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**HOUSE BILL 1794**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Representatives Waters, Reed, Schmidt, Volz, Chapman, and Cheney

AN ACT Relating to research and development incentives and growing Washington's economy for the long-term; adding a new section to chapter 82.04 RCW; adding a new section to chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; creating a new section; and providing an effective date.

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

NEW SECTION. **Sec.**  A new section is added to chapter 82.04 RCW to read as follows:

(1) Subject to the limitations of this section, a credit is authorized against the tax otherwise due under this chapter for qualified research and development expenditures.

(2)(a) The credit is calculated as follows:

(i) The greater of the amount of qualified research and development expenditures of a person or 80 percent of amounts received by a person other than a public educational or research institution in compensation for the conduct of qualified research and development;

(ii) Less 0.92 percent of the person's taxable amount from the amount determined under (a)(i) of this subsection;

(iii) Multiplied by 1.75 percent.

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

(3)(a) Except as provided in (b) of this subsection (3), a tax credit may not be carried over to another calendar year.

(b) Any amount of tax credit otherwise allowable under this section not claimed by the person in any calendar year may be carried over and claimed against the person's tax liability for the next succeeding calendar year. Any credit remaining unused in the next succeeding calendar year may be carried over and claimed against the person's tax liability for the second succeeding calendar year. However, any credit not used in that second succeeding calendar year may not be carried over for any calendar year thereafter.

(c) Credits are available on a first-in-time basis. The department must disallow any credits, or portion thereof, that would cause the total amount of credits claimed under this section during any calendar year to exceed $10,000,000. If this limitation is reached, the department must post a notice on its website. In addition, the department must provide written notice to any person who has claimed tax credits in excess of the limitation in this subsection (3)(c). The notice must indicate the amount of tax due and provide that the tax be paid within 30 days from the date of the notice. The department may not assess penalties and interest as provided in chapter 82.32 RCW on the amount due in the initial notice if the amount due is paid by the due date specified in the notice or extension thereof.

(4) The amount of the credit claimed for a reporting period may not exceed the tax otherwise due under this chapter for that reporting period. Refunds may not be granted for unused credits.

(5) To claim a credit under this section, a person must electronically file with the department all returns, forms, and any other information required by the department, in an electronic format as provided or approved by the department. Any return, form, or information required to be filed in electronic format under this section is not filed until received by the department in an electronic format. As used in this subsection, "returns" has the same meaning as in RCW 82.32.050.

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

(b) A person claiming the credit shall file a complete annual tax performance report with the department. The report is due by March 31st following any year in which a credit is claimed. The department may extend the due date for timely filing of annual tax performance reports under this section as provided in RCW 82.32.590. The report must include the amount of the tax credit claimed, the qualified research and development expenditures during the calendar year for which the credit is claimed, the taxable amount during the calendar year for which the credit is claimed, the number of new products or research projects by general classification, the number of trademarks, patents, and copyrights associated with the research and development activities for which a credit was claimed, and the following information for employment positions in Washington:

(i) The number of total employment positions;

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

(iii) The number of employment positions according to the following wage bands: Less than $100,000; $100,000 or greater, but less than $150,000; $150,000 or greater. A wage band containing fewer than three individuals may be combined with another wage band; and

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

(c) The department may request additional information necessary to measure the results of the tax credit program under this section, which must be submitted at the same time as the annual tax performance report.

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

(ii) Persons for whom the actual amount of the tax credit claimed on the taxpayer's returns or otherwise allowed by the department is less than $10,000 during the period covered by the survey may request that the department treat the tax credit amount as confidential under RCW 82.32.330.

(e) If a person fails to file a complete annual tax performance report required under this subsection (6) with the department by the due date or any extension under RCW 82.32.590, the person entitled to the credit provided in this section is not eligible to claim the credit provided in this section in the year the person failed to timely file a complete annual tax performance report.

(7) The department shall use the information from subsection (6) of this section to prepare summary descriptive statistics by category. Categories may not contain less than three taxpayers.

(8) For the purposes of this section, the following definitions apply unless the context clearly requires otherwise:

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

(b) "Qualified machinery and equipment" has the same meaning as in RCW 82.63.010.

(c) "Qualified research and development" has the same meaning as in RCW 82.63.010.

(d)(i) "Qualified research and development expenditure" means expenses incurred by a person during a calendar year on machinery, equipment, and personnel used in qualified research and development.

(ii) In determining what is a "qualified research and development expenditure," the department may consider the following:

(A) The place where the services are performed;

(B) The residence or business location of the person or persons performing the services;

(C) The place where qualified research supplies are consumed; and

(D) Any other factor that the department deems relevant.

(e) "Research and development" has the same meaning as in RCW 82.63.010.

(f) "Taxable amount" means the taxable amount subject to the tax imposed in this chapter required to be reported on the person's combined excise tax returns for the calendar year for which the credit is claimed, less any taxable amount for which a credit is allowed under RCW 82.04.440.

(9) A person claiming a credit under this section must keep records necessary for the department to verify eligibility under this section and is subject to all the requirements of chapter 82.32 RCW.

(10) Credits allowed under this section may be earned for tax reporting periods beginning on or after July 1, 2024, and ending on or before December 31, 2042. No credit may be claimed on returns filed for tax periods on or after January 1, 2045.

NEW SECTION. **Sec.**  A new section is added to chapter 82.08 RCW to read as follows:

(1) An eligible purchaser who has paid the tax levied by RCW 82.08.020 on qualified research and development equipment is eligible for an exemption in the form of a remittance. The total amount of the remittance is limited to the amount of the tax paid or the prorated amount as calculated in subsection (4) of this section, whichever is less.

(2)(a) An eligible purchaser claiming an exemption from the tax in the form of a remittance under this section must pay the tax imposed by RCW 82.08.020 on such purchases eligible for the remittance. The eligible purchaser may then apply to the department for remittance of all or part of the tax paid under RCW 82.08.020 on such purchases subject to the limitations of this section.

(b) An eligible purchaser may not apply for more than one remittance under this section per calendar year.

(3)(a) Application for a tax exemption under this section must be received by the department between January 1st and January 31st, following the calendar year in which the eligible purchaser paid state sales tax on qualified research and development equipment. The application must be made to the department in the form and manner prescribed by the department. The application must contain information regarding the qualified research and development equipment, the purchase price, and the taxes paid.

(b) An eligible purchaser must electronically file with the department all returns, forms, and any other information required by the department, in an electronic format as provided or approved by the department. Any return, form, or information required to be filed in electronic format under this section is not filed until received by the department in an electronic format. As used in this subsection (3), "returns" has the same meaning as "return" in RCW 82.32.050.

(4)(a) The department must keep a running total of all exemptions claimed under this section and section 3 of this act for each calendar year. The department may not allow any exemptions claimed under this section and section 3 of this act that would cause the total amounts to exceed $10,000,000 per calendar year.

(b) If the total amount of exemptions applied for by all applicants under this section and section 3 of this act for any calendar year exceeds $10,000,000, the department must ratably reduce the amount of the exemption allowed for all qualified applicants so that the limit of $10,000,000 for this section and section 3 of this act is not exceeded. If an exemption is reduced, the amount of reduction may not be carried forward and claimed in subsequent calendar years.

(5) For the purposes of this section, "qualified research and development equipment" means tangible personal property that has not previously been used in Washington for any purpose and is acquired by the eligible purchaser for the purpose of research and development activities devoted to experimental or laboratory research and development for new products, new uses of existing products, or improving or testing existing products.

(6) Equipment for which an exemption has been received under RCW 82.08.02565 or 82.12.02565 is not eligible for any remittance under this section.

(7) The exemption in this section applies to purchases made on or after July 1, 2024, and on or before December 31, 2044.

NEW SECTION. **Sec.**  A new section is added to chapter 82.12 RCW to read as follows:

(1) An eligible purchaser who has paid the tax levied by RCW 82.12.020 on qualified research and development equipment is eligible for an exemption in the form of a remittance. The total amount of the remittance is limited to the amount of the tax paid or the prorated amount as calculated in subsection (4) of this section, whichever is less.

(2)(a) An eligible purchaser claiming an exemption from the tax in the form of a remittance under this section must pay the tax imposed by RCW 82.12.020 on purchases eligible for the remittance. The eligible purchaser may then apply to the department for remittance of all or part of the tax paid under RCW 82.12.020 on purchases subject to the limitations of this section.

(b) An eligible purchaser may not apply for more than one remittance under this section per calendar year.

(3)(a) Application for a tax exemption under this section must be received by the department between January 1st and January 31st, following the calendar year in which the eligible purchaser paid state use tax on qualified research and development equipment. The application must be made to the department in the form and manner prescribed by the department. The application must contain information regarding the qualified research and development equipment, the purchase price, and the taxes paid.

(b) An eligible purchaser must electronically file with the department all returns, forms, and any other information required by the department, in an electronic format as provided or approved by the department. Any return, form, or information required to be filed in electronic format under this section is not filed until received by the department in an electronic format. As used in this subsection (3), "returns" has the same meaning as "return" in RCW 82.32.050.

(4)(a) The department must keep a running total of all exemptions claimed under this section and section 2 of this act for each calendar year. The department may not allow any exemptions claimed under this section and section 2 of this act that would cause the total amounts to exceed $10,000,000 per calendar year.

(b) If the total amount of exemptions applied for by all applicants under this section and section 2 of this act for any calendar year exceeds $10,000,000, the department must ratably reduce the amount of the exemption allowed for all qualified applicants so that the limit of $10,000,000 for this section and section 2 of this act is not exceeded. If an exemption is reduced, the amount of reduction may not be carried forward and claimed in subsequent calendar years.

(5) For the purposes of this section, "qualified research and development equipment" means tangible personal property that has not previously been used in Washington for any purpose and is acquired by the eligible purchaser for the purpose of research and development activities devoted to experimental or laboratory research and development for new products, new uses of existing products, or improving or testing existing products.

(6) Equipment for which an exemption has been received under RCW 82.08.02565 or 82.12.02565 is not eligible for any remittance under this section.

(7) The exemption in this section applies to purchases made on or after July 1, 2024, and on or before December 31, 2044.

NEW SECTION. **Sec.**  (1) This section is the tax preference performance statement for the tax preferences contained in sections 1 through 3, chapter . . ., Laws of 2023 (sections 1 through 3 of this act). This performance statement is only intended to be used for subsequent evaluation of the tax preferences. It is not intended to create a private right of action by any party or to be used to determine eligibility for preferential tax treatment.

(2) The legislature intends that these tax preferences induce increased expenditures on research and development, increase industry competitiveness through innovation, increase the availability of middle class jobs and upward mobility for low-income individuals, and increase the rate of entrepreneurship and the formation of high growth potential startups, as indicated in RCW 82.32.808(2) (a), (b), (c), and (f).

(3) The legislature intends to measure the performance of these tax preferences with two metrics. First, the state intends to measure the number of jobs providing middle class wages relative to all jobs in the economy against the same measure of middle class jobs relative to all jobs in the state economy in the first full calendar year that research and development tax credits are available. The legislature also intends to measure, to the extent data is commercially available, the total amount of expenditures and rate of growth of expenditures in research and development by Washington state firms prior to the first full calendar year that research and development tax credits became available and compare these figures against the rate of growth and total expenditures for each full calendar year that research and development tax credits are available. If both middle class jobs are growing and the rate of growth in research and development spending is higher than before instituting the incentives, then the legislature intends for the tax preferences to be extended.

(4) The legislature recognizes that research regarding outcomes from tax incentives shows that it may take a decade or more for state research and development tax credits and remittances to have an impact on the economy through entrepreneurship. Therefore, the legislature intends to require evaluation and sunset review of these tax preferences on a different schedule than other tax preferences. The legislature intends for the joint legislative audit and review committee to provide performance review in 2033 and 2043.

(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to any data collected by the state.

NEW SECTION. **Sec.**  This act takes effect July 1, 2024.

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