

Excise Tax Advisory

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Business and Occupation Tax Credit on Research and Development Spending for Staffing Companies

RCW 82.04.4452 provides a business and occupation (B&O) tax credit for persons whose research and development (R&D) spending during a calendar year exceeds 0.92 percent of the person's taxable amount during the same year. This excise tax advisory provides guidance regarding possible eligibility of staffing companies. Refer to WAC 458-20-24003 (Tax incentives for high technology businesses) for more information about this B&O tax credit.

How does a staffing company qualify for the B&O tax credit?

A staffing company qualifies for the B&O tax credit when the company itself is engaged in qualified R&D activities. The department recognizes the possibility that a staffing company may receive a contract to perform qualified R&D.

In order to qualify, a staffing company must meet the following criteria:

- It must perform qualified R&D activities through its employees,
- Its employees must perform qualified R&D activities in an R&D project, without considering any activity performed (1) by the person contracting with the staffing company for such performance or (2) by any other person,
- It must complete an annual tax performance report by March 31st following any year in which the credit was taken, and
- It must document any claim of the B&O tax credit.

Qualified R&D means R&D performed within the state of Washington in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, and environmental technology. Refer to WAC 458-20-24003 for more information on the five high technology areas and the definition of R&D.

R&D includes the following activities:

- Activities performed to discover technological information,
- Technical and nonroutine activities concerned with translating technological information into new or improved products, processes, techniques, formulas, inventions, or software, and

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- Exploration of a new use for an existing drug, device, or biological product if the new use requires separate licensing by the federal food and drug administration under chapter 21, C.F.R., as amended.

R&D does not include the following activities:

- Adaptation or duplication of existing products where the products are not substantially improved by application of the technology,
- Surveys and studies,
- Social science and humanities research,
- Market research or testing,
- Quality control,
- Sale promotion and service,
- Computer software developed for internal use, and
- Research in areas such as improved style, taste, and seasonal design.

Example 1: Company P, a staffing company, furnishes three employees to Company Q for performing an R&D project in biotechnology. P's employees perform all the work of this R&D project. None of Q's employees are involved in the R&D project. P qualifies for the B&O tax credit if all other requirements of the credit are met.

Example 2: Company M, a staffing company, furnishes three employees to Company N for assisting an R&D project in electronic device technology. N has a manager and five employees working on the same project. The work of M's employees and N's employees combined as a whole constitutes R&D. M's employees do not perform sufficient activities themselves to be considered performing R&D. M does not qualify for the B&O tax credit.

Example 3: Company V, a staffing company, furnishes three employees to Company W for performing a phase of an R&D project in advanced materials. W has a manager and five employees working on other phases of the same project. V's employees engage in activities in performance of a phase of an R&D project that results in discovery of technological information. The work of V's employees alone constitutes R&D. V qualifies for the B&O tax credit if all other requirements of the credit are met.

How is the B&O tax credit calculated?

A staffing company qualifies for the B&O tax credit if its R&D spending for the calendar year exceeds 0.92 percent of its taxable amount for the same calendar year.

Taxable amount means the taxable amount subject to B&O tax required to be reported on the company's combined excise tax returns for the calendar year, less any taxable amount for the same year for which a multiple activities tax credit is allowed. Refer to WAC 458-20-24003 for more information on the taxable amount and the definition of R&D spending.

Example 4: Company X, a staffing company, furnishes three employees to Company Y for performing an R&D project in advanced computing. X's employees perform qualifying R&D services. X incurs R&D spending of \$20,000 for the calendar year. X's taxable amount for the calendar year is \$1,000,000. X's R&D spending is 2% of its taxable amount ($\$20,000/\$1,000,000$), thus X qualifies for the B&O tax credit.

How does the assignment of the B&O tax credit work?

A staffing company may assign all or any portion of the credit to the person contracting for performance of qualified R&D. Once the staffing company assigns the credit, only the assignee can take the same credit. Both the staffing company and the assignee must meet all the requirements of the credit for the assignment to be valid. Refer to WAC 458-20-24003 for more information on assignment of the credit.

Example 5: Company G, a staffing company, furnishes three employees to Company H for performance of a qualified R&D project. G is obligated under the contract to assign all of its B&O tax credit to H. G is eligible for \$5,000 B&O tax credit for the calendar year. G assigns the \$5,000 credit to H, and H takes the \$5,000 credit. G cannot take the same \$5,000 B&O tax credit.
