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SENATE BILL 6355

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State of Washington

64th Legislature

2016 Regular Session

By Senators Frockt, Fain, Mullet, Rivers, Hobbs, Carlyle, Lias, and McAuliffe

Read first time 01/18/16. Referred to Committee on Trade & Economic Development.

1 AN ACT Relating to reinstating tax preferences for certain high-  
2 technology research and development; amending RCW 82.63.010,  
3 82.63.020, and 82.63.045; reenacting RCW 82.63.060 and 82.63.065;  
4 adding a new section to chapter 82.04 RCW; adding a new section to  
5 chapter 82.63 RCW; creating a new section; providing an effective  
6 date; and providing expiration dates.

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

8 NEW SECTION. **Sec. 1.** (1) This section is the tax preference  
9 performance statement for the tax credit contained in section 2 of  
10 this act and the tax deferrals contained in sections 3 through 8 of  
11 this act. This performance statement is only intended to be used for  
12 subsequent evaluation of the tax preferences. It is not intended to  
13 create a private right of action by any party or be used to determine  
14 eligibility for preferential tax treatment.

15 (2) The legislature categorizes these tax preferences as intended  
16 to improve industry competitiveness and create or retain jobs, as  
17 indicated in RCW 82.32.808(2) (b) and (c).

18 (3) It is the legislature's specific public policy objective to  
19 improve industry competitiveness and create or retain more jobs. It  
20 is the legislature's intent to provide a business and occupation tax  
21 credit for life science and environmental technology companies

1 performing research and development and a sales and use tax deferral  
2 for certain construction for new and expanding life science and  
3 environmental technology companies conducting research and  
4 development in the fields of life science and environmental  
5 technology in order to reduce the business costs of performing  
6 research and development and to reduce the cost of certain  
7 construction and equipment purchases used for research and  
8 development in specified areas, thereby encouraging investments in  
9 research and development, thereby increasing the number of firms in  
10 the industry performing research and development activities, thereby  
11 increasing the number of jobs performing research and development in  
12 the life science and environmental technology industry.

13 (4) If a review finds that the number of businesses participating  
14 in the credit and deferral programs, and the overall number of jobs  
15 for businesses participating in the credit and deferral programs  
16 performing research and development, have increased compared to the  
17 number at the time of enactment, then the legislature intends to  
18 extend the expiration date of the tax preferences.

19 (5) In order to obtain the data necessary to perform the review  
20 in subsection (4) of this section, the joint legislative audit and  
21 review committee may refer to: (a) Employment data available from the  
22 employment security department; and (b) North American industry  
23 classification system (NAICS) used by the department of revenue.

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

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

30 (2) The credit is calculated as follows:

31 (a) Determine the greater of the amount of qualified research and  
32 development expenditures of a person or eighty percent of amounts  
33 received by a person other than a public educational or research  
34 institution in compensation for the conduct of qualified research and  
35 development;

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

38 (c) Multiply the amount determined under (b) of this subsection  
39 by 1.50 percent.

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

6 (4) The credit, including any credit assigned to a person under  
7 subsection (3) of this section, must be claimed against taxes due for  
8 the same calendar year in which the qualified research and  
9 development expenditures are incurred. The credit, including any  
10 credit assigned to a person under subsection (3) of this section, for  
11 each calendar year may not exceed the lesser of five hundred thousand  
12 dollars or the amount of tax otherwise due under this chapter for the  
13 calendar year.

14 (5) For any person claiming the credit, including any credit  
15 assigned to a person under subsection (3) of this section, whose  
16 research and development spending during the calendar year in which  
17 the credit is claimed fails to exceed 0.92 percent of the person's  
18 taxable amount during the same calendar year or who is otherwise  
19 ineligible, the department must declare the taxes against which the  
20 credit was claimed to be immediately due and payable. The department  
21 must assess interest on the taxes against which the credit was  
22 claimed. However, the department may not assess penalties on taxes  
23 due under this subsection, unless the person who claimed the credit  
24 did not engage in any qualified research and development during the  
25 calendar year for which the tax credit was claimed. Interest must be  
26 assessed at the rate provided for delinquent excise taxes under  
27 chapter 82.32 RCW, retroactively to the date the credit was claimed,  
28 and accrues until the taxes against which the credit was claimed are  
29 repaid. Any credit assigned to a person under subsection (3) of this  
30 section that is disallowed as a result of this subsection may be  
31 claimed by the person who performed the qualified research and  
32 development, subject to the limitations set forth in subsection (4)  
33 of this section.

34 (6) A person claiming the credit provided in this section must  
35 file a complete annual survey with the department under  
36 RCW 82.32.585.

37 (7) The definitions in this subsection apply throughout this  
38 section unless the context clearly requires otherwise.

39 (a) "Qualified research and development" shall have the same  
40 meaning as in RCW 82.63.010.

1 (b) "Qualified research and development expenditures" means  
2 operating expenses, including wages, compensation of a proprietor or  
3 a partner in a partnership as determined under rules adopted by the  
4 department, benefits, supplies, and computer expenses, directly  
5 incurred in qualified research and development by a person claiming  
6 the credit provided in this section. The term does not include  
7 amounts paid to a person other than a public educational or research  
8 institution to conduct qualified research and development. Nor does  
9 the term include capital costs and overhead, such as expenses for  
10 land, structures, or depreciable property.

11 (c) "Research and development spending" means qualified research  
12 and development expenditures plus eighty percent of amounts paid to a  
13 person other than a public educational or research institution to  
14 conduct qualified research and development.

15 (d) "Taxable amount" means the taxable amount subject to the tax  
16 imposed in this chapter required to be reported on the person's  
17 combined excise tax returns for the calendar year for which the  
18 credit is claimed, less any taxable amount for which a credit is  
19 allowed under RCW 82.04.440.

20 (8) This section expires January 1, 2026.

21 **Sec. 3.** RCW 82.63.010 and 2015 3rd sp.s. c 5 s 303 are each  
22 amended to read as follows:

23 The definitions in this section apply throughout this chapter  
24 unless the context clearly requires otherwise.

25 ~~(1) ("Advanced computing" means technologies used in the~~  
26 ~~designing and developing of computing hardware and software,~~  
27 ~~including innovations in designing the full spectrum of hardware from~~  
28 ~~hand-held calculators to super computers, and peripheral equipment.~~

29 ~~(2) "Advanced materials" means materials with engineered~~  
30 ~~properties created through the development of specialized processing~~  
31 ~~and synthesis technology, including ceramics, high value-added~~  
32 ~~metals, electronic materials, composites, polymers, and biomaterials.~~

33 ~~(3))~~ "Applicant" means a person applying for a tax deferral  
34 under this chapter.

35 ~~((4))~~ (2) "Biotechnology" means the application of  
36 technologies, such as recombinant DNA techniques, biochemistry,  
37 molecular and cellular biology, genetics and genetic engineering,  
38 cell fusion techniques, and new bioprocesses, using living organisms,  
39 or parts of organisms, to produce or modify products, to improve

1 plants or animals, to develop microorganisms for specific uses, to  
2 identify targets for small molecule pharmaceutical development, or to  
3 transform biological systems into useful processes and products or to  
4 develop microorganisms for specific uses.

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

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

11 ~~(7))~~ (3) "Eligible investment project" means an investment  
12 project which either initiates a new operation, or expands or  
13 diversifies a current operation by expanding, renovating, or  
14 equipping an existing facility. The lessor or owner of the qualified  
15 building is not eligible for a deferral unless:

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

18 (b)(i) The lessor by written contract agrees to pass the economic  
19 benefit of the deferral to the lessee;

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

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

28 ~~((8))~~ (4) "Environmental technology" means assessment and  
29 prevention of threats or damage to human health or the environment,  
30 environmental cleanup, and the development and integration of  
31 alternative energy sources.

32 ~~((9))~~ (5)(a) "Initiation of construction" means the date that a  
33 building permit is issued under the building code adopted under RCW  
34 19.27.031 for:

35 (i) Construction of the qualified building, if the underlying  
36 ownership of the building vests exclusively with the person receiving  
37 the economic benefit of the deferral;

38 (ii) Construction of the qualified building, if the economic  
39 benefits of the deferral are passed to a lessee as provided in  
40 subsection ~~((7))~~ (3) of this section; or

1 (iii) Tenant improvements for a qualified building, if the  
2 economic benefits of the deferral are passed to a lessee as provided  
3 in subsection ~~((7))~~ (3) of this section.

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

8 (c) If the investment project is a phased project, "initiation of  
9 construction" ~~((shall apply))~~ applies separately to each phase.

10 ~~((10))~~ (6) "Investment project" means an investment in  
11 qualified buildings or qualified machinery and equipment, including  
12 labor and services rendered in the planning, installation, and  
13 construction or improvement of the project.

14 ~~((11) "Multiple qualified buildings" means qualified buildings  
15 leased to the same person when such structures: (a) Are located  
16 within a five mile radius; and (b) the initiation of construction of  
17 each building begins within a sixty month period.~~

18 ~~(12) "Person" has the meaning given in RCW 82.04.030 and includes  
19 state universities as defined in RCW 28B.10.016.~~

20 ~~(13))~~ (7) "Life science" means the application of technologies  
21 in the fields of biotechnology and medical devices.

22 (8) "Meaningful construction" means an active construction site,  
23 where excavation of a building site, laying of a building foundation,  
24 or other tangible signs of construction are taking place and that  
25 clearly shows a progression in the construction process, at the  
26 location designated by the taxpayer in the application for deferral.  
27 Planning, permitting, or land clearing before excavation of the  
28 building site, without more, does not constitute meaningful  
29 construction.

30 (9) "Medical device" means an instrument, apparatus, implement,  
31 machine, contrivance, implant, in vitro reagent, or other similar or  
32 related article, including any component, part, or accessory, that is  
33 designed or developed and:

34 (a) Recognized in the national formulary, or the United States  
35 pharmacopeia, or any supplement to them;

36 (b) Intended for use in the diagnosis of disease, or in the cure,  
37 mitigation, treatment, or prevention of disease or other conditions  
38 in human beings or other animals; or

39 (c) Intended to affect the structure or any function of the body  
40 of human beings or other animals, and which does not achieve any of

1 its primary intended purposes through chemical action within or on  
2 the body of human beings or other animals and which is not dependent  
3 upon being metabolized for the achievement of any of its principal  
4 intended purposes.

5 (10)(a) "Person" has the meaning given in RCW 82.04.030 and  
6 includes state universities as defined in RCW 28B.10.016. Person also  
7 includes any affiliate of a person.

8 (b) For purposes of this subsection (10):

9 (i) "Affiliate" means a person who controls, is controlled by, or  
10 is under common control with another person; and

11 (ii) "Control" means the possession, directly or indirectly, of  
12 more than twenty percent of the power to direct or cause the  
13 direction of the management and policies of a person, whether through  
14 the ownership of voting shares, by contract, or otherwise.

15 (11) "Pilot scale manufacturing" means design, construction, and  
16 testing of preproduction prototypes and models in the fields of  
17 ((~~biotechnology, advanced computing, electronic device technology,~~  
18 ~~advanced materials,~~)) life science and environmental technology other  
19 than for commercial sale. As used in this subsection, "commercial  
20 sale" excludes sales of prototypes or sales for market testing if the  
21 total gross receipts from such sales of the product, service, or  
22 process do not exceed one million dollars.

23 ((~~(14)~~)) (12) "Qualified buildings" means construction of new  
24 structures, and expansion or renovation of existing structures for  
25 the purpose of increasing floor space or production capacity used for  
26 pilot scale manufacturing or qualified research and development,  
27 including plant offices and other facilities that are an essential or  
28 an integral part of a structure used for pilot scale manufacturing or  
29 qualified research and development. Areas used for amusement and  
30 recreational activities, physical fitness activities, parking, the  
31 selling or furnishing of meals or other food and beverages, or  
32 similar commercial and noncommercial activities are not essential or  
33 integral to pilot scale manufacturing or qualified research and  
34 development. If a building or buildings are used partly for pilot  
35 scale manufacturing or qualified research and development, and partly  
36 for other purposes, the applicable tax deferral ((~~shall~~)) must be  
37 determined by apportionment of the costs of construction under rules  
38 adopted by the department. Such rules may include provisions for  
39 determining the amount of the deferral based on apportionment of  
40 costs of construction of an investment project consisting of a

1 building or multiple buildings, where qualified research and  
2 development or pilot scale manufacturing activities are shifted  
3 within a building or from one building to another building.

4 ((+15+)) (13)(a) "Qualified machinery and equipment" means  
5 fixtures, equipment, and support facilities that are an integral and  
6 necessary part of a pilot scale manufacturing or qualified research  
7 and development operation. "Qualified machinery and equipment"  
8 includes: Computers; software; data processing equipment; laboratory  
9 equipment, instrumentation, and other devices used in a process of  
10 experimentation to develop a new or improved pilot model, plant  
11 process, product, formula, invention, or similar property;  
12 manufacturing components such as belts, pulleys, shafts, and moving  
13 parts; molds, tools, and dies; vats, tanks, and fermenters; operating  
14 structures; and all other equipment used to control, monitor, or  
15 operate the machinery. For purposes of this chapter, qualified  
16 machinery and equipment must be either new to the taxing jurisdiction  
17 of the state or new to the certificate holder, except that used  
18 machinery and equipment may be treated as qualified machinery and  
19 equipment if the certificate holder either brings the machinery and  
20 equipment into Washington or makes a retail purchase of the machinery  
21 and equipment in Washington or elsewhere.

22 (b) "Qualified machinery and equipment" does not include any  
23 fixtures, equipment, or support facilities, if the sale to or use by  
24 the recipient is not eligible for an exemption under RCW 82.08.02565  
25 or 82.12.02565 solely because the recipient is an ineligible person  
26 as defined in RCW 82.08.02565.

27 ((+16+)) (14) "Qualified research and development" means research  
28 and development performed within this state in the fields of  
29 (~~advanced computing, advanced materials, biotechnology, electronic~~  
30 ~~device technology,~~) life science and environmental technology.

31 ((+17+)) (15) "Recipient" means a person receiving a tax deferral  
32 under this chapter.

33 ((+18+)) (16) "Research and development" means activities  
34 performed to discover technological information, and technical and  
35 nonroutine activities concerned with translating technological  
36 information into new or improved products, processes, techniques,  
37 formulas, inventions, or software. The term includes exploration of a  
38 new use for an existing drug, device, or biological product if the  
39 new use requires separate licensing by the federal food and drug  
40 administration under chapter 21, C.F.R., as amended. The term does



1 not include adaptation or duplication of existing products where the  
2 products are not substantially improved by application of the  
3 technology, nor does the term include surveys and studies, social  
4 science and humanities research, market research or testing, quality  
5 control, sale promotion and service, computer software developed for  
6 internal use, and research in areas such as improved style, taste,  
7 and seasonal design.

8 **Sec. 4.** RCW 82.63.020 and 2010 c 114 s 140 are each amended to  
9 read as follows:

10 (1)~~(a)~~ Application for deferral of taxes under this chapter must  
11 be made to the department before initiation of construction of, or  
12 acquisition of equipment or machinery for, the investment project.  
13 ~~((In the case of an investment project involving multiple qualified  
14 buildings, applications must be made for, and before the initiation  
15 of construction of, each qualified building.))~~ The application must  
16 be made ~~((to the department))~~ in a form and manner prescribed by the  
17 department. The application must contain information regarding the  
18 location of the investment project, the applicant's average  
19 employment in the state for the prior year, estimated or actual new  
20 employment related to the project, estimated or actual wages of  
21 employees related to the project, estimated or actual costs, time  
22 schedules for completion and operation, and other information  
23 required by the department. The department must rule on the  
24 application within sixty days.

25 ~~((+2))~~ (b) Nothing in this subsection (1)(b) may be construed to  
26 allow a tax deferral for an investment project for which an  
27 application for deferral under this chapter was denied by the  
28 department before January 1, 2015.

29 (2) The department will approve applications that indicate  
30 meaningful construction of an eligible investment project will occur  
31 within five years of the date of application. Applications indicating  
32 that meaningful construction of an eligible investment project will  
33 not occur within two years of the date of the application may be  
34 required to include additional documentation about the investment  
35 project, such as project milestones and other information the  
36 department may require. Applications that do not indicate meaningful  
37 construction will occur within five years of the date of application  
38 must be denied.

1       (3)(a) Recipients may amend an approved deferral application to  
2 update the completion date, estimated expenses, the square footage of  
3 the investment project, or other information about the investment  
4 project. Amendments must be made in a form and manner prescribed by  
5 the department.

6       (b) Requests to amend a previously approved application for an  
7 investment project for which meaningful construction has not  
8 commenced within five years of the date of the initial application  
9 must be denied.

10       (4) Each recipient of a deferral of taxes under this chapter must  
11 file a complete annual survey with the department under RCW  
12 82.32.585. If the economic benefits of the deferral are passed to a  
13 lessee as provided in RCW 82.63.010(~~(7)~~) (3), the lessee must file  
14 a complete annual survey, and the applicant is not required to file  
15 the annual survey.

16       ~~((3) The department must use the information reported on the~~  
17 ~~annual survey required by this section to study the tax deferral~~  
18 ~~program authorized under this chapter. The department must report to~~  
19 ~~the legislature by December 1, 2009, and December 1, 2013. The~~  
20 ~~reports must measure the effect of the program on job creation, the~~  
21 ~~number of jobs created for Washington residents, company growth, the~~  
22 ~~introduction of new products, the diversification of the state's~~  
23 ~~economy, growth in research and development investment, the movement~~  
24 ~~of firms or the consolidation of firms' operations into the state,~~  
25 ~~and such other factors as the department selects.~~

26       ~~(4)) (5) A recipient who must repay deferred taxes under RCW~~  
27 ~~82.63.045 ((because the department has found that an investment~~  
28 ~~project is used for purposes other than research and development~~  
29 ~~performed within this state in the fields of advanced computing,~~  
30 ~~advanced materials, biotechnology, electronic device technology, and~~  
31 ~~environmental technology)) is no longer required to file annual~~  
32 ~~surveys under RCW 82.32.585 ((beginning on the date an investment~~  
33 ~~project is used for nonqualifying purposes)).~~

34       NEW SECTION. Sec. 5. A new section is added to chapter 82.63  
35 RCW to read as follows:

36       (1) Except as provided in subsection (2) of this section, the  
37 department must issue a sales and use tax deferral certificate for  
38 state and local sales and use taxes due under chapters 82.08, 82.12,  
39 82.14, and 81.104 RCW on each eligible investment project. The amount

1 of tax imposed under chapters 82.08 and 82.12 RCW eligible for  
2 deferral under this chapter is limited to one million dollars per  
3 eligible investment project per person. Only one eligible investment  
4 project per person qualifies for a deferral under this chapter during  
5 a calendar year.

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

12 (3) This section expires January 1, 2026.

13 **Sec. 6.** RCW 82.63.045 and 2010 c 114 s 141 are each amended to  
14 read as follows:

15 (1) Except as provided in subsection (2) of this section and RCW  
16 82.32.585, taxes deferred under this chapter need not be repaid.

17 (2)(a) If, on the basis of the survey under RCW 82.32.585 or  
18 other information, the department finds that an investment project is  
19 used for purposes other than qualified research and development or  
20 pilot scale manufacturing at any time during the calendar year in  
21 which the investment project is certified by the department as having  
22 been operationally completed, or at any time during any of the seven  
23 succeeding calendar years, a portion of deferred taxes is immediately  
24 due according to the following schedule:

	Year in which use occurs	% of deferred taxes due
25		
26	1	100%
27	2	87.5%
28	3	75%
29	4	62.5%
30	5	50%
31	6	37.5%
32	7	25%
33	8	12.5%

34 (b) If the department finds that meaningful construction of an  
35 investment project did not begin within five years of the date of the  
36 application or that an investment project is not operationally

1 complete within ten years of the date of the initial application for  
2 deferral, the full amount of deferred taxes is immediately due.

3 (c) If the economic benefits of the deferral are passed to a  
4 lessee as provided in RCW 82.63.010(~~(+7)~~) (3), the lessee is  
5 responsible for payment to the extent the lessee has received the  
6 economic benefit.

7 ~~(3)((a) Notwithstanding subsection (2) of this section, in the~~  
8 ~~case of an investment project consisting of multiple qualified~~  
9 ~~buildings, the lessee is solely liable for payment of any deferred~~  
10 ~~tax determined by the department to be due and payable under this~~  
11 ~~section beginning on the date the department certifies that the~~  
12 ~~project is operationally complete.~~

13 ~~(b))~~ This subsection does not relieve the lessors of its  
14 obligation to the lessee under RCW 82.63.010(~~(+7)~~) (3) to pass the  
15 economic benefit of the deferral to the lessee.

16 (4) The department must assess interest at the rate provided for  
17 delinquent taxes, but not penalties, retroactively to the date of  
18 deferral. The debt for deferred taxes will not be extinguished by  
19 insolvency or other failure of the recipient. Transfer of ownership  
20 does not terminate the deferral. The deferral is transferred, subject  
21 to the successor meeting the eligibility requirements of this  
22 chapter, for the remaining periods of the deferral.

23 ~~((5) Notwithstanding subsection (2) of this section or RCW~~  
24 ~~82.32.585, deferred taxes on the following need not be repaid:~~

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

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

30 **Sec. 7.** RCW 82.63.060 and 1994 sp.s. c 5 s 8 are each reenacted  
31 to read as follows:

32 Chapter 82.32 RCW applies to the administration of this chapter.

33 **Sec. 8.** RCW 82.63.065 and 2009 c 268 s 6 are each reenacted to  
34 read as follows:

35 The department may adopt rules as may be necessary to administer  
36 this chapter.

1        NEW SECTION.    **Sec. 9.**    This act takes effect January 1, 2017.

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