



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Department of Revenue

Permanent Rule Only

Effective date of rule:

Permanent Rules

31 days after filing.

Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

Yes No If Yes, explain:

Purpose: The Department is amending WAC 458-20-240 (Rule 240) and adopting a new WAC 458-240A (Rule 240A) to explain the eligibility requirements and application procedure for the manufacturer's new employee tax. Rule 240 is amended to recognize HB 3014 (chapter 16, Laws of 2010, 1st Special Session). This legislation amended the definition of a "manufacturer" and "research and development" for purposes of the new employee tax credits. Rule 240 is also being amended to recognize ESSHB 1597 (chapter 26, Laws of 2010), which clarified that applications that are not approved by the Department cannot be disclosed. Rule 240 will now apply only to those applications filed after June 30, 2010.

The Department incorporated the information contained in the previous Rule 240 into a new Rule 240A. Rule 240A retains the information necessary for those applications that were filed prior to July 1, 2010. The information incorporated into Rule 240A is necessary until the statute of limitation period for assessments and non claim period for refunds has run.

Citation of existing rules affected by this order:

Amended: **WAC 258-20-240** (Rule 240) *Manufacturer's new employee tax credits - Applications filed after June 30, 2010*

Statutory authority for adoption: RCW 82.32.300 and 82.01.060(2)

Other authority : RCW 82.08.0293 and 82.12.0293

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as **WSR 10-17-096** on **August 17, 2010**.

Describe any changes other than editing from proposed to adopted version:

- Rule 240, subsection (9) – To recognize the current language of RCW 82.62.050(1):
This report must be filed with the department by ~~((January 31st of the year following the calendar year for which credit was approved by the department))~~ the last day of the month immediately following the end of the four consecutive full calendar quarter period for which a credit is earned.
- Rule 240A, subsection (6)(b) – To recognize provisions of ESSHB 1597 (chapter 26, Laws of 2010).
~~((Information contained in))~~ Applications, reports, or any other information received by the department in connection with this tax credit program ((is)), except applications not approved by the department are not confidential and ((is)) are subject to disclosure.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting: **An analysis was not prepared.**

Date adopted:

November 9, 2010

NAME (TYPE OR PRINT)

Alan R. Lynn

SIGNATURE

TITLE

Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: November 09, 2010

TIME: 2:20 PM

WSR 10-23-035

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	<u>1</u>	Amended	<u>1</u>	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	<u>1</u>	Amended	<u>1</u>	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

This rule was adopted on November 9, 2010 and becomes effective December 10, 2010. It may be used to determine tax liability on and after the effective date, until the codified version is available from the code reviser's office.

AMENDATORY SECTION (Amending WSR 05-01-079, filed 12/10/04, effective 1/10/05)

WAC 458-20-240 Manufacturer's new employee tax credits--Applications filed after June 30, 2010. (1) Introduction. Chapter 82.62 RCW provides business and occupation (B&O) tax credits to certain persons engaged in manufacturing and research and development activities. These credits are intended to stimulate the economy by creating employment opportunities in specific rural counties and community empowerment zones of this state. The credits are as much as \$4,000 per qualified employment position. This rule explains the eligibility requirements and application procedures for this program. It is important to note that an application for the tax credits must be submitted to the department of revenue before the actual hiring of qualified employment positions. See subsection (6) of this rule for additional information regarding this application requirement. This tax credit program is a companion to the tax deferral program under chapter 82.60 RCW; however, the eligible geographic areas in the two programs are not identical.

The department of employment security and the department of (~~community, trade, and economic development~~) commerce administer programs for rural counties and job training. These agencies should be contacted directly for information concerning those programs.

(2) **Who is eligible for these tax credits?** Subject to certain qualifications, an applicant (person applying for a tax credit under chapter 82.62 RCW) who is engaged in an eligible business project is entitled to the tax credits provided by chapter 82.62 RCW.

(a) **What is an eligible business project?** An "eligible business project" means manufacturing, commercial testing, or research and development activities conducted by an applicant in an eligible area at a specific facility, subject to the restriction noted in the following paragraph. An "eligible business project" does not include any portion of a business project undertaken by a light and power business or any portion of a business project creating employment positions outside an eligible area.

To be considered an "eligible business project," the applicant's number of average full-time qualified employment positions at the specific facility must be at least fifteen

percent greater in the calendar year for which credit is being sought than the number of positions at the same facility in the immediately preceding calendar year. Subsection (4) of this rule explains how to determine whether this threshold is satisfied.

(b) **What is an eligible area?** As noted above, the facility must be located in an eligible area to be considered an eligible business project. An "eligible area" is:

(i) A rural county, which is a county with fewer than one hundred persons per square mile or (~~(, on and after April 1, 2004)~~), a county smaller than two hundred twenty-five square miles, as determined annually by the office of financial management and published by the department of revenue effective for the period of July 1st through June 30th (see RCW (~~82.62.010(3)~~) 82.14.370); or

(ii) A community empowerment zone (CEZ). CEZ means an area meeting the requirements of RCW 43.31C.020 and officially designated by the director of the department of (~~community, trade, and economic development~~) commerce.

(iii) **How to determine whether an area is an eligible area.** Rural county designation information can be obtained from the office of financial management internet web site at www.ofm.wa.gov/popden/rural.htm. The department has instituted a geographic information system (GIS) to assist taxpayers in determining taxing jurisdiction boundaries, local tax rates, and a mapping and address lookup system to determine whether a specific address is within a CEZ. The system is available on the department's internet web site at www.dor.wa.gov.

(c) **What are manufacturing and research and development activities?** Manufacturing or research and development activities must be conducted at the facility to be considered an eligible business project.

(i) **Manufacturing.** "Manufacturing" has the meaning given in RCW 82.04.120. In addition, for the purposes of chapter 82.62 RCW "manufacturing" also includes (~~computer programming, the production of computer software, other computer-related services, and~~) the activities performed by research and development laboratories and commercial testing laboratories.

(ii) **Research and development.** "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun, but only when such activities are intended to ultimately result in the production of a new, different, or useful substance or article of tangible personal property for sale. "Commercial sales" does not include 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.

~~((iii) Computer-related services. "Computer-related~~

~~services," for the purposes of chapter 82.62 RCW's definition of "manufacturing," are services that are connected with or interact directly in the manufacture of computer hardware or software or the programming of the manufactured hardware. "Computer related services" includes the manufacture of hardware such as chips, keyboards, monitors, and any other hardware, and the components of these items. "Computer related services" also includes creating operating systems and software that will be copied and sold as canned software. The activities performed by the manufacturer to test, correct, revise, or upgrade software or hardware before they are approved for sale to the consumer are considered computer related services. "Computer related services" does not include services such as information services.))~~

(3) **What are the hiring requirements?** The average full-time qualified employment positions at the specific facility during the calendar year for which credits are claimed must be at least fifteen percent greater than the average full-time qualified employment positions at the same facility for the preceding calendar year.

(a) **What is a qualified employment position?** A "qualified employment position" means a position filled by a permanent full-time employee employed at an eligible business project for twelve consecutive months. Once a full-time position is established and filled it will continue to qualify for twelve consecutive periods so long as any person fills the position. The position is considered "filled" even during periods of vacancy, provided these periods do not exceed thirty consecutive days and the employer is training or actively recruiting a replacement employee.

(b) **What is a "permanent full-time employee"?** A "permanent full-time employee" is a position that is filled by an employee who satisfies any one of the following minimum thresholds:

(i) Works thirty-five hours per week for fifty-two consecutive weeks;

(ii) Works four hundred fifty-five hours, excluding overtime, each quarter for four consecutive quarters; or

(iii) Works one thousand eight hundred twenty hours, excluding overtime, during a period of twelve consecutive months.

(c) **"Permanent full-time employee" - Seasonal operations.** For applicants that regularly operate on a seasonal basis only and that employ more than fifty percent of their employees for less than a full twelve month continuous period, a "permanent full-time employee" is a permanent full-time employee as described above or an equivalent in full time equivalent (FTE) work hours.

(4) **How to determine if the fifteen percent employment increase requirement is met.** Qualification for tax credits

depends upon whether the applicant hires enough new positions to meet the fifteen percent average increase requirement.

(a) **Determining the fifteen percent increase.** To determine the projected number of permanent full-time qualified employment positions necessary to satisfy the fifteen percent employment increase requirement:

(i) Determine the average number of permanent full-time qualified employment positions that existed at the facility during the calendar year prior to the year in which tax credit is being claimed.

(ii) Multiply the average number of full-time positions from subsection (i) by .15 or fifteen percent. The resulting number equals the number of positions that must be filled to meet the fifteen percent increase. Numbers are rounded up to the nearest whole number at point five (.5).

(b) **When does hiring have to occur?** All hiring increases must occur during the calendar year for which credits are being sought for purposes of meeting the fifteen percent threshold test. Positions hired in a calendar year prior to making an application are not eligible for a credit but the positions are used to calculate whether the fifteen percent threshold has been met.

(c) **The department will assist applicants to determine their hiring requirements.** Accompanying the tax credit application is a worksheet to assist the applicant in determining if the fifteen percent qualified employment threshold is satisfied. Based upon the information provided in the application, the department will advise applicants of their minimum number of hiring needs for which credits are being sought.

(d) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(i) ABC Company anticipates increasing employment during the 2001 calendar year at a manufacturing facility by an average of 15 full-time qualified employment positions for a total of 113 positions. The average number of full-time qualified employment positions during the 2000 calendar year was 98. To qualify for the tax credit program the minimum average number of full-time qualified employment positions required for the 2001 calendar year is $98 \times .15 = 14.7$ (rounding up to 15 positions). Therefore, ABC Company's plan to hire 15 full-time qualified employment positions for 2001 meets the 15% employment increase requirement.

(ii) ABC anticipates increasing employment at this same manufacturing facility by an average of 15 additional full-time qualified employment positions during the 2002 calendar year to

a total of 128 positions. To qualify for the tax credit program the minimum average number of full-time qualified employment positions required for the 2002 calendar year is 17 (113 x .15 = 16.95, rounding up to 17). Therefore, ABC Company's plan to hire 15 full-time qualified employment positions for 2002 does not meet the 15% employment increase requirement.

(5) **Restriction against displacing existing jobs within Washington.** The law provides that no recipient may use tax credits approved under this program to decertify a union or to displace existing jobs in any community of the state. Thus, the average expected increase of employment positions at the specific facility for which application is made must reflect a gross increase in the applicant's employment of persons at all locations in this state. Transfers of personnel from existing positions outside of an eligible area to new positions at the specific facility within an eligible area will not be allowed for purposes of approving tax credits. Also, layoffs or terminations of employment by the recipient at other locations in Washington but outside an eligible area for the purpose of hiring new positions within an eligible area will result in the withdrawal of any credits taken or approved.

(6) **Application procedures.** A taxpayer must file an application with and obtain approval from the department of revenue to receive tax credits under this program. A separate application must be submitted for each calendar year for which credits are claimed. RCW 82.62.020 requires that application for the tax credits be made prior to the actual hiring of qualified employment positions. Applications failing to satisfy this statutory requirement will be disapproved.

(a) **How to obtain and file applications.** Application forms will be provided by the department upon request either by calling 360-902-7175 or via the department's internet web site at www.dor.wa.gov under forms. The completed application may be sent by fax to 360-586-0527 or mailed to the following address:

State of Washington
Department of Revenue
Taxpayer Account Administration
P.O. Box 47476
Olympia, WA 98504-7476

The U.S. Post Office postmark or fax date will be used as the date of application.

(b) **Confidentiality.** (~~Information contained in~~) Applications, reports, or any other information received by the department in connection with this tax credit program (~~is~~), except applications not approved by the department are not confidential and (~~is~~) are subject to disclosure. All other taxpayer information is subject to the confidentiality provisions in RCW 82.32.330.

(c) **Department to act upon application within sixty days.**

The department will determine if the applicant qualifies for tax credits on the basis of the information provided in the application and will approve or disapprove the application within sixty days. If approved, the department will issue a credit approval notice containing the dollar amount of tax credits available for use and the procedures for taking the credit. If disapproved, the department will notify the applicant in writing of the specific reasons for disapproval. The applicant may seek administrative review of the department's disapproval of an application by filing a petition for review with the department. The petition must be filed within thirty days from the date of notice of the disallowance pursuant to the provisions of WAC 458-20-100, Appeals, small claims and settlements.

(d) **No adjustment of credit after approval.** After an application is approved and tax credits are granted, no upward adjustment or amendments of the application will be made for that calendar year.

(7) **How much is the tax credit?** The amount of tax credit is based on the number of and the wages and benefits paid to qualified employment positions created.

(a) **How much tax credit may I claim for each qualified employment position?** The amount of tax credit that may be claimed for each position created is as follows:

(i) Two thousand dollars for each qualified employment position that pays forty thousand dollars or less in wages and benefits annually and is employed in an eligible business project; and

(ii) Four thousand dollars for each qualified employment position that pays more than forty thousand dollars in wages and benefits annually and is employed in an eligible business project.

(b) **What qualifies as wages and benefits?** For the purposes of chapter 82.62 RCW, "wages" means compensation paid to an individual for personal services, whether denominated as wages, salary, commission, bonus, or otherwise. "Benefits" means compensation not paid as wages and includes Social Security, retirement, health care, life insurance, industrial insurance, unemployment compensation, vacation, holiday, sick leave, military leave, and jury duty. "Benefits" does not include any amount reported as wages.

(8) **How to claim approved credits.** The recipients must take the tax credits approved under this program on their regular combined excise tax return for their regular assigned tax reporting period. These tax credits may not exceed the B&O tax liability. The amount of credit taken should be entered into the "credit" section of the return form, with a copy of the credit approval notice issued to the recipient attached to the return.

(a) **When can credits be used?** The credits may be used as soon as hiring of the projected qualified employment positions begins or may accrue until they are most beneficial for the recipient's use. For example, if a recipient has been approved for \$12,000 of tax credits based upon projections to hire five new positions, that recipient may use \$2,000 or \$4,000 of tax credit at the time it hires each new employee, depending on the wage/benefit level of the position filled.

(b) **No refunds for unused credits.** No tax refunds will be made for any tax credits which exceed tax liability during the life of this program. If tax credits derived from qualified hiring exceed the recipients' business and occupation tax liability in any one calendar year under this program, they may be carried forward to the next calendar year(s), until used.

(9) **~~((Annual))~~ Report to be filed by recipient.** A recipient of tax credits under this program must complete and submit ~~((an annual))~~ a report of employment activities to substantiate that he or she has complied with the hiring and retention requirements for approved credits. RCW 82.62.050. This report must be filed with the department by ~~((January 31st of the year following the calendar year for which credit was approved by the department))~~ the last day of the month immediately following the end of the four consecutive full calendar quarter period for which a credit is earned. Based upon this report the department will verify that the recipient is entitled to the tax credits approved by the department when the application was reviewed. The completed ~~((annual))~~ report may be sent by fax to 360-586-0527 or mailed to the following address:

State of Washington
Department of Revenue
Taxpayer Account Administration
P.O. Box 47476
Olympia, WA 98504-7476

The U.S. Post Office postmark or fax date will be used as the date of filing.

(a) **Verification of ~~((annual))~~ report.** The department will use the same report the recipient provides to the department of employment security, which is known as the quarterly employment security report, to verify the recipient's eligibility for tax credits. The recipient must maintain copies of the quarterly employment report for the year prior to the year for which credits are claimed, the year credits are claimed, and for the four quarters following the hiring of persons to fill the qualified employment positions. (The recipient does not have to forward copies of the quarterly employment report to the department each quarter.) The department may use other wage information provided to the department by the department of employment security. The taxpayer must provide additional

information to the department, as the department finds necessary to calculate and verify wage eligibility.

(b) **Failure to file report.** The law provides that if any recipient fails to submit a report or submits an inadequate report, the department may declare the amount of taxes for which credit has been used to be immediately due and payable. An inadequate report is one which fails to provide information necessary to confirm that the requisite number of employment positions has been created and maintained for twelve consecutive months.

(10) **What if the required number of positions is not created?** The law provides that if the department finds that a recipient is not eligible for tax credits for any reason, other than failure to create the required number of qualified employment positions, the amount of taxes for which any credit has been used will be immediately due. No interest or penalty will be assessed in such cases. However, if the department finds that a recipient has failed to create the specified number of qualified employment positions, the department will assess interest, but not penalties, on the taxes against which the credit has been used. This interest on the assessment is mandatory and will be assessed at the statutory rate under RCW 82.32.050, retroactively to the date the tax credit was used. The interest will accrue until the taxes for which the credit was used are fully repaid. RCW 82.32.050. The interest rates under RCW 82.32.050 can be obtained from the department's internet web site at www.dor.wa.gov or by calling the department's information center at 1-800-647-7706.

(11) **Program thresholds.** The department cannot approve any credits that will cause the total credits approved to exceed seven million five hundred thousand dollars in any fiscal year. RCW 82.62.030. A "fiscal year" is the twelve-month period of July 1st through June 30th. If all or part of an application for credit is disallowed due to cap limitations, the disallowed portion will be carried over for approval the next fiscal year. However, the applicant's carryover into the next fiscal year is only permitted if the total credits approved for the next fiscal year does not exceed the cap for that fiscal year as of the date on which the department has disallowed the application.

This rule was adopted on November 9, 2010 and becomes effective December 10, 2010. It may be used to determine tax liability on and after the effective date, until the codified version is available from the code reviser's office.

NEW SECTION

WAC 458-20-240A Manufacturer's new employee tax credits-- Applications filed prior to July 1, 2010. (1) Introduction. Chapter 82.62 RCW provides business and occupation (B&O) tax credits to certain persons engaged in manufacturing and research and development activities. These credits are intended to stimulate the economy by creating employment opportunities in specific rural counties and community empowerment zones of this state. The credits are as much as \$4,000 per qualified employment position. This rule explains the eligibility requirements and application procedures for this program. It is important to note that an application for the tax credits must be submitted to the department of revenue before the actual hiring of qualified employment positions. See subsection (6) of this rule for additional information regarding this application requirement. This tax credit program is a companion to the tax deferral program under chapter 82.60 RCW; however, the eligible geographic areas in the two programs are not identical.

The department of employment security and the department of commerce administer programs for rural counties and job training. These agencies should be contacted directly for information concerning those programs.

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To be considered an "eligible business project," the applicant's number of average full-time qualified employment positions at the specific facility must be at least fifteen percent greater in the calendar year for which credit is being sought than the number of positions at the same facility in the

immediately preceding calendar year. Subsection (4) of this rule explains how to determine whether this threshold is satisfied.

(b) **What is an eligible area?** As noted above, the facility must be located in an eligible area to be considered an eligible business project. An "eligible area" is:

(i) A rural county, which is a county with fewer than one hundred persons per square mile or, on and after April 1, 2004, a county smaller than two hundred twenty-five square miles, as determined annually by the office of financial management and published by the department of revenue effective for the period of July 1st through June 30th (see RCW 82.62.010(3)); or

(ii) A community empowerment zone (CEZ). CEZ means an area meeting the requirements of RCW 43.31C.020 and officially designated by the director of the department of commerce.

(iii) **How to determine whether an area is an eligible area.** Rural county designation information can be obtained from the office of financial management internet web site at www.ofm.wa.gov/popden/rural.htm. The department has instituted a geographic information system (GIS) to assist taxpayers in determining taxing jurisdiction boundaries, local tax rates, and a mapping and address lookup system to determine whether a specific address is within a CEZ. The system is available on the department's internet web site at www.dor.wa.gov.

(c) **What are manufacturing and research and development activities?** Manufacturing or research and development activities must be conducted at the facility to be considered an eligible business project.

(i) **Manufacturing.** "Manufacturing" has the meaning given in RCW 82.04.120. In addition, for the purposes of chapter 82.62 RCW "manufacturing" also includes computer programming, the production of computer software, other computer-related services, but only when the computer-related services are performed by a manufacturer as defined under RCW 82.04.110 and contribute to the production of a new, different, or useful substance or article of tangible personal property for sale; and the activities performed by research and development laboratories and commercial testing laboratories. (Chapter 16, Laws of 2010.)

(ii) **Research and development.** "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. "Commercial sales" does not include 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.

(iii) **Computer-related services.** "Computer-related services" for the purposes of chapter 82.62 RCW, the definition of "manufacturing" means services that are connected with or

interact directly in the manufacture of computer hardware or software or the programming of the manufactured hardware. "Computer-related services" includes the manufacture of hardware such as chips, keyboards, monitors, and any other hardware, and the components of these items. "Computer-related services" also includes creating operating systems and software that will be copied and sold as canned software. The activities performed by the manufacturer to test, correct, revise, or upgrade software or hardware before they are approved for sale to the consumer are considered computer-related services. "Computer-related services" does not include services such as information services.

(3) **What are the hiring requirements?** The average full-time qualified employment positions at the specific facility during the calendar year for which credits are claimed must be at least fifteen percent greater than the average full-time qualified employment positions at the same facility for the preceding calendar year.

(a) **What is a qualified employment position?** A "qualified employment position" means a position filled by a permanent full-time employee employed at an eligible business project for twelve consecutive months. Once a full-time position is established and filled it will continue to qualify for twelve consecutive periods so long as any person fills the position. The position is considered "filled" even during periods of vacancy, provided these periods do not exceed thirty consecutive days and the employer is training or actively recruiting a replacement employee.

(b) **What is a "permanent full-time employee"?** A "permanent full-time employee" is a position that is filled by an employee who satisfies any one of the following minimum thresholds:

(i) Works thirty-five hours per week for fifty-two consecutive weeks;

(ii) Works four hundred fifty-five hours, excluding overtime, each quarter for four consecutive quarters; or

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(c) **"Permanent full-time employee" - Seasonal operations.** For applicants that regularly operate on a seasonal basis only and that employ more than fifty percent of their employees for less than a full twelve month continuous period, a "permanent full-time employee" is a permanent full-time employee as described above or an equivalent in full-time equivalent (FTE) work hours.

(4) **How to determine if the fifteen percent employment increase requirement is met.** Qualification for tax credits depends upon whether the applicant hires enough new positions to meet the fifteen percent average increase requirement.

(a) **Determining the fifteen percent increase.** To determine the projected number of permanent full-time qualified employment positions necessary to satisfy the fifteen percent employment increase requirement:

(i) Determine the average number of permanent full-time qualified employment positions that existed at the facility during the calendar year prior to the year in which tax credit is being claimed.

(ii) Multiply the average number of full-time positions from subsection (i) by .15 or fifteen percent. The resulting number equals the number of positions that must be filled to meet the fifteen percent increase. Numbers are rounded up to the nearest whole number at point five (.5).

(b) **When does hiring have to occur?** All hiring increases must occur during the calendar year for which credits are being sought for purposes of meeting the fifteen percent threshold test. Positions hired in a calendar year prior to making an application are not eligible for a credit but the positions are used to calculate whether the fifteen percent threshold has been met.

(c) **The department will assist applicants to determine their hiring requirements.** Accompanying the tax credit application is a worksheet to assist the applicant in determining if the fifteen percent qualified employment threshold is satisfied. Based upon the information provided in the application, the department will advise applicants of their minimum number of hiring needs for which credits are being sought.

(d) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(i) ABC Company anticipates increasing employment during the 2001 calendar year at a manufacturing facility by an average of 15 full-time qualified employment positions for a total of 113 positions. The average number of full-time qualified employment positions during the 2000 calendar year was 98. To qualify for the tax credit program the minimum average number of full-time qualified employment positions required for the 2001 calendar year is $98 \times .15 = 14.7$ (rounding up to 15 positions). Therefore, ABC Company's plan to hire 15 full-time qualified employment positions for 2001 meets the 15% employment increase requirement.

(ii) ABC anticipates increasing employment at this same manufacturing facility by an average of 15 additional full-time qualified employment positions during the 2002 calendar year to a total of 128 positions. To qualify for the tax credit program the minimum average number of full-time qualified employment

positions required for the 2002 calendar year is 17 (113 x .15 = 16.95, rounding up to 17). Therefore, ABC Company's plan to hire 15 full-time qualified employment positions for 2002 does not meet the 15% employment increase requirement.

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(6) **Application procedures.** A taxpayer must file an application with and obtain approval from the department of revenue to receive tax credits under this program. A separate application must be submitted for each calendar year for which credits are claimed. RCW 82.62.020 requires that application for the tax credits be made prior to the actual hiring of qualified employment positions. Applications failing to satisfy this statutory requirement will be disapproved.

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(b) **Confidentiality.** Applications, reports, or any other information received by the department in connection with this tax credit program, except applications not approved by the department, are not confidential and are subject to disclosure. All other taxpayer information is subject to the confidentiality provisions in RCW 82.32.330.

(c) **Department to act upon application within sixty days.** The department will determine if the applicant qualifies for tax credits on the basis of the information provided in the application and will approve or disapprove the application

within sixty days. If approved, the department will issue a credit approval notice containing the dollar amount of tax credits available for use and the procedures for taking the credit. If disapproved, the department will notify the applicant in writing of the specific reasons for disapproval. The applicant may seek administrative review of the department's disapproval of an application by filing a petition for review with the department. The petition must be filed within thirty days from the date of notice of the disallowance pursuant to the provisions of WAC 458-20-100, Appeals, small claims and settlements.

(d) **No adjustment of credit after approval.** After an application is approved and tax credits are granted, no upward adjustment or amendments of the application will be made for that calendar year.

(7) **How much is the tax credit?** The amount of tax credit is based on the number of and the wages and benefits paid to qualified employment positions created.

(a) **How much tax credit may I claim for each qualified employment position?** The amount of tax credit that may be claimed for each position created is as follows:

(i) Two thousand dollars for each qualified employment position that pays forty thousand dollars or less in wages and benefits annually and is employed in an eligible business project; and

(ii) Four thousand dollars for each qualified employment position that pays more than forty thousand dollars in wages and benefits annually and is employed in an eligible business project.

(b) **What qualifies as wages and benefits?** For the purposes of chapter 82.62 RCW, "wages" means compensation paid to an individual for personal services, whether denominated as wages, salary, commission, bonus, or otherwise. "Benefits" means compensation not paid as wages and includes Social Security, retirement, health care, life insurance, industrial insurance, unemployment compensation, vacation, holiday, sick leave, military leave, and jury duty. "Benefits" does not include any amount reported as wages.

(8) **How to claim approved credits.** The recipients must take the tax credits approved under this program on their regular combined excise tax return for their regular assigned tax reporting period. These tax credits may not exceed the B&O tax liability. The amount of credit taken should be entered into the "credit" section of the return form, with a copy of the credit approval notice issued to the recipient attached to the return.

(a) **When can credits be used?** The credits may be used as soon as hiring of the projected qualified employment positions begins or may accrue until they are most beneficial for the

recipient's use. For example, if a recipient has been approved for \$12,000 of tax credits based upon projections to hire five new positions, that recipient may use \$2,000 or \$4,000 of tax credit at the time it hires each new employee, depending on the wage/benefit level of the position filled.

(b) **No refunds for unused credits.** No tax refunds will be made for any tax credits which exceed tax liability during the life of this program. If tax credits derived from qualified hiring exceed the recipients' business and occupation tax liability in any one calendar year under this program, they may be carried forward to the next calendar year(s), until used.

(9) **Annual report to be filed by recipient.** A recipient of tax credits under this program must complete and submit an annual report of employment activities to substantiate that he or she has complied with the hiring and retention requirements for approved credits. RCW 82.62.050. This report must be filed with the department by January 31st of the year following the calendar year for which credit was approved by the department. Based upon this report the department will verify that the recipient is entitled to the tax credits approved by the department when the application was reviewed. The completed annual report may be sent by fax to 360-586-0527 or mailed to the following address:

State of Washington
Department of Revenue
Taxpayer Account Administration
P.O. Box 47476
Olympia, WA 98504-7476

The U.S. Post Office postmark or fax date will be used as the date of filing.

(a) **Verification of annual report.** The department will use the same report the recipient provides to the department of employment security, which is known as the quarterly employment security report, to verify the recipient's eligibility for tax credits. The recipient must maintain copies of the quarterly employment report for the year prior to the year for which credits are claimed, the year credits are claimed, and for the four quarters following the hiring of persons to fill the qualified employment positions. (The recipient does not have to forward copies of the quarterly employment report to the department each quarter.) The department may use other wage information provided to the department by the department of employment security. The taxpayer must provide additional information to the department, as the department finds necessary to calculate and verify wage eligibility.

(b) **Failure to file report.** The law provides that if any recipient fails to submit a report or submits an inadequate report, the department may declare the amount of taxes for which credit has been used to be immediately due and payable. An

inadequate report is one which fails to provide information necessary to confirm that the requisite number of employment positions has been created and maintained for twelve consecutive months.

(10) **What if the required number of positions is not created?** The law provides that if the department finds that a recipient is not eligible for tax credits for any reason, other than failure to create the required number of qualified employment positions, the amount of taxes for which any credit has been used will be immediately due. No interest or penalty will be assessed in such cases. However, if the department finds that a recipient has failed to create the specified number of qualified employment positions, the department will assess interest, but not penalties, on the taxes against which the credit has been used. This interest on the assessment is mandatory and will be assessed at the statutory rate under RCW 82.32.050, retroactively to the date the tax credit was used. The interest will accrue until the taxes for which the credit was used are fully repaid. RCW 82.32.050. The interest rates under RCW 82.32.050 can be obtained from the department's internet web site at www.dor.wa.gov or by calling the department's information center at 1-800-647-7706.

(11) **Program thresholds.** The department cannot approve any credits that will cause the total credits approved to exceed seven million five hundred thousand dollars in any fiscal year. RCW 82.62.030. A "fiscal year" is the twelve-month period of July 1st through June 30th. If all or part of an application for credit is disallowed due to cap limitations, the disallowed portion will be carried over for approval the next fiscal year. However, the applicant's carryover into the next fiscal year is only permitted if the total credits approved for the next fiscal year does not exceed the cap for that fiscal year as of the date on which the department has disallowed the application.

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