S-1448.2

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**SUBSTITUTE SENATE BILL 5339**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senate Trade & Economic Development (originally sponsored by Senators Padden, Rivers, Angel, Dansel, Schoesler, Becker, Warnick, Honeyford, and Parlette)

AN ACT Relating to creating a business and occupation tax deferral program for small businesses; adding a new section to chapter 82.04 RCW; and creating a new section.

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

NEW SECTION. **Sec.**  (1) This section is the tax preference performance statement for the tax preference contained in section 2 of this act. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to provide tax relief for new businesses and create jobs, as indicated in RCW 82.32.808(2) (c) and (e).

(3) It is the legislature's specific public policy objective to reduce the tax burden on new businesses during the first three years of operation. It is the legislature's intent to provide a business and occupation tax deferral in order to increase the number of new business start-ups and decrease the number of new business failures, thereby increasing jobs and economic activity.

(4) If a review finds that new business start-ups increase and new business failures decrease, then the legislature intends to extend the expiration date of the tax preference.

(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to the department of revenue.

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

(1) A small business may defer taxes due and payable under this chapter during the first three years of operation as provided in this section. A small business may defer the following:

(a) One hundred percent of the taxes due under this chapter during the first two years of operation; and

(b) Fifty percent of the taxes due under this chapter during the third year of operation.

(2) A small business may not defer taxes under this section that were previously deferred.

(3) A small business may defer taxes under this section only if:

(a) The business electronically files with the department all returns, forms, and any other information required by the department, in an electronic format as provided by the department; and

(b) The business is a new business.

(4) The department must allow a small business to make an election to defer all or some taxes due and payable under this chapter when the business electronically files its tax return. The department must also provide an election to repay some or all deferred taxes.

(5)(a) The small business must begin repaying the deferred taxes in the fifth year after the date in which the taxes were deferred under this section. The first payment of twenty percent of the deferred taxes will be due sixty months after the date of deferral, with subsequent annual payments of twenty percent of the deferred taxes due for each of the following four years. The department may authorize an accelerated repayment schedule upon request of the recipient.

(b) The department may not assess interest and penalties on deferred taxes unless the taxpayer does not meet the repayment provisions described in (a) of this subsection. For the purposes of assessing interest and penalties, deferred taxes are considered due and payable from the date described in (a) of this subsection, not the original date of deferral, and assessed in the manner provided under chapter 82.32 RCW.

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

(a)(i) "New business" means a business that has not been operating in Washington longer than twelve months from the time the business applies for the credit under this section. The date that a new business began operating in Washington, for purposes of this section, is calculated from the date that a new business first engages in business in Washington or engages in any activity that generates gross income of the business from sources within this state regardless of physical presence.

(ii) "New business" does not include:

(A) A business that has been reincorporated, restructured, reorganized, or transferred, unless the majority of the activities to be conducted after the reincorporation, restructuring, reorganization, or transfer, calculated by relative gross income, are significantly different from any of the activities previously conducted by the predecessor or any other business involved in the reincorporation, restructuring, reorganization, or transfer;

(B) A new branch location or other facility, unless such new branch location or other facility is by an existing out-of-state entity first doing business in this state; or

(C) A business that is substantially similar to a business currently operated, or operated within the past five years, when the majority of the beneficial ownership is the same.

(b) "Small business" means a person reporting a gross amount on the combined excise tax return of five hundred thousand dollars or less in the prior calendar year with respect to activities taxable under this chapter.

(7) For the purposes of this section, a business or business activities are presumed to be "substantially similar" and not "significantly different" if properly within the same industry group of the North American industry classification system.

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