
SENATE BILL 6646

State of Washington 61st Legislature 2010 Regular Session

By Senators Kilmer, Zarelli, Kastama, Marr, Hobbs, Tom, McAuliffe, Shin, and Haugen; by request of Governor Gregoire

Read first time 01/20/10. Referred to Committee on Economic Development, Trade & Innovation.

1 AN ACT Relating to business and occupation tax credits for job
2 creation; amending RCW 82.62.010, 82.62.045, 82.62.050, and 82.32.650;
3 adding a new section to chapter 82.04 RCW; creating a new section; and
4 providing an effective date.

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

6 **Sec. 1.** RCW 82.62.010 and 2007 c 485 s 1 are each amended to read
7 as follows:

8 Unless the context clearly requires otherwise, the definitions in
9 this section apply throughout this chapter.

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

12 (2) "Department" means the department of revenue.

13 (3) "Eligible area" means an area as defined in RCW 82.60.020.

14 (4)(a) "Eligible business project" means manufacturing or research
15 and development activities which are conducted by an applicant in an
16 eligible area at a specific facility, provided the applicant's average
17 qualified employment positions at the specific facility will be at
18 least (~~fifteen~~) ten percent greater in the four consecutive full
19 calendar quarters after the calendar quarter during which the first

1 qualified employment position is filled than the applicant's average
2 qualified employment positions at the same facility in the four
3 consecutive full calendar quarters immediately preceding the calendar
4 quarter during which the first qualified employment position is filled.

5 (b) "Eligible business project" does not include any portion of a
6 business project undertaken by a light and power business as defined in
7 RCW 82.16.010(5) or that portion of a business project creating
8 qualified full-time employment positions outside an eligible area.

9 (5) "First qualified employment position" means the first qualified
10 employment position filled for which a credit under this chapter is
11 sought.

12 (6) "Manufacturing" means the same as defined in RCW 82.04.120.
13 "Manufacturing" also includes computer programming, the production of
14 computer software, and other computer-related services, and the
15 activities performed by research and development laboratories and
16 commercial testing laboratories.

17 (7) "Person" has the meaning given in RCW 82.04.030.

18 (8)(a)(i) "Qualified employment position" means a permanent full-
19 time employee employed in the eligible business project during four
20 consecutive full calendar quarters.

21 (ii) For seasonal employers, "qualified employment position" also
22 includes the equivalent of a full-time employee in work hours for four
23 consecutive full calendar quarters.

24 (b) For purposes of this subsection, "full time" means a normal
25 work week of at least thirty-five hours.

26 (c) Once a permanent, full-time employee has been employed, a
27 position does not cease to be a qualified employment position solely
28 due to periods in which the position goes vacant, as long as:

29 (i) The cumulative period of any vacancies in that position is not
30 more than one hundred twenty days in the four-quarter period; and

31 (ii) During a vacancy, the employer is training or actively
32 recruiting a replacement permanent, full-time employee for the
33 position.

34 (9) "Recipient" means a person receiving tax credits under this
35 chapter.

36 (10) "Research and development" means the development, refinement,
37 testing, marketing, and commercialization of a product, service, or
38 process before commercial sales have begun. As used in this

1 subsection, "commercial sales" excludes sales of prototypes or sales
2 for market testing if the total gross receipts from such sales of the
3 product, service, or process do not exceed one million dollars.

4 (11) "Seasonal employee" means an employee of a seasonal employer
5 who works on a seasonal basis. For the purposes of this subsection and
6 subsection (12) of this section, "seasonal basis" means a continuous
7 employment period of less than twelve consecutive months.

8 (12) "Seasonal employer" means a person who regularly hires more
9 than fifty percent of its employees to work on a seasonal basis.

10 **Sec. 2.** RCW 82.62.045 and 2007 c 485 s 4 are each amended to read
11 as follows:

12 (1) For the purposes of this section "eligible area" also means a
13 designated community empowerment zone approved under RCW 43.31C.020.

14 (2) An eligible business project located within an eligible area as
15 defined in this section qualifies for a credit under this chapter for
16 those employees who at the time of hire are residents of the community
17 empowerment zone in which the project is located, if the (~~fifteen~~
18 ~~percent—threshold~~) employment increase required under RCW
19 82.62.010(4)(a) is met. As used in this subsection, "resident" means
20 the person makes his or her home in the community empowerment zone. A
21 mailing address alone is insufficient to establish that a person is a
22 resident for the purposes of this section.

23 (3) All other provisions and eligibility requirements of this
24 chapter apply to applicants eligible under this section.

25 **Sec. 3.** RCW 82.62.050 and 2007 c 485 s 5 are each amended to read
26 as follows:

27 (1) Each recipient (~~shall~~) must submit a report to the department
28 by the last day of the month immediately following the end of the four
29 consecutive full calendar quarter period for which a credit under this
30 chapter is earned. The report (~~shall~~) must contain information, as
31 required by the department, from which the department may determine
32 whether the recipient is meeting the requirements of this chapter. If
33 the recipient fails to submit a report or submits an inadequate report,
34 the department may declare the amount of taxes for which a credit has
35 been used to be immediately assessed and payable. The recipient must

1 keep records, such as payroll records showing the date of hire and
2 employment security reports, to verify eligibility under this section.

3 (2) If, on the basis of a report under this section or other
4 information, the department finds that a (~~business project~~) recipient
5 is not eligible for tax credit under this chapter for reasons other
6 than failure to (~~create the required number of~~) increase the
7 recipient's average qualified employment positions as required in RCW
8 82.62.010(4)(a), the amount of taxes for which a credit has been used
9 for the project (~~shall be~~) are immediately due.

10 (3) If, on the basis of a report under this section or other
11 information, the department finds that a (~~business project~~) recipient
12 has failed to (~~create the specified number of~~) increase the
13 recipient's average qualified employment positions as required in RCW
14 82.62.010(4)(a), the department (~~shall~~) must assess interest, but not
15 penalties, on the credited taxes for which a credit has been used for
16 the project. The interest (~~shall be~~) is assessed at the rate
17 provided for delinquent excise taxes, (~~shall be~~) is assessed
18 retroactively to the date of the tax credit, and (~~shall~~) accrues
19 until the taxes for which a credit has been used are repaid.

20 NEW SECTION. Sec. 4. A new section is added to chapter 82.04 RCW
21 to read as follows:

22 (1) Subject to the requirements and limits in this section,
23 eligible small businesses are entitled to a credit against the tax due
24 under this chapter. The credit equals two thousand dollars for each
25 new qualified employment position that is maintained continually for a
26 period of at least twelve consecutive months.

27 (2)(a) Except as otherwise provided in this subsection, a credit
28 under this section may be claimed against taxes due under this chapter
29 for the reporting period in which the new qualified employment position
30 is initially filled, even if the person claiming the credit will not be
31 able to determine whether it is an eligible small business until after
32 the new qualified employment position is filled.

33 (b) Credit earned for new qualified employment positions initially
34 filled between July 1, 2010, and December 31, 2010, may not be claimed
35 before January 1, 2011.

36 (c) Except as otherwise provided in this section, the credit may be
37 carried over to subsequent reporting periods until used.

1 (3)(a) New qualified employment positions filled by existing
2 employees are eligible for the credit under this section only if the
3 position vacated by the existing employee is filled by a new hire.

4 (b) Once a new qualified employment position has been filled, a
5 position does not cease to be a new qualified employment position
6 solely due to periods in which the position goes vacant, as long as:

7 (i) The cumulative period of any vacancies in that position is not
8 more than one hundred twenty days in the twelve consecutive month
9 period for which the position must be filled; and

10 (ii) During any vacancy, the employer is training or actively
11 recruiting a replacement permanent, full-time employee for the
12 position.

13 (4)(a) The credit may be claimed and applied only on tax returns
14 due between January 1st and June 30th of each year.

15 (b) The credit may only be claimed on a return filed electronically
16 with the department using the department's online tax filing service,
17 unless the department grants a waiver for good cause shown. For
18 purposes of this subsection, "good cause" has the same meaning as in
19 RCW 82.32.080(8) (a) (i), (ii), (iii), and (vi), and (b).

20 (c) No refunds may be granted for credits under this section.

21 (d) New qualified employment positions are not eligible for a
22 credit under this section if any other statute provides a credit to the
23 employer for the filling of such employment positions.

24 (5) No application is necessary for the credit. The eligible
25 business must keep records necessary for the department to verify
26 eligibility under this section.

27 (6) Credits are available on a first-in-time basis. The department
28 must disallow any credit, or portion of a credit, that would cause the
29 total cumulative amount of credit claimed under this section by all
30 eligible small businesses during any fiscal year to exceed ten million
31 dollars. If this limitation is reached, the department must provide
32 written notice to any person who has claimed tax credits in excess of
33 the ten million dollar limitation in this subsection. The notice must
34 indicate the amount of tax due and provide that the tax be paid within
35 thirty days from the date of such notice. The department may not
36 assess any penalties or interest on the amount due in the notice.
37 However, if the full amount of tax due is not paid by the due date, the
38 department must assess penalties and interest as provided in chapter

1 82.32 RCW on the amount of unpaid tax. Interest must be assessed
2 retroactively to the date the tax credit was claimed and accrues until
3 the amount of tax due is paid.

4 (7)(a) A person must repay credit claimed under this section (i)
5 for any new qualified employment position that was not maintained
6 continually for a period of at least twelve consecutive months, except
7 as provided in subsection (3)(b) of this section, or (ii) if, with
8 respect to the credit, the person was not an eligible small business.

9 (b)(i) Except as provided in (b)(ii) of this subsection (7),
10 interest as provided in chapter 82.32 RCW applies to taxes due under
11 this subsection from the date the tax credit was claimed until the
12 amount of tax due is paid.

13 (ii) Interest will not apply to taxes due under this subsection if
14 (A) the taxpayer reports the amount due under this subsection on an
15 amended return or as otherwise instructed by the department, (B) the
16 amount due is paid in full by the taxpayer without having been assessed
17 for such amount by the department, and (C) at the time the taxpayer
18 reported the tax due under this subsection to the department, the
19 taxpayer was not under audit by the department or had not previously
20 been notified of an audit by the department, unless the amount due
21 under this subsection is not within the scope of the ongoing or pending
22 audit.

23 (c) Except as otherwise provided in this subsection (7)(c), no
24 penalties apply to taxes due under this subsection.

25 (i) If the full amount of tax due under this subsection is not paid
26 by the due date of any notice issued by the department, or any
27 extension of the due date granted by the department, penalties as
28 provided in chapter 82.32 RCW apply to the amount of tax due.

29 (ii) If a penalty was imposed under RCW 82.32.090(1) on the
30 original return for which the credit being repaid under this subsection
31 was claimed, the amount due under this subsection is subject to the
32 same penalty as was imposed on the original return.

33 (8) The employment security department must provide to the
34 department such information needed by the department to verify
35 eligibility under this section.

36 (9) A person claiming credit under this section must report to the
37 department as provided in RCW 82.32.650.

1 (10) No credit under this section may be claimed after June 30,
2 2013.

3 (11) For purposes of this section, the following definitions apply:

4 (a) "Eligible small business" means:

5 (i) A person whose gross income of the business from business
6 conducted everywhere in the world is five million dollars or less for
7 the calendar year immediately preceding the calendar year in which the
8 new qualified employment position was initially filled, if the person
9 engaged in business during the entire calendar year immediately
10 preceding the calendar year in which the new qualified employment
11 position was initially filled; or

12 (ii) A person whose gross income of the business from business
13 conducted everywhere in the world is five million dollars or less for
14 the twelve-month period beginning with the month immediately following
15 the date that the new qualified employment position was initially
16 filled, if the person did not engage in business during the entire
17 calendar year immediately preceding the calendar year in which the new
18 qualified employment position was initially filled.

19 (b) "New qualified employment position" means a permanent, full-
20 time employment position that did not previously exist, which is
21 initially filled on or after July 1, 2010, but before January 1, 2013.
22 For purposes of this subsection (11)(b), "full time" means a normal
23 work week of at least thirty-five hours.

24 **Sec. 5.** RCW 82.32.650 and 2006 c 112 s 6 are each amended to read
25 as follows:

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

30 (2) Each person claiming a tax credit under RCW 82.04.449 (~~shall~~)
31 or section 4 of this act must report information to the department by
32 filing a complete annual survey. The survey is due by March 31st of
33 the year following any calendar year in which a tax credit under RCW
34 82.04.449 or section 4 of this act is taken. The department may extend
35 the due date for timely filing of annual surveys under this section as
36 provided in RCW 82.32.590. The survey (~~shall~~) must include the

1 amount of tax credit taken. The survey (~~shall~~) must also include the
2 following information for employment positions in Washington:

3 (a) The number of total employment positions;

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

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

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

13 The first survey filed under this subsection (~~shall~~) must also
14 include information for the twelve-month period immediately before
15 first use of a (~~tax incentive~~) credit under RCW 82.04.449 or section
16 4 of this act.

17 (3) The department may request additional information necessary to
18 measure the results of the credit programs, to be submitted at the same
19 time as the survey.

20 (4) All information collected under this section, except the amount
21 of the tax credit taken, is deemed taxpayer information under RCW
22 82.32.330. Information on the amount of tax credit taken is not
23 subject to the confidentiality provisions of RCW 82.32.330.

24 (5) If a person fails to submit an annual survey under subsection
25 (2) of this section by the due date of the report or any extension
26 under RCW 82.32.590, the department (~~shall~~) must declare the amount
27 of taxes credited for the previous calendar year to be immediately due
28 and payable. The department (~~shall~~) must assess interest, but not
29 penalties, on the amounts due under this section. The interest (~~shall~~
30 ~~be~~) is assessed at the rate provided for delinquent taxes under this
31 chapter, retroactively to the date the credit was claimed, and
32 (~~shall~~) accrues until the taxes for which the credit was claimed are
33 repaid. This information is not subject to the confidentiality
34 provisions of RCW 82.32.330.

35 (6) The department (~~shall~~) must use the information from this
36 section to prepare summary descriptive statistics by category. No
37 fewer than three taxpayers (~~shall~~) may be included in any category.

1 The department (~~shall~~) must report these statistics to the
2 legislature each year by September 1st.

3 (7) The department (~~shall~~) must study the tax credit authorized
4 in RCW 82.04.449. The department (~~shall~~) must submit a report to the
5 finance committee of the house of representatives and the ways and
6 means committee of the senate by December 1, 2011. The report
7 (~~shall~~) must measure the effect of the credit on job creation, job
8 retention, company growth, the movement of firms or the consolidation
9 of firms' operations into the state, and such other factors as the
10 department selects. No study by the department is required for the tax
11 credit authorized in section 4 of this act.

12 NEW SECTION. Sec. 6. Sections 1 through 3 of this act apply with
13 respect to applications for credit under chapter 82.62 RCW received by
14 the department of revenue on or after July 1, 2010.

15 NEW SECTION. Sec. 7. This act takes effect July 1, 2010.

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