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SENATE BILL 5821

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State of Washington

65th Legislature

2017 Regular Session

By Senator Chase

Read first time 02/15/17. Referred to Committee on Higher Education.

1 AN ACT Relating to funding the state need grant by repealing tax  
2 preferences; amending RCW 82.04.540; repealing RCW 82.04.650; making  
3 appropriations; providing an effective date; and declaring an  
4 emergency.

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

6 **Sec. 1.** RCW 82.04.540 and 2006 c 301 s 1 are each amended to  
7 read as follows:

8 (1) The provision of professional employer services by a  
9 professional employer organization is taxable under RCW 82.04.290(2).

10 ~~(2) ((A professional employer organization is allowed a deduction~~  
11 ~~from the gross income of the business derived from performing~~  
12 ~~professional employer services that is equal to the portion of the~~  
13 ~~fee charged to a client that represents the actual cost of wages and~~  
14 ~~salaries, benefits, workers' compensation, payroll taxes,~~  
15 ~~withholding, or other assessments paid to or on behalf of a covered~~  
16 ~~employee by the professional employer organization under a~~  
17 ~~professional employer agreement.~~

18 ~~(3))~~ For the purposes of this section, the following definitions  
19 apply:

20 (a) "Client" means any person who enters into a professional  
21 employer agreement with a professional employer organization. For

1 purposes of this subsection (~~((3))~~) (2)(a), "person" has the same  
2 meaning as "buyer" in RCW 82.08.010.

3 (b) "Coemployer" means either a professional employer  
4 organization or a client.

5 (c) "Coemployment relationship" means a relationship which is  
6 intended to be an ongoing relationship rather than a temporary or  
7 project-specific one, wherein the rights, duties, and obligations of  
8 an employer which arise out of an employment relationship have been  
9 allocated between coemployers pursuant to a professional employer  
10 agreement and applicable state law. In such a coemployment  
11 relationship:

12 (i) The professional employer organization is entitled to enforce  
13 only such employer rights and is subject to only those obligations  
14 specifically allocated to the professional employer organization by  
15 the professional employer agreement or applicable state law;

16 (ii) The client is entitled to enforce those rights and obligated  
17 to provide and perform those employer obligations allocated to such  
18 client by the professional employer agreement and applicable state  
19 law; and

20 (iii) The client is entitled to enforce any right and obligated  
21 to perform any obligation of an employer not specifically allocated  
22 to the professional employer organization by the professional  
23 employer agreement or applicable state law.

24 (d) "Covered employee" means an individual having a coemployment  
25 relationship with a professional employer organization and a client  
26 who meets all of the following criteria: (i) The individual has  
27 received written notice of coemployment with the professional  
28 employer organization, and (ii) the individual's coemployment  
29 relationship is pursuant to a professional employer agreement.  
30 Individuals who are officers, directors, shareholders, partners, and  
31 managers of the client are covered employees to the extent the  
32 professional employer organization and the client have expressly  
33 agreed in the professional employer agreement that such individuals  
34 would be covered employees and provided such individuals meet the  
35 criteria of this subsection and act as operational managers or  
36 perform day-to-day operational services for the client.

37 (e) "Professional employer agreement" means a written contract by  
38 and between a client and a professional employer organization that  
39 provides:

40 (i) For the coemployment of covered employees; and

1 (ii) For the allocation of employer rights and obligations  
2 between the client and the professional employer organization with  
3 respect to the covered employees.

4 (f) "Professional employer organization" means any person engaged  
5 in the business of providing professional employer services. The  
6 following shall not be deemed to be professional employer  
7 organizations or the providing of professional employer services for  
8 purposes of this section:

9 (i) Arrangements wherein a person, whose principal business  
10 activity is not entering into professional employer arrangements and  
11 which does not hold itself out as a professional employer  
12 organization, shares employees with a commonly owned company within  
13 the meaning of section 414(b) and (c) of the Internal Revenue Code of  
14 1986, as amended;

15 (ii) Independent contractor arrangements by which a person  
16 assumes responsibility for the product produced or service performed  
17 by such person or his or her agents and retains and exercises primary  
18 direction and control over the work performed by the individuals  
19 whose services are supplied under such arrangements; or

20 (iii) Providing staffing services.

21 (g) "Professional employer services" means the service of  
22 entering into a coemployment relationship with a client in which all  
23 or a majority of the employees providing services to a client or to a  
24 division or work unit of a client are covered employees.

25 (h) "Staffing services" means services consisting of a person:

26 (i) Recruiting and hiring its own employees;

27 (ii) Finding other organizations that need the services of those  
28 employees;

29 (iii) Assigning those employees on a temporary basis to perform  
30 work at or services for the other organizations to support or  
31 supplement the other organizations' workforces, or to provide  
32 assistance in special work situations such as, but not limited to,  
33 employee absences, skill shortages, seasonal workloads, or to perform  
34 special assignments or projects, all under the direction and  
35 supervision of the customer; and

36 (iv) Customarily attempting to reassign the employees to other  
37 organizations when they finish each assignment.

1        NEW SECTION.    **Sec. 2.**    RCW 82.04.650 (Exemptions—Investment  
2    conduits and securitization entities) and 2010 1st sp.s. c 23 s 111  
3    are each repealed.

4        NEW SECTION.    **Sec. 3.**    (1) The sum of fifteen million dollars, or  
5    as much thereof as may be necessary, is appropriated for the fiscal  
6    year ending June 30, 2018, from the general fund to the student  
7    achievement council for the purposes of funding the state need grant  
8    program.

9        (2) The sum of fifteen million dollars, or as much thereof as may  
10    be necessary, is appropriated for the fiscal year ending June 30,  
11    2019, from the general fund to the student achievement council for  
12    the purposes of funding the state need grant program.

13       NEW SECTION.    **Sec. 4.**    This act is necessary for the immediate  
14    preservation of the public peace, health, or safety, or support of  
15    the state government and its existing public institutions, and takes  
16    effect July 1, 2017.

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