
HOUSE BILL 2468

State of Washington

66th Legislature

2020 Regular Session

By Representatives Hansen, Tharinger, Pollet, and Wylie

Read first time 01/14/20. Referred to Committee on Finance.

1 AN ACT Relating to improving the effectiveness and adequacy of
2 the workforce education investment surcharge by decreasing compliance
3 and administrative burdens for taxpayers and the department of
4 revenue; amending RCW 82.04.299; creating new sections; and declaring
5 an emergency.

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

7 **Sec. 1.** RCW 82.04.299 and 2019 c 406 s 74 are each amended to
8 read as follows:

9 The legislature intends to secure additional revenue via
10 surcharges targeted towards certain industries including select
11 advanced computing businesses.

12 The legislature intends the provisions of chapter 406, Laws of
13 2019 to be applied broadly in favor of application of the surcharges.
14 To achieve this intent, any provision within chapter 406, Laws of
15 2019 that is deemed to be ambiguous by a court of competent
16 jurisdiction, the board of tax appeals, or any other judicial or
17 administrative body, should be construed in favor of application of
18 the surcharges. The rule of statutory construction in favor of the
19 application of the surcharge under this paragraph does not apply to
20 tax periods beginning on or after January 1, 2022.

1 (1) (a) Beginning with business activities occurring on or after
2 January 1, 2020, in addition to the taxes imposed under RCW
3 82.04.290(2), a workforce education investment surcharge is imposed
4 on specified persons. The surcharge is equal to the ~~((total amount of~~
5 ~~tax payable by the person on business activities taxed))~~ gross income
6 of the business subject to the tax imposed under RCW 82.04.290(2),
7 ~~((before application of any tax credits,))~~ multiplied by the rate of
8 ~~((twenty))~~ 0.3 percent.

9 (b) For specified persons who report under one or more tax
10 classifications, this surcharge applies only to business activities
11 taxed under RCW 82.04.290(2).

12 (c) The surcharge imposed under this subsection (1) must be
13 reported and paid in a manner and frequency as required by the
14 department.

15 (2) For the purposes of this section, "specified person" means a
16 person who is not subject to the surcharge under subsection ~~((4))~~
17 (3) of this section and who ~~((is primarily engaged within this state~~
18 ~~in any combination))~~ has gross income of the business apportioned to
19 this state from any of the following activities:

20 (a) ~~((Computer software publishing or publishing and~~
21 ~~reproduction. Establishments in this industry carry out))~~ Publishing
22 computer software, reproducing computer software, or engaging in both
23 of these activities. Such activities include operations necessary for
24 producing and distributing computer software, such as designing,
25 providing documentation, assisting in installation, and providing
26 support services to software purchasers. ~~((These establishments))~~
27 Businesses engaged in these activities may design, develop, and
28 publish, or publish only. ~~((These establishments))~~ Such businesses
29 may publish and distribute software remotely through subscriptions
30 and downloads;

31 (b) Conducting original investigation undertaken on a systematic
32 basis to gain new knowledge or the application of research findings
33 or other scientific knowledge for the creation of new or
34 significantly improved products or processes. Techniques used in
35 conducting these activities may include modeling and simulation~~((-~~
36 ~~The industries within this industry group are defined on the basis of~~
37 ~~the domain of research and on scientific expertise of the~~
38 ~~establishment))~~;

39 (c) Putting capital at risk in the process of underwriting
40 securities issues or in making markets for securities and commodities

1 ~~((and))~~, including those acting as agents or brokers between buyers
2 and sellers of securities and commodities, usually charging a
3 commission. This subsection (2)(c) includes investment banks and
4 securities brokerages;

5 (d) Providing expertise in the field of information technologies
6 through one or more of the following activities: (i) Writing,
7 modifying, testing, and supporting computer software to meet the
8 needs of a particular customer; (ii) planning and designing computer
9 systems that integrate computer hardware, computer software, and
10 communication technologies; (iii) on-site management and operation of
11 clients' computer systems and data processing facilities; ~~((or))~~ (iv)
12 ~~((other professional and technical computer-related advice and~~
13 ~~services))~~ computer disaster recovery services; or (v) software
14 installation services;

15 (e) Performing central banking functions, such as issuing
16 currency, managing the nation's money supply and international
17 reserves, holding deposits that represent the reserves of other banks
18 and other central banks, and acting as a fiscal agent for the central
19 government;

20 (f) (i) Purchasing access and network capacity from owners and
21 operators of telecommunications networks and reselling wired and
22 wireless telecommunications services ~~((, except satellite,))~~ to
23 businesses and households; (ii) providing specialized
24 telecommunications services, such as satellite tracking,
25 communications telemetry, and radar station operation; (iii)
26 providing satellite terminal stations and associated facilities
27 connected with one or more terrestrial systems and capable of
28 transmitting telecommunications to, and receiving telecommunications
29 from, satellite systems; or (iv) providing internet access services
30 or voice over internet protocol services via client-supplied
31 telecommunications connections. ~~((Establishments in this industry do~~
32 ~~not operate as telecommunications carriers.))~~ Mobile virtual network
33 operators are included in this ~~((industry))~~ subsection (2)(f);

34 (g) (i) Acting as principals in buying or selling financial
35 contracts ~~((, except investment bankers, securities dealers, and~~
36 ~~commodity contracts dealers))~~; (ii) acting as agents or brokers ~~((,~~
37 ~~except securities brokerages and commodity contracts brokerages,~~
38 buying or selling financial contracts; or (iii) providing ~~((other~~
39 ~~investment services except securities and commodity exchanges, such~~
40 ~~as))~~ portfolio management, investment advice, and trust, fiduciary,

1 and custody services. This subsection (2)(g) also includes the
2 activities of venture capital companies and selling the right to
3 extract minerals;

4 (h) Supplying information, such as news reports, articles,
5 pictures, and features, to the news media. This ~~((industry comprises~~
6 ~~establishments primarily))~~ subsection (2)(h) also includes:

7 (i) Persons engaged in providing library or archive services~~((-~~
8 ~~These establishments are engaged in))~~ or maintaining collections of
9 documents and facilitating the use of these documents as required to
10 meet the informational, research, educational, or recreational needs
11 of their user~~((-. These establishments))~~);

12 (ii) Persons providing news clipping services, telephone-based
13 recorded information services, or collecting and selling the rights
14 to stock photographs. Persons engaged in any of the activities
15 described in this subsection (2)(h)(i) or (ii) may also acquire,
16 research, store, preserve, and generally make accessible to the
17 public historical documents, photographs, maps, audio material,
18 audiovisual material, and other archival material of historical
19 interest. All or portions of these collections may be accessible
20 electronically~~((-. This industry comprises establishments))~~);

21 (iii) Establishments engaged in: ~~((-i-))~~ (A) Publishing and
22 broadcasting content on the internet exclusively; or ~~((-ii-))~~ (B)
23 operating web sites that use a search engine to generate and maintain
24 extensive databases of internet addresses and content in an easily
25 searchable format, known as web search portals. The publishing and
26 broadcasting establishments in this ~~((industry))~~ subsection
27 (2)(h)(iii) do not provide traditional versions of the content they
28 publish or broadcast. They provide textual, audio, or video content
29 of general or specific interest on the internet exclusively.
30 Establishments known as web search portals ~~((often))~~ may provide
31 additional internet services, such as email, connections to other web
32 sites, auctions, news, and other limited content, and serve as a home
33 base for internet users~~((-. This industry comprises establishments~~
34 ~~primarily engaged in providing other information services, except~~
35 ~~news syndicates, libraries, archives, internet publishing and~~
36 ~~broadcasting, and web search portals))~~);

37 (i) Architectural, engineering, and related services, such as
38 drafting services, building inspection services, ~~((geophysical))~~
39 surveying and mapping services, including geophysical surveying and
40 mapping, ~~((except geophysical services))~~ and testing services;

1 (j) Retailing all types of merchandise using nonstore means, such
2 as catalogs, toll-free telephone numbers, electronic media, such as
3 interactive television or the internet, or selling directly to
4 consumers in a nonretail, physical environment. (~~Included in this~~
5 ~~industry are~~) This subsection (2)(j) includes online retailers and
6 establishments (~~primarily~~) engaged in retailing from catalog
7 showrooms of mail-order houses;

8 (k) Providing consulting services to businesses and other
9 organizations in the form of advice and assistance (~~to businesses~~
10 ~~and other organizations~~) on management, environmental, scientific,
11 (~~and~~) or technical issues;

12 (l) Providing infrastructure for hosting or data processing
13 services. (~~These establishments may provide~~) This subsection (2)(l)
14 includes specialized hosting activities, such as web hosting,
15 streaming services, or application hosting, or (~~they may provide~~)
16 providing general time-share mainframe facilities to clients. (~~Data~~
17 ~~processing establishments provide complete~~) This subsection (2)(l)
18 also includes providing processing and specialized reports from data
19 supplied by clients or (~~provide~~) providing automated data
20 processing and data entry services;

21 (m) Facilitating credit intermediation by performing activities,
22 such as arranging loans by bringing borrowers and lenders together
23 and clearing checks and credit card transactions. This subsection
24 (2)(m) includes the activities provided by mortgage and nonmortgage
25 loan brokers, financial instrument clearinghouses, and credit card
26 processing businesses;

27 (n) Offering legal and law-related services, such as those
28 offered by offices of lawyers, offices of notaries, (~~and~~) title
29 abstract and real estate settlement offices, (~~and~~) offices of
30 limited license legal technicians or limited practice officers,
31 patent agent service providers, or persons providing paralegal
32 services;

33 (o) Operating or providing access to transmission facilities and
34 infrastructure that they own or lease for the transmission of voice,
35 data, text, sound, and video using wired telecommunications networks.
36 Transmission facilities may be based on a single technology or a
37 combination of technologies. (~~Establishments in this industry~~)
38 Persons engaged in these activities use the wired telecommunications
39 network facilities that they operate to provide a variety of
40 services, such as wired telephony services, including voice over

1 internet protocol services, wired audio and video programming
2 distribution, and wired broadband internet services. (~~By exception,~~
3 ~~establishments~~) This subsection (2)(o) includes providing satellite
4 television distribution services by persons using facilities and
5 infrastructure that they operate (~~are included in this industry~~);

6 (p) Providing telecommunications services to other establishments
7 in the telecommunications (~~and~~) or broadcasting industries by
8 forwarding and receiving communications signals via a system of
9 satellites or reselling satellite telecommunications;

10 (q) Operating and maintaining switching and transmission
11 facilities to provide communications via the airwaves(~~-~~
12 ~~Establishments in this industry~~) by persons that have spectrum
13 licenses and provide services using that spectrum, such as cellular
14 phone services, paging services, wireless internet access, and
15 wireless video services. This subsection (2)(q) includes radio
16 stations, radio networks, and television broadcasters, if required to
17 have a spectrum license to operate as such;

18 (r) Extending credit or lending funds raised by credit market
19 borrowing, such as issuing commercial paper or other debt instruments
20 or by borrowing from other financial intermediaries. This subsection
21 (2)(r) includes credit card issuers, consumer finance companies, and
22 mortgage companies;

23 (s) Underwriting annuities and insurance policies and investing
24 premiums to build up a portfolio of financial assets to be used
25 against future claims. (~~Direct~~) This subsection (2)(s) includes
26 direct insurance carriers (~~are establishments that are primarily~~)
27 engaged in initially underwriting and assuming the risk of annuities
28 and insurance policies. (~~Reinsurance~~) This subsection (2)(s) also
29 includes reinsurance carriers (~~are establishments that are~~
30 primarily) engaged in assuming all or part of the risk associated
31 with an existing insurance policy originally underwritten by another
32 insurance carrier (~~- Industries are defined in terms of the type of~~
33 risk being insured against, such as death, loss of employment because
34 of age or disability, or property damage. Contributions and premiums
35 are set on the basis of actuarial calculations of probable payouts
36 based on risk factors from experience tables and expected investment
37 returns on reserves));

38 (~~Merchant wholesale distribution~~) Wholesale sales of
39 commercial or professional equipment and supplies, including
40 photographic equipment and supplies (~~and~~), office machines and

1 related equipment, (~~computer,~~) computers and computer peripheral
2 equipment (~~and~~), or medical, dental, hospital, or ophthalmic(~~, and~~
3 ~~other commercial and professional~~) equipment and supplies. This
4 subsection (2)(t) includes wholesale sales of commercial and related
5 machines and equipment generally used in restaurants and retail
6 stores;

7 (u) Operating studios and facilities for the broadcasting of
8 programs on a subscription or fee basis. (~~The broadcast programming~~
9 ~~is typically narrowcast in nature. These establishments~~) Persons
10 engaged in these activities produce programming in their own
11 facilities or acquire programming from external sources. The
12 programming material is usually delivered to a third party, such as
13 cable systems or direct-to-home satellite systems, for transmission
14 to viewers;

15 (v) Publishing newspapers, magazines, other periodicals, books,
16 directories (~~and~~), mailing lists, (~~and~~) or other works, such as
17 calendars, greeting cards, and maps. These works are characterized by
18 the intellectual creativity required in their development and are
19 usually protected by copyright. Publishers distribute or arrange for
20 the distribution of these works. Publishing establishments may create
21 the works in-house, or contract for, purchase, or compile works that
22 were originally created by others. These works may be published in
23 one or more formats, such as print or electronic form, including
24 proprietary electronic networks. (~~Establishments in this industry~~)
25 Publishers may print, reproduce, or offer direct access to the works
26 themselves or may arrange with others to carry out such functions.
27 Establishments that both print and publish may fill excess capacity
28 with commercial or job printing(~~. However, the publishing activity~~
29 ~~is still considered to be the primary activity of these~~
30 ~~establishments~~);

31 (w) Generating, transmitting, or distributing electric power.
32 (~~Establishments in this industry group~~) Persons engaging in these
33 activities may perform one or more of the following activities: (i)
34 Operate generation facilities that produce electric energy; (ii)
35 operate transmission systems that convey the electricity from the
36 generation facility to the distribution system; or (iii) operate
37 distribution systems that convey electric power received from the
38 generation facility or the transmission system to the final consumer;

39 (x) Providing specialized design services including interior
40 design, industrial design, graphic design, (~~and others, but not~~

1 ~~including architectural, engineering, and computer systems))~~ or
2 fashion design;

3 (y) Assigning rights to assets, such as patents, trademarks,
4 brand names, or franchise agreements, for which a royalty payment or
5 licensing fee is paid to the asset holder;

6 (z) Acting as agents or representatives in selling annuities and
7 insurance policies or providing other employee benefits ~~((and))~~ or
8 insurance related services, such as claims adjustment ~~((and)),~~
9 actuarial services, or third-party administration;

10 (aa) ~~((Business-to-business))~~ Operating business-to-business
11 electronic markets that bring together buyers and sellers of goods
12 using the internet or other electronic means and generally receive a
13 commission or fee for the service. ~~((Business-to-business))~~ Operating
14 business-to-business electronic markets for durable and nondurable
15 goods ~~((are))~~ is included in this ~~((industry))~~ subsection (2)(aa).
16 This ~~((industry comprises wholesale trade))~~ subsection (2)(aa) also
17 includes agents ~~((and))~~ or brokers acting on behalf of buyers or
18 sellers in the wholesale distribution of goods ~~((Agents and brokers~~
19 ~~do not take title to the goods being sold but rather receive a~~
20 ~~commission or fee for their service. Agents and brokers for all~~
21 ~~durable and nondurable goods are included in this industry))~~ of any
22 kind;

23 (bb) Accepting deposits or share deposits and ~~((is))~~ lending
24 funds from these deposits. ~~((Within this group, industries are~~
25 ~~defined on the basis of differences in the types of deposit~~
26 ~~liabilities assumed and in the nature of the credit extended))~~ This
27 subsection (2)(bb) includes commercial banks;

28 (cc)(i) Manufacturing complete aircraft, missiles, or space
29 vehicles; (ii) manufacturing aerospace engines, propulsion units,
30 auxiliary equipment or parts; (iii) developing and making prototypes
31 of aerospace products; (iv) aircraft conversion; or (v) complete
32 aircraft or propulsion systems overhaul and rebuilding;

33 (dd) Advertising, public relations, and related services, such as
34 media buying, independent media representation, outdoor advertising,
35 direct mail advertising, advertising material distribution
36 services ~~((, and other services related to advertising))~~ display
37 lettering services, or merchandise demonstration services;

38 (ee) ~~((Providing))~~ Accounting or tax preparation services, such
39 as auditing of accounting records, designing accounting systems,

1 preparing financial statements, developing budgets, preparing tax
2 returns, processing payrolls, bookkeeping, ~~((and))~~ or billing;

3 (ff) The independent practice of general or specialized medicine
4 or surgery by businesses comprised of one or more health
5 practitioners having the degree of doctor of medicine or doctor of
6 osteopathy. These practitioners operate private or group practices in
7 their own offices or in the facilities of others, such as hospitals
8 or health maintenance organization medical centers;

9 (gg) Providing ~~((a range of))~~ outpatient services, ~~((such as))~~
10 which are also known as ambulatory health care services. This
11 subsection (2)(gg) includes family planning, diagnosis and treatment
12 of mental health disorders ~~((and))~~ or alcohol ~~((and))~~ or other
13 substance ~~((abuse, and other general or specialized outpatient care~~
14 by businesses with medical staff)) use disorders, or diagnosis and
15 treatment of sleep disorders. This subsection (2)(gg) includes the
16 activities of ambulance services, blood donation centers, blood or
17 organ banks, dialysis or infusion clinics or centers, urgent care
18 clinics, blood testing services, pacemaker monitoring services,
19 physical fitness evaluation services, health screening services,
20 smoking cessation programs, and hearing testing services;

21 (hh) Pooling securities or other assets ~~((, except insurance and~~
22 ~~employee benefit funds,))~~ on behalf of shareholders, unit holders, or
23 beneficiaries, by legal entities such as investment pools or funds.
24 This subsection (2)(hh) includes open-end and closed-end investment
25 funds, trusts, estates, and agency accounts;

26 (ii) Promoting the interests of an organization's members, except
27 religious organizations, social advocacy organizations, and civic and
28 social organizations. ~~((Examples of establishments in this industry~~
29 ~~are))~~ This subsection (2)(ii) includes business associations,
30 professional organizations, labor unions, and political
31 organizations;

32 (jj) Holding the securities of or other equity interests in
33 companies and enterprises for the purpose of owning a controlling
34 interest or influencing management decisions or businesses that
35 administer, oversee, and manage other establishments of the company
36 or enterprise and that normally undertake the strategic or
37 organizational planning and decision-making role of the company or
38 enterprise ~~((Establishments that administer, oversee, and manage may~~
39 ~~hold the securities of the company or enterprise));~~

1 (kk) (~~For medical and diagnostic laboratories, providing~~)
2 Providing analytic or diagnostic services, including body fluid
3 analysis (~~and~~) or diagnostic imaging, generally to the medical
4 profession or to the patient on referral from a health practitioner.
5 This subsection (2)(kk) includes medical and diagnostic laboratories,
6 dental or medical X-ray laboratories, medical testing laboratories,
7 and pathology laboratories;

8 (11) (~~Serving as offices of chief executives and their advisory~~
9 ~~committees and commissions. This industry includes offices of the~~
10 ~~president, governors, and mayors, in addition to executive advisory~~
11 ~~commissions. This industry comprises government establishments~~
12 ~~serving as legislative bodies and their advisory committees and~~
13 ~~commissions. Included in this industry are legislative bodies, such~~
14 ~~as congress, state legislatures, and advisory and study legislative~~
15 ~~commissions. This industry comprises government establishments~~
16 ~~primarily engaged in public finance, taxation, and monetary policy.~~
17 ~~Included are financial administration activities, such as monetary~~
18 ~~policy, tax administration and collection, custody and disbursement~~
19 ~~of funds, debt and investment administration, auditing activities,~~
20 ~~and government employee retirement trust fund administration. This~~
21 ~~industry comprises government establishments serving as councils and~~
22 ~~boards of commissioners or supervisors and such bodies where the~~
23 ~~chief executive is a member of the legislative body itself. This~~
24 ~~industry comprises American Indian and Alaska Native governing~~
25 ~~bodies. Establishments in this industry perform legislative,~~
26 ~~judicial, and administrative functions for their American Indian and~~
27 ~~Alaska Native lands. Included in this industry are American Indian~~
28 ~~and Alaska Native councils, courts, and law enforcement bodies. This~~
29 ~~industry comprises government establishments primarily engaged in~~
30 ~~providing general support for government. Such support services~~
31 ~~include personnel services, election boards, and other general~~
32 ~~government support establishments that are not classified elsewhere~~
33 ~~in public administration;~~

34 ~~(mm))~~ Providing (~~a range of~~) office administrative services,
35 such as financial planning, billing (~~and~~), recordkeeping,
36 personnel (~~,~~ and) services, or physical distribution and logistics,
37 for others on a contract or fee basis. (~~These establishments do~~)
38 This subsection (2)(11) does not (~~provide~~) include providing
39 operating staff to carry out the complete operations of a business;

1 ~~((nn))~~ (mm) Providing any of the following professional,
2 scientific, or technical services ~~((including marketing))~~: Marketing
3 research, public opinion polling, lobbying, photographic services,
4 translation and interpretation services, and veterinary services.
5 ~~((This category does not include legal services, accounting, tax~~
6 ~~preparation, bookkeeping, architectural, engineering, and related~~
7 ~~services, specialized design services, computer systems design,~~
8 ~~management, scientific and technical consulting services, scientific~~
9 ~~research and development services, or advertising services))~~ This
10 subsection (2)(mm) also includes the activities of members of a
11 corporation's board of directors acting in their capacity as
12 corporate directors;

13 ~~((oo))~~ (nn) The independent practice of general or specialized
14 dentistry or dental surgery by businesses comprised of one or more
15 health practitioners having the degree of doctor of dental medicine,
16 doctor of dental surgery, or doctor of dental science. These
17 practitioners operate private or group practices in their own offices
18 or in the facilities of others, such as hospitals or health
19 maintenance organization medical centers. They may provide either
20 comprehensive preventive, cosmetic, or emergency care, or specialize
21 in a single field of dentistry;

22 ~~((pp))~~ (oo) The independent practice of ~~((general or~~
23 ~~specialized medicine or surgery, or general or specialized dentistry~~
24 ~~or dental surgery,))~~ a health care profession by businesses comprised
25 of one or more independent health practitioners, other than
26 ~~((physicians and dentists;~~

27 ~~(qq) Providing ambulatory health care services))~~ practitioners
28 described elsewhere in this subsection (2). This subsection (2)(oo)
29 includes chiropractors, optometrists, ocularists, mental health
30 practitioners, physical, occupational, or speech therapists,
31 audiologists, massage therapists, acupuncturists, Eastern medicine
32 practitioners, hypnotherapists, inhalation and respiratory
33 therapists, dental hygienists, denturists, midwives, naturopaths,
34 dietitians, podiatrists, pharmacists, homeopaths, athletic trainers,
35 registered nurses, licensed practical nurses, advanced registered
36 nurse practitioners, orthotists, prosthetists, and reflexologists.

37 (3) (a) ~~((i) For the purposes of this section, a person is~~
38 ~~primarily engaged within this state in any combination of the~~
39 ~~activities described in subsection (2) of this section if more than~~
40 ~~fifty percent of the person's cumulative gross amount reportable~~

1 under this chapter during the entire current or immediately preceding
2 calendar year was generated from engaging in any one or more of the
3 activities described in subsection (2) of this section. For purposes
4 of this subsection, "gross amount reportable" means the total value
5 of products, gross proceeds of sales, and gross income of the
6 business, reportable to the department before application of any tax
7 deductions.

8 (ii) If a person was not primarily engaged within this state in
9 any combination of the activities described in subsection (2) of this
10 section during the immediately preceding year, and the person is
11 unsure whether the person will be subject to the workforce investment
12 surcharge for the current calendar year until the close of the
13 current calendar year, the person must, if necessary, file corrected
14 returns with the department of revenue to pay any additional tax due
15 under this section for the current calendar year. Payment of
16 additional tax, along with corrected returns, is due and payable when
17 the person's last return for the calendar year during which the tax
18 liability accrued is due and payable. Additional tax due under this
19 section is subject to penalties and interest as provided under
20 chapter 82.32 RCW only if the tax is not paid in full by the date due
21 as provided in this subsection (3)(a)(ii).

22 (b) The entire amount of gross income of the business received by
23 a person pursuant to a contract under which the person is obligated
24 to perform any activity described under subsection (2) of this
25 section is deemed to be generated from engaging in any one or more of
26 the activities described in subsection (2) of this section.

27 (4)(a)) Beginning with business activities occurring on or after
28 January 1, 2020, in addition to the taxes imposed under RCW
29 82.04.290(2), a workforce education investment surcharge is imposed
30 on select advanced computing businesses ((as follows:

31 (i) For an affiliated group that has worldwide gross revenue of
32 more than twenty-five billion dollars, but not more than one hundred
33 billion dollars, during the entire current or immediately preceding
34 calendar year, the surcharge is equal to the total amount of tax
35 payable by each member of the affiliated group on all business
36 activities taxed under RCW 82.04.290(2), before application of any
37 tax credits, multiplied by the rate of thirty-three and one-third
38 percent.

39 (ii) For an affiliated group that has worldwide gross revenue of
40 more than one hundred billion dollars during the entire current or

1 ~~immediately preceding calendar year, the surcharge is equal to the~~
2 ~~total amount of tax payable by each member of the affiliated group on~~
3 ~~all business activities taxed under RCW 82.04.290(2), before~~
4 ~~application of any tax credits, multiplied by the rate of sixty-six~~
5 ~~and two-thirds percent)). The surcharge is equal to the gross income~~
6 ~~of the business subject to the tax under RCW 82.04.290(2), multiplied~~
7 ~~by the rate of 1.22 percent.~~

8 (b) ~~((1A))~~ Except as provided in (e) of this subsection (3), in
9 no case will the combined surcharge imposed under this subsection
10 ~~((4))~~ (3) paid by all members of an affiliated group be ~~((less than~~
11 ~~four million dollars or))~~ more than seven million dollars
12 ~~((annually))~~ for any calendar year.

13 (c) For persons subject to the surcharge imposed under this
14 subsection ~~((4))~~ (3) that report under one or more tax
15 classifications, the surcharge applies only to business activities
16 taxed under RCW 82.04.290(2).

17 (d) The surcharge imposed under this subsection ~~((4))~~ (3) must
18 be reported and paid on a quarterly basis in a manner ~~((and~~
19 ~~frequency))~~ as required by the department. Returns and amounts
20 payable under this subsection (3) are due by the last day of the
21 month immediately following the end of the reporting period covered
22 by the return. All other taxes must be reported and paid as required
23 under RCW 82.32.045.

24 (e) To aid in the effective administration of the surcharge in
25 this subsection ~~((4))~~ (3), the department may require persons
26 believed to be engaging in advanced computing or affiliated with a
27 person believed to be engaging in advanced computing to disclose
28 whether they are a member of an affiliated group and, if so, to
29 identify all other members of the affiliated group subject to the
30 surcharge. If the department determines that a person, with intent to
31 evade the surcharge under this subsection ~~((4))~~ (3), failed to
32 fully comply with this subsection ~~((4))~~ (3)(e), the seven million
33 dollar limitation in (b) of this subsection ~~((4))~~ (3) does not
34 apply to the person's affiliated group.

35 (f) For the purposes of this subsection ~~((4))~~ (3) the following
36 definitions apply:

37 (i) "Advanced computing" means designing or developing computer
38 software or computer hardware, whether directly or contracting with
39 another person, including modifications to computer software or
40 computer hardware, cloud computing services, or operating an online

1 marketplace, an online search engine, or online social networking
2 platform;

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

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

8 (iv) "Cloud computing services" means on-demand delivery of
9 computing resources, such as networks, servers, storage,
10 applications, and services, over the internet;

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

15 (vi) "Select advanced computing business" means a person who is a
16 member of an affiliated group with at least one member of the
17 affiliated group engaging in the business of advanced computing, and
18 the affiliated group has worldwide gross revenue of more than twenty-
19 five billion dollars during the ~~((entire current or))~~ immediately
20 preceding calendar year. A person who is primarily engaged within
21 this state in the provision of commercial mobile service, as that
22 term is defined in 47 U.S.C. Sec. 332(d)(1), shall not be considered
23 a select advanced computing business. A person who is primarily
24 engaged in this state in the operation and provision of access to
25 transmission facilities and infrastructure that the person owns or
26 leases for the transmission of voice, data, text, sound, and video
27 using wired telecommunications networks shall not be considered a
28 select advanced computing business.

29 ~~((+5))~~ (4) The workforce education investment surcharges under
30 this section do not apply to any ~~((hospital))~~:

31 (a) Hospital as defined in RCW 70.41.020, including any hospital
32 that comes within the scope of chapter 71.12 RCW if the hospital is
33 also licensed under chapter 70.41 RCW; and

34 (b) Political subdivision of the state or municipal corporation.

35 ~~((+6))~~ (5) Revenues from the surcharges under this section must
36 be deposited directly into the workforce education investment account
37 established in RCW 43.79.195.

38 ~~((+7))~~ (6) The department has the authority to determine through
39 an audit or other investigation whether a person is subject to the
40 surcharges imposed in this section. The department's determination

1 that a person is subject to the surcharge is presumed to be correct
2 unless the person shows by clear, cogent, and convincing evidence
3 that the department's determination was incorrect. The increased
4 evidentiary standard under this subsection (~~(7)~~) (6) does not apply
5 to tax periods beginning on or after January 1, 2022.

6 NEW SECTION. **Sec. 2.** If any provision of this act or its
7 application to any person or circumstance is held invalid, the
8 remainder of the act or the application of the provision to other
9 persons or circumstances is not affected.

10 NEW SECTION. **Sec. 3.** This act applies both prospectively and
11 retroactively to January 1, 2020.

12 NEW SECTION. **Sec. 4.** The provisions of RCW 82.32.805 and
13 82.32.808 do not apply to this act.

14 NEW SECTION. **Sec. 5.** This act is necessary for the immediate
15 preservation of the public peace, health, or safety, or support of
16 the state government and its existing public institutions, and takes
17 effect immediately.

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