
SUBSTITUTE HOUSE BILL 2689

State of Washington

58th Legislature

2004 Regular Session

By House Committee on Finance (originally sponsored by Representatives Eickmeyer, Buck, Miloscia, Schoesler, Hatfield, Armstrong, Haigh, Skinner, Kessler, Orcutt, Grant, Pearson, Ruderman, Campbell, Blake, Fromhold, Kenney, Woods, Linville and Rockefeller; by request of Governor Locke)

READ FIRST TIME 02/10/04.

1 AN ACT Relating to extending tax incentives in rural counties
2 expiring in 2003 or 2004; amending RCW 82.60.020, 82.60.040, 82.60.049,
3 82.60.050, and 82.60.070; adding new sections to chapter 82.04 RCW;
4 providing an effective date; providing expiration dates; and declaring
5 an emergency.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 82.04 RCW
8 to read as follows:

9 (1) Subject to the limits and provisions of this section, a credit
10 is authorized against the tax otherwise due under this chapter for
11 persons engaged in a rural county in the business of manufacturing
12 computer software or programming, as those terms are defined in this
13 section.

14 (2) A person who partially or totally relocates a business from one
15 rural county to another rural county is eligible for any new qualifying
16 employment positions created as a result of the relocation but is not
17 eligible to receive credit for the jobs moved from one county to the
18 other.

1 (3)(a) To qualify for the credit, the qualifying activity of the
2 person must be conducted in a rural county and the new qualified
3 employment position must be located in the rural county.

4 (b) If an activity is conducted both from a rural county and
5 outside of a rural county, the credit is available if at least ninety
6 percent of the qualifying activity is conducted within a rural county.
7 If the qualifying activity is a service taxable activity, the place
8 where the work is performed is the place at which the activity is
9 conducted.

10 (4)(a) The credit under this section shall equal one thousand
11 dollars for each new qualified employment position created after
12 January 1, 2004, in an eligible area. A credit is earned for the
13 calendar year the person is hired to fill the position. Additionally
14 a credit is earned for each year the position is maintained over the
15 subsequent consecutive years, up to four years. The county must meet
16 the definition of a rural county at the time the position is filled.
17 If the county does not have a rural county status the following year or
18 years, the position is still eligible for the remaining years if all
19 other conditions are met.

20 (b) Participants who claimed credit under RCW 82.04.4456 for
21 qualified employment positions created before December 31, 2003, are
22 eligible to earn credit for each year the position is maintained over
23 the subsequent consecutive years, for up to four years, which four
24 years include any years claimed under RCW 82.04.4456 Those persons who
25 did not receive a credit under RCW 82.04.4456 before December 31, 2003,
26 are not eligible to earn credit for qualified employment positions
27 created before December 31, 2003.

28 (c) Credit is authorized for new employees hired for new qualified
29 employment positions created on or after January 1, 2004. New
30 qualified employment positions filled by existing employees are
31 eligible for the credit under this section only if the position vacated
32 by the existing employee is filled by a new hire. A business that is
33 a sole proprietorship without any employees is equivalent to one
34 employee position and this type of business is eligible to receive
35 credit for one position.

36 (d) If a position is filled before July 1st, the position is
37 eligible for the full yearly credit for that calendar year. If it is

1 filled after June 30th, the position is eligible for half of the credit
2 for that calendar year.

3 (5) No application is necessary for the tax credit. The person
4 must keep records necessary for the department to verify eligibility
5 under this section. This information includes information relating to
6 description of qualifying activity conducted in the rural county and
7 outside the rural county by the person as well as detailed records on
8 positions and employees.

9 (6) If at any time the department finds that a person is not
10 eligible for tax credit under this section, the amount of taxes for
11 which a credit has been claimed shall be immediately due. The
12 department shall assess interest, but not penalties, on the taxes for
13 which the person is not eligible. The interest shall be assessed at
14 the rate provided for delinquent excise taxes under chapter 82.32 RCW,
15 shall be assessed retroactively to the date the tax credit was taken,
16 and shall accrue until the taxes for which a credit has been used are
17 repaid.

18 (7) The credit under this section may be used against any tax due
19 under this chapter, but in no case may a credit earned during one
20 calendar year be carried over to be credited against taxes incurred in
21 a subsequent calendar year. A person is not eligible to receive a
22 credit under this section if the person is receiving credit for the
23 same position under chapter 82.62 RCW or RCW 82.04.44525 or is taking
24 a credit under this chapter for information technology help desk
25 services conducted from a rural county. No refunds may be granted for
26 credits under this section.

27 (8) Transfer of ownership does not affect credit eligibility.
28 However, the successive credits are available to the successor for
29 remaining periods in the five years only if the eligibility conditions
30 of this section are met.

31 (9) A person taking tax credits under this section shall make an
32 annual report to the department. The report shall be in a letter form
33 and shall include the following information: Number of positions for
34 which credit is being claimed, type of position for which credit is
35 being claimed, type of activity in which the person is engaged in the
36 county, how long the person has been located in the county, and
37 taxpayer name and registration number. The report must be filed by
38 January 30th of each year for which credit was claimed during the

1 previous year. Failure to file a report will not result in the loss of
2 eligibility under this section. However, the department, through its
3 research division, shall contact taxpayers who have not filed the
4 report and obtain the data from the taxpayer or assist the taxpayer in
5 the filing of the report, so that the data and information necessary to
6 measure the program's effectiveness is maintained.

7 (10) As used in this section:

8 (a) "Computer software" has the meaning as defined in RCW 82.04.215
9 after June 30, 2004, and includes "software" as defined in RCW
10 82.04.215 before July 1, 2004.

11 (b) "Manufacturing" means the same as "to manufacture" under RCW
12 82.04.120. Manufacturing includes the activities of both manufacturers
13 and processors for hire.

14 (c) "Programming" means the activities that involve the creation or
15 modification of computer software, as that term is defined in this
16 chapter, and that are taxable as a service under RCW 82.04.290(2) or as
17 a retail sale under RCW 82.04.050.

18 (d) "Qualifying activity" means manufacturing of computer software
19 or programming.

20 (e) "Qualified employment position" means a permanent full-time
21 position doing programming of computer software or manufacturing of
22 computer software. This excludes administrative, professional,
23 service, executive, and other similar positions. If an employee is
24 either voluntarily or involuntarily separated from employment, the
25 employment position is considered filled on a full-time basis if the
26 employer is either training or actively recruiting a replacement
27 employee. Full-time means a position for at least thirty-five hours a
28 week.

29 (f) "Rural county" means a county with a population density of less
30 than one hundred persons per square mile as determined by the office of
31 financial management and published each year by the department for the
32 period July 1st to June 30th.

33 (11) No credit may be taken or accrued under this section on or
34 after January 1, 2011.

35 (12) This section expires January 1, 2011.

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

1 (1) Subject to the limits and provisions of this section, a credit
2 is authorized against the tax otherwise due under this chapter for
3 persons engaged in a rural county in the business of providing
4 information technology help desk services to third parties.

5 (2) To qualify for the credit, the help desk services must be
6 conducted from a rural county.

7 (3) The amount of the tax credit for persons engaged in the
8 activity of providing information technology help desk services in
9 rural counties shall be equal to one hundred percent of the amount of
10 tax due under this chapter that is attributable to providing the
11 services from the rural county. In order to qualify for the credit
12 under this subsection, the county must meet the definition of rural
13 county at the time the person begins to conduct qualifying business in
14 the county.

15 (4) No application is necessary for the tax credit. The person
16 must keep records necessary for the department to verify eligibility
17 under this section. These records include information relating to
18 description of activity engaged in a rural county by the person.

19 (5) If at any time the department finds that a person is not
20 eligible for tax credit under this section, the amount of taxes for
21 which a credit has been used is immediately due. The department shall
22 assess interest, but not penalties, on the credited taxes for which the
23 person is not eligible. The interest shall be assessed at the rate
24 provided for delinquent excise taxes under chapter 82.32 RCW, shall be
25 assessed retroactively to the date the tax credit was taken, and shall
26 accrue until the taxes for which a credit has been used are repaid.

27 (6) The credit under this section may be used against any tax due
28 under this chapter, but in no case may a credit earned during one
29 calendar year be carried over to be credited against taxes incurred in
30 a subsequent calendar year. No refunds may be granted for credits
31 under this section.

32 (7) Transfer of ownership does not affect credit eligibility.
33 However, the credit is available to the successor only if the
34 eligibility conditions of this section are met.

35 (8) A person taking tax credits under this section shall make an
36 annual report to the department. The report shall be in a letter form
37 and shall include the following information: Type of activity in which
38 the person is engaged in the county, number of employees in the rural

1 county, how long the person has been located in the county, and
2 taxpayer name and registration number. The report must be filed by
3 January 30th of each year for which credit was claimed during the
4 previous year. Failure to file a report will not result in the loss of
5 eligibility under this section. However, the department, through its
6 research division, shall contact taxpayers who have not filed the
7 report and obtain the data from the taxpayer or assist the taxpayer in
8 the filing of the report, so that the data and information necessary to
9 measure the program's effectiveness is maintained.

10 (9) As used in this section:

11 (a) "Information technology help desk services" means the following
12 services performed using electronic and telephonic communication:

- 13 (i) Software and hardware maintenance;
- 14 (ii) Software and hardware diagnostics and troubleshooting;
- 15 (iii) Software and hardware installation;
- 16 (iv) Software and hardware repair;
- 17 (v) Software and hardware information and training; and
- 18 (vi) Software and hardware upgrade.

19 (b) "Rural county" means a county with a population density of less
20 than one hundred persons per square mile, as determined by the office
21 of financial management and published each year by the department for
22 the period July 1st to June 30th.

23 (10) This section expires January 1, 2011.

24 **Sec. 3.** RCW 82.60.020 and 1999 sp.s. c 9 s 2 are each amended to
25 read as follows:

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

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

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

31 (3) "Eligible area" means a county with fewer than one hundred
32 persons per square mile as determined annually by the office of
33 financial management and published by the department of revenue
34 effective for the period July 1st through June 30th.

35 (4)(a) "Eligible investment project" means that portion of an
36 investment project that is:

1 (i) In an eligible area as defined in subsection (3) of this
2 section; and

3 (ii) Directly used to create at least one new qualified employment
4 position for each one hundred fifteen thousand dollars of investment
5 for which a deferral is requested.

6 (b) The (~~lessor/owner~~) lessor or owner of a qualified building is
7 not eligible for a deferral unless:

8 (i) The underlying ownership of the buildings, machinery, and
9 equipment vests exclusively in the same person(~~(τ)~~); or (~~unless~~)

10 (ii)(A) The lessor by written contract agrees to pass the economic
11 benefit of the deferral to the lessee (~~in the form of reduced rent~~
12 payments));

13 (B) The lessee that receives the economic benefit of the deferral
14 agrees in writing with the department to complete the annual report
15 required under RCW 82.60.070; and

16 (C) The economic benefit of the deferral passed to the lessee is no
17 less than the amount of tax deferred by the lessor and is evidenced by
18 written documentation of any type of payment, credit, or other
19 financial arrangement between the lessor or owner of the qualified
20 building and the lessee.

21 (c) "Eligible investment project" does not include any portion of
22 an investment project undertaken by a light and power business as
23 defined in RCW 82.16.010(5), other than that portion of a cogeneration
24 project that is used to generate power for consumption within the
25 manufacturing site of which the cogeneration project is an integral
26 part, or investment projects which have already received deferrals
27 under this chapter.

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

32 (6) "Manufacturing" means the same as defined in RCW 82.04.120.
33 "Manufacturing" also includes computer programming, the production of
34 computer software, and other computer-related services, and the
35 activities performed by research and development laboratories and
36 commercial testing laboratories.

37 (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. The term "entire tax year" means a full-time position that
16 is filled for a period of twelve consecutive months. The term "full-
17 time" means at least thirty-five hours a week, four hundred fifty-five
18 hours a quarter, or one thousand eight hundred twenty hours a year.

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

27 ~~((+10))~~ (11) "Recipient" means a person receiving a tax deferral
28 under this chapter.

29 ~~((+11))~~ (12) "Research and development" means the development,
30 refinement, testing, marketing, and commercialization of a product,
31 service, or process before commercial sales have begun. As used in
32 this subsection, "commercial sales" excludes sales of prototypes or
33 sales for market testing if the total gross receipts from such sales of
34 the product, service, or process do not exceed one million dollars.

35 **Sec. 4.** RCW 82.60.040 and 1999 c 164 s 302 are each amended to
36 read as follows:

37 (1) The department shall issue a sales and use tax deferral

1 certificate for state and local sales and use taxes due under chapters
2 82.08, 82.12, and 82.14 RCW on each eligible investment project that is
3 located in an eligible area as defined in RCW 82.60.020.

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

6 (3) This section expires July 1, (~~2004~~) 2010.

7 **Sec. 5.** RCW 82.60.049 and 2000 c 106 s 8 are each amended to read
8 as follows:

9 (1) For the purposes of this section:

10 (a) "Eligible area" also means a designated community empowerment
11 zone approved under RCW (~~43.63A.700~~) 43.31C.020 or a county
12 containing a community empowerment zone.

13 (b) "Eligible investment project" also means an investment project
14 in an eligible area as defined in this section.

15 (~~(c) "Qualified employment position" means a permanent full-time
16 employee employed in the eligible investment project during the entire
17 year.~~)

18 (2) In addition to the provisions of RCW 82.60.040, the department
19 shall issue a sales and use tax deferral certificate for state and
20 local sales and use taxes due under chapters 82.08, 82.12, and 82.14
21 RCW, on each eligible investment project that is located in an eligible
22 area, if the applicant establishes that at the time the project is
23 operationally complete:

24 (a) The applicant will hire at least one qualified employment
25 position for each (~~seven hundred fifty~~) one hundred fifteen thousand
26 dollars of investment (~~on~~) for which a deferral is requested; and

27 (b) The positions will be filled by persons who at the time of hire
28 are residents of the community empowerment zone. As used in this
29 subsection, "resident" means the person makes his or her home in the
30 community empowerment zone. A mailing address alone is insufficient to
31 establish that a person is a resident for the purposes of this section.
32 The persons must be hired after the date the application is filed with
33 the department.

34 (3) All other provisions and eligibility requirements of this
35 chapter apply to applicants eligible under this section.

36 (4) The qualified employment position must be filled by the end of
37 the calendar year following the year in which the project is certified

1 as operationally complete. If a person does not meet the requirements
2 for qualified employment positions by the end of the second calendar
3 year following the year in which the project is certified as
4 operationally complete, all deferred taxes are immediately due.

5 **Sec. 6.** RCW 82.60.050 and 1994 sp.s. c 1 s 7 are each amended to
6 read as follows:

7 RCW 82.60.030 and 82.60.040 shall expire July 1, ~~((2004))~~ 2010.

8 **Sec. 7.** RCW 82.60.070 and 1999 c 164 s 303 are each amended to
9 read as follows:

10 (1)(a) The legislature finds that accountability and effectiveness
11 are important aspects of setting tax policy. In order to make policy
12 choices regarding the best use of limited state resources the
13 legislature needs information on how a tax incentive is used.

14 (b) Each recipient of a deferral granted under this chapter after
15 June 30, 1994, shall ~~((submit a report to the department on December~~
16 31st of the year in which the investment project is certified by the
17 department as having been operationally completed, and on December 31st
18 of each of the seven succeeding calendar years. The report shall
19 contain information, as required by the department, from which the
20 department may determine whether the recipient is meeting the
21 requirements of this chapter. If the recipient fails to submit a
22 report or submits an inadequate report, the department may declare the
23 amount of deferred taxes outstanding to be immediately assessed and
24 payable)) complete an annual survey. If the economic benefits of the
25 deferral are passed to a lessee as provided in RCW 82.63.010(7), the
26 lessee shall agree to complete the annual survey and the applicant is
27 not required to complete the annual survey. The survey is due by March
28 31st of the year following the calendar year in which the investment
29 project is certified by the department as having been operationally
30 complete and the seven succeeding calendar years. The survey shall
31 include the amount of tax deferred, the number of new products or
32 research projects by general classification, and the number of
33 trademarks, patents, and copyrights associated with activities at the
34 investment project. The survey shall also include the following
35 information for employment positions in Washington:

36 (i) The number of total employment positions;

1 (ii) Full-time, part-time, and temporary employment positions as a
2 percent of total employment;

3 (iii) The number of employment positions according to the following
4 wage bands: Less than thirty thousand dollars; thirty thousand dollars
5 or greater, but less than sixty thousand dollars; and sixty thousand
6 dollars or greater. A wage band containing fewer than three
7 individuals may be combined with another wage band; and

8 (iv) The number of employment positions that have employer-provided
9 medical, dental, and retirement benefits, by each of the wage bands.

10 (c) The department may request additional information necessary to
11 measure the results of the deferral program, to be submitted at the
12 same time as the survey.

13 (d) All information collected under this subsection, except the
14 amount of the tax deferral taken, is deemed taxpayer information under
15 RCW 82.32.330 and is not disclosable. Information on the amount of tax
16 deferral taken is not subject to the confidentiality provisions of RCW
17 82.32.330 and may be disclosed to the public upon request.

18 (e) The department shall use the information from this section to
19 prepare summary descriptive statistics by category. No fewer than
20 three taxpayers shall be included in any category. The department
21 shall report these statistics to the legislature each year by September
22 1st.

23 (f) The department shall also use the information to study the tax
24 deferral program authorized under this chapter. The department shall
25 report to the legislature by December 1, 2009. The report shall
26 measure the effect of the program on job creation, the number of jobs
27 created for residents of eligible areas, company growth, the
28 introduction of new products, the diversification of the state's
29 economy, growth in research and development investment, the movement of
30 firms or the consolidation of firms' operations into the state, and
31 such other factors as the department selects.

32 (2) If, on the basis of a (~~report~~) survey under this section or
33 other information, the department finds that an investment project is
34 not eligible for tax deferral under this chapter, the amount of
35 deferred taxes outstanding for the project shall be immediately due.

36 (3) If, on the basis of a survey under this section or other
37 information, the department finds that an investment project for which

1 a deferral has been granted under this chapter has been operationally
2 complete for two years and has failed to create the required number of
3 qualified employment positions, all deferred taxes are immediately due.

4 (4) Notwithstanding any other subsection of this section, deferred
5 taxes need not be repaid on machinery and equipment for lumber and wood
6 products industries, and sales of or charges made for labor and
7 services, of the type which qualifies for exemption under RCW
8 82.08.02565 or 82.12.02565 to the extent the taxes have not been repaid
9 before July 1, 1995.

10 ~~((4))~~ (5) Notwithstanding any other subsection of this section,
11 deferred taxes on the following need not be repaid:

12 (a) Machinery and equipment, and sales of or charges made for labor
13 and services, which at the time of purchase would have qualified for
14 exemption under RCW 82.08.02565; and

15 (b) Machinery and equipment which at the time of first use would
16 have qualified for exemption under RCW 82.12.02565.

17 NEW SECTION. **Sec. 8.** This act is necessary for the immediate
18 preservation of the public peace, health, or safety, or support of the
19 state government and its existing public institutions, and takes effect
20 April 1, 2004.

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