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HOUSE BILL 2076

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State of Washington                      63rd Legislature                      2013 2nd Special Session

By Representatives Reykdal and Orcutt

1            AN ACT Relating to affirming exclusions for payroll cost  
2 reimbursements within a centralized payroll reporting system; adding a  
3 new section to chapter 82.04 RCW; and creating a new section.

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

5            NEW SECTION.    **Sec. 1.** (1) The legislature finds that the supreme  
6 court's decision in *William Rogers v. Tacoma*, while clarifying the  
7 taxation of temporary staffing agencies, resulted in differing  
8 interpretations of regulatory requirements in order to qualify for a  
9 pass-through exclusion from Washington B&O taxes for payroll  
10 reimbursements made within an affiliated group.

11            (2) The legislature passed Second Engrossed Substitute Senate Bill  
12 No. 6143 during the 2010 legislative session that directed the  
13 department of revenue to conduct a review and provide a report on the  
14 state's tax policies with respect to the taxation of intercompany  
15 transactions. The report affirms that centralized payroll reporting  
16 systems can result in an unintended additional layer of tax for  
17 Washington businesses. Exclusions for payroll reimbursements allow  
18 businesses to have efficient administrative costs without incurring an  
19 additional tax obligation resulting exclusively from streamlining

1 payroll processes. Further, this treatment of allowing for an  
2 exclusion of payroll cost reimbursements within a centralized payroll  
3 system is consistent with historical tax practices of the department of  
4 revenue prior to the *William Rogers* decision.

5 (3) The department of revenue continues to work with taxpayers to  
6 study taxation of transactions within and between affiliated business  
7 organizations in order to determine the appropriate policies and to  
8 identify areas where statutory and regulatory changes may be necessary.

9 (4) The legislature finds that the tax policy of allowing  
10 exclusions for payroll cost reimbursements within a centralized payroll  
11 reporting system is appropriate and should be affirmed. The  
12 legislature adopts the historical tax policy of allowing exclusions for  
13 payroll cost reimbursements within a centralized payroll reporting  
14 system of an affiliated group and requires the implementation of such  
15 tax policy from the effective date of this section. The legislature  
16 does not intend for this act to retroactively create a right of refund  
17 for taxes paid on payroll cost reimbursements prior to the enactment of  
18 this statute.

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

21 (1) This chapter does not apply to amounts that a qualified  
22 employer of record engaged in providing paymaster services receives  
23 from an affiliated business to cover employee costs of a qualified  
24 employee. However, no exclusion is allowed under this section for any  
25 employee costs incurred in connection with a contractual obligation of  
26 the taxpayer to provide services, including staffing services as  
27 defined in RCW 82.04.540.

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

30 (a) "Affiliated" has the same meaning as provided in RCW  
31 82.32.655(7).

32 (b) "Employee costs" are the actual cost of wages and salaries,  
33 benefits, workers' compensation, payroll taxes, withholding, or other  
34 assessments paid to or on behalf of an employee.

35 (c) "Functional employment relationship" means having control over  
36 the work schedule and activities of the employees and control over all  
37 employment decisions such as salary, discipline, hiring, or layoffs.

1 (d) "Paymaster services" means providing payroll and related human  
2 resource services.

3 (e) "Qualified employee" means an employee with whom the affiliated  
4 business has a functional employment relationship. Neither the  
5 employer of record, nor any other affiliate, may have a functional  
6 employment relationship with the employee.

7 (f) "Qualified employer of record" is a person who:

8 (i) Has no functional employment relationship with a qualified  
9 employee; and

10 (ii) Has no contractual liability with a qualified employee for the  
11 employee costs. A qualified employer of record may have statutory or  
12 common law liability to the qualified employees or to third parties for  
13 employee costs.

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