

Initiative Measure No. 617 filed October 1, 2013

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: I-2767.1/13

ATTY/TYPIST: JA:lel

BRIEF DESCRIPTION:

Initiative Measure No. 617 filed October 1, 2013

AN ACT Relating to promoting sustainable economic development; amending RCW 82.08.020, 82.04.4451, and 82.08.0206; adding a new chapter to Title 82 RCW; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** INTENT. This chapter concerns promoting sustainable high technology economic development and renewable energy resource development with a high technology business and occupation tax credit, providing sales tax rebates for qualifying low-income persons, and reducing the state sales tax, all funded by a carbon pollution tax. Sections 1 through 3 of this act provide definitions and an overview. Sections 4 through 9 of this act describe the high technology economic development business and occupation tax credit. Sections 10 and 11 of this act create accounts in the state treasury. Sections 12 and 13 of this act concern the carbon pollution tax. Section 14 of this act reduces the state sales tax. Section 15 of this act increases tax credits for small businesses. Section 16 of this act increases the working families tax exemption.

NEW SECTION. **Sec. 2.** DECLARATION OF POLICY. In today's globally competitive economy, innovation through research and development of sustainable high technology and renewable energy resources is vital to future prosperity. Small start-up enterprises are a significant source of innovation, job creation, and economic growth. Making the most of our plentiful local talent will create high-quality jobs in Washington, provide opportunities for training apprentice workers in the renewable energy field, and position Washington as a national leader in clean energy technologies. Washington's business and occupation tax credits available under current law benefit established companies with taxable revenue, but small start-up enterprises, despite having a heightened need for resources during the critical period when they incur research and development expenditures before generating taxable revenue, are unable to take advantage of the credits. This act is intended to target Washington's promotion of research and development in certain sustainable high technology fields by providing a business and occupation tax credit that can be carried over into future years to generate needed research and development funds for the primary benefit of small start-up enterprises, while also providing funds to enable qualifying low-income persons to participate more fully in the state's economy, and reducing the state sales tax.

NEW SECTION. **Sec. 3.** DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Advanced materials," "biotechnology," "environmental technology," and "research and development" have the same meaning as in RCW 82.63.010.

(2) "Aircraft fuel" has the same meaning as in RCW 82.42.010.

(3) "Carbon calculation" means carbon content calculations for fuels or combustible materials adopted by the energy information administration, the United States department of energy, or its successor in effect on January 1st of each year, which the department of revenue must put into effect by the following July 1st. If carbon

content calculations cease to be adopted, the last calculation effective on the last January 1st must be used.

(4) "Coal" means coal of any kind, including anthracite coal, bituminous coal, subbituminous coal, lignite, waste coal, syncoal, and coke of any kind.

(5) "Carbon pollution tax" means the tax created in section 12 of this act.

(6) "Customer" means a person or entity that purchases electricity for ultimate consumption and not for resale.

(7) "Department" means the department designated or its successor.

(8) "Fossil fuel" means petroleum products, motor vehicle fuel, special fuel, aircraft fuel, natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from these products, including still gas.

(9) "Investor-owned utility" has the same meaning as in RCW 19.29A.010.

(10) "Load" means the amount of kilowatt-hours of electricity delivered in the most recently completed year by a qualifying utility to its Washington retail customers.

(11) "Motor vehicle fuel" has the same meaning as in RCW 82.36.010.

(12) "Natural gas" means naturally occurring mixtures of hydrocarbon gases and vapors consisting principally of methane, whether in gaseous or liquid form, including methane clathrate.

(13) "Person" means any individual, division, or instrumentality of a government, business, corporation, partnership, or trust.

(14) "Petroleum product" has the same meaning as in RCW 82.23A.010.

(15) "Qualified research and development employment expenditures" means the following expenses directly incurred in performing qualified research and development:

(a) Wages and benefits paid to or accrued by individuals who spent at least fifty percent of their total hours worked during the quarter in which the credit is earned performing qualified research and

development and who are treated as employees for federal tax purposes by the person claiming the credit; and

(b) Compensation of a proprietor or a partner in a partnership as determined under rules adopted by the department of revenue. "Qualified research and development employment expenditures" does not include amounts paid to another person to conduct qualified research and development.

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

(17) "Qualifying utility" means an electric utility, as the term "electric utility" is defined in RCW 19.29A.010, that serves more than twenty-five thousand customers in the state of Washington. The number of customers served may be based on data reported by a utility in form 861, "annual electric utility report," filed with the United States energy information administration or the United States department of energy.

(18) "Rule" means a rule adopted by an agency or other entity of Washington state government to carry out the intent and purposes of this chapter.

(19) "Special fuel" has the same meaning as in RCW 82.38.020 and includes fuel that is sold or used to propel vessels.

(20) "Year" means the twelve-month period commencing January 1st and ending December 31st.

NEW SECTION. **Sec. 4.** (1) A credit is allowed for qualified research and development employment expenditures. The credit may be:

(a) Applied against any tax due under chapter 82.04 RCW during the calendar year in which the tax was accrued;

(b) Carried forward until used; or

(c) Sold to another person exclusively through the annual auction established by section 7 of this act.

(2) A person may accrue the credit regardless of whether or not they owe taxes due under chapter 82.04 RCW.

(3) A person accruing the credit must be registered with the department of revenue. The person may not be engaged in an activity requiring registration under RCW 82.32.030 and must complete and electronically file all surveys, including the annual survey required under RCW 82.32.585, reports, returns, and any other form or information the department of revenue and the department of commerce require.

(4) The credit is equal to twenty percent of qualified research and development employment expenditures accrued in a calendar year.

(5) The credit accrued during a calendar year may not exceed one hundred thousand dollars.

(6) A person may not use employment expenditures used to calculate the credit provided under RCW 82.04.4452 to calculate the credit provided under this section.

NEW SECTION. **Sec. 5.** (1) Before claiming the credit, a person must file an application with the department of commerce in the form and manner required by that department. The form must include, but is not limited to:

(a) The name, physical address, and tax registration number of the business; and

(b) A detailed description of the qualifying activity that the business will engage in. The department of commerce must notify the applicant within thirty days by mail or electronically whether the activity described in the application constitutes qualified research and development. The department of commerce may request additional information from the applicant as it deems necessary.

(2) The department of commerce must provide qualifying persons with a document certifying that the activity described in the application constitutes qualified research and development and must forward this information electronically to the department of revenue in a form and manner determined by the two agencies. A person can begin to accrue credits for qualified research and development employment expenditures from the date the certifying document is issued.

NEW SECTION. **Sec. 6.** (1) A person certified by the department of commerce to accrue the credit provided under this chapter must file a quarterly report with the department of revenue in the form and manner required by the department. The form must include, but is not limited to:

(a) The amount of qualified research and development employment expenditures accrued during the quarter;

(b) The amount of credit accrued for the quarter; and

(c) Whether the person wants to apply the credit to his, her, or its business and occupation tax liability, carrying over any unused credit, or place the credit, or any unused credit, in the auction pool account established by section 7 of this act.

(2) Credit accrued under this chapter may not be transferred, assigned, traded, or sold other than as specifically established by this chapter.

(3) The department of revenue must keep a running total of all credits accrued, whether applied to tax liability, carried forward, or placed in the auction pool account. The department may not allow any credits which would cause the total accrued credit to exceed fifty million dollars in any calendar year.

NEW SECTION. **Sec. 7.** (1) The department of revenue must establish a high technology credit auction pool account and must total the amount of credits placed in the auction pool account under the provisions of section 4 of this act.

(2) The department must hold an auction of the pooled credits under procedures established by the department at least once per calendar year and by January 31st of the following calendar year.

(3) A bid of less than eighty cents for every one dollar of credit may not be accepted.

(4) All bids must be submitted electronically in the form and manner required by the department of revenue. In addition to the price per dollar of credit, the bid must include the maximum dollar amount the bidder will pay.

(5) A person submitting the highest bid on a per dollar of credit basis must be entitled to purchase the amount of credits for which he, she, or it submitted bids until the credit pool account is exhausted. Payment must be made electronically in the form and manner required by the department of revenue within thirty days of the date of the auction. Any credits not paid for by that date must be placed back into the auction pool account.

(6) (a) The department of revenue must calculate the portion of the credit auction proceeds that each contributing person is entitled to. Each person must receive a percentage of the credit auction proceeds equal to the percentage of the person's contribution to the credit pool account.

(b) The department of revenue must advise the state treasurer of the amounts calculated under (a) of this subsection and the state treasurer must distribute these amounts to the persons entitled to the funds.

(7) All credits purchased under this chapter remain valid, and the businesses purchasing credits are held harmless, in the event any or all of the auctioned credits are deemed to have been erroneously accrued.

NEW SECTION. **Sec. 8.** (1) If, upon examination of books and records under chapter 82.32 RCW, the department of revenue finds evidence that expenditures used by a person to calculate and accrue a credit under this chapter were not qualified research and development employment expenditures, the department must submit the evidence to the department of commerce. Based on information received from the department of revenue and any additional information it has gathered, the department of commerce must determine within sixty days if the expenditures qualify for use in calculating the credit and notify the department of revenue and the person who accrued the credit.

(2) If the person who accrued the credit disagrees with the determination of the department of commerce, it may file an appeal under chapter 34.05 RCW. The appeals provisions of chapter 82.32 RCW do not apply.

NEW SECTION. **Sec. 9.** By June 1, 2019, and in compliance with RCW 43.01.036, the joint legislative audit and review committee must submit a report to the legislature and the governor that details the use, value, economic impact, and employment impact of the new business tax preference created under section 4 of this act. The report must include information for all credits granted under section 4 of this act through December 31, 2018. The department of commerce and the department of revenue must provide the joint legislative audit and review committee any information requested in preparation of the report. As requested by the committee, other agencies must also provide wage, employment, benefits, and other information related to the economic impact of the tax preference under section 4 of this act. The report must include, but is not limited to, an analysis of:

(1) Growth of eligible businesses, measured in terms of capitalization and the number of Washington residents employed by the businesses, including:

(a) How the businesses claiming the credit under section 4 of this act are growing in comparison to comparable businesses in other states;

(b) Historic growth of businesses in eligible industry sectors compared to growth in these sectors in years the tax preference was available; and

(c) How eligible industry sectors are growing in comparison to industry sectors not eligible for the tax preference under section 4 of this act; and

(2) The direct and indirect economic impact of businesses claiming the tax preference on surrounding areas. The committee may contract with innovate Washington or another entity capable of developing a methodology and implementing it to determine the direct and indirect economic impacts of the tax preference under section 4 of this act.

NEW SECTION. **Sec. 10.** The carbon pollution tax account is created in the custody of the state treasury. All receipts from the collected carbon pollution tax must be deposited into the account.

The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

NEW SECTION. **Sec. 11.** The sustainable economy working families' tax exemption account is created in the custody of the state treasury. All expenditures from the account may be used only to provide the working families' tax exemption as specified in RCW 82.08.0206. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

NEW SECTION. **Sec. 12.** (1) There is levied and collected a separate and independent fossil fuel carbon pollution tax equal to thirty dollars per metric ton of carbon dioxide as of July 1, 2015, which automatically increases by five percent each year beginning July 1, 2016, upon the sale or use in Washington of:

(a) Fossil fuels sold or used in Washington (except fossil fuels used to generate electricity), including, but not limited to, fossil fuels sold or used for aviation or marine purposes, but excluding fossil fuels intended for export outside this state. Export to a federally recognized Indian tribal reservation located within this state is not considered export outside this state;

(b) Fossil fuels used to generate electricity within Washington and fossil fuels used to generate electricity imported into Washington, the carbon dioxide equivalent content of which for purposes of this act are determined by using the fuel mix data calculated and disclosed as provided by RCW 19.29A.060 by filing with the department. Tax collected under this section must be based upon the same tax schedule for in-state generated electricity as for out-of-state generated electricity. In the absence of timely and accurate filing under subsection (2)(f) of this section, the applicable fuel mix must be conclusively presumed to be one hundred percent subbituminous coal for the respective month.

(2) Any tax collected under this section must be reported and collected in the following manner with respect to the following fossil fuels:

(a) Petroleum and its products, including crude oil, plant condensate, lubricating oil, gasoline, kerosene, diesel motor fuel, benzol, fuel oil, residual oil, liquefiable gases, and every other product derived from the refining of crude oil in accordance with and at the intervals provided in chapter 82.23A RCW in accordance with supplemental regulations and forms the department adopts;

(b) Motor vehicle fuel, in accordance with and at the intervals provided in chapter 82.36 RCW in accordance with supplemental regulations and forms the department adopts;

(c) Special fuel, in accordance with and at the intervals provided in chapter 82.36 RCW in accordance with supplemental regulations and forms the department adopts;

(d) Aircraft fuel, in accordance with and at the intervals provided in chapter 82.42 RCW in accordance with supplemental regulations and forms the department adopts;

(e) Fossil fuels not listed in this subsection and not consumed to generate electricity, in accordance with chapters 82.08 and 82.12 RCW and supplemental regulations and forms the department of revenue adopts; and

(f) Fossil fuels consumed to generate electricity must be reported in accordance with RCW 19.29A.060 to the department and collected in accordance with chapter 82.16 RCW with respect to light and power businesses with supplemental regulations and forms the department adopts.

(3) The carbon pollution tax must be reduced for uses of fossil fuels that can be shown and verified to not contribute to increasing carbon pollution including, but not limited to, fossil fuels that are sequestered in accordance with a method approved by the United States environmental protection agency or its successor. The tax reduction in such cases must be proportional to the fraction of emissions that are sequestered or otherwise shown and verified to not contribute to increasing atmospheric concentrations of carbon pollution in accordance with supplemental regulations and forms the department of revenue adopts.

(4) It is the intent and purpose of this act that the tax is imposed at the time and place of the first taxable event and upon the first taxable person within this state. Any person whose activities would otherwise require payment of the tax imposed by this act but are exempt from the tax has a precollection obligation for the tax that must be imposed on the first taxable event within this state. Failure to pay the tax with respect to a taxable event may not prevent tax liability from arising by reason of a subsequent taxable event.

(5) The department of revenue must adopt rules as necessary to implement the tax credits and carbon pollution tax provided for in this section. The department of revenue must develop and make available worksheets and guidance documents necessary to calculate the carbon pollution produced by various fossil fuels. The department must use the carbon calculation to calculate the amount of carbon pollution produced by each type of fuel and the consequent tax rate for each fuel.

(6) Any person extracting or importing fossil fuels or importing electricity is liable for payment of the carbon pollution tax imposed under this section with respect to those fuels or that electricity.

(7) While collected in accordance with the excise chapters referred to above, the proceeds of this separate and independent tax must be deposited as set forth: The department of revenue must deposit all taxes collected under this section, net of administrative costs, as follows, in order of priority:

(a) Into the carbon pollution tax account created in section 10 of this act from which withdrawals in favor of the funds identified in this section must be made;

(b) Into the sustainable economy working families' tax exemption account created in section 11 of this act: Funds sufficient to provide the working families' tax exemption in RCW 82.08.0206. These funds must also cover administrative costs necessary to implement this section;

(c) Into the general fund: All remaining funds.

NEW SECTION. **Sec. 13.** EXEMPTIONS. The tax levied under section 12 of this act does not apply to fossil fuels brought into this state by means of the fuel supply tank of a motor vehicle, vessel, or aircraft.

Sec. 14. RCW 82.08.020 and 2011 c 171 s 120 are each amended to read as follows:

(1) There is levied and collected a tax equal to (~~six~~) five and five-tenths percent of the selling price on each retail sale in this state of:

(a) Tangible personal property, unless the sale is specifically excluded from the RCW 82.04.050 definition of retail sale;

(b) Digital goods, digital codes, and digital automated services, if the sale is included within the RCW 82.04.050 definition of retail sale;

(c) Services, other than digital automated services, included within the RCW 82.04.050 definition of retail sale;

(d) Extended warranties to consumers; and

(e) Anything else, the sale of which is included within the RCW 82.04.050 definition of retail sale.

(2) There is levied and collected an additional tax on each retail car rental, regardless of whether the vehicle is licensed in this state, equal to five and nine-tenths percent of the selling price. The revenue collected under this subsection must be deposited in the multimodal transportation account created in RCW 47.66.070.

(3) Beginning July 1, 2003, there is levied and collected an additional tax of three-tenths of one percent of the selling price on each retail sale of a motor vehicle in this state, other than retail car rentals taxed under subsection (2) of this section. The revenue collected under this subsection must be deposited in the multimodal transportation account created in RCW 47.66.070.

(4) For purposes of subsection (3) of this section, "motor vehicle" has the meaning provided in RCW 46.04.320, but does not include farm tractors or farm vehicles as defined in RCW 46.04.180 and 46.04.181, off-road vehicles as defined in RCW 46.04.365, nonhighway

vehicles as defined in RCW 46.09.310, and snowmobiles as defined in RCW 46.04.546.

(5) Beginning on December 8, 2005, 0.16 percent of the taxes collected under subsection (1) of this section must be dedicated to funding comprehensive performance audits required under RCW 43.09.470. The revenue identified in this subsection must be deposited in the performance audits of government account created in RCW 43.09.475.

(6) The taxes imposed under this chapter apply to successive retail sales of the same property.

(7) The rates provided in this section apply to taxes imposed under chapter 82.12 RCW as provided in RCW 82.12.020.

Sec. 15. RCW 82.04.4451 and 2010 1st sp.s. c 23 s 1102 are each amended to read as follows:

(1) In computing the tax imposed under this chapter, a credit is allowed against the amount of tax otherwise due under this chapter, as provided in this section. Except for taxpayers that report at least fifty percent of their taxable amount under RCW 82.04.255, 82.04.290(2)(a), and 82.04.285, the maximum credit for a taxpayer for a reporting period is (~~(thirty-five)~~) one hundred five dollars multiplied by the number of months in the reporting period, as determined under RCW 82.32.045. For a taxpayer that reports at least fifty percent of its taxable amount under RCW 82.04.255, 82.04.290(2)(a), and 82.04.285, the maximum credit for a reporting period is (~~(seventy)~~) two hundred ten dollars multiplied by the number of months in the reporting period, as determined under RCW 82.32.045.

(2) When the amount of tax otherwise due under this chapter is equal to or less than the maximum credit, a credit is allowed equal to the amount of tax otherwise due under this chapter.

(3) When the amount of tax otherwise due under this chapter exceeds the maximum credit, a reduced credit is allowed equal to twice the maximum credit, minus the tax otherwise due under this chapter, but not less than zero.

(4) The department may prepare a tax credit table consisting of tax ranges using increments of no more than five dollars and a Code Rev/JA:lcl

corresponding tax credit to be applied to those tax ranges. The table shall be prepared in such a manner that no taxpayer will owe a greater amount of tax by using the table than would be owed by performing the calculation under subsections (1) through (3) of this section. A table prepared by the department under this subsection must be used by all taxpayers in taking the credit provided in this section.

Sec. 16. RCW 82.08.0206 and 2008 c 325 s 2 are each amended to read as follows:

(1) A working families' tax exemption, in the form of a remittance tax due under this chapter and chapter 82.12 RCW, is provided to eligible low-income persons for sales taxes paid under this chapter after January 1, 2008.

(2) For purposes of the exemption in this section, an eligible low-income person is:

(a) An individual, or an individual and that individual's spouse if they file a federal joint income tax return;

(b) (~~((An individual who))~~) An individual who is eligible for, and is granted, the credit provided in Title 26 U.S.C. Sec. 32; and

(c) (~~((An individual who))~~) An individual who properly files a federal income tax return as a Washington resident, and has been a resident of the state of Washington more than one hundred eighty days of the year for which the exemption is claimed.

(3) For remittances made in 2009 and 2010, the working families' tax exemption for the prior year is a retail sales tax exemption equal to the greater of five percent of the credit granted as a result of Title 26 U.S.C. Sec. 32 of the federal internal revenue code in the most recent year for which data is available or twenty-five dollars. For 2011 and thereafter, the working families' tax exemption for the prior year is equal to the greater of (~~((ten))~~) twenty percent of the credit granted as a result of Title 26 U.S.C. Sec. 32 of the federal internal revenue code in the most recent year for which data is available or (~~((fifty))~~) one hundred dollars.

(4) For any fiscal period, the working families' tax exemption authorized under this section (~~((shall))~~) must be approved by the
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legislature in the state omnibus appropriations act before persons may claim the exemption during the fiscal period.

(5) The working families' tax exemption (~~shall~~) must be administered as provided in this subsection.

(a) An eligible low-income person claiming an exemption under this section must pay the tax imposed under chapters 82.08, 82.12, and 82.14 RCW in the year for which the exemption is claimed. The eligible low-income person may then apply to the department for the remittance as calculated under subsection (3) of this section.

(b) Application (~~shall~~) must be made to the department in a form and manner determined by the department, but the department must provide alternative filing methods for applicants who do not have access to electronic filing.

(c) Application for the exemption remittance under this section must be made in the year following the year for which the federal return was filed, but in no case may any remittance be provided for any period before January 1, 2008. The department may use the best available data to process the exemption remittance. The department shall begin accepting applications October 1, 2009.

(d) The department (~~shall~~) must review the application and determine eligibility for the working families' tax exemption based on information provided by the applicant and through audit and other administrative records, including, when it deems it necessary, verification through internal revenue service data.

(e) The department (~~shall~~) must remit the exempted amounts to eligible low-income persons who submitted applications. Remittances may be made by electronic funds transfer or other means.

(f) The department may, in conjunction with other agencies or organizations, design and implement a public information campaign to inform potentially eligible persons of the existence of and requirements for this exemption.

(g) The department may contact persons who appear to be eligible low-income persons as a result of information received from the internal revenue service under such conditions and requirements as the internal revenue service may by law require.

(6) The provisions of chapter 82.32 RCW apply to the exemption in this section.

(7) The department may adopt rules necessary to implement this section.

(8) The department (~~shall~~) must limit its costs for the exemption program to the initial start-up costs to implement the program. The state omnibus appropriations act (~~shall~~) must specify funding to be used for the ongoing administrative costs of the program. These ongoing administrative costs include, but are not limited to, costs for: The processing of internet and mail applications, verification of application claims, compliance and collections, additional full-time employees at the department's call center, processing warrants, updating printed materials and web information, media advertising, and support and maintenance of computer systems.

NEW SECTION. **Sec. 17.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 18.** Sections 1 through 13 of this act constitute a new chapter in Title 82 RCW.

NEW SECTION. **Sec. 19.** This act takes effect July 1, 2015.