
SECOND SUBSTITUTE SENATE BILL 5091

State of Washington

68th Legislature

2023 Regular Session

By Senate Ways & Means (originally sponsored by Senators King, Conway, Gildon, Mullet, Short, and Van De Wege)

READ FIRST TIME 04/04/23.

1 AN ACT Relating to creating and expanding tax incentives for the
2 research, development, production, and sale of hydrogen fuel products
3 in Washington state; adding new sections to chapter 82.04 RCW;
4 creating a new section; and providing expiration dates.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** (1) This section is the tax preference
7 performance statement for the tax preferences contained in sections
8 2, 3, and 4, chapter . . ., Laws of 2023 (sections 2, 3, and 4 of
9 this act). This performance statement is only intended to be used for
10 subsequent evaluation of the tax preference. It is not intended to
11 create a private right of action by any party or be used to determine
12 eligibility for preferential tax treatment.

13 (2) The legislature categorizes these tax preferences as ones
14 intended to induce certain designated behavior by taxpayers, improve
15 industry competitiveness, and create or retain jobs, as indicated in
16 RCW 82.32.808(2) (a), (b), and (c).

17 (3) It is the legislature's specific public policy objective to
18 encourage green electrolytic hydrogen fuel product research,
19 development, and manufacture in Washington, and to increase the
20 number and wage level of jobs in this industry.

1 (4) The joint legislative audit and review committee must
2 evaluate:

3 (a) The number of businesses and employees in this state focused
4 on green electrolytic hydrogen fuel product research, development, or
5 manufacture, including examination of employee wages and benefits;

6 (b) Whether Washington businesses focused on green electrolytic
7 hydrogen fuel product research, development, and manufacturing in the
8 state have made advancements in green electrolytic hydrogen fuel
9 product technology, which may include examination of the number of
10 patents filed with the United States patent and trademark office,
11 research and development spending, products delivered to market, and
12 any other metrics deemed relevant by the committee; and

13 (c) Business and employment changes in green electrolytic
14 hydrogen fuel product research, development, and manufacture in
15 Washington compared with national changes in the industry.

16 (5) In order to obtain the data necessary to perform the review
17 in subsection (4) of this section, the joint legislative audit and
18 review committee may access and use any relevant data collected by
19 the state, including information contained on the annual tax
20 performance reports and excise tax data submitted to the department
21 of revenue and employment and wage data submitted to the employment
22 security department.

23 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.04
24 RCW to read as follows:

25 PREFERENTIAL BUSINESS AND OCCUPATION TAX RATE. (1)(a) Beginning
26 January 1, 2024, upon every person engaging within this state in the
27 business of manufacturing hydrogen fuel products, as to such persons
28 the amount of tax with respect to such business is, in the case of
29 manufacturers, equal to the value of the product manufactured, or in
30 the case of processors for hire, equal to the gross income of the
31 business, multiplied by the rate of 0.2904 percent.

32 (b) Beginning January 1, 2024, upon every person engaging within
33 this state in the business of making sales, at retail or wholesale,
34 of hydrogen fuel products manufactured by the seller, as to such
35 persons the amount of tax with respect to such business is equal to
36 the gross proceeds of sales, multiplied by the rate of 0.2904
37 percent.

38 (2) The preferential tax rate authorized under this section
39 applies only to persons compensating workers at prevailing wage rates

1 determined by local collective bargaining as determined by the
2 department of labor and industries. This subsection applies only to
3 job classifications where prevailing wage rates are available.

4 (3) For purposes of this section, the definitions in this
5 subsection apply.

6 (a) "Hydrogen" means green electrolytic hydrogen, as defined in
7 RCW 82.89.010.

8 (b) "Hydrogen electrolyzer" means a technology that uses an
9 electrochemical reaction to generate hydrogen by combining water and
10 electricity in the presence of a catalyst.

11 (c) "Hydrogen fuel cell" means a technology that uses an
12 electrochemical reaction to generate electric energy by combining
13 atoms of hydrogen and oxygen in the presence of a catalyst.

14 (d) "Hydrogen fuel product" means a hydrogen fuel cell or a
15 hydrogen electrolyzer.

16 (4) This section expires January 1, 2035.

17 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.04
18 RCW to read as follows:

19 BUSINESS AND OCCUPATION TAX CREDIT FOR HYDROGEN FUEL PRODUCT
20 RESEARCH AND DEVELOPMENT. (1) In computing the tax imposed under this
21 chapter, a credit is allowed for each person for qualified hydrogen
22 fuel product development. For a person who is a manufacturer or
23 processor for hire of hydrogen fuel products, credit may be earned
24 for expenditures occurring after January 1, 2024.

25 (2) The credit is equal to the amount of qualified hydrogen fuel
26 product development expenditures of a person, multiplied by the rate
27 of 1.75 percent.

28 (3) The credit under this section must be claimed against taxes
29 due for the same calendar year in which the qualified hydrogen fuel
30 product development expenditures are incurred. The credit for each
31 calendar year may not exceed the amount of tax otherwise due under
32 this chapter for the calendar year. Refunds may not be granted in the
33 place of a credit.

34 (4) Any person claiming the credit must file an electronic form
35 prescribed by the department that includes the amount of the credit
36 claimed, an estimate of the anticipated hydrogen fuel product
37 development expenditures during the calendar year for which the
38 credit is claimed, an estimate of the taxable amount during the
39 calendar year for which the credit is claimed, and such additional

1 information as the department may prescribe. A person whose reporting
2 period is less than annual must make an adjustment to the total
3 credit claimed for the calendar year using the person's actual
4 hydrogen fuel product development expenditures for the calendar year
5 when the person files its last return for the calendar year for which
6 the credit is claimed.

7 (5) The credit authorized under this section may only be claimed
8 by persons compensating each employee engaged in qualified hydrogen
9 fuel product development at an annualized amount equal to or greater
10 than 125 percent of the per capita personal income of the county from
11 which the employee performs a majority of the employee's employment
12 activity.

13 (6) Credits are available on a first-in-time basis. The
14 department must disallow any credits, or portion thereof, that would
15 cause the total amount of credits claimed under this section during
16 any calendar year to exceed \$3,000,000. If this limitation is
17 reached, the department must notify all persons claiming the credit
18 that the annual statewide limit has been met. In addition, the
19 department must provide written notice to any person who has claimed
20 tax credits in excess of the limitation in this subsection. The
21 notice must indicate the amount of tax due and provide that the tax
22 be paid within 30 days from the date of the notice. The department
23 may not assess penalties and interest as provided in chapter 82.32
24 RCW on the amount due in the initial notice if the amount due is paid
25 by the due date specified in the notice, or any extension thereof.

26 (7) The definitions in this subsection apply throughout this
27 section.

28 (a) "Hydrogen" and "hydrogen fuel product" have the same meanings
29 as provided in section 2 of this act.

30 (b) (i) "Hydrogen fuel product development" means:

31 (A) Research, design, and engineering activities performed in
32 relation to the development of hydrogen fuel products, hydrogen fuel
33 product technology, or of a product line of hydrogen fuel products,
34 including prototype development, testing, and certification;

35 (B) The discovery of technological information, the translating
36 of technological information into new or improved products,
37 processes, techniques, formulas, or inventions, and the adaptation of
38 existing products into new products; and

39 (C) Tool design and engineering design for the manufacturing
40 process.

1 (ii) "Hydrogen fuel product development" does not include:

2 (A) Surveys and studies, social science and humanities research,
3 market research or testing, quality control, sale promotion and
4 service, computer software developed for internal use, and research
5 in peripheral areas;

6 (B) Manufacturing activities or other production-oriented
7 activities; and

8 (C) Activities conducted by less than full-time employees of the
9 person claiming the credit under this section.

10 (c) "Qualified hydrogen fuel product development" means hydrogen
11 fuel product development performed within this state.

12 (d)(i) "Qualified hydrogen fuel product development expenditures"
13 means operating expenses, including wages, compensation of a
14 proprietor or a partner in a partnership as determined by the
15 department, benefits, supplies, and computer expenses, directly
16 incurred in qualified hydrogen fuel product development by a person
17 claiming the credit provided in this section.

18 (ii) "Qualified hydrogen fuel product development expenditures"
19 does not include amounts paid to a person or to the state and any of
20 its departments and institutions to conduct qualified hydrogen fuel
21 product development; or capital costs and overhead, such as expenses
22 for land, structures, or depreciable property.

23 (e) "Taxable amount" means the taxable amount subject to the tax
24 imposed in this chapter required to be reported on the person's tax
25 returns during the year in which the credit is claimed, less any
26 taxable amount for which a credit is allowed under RCW 82.04.440.

27 (8) In addition to all other requirements under this title, a
28 person claiming the credit under this section must file a complete
29 annual tax performance report with the department under RCW
30 82.32.534.

31 (9) Credit may not be claimed for expenditures under this section
32 for which a credit is claimed for the same expenditures under any
33 other section of this chapter.

34 (10) Credits may be earned for tax reporting periods beginning on
35 or after January 1, 2024, and before December 31, 2033. Unused credit
36 may be carried over and claimed against the person's tax liability
37 for the next succeeding calendar year, but may not be carried over
38 for any calendar year thereafter. No credit may be claimed on tax
39 returns filed for reporting periods beginning on or after January 1,
40 2035.

1 (11) To claim a credit under this section a person must
2 electronically file with the department all returns, forms, and any
3 other information required by the department, in an electronic format
4 as provided or approved by the department.

5 (12) This section expires January 1, 2035.

6 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.04
7 RCW to read as follows:

8 BUSINESS AND OCCUPATION TAX CREDIT FOR PROPERTY TAXES. (1) In
9 computing the tax imposed under this chapter, a credit is allowed for
10 state and local property taxes and leasehold excise taxes paid during
11 the calendar year.

12 (2) The credit is equal to:

13 (a) (i) (A) Property taxes paid on buildings, and land upon which
14 the buildings are located, constructed after July 1, 2023, and used
15 primarily in manufacturing hydrogen fuel products; and

16 (B) Leasehold excise taxes paid with respect to buildings
17 constructed after July 1, 2023, the land upon which the buildings are
18 located, or both, if the buildings are used primarily in
19 manufacturing hydrogen fuel products; or

20 (ii) Property taxes attributable to an increase in assessed value
21 due to the renovation or expansion of a building after July 1, 2023,
22 used primarily in manufacturing hydrogen fuel products; and

23 (b) (i) An amount equal to property taxes paid, by persons taxable
24 under section 2 of this act, on machinery and equipment exempt under
25 RCW 82.08.02565 or 82.12.02565 and acquired after July 1, 2023;

26 (ii) For purposes of determining the amount eligible for credit
27 under (b) (i) of this subsection (2), the amount of property taxes
28 paid is multiplied by a fraction to be calculated as follows:

29 (A) The numerator of the fraction is the total taxable amount
30 subject to the tax imposed under section 2 of this act on the
31 applicable business activities of manufacturing hydrogen fuel
32 products.

33 (B) The denominator of the fraction is the total taxable amount
34 subject to the tax imposed under all manufacturing classifications in
35 this chapter.

36 (C) For purposes of both the numerator and denominator of the
37 fraction, the total taxable amount refers to the total taxable amount
38 required to be reported on the person's returns for the calendar year
39 before the calendar year in which the credit under this section is

1 earned. The department may provide for an alternative method for
2 calculating the numerator in cases where the tax rate provided in
3 section 2 of this act for manufacturing was not in effect during the
4 full calendar year before the calendar year in which the credit under
5 this section is earned.

6 (D) No credit is available under this subsection (2)(b) if either
7 the numerator or the denominator of the fraction is zero. If the
8 fraction is greater than or equal to 0.9, then the fraction is
9 rounded to one.

10 (3) The credit authorized under this section may only be claimed
11 by persons compensating workers at prevailing wage rates determined
12 by local collective bargaining as determined by the department of
13 labor and industries. This subsection applies only to job
14 classifications where prevailing wage rates are available.

15 (4) Credits are available on a first-in-time basis. The
16 department must disallow any credits, or portion thereof, that would
17 cause the total amount of credits claimed under this section during
18 any calendar year to exceed \$3,000,000. If this limitation is
19 reached, the department must notify all persons claiming the credit
20 that the annual statewide limit has been met. In addition, the
21 department must provide written notice to any person who has claimed
22 tax credits in excess of the limitation in this subsection. The
23 notice must indicate the amount of tax due and provide that the tax
24 be paid within 30 days from the date of the notice. The department
25 may not assess penalties and interest as provided in chapter 82.32
26 RCW on the amount due in the initial notice if the amount due is paid
27 by the due date specified in the notice, or any extension thereof.

28 (5) The definitions in this subsection apply throughout this
29 section unless the context clearly indicates otherwise.

30 (a) "Hydrogen" and "hydrogen fuel product" have the same meanings
31 as provided in section 2 of this act.

32 (b) "Returns" means the tax returns for which the tax imposed
33 under this chapter is reported to the department.

34 (6) A credit earned during one calendar year may be carried over
35 to be credited against taxes incurred in subsequent calendar years.
36 No refunds may be granted for credits under this section.

37 (7) In addition to all other requirements under this title, a
38 person claiming the credit under this section must file a complete
39 annual tax performance report with the department under RCW
40 82.32.534.

1 (8) Credits may be earned for tax reporting periods beginning on
2 or after January 1, 2024, and before December 31, 2033. Unused credit
3 may be carried over and claimed against the person's tax liability
4 for the next succeeding calendar year, but may not be carried over
5 for any calendar year thereafter. No credit may be claimed on tax
6 returns filed for reporting periods beginning on or after January 1,
7 2035.

8 (9) To claim a credit under this section a person must
9 electronically file with the department all returns, forms, and any
10 other information required by the department, in an electronic format
11 as provided or approved by the department.

12 (10) This section expires January 1, 2035.

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