
SENATE BILL 5486

State of Washington

53rd Legislature

1993 Regular Session

By Senators McCaslin and Roach

Read first time 02/01/93. Referred to Committee on Trade, Technology & Economic Development.

1 AN ACT Relating to the deferral of taxation where the deferred tax
2 payments are for investments or costs that result in the creation of a
3 specified number of jobs; amending RCW 82.60.050 and 82.61.040; adding
4 a new chapter to Title 82 RCW; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** Unless the context clearly requires
7 otherwise, the definitions in this section apply throughout this
8 chapter.

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

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

12 (3) "Person" has the meaning given in RCW 82.04.030.

13 (4) "Recipient" means a person receiving a tax deferral under this
14 chapter.

15 (5) "Certificate" means a tax deferral certificate issued by the
16 department under this chapter.

17 (6) "Certificate holder" means an applicant to whom a tax deferral
18 certificate has been issued.

1 (7) "Operationally complete" means constructed or improved to the
2 point of being functionally useable for the intended purpose.

3 (8) "Initiation of construction" means that date upon which on-site
4 construction commences.

5 (9) "Qualified employment position" means a permanent full-time
6 employee employed in the eligible investment project during the entire
7 tax year.

8 (10) "Manufacturing" means all activities of a commercial or
9 industrial nature wherein labor or skill is applied, by hand or
10 machinery, to materials so that as a result of that labor or skill a
11 new, different, or useful substance or article of tangible personal
12 property is produced for sale or commercial or industrial use and shall
13 include the production or fabrication of specially made or custom made
14 articles. "Manufacturing" includes computer programming, the
15 production of computer software, and other computer-related services,
16 and the activities performed by research and development laboratories
17 and commercial testing laboratories.

18 (11) "Research and development" means the development, refinement,
19 testing, marketing, and commercialization of a product, service, or
20 process before commercial sales have begun. As used in this
21 subsection, "commercial sales" excludes sales of prototypes or sales
22 for market testing if the total gross receipts from the sales of the
23 product, service, or process do not exceed one million dollars.

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

28 (13) "Qualified buildings" means new structures used for
29 manufacturing or research and development activities, including plan
30 offices and warehouses or other facilities for the storage of raw
31 material or finished goods if the facilities are an essential or an
32 integral part of a factory, mill, plant, or laboratory used for
33 manufacturing or research and development. If a building is used
34 partly for manufacturing or research and development and partly for
35 other purposes, the applicable tax deferral shall be determined by
36 apportionment of the costs of construction under rules adopted by the
37 department.

38 (14) "Qualified machinery and equipment" means all new industrial
39 and research fixtures, equipment, and support facilities that are an

1 integral and necessary part of a manufacturing or research and
2 development operation. "Qualified machinery and equipment" includes
3 computers; software; data processing equipment; laboratory equipment;
4 manufacturing components such as belts, pulleys, shafts, and moving
5 parts; molds, tools, and dies; operating structures; and all equipment
6 used to control or operate the machinery.

7 (15) "Eligible investment project" means that portion of an
8 investment project that:

9 (a) Is directly utilized to create at least one new full-time
10 qualified employment position for each three hundred thousand dollars
11 of investment on which a deferral is requested; and

12 (b) Either initiates a new operation, or expands or diversifies a
13 current operation by expanding or renovating an existing building with
14 costs in excess of twenty-five percent of the true and fair value of
15 the plant complex prior to improvement; or

16 (c) Constructs new buildings and acquires new related machinery and
17 equipment when the buildings, machinery, and equipment are to be used
18 for either manufacturing or research and development activities if
19 construction is commenced after July 1, 1993; or

20 (d) Acquires machinery and equipment to be used for either
21 manufacturing or research and development if the machinery and
22 equipment is housed in a new leased structure. However, the lessor or
23 owner of the structure is not eligible for a deferral unless the
24 underlying ownership of the buildings, machinery, and equipment vests
25 exclusively in the same person.

26 "Eligible investment project" does not mean any portion of an
27 investment project undertaken by a light and power business as defined
28 in RCW 82.16.010(5) or investment projects that have already received
29 deferrals under this chapter.

30 NEW SECTION. **Sec. 2.** (1) Application for deferral of taxes under
31 this chapter must be made before initiation of the construction of the
32 investment project or acquisition of equipment or machinery or plant.
33 The application shall be made to the department in a form and manner
34 prescribed by the department.

35 (2) The application shall contain, at a minimum:

36 (a) Information regarding the location of the investment project;

37 (b) The applicant's average employment in the state for the prior
38 year;

- 1 (c) Estimated or actual new employment related to the project;
- 2 (d) Estimated or actual wages of employees related to the project;
- 3 (e) Estimated or actual costs; and
- 4 (f) Time schedules for completion and operation.

5 Additional information may also be required by the department.

6 (3) Application for deferral of taxes shall be made within one
7 hundred eighty days of the acquisition of equipment or machinery.

8 (4) The department shall rule on the application within sixty days
9 and, if approved, issue a tax deferral certificate to the applicant.

10 (5) A certificate holder shall initiate construction of the
11 investment project within one hundred eighty days of receiving the tax
12 deferral certificate from the department.

13 NEW SECTION. **Sec. 3.** (1) The department shall issue a sales and
14 use tax deferral certificate for state and local sales and use taxes
15 due under chapters 82.08, 82.12, and 82.14 RCW on each eligible
16 investment project. The use of the certificate shall be governed by
17 rules established by the department.

18 (2) The department shall keep a running total of all deferrals
19 granted under this chapter during each fiscal biennium.

20 NEW SECTION. **Sec. 4.** (1) On an annual basis, the department and
21 the department of trade and economic development shall jointly report
22 to the legislature about the effects of this chapter on new
23 manufacturing and research and development activities in this state.

24 (2) The report shall contain information concerning the number of
25 deferral certificates granted, the amount of sales tax deferred, the
26 number of jobs created, and other information useful in measuring the
27 effects.

28 (3) The report shall be submitted by January 1, 1996, and by
29 January 1 of each year thereafter.

30 NEW SECTION. **Sec. 5.** (1) The recipient shall begin paying the
31 deferred taxes in the third year after the date certified by the
32 department as the date on which the construction project is
33 operationally complete or the plant resumes operation, as appropriate.

34 (2) The first payment is due on December 31st of the third calendar
35 year after the certified date. Subsequent annual payments are due on

1 December 31st of the following four years. Amounts of payment are to
2 be scheduled as follows:

3	Repayment Year	% of Deferred Tax Repaid
4	1	10%
5	2	15%
6	3	20%
7	4	25%
8	5	30%

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

11 (4) Interest shall not be charged on any taxes deferred under this
12 chapter for the period of deferral. However, any other penalties and
13 interest applicable to delinquent excise taxes may be assessed and
14 imposed for payments delinquent under this chapter.

15 (5) The debt for deferred taxes will not be extinguished by
16 insolvency or other failure of the recipient.

17 NEW SECTION. **Sec. 6.** (1) Each recipient shall submit a report to
18 the department on December 31st of each year during the repayment
19 period until the tax deferral is repaid. The report shall contain
20 information, as required by the department, from which the department
21 may determine whether the recipient is meeting the requirements of this
22 chapter. If the recipient fails to submit a report or submits an
23 inadequate report, the department may declare the amount of deferred
24 taxes outstanding to be immediately assessed and payable.

25 (2) If, on the basis of a report under this section or other
26 information, the department finds that an investment project is not
27 eligible for tax deferral under this chapter for reasons other than
28 failure to create the required number of qualified employment
29 positions, the amount of deferred taxes outstanding for the project
30 shall be immediately due.

31 (3) If, on the basis of a report under this section or other
32 information, the department finds that an investment project has been
33 operationally complete for three years and has failed to create the
34 required number of qualified employment positions, the department shall
35 assess interest, but not penalties, on the deferred taxes for the
36 project. The interest shall:

37 (a) Be assessed at the rate provided for delinquent excise taxes;

- 1 (b) Be assessed retroactively to the date of deferral; and
2 (c) Accrue until the deferred taxes are repaid.

3 NEW SECTION. **Sec. 7.** The employment security department shall
4 make, and certify to the department, all determinations of employment
5 and wages required under this chapter.

6 NEW SECTION. **Sec. 8.** Chapter 82.32 RCW applies to the
7 administration of this chapter.

8 NEW SECTION. **Sec. 9.** Applications, reports, and any other
9 information received by the department under this chapter shall not be
10 confidential and shall be subject to disclosure.

11 NEW SECTION. **Sec. 10.** If any provision of this act or its
12 application to any person or circumstance is held invalid, the
13 remainder of the act or the application of the provision to other
14 persons or circumstances is not affected.

15 NEW SECTION. **Sec. 11.** This act shall not be construed as
16 affecting any existing right acquired or liability or obligation
17 incurred under the sections repealed in this act or under any rule or
18 order adopted under those sections, nor as affecting any proceeding
19 instituted under those sections.

20 NEW SECTION. **Sec. 12.** No taxes may be deferred prior to July 1,
21 1993.

22 NEW SECTION. **Sec. 13.** This act is necessary for the immediate
23 preservation of the public peace, health, or safety, or support of the
24 state government and its existing public institutions, and shall take
25 effect immediately.

26 NEW SECTION. **Sec. 14.** Sections 1 through 12 of this act shall
27 constitute a new chapter in Title 82 RCW.

28 **Sec. 15.** RCW 82.60.050 and 1988 c 41 s 5 are each amended to read
29 as follows:

30 RCW 82.60.030 and 82.60.040 shall expire July 1, (~~1994~~) 1993.

1 **Sec. 16.** RCW 82.61.040 and 1988 c 41 s 2 are each amended to read
2 as follows:
3 RCW 82.61.020 and 82.61.030 shall expire July 1, (~~1994~~) 1993.

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