

Chapter 82.63 RCW
TAX DEFERRALS FOR HIGH-TECHNOLOGY BUSINESSES

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RCW 82.63.005 Findings—Intent to create a contract. The legislature finds that high-wage, high-skilled jobs are vital to the economic health of the state's citizens, and that targeted tax incentives will encourage the formation of high-wage, high-skilled jobs. The legislature also finds that tax incentives should be subject to the same rigorous requirements for efficiency and accountability as are other expenditure programs, and that tax incentives should therefore be focused to provide the greatest possible return on the state's investment.

The legislature also finds that high-technology businesses are a vital and growing source of high-wage, high-skilled jobs in this state, and that the high-technology sector is a key component of the state's effort to encourage economic diversification. However, the legislature finds that many high-technology businesses incur significant costs associated with research and development and pilot scale manufacturing many years before a marketable product can be produced, and that current state tax policy discourages the growth of these companies by taxing them long before they become profitable.

The legislature further finds that stimulating growth of high-technology businesses early in their development cycle, when they are turning ideas into marketable products, will build upon the state's established high-technology base, creating additional research and development jobs and subsequent manufacturing facilities.

For these reasons, the legislature hereby establishes a program of business and occupation tax credits for qualified research and development expenditures. The legislature also hereby establishes a tax deferral program for high-technology research and development and pilot scale manufacturing facilities. The legislature declares that these limited programs serve the vital public purposes of incenting expenditures in research and development, supporting, and sustaining as they develop new technologies and products, and creating quality employment opportunities in this state. The legislature further declares its intent to create a contract within the meaning of Article I, section 23 of the state Constitution as to those businesses that make capital investments in consideration of the tax deferral program established in this chapter. [2004 c 2 s 1; 1994 sp.s. c 5 s 1.]

RCW 82.63.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Advanced computing" means technologies used in the designing and developing of computing hardware and software, including innovations in designing the full spectrum of hardware from handheld calculators to super computers, and peripheral equipment.

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

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

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

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

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

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

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

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

(ii) The lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual tax performance report required under RCW 82.63.020(2); and

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

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

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

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

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

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

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

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

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

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

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

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

(14) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity used for pilot scale manufacturing or qualified research and development, including plant offices and other facilities that are an essential or an integral part of a structure used for pilot scale manufacturing or qualified research and development. If a building or buildings are used partly for pilot scale manufacturing or qualified research and development, and partly for other purposes, the applicable tax deferral is determined by apportionment of the costs of construction under rules adopted by the department. Such rules may include provisions for determining the amount of the deferral based on apportionment of costs of construction of an investment project consisting of a building or multiple buildings, where qualified research and development or pilot scale manufacturing activities are shifted within a building or from one building to another building.

(15)(a) "Qualified machinery and equipment" means fixtures, equipment, and support facilities that are an integral and necessary part of a pilot scale manufacturing or qualified research and development operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment, instrumentation, and other devices used in a process of experimentation to develop a new or improved pilot model, plant process, product, formula, invention, or similar property; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; vats, tanks, and fermenters; operating structures; and all other equipment used to control, monitor, or operate the machinery. For purposes of this chapter, qualified machinery and equipment must be either new to the taxing jurisdiction of the state or new to the certificate holder, except that used

machinery and equipment may be treated as qualified machinery and equipment if the certificate holder either brings the machinery and equipment into Washington or makes a retail purchase of the machinery and equipment in Washington or elsewhere.

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

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

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

(18) "Research and development" means activities performed to discover technological information, and technical and nonroutine activities concerned with translating technological information into new or improved products, processes, techniques, formulas, inventions, or software. The term includes exploration of a new use for an existing drug, device, or biological product if the new use requires separate licensing by the federal food and drug administration under chapter 21, C.F.R., as amended. The term does not include adaptation or duplication of existing products where the products are not substantially improved by application of the technology, nor does the term include surveys and studies, social science and humanities research, market research or testing, quality control, sale promotion and service, computer software developed for internal use, and research in areas such as improved style, taste, and seasonal design. [2020 c 139 s 43; 2015 3rd sp.s. c 5 s 303. Prior: 2009 c 268 s 2; 2004 c 2 s 3; 1995 1st sp.s. c 3 s 12; 1994 sp.s. c 5 s 3.]

Construction—2017 c 323: See note following RCW 82.08.052.

Application—2015 3rd sp.s. c 5 s 303: "Section 303 of this act does not apply with respect to deferral certificates issued under chapter 82.63 RCW before January 1, 2015." [2015 3rd sp.s. c 5 s 304.]

Effective dates—2015 3rd sp.s. c 5: See note following RCW 82.08.052.

Conflicting laws—2015 3rd sp.s. c 5: See note following RCW 82.08.02565.

Policy—Application—2009 c 268: See notes following RCW 82.63.090.

Findings—Effective date—1995 1st sp.s. c 3: See notes following RCW 82.08.02565.

RCW 82.63.020 Application—Annual tax performance report—Reports. (1) Application for deferral of taxes under this chapter must be made before initiation of construction of, or acquisition of equipment or machinery for the investment project. In the case of an investment project involving multiple qualified buildings,

applications must be made for, and before the initiation of construction of, each qualified building. The application must be made to the department in a form and manner prescribed by the department. The application must contain information regarding the location of the investment project, the applicant's average employment in the state for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, time schedules for completion and operation, and other information required by the department. The department must rule on the application within sixty days.

(2) Each recipient of a deferral of taxes under this chapter must file a complete annual tax performance report with the department under RCW 82.32.534. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.63.010(7), the lessee must file a complete annual tax performance report, and the applicant is not required to file the annual tax performance report.

(3) A recipient who must repay deferred taxes under RCW 82.63.045 because the department has found that an investment project is used for purposes other than research and development performed within this state in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, and environmental technology is no longer required to file annual tax performance reports under RCW 82.32.534 beginning on the date an investment project is used for nonqualifying purposes. [2017 c 135 s 37; 2010 c 114 s 140; 2009 c 268 s 3; 2004 c 2 s 4; 1994 sp.s. c 5 s 4.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.534.

Policy—Application—2009 c 268: See notes following RCW 82.63.090.

RCW 82.63.045 Repayment not required—Repayment schedule for unqualified investment project—Exceptions. (1) Except as provided in subsection (2) of this section and RCW 82.32.534, taxes deferred under this chapter need not be repaid.

(2)(a) If, on the basis of the tax performance report under RCW 82.32.534 or other information, the department finds that an investment project is used for purposes other than qualified research and development or pilot scale manufacturing at any time during the calendar year in which the investment project is certified by the department as having been operationally completed, or at any time during any of the seven succeeding calendar years, a portion of deferred taxes is immediately due according to the following schedule:

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

7	25%
8	12.5%

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

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

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

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

(5) Notwithstanding subsection (2) of this section or RCW 82.32.534, deferred taxes on the following need not be repaid:

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

(b) Machinery and equipment which at the time of first use would have qualified for exemption under RCW 82.12.02565. [2017 c 135 s 38; 2010 c 114 s 141; 2009 c 268 s 5; 2004 c 2 s 6; 2000 c 106 s 10; 1995 1st sp.s. c 3 s 13.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.534.

Policy—Application—2009 c 268: See notes following RCW 82.63.090.

Effective date—2000 c 106: See note following RCW 82.32.330.

Findings—Effective date—1995 1st sp.s. c 3: See notes following RCW 82.08.02565.

RCW 82.63.060 Administration. Chapter 82.32 RCW applies to the administration of this chapter. [1994 sp.s. c 5 s 8.]

RCW 82.63.065 Administration—Department may adopt rules. The department may adopt rules as may be necessary to administer this chapter. [2009 c 268 s 6.]

Policy—Application—2009 c 268: See notes following RCW 82.63.090.

RCW 82.63.070 Public disclosure. Applications approved by the department under this chapter are not confidential and are subject to disclosure. [2010 c 106 s 108; 2004 c 2 s 7; 1994 sp.s. c 5 s 9.]

Effective date—2010 c 106: See note following RCW 35.102.145.

RCW 82.63.090 Multiple qualified buildings. (1) In the case of multiple qualified buildings, if the lessee who will conduct the qualified research and development or pilot scale manufacturing within the multiple qualified buildings desires to treat the multiple qualified buildings as a single investment project, the lessee must make a preliminary election to treat the multiple qualified buildings as a single investment project. The lessee must make the preliminary election before a temporary certificate of occupancy, or its equivalent, is issued for any of the multiple qualified buildings.

(2) (a) A final election whether or not to treat the multiple qualified buildings as a single investment project must be made by the date that is the earlier of:

(i) Sixty months following the date that the lessee made the preliminary election under subsection (1) of this section; or

(ii) Thirty days after the issuance of the temporary certificate of occupancy, or its equivalent, for the last qualified building to be completed and that will be included in the final election.

(b) All buildings included in a final election to treat multiple qualified buildings as a single investment project must have been issued a temporary certificate of occupancy or its equivalent.

(c) Before the final election is made, the lessee may remove one or more of the qualified buildings included in the preliminary election from the investment project.

(d) When a qualified building for which a preliminary election has been made under subsection (1) of this section is, for any reason, not included in a final election to treat the multiple qualified buildings as a single investment project, the qualified building will be treated as an individual investment project under the original application for that building.

(e) If a final election is made not to treat the multiple qualified buildings as a single investment project or a final election is not made by the deadline in (a) of this subsection, the qualified buildings will each be treated as individual investment projects under the original applications for those buildings.

(3) When a final election is made to treat multiple qualified buildings as a single investment project, the department must review the investment project to determine whether to certify the investment project as being operationally complete. If the department certifies that an investment project is operationally complete, the certification is deemed to have occurred in the calendar year in which the final election is made.

(4) The department may not certify as operationally complete an investment project consisting of multiple qualifying buildings unless the lessee furnishes the department with a bond, letter of credit, or other security acceptable to the department in an amount equal to the repayment obligation as determined by the department. The department may decrease the secured amount each year as the repayment obligation decreases under the provisions of RCW 82.63.045. If the lessee does not furnish the department with a bond, letter of credit, or other

security acceptable to the department equal to the amount of deferred tax, the qualified buildings will each be treated as individual investment projects under the original applications for those buildings.

(5) The preliminary election and final election must be made in a form and manner prescribed by the department. [2009 c 268 s 4.]

Policy—2009 c 268: "The legislature has long recognized that high-wage, high-skilled jobs are vital to the economic health of the state and its citizens. The legislature also recognizes that targeted tax incentives encourage the formation of high-wage, high-skilled jobs. For that and related reasons, the legislature established the tax deferral program in chapter 82.63 RCW for high-technology research and development and pilot scale manufacturing. In doing so, the legislature ensured that the deferral applies to the construction or renovation of one or more buildings by an owner who engages in qualifying research and development or pilot scale manufacturing. The legislature also ensured that the deferral applies to owners who lease newly constructed or renovated buildings to one or more lessees that conduct qualifying research and development or pilot scale manufacturing, if the owner passes on the economic benefit of the deferral to the lessee or lessees. However, current language could be interpreted to deny the deferral to multiple lessors of separate buildings leasing to a single qualifying lessee under the umbrella of one project and a single deferral application, unless the lessors form a joint venture or similar entity. Because the legislature did not intend to deny the deferral for such projects, the legislature by this act, amends chapter 82.63 RCW to clarify that the deferral applies to an otherwise qualifying project involving a single deferral application covering multiple lessors leasing separate buildings to a single qualifying lessee." [2009 c 268 s 1.]

Application—2009 c 268: "This act applies to deferral applications received by the department of revenue after June 30, 2007." [2009 c 268 s 7.]

RCW 82.63.900 Effective date—1994 sp.s. c 5. This act shall take effect January 1, 1995. [1994 sp.s. c 5 s 12.]