

CERTIFICATION OF ENROLLMENT

ENGROSSED HOUSE BILL 2664

Chapter 1, Laws of 1994

53rd Legislature
1994 1st Special Session

INVESTMENT PROJECTS IN DISTRESSED AREAS--TAX INCENTIVE

EFFECTIVE DATE: 7/1/94

Passed by the House March 14, 1994
Yeas 86 Nays 6

BRIAN EBERSOLE

**Speaker of the
House of Representatives**

Passed by the Senate March 14, 1994
Yeas 43 Nays 4

JOEL PRITCHARD

President of the Senate

Approved March 31, 1994

MIKE LOWRY

Governor of the State of Washington

CERTIFICATE

I, Marilyn Showalter, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED HOUSE BILL 2664** as passed by the House of Representatives and the Senate on the dates hereon set forth.

MARILYN SHOWALTER

Chief Clerk

FILED

March 31, 1994 - 11:45 a.m.

**Secretary of State
State of Washington**

ENGROSSED HOUSE BILL 2664

AS RECOMMENDED BY THE CONFERENCE COMMITTEE

Passed Legislature - 1994 1st Special Session

State of Washington 53rd Legislature 1994 1st Special Session

By Representatives Springer, Foreman, Jones, G. Fisher, Shin, Chappell, Basich, Pruitt, Holm, Ogden, Wolfe, Sheldon, H. Myers, Kessler, Conway, Cothorn, Morris and Rayburn; by request of Governor Lowry

Read first time 01/19/94. Referred to Committee on Revenue.

1 AN ACT Relating to tax deferrals for investment projects in
2 distressed areas; amending RCW 82.60.020, 82.60.030, 82.60.040,
3 82.60.070, 82.60.065, and 82.60.050; adding new sections to chapter
4 82.60 RCW; and providing an effective date.

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

6 **Sec. 1.** RCW 82.60.020 and 1993 sp.s. c 25 s 403 are each amended
7 to read as follows:

8 Unless the context clearly requires otherwise, the definitions in
9 this section apply throughout this chapter.

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

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

13 (3) "Eligible area" means: (a) A county in which the average level
14 of unemployment for the three years before the year in which an
15 application is filed under this chapter exceeds the average state
16 unemployment for those years by twenty percent; (b) a metropolitan
17 statistical area, as defined by the office of federal statistical
18 policy and standards, United States department of commerce, in which
19 the average level of unemployment for the calendar year immediately

1 preceding the year in which an application is filed under this chapter
2 exceeds the average state unemployment for such calendar year by twenty
3 percent; ~~((or))~~ (c) a designated neighborhood reinvestment area
4 approved under RCW 43.63A.700; (d) a town with a population of less
5 than twelve hundred persons in those counties that are not covered
6 under (a) of this subsection that are timber impact areas as defined in
7 RCW 43.31.601; or (e) a county designated by the governor as an
8 eligible area under section 9 of this act.

9 (4)(a) "Eligible investment project" means that portion of an
10 investment project which:

11 (i) Is directly utilized to create at least one new full-time
12 qualified employment position for each three hundred thousand dollars
13 of investment on which a deferral is requested in an application
14 approved before July 1, 1994, and for each seven hundred fifty thousand
15 dollars of investment on which a deferral is requested in an
16 application approved after June 30, 1994; and

17 (ii) Either initiates a new operation, or expands or diversifies a
18 current operation by expanding, equipping, or renovating an existing
19 ~~((building))~~ facility with costs in excess of twenty-five percent of
20 the true and fair value of the ~~((plant complex))~~ facility prior to
21 improvement~~((; or~~

22 ~~((iii))~~ ~~Acquires machinery and equipment to be used for either~~
23 ~~manufacturing or research and development if the machinery and~~
24 ~~equipment is housed in a new leased structure)).~~ The lessor/owner of
25 ~~((the structure))~~ a qualified building is not eligible for a deferral
26 unless the underlying ownership of the buildings, machinery, and
27 equipment vests exclusively in the same person, or unless the lessor by
28 written contract agrees to pass the economic benefit of the deferral to
29 the lessee in the form of reduced rent payments.

30 (b) For purposes of (a)(i) of this subsection, the number of new
31 full-time qualified employment positions created by an investment
32 project shall be deemed to be reduced by the number of full-time
33 employment positions maintained by the recipient in any other community
34 in this state that are displaced as a result of the investment project.

35 (c) "Eligible investment project" does not include any portion of
36 an investment project undertaken by a light and power business as
37 defined in RCW 82.16.010(5), other than cogeneration projects that are
38 both an integral part of a manufacturing facility and owned at least

1 fifty percent by the manufacturer, or investment projects which have
2 already received deferrals under this chapter.

3 (5) "Investment project" means an investment in qualified buildings
4 (~~and~~) or qualified machinery and equipment, including labor and
5 services rendered in the planning, installation, and construction of
6 the project.

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

17 (7) "Person" has the meaning given in RCW 82.04.030.

18 (8) "Qualified buildings" means (~~new~~) structures used for
19 manufacturing and research and development activities, including plant
20 offices and warehouses or other facilities for the storage of raw
21 material or finished goods if such facilities are an essential or an
22 integral part of a factory, mill, plant, or laboratory used for
23 manufacturing or research and development. If a building is used
24 partly for manufacturing or research and development and partly for
25 other purposes, the applicable tax deferral shall be determined by
26 apportionment of the costs of construction under rules adopted by the
27 department.

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

31 (10) "Qualified machinery and equipment" means all new industrial
32 and research fixtures, equipment, and support facilities that are an
33 integral and necessary part of a manufacturing or research and
34 development operation. "Qualified machinery and equipment" includes:
35 Computers; software; data processing equipment; laboratory equipment;
36 manufacturing components such as belts, pulleys, shafts, and moving
37 parts; molds, tools, and dies; operating structures; and all equipment
38 used to control or operate the machinery.

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

3 (12) "Research and development" means the development, refinement,
4 testing, marketing, and commercialization of a product, service, or
5 process before commercial sales have begun. As used in this
6 subsection, "commercial sales" excludes sales of prototypes or sales
7 for market testing if the total gross receipts from such sales of the
8 product, service, or process do not exceed one million dollars.

9 **Sec. 2.** RCW 82.60.030 and 1985 c 232 s 3 are each amended to read
10 as follows:

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

22 **Sec. 3.** RCW 82.60.040 and 1986 c 116 s 13 are each amended to read
23 as follows:

24 (1) The department shall issue a sales and use tax deferral
25 certificate for state and local sales and use taxes due under chapters
26 82.08, 82.12, and 82.14 RCW on each eligible investment project that:

27 (a) Is located in an eligible area other than a designated
28 neighborhood reinvestment area approved under RCW 43.63A.700;

29 (b) Is located in any county if seventy-five percent of the new
30 qualified employment positions are to be filled by residents of a
31 contiguous county that qualifies as an eligible area; or

32 (c) Is located in a designated neighborhood reinvestment area
33 approved under RCW 43.63A.700, or in a county containing such a
34 neighborhood reinvestment area, if seventy-five percent of the new
35 qualified employment positions are to be filled by residents of the
36 neighborhood reinvestment area.

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

3 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.60 RCW
4 to read as follows:

5 In addition to the other requirements of this chapter, a recipient
6 of a tax deferral under RCW 82.60.040(1) (b) or (c) shall meet the
7 following requirements:

8 (1) The recipient shall fill at least seventy-five percent of the
9 new qualified employment positions with residents of the contiguous
10 county or neighborhood reinvestment area by December 31 of the calendar
11 year during which the department certifies that the investment project
12 is operationally completed, and shall maintain the required percentage
13 during each of the seven succeeding calendar years.

14 (2) If the deferral is for expansion or diversification of an
15 existing facility, the recipient shall ensure that the percentage of
16 qualified employment positions filled by residents of the contiguous
17 county or neighborhood reinvestment area for periods prior to the
18 application be maintained for seven calendar years after the year
19 during which the department certifies that the investment project is
20 operationally completed.

21 **Sec. 5.** RCW 82.60.070 and 1985 c 232 s 6 are each amended to read
22 as follows:

23 (1) Each recipient of a deferral granted under this chapter prior
24 to July 1, 1994, shall submit a report to the department on December
25 31st of each year during the repayment period until the tax deferral is
26 repaid. Each recipient of a deferral granted under this chapter after
27 June 30, 1994, shall submit a report to the department on December 31st
28 of the year in which the investment project is certified by the
29 department as having been operationally completed, and on December 31st
30 of each of the seven succeeding calendar years. The report shall
31 contain information, as required by the department, from which the
32 department may determine whether the recipient is meeting the
33 requirements of this chapter. If the recipient fails to submit a
34 report or submits an inadequate report, the department may declare the
35 amount of deferred taxes outstanding to be immediately assessed and
36 payable.

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

7 (3) If, on the basis of a report under this section or other
8 information, the department finds that an investment project for which
9 a deferral has been granted under this chapter prior to July 1, 1994,
10 has been operationally complete for three years and has failed to
11 create the required number of qualified employment positions, the
12 department shall assess interest, but not penalties, on the deferred
13 taxes for the project. The interest shall be assessed at the rate
14 provided for delinquent excise taxes, shall be assessed retroactively
15 to the date of deferral, and shall accrue until the deferred taxes are
16 repaid.

17 (4) If, on the basis of a report under this section or other
18 information, the department finds that an investment project for which
19 a deferral has been granted under this chapter after June 30, 1994, has
20 been operationally complete for three years and has failed to create
21 the required number of qualified employment positions, the amount of
22 taxes not eligible for deferral shall be immediately due. The
23 department shall assess interest at the rate provided for delinquent
24 excise taxes, but not penalties, retroactively to the date of deferral.

25 (5) If, on the basis of a report under this section or other
26 information, the department finds that an investment project qualifying
27 for deferral under RCW 82.60.040(1) (b) or (c) has failed to comply
28 with any requirement of section 4 of this act for any calendar year for
29 which reports are required under subsection (1) of this section, twelve
30 and one-half percent of the amount of deferred taxes shall be
31 immediately due. The department shall assess interest at the rate
32 provided for delinquent excise taxes, but not penalties, retroactively
33 to the date of deferral.

34 **Sec. 6.** RCW 82.60.065 and 1986 c 116 s 14 are each amended to read
35 as follows:

36 (~~Notwithstanding any other provision of this chapter,~~) Except as
37 provided in RCW 82.60.070:

1 (1) Taxes deferred under this chapter on the sale or use of labor
2 that is directly used in the construction of an investment project for
3 which a deferral has been granted under this chapter after June 11,
4 1986, and prior to July 1, 1994, need not be repaid.

5 (2) Taxes deferred under this chapter on an investment project for
6 which a deferral has been granted under this chapter after June 30,
7 1994, need not be repaid.

8 **Sec. 7.** RCW 82.60.050 and 1993 sp.s. c 25 s 404 are each amended
9 to read as follows:

10 RCW 82.60.030 and 82.60.040 shall expire July 1, (~~1998~~) 2004.

11 NEW SECTION. **Sec. 8.** A new section is added to chapter 82.60 RCW
12 to read as follows:

13 If the department determines that an investment project for which
14 an exemption is granted under this chapter competes with an investment
15 project for which a deferral is granted under this chapter, the
16 department shall study the impacts on the project for which a deferral
17 is granted and report to the fiscal committees of the legislature
18 concerning revenue matters.

19 NEW SECTION. **Sec. 9.** A new section is added to chapter 82.60 RCW
20 to read as follows:

21 The governor is authorized to designate a county as an eligible
22 area for purposes of this chapter if, as a result of a natural disaster
23 or business or military base closure or mass layoff, the twelve-month
24 average unemployment rate using the projected level of new unemployment
25 in the county over the ensuing twelve months added to the base
26 unemployment level in the county for the preceding twelve months will
27 exceed the previous twelve-month average state unemployment rate by
28 forty percent. The designation shall be effective for a period of
29 twelve months.

30 NEW SECTION. **Sec. 10.** This act shall take effect July 1, 1994.

Passed the House March 14, 1994.

Passed the Senate March 14, 1994.

Approved by the Governor March 31, 1994.

Filed in Office of Secretary of State March 31, 1994.