



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (June 2004)
(Implements RCW 34.05.310)
Do NOT use for expedited rule making

Agency: Department of Revenue

Subject of possible rule making:

Amend WAC 458-20-240 *Manufacturer's New Employee Tax Credits – Applications filed after June 30,2010*

Statutes authorizing the agency to adopt rules on this subject:

RCW 84.36.865 *Rules and regulations.*

Reasons why rules on this subject may be needed and what they might accomplish:

WAC 458-20-240 provides administrative guidance regarding criteria of eligibility for businesses applying for a B&O tax credit under chapter 82.62 RCW. Amending WAC 458-20-240 will update language in the rule due to statutory language. The proposed amendments to the rule clarify several areas of the program, including but not limited to: the application and procedures requirements, hiring requirements, criteria for qualifying, reporting requirements, and how to claim approved credits.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies: None.

Process for developing new rule (check all that apply):

- Negotiated rule making
- Pilot rule making
- Agency study
- Other (describe) Parties interested in this rule making may contact the individual listed below. The public may also participate by providing written comments throughout this rule making or giving oral testimony at the public meeting or public hearing.

How interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication:

A preliminary draft of possible rule changes is available via the Department's online [Rules Agenda](#).

Written comments may be submitted by mail and should be directed to Joseph Vidal at either of the following addresses: email: JosephV@dor.wa.gov, or mailing address: Joseph Vidal, ITA Division, PO Box 47453, Olympia, WA 98504-7453.

Written and oral comments will be accepted at the public meeting and are due by close of business April 30, 2015.

Public meeting location:

Capitol Plaza Building
4th Floor Executive Conference Room
1025 Union Avenue SE
Olympia, Washington

Assistance for persons with disabilities:

Contact Mary Carol LaPalm (360) 725-7499 or Renee Cosare (360) 725-7514 no later than 10 days before the meeting date.

For Hearing Impaired please contact us via the Washington Relay Operator at (800) 833-6384.

Call in option can be provided upon request no later than 3 days before the meeting date.

Date: April 30, 2015 **Time:** 10:00 A.M.

Date March 16, 2015

Name

Dylan Waits

Signature

Title

Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: March 16, 2015

TIME: 11:33 AM

WSR 15-07-063

AMENDATORY SECTION (Amending WSR 10-23-035, filed 11/9/10, effective 12/10/10)

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

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

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

(a) **What is an eligible business project?** An "eligible business project" means:

(i) Manufacturing, commercial testing, or research and development activities conducted by an applicant;

(ii) In an eligible area at a specific facility (~~, subject to the restriction noted in the following paragraph. An "eligible business project"~~);

(iii) Where employment increases as described under subsection (3) of this rule; and

(iv) Does not include any portion of a business project undertaken by a light and power business or any portion of a business project creating employment positions outside an eligible area.

To be considered an "eligible business project," the applicant's number of average full-time qualified employment positions at the specific facility must (~~be at least~~) increase by fifteen percent (~~greater~~) in the (~~calendar year for which credit is being sought than the number of positions at the same facility in the immediately preceding calendar year~~) four consecutive full calendar quarters after the calendar quarter during which the first qualified employment position is filled. Subsection (4) of this rule explains how to determine whether this threshold is satisfied.

New businesses meeting all requirement of the program, whether new to Washington or newly formed, are eligible for all qualified employment positions filled during the four consecutive full calendar quarters immediately preceding the quarter during which the first qualified employment position is filled.

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

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

(ii) A community empowerment zone (CEZ). CEZ means an area meeting the requirements of RCW 43.31C.020 and officially designated by the director of the department of commerce. For a business located in a CEZ, credit is only earned for those employees, who at the time of hire, are residents of the CEZ in which the project is located.

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

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

(i) **Manufacturing.** "Manufacturing" has the meaning given in RCW 82.04.120. In addition, for the purposes of chapter 82.62 RCW, "manufacturing" also includes the activities performed by research and development laboratories and commercial testing laboratories.

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

(3) **What are the hiring requirements?** The average full-time qualified employment positions at the specific facility (~~during the calendar year for which credits are claimed must be at least fifteen percent greater than the average full-time qualified employment positions at the same facility for the preceding calendar year~~) will be at least fifteen percent greater in the four consecutive full calendar quarters after the calendar quarter during which the first qualified employment position is filled than the applicant's average qualified employment positions at the same facility in the four consecutive full calendar quarters immediately preceding the calendar quarter during which the first qualified employment position is filled.

(a) **What is a qualified employment position?** A "qualified employment position" means a position filled by a permanent full-time employee employed at an eligible business project for (~~twelve consecutive months~~) four consecutive full calendar quarters. Once a full-time position is established and filled it will continue to (~~qualify for twelve consecutive periods so long as any person fills the posi-~~

~~tion. The position is)) be considered "filled" even during periods of vacancy, provided ((these periods do not exceed thirty consecutive days and the employer is training or actively recruiting a replacement employee)) the cumulative period of any vacancies in that position is not more than one hundred twenty days in the four quarter period and the employer is training or actively recruiting a permanent replacement, full-time employee for the position.~~

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

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

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

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

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

(4) **How to determine if the fifteen percent employment increase requirement is met.** ~~((Qualification for tax credits depends upon whether the applicant hires enough new positions to meet the fifteen percent average increase requirement.))~~ The credit is only available to applicants who satisfy the fifteen percent employment increase.

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

(i) Determine the average number of permanent full-time qualified employment positions that existed at the facility during the ~~((calendar year prior to the year in which tax credit is being claimed))~~ four consecutive full calendar quarters immediately preceding the calendar quarter for which the first qualified employment position is filled.

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

(b) **When does hiring have to occur?** All hiring increases must occur during the ~~((calendar year for which credits are being sought))~~ four consecutive full calendar quarters after the calendar quarter during which the first qualified employment position is filled for purposes of meeting the fifteen percent threshold test. Positions hired in ~~((a calendar year prior to making an application))~~ the four consecutive full calendar quarters prior to the first qualified employment position being filled are not eligible for a credit but the positions are used ~~((to calculate))~~ as a base when calculating whether the fifteen percent threshold has been met.

(c) **The department will assist applicants to determine their hiring requirements.** Accompanying the tax credit application is a worksheet to assist the applicant in determining if the fifteen percent qualified employment threshold is satisfied. Based upon the information provided in the application, the department will advise appli-

cants of their minimum number of hiring needs for which credits are being sought.

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

(i) ABC Company anticipates increasing employment (~~during the 2001 calendar year~~) at a manufacturing facility by an average of 15 full-time qualified employment positions for a total of 113 positions. The average number of full-time qualified employment positions (~~during the 2000 calendar year~~) for the four consecutive full calendar quarters immediately preceding the calendar quarter for which the first qualified employment position is filled was 98. To qualify for the tax credit program, the minimum average number of full-time qualified employment positions required for the (~~2001 calendar year~~) four consecutive full calendar quarters after the calendar quarter for which the first qualified positions is filled is $98 \times .15 = 14.7$ (rounding (~~up to 15~~) down to 14 positions). Therefore, ABC Company's plan to hire 15 full-time qualified (~~employment positions for 2001~~) employees satisfies the 15% employment increase requirement.

(ii) ABC anticipates increasing employment positions at this same manufacturing facility by an average of 15 additional full-time qualified employment positions during (~~the 2002 calendar year to~~) the following four consecutive full calendar quarters for a total of 128 positions. To qualify for the tax credit program, the minimum average number of full-time qualified employment positions required for (~~the 2002 calendar year is 17~~) these four consecutive full calendar quarters is 16 ($113 \times .15 = 16.95$, rounding (~~up to 17~~) down to 16). Therefore, ABC Company's plan to hire 15 full-time qualified (~~employment positions for 2002~~) employees does not (~~meet~~) satisfy the 15% employment increase requirement.

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

(6) **Application procedures.** A taxpayer must file an application with and obtain approval from the department (~~of revenue~~) to receive tax credits under this program. A (~~separate~~) new application must be submitted (~~for each calendar year for which credits are claimed~~) after each group of four consecutive full calendar quarters that you project employment to increase over 15%. RCW 82.62.020 requires that application for the tax credits be (~~made prior to the actual hiring of qualified employment positions~~) filed within the first ninety days after the first qualified employment position is filled. Applications failing to satisfy this statutory requirement will be disapproved.

(a) **How to obtain and file applications.** Application forms will be provided by the department upon request either by calling

360-902-7175 or ((via)) from the department's internet web site at ((www.dor.wa.gov)) dor.wa.gov under the option for forms. The completed application may be sent by fax to 360-586-0527 or mailed to the following address:

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

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

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

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

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

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

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

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

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

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

holiday, sick leave, military leave, and jury duty. "Benefits" does not include any amount reported as wages.

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

(a) **When can credits be used?** The credits ~~((may be used as soon as hiring of the projected qualified employment positions begins or may accrue until they are most beneficial for the recipient's use. For example, if a recipient has been approved for \$12,000 of tax credits based upon projections to hire five new positions, that recipient may use))~~ cannot be used until the department has approved the application. After approval, a recipient may use \$2,000 or \$4,000 of tax credit at the time it hires each new employee, depending on the wage/benefit level of the position filled.

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

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

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

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

(a) **Verification of report.** The department will use the same report the recipient provides to the department of employment security, which is known as the quarterly employment security report, to verify the recipient's eligibility for tax credits. The recipient must maintain copies of the quarterly employment report for the ~~((year))~~ four consecutive full calendar quarters prior to the ~~((year for which credits are claimed, the year))~~ quarter for which the first qualified employment position is filled, the five calendar quarters for which the credits are claimed (this includes the quarter for which the first qualified employment position is filled), and ((for)) the four consecutive full calendar quarters following the hiring of persons to fill

the qualified employment positions. (The recipient does not have to forward copies of the quarterly employment report to the department each quarter.) The department may use other wage information provided to the department by the department of employment security. The taxpayer must provide additional information to the department, as the department finds necessary to calculate and verify wage eligibility.

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

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

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