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SENATE BILL 5665

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State of Washington

64th Legislature

2015 Regular Session

By Senators Hill, Liias, Fain, Brown, and Benton; by request of Office of Financial Management

Read first time 01/28/15. Referred to Committee on Ways & Means.

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

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 6 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 high-technology companies performing research and

1 development and a sales and use tax deferral for certain construction  
2 for new and expanding high-technology companies conducting research  
3 and development in the fields of advanced computing, advanced  
4 materials, biotechnology, electronic device technology, or  
5 environmental technology, in order to reduce the business costs of  
6 performing 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 high-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 (3) 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 industrial  
23 code system (NAICS) from 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, but not penalties, on the taxes against which  
22 the credit was claimed. Interest must be assessed at the rate  
23 provided for delinquent excise taxes under chapter 82.32 RCW,  
24 retroactively to the date the credit was claimed, and accrues until  
25 the taxes against which the credit was claimed are repaid. Any credit  
26 assigned to a person under subsection (3) of this section that is  
27 disallowed as a result of this section may be claimed by the person  
28 who performed the qualified research and development subject to the  
29 limitations set forth in subsection (4) of this section.

30 (6) A person claiming the credit provided in this section must  
31 file a complete annual survey with the department under RCW  
32 82.32.585.

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

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

37 (b) "Qualified research and development expenditures" means  
38 operating expenses, including wages, compensation of a proprietor or  
39 a partner in a partnership as determined under rules adopted by the  
40 department, benefits, supplies, and computer expenses, directly

1 incurred in qualified research and development by a person claiming  
2 the credit provided in this section. The term does not include  
3 amounts paid to a person other than a public educational or research  
4 institution to conduct qualified research and development. Nor does  
5 the term include capital costs and overhead, such as expenses for  
6 land, structures, or depreciable property.

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

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

16 (8) This section expires January 1, 2025.

17 **Sec. 3.** RCW 82.63.010 and 2009 c 268 s 2 are each reenacted and  
18 amended to read as follows:

19 (~~Unless the context clearly requires otherwise,~~) The  
20 definitions in this section apply throughout this chapter unless the  
21 context clearly requires otherwise.

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

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

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

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

1 systems into useful processes and products or to develop  
2 microorganisms for specific uses.

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

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

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

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

16 ~~(b)(i))~~) The lessor by written contract agrees to pass the  
17 economic benefit of the deferral to the lessee;

18 ~~((+ii))~~) (b) The lessee that receives the economic benefit of the  
19 deferral agrees in writing with the department to complete the annual  
20 survey required under RCW 82.63.020(~~((+2))~~) (4); and

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

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

29 (9)(a) "Initiation of construction" means the date that a  
30 building permit is issued under the building code adopted under RCW  
31 19.27.031 for:

32 (i) Construction of the qualified building, if the underlying  
33 ownership of the building vests exclusively with the person receiving  
34 the economic benefit of the deferral;

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

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

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

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

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

11 (11) "Meaningful construction" means an active construction site,  
12 where excavation of a building site, laying of a building foundation,  
13 or other tangible signs of construction are taking place and that  
14 clearly shows a progression in the construction process, at the  
15 location designated by the taxpayer in the application for deferral.  
16 Planning, permitting, or land clearing before excavation of the  
17 building site, without more, does not constitute meaningful  
18 construction.

19 (12) "Multiple qualified buildings" means qualified buildings  
20 leased to the same person when such structures: (a) Are located  
21 within a five-mile radius; and (b) the initiation of construction of  
22 each building begins within a sixty-month period.

23 (~~(12)~~) (13) "Person" has the meaning given in RCW 82.04.030 and  
24 includes state universities as defined in RCW 28B.10.016. Person also  
25 includes any affiliate of a person. For purposes of this subsection  
26 (13), (a) "affiliate" means a person who controls, is controlled by,  
27 or is under common control with another person, and (b) "control"  
28 means the possession, directly or indirectly, of more than twenty  
29 percent of the power to direct or cause the direction of the  
30 management and policies of a person, whether through the ownership of  
31 voting shares, by contract, or otherwise.

32 (~~(13)~~) (14) "Pilot scale manufacturing" means design,  
33 construction, and testing of preproduction prototypes and models in  
34 the fields of biotechnology, advanced computing, electronic device  
35 technology, advanced materials, and environmental technology other  
36 than for commercial sale. As used in this subsection, "commercial  
37 sale" excludes sales of prototypes or sales for market testing if the  
38 total gross receipts from such sales of the product, service, or  
39 process do not exceed one million dollars.

1        ~~((14))~~ (15) "Qualified buildings" means construction of new  
2 structures, and expansion or renovation of existing structures for  
3 the purpose of increasing floor space or production capacity used for  
4 pilot scale manufacturing or qualified research and development,  
5 including plant offices and other facilities that are an essential or  
6 an integral part of a structure used for pilot scale manufacturing or  
7 qualified research and development. Areas used for amusement and  
8 recreational activities, physical fitness activities, parking, the  
9 selling or furnishing of meals or other food and beverages, or  
10 similar commercial and noncommercial activities are not essential or  
11 integral to pilot scale manufacturing or qualified research and  
12 development. If a building or buildings are used partly for pilot  
13 scale manufacturing or qualified research and development, and partly  
14 for other purposes, the applicable tax deferral shall be determined  
15 by apportionment of the costs of construction under rules adopted by  
16 the department. Such rules may include provisions for determining the  
17 amount of the deferral based on apportionment of costs of  
18 construction of an investment project consisting of a building or  
19 multiple buildings, where qualified research and development or pilot  
20 scale manufacturing activities are shifted within a building or from  
21 one building to another building.

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

1 (16) "Qualified research and development" means research and  
2 development performed within this state in the fields of advanced  
3 computing, advanced materials, biotechnology, electronic device  
4 technology, and environmental technology.

5 (17) "Recipient" means a person receiving a tax deferral under  
6 this chapter.

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

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

24 (1)(a) Application for deferral of taxes under this chapter must  
25 be made to the department before initiation of construction of(~~(, or~~  
26 ~~acquisition of equipment or machinery for~~)) the investment project.  
27 In the case of an investment project involving multiple qualified  
28 buildings, applications must be made for, and before the initiation  
29 of construction of, each qualified building. The application must be  
30 made (~~to the department~~) in a form and manner prescribed by the  
31 department. The application must contain information regarding the  
32 location of the investment project, the applicant's average  
33 employment in the state for the prior year, estimated or actual new  
34 employment related to the project, estimated or actual wages of  
35 employees related to the project, estimated or actual costs, time  
36 schedules for completion and operation, and other information  
37 required by the department. The department must rule on the  
38 application within sixty days.



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

5       (2) The department will approve applications that indicate  
6 meaningful construction of an eligible investment project will occur  
7 within five years of the date of application. Applications indicating  
8 that meaningful construction of an eligible investment project will  
9 not occur within two years of the date of the application may be  
10 required to include additional documentation about the investment  
11 project, such as project milestones and other information the  
12 department may require. Applications that do not indicate meaningful  
13 construction will occur within five years of the date of application  
14 must be denied.

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

20       (b) Requests to amend a previously approved application for an  
21 investment project for which meaningful construction has not  
22 commenced within five years of the date of the initial application  
23 must be denied.

24       (4) Each recipient of a deferral of taxes under this chapter must  
25 file a complete annual survey with the department under RCW  
26 82.32.585. If the economic benefits of the deferral are passed to a  
27 lessee as provided in RCW 82.63.010(7), the lessee must file a  
28 complete annual survey, and the applicant is not required to file the  
29 annual survey.

30       ~~((3))~~ (5) The department must use the information reported on  
31 the annual survey required by this section to study the tax deferral  
32 program authorized under this chapter. The department must report to  
33 the legislature by December 1, 2009, and December 1, 2013. The  
34 reports must measure the effect of the program on job creation, the  
35 number of jobs created for Washington residents, company growth, the  
36 introduction of new products, the diversification of the state's  
37 economy, growth in research and development investment, the movement  
38 of firms or the consolidation of firms' operations into the state,  
39 and such other factors as the department selects.

1       (~~(4)~~) (6) A recipient who must repay deferred taxes under RCW  
2 82.63.045 (~~(because the department has found that an investment~~  
3 ~~project is used for purposes other than research and development~~  
4 ~~performed within this state in the fields of advanced computing,~~  
5 ~~advanced materials, biotechnology, electronic device technology, and~~  
6 ~~environmental technology)~~) is no longer required to file annual  
7 surveys under RCW 82.32.585 (~~(beginning on the date an investment~~  
8 ~~project is used for nonqualifying purposes)~~).

9       NEW SECTION.   **Sec. 5.** A new section is added to chapter 82.63  
10 RCW to read as follows:

11       (1) Except as provided in subsection (2) of this section, the  
12 department must issue a sales and use tax deferral certificate for  
13 state and local sales and use taxes due under chapters 82.08, 82.12,  
14 82.14, and 81.104 RCW on each eligible investment project. The amount  
15 of tax imposed under chapters 82.08 and 82.12 RCW eligible for  
16 deferral under this chapter is limited to one million dollars per  
17 eligible investment project per person. Only one eligible investment  
18 project per person qualifies for a deferral under this chapter during  
19 a calendar year.

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

26       (3) This section expires January 1, 2025.

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

29       (1) Except as provided in subsection (2) of this section and RCW  
30 82.32.585, taxes deferred under this chapter need not be repaid.

31       (2)(a) If, on the basis of the survey under RCW 82.32.585 or  
32 other information, the department finds that an investment project is  
33 used for purposes other than qualified research and development or  
34 pilot scale manufacturing at any time during the calendar year in  
35 which the investment project is certified by the department as having  
36 been operationally completed, or at any time during any of the seven  
37 succeeding calendar years, a portion of deferred taxes is immediately  
38 due according to the following schedule:

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

10        (b) If the department finds that meaningful construction of an  
11 investment project did not begin within five years of the date of the  
12 application or that an investment project is not operationally  
13 complete within ten years of the date of the initial application for  
14 deferral, the full amount of deferred taxes is immediately due.

15        (c) If the economic benefits of the deferral are passed to a  
16 lessee as provided in RCW 82.63.010(7), the lessee is responsible for  
17 payment to the extent the lessee has received the economic benefit.

18        (3)(a) Notwithstanding subsection (2) of this section, in the  
19 case of an investment project consisting of multiple qualified  
20 buildings, the lessee is solely liable for payment of any deferred  
21 tax determined by the department to be due and payable under this  
22 section beginning on the date the department certifies that the  
23 project is operationally complete.

24        (b) This subsection does not relieve the lessors of its  
25 obligation to the lessee under RCW 82.63.010(7) to pass the economic  
26 benefit of the deferral to the lessee.

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

34        (5) Notwithstanding subsection (2) of this section or RCW  
35 82.32.585, deferred taxes under a deferral certificate issued before  
36 January 1, 2015, on the following need not be repaid:

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

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

6 NEW SECTION. **Sec. 7.** This act is necessary for the immediate  
7 preservation of the public peace, health, or safety, or support of  
8 the state government and its existing public institutions, and takes  
9 effect July 1, 2015.

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