

2 **ESSB 5201** - S AMD - 437

3 By Senators Bauer, Gaspard, Snyder, Cantu, Sellar, Palmer,
4 Hargrove, Swecker

5 ADOPTED 5/22/95

6 Strike everything after the enacting clause and insert the
7 following:

8 "NEW SECTION. **Sec. 1.** The legislature finds and declares that:

9 (1) The health, safety, and welfare of the people of the state of
10 Washington are heavily dependent upon the continued encouragement,
11 development, and expansion of opportunities for family wage employment
12 in our state's private sector;

13 (2) The state's private sector must be encouraged to commit to
14 continuous improvement of process, products, and services and to
15 deliver high-quality, high-value products through technological
16 innovations and high-performance work organizations;

17 (3) The state's opportunities for increased economic dealings with
18 other states and nations of the world are dependent on supporting and
19 attracting a diverse, stable, and competitive economic base of private
20 sector employers;

21 (4) The state's current policy of applying its sales and use taxes
22 to machinery, equipment, and installation labor used in manufacturing,
23 research and development, and other activities has placed our state's
24 private sector at a competitive disadvantage with other states and
25 serves as a significant disincentive to the continuous improvement of
26 products, technology, and modernization necessary for the preservation,
27 stabilization, and expansion of employment and to ensure a stable
28 economy; and

29 (5) It is vital to the continued development of economic
30 opportunity in this state, including the development of new businesses
31 and the expansion or modernization of existing businesses, that the
32 state of Washington provide tax incentives to entities making a
33 commitment to sites and operations in this state.

34 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.08 RCW
35 to read as follows:

1 (1) The tax levied by RCW 82.08.020 shall not apply to sales to a
2 manufacturer or processor for hire of machinery and equipment used
3 directly in a manufacturing operation, or to sales of or charges made
4 for labor and services rendered in respect to installing the machinery
5 and equipment, but only when the purchaser provides the seller with an
6 exemption certificate in a form and manner prescribed by the department
7 by rule, and the purchaser provides the department with a duplicate of
8 the certificate or a summary of exempt sales as the department may
9 require. The seller shall retain a copy of the certificate for the
10 seller's files.

11 (2) For purposes of this section and section 3 of this act:

12 (a) "Machinery and equipment" means industrial fixtures, devices,
13 and support facilities. "Machinery and equipment" includes pollution
14 control equipment installed and used in a manufacturing operation to
15 prevent air pollution, water pollution, or contamination that might
16 otherwise result from the manufacturing operation.

17 (b) "Machinery and equipment" does not include:

18 (i) Hand tools;

19 (ii) Property with a useful life of less than one year;

20 (iii) Repair parts required to restore machinery and equipment to
21 normal working order;

22 (iv) Replacement parts that do not increase productivity, improve
23 efficiency, or extend the useful life of the machinery and equipment;
24 or

25 (v) Building fixtures that are not integral to the manufacturing
26 operation that are permanently affixed to and become a physical part of
27 a building, such as utility systems for heating, ventilation, air
28 conditioning, communications, plumbing, or electrical.

29 (c) Machinery and equipment is "used directly" in a manufacturing
30 operation if the machinery and equipment:

31 (i) Acts upon or interacts with an item of tangible personal
32 property;

33 (ii) Conveys, transports, handles, or temporarily stores an item of
34 tangible personal property at the manufacturing site;

35 (iii) Controls, guides, measures, verifies, aligns, regulates, or
36 tests tangible personal property;

37 (iv) Provides physical support for or access to tangible personal
38 property;

39 (v) Produces power for, or lubricates machinery and equipment;

1 (vi) Produces another item of tangible personal property for use in
2 the manufacturing operation; or

3 (vii) Places tangible personal property in the container, package,
4 or wrapping in which the tangible personal property is normally sold or
5 transported.

6 (d) "Manufacturing operation" means the manufacturing of articles,
7 substances, or commodities for sale as tangible personal property. The
8 manufacturing operation begins at the point where the raw materials
9 enter the manufacturing site and ends at the point where the finished
10 product leaves the manufacturing site. The term also includes that
11 portion of a cogeneration project that is used to generate power for
12 consumption within the manufacturing site of which the cogeneration
13 project is an integral part. The term does not include research and
14 development, the production of electricity by a light and power
15 business as defined in RCW 82.16.010, or the preparation of food
16 products on the premises of a person selling food products at retail.

17 (e) "Cogeneration" means the simultaneous generation of electrical
18 energy and low-grade heat from the same fuel.

19 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.12 RCW
20 to read as follows:

21 The provisions of this chapter shall not apply in respect to the
22 use by a manufacturer or processor for hire of machinery and equipment
23 used directly in a manufacturing operation, but only when the user
24 provides the department with:

25 (1) An exemption certificate in a form and manner prescribed by the
26 department within sixty days of the first use of the machinery and
27 equipment in this state; or

28 (2) An annual summary listing the machinery and equipment by
29 January 31 of the year following the calendar year in which the
30 machinery and equipment is first used in this state.

31 **Sec. 4.** RCW 82.04.190 and 1986 c 231 s 2 are each amended to read
32 as follows:

33 "Consumer" means the following:

34 (1) Any person who purchases, acquires, owns, holds, or uses any
35 article of tangible personal property irrespective of the nature of the
36 person's business and including, among others, without limiting the
37 scope hereof, persons who install, repair, clean, alter, improve,

1 construct, or decorate real or personal property of or for consumers
2 other than for the purpose (a) of resale as tangible personal property
3 in the regular course of business or (b) of incorporating such property
4 as an ingredient or component of real or personal property when
5 installing, repairing, cleaning, altering, imprinting, improving,
6 constructing, or decorating such real or personal property of or for
7 consumers or (c) of consuming such property in producing for sale a new
8 article of tangible personal property or a new substance, of which such
9 property becomes an ingredient or component or as a chemical used in
10 processing, when the primary purpose of such chemical is to create a
11 chemical reaction directly through contact with an ingredient of a new
12 article being produced for sale or (d) purchases for the purpose of
13 consuming the property purchased in producing ferrosilicon which is
14 subsequently used in producing magnesium for sale, if the primary
15 purpose of such property is to create a chemical reaction directly
16 through contact with an ingredient of ferrosilicon;

17 (2) Any person engaged in any business activity taxable under RCW
18 82.04.290 and any person who purchases, acquires, or uses any telephone
19 service as defined in RCW 82.04.065, other than for resale in the
20 regular course of business;

21 (3) Any person engaged in the business of contracting for the
22 building, repairing or improving of any street, place, road, highway,
23 easement, right of way, mass public transportation terminal or parking
24 facility, bridge, tunnel, or trestle which is owned by a municipal
25 corporation or political subdivision of the state of Washington or by
26 the United States and which is used or to be used primarily for foot or
27 vehicular traffic including mass transportation vehicles of any kind as
28 defined in RCW 82.04.280, in respect to tangible personal property when
29 such person incorporates such property as an ingredient or component of
30 such publicly owned street, place, road, highway, easement, right of
31 way, mass public transportation terminal or parking facility, bridge,
32 tunnel, or trestle by installing, placing or spreading the property in
33 or upon the right of way of such street, place, road, highway,
34 easement, bridge, tunnel, or trestle or in or upon the site of such
35 mass public transportation terminal or parking facility;

36 (4) Any person who is an owner, lessee or has the right of
37 possession to or an easement in real property which is being
38 constructed, repaired, decorated, improved, or otherwise altered by a
39 person engaged in business, excluding only (a) municipal corporations

1 or political subdivisions of the state in respect to labor and services
2 rendered to their real property which is used or held for public road
3 purposes, and (b) the United States, instrumentalities thereof, and
4 county and city housing authorities created pursuant to chapter 35.82
5 RCW in respect to labor and services rendered to their real property.
6 Nothing contained in this or any other subsection of this definition
7 shall be construed to modify any other definition of "consumer";

8 (5) Any person who is an owner, lessee, or has the right of
9 possession to personal property which is being constructed, repaired,
10 improved, cleaned, imprinted, or otherwise altered by a person engaged
11 in business;

12 (6) Any person engaged in the business of constructing, repairing,
13 decorating, or improving new or existing buildings or other structures
14 under, upon, or above real property of or for the United States, any
15 instrumentality thereof, or a county or city housing authority created
16 pursuant to chapter 35.82 RCW, including the installing or attaching of
17 any article of tangible personal property therein or thereto, whether
18 or not such personal property becomes a part of the realty by virtue of
19 installation; also, any person engaged in the business of clearing land
20 and moving earth of or for the United States, any instrumentality
21 thereof, or a county or city housing authority created pursuant to
22 chapter 35.82 RCW. Any such person shall be a consumer within the
23 meaning of this subsection in respect to tangible personal property
24 incorporated into, installed in, or attached to such building or other
25 structure by such person; and

26 (7) Any person who is a lessor of machinery and equipment, the
27 rental of which is exempt from the tax imposed by RCW 82.08.020 under
28 section 2 of this act, with respect to the sale of or charge made for
29 tangible personal property consumed and for labor and services rendered
30 in respect to repairing the machinery and equipment.

31 Nothing contained in this or any other subsection of this
32 definition shall be construed to modify any other definition of
33 "consumer."

34 **Sec. 5.** RCW 82.60.020 and 1994 sp.s. c 7 s 704 and 1994 sp.s. c 1
35 s 1 are each reenacted and amended to read as follows:

36 Unless the context clearly requires otherwise, the definitions in
37 this section apply throughout this chapter.

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

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

4 (3) "Eligible area" means: (a) A county in which the average level
5 of unemployment for the three years before the year in which an
6 application is filed under this chapter exceeds the average state
7 unemployment for those years by twenty percent; (b) a metropolitan
8 statistical area, as defined by the office of federal statistical
9 policy and standards, United States department of commerce, in which
10 the average level of unemployment for the calendar year immediately
11 preceding the year in which an application is filed under this chapter
12 exceeds the average state unemployment for such calendar year by twenty
13 percent; (c) a designated community empowerment zone approved under RCW
14 43.63A.700 or a county containing such a community empowerment zone;
15 (d) a town with a population of less than twelve hundred persons in
16 those counties that are not covered under (a) of this subsection that
17 are timber impact areas as defined in RCW 43.31.601; ~~((or))~~ (e) a
18 county designated by the governor as an eligible area under RCW
19 82.60.047; or (f) a county that is contiguous to a county that
20 qualifies as an eligible area under (a) or (e) of this subsection.

21 (4)(a) "Eligible investment project" means:

22 (i) An investment project in an eligible area as defined in
23 subsection (3)(a), (b), (d), or (e) of this section; or

24 (ii) That portion of an investment project in an eligible area as
25 defined in subsection (3)(c) or (f) of this section which(~~(i)~~) is
26 directly utilized to create at least one new full-time qualified
27 employment position for each three hundred thousand dollars of
28 investment on which a deferral is requested in an application approved
29 before July 1, 1994, and for each seven hundred fifty thousand dollars
30 of investment on which a deferral is requested in an application
31 approved after June 30, 1994(~~(i) and~~

32 ~~(ii) Either initiates a new operation, or expands or diversifies a~~
33 ~~current operation by expanding, equipping, or renovating an existing~~
34 ~~facility with costs in excess of twenty five percent of the true and~~
35 ~~fair value of the facility prior to improvement)).~~

36 (b) The lessor/owner of a qualified building is not eligible for a
37 deferral unless the underlying ownership of the buildings, machinery,
38 and equipment vests exclusively in the same person, or unless the

1 lessor by written contract agrees to pass the economic benefit of the
2 deferral to the lessee in the form of reduced rent payments.

3 ~~((b))~~ (c) For purposes of (a)~~((i))~~ (ii) of this
4 subsection(~~(7)~~):

5 (i) The department shall consider the entire investment project,
6 including any investment in machinery and equipment that otherwise
7 qualifies for exemption under section 2 or 3 of this act, for purposes
8 of determining the portion of the investment project that qualifies for
9 deferral as an eligible investment project; and

10 (ii) The number of new full-time qualified employment positions
11 created by an investment project shall be deemed to be reduced by the
12 number of full-time employment positions maintained by the recipient in
13 any other community in this state that are displaced as a result of the
14 investment project.

15 ~~((e))~~ (d) "Eligible investment project" does not include any
16 portion of an investment project undertaken by a light and power
17 business as defined in RCW 82.16.010(5), other than that portion of a
18 cogeneration project~~((s that are both an integral part of a~~
19 ~~manufacturing facility and owned at least fifty percent by the~~
20 ~~manufacturer))~~ that is used to generate power for consumption within
21 the manufacturing site of which the cogeneration project is an integral
22 part, or investment projects which have already received deferrals
23 under this chapter.

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

28 (6) "Manufacturing" means all activities of a commercial or
29 industrial nature wherein labor or skill is applied, by hand or
30 machinery, to materials so that as a result thereof a new, different,
31 or useful substance or article of tangible personal property is
32 produced for sale or commercial or industrial use and shall include the
33 production or fabrication of specially made or custom made articles.
34 "Manufacturing" also includes computer programming, the production of
35 computer software, and other computer-related services, and the
36 activities performed by research and development laboratories and
37 commercial testing laboratories.

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

1 (8) "Qualified buildings" means construction of new structures, and
2 expansion or renovation of existing structures for the purpose of
3 increasing floor space or production capacity used for manufacturing
4 and research and development activities, including plant offices and
5 warehouses or other facilities for the storage of raw material or
6 finished goods if such facilities are an essential or an integral part
7 of a factory, mill, plant, or laboratory used for manufacturing or
8 research and development. If a building is used partly for
9 manufacturing or research and development and partly for other
10 purposes, the applicable tax deferral shall be determined by
11 apportionment of the costs of construction under rules adopted by the
12 department.

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

16 (10) "Qualified machinery and equipment" means all new industrial
17 and research fixtures, equipment, and support facilities that are an
18 integral and necessary part of a manufacturing or research and
19 development operation. "Qualified machinery and equipment" includes:
20 Computers; software; data processing equipment; laboratory equipment;
21 manufacturing components such as belts, pulleys, shafts, and moving
22 parts; molds, tools, and dies; operating structures; and all equipment
23 used to control or operate the machinery.

24 (11) "Recipient" means a person receiving a tax deferral under this
25 chapter.

26 (12) "Research and development" means the development, refinement,
27 testing, marketing, and commercialization of a product, service, or
28 process before commercial sales have begun. As used in this
29 subsection, "commercial sales" excludes sales of prototypes or sales
30 for market testing if the total gross receipts from such sales of the
31 product, service, or process do not exceed one million dollars.

32 **Sec. 6.** RCW 82.60.040 and 1994 sp.s. c 1 s 3 are each amended to
33 read as follows:

34 (1) The department shall issue a sales and use tax deferral
35 certificate for state and local sales and use taxes due under chapters
36 82.08, 82.12, and 82.14 RCW on each eligible investment project that:

1 (a) Is located in an eligible area (~~((other than a designated~~
2 ~~neighborhood reinvestment area approved under RCW 43.63A.700))~~ as
3 defined in RCW 82.60.020(3)(a), (b), (d), or (e);

4 (b) Is located in (~~(any county)~~) an eligible area as defined in RCW
5 82.60.020(3)(f) if seventy-five percent of the new qualified employment
6 positions are to be filled by residents of a contiguous county that
7 (qualifies as) is an eligible area as defined in RCW 82.60.020(3)(a)
8 or (e); or

9 (c) Is located in (~~(a designated neighborhood reinvestment area~~
10 ~~approved under RCW 43.63A.700, or in a county containing such a~~
11 ~~neighborhood reinvestment area,)~~) an eligible area as defined in RCW
12 82.60.020(3)(c) if seventy-five percent of the new qualified employment
13 positions are to be filled by residents of ((the neighborhood
14 reinvestment area)) a designated community empowerment zone approved
15 under RCW 43.63A.700 located within the county in which the eligible
16 investment project is located.

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

19 **Sec. 7.** RCW 82.60.045 and 1994 sp.s. c 1 s 4 are each amended to
20 read as follows:

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

24 (1) The recipient shall fill at least seventy-five percent of the
25 new qualified employment positions with residents of the contiguous
26 county or (~~(neighborhood reinvestment area))~~ community empowerment zone
27 by December 31 of the calendar year during which the department
28 certifies that the investment project is operationally completed, and
29 shall maintain the required percentage during each of the seven
30 succeeding calendar years.

31 (2) If the deferral is for expansion or diversification of an
32 existing facility, the recipient shall ensure that the percentage of
33 qualified employment positions filled by residents of the contiguous
34 county or (~~(neighborhood reinvestment area))~~ community empowerment zone
35 for periods prior to the application be maintained for seven calendar
36 years after the year during which the department certifies that the
37 investment project is operationally completed.

1 **Sec. 8.** RCW 82.60.065 and 1994 sp.s. c 1 s 6 are each amended to
2 read as follows:

3 Except as provided in RCW 82.60.070:

4 (1) Taxes deferred under this chapter on the sale or use of labor
5 that is directly used in the construction of an investment project for
6 which a deferral has been granted under this chapter after June 11,
7 1986, and prior to July 1, 1994, need not be repaid.

8 (2) Taxes deferred under this chapter on an investment project for
9 which a deferral has been granted under this chapter after June 30,
10 1994, need not be repaid.

11 (3) Taxes deferred under this chapter need not be repaid on
12 machinery and equipment for lumber and wood products industries, and
13 sales of or charges made for labor and services, of the type which
14 qualifies for exemption under section 2 or 3 of this act to the extent
15 the taxes have not been repaid before the effective date of this
16 section.

17 **Sec. 9.** RCW 82.60.070 and 1994 sp.s. c 1 s 5 are each amended to
18 read as follows:

19 (1) Each recipient of a deferral granted under this chapter prior
20 to July 1, 1994, shall submit a report to the department on December
21 31st of each year during the repayment period until the tax deferral is
22 repaid. Each recipient of a deferral granted under this chapter after
23 June 30, 1994, shall submit a report to the department on December 31st
24 of the year in which the investment project is certified by the
25 department as having been operationally completed, and on December 31st
26 of each of the seven succeeding calendar years. The report shall
27 contain information, as required by the department, from which the
28 department may determine whether the recipient is meeting the
29 requirements of this chapter. If the recipient fails to submit a
30 report or submits an inadequate report, the department may declare the
31 amount of deferred taxes outstanding to be immediately assessed and
32 payable.

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

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

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

19 (5) If, on the basis of a report under this section or other
20 information, the department finds that an investment project qualifying
21 for deferral under RCW 82.60.040(1) (b) or (c) has failed to comply
22 with any requirement of RCW 82.60.045 for any calendar year for which
23 reports are required under subsection (1) of this section, twelve and
24 one-half percent of the amount of deferred taxes shall be immediately
25 due. The department shall assess interest at the rate provided for
26 delinquent excise taxes, but not penalties, retroactively to the date
27 of deferral.

28 (6) Notwithstanding any other subsection of this section, deferred
29 taxes need not be repaid on machinery and equipment for lumber and wood
30 products industries, and sales of or charges made for labor and
31 services, of the type which qualifies for exemption under section 2 or
32 3 of this act to the extent the taxes have not been repaid before the
33 effective date of this section.

34 (7) Notwithstanding any other subsection of this section, deferred
35 taxes on the following need not be repaid:

36 (a) Machinery and equipment, and sales of or charges made for labor
37 and services, which at the time of purchase would have qualified for
38 exemption under section 2 of this act; and

1 (b) Machinery and equipment which at the time of first use would
2 have qualified for exemption under section 3 of this act.

3 **Sec. 10.** RCW 82.61.010 and 1994 c 125 s 1 are each amended to read
4 as follows:

5 Unless the context clearly requires otherwise, the definitions in
6 this section apply throughout this chapter.

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

9 (2) "Person" has the meaning given in RCW 82.04.030.

10 (3) "Department" means the department of revenue.

11 (4) "Eligible investment project" means:

12 (a) Construction of new buildings and the acquisition of new
13 related machinery and equipment when the buildings, machinery, and
14 equipment are to be used for either manufacturing or research and
15 development activities, which construction is commenced prior to
16 December 31, (~~(1998)~~) 1995; or

17 (b) Acquisition prior to December 31, (~~(1998)~~) 1995, of new
18 machinery and equipment to be used for either manufacturing or research
19 and development if the machinery and equipment is housed in a new
20 leased structure. The lessor/owner of the structure is not eligible
21 for a deferral unless the underlying ownership of the buildings,
22 machinery, and equipment vests exclusively in the same person; or

23 (c) Acquisition of all new or used machinery, equipment, or other
24 personal property for use in the production or casting of aluminum at
25 an aluminum smelter or at facilities related to an aluminum smelter, if
26 the plant was in operation prior to 1975 and has ceased operations or
27 is in imminent danger of ceasing operations for economic reasons, as
28 determined by the department, and if the person applying for a deferral

29 (i) has consulted with any collective bargaining unit that represented
30 employees of the plant pursuant to a collective bargaining agreement
31 that was in effect either immediately prior to the time the plant
32 ceased operations or during the period when the plant was in imminent
33 danger of ceasing operations, on the proposed operation of the plant
34 and on the terms and conditions of employment for wage and salaried
35 employees and (ii) has obtained a written concurrence from the
36 bargaining unit on the decision to apply for a deferral under this
37 chapter; or

1 (d) Modernization projects involving construction, acquisition, or
2 upgrading of equipment or machinery, including services and labor,
3 which are commenced after May 19, 1987, and are intended to increase
4 the operating efficiency of existing plants which are either aluminum
5 smelters or aluminum rolling mills or of facilities related to such
6 plants, if the plant was in operation prior to 1975, and if the person
7 applying for a deferral (i) has consulted with any collective
8 bargaining unit that represents employees of the plant on the proposed
9 operation of the plant and the terms and conditions of employment for
10 wage and salaried employees and (ii) has obtained a written concurrence
11 from the bargaining unit on the decision to apply for a deferral under
12 this chapter.

13 (5) "Manufacturing" means all activities of a commercial or
14 industrial nature wherein labor or skill is applied, by hand or
15 machinery, to materials so that as a result thereof a new, different,
16 or useful substance or article of tangible personal property is
17 produced for sale or commercial or industrial use and includes the
18 production or fabrication of specially made or custom-made articles.

19 (6) "Research and development" means the development, refinement,
20 testing, marketing, and commercialization of a product, service, or
21 process before commercial sales have begun.

22 (7) "Buildings" means only those new structures used for either
23 manufacturing or research and development activities, including plant
24 offices and warehouses or other facilities for the storage of raw
25 materials or finished goods if such facilities are an essential or an
26 integral part of a factory, mill, plant, or laboratory used for
27 manufacturing or research and development purposes. If a building is
28 used partly for manufacturing or research and development and partly
29 for other purposes, the applicable tax deferral shall be determined by
30 apportionment of the costs of construction under rules adopted by the
31 department.

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

1 chapter, new machinery and equipment means either new to the taxing
2 jurisdiction of the state or new to the certificate holder. Used
3 machinery and equipment may be treated as new equipment and machinery
4 if the certificate holder either brings the machinery and equipment
5 into Washington or makes a retail purchase of the machinery and
6 equipment in Washington or elsewhere.

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

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

12 (11) "Certificate holder" means an applicant to whom a tax deferral
13 certificate has been issued.

14 (12) "Operationally complete" means constructed or improved to the
15 point of being functionally useable for the intended purpose.

16 (13) "Initiation of construction" means that date upon which on-
17 site construction commences.

18 NEW SECTION. **Sec. 11.** The following acts or parts of acts are
19 each repealed:

20 (1) RCW 82.61.020 and 1987 c 497 s 2 & 1985 ex.s. c 2 s 2; and

21 (2) RCW 82.61.040 and 1993 sp.s. c 25 s 408, 1988 c 41 s 2, 1986 c
22 116 s 10, & 1985 ex.s. c 2 s 8.

23 **Sec. 12.** RCW 82.63.010 and 1994 sp.s. c 5 s 3 are each amended to
24 read as follows:

25 Unless the context clearly requires otherwise, the definitions in
26 this section apply throughout this chapter.

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

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

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

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

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

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

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

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

30 (9) "Investment project" means an investment in qualified buildings
31 or qualified machinery and equipment, including labor and services
32 rendered in the planning, installation, and construction or improvement
33 of the project.

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

35 (11) "Pilot scale manufacturing" means design, construction, and
36 testing of preproduction prototypes and models in the fields of
37 biotechnology, advanced computing, electronic device technology,
38 advanced materials, and environmental technology other than for
39 commercial sale. As used in this subsection, "commercial sale"

1 excludes sales of prototypes or sales for market testing if the total
2 gross receipts from such sales of the product, service, or process do
3 not exceed one million dollars.

4 (12) "Qualified buildings" means construction of new structures,
5 and expansion or renovation of existing structures for the purpose of
6 increasing floor space or production capacity used for pilot scale
7 manufacturing or qualified research and development, including plant
8 offices and other facilities that are an essential or an integral part
9 of a structure used for pilot scale manufacturing or qualified research
10 and development. If a building is used partly for pilot scale
11 manufacturing or qualified research and development, and partly for
12 other purposes, the applicable tax deferral shall be determined by
13 apportionment of the costs of construction under rules adopted by the
14 department.

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

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

37 (15) "Recipient" means a person receiving a tax deferral under this
38 chapter.

1 (16) "Research and development" means activities performed to
2 discover technological information, and technical and nonroutine
3 activities concerned with translating technological information into
4 new or improved products, processes, techniques, formulas, inventions,
5 or software. The term includes exploration of a new use for an
6 existing drug, device, or biological product if the new use requires
7 separate licensing by the federal food and drug administration under
8 chapter 21, C.F.R., as amended. The term does not include adaptation
9 or duplication of existing products where the products are not
10 substantially improved by application of the technology, nor does the
11 term include surveys and studies, social science and humanities
12 research, market research or testing, quality control, sale promotion
13 and service, computer software developed for internal use, and research
14 in areas such as improved style, taste, and seasonal design.

15 NEW SECTION. **Sec. 13.** A new section is added to chapter 82.63 RCW
16 to read as follows:

17 (1) Except as provided in subsection (2) of this section, taxes
18 deferred under this chapter need not be repaid.

19 (2) If, on the basis of a report under RCW 82.63.020 or other
20 information, the department finds that an investment project is used
21 for purposes other than qualified research and development or pilot
22 scale manufacturing at any time during the calendar year in which the
23 investment project is certified by the department as having been
24 operationally completed, or at any time during any of the seven
25 succeeding calendar years, a portion of deferred taxes shall be
26 immediately due according to the following schedule:

27	Year in which use occurs	% of deferred taxes due
28	1	100%
29	2	87.5%
30	3	75%
31	4	62.5%
32	5	50%
33	6	37.5%
34	7	25%
35	8	12.5%

1 The department shall assess interest at the rate provided for
2 delinquent taxes, but not penalties, retroactively to the date of
3 deferral.

4 (3) Notwithstanding subsection (2) of this section, deferred taxes
5 on the following need not be repaid:

6 (a) Machinery and equipment, and sales of or charges made for labor
7 and services, which at the time of purchase would have qualified for
8 exemption under section 2 of this act; and

9 (b) Machinery and equipment which at the time of first use would
10 have qualified for exemption under section 3 of this act.

11 NEW SECTION. **Sec. 14.** The following acts or parts of acts are
12 each repealed:

13 (1) RCW 82.63.040 and 1994 sp.s. c 5 s 6; and

14 (2) RCW 82.63.050 and 1994 sp.s. c 5 s 7.

15 NEW SECTION. **Sec. 15.** The legislative fiscal committees shall
16 report to the legislature by December 1, 1999, on the economic impacts
17 of the manufacturers' tax exemption. This report shall analyze
18 employment and other relevant economic data from before and after the
19 enactment of the tax exemptions authorized under this act and shall
20 measure the effect on the creation or retention of family wage jobs and
21 diversification of the state's economy. Analytic techniques may
22 include, but not be limited to, comparisons of Washington to other
23 states that did not enact business tax changes, comparisons across
24 Washington counties based on usage of the tax exemptions, and
25 comparisons across similar firms based on their use of the tax
26 exemptions. In performing the analysis, the legislative fiscal
27 committees shall consult with business and labor interests. The
28 department or revenue, the employment security department, and other
29 agencies shall provide to the legislative fiscal committees such data
30 as the legislative fiscal committees may request in performing the
31 analysis required under this section.

32 NEW SECTION. **Sec. 16.** This act is necessary for the immediate
33 preservation of the public peace, health, or safety, or support of the
34 state government and its existing public institutions, and shall take
35 effect July 1, 1995."

1 **ESSB 5201** - S AMD - 437

2 By Senators Bauer, Gaspard, Snyder, Cantu, Sellar, Palmer,
3 Hargrove, Swecker

4 ADOPTED 5/22/95

5 On page 1, line 3 of the title, after "development;" strike the
6 remainder of the title and insert "amending RCW 82.04.190, 82.60.040,
7 82.60.045, 82.60.065, 82.60.070, 82.61.010, and 82.63.010; reenacting
8 and amending RCW 82.60.020; adding a new section to chapter 82.08 RCW;
9 adding a new section to chapter 82.12 RCW; adding a new section to
10 chapter 82.63 RCW; creating new sections; repealing RCW 82.61.020,
11 82.61.040, 82.63.040, and 82.63.050; providing an effective date; and
12 declaring an emergency."

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