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**SENATE BILL 6347**

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**State of Washington**

**53rd Legislature**

**1994 Regular Session**

**By** Senators Skratek, Sellar, Gaspard, Owen, Bluechel, Pelz, Winsley, McAuliffe, Quigley, Ludwig, A. Smith, Deccio, Moyer and M. Rasmussen; by request of Governor Lowry

Read first time 01/19/94. Referred to Committee on Trade, Technology & Economic Development.

1 AN ACT Relating to the taxation of high-technology businesses;  
2 providing business and occupation tax credits for qualifying research  
3 and development expenditures; providing tax deferrals for research and  
4 development and pilot scale manufacturing facilities; adding a new  
5 section to chapter 82.04 RCW; adding a new chapter to Title 82 RCW; and  
6 declaring an emergency.

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

8 NEW SECTION. **Sec. 1.** The legislature finds that high-paying jobs  
9 are vital to the economic health of the state's citizens, and that  
10 targeted tax incentives will encourage the formation of high-paying  
11 jobs. The legislature also finds that tax incentives should be subject  
12 to the same rigorous requirements for efficiency and accountability as  
13 are other expenditure programs, and that tax incentives should  
14 therefore be focused to provide the greatest possible return on the  
15 state's investment.

16 The legislature also finds that high-technology businesses are a  
17 vital and growing source of high-paying jobs in this state, and that  
18 the high-technology sector is a key component of the state's effort to  
19 encourage economic diversification. However, the legislature finds

1 that many high-technology businesses incur significant costs associated  
2 with research and development and pilot scale manufacturing many years  
3 before a marketable product can be produced, and that current state tax  
4 policy discourages the growth of these companies by taxing them long  
5 before they become profitable.

6 The legislature further finds that stimulating growth of high-  
7 technology businesses early in their development cycle, when they are  
8 turning ideas into marketable products, will build upon the state's  
9 established high-technology base, creating additional research and  
10 development jobs and subsequent manufacturing facilities.

11 For these reasons, the legislature hereby establishes a program of  
12 business and occupation tax credits for qualified research and  
13 development expenditures. The legislature also hereby establishes a  
14 tax deferral program for high-technology research and development and  
15 pilot scale manufacturing facilities. The legislature declares that  
16 these limited programs serve the vital public purpose of creating  
17 employment opportunities in this state. The legislature further  
18 declares its intent to create a contract within the meaning of Article  
19 I, section 23 of the state Constitution as to those businesses that  
20 make capital investments in consideration of the tax deferral program  
21 established in this chapter.

22 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.04 RCW  
23 to read as follows:

24 (1) In computing the tax imposed under this chapter, a credit is  
25 allowed for each person whose qualified research and development  
26 expenditures during the year in which the credit is claimed exceed 0.92  
27 percent of the person's taxable amount during the same calendar year.

28 (2) The credit is equal to the amount of qualified research and  
29 development expenditures multiplied by the rate of 0.515 percent in the  
30 case of a nonprofit corporation or nonprofit association engaging  
31 within this state in research and development, and 2.5 percent for  
32 every other person.

33 (3) The credit shall be taken against taxes due for the same  
34 calendar year in which the qualified research and development  
35 expenditures are incurred, and shall not during any calendar year  
36 exceed the lesser of two million dollars or the amount of tax otherwise  
37 due under this chapter for the calendar year.

1 (4) A person taking the credit whose qualified research and  
2 development expenditures during the calendar year in which the credit  
3 is claimed fail to exceed 0.92 percent of the person's taxable amount  
4 during the same calendar year is liable for payment of the additional  
5 taxes represented by the amount of credit taken together with interest,  
6 but not penalties. Interest is due at the rate provided for delinquent  
7 excise taxes retroactively to the date the credit was taken until the  
8 taxes are paid.

9 (5) A person claiming the credit shall file an affidavit form  
10 prescribed by the department, which shall include the amount of the  
11 credit claimed, an estimate of the anticipated qualified research and  
12 development expenditures during the calendar year for which the credit  
13 is claimed, an estimate of gross income from all sources during the  
14 calendar year for which the credit is claimed, and additional  
15 information as the department may prescribe.

16 (6) For the purpose of this section:

17 (a) "Qualified research and development expenditures" means  
18 operating expenses, including wages, benefits, supplies, and computer  
19 expenses, directly incurred in qualified research and development by a  
20 person claiming the credit provided in this section. The term does not  
21 include amounts paid to a person other than a public educational or  
22 research institution to conduct qualified research and development, nor  
23 does the term include capital costs and overhead, such as expenses for  
24 land, structures, or depreciable property.

25 (b) "Qualified research and development" shall have the same  
26 meaning as in section 3 of this act.

27 (c) "Taxable amount" means the taxable amount subject to the tax  
28 imposed in this chapter required to be reported on the person's  
29 combined excise tax returns during the year in which the credit is  
30 claimed.

31 (7) This section shall expire December 31, 2004.

32 NEW SECTION. **Sec. 3.** Unless the context clearly requires  
33 otherwise, the definitions in this section apply throughout this  
34 chapter.

35 (1) "Advanced computing" means leading-edge technologies used in  
36 the designing and developing of computing hardware and software,  
37 including innovations in designing the full spectrum of hardware from  
38 hand-held calculators to super computers, and peripheral equipment.

1 (2) "Advanced materials" means materials with engineered properties  
2 created through the development of specialized processing and synthesis  
3 technology, including ceramics, high value-added metals, electronic  
4 materials, composites, polymers, and biomaterials.

5 (3) "Applicant" means a person applying for a tax deferral under  
6 this chapter.

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

16 (5) "Department" means the department of revenue.

17 (6) "Electronic device technology" means leading-edge technologies  
18 involving microelectronics; semiconductors; electronic equipment and  
19 instrumentation; radio frequency, microwave, and millimeter  
20 electronics; and optical and optic-electrical devices; and data and  
21 digital communications and imaging devices.

22 (7) "Eligible investment project" means that portion of an  
23 investment project which either initiates a new operation, or expands  
24 or diversifies a current operation by expanding, renovating, or  
25 equipping an existing facility with costs in excess of twenty-five  
26 percent of the true and fair value of the facility prior to  
27 improvement. The lessor or owner of the qualified building is not  
28 eligible for a deferral unless the underlying ownership of the  
29 buildings, machinery, and equipment vests exclusively in the same  
30 person, or unless the lessor by written contract agrees to pass the  
31 economic benefit of the deferral to the lessee in the form of reduced  
32 rent payments.

33 (8) "Environmental technology" means assessment, prevention, and  
34 cleanup of environmental damage, and the development of alternative  
35 energy sources.

36 (9) "Investment project" means an investment in qualified buildings  
37 or qualified machinery and equipment, including labor and services  
38 rendered in the planning, installation, and construction or improvement  
39 of the project.

1 (10) "Person" has the meaning given in RCW 82.04.030.

2 (11) "Pilot scale manufacturing" means design, construction, and  
3 testing of preproduction prototypes and models in the fields of  
4 biotechnology, advanced computing, electronic device technology,  
5 advanced materials, and environmental technology other than for  
6 commercial sale. As used in this subsection, "commercial sale"  
7 excludes sales of prototypes or sales for market testing if the total  
8 gross receipts from such sales of the product, service, or process do  
9 not exceed one million dollars.

10 (12) "Qualified buildings" means structures used for pilot scale  
11 manufacturing or qualifying research and development, including plant  
12 offices and other facilities that are an essential or an integral part  
13 of a structure used for pilot scale manufacturing or qualifying  
14 research and development. If a building is used partly for pilot scale  
15 manufacturing or qualifying research and development, and partly for  
16 other purposes, the applicable tax deferral shall be determined by  
17 apportionment of the costs of construction under rules adopted by the  
18 department.

19 (13) "Qualified machinery and equipment" means fixtures, equipment,  
20 and support facilities that are an integral and necessary part of a  
21 pilot scale manufacturing or qualifying research and development  
22 operation. "Qualified machinery and equipment" includes: Computers;  
23 software; data processing equipment; laboratory equipment,  
24 instrumentation, and other devices used in a process of experimentation  
25 to develop a new or improved pilot model, plant process, product,  
26 formula, invention, or similar property; manufacturing components such  
27 as belts, pulleys, shafts, and moving parts; molds, tools, and dies;  
28 vats, tanks, and fermenters; operating structures; and all other  
29 equipment used to control, monitor, or operate the machinery. For  
30 purposes of this chapter, new machinery and equipment means either new  
31 to the taxing jurisdiction of the state or new to the certificate  
32 holder. Used machinery and equipment may be treated as new equipment  
33 and machinery if the certificate holder either brings the machinery and  
34 equipment into Washington or makes a retail purchase of the machinery  
35 and equipment in Washington or elsewhere.

36 (14) "Qualified research and development" means research and  
37 development performed within this state in the fields of biotechnology,  
38 advanced computing, electronic device technology, advanced materials,  
39 and environmental technology.

1 (15) "Recipient" means a person receiving a tax deferral under this  
2 chapter.

3 (16) "Research and development" means activities performed to  
4 discover technological information, and technical and nonroutine  
5 activities concerned with translating technological information into  
6 new or improved products, processes, techniques, formulas, inventions,  
7 or software. The term does not include adaptation or duplication of  
8 existing products where the products are not substantially improved by  
9 application of the technology, nor does the term include surveys and  
10 studies, social science and humanities research, market research or  
11 testing, quality control, sale promotion and service, computer software  
12 developed for internal use, and research in areas such as improved  
13 style, taste, and seasonal design.

14 NEW SECTION. **Sec. 4.** Application for deferral of taxes under this  
15 chapter must be made before initiation of construction of, or  
16 acquisition of equipment or machinery for the investment project. The  
17 application shall be made to the department in a form and manner  
18 prescribed by the department. The application shall contain  
19 information regarding the location of the investment project, the  
20 applicant's average employment in the state for the prior year,  
21 estimated or actual new employment related to the project, estimated or  
22 actual wages of employees related to the project, estimated or actual  
23 costs, time schedules for completion and operation, and other  
24 information required by the department. The department shall rule on  
25 the application within sixty days.

26 NEW SECTION. **Sec. 5.** (1) Except as provided in subsection (2) of  
27 this section, the department shall issue a sales and use tax deferral  
28 certificate for state and local sales and use taxes due under chapters  
29 82.08, 82.12, and 82.14 RCW on each eligible investment project.

30 (2) No certificate may be issued for an investment project that has  
31 already received a deferral under chapters 82.60 or 82.61 RCW or this  
32 chapter, except that an investment project for qualified research and  
33 development that has already received a deferral may also receive an  
34 additional deferral certificate for adapting the investment project for  
35 use in pilot scale manufacturing.

36 (3) This section shall expire July 1, 2004.

1        NEW SECTION.    **Sec. 6.**    (1) Except as provided in subsection (2) of  
2 this section, a recipient shall begin paying taxes deferred under this  
3 chapter on December 31st of the third calendar year after the date  
4 certified by the department as the date on which the investment project  
5 has been operationally completed, or on December 31st of the fifth  
6 calendar year after the certificate was granted, whichever is sooner.  
7 Subsequent annual payments shall be due on December 31st of the  
8 following four years with amounts of payment scheduled as follows:

9	Repayment Year	% of Deferred Tax Repaid
10	1	10%
11	2	15%
12	3	20%
13	4	25%
14	5	30%

15        (2) A recipient of a tax deferral on an investment project for  
16 qualified research and development on, or pilot scale manufacturing of,  
17 a product which requires licensing by the federal drug administration  
18 under chapter 21, C.F.R., as amended, shall begin paying taxes deferred  
19 under this chapter on December 31st of the fifth calendar year after  
20 the date certified by the department as the date on which the  
21 investment project has been operationally completed, or on December  
22 31st of the seventh calendar year after the certificate was granted,  
23 whichever is sooner.    Subsequent annual payments shall be due on  
24 December 31st of the following five years with amounts of payment  
25 scheduled as follows:

26	Repayment Year	% of Deferred Tax Repaid
27	1	10%
28	2	10%
29	3	15%
30	4	20%
31	5	20%
32	6	25%

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

1 (4) Interest may not be charged on taxes deferred under this  
2 chapter for the period of deferral, although all other penalties and  
3 interest applicable to delinquent excise taxes may be assessed and  
4 imposed for delinquent payments under this chapter. The debt for  
5 deferred taxes will not be extinguished by insolvency or other failure  
6 of the recipient.

7 NEW SECTION. **Sec. 7.** If an investment project is used for  
8 purposes other than qualified research and development or pilot scale  
9 manufacturing prior to repayment of the taxes deferred under this  
10 chapter, the amount of the deferred taxes outstanding for the project  
11 is immediately due. The department shall assess interest, but not  
12 penalties, on the deferred taxes for the project. The interest shall  
13 be assessed at the rate provided for delinquent excise taxes, shall be  
14 assessed retroactively to the date of deferral, and shall accrue until  
15 the deferred taxes are repaid.

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

18 NEW SECTION. **Sec. 9.** Applications and other information received  
19 by the department under this chapter are not confidential and are  
20 subject to disclosure.

21 NEW SECTION. **Sec. 10.** No taxes may be deferred under this chapter  
22 prior to July 1, 1994.

23 NEW SECTION. **Sec. 11.** Sections 1 and 3 through 10 of this act  
24 shall constitute a new chapter in Title 82 RCW.

25 NEW SECTION. **Sec. 12.** This act is necessary for the immediate  
26 preservation of the public peace, health, or safety, or support of the  
27 state government and its existing public institutions, and shall take  
28 effect immediately.

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