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HOUSE BILL 2812

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State of Washington                      61st Legislature                      2010 Regular Session

By Representatives Ericksen and Orcutt

Read first time 01/14/10. Referred to Committee on Finance.

1            AN ACT Relating to limiting penalties for failing to file an annual  
2 survey or annual report for tax incentives; amending RCW 82.04.4452,  
3 82.32.535, 82.32.5351, 82.32.545, 82.32.560, 82.32.570, 82.32.590,  
4 82.32.610, 82.32.620, 82.32.630, and 82.32.650; amending 2009 c 461 s  
5 9 (uncodified); and providing a contingent effective date.

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

7            **Sec. 1.** RCW 82.04.4452 and 2005 c 514 s 1003 are each amended to  
8 read as follows:

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

13            (2) The credit (~~shall be~~) is calculated as follows:

14            (a) Determine the greater of the amount of qualified research and  
15 development expenditures of a person or eighty percent of amounts  
16 received by a person other than a public educational or research  
17 institution in compensation for the conduct of qualified research and  
18 development;

1 (b) Subtract 0.92 percent of the person's taxable amount from the  
2 amount determined under (a) of this subsection;

3 (c) Multiply the amount determined under (b) of this subsection by  
4 the following:

5 (i) For the period June 10, 2004, through December 31, 2006, the  
6 person's average tax rate for the calendar year for which the credit is  
7 claimed;

8 (ii) For the calendar year ending December 31, 2007, the greater of  
9 the person's average tax rate for that calendar year or 0.75 percent;

10 (iii) For the calendar year ending December 31, 2008, the greater  
11 of the person's average tax rate for that calendar year or 1.0 percent;

12 (iv) For the calendar year ending December 31, 2009, the greater of  
13 the person's average tax rate for that calendar year or 1.25 percent;

14 (v) For the calendar year ending December 31, 2010, and thereafter,  
15 1.50 percent.

16 For purposes of calculating the credit, if a person's reporting  
17 period is less than annual, the person may use an estimated average tax  
18 rate for the calendar year for which the credit is claimed by using the  
19 person's average tax rate for each reporting period. A person who uses  
20 an estimated average tax rate must make an adjustment to the total  
21 credit claimed for the calendar year using the person's actual average  
22 tax rate for the calendar year when the person files its last return  
23 for the calendar year for which the credit is claimed.

24 (3) Any person entitled to the credit provided in subsection (2) of  
25 this section as a result of qualified research and development  
26 conducted under contract may assign all or any portion of the credit to  
27 the person contracting for the performance of the qualified research  
28 and development.

29 (4) The credit, including any credit assigned to a person under  
30 subsection (3) of this section, (~~shall~~) must be claimed against taxes  
31 due for the same calendar year in which the qualified research and  
32 development expenditures are incurred. The credit, including any  
33 credit assigned to a person under subsection (3) of this section, for  
34 each calendar year shall not exceed the lesser of two million dollars  
35 or the amount of tax otherwise due under this chapter for the calendar  
36 year.

37 (5) For any person claiming the credit, including any credit  
38 assigned to a person under subsection (3) of this section, whose

1 research and development spending during the calendar year in which the  
2 credit is claimed fails to exceed 0.92 percent of the person's taxable  
3 amount during the same calendar year or who is otherwise ineligible,  
4 the department (~~shall~~) must declare the taxes against which the  
5 credit was claimed to be immediately due and payable. The department  
6 (~~shall~~) must assess interest, but not penalties, on the taxes against  
7 which the credit was claimed. Interest (~~shall be~~) is assessed at the  
8 rate provided for delinquent excise taxes under chapter 82.32 RCW,  
9 retroactively to the date the credit was claimed, and (~~shall~~) accrues  
10 until the taxes against which the credit was claimed are repaid. Any  
11 credit assigned to a person under subsection (3) of this section that  
12 is disallowed as a result of this section may be claimed by the person  
13 who performed the qualified research and development subject to the  
14 limitations set forth in subsection (4) of this section.

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

19 (b) A person claiming the credit (~~shall~~) must file a complete  
20 annual survey with the department. The survey is due by March 31st  
21 following any year in which a credit is claimed. The department may  
22 extend the due date for timely filing of annual surveys under this  
23 section as provided in RCW 82.32.590. The survey (~~shall~~) must  
24 include the amount of the tax credit claimed, the qualified research  
25 and development expenditures during the calendar year for which the  
26 credit is claimed, the taxable amount during the calendar year for  
27 which the credit is claimed, the number of new products or research  
28 projects by general classification, the number of trademarks, patents,  
29 and copyrights associated with the research and development activities  
30 for which a credit was claimed, and whether the credit has been  
31 assigned under subsection (3) of this section and who assigned the  
32 credit. The survey (~~shall~~) must 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 tax credit program, to be submitted at the  
8 same time as the survey.

9 (d)(i) All information collected under this subsection, except the  
10 amount of the tax credit claimed, is deemed taxpayer information under  
11 RCW 82.32.330. Information on the amount of tax credit claimed is not  
12 subject to the confidentiality provisions of RCW 82.32.330 and may be  
13 disclosed to the public upon request, except as provided in this  
14 subsection (6)(d). If the amount of the tax credit as reported on the  
15 survey is different than the amount actually claimed on the taxpayer's  
16 tax returns or otherwise allowed by the department, the amount actually  
17 claimed or allowed may be disclosed.

18 (ii) Persons for whom the actual amount of the tax credit claimed  
19 on the taxpayer's returns or otherwise allowed by the department is  
20 less than ten thousand dollars during the period covered by the survey  
21 may request the department to treat the tax credit amount as  
22 confidential under RCW 82.32.330.

23 (e) If a person fails to file a complete annual survey required  
24 under this subsection with the department by the due date or any  
25 extension under RCW 82.32.590, the person entitled to the credit  
26 provided in subsection (2) of this section is not eligible to claim or  
27 assign ninety percent of the credit provided in subsection (2) of this  
28 section in the year the person failed to timely file a complete survey.

29 (7) The department (~~shall~~) must use the information from  
30 subsection (6) of this section to prepare summary descriptive  
31 statistics by category. No fewer than three taxpayers (~~shall~~) may be  
32 included in any category. The department shall report these statistics  
33 to the legislature each year by September 1st.

34 (8) The department (~~shall~~) must use the information from  
35 subsection (6) of this section to study the tax credit program  
36 authorized under this section. The department (~~shall~~) must report to  
37 the legislature by December 1, 2009, and December 1, 2013. The reports  
38 (~~shall~~) must measure the effect of the program on job creation, the

1 number of jobs created for Washington residents, company growth, the  
2 introduction of new products, the diversification of the state's  
3 economy, growth in research and development investment, the movement of  
4 firms or the consolidation of firms' operations into the state, and  
5 such other factors as the department selects.

6 (9) For the purpose of this section:

7 (a) "Average tax rate" means a person's total tax liability under  
8 this chapter for the calendar year for which the credit is claimed  
9 divided by the taxpayer's total taxable amount under this chapter for  
10 the calendar year for which the credit is claimed.

11 (b) "Qualified research and development expenditures" means  
12 operating expenses, including wages, compensation of a proprietor or a  
13 partner in a partnership as determined under rules adopted by the  
14 department, benefits, supplies, and computer expenses, directly  
15 incurred in qualified research and development by a person claiming the  
16 credit provided in this section. The term does not include amounts  
17 paid to a person other than a public educational or research  
18 institution to conduct qualified research and development. Nor does  
19 the term include capital costs and overhead, such as expenses for land,  
20 structures, or depreciable property.

21 (c) "Qualified research and development" (~~shall have~~) has the  
22 same meaning as in RCW 82.63.010.

23 (d) "Research and development spending" means qualified research  
24 and development expenditures plus eighty percent of amounts paid to a  
25 person other than a public educational or research institution to  
26 conduct qualified research and development.

27 (e) "Taxable amount" means the taxable amount subject to the tax  
28 imposed in this chapter required to be reported on the person's  
29 combined excise tax returns for the calendar year for which the credit  
30 is claimed, less any taxable amount for which a credit is allowed under  
31 RCW 82.04.440.

32 (10) This section expires January 1, 2015.

33 **Sec. 2.** RCW 82.32.535 and 2003 c 149 s 11 are each amended to read  
34 as follows:

35 (1) The legislature finds that accountability and effectiveness are  
36 important aspects of setting tax policy. In order to make policy

1 choices regarding the best use of limited state resources the  
2 legislature needs information on how a tax incentive is used.

3 (2)(a) A person who reports taxes under RCW 82.04.240(2) or who  
4 claims an exemption or credit under RCW 82.04.426, 82.08.965,  
5 82.12.965, 82.08.970, 82.12.970, 82.04.448, or 84.36.645, (~~shall~~)  
6 must make an annual report to the department detailing employment,  
7 wages, and employer-provided health and retirement benefits per job at  
8 the manufacturing site. The report (~~shall~~) may not include names of  
9 employees. The report (~~shall~~) must also detail employment by the  
10 total number of full-time, part-time, and temporary positions. The  
11 first report filed under this subsection (~~shall~~) must include  
12 employment, wage, and benefit information for the twelve-month period  
13 immediately before first use of a preferential tax rate under RCW  
14 82.04.240(2), or tax exemption or credit under RCW 82.04.426,  
15 82.08.965, 82.12.965, 82.08.970, 82.12.970, 82.04.448, or 84.36.645.  
16 The report is due by March 31st following any year in which a  
17 preferential tax rate under RCW 82.04.240(2) is used, or tax exemption  
18 or credit under RCW 82.04.426, 82.08.965, 82.12.965, 82.08.970,  
19 82.12.970, 82.04.448, or 84.36.645 is taken. This information is not  
20 subject to the confidentiality provisions of RCW 82.32.330 and may be  
21 disclosed to the public upon request.

22 (b) If a person fails to submit an annual report under (a) of this  
23 subsection the department shall declare ten percent of the amount of  
24 taxes exempted or credited for that year to be immediately due and  
25 payable. Excise taxes payable under this subsection are subject to  
26 interest, as provided under this chapter. This information is not  
27 subject to the confidentiality provisions of RCW 82.32.330 and may be  
28 disclosed to the public upon request.

29 (3) By November 1st of the year occurring five years after \*the  
30 effective date of this act, and November 1st of the year occurring  
31 eleven years after the effective date of this act, the fiscal  
32 committees of the house of representatives and the senate, in  
33 consultation with the department, shall report to the legislature on  
34 the effectiveness of chapter 149, Laws of 2003 in regard to keeping  
35 Washington competitive. The report (~~shall~~) must measure the effect  
36 of chapter 149, Laws of 2003 on job retention, net jobs created for  
37 Washington residents, company growth, diversification of the state's  
38 economy, cluster dynamics, and other factors as the committees select.

1 The reports (~~shall~~) must include a discussion of principles to apply  
2 in evaluating whether the legislature should reenact any or all of the  
3 tax preferences in chapter 149, Laws of 2003.

4 **Sec. 3.** RCW 82.32.5351 and 2006 c 84 s 5 are each amended to read  
5 as follows:

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

10 (2)(a) A person who reports taxes under RCW 82.04.2404 or who  
11 claims an exemption or credit under RCW 82.08.9651 and 82.12.9651  
12 (~~shall~~) must make a complete annual report to the department  
13 detailing employment, wages, and employer-provided health and  
14 retirement benefits per job at the manufacturing site. The report  
15 (~~shall~~) may not include names of employees. The report shall also  
16 detail employment by the total number of full-time, part-time, and  
17 temporary positions. The first report filed under this subsection  
18 (~~shall~~) must include employment, wage, and benefit information for  
19 the twelve-month period immediately before first use of a preferential  
20 tax rate under RCW 82.04.2404, or tax exemption or credit under RCW  
21 82.08.9651 and 82.12.9651. The report is due by April 30th following  
22 any year in which a preferential tax rate under RCW 82.04.2404 is used,  
23 or tax exemption or credit under RCW 82.08.9651 and 82.12.9651 is  
24 taken. The department may extend the due date for timely filing annual  
25 reports under this section as provided in RCW 82.32.590. This  
26 information is not subject to the confidentiality provisions of RCW  
27 82.32.330 and may be disclosed to the public upon request.

28 (b) If a person fails to submit a complete annual report under (a)  
29 of this subsection by the due date of the report or any extension under  
30 RCW 82.32.590, the department (~~shall~~) must declare ten percent of the  
31 amount of taxes exempted or credited, or reduced in the case of the  
32 preferential business and occupation tax rate, for that year to be  
33 immediately due and payable. Excise taxes payable under this  
34 subsection are subject to interest but not penalties, as provided under  
35 this chapter. This information is not subject to the confidentiality  
36 provisions of RCW 82.32.330 and may be disclosed to the public upon  
37 request.

1 (3) By November 1st of the year occurring five years after December  
2 1, 2006, and November 1st of the year occurring eleven years after  
3 December 1, 2006, the fiscal committees of the house of representatives  
4 and the senate, in consultation with the department, (~~shall~~) must  
5 report to the legislature on the effectiveness of chapter 84, Laws of  
6 2006 in regard to keeping Washington competitive. The report (~~shall~~)  
7 must measure the effect of chapter 84, Laws of 2006 on job retention,  
8 net jobs created for Washington residents, company growth,  
9 diversification of the state's economy, cluster dynamics, and other  
10 factors as the committees select. The reports (~~shall~~) must include  
11 a discussion of principles to apply in evaluating whether the  
12 legislature should reenact any or all of the tax preferences in chapter  
13 84, Laws of 2006.

14 **Sec. 4.** RCW 82.32.545 and 2008 c 81 s 10 are each amended to read  
15 as follows:

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

20 (2)(a) A person who reports taxes under RCW 82.04.260(11),  
21 82.04.250(3), or 82.04.290(3), or who claims an exemption or credit  
22 under RCW 82.04.4461, 82.08.980, 82.12.980, 82.29A.137, 84.36.655, and  
23 82.04.4463 (~~shall~~) must make an annual report to the department  
24 detailing employment, wages, and employer-provided health and  
25 retirement benefits for employment positions in Washington. However,  
26 persons engaged in manufacturing commercial airplanes or components of  
27 such airplanes may report employment, wage, and benefit information per  
28 job at the manufacturing site. The report (~~shall~~) may not include  
29 names of employees. The report shall also detail employment by the  
30 total number of full-time, part-time, and temporary positions. The  
31 first report filed under this subsection (~~shall~~) must include  
32 employment, wage, and benefit information for the twelve-month period  
33 immediately before first use of a preferential tax rate under RCW  
34 82.04.260(11), 82.04.250(3), or 82.04.290(3), or tax exemption or  
35 credit under RCW 82.04.4461, 82.08.980, 82.12.980, 82.29A.137,  
36 84.36.655, and 82.04.4463, unless a survey covering this twelve-month  
37 period was filed as required by a statute repealed by chapter 81, Laws



1 of 2008. The report is due by March 31st following any year in which  
2 a preferential tax rate under RCW 82.04.260(11), 82.04.250(3), or  
3 82.04.290(3), is used, or tax exemption or credit under RCW 82.04.4461,  
4 82.08.980, 82.12.980, 82.29A.137, 84.36.655, and 82.04.4463 is taken.  
5 This information is not subject to the confidentiality provisions of  
6 RCW 82.32.330 and may be disclosed to the public upon request.

7 (b) If a person fails to submit an annual report under (a) of this  
8 subsection by the due date of the report, the department (~~shall~~) must  
9 declare ten percent of the amount of taxes exempted or credited, or  
10 reduced in the case of the preferential business and occupation tax  
11 rate, for that year to be immediately due and payable. Excise taxes  
12 payable under this subsection are subject to interest but not  
13 penalties, as provided under this chapter. This information is not  
14 subject to the confidentiality provisions of RCW 82.32.330 and may be  
15 disclosed to the public upon request.

16 (3) By November 1, 2010, and by November 1, 2023, the fiscal  
17 committees of the house of representatives and the senate, in  
18 consultation with the department, (~~shall~~) must report to the  
19 legislature on the effectiveness of chapter 1, Laws of 2003 2nd sp.  
20 sess., chapter 177, Laws of 2006, and chapter 81, Laws of 2008 in  
21 regard to keeping Washington competitive. The report (~~shall~~) must  
22 measure the effect of these laws on job retention, net jobs created for  
23 Washington residents, company growth, diversification of the state's  
24 economy, cluster dynamics, and other factors as the committees select.  
25 The reports (~~shall~~) must include a discussion of principles to apply  
26 in evaluating whether the legislature should reenact any or all of the  
27 tax preferences in chapter 1, Laws of 2003 2nd sp. sess., chapter 177,  
28 Laws of 2006, and chapter 81, Laws of 2008.

29 **Sec. 5.** RCW 82.32.560 and 2009 c 434 s 2 are each amended to read  
30 as follows:

31 (1) For the purposes of this section, "electrolytic processing  
32 business tax exemption" means the exemption and preferential tax rate  
33 under RCW 82.16.0421.

34 (2) The legislature finds that accountability and effectiveness are  
35 important aspects of setting tax policy. In order to make policy  
36 choices regarding the best use of limited state resources, the

1 legislature needs information to evaluate whether the stated goals of  
2 legislation were achieved.

3 (3) The goals of the electrolytic processing business tax exemption  
4 are:

5 (a) To retain family wage jobs by enabling electrolytic processing  
6 businesses to maintain production of chlor-alkali and sodium chlorate  
7 at a level that will preserve at least seventy-five percent of the jobs  
8 that were on the payroll effective January 1, 2004; and

9 (b) To allow the electrolytic processing industries to continue  
10 production in this state so that the industries will remain competitive  
11 and be positioned to preserve and create new jobs.

12 (4)(a) A person who receives the benefit of an electrolytic  
13 processing business tax exemption (~~shall~~) must make an annual report  
14 to the department detailing employment, wages, and employer-provided  
15 health and retirement benefits per job at the manufacturing site. The  
16 report is due by March 31st following any year in which a tax exemption  
17 is claimed or used. The report (~~shall~~) may not include names of  
18 employees. The report (~~shall~~) must detail employment by the total  
19 number of full-time, part-time, and temporary positions. The report  
20 (~~shall~~) must indicate the quantity of product produced at the plant  
21 during the time period covered by the report. The first report filed  
22 under this subsection (~~shall~~) must include employment, wage, and  
23 benefit information for the twelve-month period immediately before  
24 first use of a tax exemption. Employment reports shall include data  
25 for actual levels of employment and identification of the number of  
26 jobs affected by any employment reductions that have been publicly  
27 announced at the time of the report. Information in a report under  
28 this section is not subject to the confidentiality provisions of RCW  
29 82.32.330 and may be disclosed to the public upon request.

30 (b) If a person fails to submit an annual report under (a) of this  
31 subsection by the due date of the report, the department (~~shall~~) must  
32 declare ten percent of the amount of taxes exempted for that year to be  
33 immediately due and payable. Public utility taxes payable under this  
34 subsection are subject to interest but not penalties, as provided under  
35 this chapter. This information is not subject to the confidentiality  
36 provisions of RCW 82.32.330 and may be disclosed to the public upon  
37 request.

1 (5) Pursuant to chapter 43.136 RCW, the citizen commission for  
2 performance measurement of tax preferences must schedule the  
3 electrolytic processing business tax exemption under RCW 82.16.0421 for  
4 a tax preference review by the joint legislative audit and review  
5 committee. In addition to any of the factors in RCW 43.136.055(1), the  
6 committee must also study and report on the effect of the incentive on  
7 job retention for Washington residents, and other factors as the  
8 committee selects. The report (~~shall~~) must also discuss expected  
9 trends or changes to electricity prices as they affect the industries  
10 that benefit from the incentives.

11 **Sec. 6.** RCW 82.32.570 and 2006 c 182 s 6 are each amended to read  
12 as follows:

13 (1) For the purposes of this section, "smelter tax incentive" means  
14 the preferential tax rate under RCW 82.04.2909, or an exemption or  
15 credit under RCW 82.04.4481, 82.08.805, 82.12.805, or 82.12.022(5).

16 (2) The legislature finds that accountability and effectiveness are  
17 important aspects of setting tax policy. In order to make policy  
18 choices regarding the best use of limited state resources the  
19 legislature needs information to evaluate whether the stated goals of  
20 legislation were achieved.

21 (3) The goals of the smelter tax incentives are to retain family-  
22 wage jobs in rural areas by:

23 (a) Enabling the aluminum industry to maintain production of  
24 aluminum at a level that will preserve at least 75 percent of the jobs  
25 that were on the payroll effective January 1, 2004, as adjusted for  
26 employment reductions publicly announced before November 30, 2003; and

27 (b) Allowing the aluminum industry to continue producing aluminum  
28 in this state through 2012 so that the industry will be positioned to  
29 preserve and create new jobs when the anticipated reduction of energy  
30 costs occurs.

31 (4)(a) An aluminum smelter receiving the benefit of a smelter tax  
32 incentive (~~shall~~) must make an annual report to the department  
33 detailing employment, wages, and employer-provided health and  
34 retirement benefits per job at the manufacturing site. The report is  
35 due by March 31st following any year in which a tax incentive is  
36 claimed or used. The report (~~shall~~) may not include names of  
37 employees. The report (~~shall~~) must detail employment by the total

1 number of full-time, part-time, and temporary positions. The report  
2 (~~shall~~) must indicate the quantity of aluminum smelted at the plant  
3 during the time period covered by the report. The first report filed  
4 under this subsection (~~shall~~) must include employment, wage, and  
5 benefit information for the twelve-month period immediately before  
6 first use of a tax incentive. Employment reports (~~shall~~) must  
7 include data for actual levels of employment and identification of the  
8 number of jobs affected by any employment reductions that have been  
9 publicly announced at the time of the report. Information in a report  
10 under this section is not subject to the confidentiality provisions of  
11 RCW 82.32.330 and may be disclosed to the public upon request.

12 (b) If a person fails to submit an annual report under (a) of this  
13 subsection by the due date of the report, the department (~~shall~~) must  
14 declare ten percent of the amount of taxes exempted or credited, or  
15 reduced in the case of the preferential business and occupation tax  
16 rate, for that year to be immediately due and payable. Excise taxes  
17 payable under this subsection are subject to interest but not  
18 penalties, as provided under this chapter. This information is not  
19 subject to the confidentiality provisions of RCW 82.32.330 and may be  
20 disclosed to the public upon request.

21 (5) By December 1, 2007, December 1, 2010, and December 1, 2015,  
22 the fiscal committees of the house of representatives and the senate,  
23 in consultation with the department, (~~shall~~) must report to the  
24 legislature on the effectiveness of the smelter tax incentives under  
25 RCW 82.04.4482 and 82.16.0498. The reports (~~shall~~) must measure the  
26 effect of the tax incentives on job retention for Washington residents  
27 and any other factors the committees may select.

28 **Sec. 7.** RCW 82.32.590 and 2009 c 461 s 7 are each amended to read  
29 as follows:

30 (1) If the department finds that the failure of a taxpayer to file  
31 an annual survey or annual report under RCW 82.04.4452, 82.32.5351,  
32 82.32.650, 82.32.630, 82.32.610, 82.82.020, 82.32.632, or 82.74.040 by  
33 the due date was the result of circumstances beyond the control of the  
34 taxpayer, the department (~~shall~~) must extend the time for filing the  
35 survey or report. (~~Such~~) The extension (~~shall~~) must be for a  
36 period of thirty days from the date the department issues its written

1 notification to the taxpayer that it qualifies for an extension under  
2 this section. The department may grant additional extensions as it  
3 deems proper.

4 (2) In making a determination whether the failure of a taxpayer to  
5 file an annual survey or annual report by the due date was the result  
6 of circumstances beyond the control of the taxpayer, the department  
7 (~~shall~~) may be guided by rules adopted by the department for the  
8 waiver or cancellation of penalties when the underpayment or untimely  
9 payment of any tax was due to circumstances beyond the control of the  
10 taxpayer. The department must include the following as circumstances  
11 beyond the control of the taxpayer:

12 (a) Failure to file the annual survey or annual report by the due  
13 date was the result of employee actions unknown to or beyond the  
14 control of the taxpayer; or

15 (b) Failure to file the annual survey or annual report by the due  
16 date was the result of failure to receive notice from the department of  
17 the requirement to return an annual survey or annual report.

18 **Sec. 8.** RCW 82.32.610 and 2006 c 354 s 5 are each amended to read  
19 as follows:

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

24 (2) Each person claiming a tax exemption under RCW 82.04.4266,  
25 82.04.4268, or 82.04.4269 (~~shall~~) must report information to the  
26 department by filing a complete annual survey. The survey is due by  
27 March 31st of the year following any calendar year in which a tax  
28 exemption under RCW 82.04.4266, 82.04.4268, or 82.04.4269 is taken.  
29 The department may extend the due date for timely filing of annual  
30 surveys under this section as provided in RCW 82.32.590. The survey  
31 (~~shall~~) must include the amount of tax exemption taken. The survey  
32 (~~shall~~) must also include the following information for employment  
33 positions in Washington:

- 34 (a) The number of total employment positions;
- 35 (b) Full-time, part-time, and temporary employment positions as a  
36 percent of total employment;

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

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

8 The first survey filed under this subsection (~~shall~~) must also  
9 include information for the twelve-month period immediately before  
10 first use of a tax incentive.

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

14 (4) All information collected under this section, except the amount  
15 of the tax exemption taken, is deemed taxpayer information under RCW  
16 82.32.330. Information on the amount of tax exemption taken is not  
17 subject to the confidentiality provisions of RCW 82.32.330.

18 (5) If a person fails to submit an annual survey under subsection  
19 (2) of this section by the due date of the survey or any extension  
20 under RCW 82.32.590, the department shall declare ten percent of the  
21 amount of taxes exempted for the previous calendar year to be  
22 immediately due and payable. The department (~~shall~~) must assess  
23 interest, but not penalties, on the amounts due under this section.  
24 The amount due (~~shall~~) must be calculated using a rate of 0.138  
25 percent. The interest (~~shall be~~) is assessed at the rate provided  
26 for delinquent taxes under this chapter, retroactively to the date the  
27 exemption was claimed, and (~~shall~~) accrues until the taxes for which  
28 the exemption was claimed are repaid. This information is not subject  
29 to the confidentiality provisions of RCW 82.32.330.

30 (6) The department (~~shall~~) must use the information from this  
31 section to prepare summary descriptive statistics by category. No  
32 fewer than three taxpayers (~~shall~~) may be included in any category.  
33 The department (~~shall~~) must report these statistics to the  
34 legislature each year by September 1st.

35 (7) The department (~~shall~~) must study the tax exemption  
36 authorized in RCW 82.04.4266, 82.04.4268, and 82.04.4269. The  
37 department (~~shall~~) must submit a report to the finance committee of  
38 the house of representatives and the ways and means committee of the

1 senate by December 1, 2011. The report (~~shall~~) must measure the  
2 effect of the exemption on job creation, job retention, company growth,  
3 the movement of firms or the consolidation of firms' operations into  
4 the state, and such other factors as the department selects.

5 **Sec. 9.** RCW 82.32.620 and 2005 c 301 s 4 are each amended to read  
6 as follows:

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

11 (2)(a) A person who reports taxes under RCW 82.04.294 (~~shall~~)  
12 must make an annual report to the department detailing employment,  
13 wages, and employer-provided health and retirement benefits per job at  
14 the manufacturing site. The report (~~shall~~) may not include names of  
15 employees. The report shall also detail employment by the total number  
16 of full-time, part-time, and temporary positions. The first report  
17 filed under this subsection (~~shall~~) must include employment, wage,  
18 and benefit information for the twelve-month period immediately before  
19 first use of a preferential tax rate under RCW 82.04.294. The report  
20 is due by March 31st following any year in which a preferential tax  
21 rate under RCW 82.04.294 is used. This information is not subject to  
22 the confidentiality provisions of RCW 82.32.330.

23 (b) If a person fails to submit an annual report under (a) of this  
24 subsection, the department (~~shall~~) must declare ten percent of the  
25 amount of taxes reduced for the previous calendar year to be  
26 immediately due and payable. Excise taxes payable under this  
27 subsection are subject to interest, but not penalties, at the rate  
28 provided for delinquent taxes, as provided under this chapter. The  
29 department (~~shall~~) must assess interest, retroactively to the date  
30 the preferential tax rate under RCW 82.04.294, was used. The interest  
31 (~~shall be~~) is assessed at the rate provided for delinquent excise  
32 taxes under this chapter, and (~~shall~~) accrues until the taxes for  
33 which the preferential tax rate was used are repaid. This information  
34 is not subject to the confidentiality provisions of RCW 82.32.330.

35 **Sec. 10.** RCW 82.32.630 and 2007 c 48 s 6 are each amended to read  
36 as follows:

1 (1) The legislature finds that accountability and effectiveness are  
2 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 (2)(a) A person who reports taxes under RCW 82.04.260(12) (~~shall~~)  
6 must file a complete annual survey with the department. The survey is  
7 due by March 31st following any year in which a person reports taxes  
8 under RCW 82.04.260(12). The department may extend the due date for  
9 timely filing of annual surveys under this section as provided in RCW  
10 82.32.590. The survey (~~shall~~) must include the amount of tax reduced  
11 under the preferential rate in RCW 82.04.260(12). The survey (~~shall~~)  
12 must also include the following information for employment positions in  
13 Washington:

14 (i) The number of total employment positions;

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

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

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

24 (b) The first survey filed under this subsection (~~shall~~) must  
25 include employment, wage, and benefit information for the twelve-month  
26 period immediately before first use of a preferential tax rate under  
27 RCW 82.04.260(12).

28 (c) As part of the annual survey, the department may request  
29 additional information, including the amount of investment in equipment  
30 used in the activities taxable under the preferential rate in RCW  
31 82.04.260(12), necessary to measure the results of, or determine  
32 eligibility for, the preferential tax rate in RCW 82.04.260(12).

33 (d) All information collected under this section, except the amount  
34 of the tax reduced under the preferential rate in RCW 82.04.260(12), is  
35 deemed taxpayer information under RCW 82.32.330. Information on the  
36 amount of tax reduced is not subject to the confidentiality provisions  
37 of RCW 82.32.330 and may be disclosed to the public upon request,  
38 except as provided in (e) of this subsection. If the amount of the tax



1 reduced as reported on the survey is different than the amount actually  
2 reduced based on the taxpayer's excise tax returns or otherwise allowed  
3 by the department, the amount actually reduced may be disclosed.

4 (e) Persons for whom the actual amount of the tax reduction is less  
5 than ten thousand dollars during the period covered by the survey may  
6 request the department to treat the amount of the tax reduction as  
7 confidential under RCW 82.32.330.

8 (f) Small harvesters as defined in RCW 84.33.035 are not required  
9 to file the annual survey under this section.

10 (3) If a person fails to submit a complete annual survey under  
11 subsection (2) of this section by the due date or any extension under  
12 RCW 82.32.590, the department (~~shall~~) must declare ten percent of the  
13 amount of taxes reduced under the preferential rate in RCW  
14 82.04.260(12) for the period covered by the survey to be immediately  
15 due and payable. The department (~~shall~~) must assess interest, but  
16 not penalties, on the taxes. Interest (~~shall be~~) is assessed at the  
17 rate provided for delinquent excise taxes under this chapter,  
18 retroactively to the date the reduced taxes were due, and (~~shall~~)  
19 accrues until the amount of the reduced taxes is repaid.

20 (4) The department (~~shall~~) must use the information from the  
21 annual survey required under subsection (2) of this section to prepare  
22 summary descriptive statistics by category. The department (~~shall~~)  
23 must report these statistics to the legislature each year by September  
24 1st. The requirement to prepare and report summary descriptive  
25 statistics (~~shall~~) must cease after September 1, 2025.

26 (5) By November 1, 2011, and November 1, 2023, the fiscal  
27 committees of the house of representatives and the senate, in  
28 consultation with the department, (~~shall~~) must report to the  
29 legislature on the effectiveness of the preferential tax rate provided  
30 in RCW 82.04.260(12). The report (~~shall~~) must measure the effect of  
31 the preferential tax rate provided in RCW 82.04.260(12) on job  
32 retention, net jobs created for Washington residents, company growth,  
33 and other factors as the committees select. The report (~~shall~~) must  
34 include a discussion of principles to apply in evaluating whether the  
35 legislature should continue the preferential tax rate provided in RCW  
36 82.04.260(12).

1       **Sec. 11.** RCW 82.32.650 and 2006 c 112 s 6 are each amended to read  
2 as follows:

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

7       (2)(a) Each person claiming a tax credit under RCW 82.04.449  
8 (~~shall~~) must report information to the department by filing a  
9 complete annual survey. The survey is due by March 31st of the year  
10 following any calendar year in which a tax credit under RCW 82.04.449  
11 is taken. The department may extend the due date for timely filing of  
12 annual surveys under this section as provided in RCW 82.32.590. The  
13 survey (~~shall~~) must include the amount of tax credit taken. The  
14 survey (~~shall~~) must also include the following information for  
15 employment positions in Washington:

16       (~~a~~) (i) The number of total employment positions;

17       (~~b~~) (ii) Full-time, part-time, and temporary employment  
18 positions as a percent of total employment;

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

24       (~~d~~) (iv) The number of employment positions that have  
25 employer-provided medical, dental, and retirement benefits, by each of  
26 the wage bands.

27       (b) The first survey filed under this subsection (~~shall~~) must  
28 also include information for the twelve-month period immediately before  
29 first use of a tax incentive.

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

33       (4) All information collected under this section, except the amount  
34 of the tax credit taken, is deemed taxpayer information under RCW  
35 82.32.330. Information on the amount of tax credit taken is not  
36 subject to the confidentiality provisions of RCW 82.32.330.

37       (5) If a person fails to submit an annual survey under subsection  
38 (2) of this section by the due date of the report or any extension

1 under RCW 82.32.590, the department (~~shall~~) must declare ten percent  
2 of the amount of taxes credited for the previous calendar year to be  
3 immediately due and payable. The department (~~shall~~) must assess  
4 interest, but not penalties, on the amounts due under this section.  
5 The interest (~~shall be~~) is assessed at the rate provided for  
6 delinquent taxes under this chapter, retroactively to the date the  
7 credit was claimed, and (~~shall~~) accrues until the taxes for which the  
8 credit was claimed are repaid. This information is not subject to the  
9 confidentiality provisions of RCW 82.32.330.

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

15 (7) The department (~~shall~~) must study the tax credit authorized  
16 in RCW 82.04.449. The department (~~shall~~) must submit a report to the  
17 finance committee of the house of representatives and the ways and  
18 means committee of the senate by December 1, 2011. The report  
19 (~~shall~~) must measure the effect of the credit on job creation, job  
20 retention, company growth, the movement of firms or the consolidation  
21 of firms' operations into the state, and (~~such~~) other factors as the  
22 department selects.

23 **Sec. 12.** 2009 c 461 s 9 (uncodified) is amended to read as  
24 follows:

25 (1)(a) Section 2, chapter . . . , Laws of 2010 (section 2 of this  
26 act), section 3, chapter 461, Laws of 2009, section 7, chapter 300,  
27 Laws of 2006, and section 4, chapter 149, Laws of 2003 are contingent  
28 upon the siting and commercial operation of a significant semiconductor  
29 microchip fabrication facility in the state of Washington.

30 (b) For the purposes of this section:

31 (i) "Commercial operation" means the same as "commencement of  
32 commercial production" as used in RCW 82.08.965.

33 (ii) "Semiconductor microchip fabrication" means "manufacturing  
34 semiconductor microchips" as defined in RCW 82.04.426.

35 (iii) "Significant" means the combined investment of new buildings  
36 and new machinery and equipment in the buildings, at the commencement  
37 of commercial production, will be at least one billion dollars.

1           (2) Chapter 149, Laws of 2003 takes effect the first day of the  
2 month in which a contract for the construction of a significant  
3 semiconductor fabrication facility is signed, as determined by the  
4 director of the department of revenue.

5           (3)(a) The department of revenue must provide notice of the  
6 effective date of this act to affected taxpayers, the legislature, and  
7 others as deemed appropriate by the department.

8           (b) If, after making a determination that a contract has been  
9 signed and chapter 149, Laws of 2003 is effective, the department  
10 discovers that commencement of commercial production did not take place  
11 within three years of the date the contract was signed, the department  
12 must make a determination that chapter 149, Laws of 2003 is no longer  
13 effective, and all taxes that would have been otherwise due are deemed  
14 deferred taxes and are immediately assessed and payable from any person  
15 reporting tax under RCW 82.04.240(2) or claiming an exemption or credit  
16 under section 2 or 5 through 10 , chapter 149, Laws of 2003. The  
17 department is not authorized to make a second determination regarding  
18 the effective date of chapter 149, Laws of 2003.

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