

# SPECIAL NOTICE

June 21, 2005

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## High Technology Business and Occupation Tax Credit Changes

This notice provides an update to ESHB 2546 (Chapter 2, Laws of 2004) enacted in the 2004 legislation session, which extended the High Technology Business and occupation (High-tech B&O) Tax Credit to January 1, 2015. Engrossed Substitute House Bill (ESHB) 2314, Part X, (Chapter 514, Laws of 2005)

The Department discovered a significant error in ESHB 2546 in the definition of “average tax rate” used to calculate the credit. Our Special Notice dated August 9, 2004 (*High Technology Business Tax Incentives*) advised taxpayers, in anticipation of retroactive legislation, to calculate the credit as the Department believed the Legislature intended. During the 2005 legislative session, ESHB 2314 (Chapter 514, Laws of 2005) was enacted, which retroactively corrects the definition of “average tax rate” consistent with the Department’s advice. In addition to the correction, the Legislature increased the amount of credit a person may claim beginning calendar year 2007.

### Calculating the Credit – Retroactive to June 10, 2004

#### Important Definitions

“**Average tax rate**” means a person’s total B&O tax liability for the calendar year for which the credit is claimed divided by the taxpayer’s total taxable amount under the B&O tax for the calendar year for which the credit is claimed.

“**Taxable amount**” means the taxable amount subject to the B&O tax and required to be reported on the person’s excise tax returns for the calendar year for which the credit is claimed, less any taxable amount for which a credit is allowed under RCW 82.04.440 (Multiple Activities Tax Credit).

“**Research and development spending**” means qualified research and development expenditures plus 80 percent of amounts paid to a person other than a public educational or research institution to conduct qualified research and development.

“**Qualified research and development expenditures**” means operating expenses, including wages, compensation of a proprietor or a partner in a partnership as determined under rules adopted by the Department, benefits, supplies, and computer expenses, directly incurred in qualified research and development by a person claiming the credit provided in this section. The term does not include amounts paid to a person

other than a public educational or research institution to conduct qualified research and development. Nor does the term include capital costs and overhead, such as expenses for land, structures, or depreciable property. **“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.

## **Calculating the Credit**

If the person meets the threshold of research and development spending to qualify for the credit, the credit shall be calculated as follows:

Step 1: Determine the greater of the amount of qualified research and development expenditures of a person or 80 percent of amounts received by a person other than a public educational or research institution in compensation for the conduct of qualified research and development

Step 2: Subtract 0.92 percent of the person’s taxable amount from the amount determined in step one.

Step 3: Multiply the amount determined under step two by the following:

- ◆ For the period June 10, 2004, through December 31, 2006, the person’s average tax rate for the calendar year for which the credit is claimed;
- ◆ For the calendar year ending December 31, 2007, the greater of the person’s average tax rate for that calendar year or 0.75 percent;
- ◆ For the calendar year ending December 31, 2008, the greater of the person’s average tax rate for that calendar year or 1.0 percent;
- ◆ For the calendar year ending December 31, 2009, the greater of the person’s average tax rate for that calendar year or 1.25 percent;
- ◆ For the calendar year ending December 31, 2010, and thereafter, 1.50 percent.

## **End of the Year Reconciliation Required**

For purposes of calculating the credit, if a person’s reporting period is less than annual, the person may use an estimated average tax rate for the calendar year for which the credit is claimed by using the person’s average tax rate for each reporting period. A person who uses an estimated average tax rate must make an adjustment to the total credit claimed for the calendar year using the person’s actual average tax rate for the calendar year when the person files its last return for the calendar year for which the credit is claimed.

## **Penalty Waived, Interest Due on Additional Tax**

A person who owes additional tax as a result of the changes in how the credit calculated is liable for interest, but not penalties, if the entire additional tax liability is paid in full to the Department of Revenue before January 1, 2006. Interest shall be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, retroactively to the date the credit was claimed, and shall accrue until the additional tax is repaid.

Persons who fail to repay the full amount of additional tax owed before January 1, 2006, are subject to all applicable penalties and interest as provided in chapter 82.32 RCW on the additional tax owed.

### **Electronic Filing Required**

Virtually all persons receiving tax benefits from the High Technology B&O tax credit provided by RCW 82.04.4452 **must file all returns, surveys, reports, and any other required forms or information in an electronic format** as provided or approved by the Department **effective January 1, 2006**.

However, upon request, the Department may relieve a person from the requirement to file electronically if the person's cumulative tax benefit from RCW 82.04.4452 (high technology credit) and from the incentive programs provided by 82.32.535 (semiconductor), 82.32.545 (aerospace), 82.32.570 (aluminum smelters), 82.32.560 (electrolytic processing), 82.60.070 (rural county/CEZ sales tax deferral/waiver program), or 82.63.020 (high technology sales tax deferral/waiver program) is less than \$1,000 annually.

### **Annual Survey Due Date May Be Extended**

By law, the Department of Revenue may extend the due date for the annual surveys due after December 31, 2004 when the failure of a taxpayer to file the survey by the April 30 due date was the result of circumstances beyond the control of the taxpayer. The Department will use the criteria in making this determination that are outlined in WAC 458-20-228.

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