

CERTIFICATION OF ENROLLMENT
SUBSTITUTE SENATE BILL 6240

58th Legislature
2004 Regular Session

Passed by the Senate March 10, 2004
YEAS 49 NAYS 0

President of the Senate

Passed by the House March 9, 2004
YEAS 93 NAYS 3

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Milton H. Doumit, Jr.,
Secretary of the Senate of the
State of Washington, do hereby
certify that the attached is
SUBSTITUTE SENATE BILL 6240 as
passed by the Senate and the House
of Representatives on the dates
hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6240

AS AMENDED BY THE HOUSE

Passed Legislature - 2004 Regular Session

State of Washington 58th Legislature 2004 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators T. Sheldon, Zarelli, Benton, Hale, McAuliffe, Prentice, Rasmussen, Murray and Haugen; by request of Governor Locke)

READ FIRST TIME 01/23/04.

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

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

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

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

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

18 (3)(a) To qualify for the credit, the qualifying activity of the

1 person must be conducted in a rural county and the new qualified
2 employment position must be located in the rural county.

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

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

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

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

35 (d) If a position is filled before July 1st, the position is
36 eligible for the full yearly credit for that calendar year. If it is
37 filled after June 30th, the position is eligible for half of the credit
38 for that calendar year.

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

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

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

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

29 (9) A person taking tax credits under this section shall make an
30 annual report to the department. The report shall be in a letter form
31 and shall include the following information: Number of positions for
32 which credit is being claimed, type of position for which credit is
33 being claimed, type of activity in which the person is engaged in the
34 county, how long the person has been located in the county, and
35 taxpayer name and registration number. The report must be filed by
36 January 30th of each year for which credit was claimed during the
37 previous year. Failure to file a report will not result in the loss of
38 eligibility under this section. However, the department, through its

1 research division, shall contact taxpayers who have not filed the
2 report and obtain the data from the taxpayer or assist the taxpayer in
3 the filing of the report, so that the data and information necessary to
4 measure the program's effectiveness is maintained.

5 (10) As used in this section:

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

9 (b) "Manufacturing" means the same as "to manufacture" under RCW
10 82.04.120. Manufacturing includes the activities of both manufacturers
11 and processors for hire.

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

16 (d) "Qualifying activity" means manufacturing of computer software
17 or programming.

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

27 (f) "Rural county" means the same as in RCW 82.14.370.

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

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

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

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

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

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

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

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

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

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

31 (8) 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: Type of activity in which
34 the person is engaged in the county, number of employees in the rural
35 county, how long the person has been located in the county, and
36 taxpayer name and registration number. The report must be filed by
37 January 30th of each year for which credit was claimed during the
38 previous year. Failure to file a report will not result in the loss of

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

6 (9) As used in this section:

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

- 9 (i) Software and hardware maintenance;
10 (ii) Software and hardware diagnostics and troubleshooting;
11 (iii) Software and hardware installation;
12 (iv) Software and hardware repair;
13 (v) Software and hardware information and training; and
14 (vi) Software and hardware upgrade.

15 (b) "Rural county" means the same as in RCW 82.14.370.

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

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

19 Unless the context clearly requires otherwise, the definitions in
20 this section apply throughout this chapter.

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

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

24 (3) "Eligible area" means a ~~((county with fewer than one hundred
25 persons per square mile as determined annually by the office of
26 financial management and published by the department of revenue
27 effective for the period July 1st through June 30th))~~ rural county as
28 defined in RCW 82.14.370.

29 (4)(a) "Eligible investment project" means an investment project in
30 an eligible area as defined in subsection (3) of this section.

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

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

35 (ii)(A) The lessor by written contract agrees to pass the economic
36 benefit of the deferral to the lessee ~~((in the form of reduced rent
37 payments))~~i

1 (B) The lessee that receives the economic benefit of the deferral
2 agrees in writing with the department to complete the annual survey
3 required under RCW 82.60.070; and

4 (C) The economic benefit of the deferral passed to the lessee is no
5 less than the amount of tax deferred by the lessor and is evidenced by
6 written documentation of any type of payment, credit, or other
7 financial arrangement between the lessor or owner of the qualified
8 building and the lessee.

9 (c) "Eligible investment project" does not include any portion of
10 an investment project undertaken by a light and power business as
11 defined in RCW 82.16.010(5), other than that portion of a cogeneration
12 project that is used to generate power for consumption within the
13 manufacturing site of which the cogeneration project is an integral
14 part, or investment projects which have already received deferrals
15 under this chapter.

16 (5) "Investment project" means an investment in qualified buildings
17 or qualified machinery and equipment, including labor and services
18 rendered in the planning, installation, and construction of the
19 project.

20 (6) "Manufacturing" means the same as defined in RCW 82.04.120.
21 "Manufacturing" also includes computer programming, the production of
22 computer software, and other computer-related services, and the
23 activities performed by research and development laboratories and
24 commercial testing laboratories.

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

26 (8) "Qualified buildings" means construction of new structures, and
27 expansion or renovation of existing structures for the purpose of
28 increasing floor space or production capacity used for manufacturing
29 and research and development activities, including plant offices and
30 warehouses or other facilities for the storage of raw material or
31 finished goods if such facilities are an essential or an integral part
32 of a factory, mill, plant, or laboratory used for manufacturing or
33 research and development. If a building is used partly for
34 manufacturing or research and development and partly for other
35 purposes, the applicable tax deferral shall be determined by
36 apportionment of the costs of construction under rules adopted by the
37 department.

1 (9) "Qualified employment position" means a permanent full-time
2 employee employed in the eligible investment project during the entire
3 tax year. The term "entire tax year" means a full-time position that
4 is filled for a period of twelve consecutive months. The term "full-
5 time" means at least thirty-five hours a week, four hundred fifty-five
6 hours a quarter, or one thousand eight hundred twenty hours a year.

7 (10) "Qualified machinery and equipment" means all new industrial
8 and research fixtures, equipment, and support facilities that are an
9 integral and necessary part of a manufacturing or research and
10 development operation. "Qualified machinery and equipment" includes:
11 Computers; software; data processing equipment; laboratory equipment;
12 manufacturing components such as belts, pulleys, shafts, and moving
13 parts; molds, tools, and dies; operating structures; and all equipment
14 used to control or operate the machinery.

15 (~~(10)~~) (11) "Recipient" means a person receiving a tax deferral
16 under this chapter.

17 (~~(11)~~) (12) "Research and development" means the development,
18 refinement, testing, marketing, and commercialization of a product,
19 service, or process before commercial sales have begun. As used in
20 this subsection, "commercial sales" excludes sales of prototypes or
21 sales for market testing if the total gross receipts from such sales of
22 the product, service, or process do not exceed one million dollars.

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

25 (1) The department shall issue a sales and use tax deferral
26 certificate for state and local sales and use taxes due under chapters
27 82.08, 82.12, and 82.14 RCW on each eligible investment project that is
28 located in an eligible area as defined in RCW 82.60.020.

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

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

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

34 (1) For the purposes of this section:

35 (a) "Eligible area" also means a designated community empowerment

1 zone approved under RCW ((43.63A.700)) 43.31C.020 or a county
2 containing a community empowerment zone.

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

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

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

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

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

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

26 (4) The qualified employment position must be filled by the end of
27 the calendar year following the year in which the project is certified
28 as operationally complete. If a person does not meet the requirements
29 for qualified employment positions by the end of the second calendar
30 year following the year in which the project is certified as
31 operationally complete, all deferred taxes are immediately due.

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

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

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

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

5 (b) Each recipient of a deferral granted under this chapter after
6 June 30, 1994, shall ((submit a report to the department on December
7 31st of the year in which the investment project is certified by the
8 department as having been operationally completed, and on December 31st
9 of each of the seven succeeding calendar years. The report shall
10 contain information, as required by the department, from which the
11 department may determine whether the recipient is meeting the
12 requirements of this chapter. If the recipient fails to submit a
13 report or submits an inadequate report, the department may declare the
14 amount of deferred taxes outstanding to be immediately assessed and
15 payable)) complete an annual survey. If the economic benefits of the
16 deferral are passed to a lessee as provided in RCW 82.60.020(4), the
17 lessee shall agree to complete the annual survey and the applicant is
18 not required to complete the annual survey. The survey is due by March
19 31st of the year following the calendar year in which the investment
20 project is certified by the department as having been operationally
21 complete and the seven succeeding calendar years. The survey shall
22 include the amount of tax deferred, the number of new products or
23 research projects by general classification, and the number of
24 trademarks, patents, and copyrights associated with activities at the
25 investment project. The survey shall also include the following
26 information for employment positions in Washington:

27 (i) The number of total employment positions;

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

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

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

37 (c) The department may request additional information necessary to

1 measure the results of the deferral program, to be submitted at the
2 same time as the survey.

3 (d) All information collected under this subsection, except the
4 amount of the tax deferral taken, is deemed taxpayer information under
5 RCW 82.32.330 and is not disclosable. Information on the amount of tax
6 deferral taken is not subject to the confidentiality provisions of RCW
7 82.32.330 and may be disclosed to the public upon request.

8 (e) The department shall use the information from this section to
9 prepare summary descriptive statistics by category. No fewer than
10 three taxpayers shall be included in any category. The department
11 shall report these statistics to the legislature each year by September
12 1st.

13 (f) The department shall also use the information to study the tax
14 deferral program authorized under this chapter. The department shall
15 report to the legislature by December 1, 2009. The report shall
16 measure the effect of the program on job creation, the number of jobs
17 created for residents of eligible areas, company growth, the
18 introduction of new products, the diversification of the state's
19 economy, growth in research and development investment, the movement of
20 firms or the consolidation of firms' operations into the state, and
21 such other factors as the department selects.

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

26 (b) If a recipient of the deferral fails to complete the annual
27 survey required under subsection (1) of this section by the date due,
28 twelve and one-half percent of the deferred tax shall be immediately
29 due. If the economic benefits of the deferral are passed to a lessee
30 as provided in RCW 82.60.020(4), the lessee shall be responsible for
31 payment to the extent the lessee has received the economic benefit.

32 (3) Notwithstanding any other subsection of this section, deferred
33 taxes need not be repaid on machinery and equipment for lumber and wood
34 products industries, and sales of or charges made for labor and
35 services, of the type which qualifies for exemption under RCW
36 82.08.02565 or 82.12.02565 to the extent the taxes have not been repaid
37 before July 1, 1995.

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

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

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

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

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