
SUBSTITUTE HOUSE BILL 3099

State of Washington

60th Legislature

2008 Regular Session

By House Finance (originally sponsored by Representatives Kelley, Darneille, Flannigan, Kirby, Morrell, Campbell, Lantz, Conway, Green, McDonald, Seaquist, and Sullivan)

READ FIRST TIME 02/12/08.

1 AN ACT Relating to creating a sales and use tax deferral program
2 for eligible investment projects in community empowerment zones;
3 amending RCW 82.63.030; reenacting and amending RCW 82.32.590 and
4 82.32.600; adding a new chapter to Title 82 RCW; and providing an
5 effective date.

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

7 NEW SECTION. **Sec. 1.** The definitions in this section apply
8 throughout this chapter unless the context clearly requires otherwise.

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

11 (2) "Corporate headquarters" means a facility or facilities where
12 corporate staff employees are physically employed, and where the
13 majority of the company's management services are handled either on a
14 regional or a national basis. Company management services may include:
15 Accounts receivable and payable, accounting, data processing,
16 distribution management, employee benefit plan, financial and
17 securities accounting, information technology, insurance, legal,
18 merchandising, payroll, personnel, purchasing procurement, planning,

1 reporting and compliance, research and development, tax, treasury, or
2 other headquarters-related services.

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

4 (4) "Eligible area" means a designated community empowerment zone
5 approved under RCW 43.31C.020.

6 (5)(a) "Eligible investment project" means an investment project in
7 a qualified building or buildings in an eligible area, as defined in
8 subsection (4) of this section, which will have employment at the
9 qualified building or buildings of at least five hundred employees in
10 qualified employment positions, each of whom must earn for the year
11 reported at least the average annual wage for the state for that year
12 as determined by the employment security department.

13 (b) The lessor or owner of a qualified building or buildings is not
14 eligible for a deferral unless:

15 (i) The underlying ownership of the building or buildings vests
16 exclusively in the same person; or

17 (ii)(A) The lessor by written contract agrees to pass the economic
18 benefit of the deferral to the lessee;

19 (B) The lessee that receives the economic benefit of the deferral
20 agrees in writing with the department to complete the annual survey
21 required under section 2 of this act; and

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

27 (6) "Investment project" means a capital investment of at least
28 fifty million dollars in a qualified building or buildings including
29 tangible personal property and fixtures that will be incorporated as an
30 ingredient or component of such buildings during the course of their
31 construction, and including labor and services rendered in the
32 planning, installation, and construction of the project.

33 (7) "Operationally complete" means a date no later than one year
34 from the date the project is issued an occupancy permit by the local
35 permit issuing authority.

36 (8) "Person" has the same meaning as provided in RCW 82.04.030.

37 (9) "Qualified building or buildings" means construction of a new
38 structure or structures to be used for corporate headquarters. If a

1 building is used partly for corporate headquarters and partly for other
2 purposes, the applicable tax deferral is determined by apportionment of
3 the costs of construction under rules adopted by the department.

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

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

12 NEW SECTION. **Sec. 2.** (1) Application for deferral of taxes under
13 this chapter can be made at any time prior to completion of
14 construction of a qualified building or buildings, but tax liability
15 incurred prior to the department's receipt of an application may not be
16 deferred. The application must be made to the department in a form and
17 manner prescribed by the department. The application must contain
18 information regarding the location of the investment project, the
19 applicant's average employment in the state for the prior year,
20 estimated or actual new employment related to the project, estimated or
21 actual wages of employees related to the project, estimated or actual
22 costs, time schedules for completion and operation, and other
23 information required by the department. The department must rule on
24 the application within sixty days.

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

29 (b) Applicants for deferral of taxes under this chapter must agree
30 to complete an annual survey. If the economic benefits of the deferral
31 are passed to a lessee as provided in section 1(5) of this act, the
32 lessee must agree to complete the annual survey and the applicant is
33 not required to complete the annual survey. The survey is due by March
34 31st of the year following the calendar year in which the investment
35 project is certified by the department as having been operationally
36 complete and the seven succeeding calendar years. The survey must

1 include the amount of tax deferred. The survey must also include the
2 following information for employment positions in Washington:

3 (i) The number of total employment positions;

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

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

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

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

16 (d) All information collected under this subsection, except the
17 amount of the tax deferral taken, is deemed taxpayer information under
18 RCW 82.32.330 and is not disclosable. Information on the amount of tax
19 deferral taken is not subject to the confidentiality provisions of RCW
20 82.32.330 and may be disclosed to the public upon request.

21 (3) The department must use the information to study the tax
22 deferral program authorized under this chapter. The department must
23 report to the legislature by December 1, 2014, and December 1, 2018.
24 The reports must measure the effect of the program on job creation, the
25 number of jobs created for Washington residents, company growth, the
26 introduction of new products, the diversification of the state's
27 economy, growth in research and development investment, the movement of
28 firms or the consolidation of firms' operations into the state, and
29 such other factors as the department selects. If fewer than three
30 deferrals are granted under this chapter, the department may not report
31 statistical information.

32 (4) Applications for deferral of taxes under this section may not
33 be made after December 31, 2020.

34 NEW SECTION. **Sec. 3.** (1) The department must issue a sales and
35 use tax deferral certificate for state and local sales and use taxes
36 due under chapters 82.08, 82.12, and 82.14 RCW on each eligible
37 investment project meeting the requirements of this chapter.

1 (2) No certificate may be issued for an investment project that has
2 already received a deferral under chapter 82.60 or 82.63 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) The department must keep a running total of all deferrals
8 granted under this chapter during each fiscal biennium.

9 (4) The number of eligible investment projects for which the
10 benefits of this chapter will be allowed is limited to two per
11 biennium. The department must approve deferral certificates for
12 completed applications on a first in-time basis. During any biennium,
13 only one deferral certificate may be issued per community empowerment
14 zone.

15 **Sec. 4.** RCW 82.63.030 and 2004 c 2 s 5 are each amended to read as
16 follows:

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

21 (2) No certificate may be issued for an investment project that has
22 already received a deferral under chapter 82.60 (~~or 82.61~~) RCW or
23 this chapter, except that an investment project for qualified research
24 and development that has already received a deferral may also receive
25 an additional deferral certificate for adapting the investment project
26 for use in pilot scale manufacturing.

27 (3) This section shall expire January 1, 2015.

28 NEW SECTION. **Sec. 5.** (1) Except as provided in subsection (2) of
29 this section, taxes deferred under this chapter need not be repaid.

30 (2)(a) If, on the basis of the survey under section 2 of this act
31 or other information, the department finds that an investment project
32 is no longer an "eligible investment project" under section 1 of this
33 act at any time during the calendar year in which the investment
34 project is certified by the department as having been operationally
35 completed, or at any time during any of the seven succeeding calendar

1 years, a portion of deferred taxes are immediately due according to the
2 following schedule:

3	Year in which use occurs	% of deferred taxes due
4	1	100%
5	2	87.5%
6	3	75%
7	4	62.5%
8	5	50%
9	6	37.5%
10	7	25%
11	8	12.5%

12 (b) If a recipient of the deferral fails to complete the annual
13 survey required under section 2 of this act by the date due, twelve and
14 one-half percent of the deferred tax is immediately due. If the
15 economic benefits of the deferral are passed to a lessee as provided in
16 section 1(5) of this act, the lessee is responsible for payment to the
17 extent the lessee has received the economic benefit.

18 (c) If an investment project is meeting the requirement of section
19 1(5) of this act at any time during the calendar year in which the
20 investment project is certified as having been operationally complete
21 and the recipient of the deferral fails to complete the annual survey
22 due under section 2 of this act, the portion of deferred taxes
23 immediately due is the amount on the schedule in (a) of this
24 subsection. If the economic benefits of the deferral are passed to a
25 lessee as provided in section 1(5) of this act, the lessee is
26 responsible for payment to the extent the lessee has received the
27 economic benefit.

28 (3) The department must assess interest at the rate provided for
29 delinquent taxes, but not penalties, retroactively to the date of
30 deferral. The debt for deferred taxes will not be extinguished by
31 insolvency or other failure of the recipient. Transfer of ownership
32 does not terminate the deferral. The deferral is transferred, subject
33 to the successor meeting the eligibility requirements of this chapter,
34 for the remaining periods of the deferral.

1 NEW SECTION. **Sec. 6.** The qualified employment positions must be
2 filled by the end of the calendar year following the year in which the
3 project is certified as operationally complete. If a recipient does
4 not meet the requirements for qualified employment positions by the end
5 of the second calendar year following the year in which the project is
6 certified as operationally complete, all deferred taxes are immediately
7 due.

8 **Sec. 7.** RCW 82.32.590 and 2006 c 354 s 17, 2006 c 300 s 10, 2006
9 c 177 s 8, 2006 c 112 s 7, and 2006 c 84 s 7 are each reenacted and
10 amended to read as follows:

11 (1) If the department finds that the failure of a taxpayer to file
12 an annual survey or annual report under RCW 82.04.4452, 82.32.5351,
13 82.32.650, 82.32.635, 82.32.640, 82.32.630, 82.32.610, section 2 of
14 this act, or 82.74.040 by the due date was the result of circumstances
15 beyond the control of the taxpayer, the department shall extend the
16 time for filing the survey or report. Such extension shall be for a
17 period of thirty days from the date the department issues its written
18 notification to the taxpayer that it qualifies for an extension under
19 this section. The department may grant additional extensions as it
20 deems proper.

21 (2) In making a determination whether the failure of a taxpayer to
22 file an annual survey or annual report by the due date was the result
23 of circumstances beyond the control of the taxpayer, the department
24 shall be guided by rules adopted by the department for the waiver or
25 cancellation of penalties when the underpayment or untimely payment of
26 any tax was due to circumstances beyond the control of the taxpayer.

27 **Sec. 8.** RCW 82.32.600 and 2007 c 54 s 23 and 2007 c 54 s 22 are
28 each reenacted and amended to read as follows:

29 (1) Persons required to file annual surveys or annual reports under
30 RCW 82.04.4452 or 82.32.5351, 82.32.610, 82.32.630, 82.32.635,
31 82.32.640, section 2 of this act, or 82.74.040 must electronically file
32 with the department all surveys, reports, returns, and any other forms
33 or information the department requires in an electronic format as
34 provided or approved by the department. As used in this section,
35 "returns" has the same meaning as "return" in RCW 82.32.050.

1 (2) Any survey, report, return, or any other form or information
2 required to be filed in an electronic format under subsection (1) of
3 this section is not filed until received by the department in an
4 electronic format.

5 (3) The department may waive the electronic filing requirement in
6 subsection (1) of this section for good cause shown.

7 NEW SECTION. **Sec. 9.** Sections 1 through 3, 5, and 6 of this act
8 constitute a new chapter in Title 82 RCW.

9 NEW SECTION. **Sec. 10.** This act takes effect July 1, 2009.

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