

CERTIFICATION OF ENROLLMENT  
**ENGROSSED SUBSTITUTE HOUSE BILL 2546**

Chapter 2, Laws of 2004

58th Legislature  
2004 Regular Session

HIGH TECHNOLOGY TAX INCENTIVES

EFFECTIVE DATE: 6/10/04 - Except sections 9 and 10, which become effective 7/1/04.

Passed by the House January 30, 2004  
Yeas 86 Nays 12

FRANK CHOPP

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**Speaker of the House of Representatives**

Passed by the Senate February 10, 2004  
Yeas 40 Nays 9

SHIRLEY WINSLEY

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**President of the Senate**

Approved February 19, 2004.

GARY F. LOCKE

\_\_\_\_\_  
**Governor of the State of Washington**

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 2546** as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER

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**Chief Clerk**

FILED

February 19, 2004 - 11:35 a.m.

**Secretary of State  
State of Washington**

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**ENGROSSED SUBSTITUTE HOUSE BILL 2546**

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Passed Legislature - 2004 Regular Session

**State of Washington                      58th Legislature                      2004 Regular Session**

**By**            House Committee on Finance (originally sponsored by Representatives McIntire, Morris, Hunter, Ruderman, Kessler, Lovick, Hunt, Grant, Hatfield, Fromhold, Clibborn and Clements; by request of Governor Locke)

READ FIRST TIME 01/27/04.

1            AN ACT Relating to high technology and research and development tax  
2 incentives; amending RCW 82.63.005, 82.04.4452, 82.63.010, 82.63.020,  
3 82.63.030, 82.63.045, 82.63.070, and 82.04.190; adding new sections to  
4 chapter 82.04 RCW; providing an effective date; and providing  
5 expiration dates.

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

7            **Sec. 1.** RCW 82.63.005 and 1994 sp.s. c 5 s 1 are each amended to  
8 read as follows:

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

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

1 effort to encourage economic diversification. However, the legislature  
2 finds that many high-technology businesses incur significant costs  
3 associated with research and development and pilot scale manufacturing  
4 many years before a marketable product can be produced, and that  
5 current state tax policy discourages the growth of these companies by  
6 taxing them long before they become profitable.

7 The legislature further finds that stimulating growth of high-  
8 technology businesses early in their development cycle, when they are  
9 turning ideas into marketable products, will build upon the state's  
10 established high-technology base, creating additional research and  
11 development jobs and subsequent manufacturing facilities.

12 For these reasons, the legislature hereby establishes a program of  
13 business and occupation tax credits for qualified research and  
14 development expenditures. The legislature also hereby establishes a  
15 tax deferral program for high-technology research and development and  
16 pilot scale manufacturing facilities. The legislature declares that  
17 these limited programs serve the vital public purposes of incenting  
18 expenditures in research and development, supporting, and sustaining as  
19 they develop new technologies and products, and creating quality  
20 employment opportunities in this state. The legislature further  
21 declares its intent to create a contract within the meaning of Article  
22 I, section 23 of the state Constitution as to those businesses that  
23 make capital investments in consideration of the tax deferral program  
24 established in this chapter.

25 **Sec. 2.** RCW 82.04.4452 and 2000 c 103 s 7 are each amended to read  
26 as follows:

27 (1) In computing the tax imposed under this chapter, a credit is  
28 allowed for each person whose research and development spending during  
29 the year in which the credit is claimed exceeds 0.92 percent of the  
30 person's taxable amount during the same calendar year.

31 (2) The credit (~~(is equal to)~~) shall be calculated as follows: (a)  
32 Determine the greater of the amount of qualified research and  
33 development expenditures of a person or eighty percent of amounts  
34 received by a person other than a public educational or research  
35 institution in compensation for the conduct of qualified research and  
36 development(~~(, multiplied)~~); (b) subtract 0.92 percent of the person's  
37 taxable amount from the amount determined under (a) of this subsection;

1 (c) multiply the amount determined under (b) of this subsection by the  
2 rate provided in RCW 82.04.260(3) in the case of a nonprofit  
3 corporation or nonprofit association engaging within this state in  
4 research and development, and the person's average tax rate (~~provided~~  
5 ~~in RCW 82.04.290(2))~~) for every other person.

6 (3) Any person entitled to the credit provided in subsection (2) of  
7 this section as a result of qualified research and development  
8 conducted under contract may assign all or any portion of the credit to  
9 the person contracting for the performance of the qualified research  
10 and development.

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

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

31 (6) Any person claiming the credit, and any person assigning a  
32 credit as provided in subsection (3) of this section, shall file an  
33 (~~affidavit~~) annual report in a form prescribed by the department  
34 which shall include the amount of the credit claimed, (~~an estimate~~  
35 ~~of~~) the (~~anticipated~~) qualified research and development  
36 expenditures during the calendar year for which the credit is claimed,  
37 (~~an estimate of~~) and the taxable amount during the calendar year for

1 which the credit is claimed, and such additional information as the  
2 department may prescribe. The report is due by March 31st following  
3 any year a credit is taken.

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

8 (b) A person claiming the credit shall agree to ~~((supply the~~  
9 ~~department with information necessary to measure the results of the tax~~  
10 ~~credit program for qualified research and development expenditures))~~  
11 complete an annual survey. The annual survey is in addition to the  
12 annual report due under subsection (6) of this section. The survey is  
13 due by March 31st following any year in which a credit is taken. The  
14 survey shall include the amount of the tax credit taken, the number of  
15 new products or research projects by general classification, and the  
16 number of trademarks, patents, and copyrights associated with the  
17 research and development activities for which a credit was taken. The  
18 survey shall also include the following information for employment  
19 positions in Washington:

20 (i) The number of total employment positions;

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

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

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

30 (c) The department may request additional information necessary to  
31 measure the results of the tax credit program, to be submitted at the  
32 same time as the survey.

33 (d) All information collected under this subsection, except the  
34 amount of the tax credit taken, is deemed taxpayer information under  
35 RCW 82.32.330 and is not disclosable. Information on the amount of tax  
36 credit taken is not subject to the confidentiality provisions of RCW  
37 82.32.330 and may be disclosed to the public upon request except that

1 persons taking less than ten thousand dollars of credit during the  
2 period covered by the survey may request the department to treat the  
3 tax credit amount as confidential under RCW 82.32.330.

4 (e) If a person fails to complete the survey required under this  
5 subsection by the due date, the person entitled to the credit provided  
6 in subsection (2) of this section is not eligible to take or assign the  
7 credit provided in subsection (2) of this section in the year the  
8 person failed to complete the survey.

9 (8) The department shall use the information from subsection (7) of  
10 this section to prepare summary descriptive statistics by category. No  
11 fewer than three taxpayers shall be included in any category. The  
12 department shall report these statistics to the legislature each year  
13 by September 1st.

14 (9) The department shall use the information ((required under))  
15 from subsection (7) of this section to ((perform three assessments on))  
16 study the tax credit program authorized under this section. ((The  
17 assessments will take place in 1997, 2000, and 2003. The department  
18 shall prepare reports on each assessment and deliver their reports by  
19 September 1, 1997, September 1, 2000, and September 1, 2003. The  
20 assessments)) The department shall report to the legislature by  
21 December 1, 2009, and December 1, 2013. The reports shall measure the  
22 effect of the program on job creation, the number of jobs created for  
23 Washington residents, company growth, the introduction of new products,  
24 the diversification of the state's economy, growth in research and  
25 development investment, the movement of firms or the consolidation of  
26 firms' operations into the state, and such other factors as the  
27 department selects.

28 ((+9)) (10) For the purpose of this section:

29 (a) "Average tax rate" means a person's total tax under this  
30 chapter for the reporting period divided by the taxpayer's total  
31 taxable income under this chapter for the reporting period.

32 (b) "Qualified research and development expenditures" means  
33 operating expenses, including wages, compensation of a proprietor or a  
34 partner in a partnership as determined under rules adopted by the  
35 department, benefits, supplies, and computer expenses, directly  
36 incurred in qualified research and development by a person claiming the  
37 credit provided in this section. The term does not include amounts  
38 paid to a person other than a public educational or research

1 institution to conduct qualified research and development. Nor does  
2 the term include capital costs and overhead, such as expenses for land,  
3 structures, or depreciable property.

4 ~~((b))~~ (c) "Qualified research and development" shall have the  
5 same meaning as in RCW 82.63.010.

6 ~~((e))~~ (d) "Research and development spending" means qualified  
7 research and development expenditures plus eighty percent of amounts  
8 paid to a person other than a public educational or research  
9 institution to conduct qualified research and development.

10 ~~((d))~~ (e) "Taxable amount" means the taxable amount subject to  
11 the tax imposed in this chapter required to be reported on the person's  
12 combined excise tax returns during the year in which the credit is  
13 claimed, less any taxable amount for which a credit is allowed under  
14 RCW 82.04.440.

15 ~~((10))~~ (11) This section expires ~~((December 31, 2004))~~ January 1,  
16 2015.

17 **Sec. 3.** RCW 82.63.010 and 1995 1st sp.s. c 3 s 12 are each amended  
18 to read as follows:

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

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

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

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

31 (4) "Biotechnology" means the application of technologies, such as  
32 recombinant DNA techniques, biochemistry, molecular and cellular  
33 biology, genetics and genetic engineering, cell fusion techniques, and  
34 new bioprocesses, using living organisms, or parts of organisms, to  
35 produce or modify products, to improve plants or animals, to develop  
36 microorganisms for specific uses, to identify targets for small

1 molecule pharmaceutical development, or to transform biological systems  
2 into useful processes and products or to develop microorganisms for  
3 specific uses.

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

5 (6) "Electronic device technology" means technologies involving  
6 microelectronics; semiconductors; electronic equipment and  
7 instrumentation; radio frequency, microwave, and millimeter  
8 electronics; optical and optic-electrical devices; and data and digital  
9 communications and imaging devices.

10 (7) "Eligible investment project" means an investment project which  
11 either initiates a new operation, or expands or diversifies a current  
12 operation by expanding, renovating, or equipping an existing facility.  
13 The lessor or owner of the qualified building is not eligible for a  
14 deferral unless:

15 (a) The underlying ownership of the buildings, machinery, and  
16 equipment vests exclusively in the same person(~~(, or unless)~~); or

17 (b)(i) The lessor by written contract agrees to pass the economic  
18 benefit of the deferral to the lessee (~~(in the form of reduced rent~~  
19 payments));

20 (ii) The lessee that receives the economic benefit of the deferral  
21 agrees in writing with the department to complete the annual survey  
22 required under RCW 82.63.020(2); and

23 (iii) The economic benefit of the deferral passed to the lessee is  
24 no less than the amount of tax deferred by the lessor and is evidenced  
25 by written documentation of any type of payment, credit, or other  
26 financial arrangement between the lessor or owner of the qualified  
27 building and the lessee.

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

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

35 (10) "Person" has the meaning given in RCW 82.04.030 and includes  
36 state universities as defined in RCW 28B.10.016.

37 (11) "Pilot scale manufacturing" means design, construction, and  
38 testing of preproduction prototypes and models in the fields of



1 biotechnology, advanced computing, electronic device technology,  
2 advanced materials, and environmental technology other than for  
3 commercial sale. As used in this subsection, "commercial sale"  
4 excludes sales of prototypes or sales for market testing if the total  
5 gross receipts from such sales of the product, service, or process do  
6 not exceed one million dollars.

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

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

36 (14) "Qualified research and development" means research and  
37 development performed within this state in the fields of advanced

1 computing, advanced materials, biotechnology, electronic device  
2 technology, and environmental technology.

3 (15) "Recipient" means a person receiving a tax deferral under this  
4 chapter.

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

19 (17)(a) "Initiation of construction" means the date that a building  
20 permit is issued under the building code adopted under RCW 19.27.031  
21 for:

22 (i) Construction of the qualified building, if the underlying  
23 ownership of the building vests exclusively with the person receiving  
24 the economic benefit of the deferral;

25 (ii) Construction of the qualified building, if the economic  
26 benefits of the deferral are passed to a lessee as provided in  
27 subsection (7) of this section; or

28 (iii) Tenant improvements for a qualified building, if the economic  
29 benefits of the deferral are passed to a lessee as provided in  
30 subsection (7) of this section.

31 (b) "Initiation of construction" does not include soil testing,  
32 site clearing and grading, site preparation, or any other related  
33 activities that are initiated before the issuance of a building permit  
34 for the construction of the foundation of the building.

35 (c) If the investment project is a phased project, "initiation of  
36 construction" shall apply separately to each phase.

1           **Sec. 4.** RCW 82.63.020 and 1994 sp.s. c 5 s 4 are each amended to  
2 read as follows:

3           (1) Application for deferral of taxes under this chapter must be  
4 made before initiation of construction of, or acquisition of equipment  
5 or machinery for the investment project. The application shall be made  
6 to the department in a form and manner prescribed by the department.  
7 The application shall contain information regarding the location of the  
8 investment project, the applicant's average employment in the state for  
9 the prior year, estimated or actual new employment related to the  
10 project, estimated or actual wages of employees related to the project,  
11 estimated or actual costs, time schedules for completion and operation,  
12 and other information required by the department. The department shall  
13 rule on the application within sixty days.

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

18           (b) Applicants for deferral of taxes under this chapter shall agree  
19 to ((supply the department with nonproprietary information necessary to  
20 measure the results of the tax deferral program for high technology  
21 research and development and pilot scale manufacturing facilities))  
22 complete an annual survey. If the economic benefits of the deferral  
23 are passed to a lessee as provided in RCW 82.63.010(7), the lessee  
24 shall agree to complete the annual survey and the applicant is not  
25 required to complete the annual survey. The survey is due by March  
26 31st of the year following the calendar year in which the investment  
27 project is certified by the department as having been operationally  
28 complete and the seven succeeding calendar years. The survey shall  
29 include the amount of tax deferred, the number of new products or  
30 research projects by general classification, and the number of  
31 trademarks, patents, and copyrights associated with activities at the  
32 investment project. The survey shall also include the following  
33 information for employment positions in Washington:

34           (i) The number of total employment positions;

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

37           (iii) The number of employment positions according to the following  
38 wage bands: Less than thirty thousand dollars; thirty thousand dollars

1 or greater, but less than sixty thousand dollars; and sixty thousand  
2 dollars or greater. A wage band containing fewer than three  
3 individuals may be combined with another wage band; and

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

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

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

14 (3) The department shall use the information from this section to  
15 prepare summary descriptive statistics by category. No fewer than  
16 three taxpayers shall be included in any category. The department  
17 shall report these statistics to the legislature each year by September  
18 1st.

19 (4) The department shall use the information to ((perform three  
20 assessments on)) study the tax deferral program authorized under this

21 chapter. ((The assessments will take place in 1997, 2000, and 2003.))  
22 The department shall ((prepare reports on each assessment and deliver  
23 their reports by September 1, 1997, September 1, 2000, and September 1,  
24 2003)) report to the legislature by December 1, 2009, and December 1,  
25 2013. The ((assessments)) reports shall measure the effect of the  
26 program on job creation, the number of jobs created for Washington  
27 residents, company growth, the introduction of new products, the  
28 diversification of the state's economy, growth in research and  
29 development investment, the movement of firms or the consolidation of  
30 firms' operations into the state, and such other factors as the  
31 department selects.

32 **Sec. 5.** RCW 82.63.030 and 1994 sp.s. c 5 s 5 are each amended to  
33 read as follows:

34 (1) Except as provided in subsection (2) of this section, the  
35 department shall issue a sales and use tax deferral certificate for  
36 state and local sales and use taxes due under chapters 82.08, 82.12,  
37 and 82.14 RCW on each eligible investment project.

1 (2) No certificate may be issued for an investment project that has  
2 already received a deferral under chapter 82.60 or 82.61 RCW or this  
3 chapter, except that an investment project for qualified research and  
4 development that has already received a deferral may also receive an  
5 additional deferral certificate for adapting the investment project for  
6 use in pilot scale manufacturing.

7 (3) This section shall expire ((July)) January 1, ((2004)) 2015.

8 **Sec. 6.** RCW 82.63.045 and 2000 c 106 s 10 are each amended to read  
9 as follows:

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

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

Year in which use occurs	% of deferred taxes due
1	100%
2	87.5%
3	75%
4	62.5%
5	50%
6	37.5%
7	25%
8	12.5%

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29 (b) If a recipient of the deferral fails to complete the annual  
30 survey required under RCW 82.63.020 by the date due, 12.5 percent of  
31 the deferred tax shall be immediately due. If the economic benefits of  
32 the deferral are passed to a lessee as provided in RCW 82.63.010(7),  
33 the lessee shall be responsible for payment to the extent the lessee  
34 has received the economic benefit.

1       (c) If an investment project is used for purposes other than  
2 qualified research and development or pilot scale manufacturing at any  
3 time during the calendar year in which the investment project is  
4 certified as having been operationally complete and the recipient of  
5 the deferral fails to complete the annual survey due under RCW  
6 82.63.020, the portion of deferred taxes immediately due is the amount  
7 on the schedule in (a) of this subsection. If the economic benefits of  
8 the deferral are passed to a lessee as provided in RCW 82.63.010(7),  
9 the lessee shall be responsible for payment to the extent the lessee  
10 has received the economic benefit.

11       (3) The department shall assess interest at the rate provided for  
12 delinquent taxes, but not penalties, retroactively to the date of  
13 deferral. The debt for deferred taxes will not be extinguished by  
14 insolvency or other failure of the recipient. Transfer of ownership  
15 does not terminate the deferral. The deferral is transferred, subject  
16 to the successor meeting the eligibility requirements of this chapter,  
17 for the remaining periods of the deferral.

18       (~~(3)~~) (4) Notwithstanding subsection (2) of this section,  
19 deferred taxes on the following need not be repaid:

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

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

25       **Sec. 7.** RCW 82.63.070 and 1994 sp.s. c 5 s 9 are each amended to  
26 read as follows:

27       Applications (~~(and other information)~~) received by the department  
28 under this chapter are not confidential and are subject to disclosure.

29       **Sec. 8.** RCW 82.04.190 and 2002 c 367 s 2 are each amended to read  
30 as follows:

31       "Consumer" means the following:

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

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

16 (2)(a) Any person engaged in any business activity taxable under  
17 RCW 82.04.290; (b) any person who purchases, acquires, or uses any  
18 telephone service as defined in RCW 82.04.065, other than for resale in  
19 the regular course of business; (c) any person who purchases, acquires,  
20 or uses any service defined in RCW 82.04.050(2)(a) or any amusement and  
21 recreation service defined in RCW 82.04.050(3)(a), other than for  
22 resale in the regular course of business; and (d) any person who is an  
23 end user of software;

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

1 (4) Any person who is an owner, lessee or has the right of  
2 possession to or an easement in real property which is being  
3 constructed, repaired, decorated, improved, or otherwise altered by a  
4 person engaged in business, excluding only (a) municipal corporations  
5 or political subdivisions of the state in respect to labor and services  
6 rendered to their real property which is used or held for public road  
7 purposes, and (b) the United States, instrumentalities thereof, and  
8 county and city housing authorities created pursuant to chapter 35.82  
9 RCW in respect to labor and services rendered to their real property.  
10 Nothing contained in this or any other subsection of this definition  
11 shall be construed to modify any other definition of "consumer";

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

16 (6) Any person engaged in the business of constructing, repairing,  
17 decorating, or improving new or existing buildings or other structures  
18 under, upon, or above real property of or for the United States, any  
19 instrumentality thereof, or a county or city housing authority created  
20 pursuant to chapter 35.82 RCW, including the installing or attaching of  
21 any article of tangible personal property therein or thereto, whether  
22 or not such personal property becomes a part of the realty by virtue of  
23 installation; also, any person engaged in the business of clearing land  
24 and moving earth of or for the United States, any instrumentality  
25 thereof, or a county or city housing authority created pursuant to  
26 chapter 35.82 RCW. Any such person shall be a consumer within the  
27 meaning of this subsection in respect to tangible personal property  
28 incorporated into, installed in, or attached to such building or other  
29 structure by such person, except that consumer does not include any  
30 person engaged in the business of constructing, repairing, decorating,  
31 or improving new or existing buildings or other structures under, upon,  
32 or above real property of or for the United States, or any  
33 instrumentality thereof, if the investment project would qualify for  
34 sales and use tax deferral under chapter 82.63 RCW if undertaken by a  
35 private entity;

36 (7) Any person who is a lessor of machinery and equipment, the  
37 rental of which is exempt from the tax imposed by RCW 82.08.020 under  
38 RCW 82.08.02565, with respect to the sale of or charge made for



1 tangible personal property consumed in respect to repairing the  
2 machinery and equipment, if the tangible personal property has a useful  
3 life of less than one year. Nothing contained in this or any other  
4 subsection of this section shall be construed to modify any other  
5 definition of "consumer";

6 (8) Any person engaged in the business of cleaning up for the  
7 United States, or its instrumentalities, radioactive waste and other  
8 byproducts of weapons production and nuclear research and development;  
9 and

10 (9) Until July 1, 2003, any person engaged in the business of  
11 conducting environmental remedial action as defined in RCW  
12 82.04.2635(2).

13 NEW SECTION. **Sec. 9.** A new section is added to chapter 82.04 RCW  
14 to read as follows:

15 This chapter does not apply to amounts received by any person for  
16 research and development under the federal small business innovation  
17 research program (114 Stat. 2763A; 15 U.S.C. Sec. 638 et seq.).

18 NEW SECTION. **Sec. 10.** A new section is added to chapter 82.04 RCW  
19 to read as follows:

20 This chapter does not apply to amounts received by any person for  
21 research and development under the federal small business technology  
22 transfer program (115 Stat. 263; 15 U.S.C. Sec. 638 et seq.).

23 NEW SECTION. **Sec. 11.** Sections 9 and 10 of this act take effect  
24 July 1, 2004.

Passed by the House January 30, 2004.

Passed by the Senate February 10, 2004.

Approved by the Governor February 19, 2004.

Filed in Office of Secretary of State February 19, 2004.