

THIS DRAFT IS NOT TO BE CONSIDERED A PROPOSED RULE AND IS ONLY PROVIDED FOR DISCUSSION PURPOSES TO DETERMINE WHAT TOPICS A LATER PROPOSED RULE MIGHT ADDRESS. UNDER NO CIRCUMSTANCES IS THIS DISCUSSION DRAFT TO BE USED TO DETERMINE TAX LIABILITY AND OR EXEMPTIONS.

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WAC 458-20-24003 Tax incentives for high technology businesses. (1)

Introduction. This rule explains the tax incentives, contained in chapter 82.63 RCW and RCW 82.04.4452, which apply to businesses engaged in research and development or pilot scale manufacturing in Washington in five high technology areas: advanced computing, advanced materials, biotechnology, electronic device technology, and environmental technology. Eligibility for high technology or research and development tax incentives offered by the federal government or any other jurisdiction does not establish eligibility for Washington’s programs.

(2) **Definitions.** For purposes of this rule, the following definitions apply unless otherwise required by the context.

(a) "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 hand-held calculators to super computers, and peripheral equipment.

(b) "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.

(c) "Applicant" means a person applying for a tax deferral under chapter 82.63 RCW.

(d) "Biotechnology" means the application of technologies, such as recombinant DNA techniques, biochemistry, molecular and cellular biology, genetics, including genomics, gene expression 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.

(e) "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.

(f) "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 the underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person, or unless the lessor by written contract agrees to pass the economic benefit of the deferral to the lessee in the form of reduced rent payments.

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

4 (i) The assessment and prevention of threats or damage to human health or the
5 environment concerns assessing and preventing potential or actual releases of pollutants
6 into the environment that are damaging to human health or the environment. It also
7 concerns assessing and preventing other physical alterations of the environment that are
8 damaging to human health or the environment.

9 (A) Pollutants include waste materials or byproducts from manufacturing or other
10 activities.

11 (B) Environmental technology includes technology to reduce emissions of harmful
12 pollutants but does not include technology to increase fuel economy. Where technology
13 both reduces emissions and increases fuel economy, it is environmental technology if the
14 primary purpose is to reduce emissions. That reducing emissions is the primary purpose of
15 technology can be demonstrated by showing the technology is developed to meet
16 governmental emission standards.

17 (C) Environmental technology does not include technology for preventive health
18 measures for, or medical treatment of, human beings.

19 (ii) Environmental cleanup is corrective or remedial action to protect human health
20 or the environment from releases of pollutants into the environment.

21 (iii) Alternative energy sources are those other than traditional energy sources such
22 as fossil fuels, nuclear power, and hydroelectricity. However, when traditional energy
23 sources are used in conjunction with the development of alternative energy sources, all the
24 development will be considered the development of alternative energy sources.

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

28 (i) "Person" has the meaning given in RCW 82.04.030.

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

35 (k) "Qualified buildings" means construction of new structures, and expansion or
36 renovation of existing structures for the purpose of increasing floor space or production
37 capacity used for pilot scale manufacturing or qualified research and development,
38 including plant offices and other facilities that are an essential or an integral part of a
39 structure used for pilot scale manufacturing or qualified research and development.

40 (i) If a building is used partly for pilot scale manufacturing or qualified research and
41 development and partly for other purposes, the applicable tax deferral shall be
42 determined as follows:

43 (A) Tax on the cost of construction of areas devoted solely to pilot scale
44 manufacturing or research and development may be deferred.

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- 1 (B) Tax on the cost of construction of areas not used at all for pilot scale
- 2 manufacturing or research and development may not be deferred.
- 3 (C) Tax on the cost of construction of areas used in common for pilot scale
- 4 manufacturing or research and development and for other purposes, such as
- 5 hallways, bathrooms, and conference rooms, may be deferred by apportioning
- 6 the costs of construction on a square footage basis. The apportioned costs of
- 7 construction eligible for deferral are established by using the ratio, expressed as
- 8 a percentage, of the square feet of the construction, expansion, or renovation
- 9 devoted to pilot scale manufacturing or qualified research and development,
- 10 excluding areas used in common to the total square feet of the construction,
- 11 expansion, or renovation, excluding areas used in common. That percentage is
- 12 applied to the cost of construction of the common areas to determine the costs
- 13 of construction eligible for tax deferral. Expressed as a formula, apportionment
- 14 of the cost of the common areas is determined by:

$$\frac{\text{Square feet devoted to research and development or pilot scale manufacturing, excluding square feet of common areas}}{\text{Total square feet, excluding square feet of common areas}} = \text{Percentage of total cost of construction of common areas eligible for deferral}$$

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16 Square feet devoted to research and development or

17 pilot scale manufacturing,

18 excluding square feet of common areas

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26 Total square feet, excluding square feet of common areas

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32 (ii) Building construction does not include the construction of landscaping or most

33 other work outside the building itself. It does include the construction of parking lots

34 connected to or adjacent to the building if the parking lots are for the use of workers

35 performing research and development in the building.

36

37 (l) "Qualified machinery and equipment" means fixtures, equipment, and support

38 facilities that are an integral and necessary part of a pilot scale manufacturing or qualified

39 research and development operation. "Qualified machinery and equipment" includes:

40 Computers; software; data processing equipment; laboratory equipment, instrumentation,

41 and other devices used in a process of experimentation to develop a new or improved pilot

42 model, plant process, product, formula, invention, or similar property; manufacturing

43 components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; vats,

44 tanks, and fermenters; operating structures; and all other equipment used to control,

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1 monitor, or operate the machinery. For purposes of this rule, qualified machinery and
2 equipment must be either new to the taxing jurisdiction of the state or new to the certificate
3 holder, except that used machinery and equipment may be treated as qualified machinery
4 and equipment if the certificate holder either brings the machinery and equipment into
5 Washington or makes a retail purchase of the machinery and equipment in Washington or
6 elsewhere.

7 (i) Machinery and equipment is an integral and necessary part of pilot scale
8 manufacturing or qualified research and development if the pilot scale manufacturing or
9 qualified research and development could not be accomplished without it. A laboratory
10 table would be integral and necessary to qualified research and development. Decorative
11 artwork would not be integral and necessary to qualified research and development.

12 (ii) Qualified machinery and equipment must be used exclusively for pilot scale
13 manufacturing or qualified research and development to qualify for the deferral. However,
14 de minimis nonqualifying use will not cause the loss of the deferral. An example of de
15 minimis use is the occasional use of a computer for personal e-mail.

16 (iii) Unlike buildings, if machinery and equipment is used for both qualifying and
17 nonqualifying purposes, the costs may not be apportioned. Sales or use tax may not be
18 deferred on the purchase or use of machinery and equipment used for both qualifying and
19 nonqualifying purposes.

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

23 (n) "Qualified research and development expenditures" means operating expenses,
24 including wages, compensation of a proprietor or a partner in a partnership, benefits,
25 supplies, and computer expenses, directly incurred in qualified research and development by
26 a person claiming the business and occupation tax credit provided by RCW 82.04.4452.
27 The term does not include amounts paid to a person other than a public educational or
28 research institution to conduct qualified research and development. Nor does the term
29 include capital costs and overhead, such as expenses for land, structures, or depreciable
30 property.

31 (i) In order for an operating expense to be a qualified research and development
32 expenditure, it must be directly incurred in qualified research and development. If an
33 employee performs qualified research and development activities and also performs other
34 activities, only the wages and benefits proportionate to the time spent on qualified research
35 and development activities are qualified research and development expenditures under this
36 rule. The wages of employees who supervise or are supervised by persons performing
37 qualified research and development are qualified research and development expenditures to
38 the extent the work of those supervising or being supervised involves qualified research and
39 development.

40 (ii) The compensation of a proprietor or a partner is determined in one of two ways:

41 (A) If there is net income for federal income tax purposes, the amount reported
42 subject to self-employment tax is the compensation.

43 (B) If there is no net income for federal income tax purposes, reasonable cash
44 withdrawals or cash advances are the compensation.

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1 (iii) Depreciable property within the meaning of this rule is any property with a
2 useful life that extends beyond the accounting year in which it is acquired, regardless of
3 whether the property is depreciated or currently expensed. Expenditures related to
4 depreciable property are not qualified research and development expenditures within the
5 meaning of this rule even though they are currently expensed.

6 (iv) Computer expenses do not include the purchase, lease, rental, or repair of
7 equipment. They do include Internet subscriber fees, run time on a mainframe computer,
8 and outside processing.

9 (v) Training expenses for employees are qualified research and development
10 expenditures if the training is directly related to the research and development being
11 performed. Training expenses include registration fees, materials, and travel expenses.
12 Although the research and development must occur in Washington, training may take place
13 outside of Washington.

14 (vi) Qualified research and development expenditures include the cost of clinical
15 trials for drugs and certification by Underwriters Laboratories.

16 (vii) Qualified research and development expenditures do not include legal
17 expenses, patent fees, or any other expense not incurred directly for qualified research and
18 development.

19 (viii) Stock options granted as compensation to employees performing qualified
20 research and development are qualified research and development expenditures to the extent
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22
23 (ix) Pre-employment expenses related to employees who perform qualified research
24 and development are qualified research and development expenditures. These expenses
25 include recruiting and relocation expenses and employee placement fees.

26 (o) "Research and development" means activities performed to discover
27 technological information, and technical and nonroutine activities concerned with
28 translating technological information into new or improved products, processes,
29 techniques, formulas, inventions, or software.

30
31 The term includes exploration of a new use for an existing drug, device, or biological
32 product if the new use requires separate licensing by the federal food and drug
33 administration under chapter 21, C.F.R., as amended.

34
35 The term does not include adaptation or duplication of existing products where the products
36 are not substantially improved by application of the technology, nor does the term include
37 surveys and studies, social science and humanities research, market research or testing,
38 quality control, sale promotion and service, computer software developed for internal use,
39 and research in areas such as improved style, taste, and seasonal design.

40
41 (i) A person need not both discover technological information and translate
42 technological information into new or improved products, processes, techniques, formulas,
43 inventions, or software in order to engage in research and development. A person may
44 perform either activity alone and be engaged in research and development.

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2 (ii) To discover technological information means to gain knowledge of
3 technological information through purposeful investigation. The knowledge sought must
4 be of something not previously known or, if known, only known by persons who have
5 not made the knowledge available to the public.

6
7 (iii) Technological information is information related to the application of
8 science, especially with respect to industrial and commercial objectives. Industrial and
9 commercial objectives include both sale and internal use (other than internal use
10 software). The translation of technological information into new or improved products,
11 processes, techniques, formulas, inventions, or software does not require the use of newly
12 discovered technological information to qualify as research and development.

13
14 (iv) The translation of technological information requires both technical and
15 nonroutine activities. An activity is technical if it involves the application of scientific,
16 engineering, or computer science methods or principles. An activity is nonroutine if the
17 outcome is uncertain. The fact that the outcome of activity is unique does not imply that
18 nonroutine activity produced that outcome. If the outcome of activity is certain, there is a
19 presumption that the activity producing the outcome is routine. Indicia of nonroutine
20 activities include:

- 21 (A) The activity requires the overcoming of technological barriers;
- 22 (B) The activity has not been done before; and,
- 23 (C) The activity involves a process of experimentation.

24
25 (v) A product is substantially improved when it functions fundamentally
26 differently because of the application of technological information. This fundamental
27 difference must be objectively measured. Examples of objective measures include
28 increased value, faster operation, greater reliability, and more efficient performance.

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31 (vi) Computer software is developed for internal use if it is to be used only by the
32 person by whom it is developed. If it is to be available for sale, lease, or license, it is not
33 developed for internal use, even though it may have some internal applications. If it is to
34 be available for use by persons, other than the person by whom it is developed, who
35 access or download it remotely, such as through the Internet, it is not usually deemed to
36 be developed for internal use. However, remotely accessed software is deemed to be
37 developed for internal use if its purpose is to assist users in obtaining goods, services, or
38 information provided by or through the person by whom the software is developed. For
39 example, software is developed for internal use if it enables or makes easier the ordering
40 of goods from or through the person by whom the software is developed. On the other
41 hand, a search engine used to search the World Wide Web is an example of software that
42 is not developed for internal use because the search engine itself is the service sought.

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1 (vii) Research and development is complete when the product, process, technique,
2 formula, invention, or software can be reliably reproduced for sale or commercial use.

3
4 (p) "Research and development spending" means qualified research and
5 development expenditures plus eighty percent of amounts paid to a person other than a
6 public educational or research institution to conduct qualified research and development.

7 (q) "Taxable amount" means the taxable amount subject to business and occupation
8 tax required to be reported on the person's combined excise tax returns for the year for
9 which the credit is claimed, less any taxable amount for which a multiple activities tax credit
10 is allowed under RCW 82.04.440. See WAC 458-20-19301 for information on the multiple
11 activities tax credit.

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15 (3) **Sales and use tax deferral.** Chapter 82.63 RCW provides for the deferral of
16 sales and use taxes on eligible investment projects. These are projects that involve
17 research and development or pilot scale manufacturing in five high technology areas:
18 advanced computing, advanced materials, biotechnology, electronic device technology,
19 and environmental technology.

20 (a) **Application process.**

21 (i) Applicants must apply for deferral to the department of revenue before the
22 initiation of construction of, or acquisition of equipment or machinery for the investment
23 project. The date of application is the earlier of the postmark date or the date of receipt
24 by the department.

25 (A) Construction is initiated when workers start on-site building tasks. The
26 initiation of construction does not include land clearing or site preparation prior to
27 excavation of the building site. Also, the initiation of construction does not include
28 design or planning activities.

29 (B) Equipment or machinery is acquired at the time the applicant or its agent
30 obtains dominion and control of the equipment or machinery.

31 (ii) Application forms may be obtained at department of revenue district offices,
32 by downloading from the department's web site (dor.wa.gov), by telephoning the
33 telephone information center (800-647-7706), or by contacting the department's special
34 programs division at:

35
36 Department of Revenue
37 Special Programs Division
38 Post Office Box 448
39 Olympia, WA 98504-0448
40 FAX 360-586-2163

41
42 (iii) Applicants must mail or fax applications to the special programs division at
43 the address or fax number given above.

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1 (iv) The application form shall include information regarding the location of the
2 investment project, the applicant's average employment in Washington for the prior year,
3 estimated or actual new employment related to the project, estimated or actual wages of
4 employees related to the project, estimated or actual costs, and time schedules for
5 completion and operation. The application form may also include other information
6 relevant to the project and the applicant's eligibility for deferral.

7 (v) Applicants must agree to supply the department with nonproprietary
8 information necessary to measure the results of the tax deferral program.

9 (vi) Applications and other information received by the department in connection
10 with the deferral program are not confidential and are subject to public disclosure.

11 (vii) The department must rule on an application within sixty days. If an
12 application is denied, the department must explain in writing the basis for the denial. An
13 applicant may appeal a denial within thirty days under WAC 458-20-100.

14 **(b) Deferral certificate.**

15 (i) If an application is approved, the department must issue the applicant a sales
16 and use tax deferral certificate.

17 (ii) The certificate provides for deferral of state and local sales and use taxes on
18 the eligible investment project. The certificate will state the amount of tax deferral for
19 which the recipient is eligible. It will also state the date by which the project will be
20 operationally complete. The deferral is limited to investment in qualified buildings or
21 qualified machinery and equipment. The deferral does not apply to the taxes of persons
22 with whom the recipient does business, persons the recipient hires, or employees of the
23 recipient.

24 (iii) A successful applicant, hereafter referred to as a recipient, must present a copy
25 of the certificate to sellers of goods or retail services provided in connection with the
26 eligible investment project in order to avoid paying sales or use tax. Sellers who accept
27 these certificates in good faith are relieved of the responsibility to collect sales or use tax on
28 transactions covered by the certificates. Sellers must retain copies of certificates as
29 documentation for why sales or use tax was not collected on a transaction.

30 (iv) In cases of leases of qualifying machinery and equipment, the deferral
31 certificate allows for deferral of tax on payments made during the initial term of the lease,
32 and does not allow for deferral for extensions or renewals of the lease. Deferral of tax is
33 not allowed for lease payments for any period after the seventh calendar year following the
34 calendar year for which the project is certified as operationally complete.

35 (v) The certificate may not be used to defer tax on repairs to, or replacement parts
36 for, qualified machinery and equipment.

37 (vi) The department may not issue a certificate for an investment project that has
38 already received a deferral under chapters 82.60, 82.61, or 82.63 RCW, except that an
39 investment project for qualified research and development that has already received a
40 deferral may also receive an additional deferral certificate for adapting the investment
41 project for use in pilot scale manufacturing.

42 **(c) Amendment of application or certificate.**

43 (i) Applicants and recipients may make written requests to the special programs
44 division to amend an application or certificate.

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- 1 (ii) Grounds for requesting amendment include, but are not limited to:
- 2 (A) The project will exceed the costs originally stated;
- 3 (B) The project will take more time to complete than originally stated;
- 4 (C) The original application is no longer accurate because of changes in the
- 5 project.
- 6 (D) Transfer of ownership of the project.
- 7 (iii) The department must rule on the request within sixty days. If the request is
- 8 denied, the department must explain in writing the basis for the denial. An applicant may
- 9 appeal a denial within thirty days under WAC 458-20-100.

10 **(d) Certification.**

11 (i) When the building, machinery, or equipment is ready for use, the recipient

12 must notify the special programs division in writing that the eligible investment project is

13 operationally complete. The department shall, after appropriate investigation: certify that

14 the project is operationally complete; not certify the project; or certify only a portion of

15 the project. The certification will include the year in which the project is operationally

16 complete.

17 (ii) If all or any portion of the project is not certified, the recipient must repay all

18 or a proportional part of the deferred taxes. The department will notify the recipient of

19 the amount due, including interest, and the due date.

20 (iii) The department must explain in writing the basis for not certifying all or any

21 portion of a project. The decision of the department to not certify all or a portion of a

22 project may be appealed under WAC 458-20-100 within thirty days.

23

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25 **(e) Repayment of deferred taxes.**

26 (i) Deferred taxes need not be repaid if the investment project is used only for

27 qualified research and development or pilot scale manufacturing during the calendar year

28 for which the department certifies the investment project as operationally complete and

29 during the succeeding seven calendar years.

30 (ii) Deferred taxes must be repaid if an investment project is used for purposes

31 other than qualified research and development or pilot scale manufacturing during the

32 calendar year for which the department certifies the investment project as operationally

33 complete or at any time during any of the succeeding seven calendar years. Taxes are

34 immediately due according to the following schedule:

35

36 Year in which nonqualifying use occurs	% of deferred taxes due
37 1	100%
38 2	87.5%
39 3	75%
40 4	62.5%
41 5	50%
42 6	37.5%
43 7	25%
44 8	12.5%

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2 Interest on the taxes, but not penalties, must be paid retroactively to the date of deferral.

3
4 (iii) However, if the investment project is used for purposes other than qualified
5 research and development or pilot scale manufacturing during the first eight years,
6 deferred taxes need not be repaid on particular items if the purchase or use of the item
7 would have qualified for the machinery and equipment sales and use tax exemptions
8 provided by RCW 82.08.02565 and 82.12.02565 (discussed in WAC 458-20-13601) at
9 the time of purchase or first use.

10 (iv) Deferred taxes need not be repaid if qualified machinery and equipment on
11 which the taxes were deferred is destroyed, becomes inoperable and cannot be reasonably
12 repaired, wears out, or becomes obsolete and is no longer practical for use in the project.
13 The use of machinery and equipment which becomes obsolete for purposes of the project
14 and is used outside the project is subject to use tax at the time of such use.

15
16 (f) **Transfer of deferral.** Transfer of ownership does not terminate the deferral.
17 The deferral may be transferred to the new owner if the new owner meets all eligibility
18 requirements for the remaining periods of the deferral. The new owner must apply for an
19 amendment to the deferral certificate. If the deferral is transferred, the new owner is
20 liable for repayment of deferred taxes under the same terms as the original owner. If the
21 new owner is a successor to the previous owner under the terms of WAC 458-20-216 and
22 the deferral is not transferred, the new owner's liability for deferred taxes is limited to
23 those that are due for payment at the time ownership is transferred.

24 (g) **No extinguishment of debt.** The debt for deferred taxes will not be
25 extinguished by the insolvency or other failure of the recipient.

26 (h) **Expiration of sales and use tax deferral program.** The authority of the
27 department to issue deferral certificates expires July 1, 2004.

28
29 **(4) Examples relating to the sales and use tax deferral program.**

30 (a) Lessor and lessee examples.

31 (i) Prior to the initiation of construction, Owner/Lessor A enters into an
32 agreement with Lessee B, a company engaged in qualified research and development.
33 Under the agreement, A will build a building to house B's research and development
34 activities, will apply for a tax deferral on construction of the building, will lease the
35 building to B, and will pass on the value of the deferral through reduced rent payments.
36 A applies for the deferral before construction begins. A is entitled to a deferral on
37 building construction costs.

38 (ii) After construction has begun, Lessee C asks that certain tenant improvements
39 be added to the building. Lessor D and Lessee C each agree to pay a portion of the cost
40 of the improvements. C and D each apply for a deferral on the costs of the tenant
41 improvements. Both applications may be approved. While construction of the building
42 was initiated before the applications were submitted, tenant improvements on a building
43 under construction are deemed to be the expansion or renovation of an existing structure.

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1 (iii) After construction has begun but before machinery or equipment has been
2 acquired, Lessee E applies for a deferral on machinery and equipment. The application
3 will be approved. Even though it is too late to apply for a deferral of tax on building
4 costs, it is not too late to apply for a deferral for the machinery and equipment.

5 (b) Apportionment of building costs. A building to be constructed will be
6 partially devoted to research and development and partially devoted to marketing, a
7 nonqualifying purpose. The total area of the building is 100,000 square feet. 60,000
8 square feet are used only for research and development, 20,000 square feet are used only
9 for marketing, and the remaining 20,000 square feet are used in common by research and
10 development employees and marketing employees. Tax on the cost of constructing the
11 60,000 square feet used only for research and development may be deferred. Tax on the
12 cost of constructing the 20,000 square feet used only for marketing may not be deferred.
13 Tax on 75 percent of the cost of constructing the common areas may be deferred. (60,000
14 square feet devoted solely to research and development divided by 80,000 square feet
15 devoted solely to research and development and marketing results in a ratio expressed as
16 75 percent.

17 (5) **Business and occupation tax credit.** RCW 82.04.4452 provides for a
18 business and occupation tax credit for persons engaging in research and development in
19 Washington in five areas of high technology: advanced computing, advanced materials,
20 biotechnology, electronic device technology, and environmental technology.

21 (a) **Eligibility for the credit.** Persons are eligible for the credit if their research
22 and development spending in the calendar year for which credit is claimed exceeds 0.92
23 percent of the person's taxable amount for the same calendar year.

24 (b) **Calculating the credit.**

25 (i) Prior to July 1, 1998. The amount of the credit is equal to the greater of:
26 the person's qualified research and development expenditures
27 or
28 eighty percent of amounts received by a person other than a public
29 educational or research institution as compensation for conducting
30 qualified research and development
31 multiplied by 0.00515 in the case of a nonprofit corporation or association, and
32 multiplied by 0.025 in the case of all other persons.

33
34 (ii) On and after July 1, 1998. The amount of the credit is equal to the greater of:
35 the person's qualified research and development expenditures
36 or
37 eighty percent of amounts received by a person other than a public
38 educational or research institution as compensation for conducting
39 qualified research and development
40 multiplied by 0.00484 in the case of a nonprofit corporation or association, and
41 multiplied by 0.015 in the case of all other persons.

42 (iii) Persons calculating the credit on the basis of amounts received for conducting
43 qualified research and development must actually perform the research and development
44 themselves. Amounts received for conducting qualified research and development that

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1 are paid to other persons who actually perform some or all of the qualified research and
2 development contracted for may not be included in the calculation.

3 (iv) The credit for any calendar year may not exceed the lesser of two million
4 dollars or the amount of business and occupation tax otherwise due for the calendar year.

5 (iv) Credits may not be carried forward or carried back to other calendar years.

6 (c) Claiming the credit.

7 (i) The first time persons claim the credit they must complete an Initial Survey,
8 Research and Development Credit form (26 0005) and mail it to the address indicated on
9 the form. The purpose of the initial survey is to gather information necessary to measure
10 the results of the credit program. By law, persons claiming the credit must agree to
11 provide this information.

12 (ii) Credits are claimed on the person's combined excise tax return. Every time a
13 credit is claimed, the person making the claim must complete and attach a Declaration,
14 Research and Development Credit form (26 0003) to the return.

15 (iii) The Initial Survey and Declaration forms used in the credit program may be
16 obtained at department of revenue district offices, by downloading from the department's
17 web site (dor.wa.gov), or by telephoning the telephone information center (800-647-
18 7706).

19 (d) **Assignment of the credit.**

20 (i) A person entitled to the credit because of qualified research and development
21 conducted under contract for another person may assign all or a portion of the credit to
22 the person who contracted for the performance of the qualified research and
23 development.

24 (ii) The assignment is accomplished by use of the Declaration, Research and
25 Development Credit form, referred to in subsection (5)(c)(ii).

26 (iii) Both the person assigning the credit and the person receiving the credit must
27 be eligible under subsection (5)(a) for the assignment to be valid.

28 (iv) The total of the credit claimed and the credit assigned by a person assigning
29 credit may not exceed the lesser of two million dollars or the amount of business and
30 occupation tax otherwise due from the assignor in any calendar year.

31 (v) The total of the credit claimed, including credit received by assignment, may
32 not exceed the lesser of two million dollars or the amount of business and occupation tax
33 otherwise due from the assignee in any calendar year.

34 (e) **Expiration.** The business and occupation tax credit program for high
35 technology businesses expires December 31, 2004.

36

37 (6) **Examples relating to the credit program.**

38 (a) A business, not a nonprofit corporation or association, which engages in
39 qualified research and development has a taxable amount of \$10,000,000 in 2002. It pays
40 \$80,000 in 2002 in wages and benefits to employees directly engaged in qualified
41 research and development. Also during 2002, it pays \$20,000 to a person that is not a
42 public educational or research institute to conduct qualified research and development. It
43 is eligible to claim the credit for 2002. Its research and development spending, \$96,000

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1 (\$80,000 in wages plus 80 percent of \$20,000 for contracted research and development)
2 is more than \$92,000 (0.92 percent of its taxable amount, \$10,000,000).

3 The amount of credit is \$1,200. This is determined by multiplying its qualified
4 research and development expenditures, \$80,000, by 0.015. The contracted amount is not
5 included in the credit computation.

6 (b) A company that engages in environmental cleanup contracted to clean up a
7 site. It had never faced exactly the same situation before, but guaranteed at the outset that
8 it could do the job. It used a variety of existing technologies to accomplish the task in a
9 combination it had never used before. The company was not engaged in research and
10 development in performing this contract. It applied existing technologies in a routine
11 manner, considering the nature of its business, and the outcome was certain.

12 (c) Company A is engaged in research and development in biotechnology and
13 needs to perform standard blood tests as part of its development of a drug. It contracts
14 with a lab, B, to perform the tests. The cost of the tests are qualified research and
15 development expenditures for A, the company engaged in the research and development.
16 Although the tests themselves are routine, they are only a part of what A is doing in the
17 course of developing the drug. B, the lab contracted to perform the testing, is not engaged
18 in research and development with respect to the drug being developed. B is engaged in
19 what is routine for it and is not entitled to a credit on account of the compensation it
20 receives for conducting the tests.

21 (d) Company C is engaged in research and development. It enters into a contract
22 with Company D requiring Company D to provide employees to work under the direction
23 of Company C. Company D's only obligation is to provide employees. It is not obligated
24 to perform any other task. Company D's provision of employees is not research and
25 development and it is not entitled to the credit on account of the contract.
26