

ESSB 6492 - H AMD 1092

By Representative DeBolt

NOT ADOPTED 02/06/2020

1 On page 1, line 18, after "82.04.299" strike "or subject to the
2 tax rate under RCW 82.04.290(2)(a)(i)"

3 On page 2, beginning on line 21, after "82.04.299" strike all
4 material through "82.04.290(2)(a)(i)" on line 22

5 Beginning on page 3, line 9, strike all of sections 2 and 3

6 Renumber the remaining sections consecutively, correct any
7 internal references accordingly, and correct the title.

8 Beginning on page 15, line 13, after "imposed on" strike all
9 material through "January 1, 2022.)" on page 18, line 2, and insert
10 "~~((select advanced computing businesses as follows:~~

11 ~~(i) For an affiliated group that has worldwide gross revenue of~~
12 ~~more than twenty-five billion dollars, but not more than one hundred~~
13 ~~billion dollars, during the entire current or immediately preceding~~
14 ~~calendar year, the surcharge is equal to the total amount of tax~~
15 ~~payable by each member of the affiliated group on all business~~
16 ~~activities taxed under RCW 82.04.290(2), before application of any~~
17 ~~tax credits, multiplied by the rate of thirty-three and one-third~~
18 ~~percent.~~

19 ~~(ii) For an affiliated group that has worldwide gross revenue of~~
20 ~~more than one hundred billion dollars during the entire current or~~
21 ~~immediately preceding calendar year, the surcharge is equal to the~~
22 ~~total amount of tax payable by each member of the affiliated group on~~
23 ~~all business activities taxed under RCW 82.04.290(2), before~~
24 ~~application of any tax credits, multiplied by the rate of sixty-six~~
25 ~~and two-thirds percent.~~

26 ~~(b) In no case will the combined surcharge imposed under this~~
27 ~~subsection (4) paid by all members of an affiliated group be less~~
28 ~~than four million dollars or more than seven million dollars~~
29 ~~annually.~~

30 ~~(c) For persons subject to the surcharge imposed under this~~
31 ~~subsection (4) that report under one or more tax classifications, the~~

1 surcharge applies only to business activities taxed under RCW
2 82.04.290(2).

3 ~~(d) The surcharge imposed under this subsection (4) must be~~
4 ~~reported and paid in a manner and frequency as required by the~~
5 ~~department.~~

6 ~~(e) To aid in the effective administration of the surcharge in~~
7 ~~this subsection (4), the department may require persons believed to~~
8 ~~be engaging in advanced computing or affiliated with a person~~
9 ~~believed to be engaging in advanced computing to disclose whether~~
10 ~~they are a member of an affiliated group and, if so, to identify all~~
11 ~~other members of the affiliated group subject to the surcharge. If~~
12 ~~the department determines that a person, with intent to evade the~~
13 ~~surcharge under this subsection (4), failed to fully comply with this~~
14 ~~subsection (4)(e), the seven million dollar limitation in (b) of this~~
15 ~~subsection (4) does not apply to the person's affiliated group.~~

16 ~~(f) For the purposes of this subsection (4) the following~~
17 ~~definitions apply:~~

18 ~~(i) "Advanced computing" means designing or developing computer~~
19 ~~software or computer hardware, whether directly or contracting with~~
20 ~~another person, including modifications to computer software or~~
21 ~~computer hardware, cloud computing services, or operating an online~~
22 ~~marketplace, an online search engine, or online social networking~~
23 ~~platform;~~

24 ~~(ii) "Affiliate" and "affiliated" means a person that directly or~~
25 ~~indirectly, through one or more intermediaries, controls, is~~
26 ~~controlled by, or is under common control with another person;~~

27 ~~(iii) "Affiliated group" means a group of two or more persons~~
28 ~~that are affiliated with each other;~~

29 ~~(iv) "Cloud computing services" means on-demand delivery of~~
30 ~~computing resources, such as networks, servers, storage,~~
31 ~~applications, and services, over the internet;~~

32 ~~(v) "Control" means the possession, directly or indirectly, of~~
33 ~~more than fifty percent of the power to direct or cause the direction~~
34 ~~of the management and policies of a person, whether through the~~
35 ~~ownership of voting shares, by contract, or otherwise; and~~

36 ~~(vi) "Select advanced computing business" means a person who is a~~
37 ~~member of an affiliated group with at least one member of the~~
38 ~~affiliated group engaging in the business of advanced computing, and~~
39 ~~the affiliated group has worldwide gross revenue of more than twenty-~~
40 ~~five billion dollars during the entire current or immediately~~

1 preceding calendar year. A person who is primarily engaged within
2 this state in the provision of commercial mobile service, as that
3 term is defined in 47 U.S.C. Sec. 332(d)(1), shall not be considered
4 a select advanced computing business. A person who is primarily
5 engaged in this state in the operation and provision of access to
6 transmission facilities and infrastructure that the person owns or
7 leases for the transmission of voice, data, text, sound, and video
8 using wired telecommunications networks shall not be considered a
9 select advanced computing business.

10 (5) The workforce education investment surcharges under this
11 section do not apply to any hospital as defined in RCW 70.41.020,
12 including any hospital that comes within the scope of chapter 71.12
13 RCW if the hospital is also licensed under chapter 70.41 RCW.

14 (6) Revenues from the surcharges under this section must be
15 deposited directly into the workforce education investment account
16 established in RCW 43.79.195.

17 (7) The department has the authority to determine through an
18 audit or other investigation whether a person is subject to the
19 surcharges imposed in this section. The department's determination
20 that a person is subject to the surcharge is presumed to be correct
21 unless the person shows by clear, cogent, and convincing evidence
22 that the department's determination was incorrect. The increased
23 evidentiary standard under this subsection (7) does not apply after
24 January 1, 2022)) specified persons.

25 (b) The surcharge is equal to the greater of:

26 (i) The gross income of the person subject to the tax under RCW
27 82.04.290, multiplied by a rate of two and one-half percent; or

28 (ii) Three hundred million dollars per year.

29 (2) For the purposes of this section, "specified person" means
30 any person for whom all of the following apply:

31 (a) The person has been registered with the department for at
32 least thirty-seven years;

33 (b) At any time after the effective date of this section, the
34 combined employment in this state of the person exceeds forty
35 thousand full-time and part-time employees, based on data reported to
36 the employment security department; and

37 (c) The business activities of the person primarily include the
38 development, sales, and licensing of computer software and services.

39 (3) Revenues must be deposited directly into the workforce
40 education investment account established in RCW 43.79.195.

1 (4) The department has the authority to determine through an
2 audit or other investigation whether a person is subject to the
3 surchage imposed in this section. The department's determination is
4 presumed to be correct unless the person shows by clear, cogent, and
5 convincing evidence that the department's determination is
6 incorrect."

7 On page 18, line 13, after "(2)" strike all material through
8 "are" and insert "Section 1 of this act is"

9 On page 18, line 16, after "and" strike "take" and insert "takes"

10 On page 18, beginning on line 19, strike all of section 9

11 Correct the title.

EFFECT: (1) Removes the 1.75 percent business and occupation tax on services.

(2) Imposes the greater of a 2.5 percent advanced computing surcharge on the gross income of a person or \$300 million per year. Persons subject to this new surcharge are businesses for whom all of the following apply: (a) They have been registered with the Department of Revenue to do business in Washington for at least 37 years; (b) their combined employment in this state exceeds 40,000 full-time and part-time employees; and (c) their business activities are primarily the development, sales, and licensing of computer software and services.

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