

CERTIFICATION OF ENROLLMENT

ENGROSSED SECOND SUBSTITUTE SENATE BILL 6347

Chapter 5, Laws of 1994
CHAPTER NO. CORRECTED

53rd Legislature
1994 First Special Session

HIGH TECHNOLOGY BUSINESSES--TAX CREDITS AND DEFERRALS

EFFECTIVE DATE: 1/1/95

Passed by the Senate March 14, 1994
YEAS 34 NAYS 11

JOEL PRITCHARD

President of the Senate

Passed by the House March 14, 1994
YEAS 78 NAYS 15

BRIAN EBERSOLE

**Speaker of the
House of Representatives**

Approved April 4, 1994

MIKE LOWRY

Governor of the State of Washington

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE SENATE BILL 6347** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MARTY BROWN

Secretary

FILED

April 4, 1994 - 12:35 p.m.

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE SENATE BILL 6347

Passed Legislature - 1994 Regular Session

State of Washington

53rd Legislature

1994 Regular Session

By Senate Committee on Ways & Means (originally sponsored 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 02/08/94.

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;
6 creating a new section; and providing an effective date.

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

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

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

1 finds that many high-technology businesses incur significant costs
2 associated with research and development and pilot scale manufacturing
3 many years before a marketable product can be produced, and that
4 current state tax policy discourages the growth of these companies by
5 taxing them long 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 research and development spending during
26 the year in which the credit is claimed exceeds 0.92 percent of the
27 person's taxable amount during the same calendar year.

28 (2) The credit is equal to the greater of the amount of qualified
29 research and development expenditures of a person or eighty percent of
30 amounts received by a person other than a public educational or
31 research institution in compensation for the conduct of qualified
32 research and development, multiplied by the rate of 0.515 percent in
33 the case of a nonprofit corporation or nonprofit association engaging
34 within this state in research and development, and 2.5 percent for
35 every other person.

36 (3) Any person entitled to the credit provided in subsection (2) of
37 this section as a result of qualified research and development
38 conducted under contract may assign all or any portion of the credit to

1 the person contracting for the performance of the qualified research
2 and development.

3 (4) The credit, including any credit assigned to a person under
4 subsection (3) of this section, shall be taken against taxes due for
5 the same calendar year in which the qualified research and development
6 expenditures are incurred. The credit, including any credit assigned
7 to a person under subsection (3) of this section, for each calendar
8 year shall not exceed the lesser of two million dollars or the amount
9 of tax otherwise due under this chapter for the calendar year.

10 (5) Any person taking the credit, including any credit assigned to
11 a person under subsection (3) of this section, whose research and
12 development spending during the calendar year in which the credit is
13 claimed fails to exceed 0.92 percent of the person's taxable amount
14 during the same calendar year shall be liable for payment of the
15 additional taxes represented by the amount of credit taken together
16 with interest, but not penalties. Interest shall be due at the rate
17 provided for delinquent excise taxes retroactively to the date the
18 credit was taken until the taxes are paid. Any credit assigned to a
19 person under subsection (3) of this section that is disallowed as a
20 result of this section may be taken by the person who performed the
21 qualified research and development subject to the limitations set forth
22 in subsection (4) of this section.

23 (6) Any person claiming the credit, and any person assigning a
24 credit as provided in subsection (3) of this section, shall file an
25 affidavit form prescribed by the department which shall include the
26 amount of the credit claimed, an estimate of the anticipated qualified
27 research and development expenditures during the calendar year for
28 which the credit is claimed, an estimate of the taxable amount during
29 the calendar year for which the credit is claimed, and such additional
30 information as the department may prescribe.

31 (7) A person claiming the credit shall agree to supply the
32 department with information necessary to measure the results of the tax
33 credit program for qualified research and development expenditures.

34 (8) The department shall use the information required under
35 subsection (7) of this section to perform three assessments on the tax
36 credit program authorized under this section. The assessments will
37 take place in 1997, 2000, and 2003. The department shall prepare
38 reports on each assessment and deliver their reports by September 1,
39 1997, September 1, 2000, and September 1, 2003. The assessments shall

1 measure the effect of the program on job creation, the number of jobs
2 created for Washington residents, company growth, the introduction of
3 new products, the diversification of the state's economy, growth in
4 research and development investment, the movement of firms or the
5 consolidation of firms' operations into the state, and such other
6 factors as the department selects.

7 (9) For the purpose of this section:

8 (a) "Qualified research and development expenditures" means
9 operating expenses, including wages, compensation of a proprietor or a
10 partner in a partnership as determined under rules adopted by the
11 department, benefits, supplies, and computer expenses, directly
12 incurred in qualified research and development by a person claiming the
13 credit provided in this section. The term does not include amounts
14 paid to a person other than a public educational or research
15 institution to conduct qualified research and development. Nor does
16 the term include capital costs and overhead, such as expenses for land,
17 structures, or depreciable property.

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

20 (c) "Research and development spending" means qualified research
21 and development expenditures plus eighty percent of amounts paid to a
22 person other than a public educational or research institution to
23 conduct qualified research and development.

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

29 (10) This section shall expire December 31, 2004.

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

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

37 (2) "Advanced materials" means materials with engineered properties
38 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 (3) "Applicant" means a person applying for a tax deferral under
4 this chapter.

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

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

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

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

31 (8) "Environmental technology" means assessment and prevention of
32 threats or damage to human health or the environment, environmental
33 cleanup, and the development of alternative energy sources.

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

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

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

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

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

36 (14) "Qualified research and development" means research and
37 development performed within this state in the fields of advanced
38 computing, advanced materials, biotechnology, electronic device
39 technology, 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 includes exploration of a new use for an
8 existing drug, device, or biological product if the new use requires
9 separate licensing by the federal food and drug administration under
10 chapter 21, C.F.R., as amended. The term does not include adaptation
11 or duplication of existing products where the products are not
12 substantially improved by application of the technology, nor does the
13 term include surveys and studies, social science and humanities
14 research, market research or testing, quality control, sale promotion
15 and service, computer software developed for internal use, and research
16 in areas such as improved style, taste, and seasonal design.

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

29 Applicants for deferral of taxes under this chapter shall agree to
30 supply the department with nonproprietary information necessary to
31 measure the results of the tax deferral program for high-technology
32 research and development and pilot scale manufacturing facilities. The
33 department shall use the information to perform three assessments on
34 the tax deferral program authorized under sections 1 and 3 through 9 of
35 this act. The assessments will take place in 1997, 2000, and 2003.
36 The department shall prepare reports on each assessment and deliver
37 their reports by September 1, 1997, September 1, 2000, and September 1,
38 2003. The assessments shall measure the effect of the program on job

1 creation, the number of jobs created for Washington residents, company
2 growth, the introduction of new products, the diversification of the
3 state's economy, growth in research and development investment, the
4 movement of firms or the consolidation of firms' operations into the
5 state, and such other factors as the department selects.

6 NEW SECTION. **Sec. 5.** (1) Except as provided in subsection (2) of
7 this section, the department shall issue a sales and use tax deferral
8 certificate for state and local sales and use taxes due under chapters
9 82.08, 82.12, and 82.14 RCW on each eligible investment project.

10 (2) No certificate may be issued for an investment project that has
11 already received a deferral under chapters 82.60 or 82.61 RCW or this
12 chapter, except that an investment project for qualified research and
13 development that has already received a deferral may also receive an
14 additional deferral certificate for adapting the investment project for
15 use in pilot scale manufacturing.

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

17 NEW SECTION. **Sec. 6.** (1) Except as provided in subsections (2)
18 and (3) of this section, a recipient shall begin paying taxes deferred
19 under this chapter on December 31st of the third 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 fifth calendar year after the certificate was granted,
23 whichever is sooner. Subsequent annual payments shall be due on
24 December 31st of the following four years with amounts of payment
25 scheduled as follows:

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

32 (2) A recipient that is an institution recognized as a
33 comprehensive cancer center by the national cancer institute before
34 April 20, 1983, shall begin paying taxes deferred under this chapter on
35 December 31st of the third calendar year after the date certified by

1 the department as the date on which the investment project has been
2 operationally completed, or on December 31st of the fifth calendar year
3 after the certificate was granted, whichever is sooner. Subsequent
4 annual payments shall be due on December 31st of the following four
5 years with amounts of payment scheduled as follows:

6	Repayment Year	% of Deferred Tax Repaid
7	1	10%
8	2	12%
9	3	14%
10	4	28%
11	5	36%

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

23	Repayment Year	% of Deferred Tax Repaid
24	1	10%
25	2	10%
26	3	15%
27	4	20%
28	5	20%
29	6	25%

30 (4) The department may authorize an accelerated repayment schedule
31 upon request of the recipient.

32 (5) Interest may not be charged on taxes deferred under this
33 chapter for the period of deferral, although all other penalties and
34 interest applicable to delinquent excise taxes may be assessed and
35 imposed for delinquent payments under this chapter. The debt for

1 deferred taxes will not be extinguished by insolvency or other failure
2 of the recipient.

3 NEW SECTION. **Sec. 7.** If an investment project is used for
4 purposes other than qualified research and development or pilot scale
5 manufacturing prior to repayment of the taxes deferred under this
6 chapter, the amount of the deferred taxes outstanding for the project
7 is immediately due.

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

10 NEW SECTION. **Sec. 9.** Applications and other information received
11 by the department under this chapter are not confidential and are
12 subject to disclosure.

13 NEW SECTION. **Sec. 10.** The department shall perform an assessment
14 of the results of the tax credit and tax deferral programs authorized
15 under chapters 82.60, 82.61, and 82.62 RCW and deliver a report on the
16 assessment to the governor and the legislature by September 1, 1996.
17 The assessments shall measure the effect of the programs on job
18 creation, the number of jobs created for Washington residents, company
19 growth, the introduction of new products, the diversification of the
20 state's economy, growth in research and development investment, the
21 movement of firms or the consolidation of firms' operations into the
22 state, and such other factors as the department selects.

23 NEW SECTION. **Sec. 11.** Sections 1 and 3 through 9 of this act
24 shall constitute a new chapter in Title 82 RCW.

25 NEW SECTION. **Sec. 12.** This act shall take effect January 1, 1995.
Passed the Senate March 14, 1994.
Passed the House March 14, 1994.
Approved by the Governor April 4, 1994.
Filed in Office of Secretary of State April 4, 1994.