobs
19 that were on the payroll effective January 1, 2004; and

20 (b) To allow the electrolytic processing industries to continue
21 production in this state through 2011 so that the industries will be
22 positioned to preserve and create new jobs when the anticipated
23 reduction of energy costs occur.

24 (4)(a) A person who receives the benefit of an electrolytic
25 processing business tax exemption shall make an annual report to the
26 department detailing employment, wages, and employer-provided health
27 and retirement benefits per job at the manufacturing site. The report
28 is due by ((March 31st)) April 30th following any year in which a tax
29 exemption is claimed or used. The department may extend the due date
30 for timely filing annual reports under this section as provided in RCW
31 82.32.590. The report shall not include names of employees. The
32 report shall detail employment by the total number of full-time, part-
33 time, and temporary positions. The report shall indicate the quantity
34 of product produced at the plant during the time period covered by the
35 report. The first report filed under this subsection shall include
36 employment, wage, and benefit information for the twelve-month period
37 immediately before first use of a tax exemption. Employment reports

1 shall include data for actual levels of employment and identification
2 of the number of jobs affected by any employment reductions that have
3 been publicly announced at the time of the report. Information in a
4 report under this section is not subject to the confidentiality
5 provisions of RCW 82.32.330 and may be disclosed to the public upon
6 request.

7 (b) If a person fails to submit an annual report under (a) of this
8 subsection by the due date of the report or any extension under RCW
9 82.32.590, the department shall declare the amount of taxes exempted
10 for that year to be immediately due and payable. Public utility taxes
11 payable under this subsection are subject to interest but not
12 penalties, as provided under this chapter. This information is not
13 subject to the confidentiality provisions of RCW 82.32.330 and may be
14 disclosed to the public upon request.

15 (5) By December 1, 2007, and by December 1, 2010, the fiscal
16 committees of the house of representatives and the senate, in
17 consultation with the department, shall report to the legislature on
18 the effectiveness of the tax incentive under RCW 82.16.0421. The
19 report shall measure the effect of the incentive on job retention for
20 Washington residents, and other factors as the committees select. The
21 report shall also discuss expected trends or changes to electricity
22 prices as they affect the industries that benefit from the incentives.

23 **Sec. 306.** RCW 82.32.570 and 2004 c 24 s 14 are each amended to
24 read as follows:

25 (1) For the purposes of this section, "smelter tax incentive" means
26 the preferential tax rate under RCW 82.04.2909, or an exemption or
27 credit under RCW 82.04.4481, 82.08.805, 82.12.805, or 82.12.022(5).

28 (2) The legislature finds that accountability and effectiveness are
29 important aspects of setting tax policy. In order to make policy
30 choices regarding the best use of limited state resources the
31 legislature needs information to evaluate whether the stated goals of
32 legislation were achieved.

33 (3) The goals of the smelter tax incentives are to retain family-
34 wage jobs in rural areas by:

35 (a) Enabling the aluminum industry to maintain production of
36 aluminum at a level that will preserve at least 75 percent of the jobs

1 that were on the payroll effective January 1, 2004, as adjusted for
2 employment reductions publicly announced before November 30, 2003; and

3 (b) Allowing the aluminum industry to continue producing aluminum
4 in this state through 2006 so that the industry will be positioned to
5 preserve and create new jobs when the anticipated reduction of energy
6 costs occurs.

7 (4)(a) An aluminum smelter receiving the benefit of a smelter tax
8 incentive shall make an annual report to the department detailing
9 employment, wages, and employer-provided health and retirement benefits
10 per job at the manufacturing site. The report is due by ((~~March 31st~~))
11 April 30th following any year in which a tax incentive is claimed or
12 used. The department may extend the due date for timely filing annual
13 reports under this section as provided in RCW 82.32.590. The report
14 shall not include names of employees. The report shall detail
15 employment by the total number of full-time, part-time, and temporary
16 positions. The report shall indicate the quantity of aluminum smelted
17 at the plant during the time period covered by the report. The first
18 report filed under this subsection shall include employment, wage, and
19 benefit information for the twelve-month period immediately before
20 first use of a tax incentive. Employment reports shall include data
21 for actual levels of employment and identification of the number of
22 jobs affected by any employment reductions that have been publicly
23 announced at the time of the report. Information in a report under
24 this section is not subject to the confidentiality provisions of RCW
25 82.32.330 and may be disclosed to the public upon request.

26 (b) If a person fails to submit an annual report under (a) of this
27 subsection by the due date of the report or any extension under RCW
28 82.32.590, the department shall declare the amount of taxes exempted or
29 credited, or reduced in the case of the preferential business and
30 occupation tax rate, for that year to be immediately due and payable.
31 Excise taxes payable under this subsection are subject to interest but
32 not penalties, as provided under this chapter. This information is not
33 subject to the confidentiality provisions of RCW 82.32.330 and may be
34 disclosed to the public upon request.

35 (5) By December 1, 2005, and by December 1, 2006, the fiscal
36 committees of the house of representatives and the senate, in
37 consultation with the department, shall report to the legislature on
38 the effectiveness of the smelter tax incentives and, by December 1,

1 2010, on the effectiveness of the incentives under RCW 82.04.4482 and
2 82.16.0498. The reports shall measure the effect of the tax incentives
3 on job retention for Washington residents and any other factors the
4 committees may select.

5 **Sec. 307.** RCW 82.32.610 and 2005 c 513 s 3 are each amended to
6 read as follows:

7 (1) The legislature finds that accountability and effectiveness are
8 important aspects of setting tax policy. In order to make policy
9 choices regarding the best use of limited state resources the
10 legislature needs information on how a tax incentive is used.

11 (2) Each person claiming a tax exemption under RCW 82.04.4266 shall
12 report information to the department by filing a complete annual
13 survey. The survey is due by ((March 31st)) April 30th of the year
14 following any calendar year in which a tax exemption under RCW
15 82.04.4266 is taken. The department may extend the due date for timely
16 filing annual reports under this section as provided in RCW 82.32.590.
17 The survey shall include the amount of tax exemption taken. The survey
18 shall also include the following information for employment positions
19 in Washington:

20 (a) The number of total employment positions;

21 (b) Full-time, part-time, and temporary employment positions as a
22 percent of total employment;

23 (c) The number of employment positions according to the following
24 wage bands: Less than thirty thousand dollars; thirty thousand dollars
25 or greater, but less than sixty thousand dollars; and sixty thousand
26 dollars or greater. A wage band containing fewer than three
27 individuals may be combined with another wage band; and

28 (d) The number of employment positions that have employer-provided
29 medical, dental, and retirement benefits, by each of the wage bands.

30 The first survey filed under this subsection shall also include
31 information for the twelve-month period immediately before first use of
32 a tax incentive.

33 (3) The department may request additional information necessary to
34 measure the results of the exemption program, to be submitted at the
35 same time as the survey.

36 (4) All information collected under this section, except the amount

1 of the tax exemption taken, is deemed taxpayer information under RCW
2 82.32.330. Information on the amount of tax exemption taken is not
3 subject to the confidentiality provisions of RCW 82.32.330.

4 (5) If a person fails to submit an annual survey under subsection
5 (2) of this section by the due date of the report or any extension
6 under RCW 82.32.590, the department shall declare the amount of taxes
7 exempted for the previous calendar year to be immediately due and
8 payable. The department shall assess interest, but not penalties, on
9 the amounts due under this section. The amount due shall be calculated
10 using a rate of 0.138 percent. The interest shall be assessed at the
11 rate provided for delinquent taxes under this chapter, retroactively to
12 the date the exemption was claimed, and shall accrue until the taxes
13 for which the exemption was claimed are repaid. This information is
14 not subject to the confidentiality provisions of RCW 82.32.330.

15 (6) The department shall use the information from this section to
16 prepare summary descriptive statistics by category. No fewer than
17 three taxpayers shall be included in any category. The department
18 shall report these statistics to the legislature each year by September
19 1st.

20 (7) The department shall study the tax exemption authorized in RCW
21 82.04.4266. The department shall submit a report to the finance
22 committee of the house of representatives and the ways and means
23 committee of the senate by December 1, 2011. The report shall measure
24 the effect of the exemption on job creation, job retention, net jobs
25 for Washington residents, company growth, ~~((the movement of firms or~~
~~the consolidation of firms' operations into the state))~~ diversification
26 of the state's economy, cluster dynamics, and such other factors as the
27 department selects.

29 **Sec. 308.** RCW 82.32.620 and 2005 c 301 s 4 are each amended to
30 read as follows:

31 (1) The legislature finds that accountability and effectiveness are
32 important aspects of setting tax policy. In order to make policy
33 choices regarding the best use of limited state resources the
34 legislature needs information on how a tax incentive is used.

35 (2)(a) A person who reports taxes under RCW 82.04.294 shall make an
36 annual report to the department detailing employment, wages, and
37 employer-provided health and retirement benefits per job at the

1 manufacturing site. The report shall not include names of employees.
2 The report shall also detail employment by the total number of full-
3 time, part-time, and temporary positions. The first report filed under
4 this subsection shall include employment, wage, and benefit information
5 for the twelve-month period immediately before first use of a
6 preferential tax rate under RCW 82.04.294. The report is due by
7 ((March 31st)) April 30th following any year in which a preferential
8 tax rate under RCW 82.04.294 is used. The department may extend the
9 due date for timely filing annual reports under this section as
10 provided in RCW 82.32.590. This information is not subject to the
11 confidentiality provisions of RCW 82.32.330.

12 (b) If a person fails to submit an annual report under (a) of this
13 subsection, the department shall declare the amount of taxes reduced
14 for the previous calendar year to be immediately due and payable.
15 Excise taxes payable under this subsection are subject to interest, but
16 not penalties, at the rate provided for delinquent taxes, as provided
17 under this chapter. The department shall assess interest,
18 retroactively to the date the preferential tax rate under RCW
19 82.04.294, was used. The interest shall be assessed at the rate
20 provided for delinquent excise taxes under this chapter, and shall
21 accrue until the taxes for which the preferential tax rate was used are
22 repaid. This information is not subject to the confidentiality
23 provisions of RCW 82.32.330.

24 **Sec. 309.** RCW 82.32.330 and 2005 c 326 s 1 are each amended to
25 read as follows:

26 (1) For purposes of this section:

27 (a) "Disclose" means to make known to any person in any manner
28 whatever a return or tax information;

29 (b) "Return" means a tax or information return or claim for refund
30 required by, or provided for or permitted under, the laws of this state
31 which is filed with the department of revenue by, on behalf of, or with
32 respect to a person, and any amendment or supplement thereto, including
33 supporting schedules, attachments, or lists that are supplemental to,
34 or part of, the return so filed;

35 (c) "Tax information" means (i) a taxpayer's identity, (ii) the
36 nature, source, or amount of the taxpayer's income, payments, receipts,
37 deductions, exemptions, credits, assets, liabilities, net worth, tax

1 liability deficiencies, overassessments, or tax payments, whether taken
2 from the taxpayer's books and records or any other source, (iii)
3 whether the taxpayer's return was, is being, or will be examined or
4 subject to other investigation or processing, (iv) a part of a written
5 determination that is not designated as a precedent and disclosed
6 pursuant to RCW 82.32.410, or a background file document relating to a
7 written determination, and (v) other data received by, recorded by,
8 prepared by, furnished to, or collected by the department of revenue
9 with respect to the determination of the existence, or possible
10 existence, of liability, or the amount thereof, of a person under the
11 laws of this state for a tax, penalty, interest, fine, forfeiture, or
12 other imposition, or offense: PROVIDED, That data, material, or
13 documents that do not disclose information related to a specific or
14 identifiable taxpayer do not constitute tax information under this
15 section. Except as provided by RCW 82.32.410, nothing in this chapter
16 shall require any person possessing data, material, or documents made
17 confidential and privileged by this section to delete information from
18 such data, material, or documents so as to permit its disclosure;

19 (d) "State agency" means every Washington state office, department,
20 division, bureau, board, commission, or other state agency;

21 (e) "Taxpayer identity" means the taxpayer's name, address,
22 telephone number, registration number, or any combination thereof, or
23 any other information disclosing the identity of the taxpayer; and

24 (f) "Department" means the department of revenue or its officer,
25 agent, employee, or representative.

26 (2) Returns and tax information shall be confidential and
27 privileged, and except as authorized by this section, neither the
28 department of revenue nor any other person may disclose any return or
29 tax information.

30 (3) This section does not prohibit the department of revenue from:

31 (a) Disclosing such return or tax information in a civil or
32 criminal judicial proceeding or an administrative proceeding:

33 (i) In respect of any tax imposed under the laws of this state if
34 the taxpayer or its officer or other person liable under Title 82 RCW
35 is a party in the proceeding; or

36 (ii) In which the taxpayer about whom such return or tax
37 information is sought and another state agency are adverse parties in
38 the proceeding;

1 (b) Disclosing, subject to such requirements and conditions as the
2 director shall prescribe by rules adopted pursuant to chapter 34.05
3 RCW, such return or tax information regarding a taxpayer to such
4 taxpayer or to such person or persons as that taxpayer may designate in
5 a request for, or consent to, such disclosure, or to any other person,
6 at the taxpayer's request, to the extent necessary to comply with a
7 request for information or assistance made by the taxpayer to such
8 other person: PROVIDED, That tax information not received from the
9 taxpayer shall not be so disclosed if the director determines that such
10 disclosure would compromise any investigation or litigation by any
11 federal, state, or local government agency in connection with the civil
12 or criminal liability of the taxpayer or another person, or that such
13 disclosure would identify a confidential informant, or that such
14 disclosure is contrary to any agreement entered into by the department
15 that provides for the reciprocal exchange of information with other
16 government agencies which agreement requires confidentiality with
17 respect to such information unless such information is required to be
18 disclosed to the taxpayer by the order of any court;

19 (c) Disclosing the name of a taxpayer with a deficiency greater
20 than five thousand dollars and against whom a warrant under RCW
21 82.32.210 has been either issued or filed and remains outstanding for
22 a period of at least ten working days. The department shall not be
23 required to disclose any information under this subsection if a
24 taxpayer: (i) Has been issued a tax assessment; (ii) has been issued
25 a warrant that has not been filed; and (iii) has entered a deferred
26 payment arrangement with the department of revenue and is making
27 payments upon such deficiency that will fully satisfy the indebtedness
28 within twelve months;

29 (d) Disclosing the name of a taxpayer with a deficiency greater
30 than five thousand dollars and against whom a warrant under RCW
31 82.32.210 has been filed with a court of record and remains
32 outstanding;

33 (e) Publishing statistics so classified as to prevent the
34 identification of particular returns or reports or items thereof;

35 (f) Disclosing such return or tax information, for official
36 purposes only, to the governor or attorney general, or to any state
37 agency, or to any committee or subcommittee of the legislature dealing

1 with matters of taxation, revenue, trade, commerce, the control of
2 industry or the professions;

3 (g) Permitting the department of revenue's records to be audited
4 and examined by the proper state officer, his or her agents and
5 employees;

6 (h) Disclosing any such return or tax information to a peace
7 officer as defined in RCW 9A.04.110 or county prosecuting attorney, for
8 official purposes. The disclosure may be made only in response to a
9 search warrant, subpoena, or other court order, unless the disclosure
10 is for the purpose of criminal tax enforcement. A peace officer or
11 county prosecuting attorney who receives the return or tax information
12 may disclose that return or tax information only for use in the
13 investigation and a related court proceeding, or in the court
14 proceeding for which the return or tax information originally was
15 sought;

16 (i) Disclosing any such return or tax information to the proper
17 officer of the internal revenue service of the United States, the
18 Canadian government or provincial governments of Canada, or to the
19 proper officer of the tax department of any state or city or town or
20 county, for official purposes, but only if the statutes of the United
21 States, Canada or its provincial governments, or of such other state or
22 city or town or county, as the case may be, grants substantially
23 similar privileges to the proper officers of this state;

24 (j) Disclosing any such return or tax information to the Department
25 of Justice, including the Bureau of Alcohol, Tobacco ((and)), Firearms
26 ((of the Department of the Treasury)) and Explosives within the
27 Department of Justice, the Department of Defense, the Immigration and
28 Customs Enforcement and the Customs and Border Protection agencies of
29 the United States ((Customs Service)) Department of Homeland Security,
30 the Coast Guard of the United States, and the United States Department
31 of Transportation, or any authorized representative thereof, for
32 official purposes;

33 (k) Publishing or otherwise disclosing the text of a written
34 determination designated by the director as a precedent pursuant to RCW
35 82.32.410;

36 (l) Disclosing, in a manner that is not associated with other tax
37 information, the taxpayer name, entity type, business address, mailing
38 address, revenue tax registration numbers, North American industry

classification system or standard industrial classification code of a taxpayer, and the dates of opening and closing of business. This subsection shall not be construed as giving authority to the department to give, sell, or provide access to any list of taxpayers for any commercial purpose;

(m) Disclosing such return or tax information that is also maintained by another Washington state or local governmental agency as a public record available for inspection and copying under the provisions of chapter 42.17 RCW or is a document maintained by a court of record not otherwise prohibited from disclosure;

(n) Disclosing such return or tax information to the United States department of agriculture for the limited purpose of investigating food stamp fraud by retailers;

(o) Disclosing to a financial institution, escrow company, or title company, in connection with specific real property that is the subject of a real estate transaction, current amounts due the department for a filed tax warrant, judgment, or lien against the real property;

(p) Disclosing to a person against whom the department has asserted liability as a successor under RCW 82.32.140 return or tax information pertaining to the specific business of the taxpayer to which the person has succeeded; ((or))

(q) Disclosing such return or tax information in the possession of the department relating to the administration or enforcement of the real estate excise tax imposed under chapter 82.45 RCW, including information regarding transactions exempt or otherwise not subject to tax; or

(r) Disclosing the least amount of return or tax information necessary for the reports of the effectiveness of tax incentive programs when the number of taxpayers included in the reports or any part of the reports cannot be classified to prevent the identification of taxpayers or particular returns, reports, tax information, or items in the possession of the department.

(4)(a) The department may disclose return or taxpayer information to a person under investigation or during any court or administrative proceeding against a person under investigation as provided in this subsection (4). The disclosure must be in connection with the department's official duties relating to an audit, collection activity, or a civil or criminal investigation. The disclosure may occur only

1 when the person under investigation and the person in possession of
2 data, materials, or documents are parties to the return or tax
3 information to be disclosed. The department may disclose return or tax
4 information such as invoices, contracts, bills, statements, resale or
5 exemption certificates, or checks. However, the department may not
6 disclose general ledgers, sales or cash receipt journals, check
7 registers, accounts receivable/payable ledgers, general journals,
8 financial statements, expert's workpapers, income tax returns, state
9 tax returns, tax return workpapers, or other similar data, materials,
10 or documents.

11 (b) Before disclosure of any tax return or tax information under
12 this subsection (4), the department shall, through written
13 correspondence, inform the person in possession of the data, materials,
14 or documents to be disclosed. The correspondence shall clearly
15 identify the data, materials, or documents to be disclosed. The
16 department may not disclose any tax return or tax information under
17 this subsection (4) until the time period allowed in (c) of this
18 subsection has expired or until the court has ruled on any challenge
19 brought under (c) of this subsection.

20 (c) The person in possession of the data, materials, or documents
21 to be disclosed by the department has twenty days from the receipt of
22 the written request required under (b) of this subsection to petition
23 the superior court of the county in which the petitioner resides for
24 injunctive relief. The court shall limit or deny the request of the
25 department if the court determines that:

26 (i) The data, materials, or documents sought for disclosure are
27 cumulative or duplicative, or are obtainable from some other source
28 that is more convenient, less burdensome, or less expensive;

29 (ii) The production of the data, materials, or documents sought
30 would be unduly burdensome or expensive, taking into account the needs
31 of the department, the amount in controversy, limitations on the
32 petitioner's resources, and the importance of the issues at stake; or

33 (iii) The data, materials, or documents sought for disclosure
34 contain trade secret information that, if disclosed, could harm the
35 petitioner.

36 (d) The department shall reimburse reasonable expenses for the
37 production of data, materials, or documents incurred by the person in
38 possession of the data, materials, or documents to be disclosed.

1 (e) Requesting information under (b) of this subsection that may
2 indicate that a taxpayer is under investigation does not constitute a
3 disclosure of tax return or tax information under this section.

4 (5) Any person acquiring knowledge of any return or tax information
5 in the course of his or her employment with the department of revenue
6 and any person acquiring knowledge of any return or tax information as
7 provided under subsection (3)(f), (g), (h), (i), (j), or (n) of this
8 section, who discloses any such return or tax information to another
9 person not entitled to knowledge of such return or tax information
10 under the provisions of this section, is guilty of a misdemeanor. If
11 the person guilty of such violation is an officer or employee of the
12 state, such person shall forfeit such office or employment and shall be
13 incapable of holding any public office or employment in this state for
14 a period of two years thereafter.

15 **Sec. 310.** RCW 82.32.330 and 2005 c 326 s 1 and 2005 c 274 s 361
16 are each reenacted and amended to read as follows:

17 (1) For purposes of this section:

18 (a) "Disclose" means to make known to any person in any manner
19 whatever a return or tax information;

20 (b) "Return" means a tax or information return or claim for refund
21 required by, or provided for or permitted under, the laws of this state
22 which is filed with the department of revenue by, on behalf of, or with
23 respect to a person, and any amendment or supplement thereto, including
24 supporting schedules, attachments, or lists that are supplemental to,
25 or part of, the return so filed;

26 (c) "Tax information" means (i) a taxpayer's identity, (ii) the
27 nature, source, or amount of the taxpayer's income, payments, receipts,
28 deductions, exemptions, credits, assets, liabilities, net worth, tax
29 liability deficiencies, overassessments, or tax payments, whether taken
30 from the taxpayer's books and records or any other source, (iii)
31 whether the taxpayer's return was, is being, or will be examined or
32 subject to other investigation or processing, (iv) a part of a written
33 determination that is not designated as a precedent and disclosed
34 pursuant to RCW 82.32.410, or a background file document relating to a
35 written determination, and (v) other data received by, recorded by,
36 prepared by, furnished to, or collected by the department of revenue
37 with respect to the determination of the existence, or possible

1 existence, of liability, or the amount thereof, of a person under the
2 laws of this state for a tax, penalty, interest, fine, forfeiture, or
3 other imposition, or offense: PROVIDED, That data, material, or
4 documents that do not disclose information related to a specific or
5 identifiable taxpayer do not constitute tax information under this
6 section. Except as provided by RCW 82.32.410, nothing in this chapter
7 shall require any person possessing data, material, or documents made
8 confidential and privileged by this section to delete information from
9 such data, material, or documents so as to permit its disclosure;

10 (d) "State agency" means every Washington state office, department,
11 division, bureau, board, commission, or other state agency;

12 (e) "Taxpayer identity" means the taxpayer's name, address,
13 telephone number, registration number, or any combination thereof, or
14 any other information disclosing the identity of the taxpayer; and

15 (f) "Department" means the department of revenue or its officer,
16 agent, employee, or representative.

17 (2) Returns and tax information shall be confidential and
18 privileged, and except as authorized by this section, neither the
19 department of revenue nor any other person may disclose any return or
20 tax information.

21 (3) This section does not prohibit the department of revenue from:

22 (a) Disclosing such return or tax information in a civil or
23 criminal judicial proceeding or an administrative proceeding:

24 (i) In respect of any tax imposed under the laws of this state if
25 the taxpayer or its officer or other person liable under Title 82 RCW
26 is a party in the proceeding; or

27 (ii) In which the taxpayer about whom such return or tax
28 information is sought and another state agency are adverse parties in
29 the proceeding;

30 (b) Disclosing, subject to such requirements and conditions as the
31 director shall prescribe by rules adopted pursuant to chapter 34.05
32 RCW, such return or tax information regarding a taxpayer to such
33 taxpayer or to such person or persons as that taxpayer may designate in
34 a request for, or consent to, such disclosure, or to any other person,
35 at the taxpayer's request, to the extent necessary to comply with a
36 request for information or assistance made by the taxpayer to such
37 other person: PROVIDED, That tax information not received from the
38 taxpayer shall not be so disclosed if the director determines that such

1 disclosure would compromise any investigation or litigation by any
2 federal, state, or local government agency in connection with the civil
3 or criminal liability of the taxpayer or another person, or that such
4 disclosure would identify a confidential informant, or that such
5 disclosure is contrary to any agreement entered into by the department
6 that provides for the reciprocal exchange of information with other
7 government agencies which agreement requires confidentiality with
8 respect to such information unless such information is required to be
9 disclosed to the taxpayer by the order of any court;

10 (c) Disclosing the name of a taxpayer with a deficiency greater
11 than five thousand dollars and against whom a warrant under RCW
12 82.32.210 has been either issued or filed and remains outstanding for
13 a period of at least ten working days. The department shall not be
14 required to disclose any information under this subsection if a
15 taxpayer: (i) Has been issued a tax assessment; (ii) has been issued
16 a warrant that has not been filed; and (iii) has entered a deferred
17 payment arrangement with the department of revenue and is making
18 payments upon such deficiency that will fully satisfy the indebtedness
19 within twelve months;

20 (d) Disclosing the name of a taxpayer with a deficiency greater
21 than five thousand dollars and against whom a warrant under RCW
22 82.32.210 has been filed with a court of record and remains
23 outstanding;

24 (e) Publishing statistics so classified as to prevent the
25 identification of particular returns or reports or items thereof;

26 (f) Disclosing such return or tax information, for official
27 purposes only, to the governor or attorney general, or to any state
28 agency, or to any committee or subcommittee of the legislature dealing
29 with matters of taxation, revenue, trade, commerce, the control of
30 industry or the professions;

31 (g) Permitting the department of revenue's records to be audited
32 and examined by the proper state officer, his or her agents and
33 employees;

34 (h) Disclosing any such return or tax information to a peace
35 officer as defined in RCW 9A.04.110 or county prosecuting attorney, for
36 official purposes. The disclosure may be made only in response to a
37 search warrant, subpoena, or other court order, unless the disclosure
38 is for the purpose of criminal tax enforcement. A peace officer or

1 county prosecuting attorney who receives the return or tax information
2 may disclose that return or tax information only for use in the
3 investigation and a related court proceeding, or in the court
4 proceeding for which the return or tax information originally was
5 sought;

6 (i) Disclosing any such return or tax information to the proper
7 officer of the internal revenue service of the United States, the
8 Canadian government or provincial governments of Canada, or to the
9 proper officer of the tax department of any state or city or town or
10 county, for official purposes, but only if the statutes of the United
11 States, Canada or its provincial governments, or of such other state or
12 city or town or county, as the case may be, grants substantially
13 similar privileges to the proper officers of this state;

14 (j) Disclosing any such return or tax information to the Department
15 of Justice, including the Bureau of Alcohol, Tobacco ((and))_ Firearms
16 ((~~of the Department of the Treasury~~) and Explosives within the
17 Department of Justice, the Department of Defense, the Immigration and
18 Customs Enforcement and the Customs and Border Protection agencies of
19 the United States ((Customs Service)) Department of Homeland Security,
20 the Coast Guard of the United States, and the United States Department
21 of Transportation, or any authorized representative thereof, for
22 official purposes;

23 (k) Publishing or otherwise disclosing the text of a written
24 determination designated by the director as a precedent pursuant to RCW
25 82.32.410;

26 (l) Disclosing, in a manner that is not associated with other tax
27 information, the taxpayer name, entity type, business address, mailing
28 address, revenue tax registration numbers, North American industry
29 classification system or standard industrial classification code of a
30 taxpayer, and the dates of opening and closing of business. This
31 subsection shall not be construed as giving authority to the department
32 to give, sell, or provide access to any list of taxpayers for any
33 commercial purpose;

34 (m) Disclosing such return or tax information that is also
35 maintained by another Washington state or local governmental agency as
36 a public record available for inspection and copying under the
37 provisions of chapter 42.56 RCW or is a document maintained by a court
38 of record not otherwise prohibited from disclosure;

1 (n) Disclosing such return or tax information to the United States
2 department of agriculture for the limited purpose of investigating food
3 stamp fraud by retailers;

4 (o) Disclosing to a financial institution, escrow company, or title
5 company, in connection with specific real property that is the subject
6 of a real estate transaction, current amounts due the department for a
7 filed tax warrant, judgment, or lien against the real property;

8 (p) Disclosing to a person against whom the department has asserted
9 liability as a successor under RCW 82.32.140 return or tax information
10 pertaining to the specific business of the taxpayer to which the person
11 has succeeded; ((or))

12 (q) Disclosing such return or tax information in the possession of
13 the department relating to the administration or enforcement of the
14 real estate excise tax imposed under chapter 82.45 RCW, including
15 information regarding transactions exempt or otherwise not subject to
16 tax; or

17 (r) Disclosing the least amount of return or tax information
18 necessary for the reports of the effectiveness of tax incentive
19 programs when the number of taxpayers included in the reports or any
20 part of the reports cannot be classified to prevent the identification
21 of taxpayers or particular returns, reports, tax information, or items
22 in the possession of the department.

23 (4)(a) The department may disclose return or taxpayer information
24 to a person under investigation or during any court or administrative
25 proceeding against a person under investigation as provided in this
26 subsection (4). The disclosure must be in connection with the
27 department's official duties relating to an audit, collection activity,
28 or a civil or criminal investigation. The disclosure may occur only
29 when the person under investigation and the person in possession of
30 data, materials, or documents are parties to the return or tax
31 information to be disclosed. The department may disclose return or tax
32 information such as invoices, contracts, bills, statements, resale or
33 exemption certificates, or checks. However, the department may not
34 disclose general ledgers, sales or cash receipt journals, check
35 registers, accounts receivable/payable ledgers, general journals,
36 financial statements, expert's workpapers, income tax returns, state
37 tax returns, tax return workpapers, or other similar data, materials,
38 or documents.

1 (b) Before disclosure of any tax return or tax information under
2 this subsection (4), the department shall, through written
3 correspondence, inform the person in possession of the data, materials,
4 or documents to be disclosed. The correspondence shall clearly
5 identify the data, materials, or documents to be disclosed. The
6 department may not disclose any tax return or tax information under
7 this subsection (4) until the time period allowed in (c) of this
8 subsection has expired or until the court has ruled on any challenge
9 brought under (c) of this subsection.

10 (c) The person in possession of the data, materials, or documents
11 to be disclosed by the department has twenty days from the receipt of
12 the written request required under (b) of this subsection to petition
13 the superior court of the county in which the petitioner resides for
14 injunctive relief. The court shall limit or deny the request of the
15 department if the court determines that:

16 (i) The data, materials, or documents sought for disclosure are
17 cumulative or duplicative, or are obtainable from some other source
18 that is more convenient, less burdensome, or less expensive;

19 (ii) The production of the data, materials, or documents sought
20 would be unduly burdensome or expensive, taking into account the needs
21 of the department, the amount in controversy, limitations on the
22 petitioner's resources, and the importance of the issues at stake; or

23 (iii) The data, materials, or documents sought for disclosure
24 contain trade secret information that, if disclosed, could harm the
25 petitioner.

26 (d) The department shall reimburse reasonable expenses for the
27 production of data, materials, or documents incurred by the person in
28 possession of the data, materials, or documents to be disclosed.

29 (e) Requesting information under (b) of this subsection that may
30 indicate that a taxpayer is under investigation does not constitute a
31 disclosure of tax return or tax information under this section.

32 (5) Any person acquiring knowledge of any return or tax information
33 in the course of his or her employment with the department of revenue
34 and any person acquiring knowledge of any return or tax information as
35 provided under subsection (3)(f), (g), (h), (i), (j), or (n) of this
36 section, who discloses any such return or tax information to another
37 person not entitled to knowledge of such return or tax information
38 under the provisions of this section, is guilty of a misdemeanor. If

the person guilty of such violation is an officer or employee of the state, such person shall forfeit such office or employment and shall be incapable of holding any public office or employment in this state for a period of two years thereafter.

PART IV

MISCELLANEOUS

NEW SECTION. **Sec. 401.** Except as provided in section 110 of this act, the repealed sections in section 112 of this act do not affect any rights, liabilities, obligations, or proceedings, incurred or instituted under those repealed sections or rules or orders adopted by the department of revenue pursuant to those repealed sections prior to the effective date of section 112 of this act.

13 NEW SECTION. **Sec. 402.** (1) Sections 101 through 112 and 201 of
14 this act take effect January 1, 2007.

15 (2) Sections 301 through 309 of this act are necessary for the
16 immediate preservation of the public peace, health, or safety, or
17 support of the state government and its existing public institutions,
18 and take effect immediately.

19 (3) Section 310 of this act takes effect July 1, 2006.

20 NEW SECTION. Sec. 403. Section 309 of this act expires July 1,
21 2006.

NEW SECTION. Sec. 404. Part headings used in this act are not part of the law.

24 NEW SECTION. **Sec. 405.** If any provision of this act or its
25 application to any person or circumstance is held invalid, the
26 remainder of the act or the application of the provision to other
27 persons or circumstances is not affected.

--- END ---