
SENATE BILL 5423

State of Washington**66th Legislature****2019 Regular Session**

By Senators Palumbo, Warnick, Hobbs, Takko, Schoesler, Sheldon, King, Brown, Short, Wilson, L., Wagoner, Wellman, Honeyford, and Van De Wege

1 AN ACT Relating to creating the Washington rural development and
2 opportunity zone act; amending RCW 82.04.260; adding a new section to
3 chapter 48.14 RCW; adding a new section to chapter 82.04 RCW; adding
4 a new chapter to Title 43 RCW; creating a new section; and providing
5 an expiration date.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that while many
8 parts of the state are thriving economically, some rural and
9 distressed communities have struggled to keep pace. These communities
10 represent significant opportunity for economic growth and innovation.
11 However, businesses and entrepreneurs often find it difficult to
12 obtain the capital they need to expand and grow in these areas.
13 Therefore, it is the intent of the legislature to incentivize private
14 investments and job creation in rural and distressed communities
15 while ensuring no loss of revenue to the state.

16 NEW SECTION. **Sec. 2.** TAX PREFERENCE PERFORMANCE STATEMENT. (1)
17 This section is the tax preference performance statement for the tax
18 preferences created in sections 7 and 13, chapter . . ., Laws of 2019
19 (sections 7 and 13 of this act). This performance statement is only
20 intended to be used for subsequent evaluation of the tax preference.

1 (2) The legislature categorizes these tax preferences as ones
2 intended to create or retain jobs, as indicated in RCW
3 82.32.808(2)(c).

4 (3) It is the legislature's specific public policy objective to
5 create and retain jobs in rural development and opportunity zone
6 areas of Washington. It is the legislature's intent to provide a
7 vested tax credit that may be used to offset certain business and
8 occupation taxes under chapter 82.04 RCW, and insurance premium taxes
9 under chapter 48.14 RCW owed by Washington taxpayers, in order to
10 induce such taxpayers to invest in rural development and opportunity
11 zone funds whose management teams:

12 (a) Have experience investing in companies located in rural
13 development and opportunity zone areas;

14 (b) Have been vetted by the United States small business
15 administration or the United States department of agriculture; and

16 (c) Have submitted a business plan that:

17 (i) Projects the number of jobs that will be created or retained
18 as a result of such investment fund's investments in rural companies
19 and includes the assumptions used to determine the projection; and

20 (ii) Includes a revenue impact assessment that demonstrates that
21 the business plan will result in a positive economic impact on
22 Washington state over a ten-year period that exceeds the cumulative
23 amount of tax credits that would be issued to the investment fund's
24 investors, thereby:

25 (A) Enabling the capitalization of rural development and
26 opportunity zone funds;

27 (B) Incentivizing and requiring rural development and opportunity
28 zone funds to invest in companies located in rural areas of
29 Washington; and

30 (C) Enabling the creation or retention of jobs in rural
31 development and opportunity zone areas of Washington.

32 (4) If the joint legislative audit and review committee finds
33 that the aggregate number of jobs created or retained matches or
34 exceeds the aggregate number of jobs set forth in the business plans
35 of approved rural development and opportunity zone funds, in the six
36 years following enactment of these tax preferences, then the
37 legislature intends to continue the tax preferences created in
38 sections 7 and 13, chapter . . ., Laws of 2019 (sections 7 and 13 of
39 this act).

1 (5) In order to obtain the data necessary to perform the review
2 in subsection (4) of this section, the joint legislative audit and
3 review committee may refer to:

4 (a) The annual report that a taxpayer claiming the tax credit in
5 section 13 of this act must file with the department of revenue under
6 RCW 82.32.534; and

7 (b) The annual reports required under section 11 of this act.

8 NEW SECTION. **Sec. 3.** SHORT TITLE. This chapter may be known and
9 cited as the Washington rural development and opportunity zone act.

10 NEW SECTION. **Sec. 4.** DEFINITIONS. The definitions in this
11 section apply throughout this chapter unless the context clearly
12 requires otherwise.

13 (1) "Affiliate" means an entity that directly or indirectly,
14 through one or more intermediaries, controls, is controlled by, or is
15 under common control with another entity. For the purposes of this
16 chapter, "control" means the possession, directly or indirectly, of
17 more than fifty percent of the power to direct or cause the direction
18 of the management and policies of a person, whether through the
19 ownership of voting shares, by contract, or otherwise.

20 (2) "Average monthly employment" means the cumulative number of
21 full-time employees on the last day of each month of a calendar year
22 divided by twelve.

23 (3) "Closing date" means the date on which a rural development
24 and opportunity zone fund has collected all of the amounts specified
25 by section 5 of this act.

26 (4) "Credit-eligible capital contribution" means an investment of
27 cash by a person subject to (a) business and occupation taxes under
28 chapter 82.04 RCW and/or (b) insurance premium taxes under chapter
29 48.14 RCW in a rural development and opportunity zone fund that
30 equals the amount specified on a tax credit certificate issued by the
31 department under section 5 of this act. The investment must purchase
32 an equity interest in the rural development and opportunity zone fund
33 or purchase, at par value or premium, a debt instrument that has a
34 maturity date at least five years from the closing date and a
35 repayment schedule that is no faster than level principal
36 amortization over five years.

37 (5) "Department" means the department of commerce.

1 (6) "Full-time employee" means an employment position that
2 requires at least thirty-five hours of work each week.

3 (7) "Growth investment" means any capital or equity investment in
4 a targeted small business or any loan to a targeted small business
5 with a stated maturity at least one year after the date of issuance.

6 (8) "Investment authority" means the amount stated on the written
7 approval issued under section 5(8) of this act certifying the rural
8 development and opportunity zone fund. At least sixty percent of a
9 rural development and opportunity zone fund's investment authority
10 must be comprised of credit-eligible capital contributions.

11 (9) "Investor" also means "taxpayer."

12 (10) "Jobs created" means the number of full-time employees in
13 the state at the targeted small business at the time of the initial
14 growth investment subtracted from the monthly average of those
15 employment positions for that year.

16 (11) "Jobs retained" means the number of full-time employees in
17 the state at a targeted small business that existed before the
18 initial growth investment in the targeted small business, for which
19 the rural development and opportunity zone fund has obtained a
20 certification from an executive officer of the targeted small
21 businesses that such jobs would have been lost or moved out of state
22 if the growth investment had not been made.

23 (12) "NAICS code" means the North American industry
24 classification system code used by federal statistical agencies and
25 the state in classifying business establishments for the purpose of
26 collecting, analyzing, and publishing statistical data related to the
27 business economy.

28 (13) "Principal business operations" means a business located at
29 the place or places where at least sixty percent of its employees
30 work or where employees that are paid at least sixty percent of its
31 payroll work. An out-of-state business that has agreed to relocate
32 employees using the proceeds of a growth investment to establish its
33 principal business operations in a qualified area in the state is
34 deemed to have its principal business operations in this new location
35 provided it satisfies this definition within one hundred eighty days
36 after receiving the growth investment, unless the department agrees
37 to a later date.

38 (14) "Qualified area" means:

39 (a) A county with a population density of less than one hundred
40 persons per square mile or a county smaller than two hundred twenty-

1 five square miles as determined by the office of financial management
2 and published each year by the department for the period July 1st to
3 June 30th; or

4 (b) A qualified opportunity zone as defined by Title 26 U.S.C.
5 Sec. 1400Z-1 of the federal internal revenue code of 1986, as
6 amended.

7 (15) "Rural development and opportunity zone fund" or "fund"
8 means an entity certified by the department under section 5 of this
9 act.

10 (16)(a) "Targeted small business" means a business that, at the
11 time of the initial investment in the company by a rural development
12 and opportunity zone fund:

13 (i) Has less than two hundred fifty employees and not more than
14 ten million dollars in net income for the preceding calendar year;

15 (ii) Has its principal business operations in one or more
16 qualified areas in the state. For purposes of this subsection
17 (16)(a)(ii), the principal business operations of a business are
18 located at a place where:

19 (A) At least sixty percent of the business's employees work; or

20 (B) Employees who are paid at least sixty percent of the
21 business's payroll work; and

22 (iii) Is engaged in industries related to manufacturing, plant
23 sciences, services, distribution, warehousing, farming, forestry,
24 biotechnology, fisheries, biofuels, technology, or the marketing and
25 sale of technology, business that supplies inputs for agriculture and
26 food industry, agricultural primary production, feed industry,
27 branded or other food production, or if the business is not engaged
28 in such industries, the department makes a determination that the
29 investment will be highly beneficial to the economic growth of the
30 state.

31 (b) An out-of-state business that agrees to relocate employees
32 using the proceeds of a growth investment to establish principal
33 business operations in a qualified area in the state qualifies as a
34 targeted small business if the business satisfies the requirements
35 of:

36 (i) Subsection (16)(a)(i) and (iii) of this section at the time
37 of the initial growth investment in the business; and

38 (ii) Subsection (16)(a)(ii) of this section not later than the
39 one hundred eightieth day after receiving the initial growth
40 investment or a later date agreed to by the department.

1 NEW SECTION. **Sec. 5.** TAX CREDIT APPLICATION, APPROVAL, AND
2 ALLOCATIONS. (1) Beginning November 1, 2019, the department must
3 accept applications for approval as a rural development and
4 opportunity zone fund. The application must include all of the
5 following:

6 (a) The total investment authority sought by the applicant under
7 the business plan;

8 (b) A copy of the applicant's or an affiliate of the applicant's
9 license as a rural business investment company under Title 7 U.S.C.
10 Sec. 2009cc, as amended, as of January 1, 2019, or as a small
11 business investment company under Title 15 U.S.C. Sec. 681, as
12 amended, as of January 1, 2019, provided that any such affiliate used
13 to satisfy this requirement must have been an affiliate of the
14 applicant or its affiliates for at least four years;

15 (c) Evidence that, as of the date the application is submitted,
16 the applicant or affiliates of the applicant have invested at least
17 one hundred fifty million dollars in nonpublic companies located in
18 areas within or without the state of Washington that would be
19 qualified areas if in Washington;

20 (d) An estimate of the number of jobs that will be created or
21 retained in this state as a result of the applicant's growth
22 investments and the assumptions used to determine the estimate;

23 (e) A business plan that includes a revenue impact assessment
24 projecting state and local tax revenue to be generated by the
25 applicant's proposed growth investments prepared by a nationally
26 recognized third-party independent economic forecasting firm using a
27 dynamic economic forecasting model that analyzes the applicant's
28 business plan over the ten years following the date the application
29 is submitted to the department;

30 (f) A signed affidavit from each investor stating the amount of
31 credit-eligible capital contributions each taxpayer commits to make
32 and against which of the two tax types the investor plans to apply
33 the credit:

34 (i) Business and occupation taxes under chapter 82.04 RCW; or

35 (ii) Insurance premium taxes under chapter 48.14 RCW; and

36 (g) A nonrefundable application fee of five thousand dollars.

37 (2) The department must make an application determination within
38 thirty days of receipt in the order in which the applications are
39 received. The department must deem applications received on the same
40 day to have been received simultaneously.

1 (3) The department may not approve more than one hundred million
2 dollars in investment authority and not more than sixty million
3 dollars in credit-eligible capital contributions under this section.
4 If requests for investment authority exceed this limitation, the
5 department must proportionally reduce the investment authority and
6 the credit-eligible capital contributions for each approved
7 application as necessary to avoid exceeding the limit.

8 (4) The department may not approve more than thirty-five million
9 dollars in investment authority and not more than twenty-one million
10 dollars in credit-eligible capital contributions for an applicant
11 under this section. If fewer than three applicants have been approved
12 as a fund under this section by November 1, 2020, a fund may apply
13 for additional investment authority and capital contributions in
14 excess of the limit under this subsection.

15 (5) The department must deny an application submitted under this
16 section if any of the following are true:

17 (a) The application is incomplete or the application fee is not
18 paid in full;

19 (b) The applicant does not satisfy all the criteria described in
20 subsection (1)(b) of this section;

21 (c) The revenue impact assessment submitted under subsection
22 (1)(e) of this section does not demonstrate that the applicant's
23 business plan will result in a positive economic impact on aggregate
24 state and local government revenue over a ten-year period that
25 exceeds the cumulative amount of tax credits that would be issued to
26 the applicant's investors under section 7 or 13 of this act if the
27 application were approved;

28 (d) The credit-eligible capital contributions described in
29 affidavits submitted under subsection (1)(f) of this section do not
30 equal at least sixty percent of the total amount of investment
31 authority sought under the applicant's business plan; or

32 (e) The department has already approved the maximum amount of
33 investment authority and credit-eligible capital contributions
34 allowed under subsections (3) and (4) of this section.

35 (6) If the department denies an application, the applicant may
36 provide additional information to the department to complete,
37 clarify, or cure defects in the application identified by the
38 department, except for failure to make the submission required by
39 subsection (1)(f) of this section, within fifteen days of the notice
40 of denial for reconsideration and determination. The department must

1 review and reconsider such applications within thirty days before any
2 pending application submitted after the original submission date of
3 the reconsidered application.

4 (7) The department may not deny a rural development and
5 opportunity zone fund application or reduce the requested investment
6 authority for reasons other than those described in subsections (3)
7 through (5) of this section.

8 (8) Upon approval of an application, the department must provide
9 a written approval to the applicant as a rural development and
10 opportunity zone fund specifying the amount of the applicant's
11 investment authority.

12 (9) After receiving the approval issued under subsection (8) of
13 this section, a rural development and opportunity zone fund must:

14 (a) Within sixty days:

15 (i) Collect the credit-eligible capital contributions from each
16 investor; and

17 (ii) Collect one or more investments of cash that, when added to
18 the contributions collected under (a)(i) of this subsection, equal
19 the fund's investment authority.

20 (b) Within sixty-five days, send to the department documentation
21 sufficient to prove that the amounts described in (a)(i) and (ii) of
22 this subsection have been collected.

23 (10) Upon receiving documentation from the rural development and
24 opportunity zone fund that it is fully funded, the department must
25 issue a tax credit certificate to each investor whose affidavit was
26 included in the application specifying the amount of the investor's
27 credit-eligible capital contribution. The department must provide a
28 copy of the tax credit certificates to the office of the insurance
29 commissioner for investors earning tax credits eligible for use
30 against insurance premium taxes, including the retaliatory provision,
31 imposed under chapter 48.14 RCW, and to the department of revenue for
32 investors earning tax credits eligible for use against business and
33 occupation taxes imposed under chapter 82.04 RCW. The tax credit
34 certificate must include:

35 (a) The credit-eligible capital contribution amount;

36 (b) The name of the rural development and opportunity zone fund;

37 (c) The unified business identifier number of the investor; and

38 (d) The closing date of the rural development and opportunity
39 zone fund.

1 (11) Tax credits may be transferred or allocated to an affiliate
2 of the taxpayer. Taxpayers must notify the department if they wish to
3 transfer or allocate a credit to an affiliate. The department will
4 verify the transfer is to an affiliate and then issue an amended tax
5 credit certificate to the taxpayer and a new tax credit certificate
6 to the affiliate. The department must provide the department of
7 revenue and the office of the insurance commissioner with a copy of
8 the amended tax credit certificate of the transferor and the new tax
9 credit certificate of the transferee.

10 (12) If the rural development and opportunity zone fund fails to
11 fully comply with subsection (9) of this section, the fund's approval
12 lapses and the corresponding investment authority and credit-eligible
13 capital contributions under this subsection do not count toward the
14 limits on the program size prescribed by subsection (3) of this
15 section. The department must first award lapsed investment authority
16 pro rata to each rural development and opportunity zone fund that was
17 awarded less than the requested investment authority under subsection
18 (3) of this section, which a fund may allocate to its investors in
19 its discretion. Any remaining investment authority may be awarded by
20 the department to new applicants.

21 (13) Application fees submitted to the department under
22 subsection (1)(g) of this section must be deposited in the rural
23 development and opportunity zone account created in section 6 of this
24 act.

25 NEW SECTION. **Sec. 6.** RURAL DEVELOPMENT AND OPPORTUNITY ZONE
26 ACCOUNT. The rural development and opportunity zone account is
27 created in the state treasury. All receipts from application fees
28 submitted to the department under section 5 of this act must be
29 deposited into the account. Moneys in the account may be spent only
30 after appropriation. Expenditures from the account may be used by the
31 department only for administering this chapter.

32 NEW SECTION. **Sec. 7.** A new section is added to chapter 48.14
33 RCW to read as follows:

34 INSURANCE PREMIUM TAX CREDIT ESTABLISHED. (1) A tax credit is
35 authorized against the tax, including the retaliatory provision,
36 otherwise due under this chapter for persons that made a credit-
37 eligible capital contribution to a rural development and opportunity

1 zone fund and were issued a tax credit certificate under section 5 of
2 this act.

3 (2) A taxpayer earns a credit on the closing date noted on the
4 taxpayer's tax credit certificate issued under section 5 of this act.
5 The credit is equal to the amount of the taxpayer's credit-eligible
6 capital contribution to the rural development and opportunity zone
7 fund as specified on the tax credit certificate.

8 (3) The taxpayer may claim up to one-third of the credit
9 authorized under this section for each of the calendar years that
10 includes the fourth through sixth anniversaries of the closing date
11 noted on the tax credit certificate, exclusive of amounts carried
12 forward from prior years.

13 (4) The amount claimed for a tax reporting period may not exceed
14 the amount of tax otherwise due under this chapter for that reporting
15 period. Unused credits may be carried forward until used, even if
16 claimed after the expiration date of this section. No refunds may be
17 granted for credits under this section.

18 (5) All persons claiming a credit under this section must file
19 electronically with the office of the insurance commissioner all
20 returns, other forms, or any other information as may be required by
21 the office of the insurance commissioner.

22 (6) A taxpayer claiming a credit under this section must submit a
23 copy of the tax credit certificate issued to the taxpayer under
24 section 5 of this act to the office of the insurance commissioner
25 when filing the first return in which the taxpayer will claim a
26 credit against taxes due under this chapter.

27 (7) The credit may not be transferred or allocated to any other
28 entity other than an affiliate subject to the insurance premium,
29 including retaliatory provisions, imposed under this chapter. The
30 department must provide the office of the insurance commissioner with
31 a copy of the amended tax credit certificate of the transferor and
32 the new tax credit certificate of the transferee. The office of the
33 insurance commissioner must disallow tax credits claimed by any
34 transferee other than an affiliate of the transferor.

35 (8) The department must notify the office of the insurance
36 commissioner if a tax credit certificate was revoked as provided in
37 section 8 of this act. Upon such notice, the office of the insurance
38 commissioner must:

1 (a) Provide written notice to the taxpayer or any affiliate to
2 which the credit was transferred that the credit was revoked by the
3 department;

4 (b) Include in the notice the amount of all credits previously
5 claimed and that such amount be paid in full within thirty days of
6 the date of the notice. If the taxpayer or the affiliate fails to pay
7 the amount in full by the due date in the notice or any extension
8 granted by the office of the insurance commissioner, the office of
9 the insurance commissioner must impose penalties and interest
10 consistent with RCW 48.14.060; and

11 (c) Deny any further use of the tax credit certificate by the
12 taxpayer or any affiliate to which the credit was transferred.

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

15 (a) "Affiliate" means an entity that directly or indirectly,
16 through one or more intermediaries, controls, is controlled by, or is
17 under common control with another entity. For the purposes of this
18 section, "control" means the possession, directly or indirectly, of
19 more than fifty percent of the power to direct or cause the direction
20 of the management and policies of a person, whether through the
21 ownership of voting shares, by contract, or otherwise.

22 (b) "Credit-eligible capital contribution" means an investment of
23 cash by a person subject to (a) business and occupation taxes under
24 chapter 82.04 RCW and/or (b) insurance premium taxes under chapter
25 48.14 RCW in a rural development and opportunity zone fund that
26 equals the amount specified on a tax credit certificate issued by the
27 department of commerce under section 5 of this act. The investment
28 must purchase an equity interest in the rural development and
29 opportunity zone fund or purchase, at par value or premium, a debt
30 instrument that has a maturity date at least five years from the
31 closing date and a repayment schedule that is no faster than level
32 principal amortization over five years.

33 (c) "Rural development and opportunity zone fund" means an entity
34 certified by the department of commerce under section 5 of this act.

35 (10) This section expires July 1, 2025.

36 NEW SECTION. **Sec. 8.** REVOCATION OF TAX CREDIT CERTIFICATES AND
37 EXIT. (1) The department must revoke a tax credit certificate issued
38 under section 5 of this act if any of the following occur with

1 respect to a rural development and opportunity zone fund before it
2 exits the program in accordance with subsection (4) of this section:

3 (a) The rural development and opportunity zone fund in which the
4 credit-eligible capital contribution was made does not invest
5 seventy-five percent of its investment authority in growth
6 investments in this state within two years of the closing date and
7 one hundred percent of its investment authority in growth investments
8 in this state within three years of the closing date;

9 (b) The rural development and opportunity zone fund, after
10 satisfying (a) of this subsection, fails to maintain growth
11 investments equal to one hundred percent of its investment authority
12 until the sixth anniversary of the closing date. For the purposes of
13 this subsection, an investment is "maintained" even if the investment
14 is sold or repaid so long as the rural development and opportunity
15 zone fund reinvests an amount equal to the capital returned or
16 recovered by the fund from the original investment, exclusive of any
17 profits realized, in other growth investments in this state within
18 twelve months of the receipt of such capital. Amounts received
19 periodically by a rural development and opportunity zone fund must be
20 treated as continually invested in growth investments if the amounts
21 are reinvested in one or more growth investments by the end of the
22 following calendar year;

23 (c) The rural development and opportunity zone fund, before
24 exiting the program in accordance with subsection (4) of this
25 section, makes a distribution or payment that results in the rural
26 development and opportunity zone fund having less than one hundred
27 percent of its investment authority invested in growth investments in
28 this state or available for investment in growth investments and held
29 in cash and other marketable securities;

30 (d) The rural development and opportunity zone fund invests more
31 than the greater of five million dollars or twenty percent of its
32 investment authority in the same targeted small business, including
33 amounts invested in affiliates of the targeted small business; or

34 (e) The rural development and opportunity zone fund makes a
35 growth investment in a targeted small business that directly or
36 indirectly through an affiliate owns, has the right to acquire an
37 ownership interest, makes a loan to, or makes an investment in the
38 rural development and opportunity zone fund, an affiliate of the
39 fund, or an investor in the fund. This subsection does not apply to
40 investments in publicly traded securities by a targeted small

1 business or an owner or affiliate of such business. For purposes of
2 this subsection, a rural development and opportunity zone fund will
3 not be considered an affiliate of a targeted small business solely as
4 a result of its growth investment.

5 (2) Before revoking one or more tax credit certificates under
6 this subsection, the department must notify the rural development and
7 opportunity zone fund of the reasons for the pending revocation. The
8 fund has ninety days from the date the notice was dispatched to
9 correct any violation outlined in the notice to the satisfaction of
10 the department and avoid revocation of the tax credit certificate.

11 (3) If tax credit certificates are revoked under this section,
12 the associated investment authority and credit-eligible capital
13 contributions do not count toward the limit on total investment
14 authority and credit-eligible capital contributions described by
15 section 5(3) of this act. The department must first award reverted
16 authority pro rata to each rural development and opportunity zone
17 fund that was awarded less than the requested investment authority
18 under section 5(3) of this act. The department may award any
19 remaining investment authority to new applicants.

20 (4) On or after the sixth anniversary of the closing date, a
21 rural development and opportunity zone fund may apply to the
22 department to exit the program and no longer be subject to regulation
23 under this chapter. The department must respond to the application
24 within thirty days of receipt. In evaluating the application, the
25 fact that no tax credit certificates have been revoked and that the
26 fund has not received a notice of revocation that has not been cured
27 under subsection (2) of this section is sufficient evidence to prove
28 that the fund is eligible for exit. The department may not
29 unreasonably deny an application submitted under this subsection. If
30 the application is denied, the notice must include the reasons for
31 the determination. The department must notify the office of the
32 insurance commissioner and the department of revenue when a fund
33 exits the program.

34 (5) The department may not revoke a tax credit certificate after
35 a rural development and opportunity zone fund exits the program.

36 NEW SECTION. **Sec. 9.** (1) Before approving the exit of a rural
37 development and opportunity zone fund from the program, the
38 department must evaluate the number of jobs created or retained by

1 the fund and determine whether the fund must repay to the state any
2 portion of the credit as follows:

3 (a) If the number of jobs created or retained as a result of the
4 fund's investments is less than sixty percent of the amount filed as
5 part of the fund's application, the fund must repay to the state
6 sixty percent of the amount of the tax credit certificates issued to
7 investors in the fund;

8 (b) If the number of jobs created or retained as a result of the
9 fund's investments is less than eighty percent but more than sixty
10 percent of the amount filed as part of the fund's application, the
11 fund must repay to the state thirty percent of the amount of the tax
12 credit certificates issued to investors in the fund; and

13 (c) In measuring jobs created and retained as a result of the
14 rural development and opportunity zone fund's growth investments, the
15 department must prorate the number of jobs set forth in the fund's
16 business plan based upon the amount of investment authority requested
17 in the fund's application.

18 (2) The department must provide written notice to the fund of any
19 repayment due under this section. The fund must submit payment to the
20 department of revenue within thirty days of the date of that notice.
21 If the fund fails to pay the full amount by the due date in the
22 notice or any extension granted by the department of revenue, the
23 department of revenue must impose penalties and interest as provided
24 under chapter 82.32 RCW.

25 NEW SECTION. **Sec. 10.** REQUEST FOR DETERMINATION. A rural
26 development and opportunity zone fund, before making a growth
27 investment, may request from the department a written opinion as to
28 whether the business in which it proposed to invest is a targeted
29 small business. The department, not later than the fifteenth business
30 day after the date of receipt of the request, must notify the rural
31 development and opportunity zone fund of its determination. If the
32 department fails to notify the fund by the fifteenth business day of
33 its determination, the business in which the rural development and
34 opportunity zone fund proposes to invest must be considered a
35 targeted small business.

36 NEW SECTION. **Sec. 11.** REPORTING OBLIGATIONS. (1) Each rural
37 development and opportunity zone fund must submit a report to the
38 department on or before the fifth business day after each anniversary

1 of the closing date until the rural development and opportunity zone
2 fund has exited the program in accordance with section 8(4) of this
3 act. The report must provide documentation as to the rural
4 development and opportunity zone fund's growth investments and
5 include:

- 6 (a) A bank statement evidencing each growth investment;
- 7 (b) The name and location of principal operations;
- 8 (c) Industry NAICS code of each business receiving a growth
9 investment, including either the determination letter set forth in
10 section 10 of this act or evidence that the business qualified as a
11 targeted small business at the time the investment was made;
- 12 (d) The number of jobs created or retained as a result of the
13 fund's growth investments as of the last day of the preceding
14 calendar year and the assumptions used to determine the number of
15 employment positions;
- 16 (e) The average annual salary of the positions described in (c)
17 of this subsection; and
- 18 (f) Any other information required by the department.

19 (2) The department must consult with staff of the joint
20 legislative audit and review committee when developing the specific
21 format and questions included in the accountability report to ensure
22 it provides the information needed for performance evaluations under
23 chapter 43.136 RCW.

24 (3) By November 1, 2019, and annually thereafter, the department
25 must submit a report to the economic development committees of the
26 legislature that includes the following:

- 27 (a) The names of the applicants approved and the amount and type
28 of credit allocated to investors in the fund;
- 29 (b) The criteria used to select the applicants approved under
30 section 5 of this act; and
- 31 (c) A summary of the information reported by each fund under
32 subsection (1) of this section.

33 NEW SECTION. **Sec. 12.** The department must adopt rules necessary
34 to implement this chapter.

35 NEW SECTION. **Sec. 13.** A new section is added to chapter 82.04
36 RCW to read as follows:

37 BUSINESS AND OCCUPATION TAX CREDIT ESTABLISHED. (1) A tax credit
38 is authorized against tax otherwise due under this chapter for

1 persons that made a credit-eligible capital contribution to a rural
2 development and opportunity zone fund and were issued a tax credit
3 certificate under section 5 of this act.

4 (2) A taxpayer earns a credit on the closing date noted on the
5 taxpayer's tax credit certificate issued under section 5 of this act.
6 The credit is equal to the amount of the taxpayer's credit-eligible
7 capital contribution to the rural development and opportunity zone
8 fund as specified on the tax credit certificate.

9 (3) The taxpayer may claim up to one-third of the credit
10 authorized under this section for each of the calendar years that
11 includes the fourth through sixth anniversaries of the closing date
12 noted on the tax credit certificate, exclusive of amounts carried
13 forward from prior years.

14 (4) The amount claimed for a tax reporting period may not exceed
15 the amount of tax otherwise due under this chapter for that reporting
16 period. Unused credits may be carried forward until used, even if
17 claimed after the expiration date of this section. No refunds may be
18 granted for credits under this section.

19 (5) All persons claiming a credit under this section must file
20 electronically with the department all returns, other forms, or any
21 other information as may be required by the department.

22 (6) A taxpayer claiming a credit under this section must submit a
23 copy of the tax credit certificate issued to the taxpayer under
24 section 5 of this act to the department when filing the first return
25 in which the taxpayer will claim a credit against taxes due under
26 this chapter.

27 (7) The credit may not be transferred or allocated to any other
28 entity other than an affiliate subject to the business and occupation
29 taxes imposed under this chapter. The department of commerce must
30 provide the department with a copy of the amended tax credit
31 certificate of the transferor and the new tax credit certificate of
32 the transferee. The department must disallow tax credits claimed by
33 any transferee other than an affiliate of the transferor.

34 (8) The department of commerce must notify the department if a
35 tax credit certificate was revoked as provided in section 8 of this
36 act. Upon such notice, the department of commerce must:

37 (a) Provide written notice to the taxpayer or any affiliate to
38 which the credit was transferred that the credit was revoked by the
39 department;

1 (b) Include in the notice the amount of all credits previously
2 claimed and that such amount be paid in full within thirty days of
3 the date of the notice. If the taxpayer or the affiliate fails to pay
4 the amount in full by the due date in the notice or any extension
5 granted by the department, the department must impose penalties and
6 interest as provided under chapter 82.32 RCW; and

7 (c) Deny any further use of the tax credit certificate by the
8 taxpayer or any affiliate to which the credit was transferred.

9 (9) A taxpayer claiming the tax credit against taxes due under
10 this chapter must file a complete annual report with the department
11 under RCW 82.32.534.

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

14 (a) "Affiliate" means an entity that directly or indirectly,
15 through one or more intermediaries, controls, is controlled by, or is
16 under common control with another entity. For the purposes of this
17 section, "control" means the possession, directly or indirectly, of
18 more than fifty percent of the power to direct or cause the direction
19 of the management and policies of a person, whether through the
20 ownership of voting shares, by contract, or otherwise.

21 (b) "Credit-eligible capital contribution" means an investment of
22 cash by a person subject to (a) business and occupation taxes under
23 chapter 82.04 RCW and/or (b) insurance premium taxes under chapter
24 48.14 RCW in a rural development and opportunity zone fund that
25 equals the amount specified on a tax credit certificate issued by the
26 department of commerce under section 5 of this act. The investment
27 must purchase an equity interest in the rural development and
28 opportunity zone fund or purchase, at par value or premium, a debt
29 instrument that has a maturity date at least five years from the
30 closing date and a repayment schedule that is no faster than level
31 principal amortization over five years.

32 (c) "Rural development and opportunity zone fund" means an entity
33 certified by the department of commerce under section 5 of this act.

34 (11) This section expires July 1, 2025.

35 **Sec. 14.** RCW 82.04.260 and 2018 c 164 s 3 are each amended to
36 read as follows:

37 (1) Upon every person engaging within this state in the business
38 of manufacturing:

1 (a) Wheat into flour, barley into pearl barley, soybeans into
2 soybean oil, canola into canola oil, canola meal, or canola by-
3 products, or sunflower seeds into sunflower oil; as to such persons
4 the amount of tax with respect to such business is equal to the value
5 of the flour, pearl barley, oil, canola meal, or canola by-product
6 manufactured, multiplied by the rate of 0.138 percent;

7 (b) Beginning July 1, 2025, seafood products that remain in a
8 raw, raw frozen, or raw salted state at the completion of the
9 manufacturing by that person; or selling manufactured seafood
10 products that remain in a raw, raw frozen, or raw salted state at the
11 completion of the manufacturing, to purchasers who transport in the
12 ordinary course of business the goods out of this state; as to such
13 persons the amount of tax with respect to such business is equal to
14 the value of the products manufactured or the gross proceeds derived
15 from such sales, multiplied by the rate of 0.138 percent. Sellers
16 must keep and preserve records for the period required by RCW
17 82.32.070 establishing that the goods were transported by the
18 purchaser in the ordinary course of business out of this state;

19 (c) (i) Except as provided otherwise in (c) (iii) of this
20 subsection, from July 1, 2025, until January 1, 2036, dairy products;
21 or selling dairy products that the person has manufactured to
22 purchasers who either transport in the ordinary course of business
23 the goods out of state or purchasers who use such dairy products as
24 an ingredient or component in the manufacturing of a dairy product;
25 as to such persons the tax imposed is equal to the value of the
26 products manufactured or the gross proceeds derived from such sales
27 multiplied by the rate of 0.138 percent. Sellers must keep and
28 preserve records for the period required by RCW 82.32.070
29 establishing that the goods were transported by the purchaser in the
30 ordinary course of business out of this state or sold to a
31 manufacturer for use as an ingredient or component in the
32 manufacturing of a dairy product.

33 (ii) For the purposes of this subsection (1) (c), "dairy products"
34 means:

35 (A) Products, not including any marijuana-infused product, that
36 as of September 20, 2001, are identified in 21 C.F.R., chapter 1,
37 parts 131, 133, and 135, including by-products from the manufacturing
38 of the dairy products, such as whey and casein; and

1 (B) Products comprised of not less than seventy percent dairy
2 products that qualify under (c)(ii)(A) of this subsection, measured
3 by weight or volume.

4 (iii) The preferential tax rate provided to taxpayers under this
5 subsection (1)(c) does not apply to sales of dairy products on or
6 after July 1, 2023, where a dairy product is used by the purchaser as
7 an ingredient or component in the manufacturing in Washington of a
8 dairy product;

9 (d)(i) Beginning July 1, 2025, fruits or vegetables by canning,
10 preserving, freezing, processing, or dehydrating fresh fruits or
11 vegetables, or selling at wholesale fruits or vegetables manufactured
12 by the seller by canning, preserving, freezing, processing, or
13 dehydrating fresh fruits or vegetables and sold to purchasers who
14 transport in the ordinary course of business the goods out of this
15 state; as to such persons the amount of tax with respect to such
16 business is equal to the value of the products manufactured or the
17 gross proceeds derived from such sales multiplied by the rate of
18 0.138 percent. Sellers must keep and preserve records for the period
19 required by RCW 82.32.070 establishing that the goods were
20 transported by the purchaser in the ordinary course of business out
21 of this state.

22 (ii) For purposes of this subsection (1)(d), "fruits" and
23 "vegetables" do not include marijuana, useable marijuana, or
24 marijuana-infused products; and

25 (e) Wood biomass fuel; as to such persons the amount of tax with
26 respect to the business is equal to the value of wood biomass fuel
27 manufactured, multiplied by the rate of 0.138 percent. For the
28 purposes of this section, "wood biomass fuel" means a liquid or
29 gaseous fuel that is produced from lignocellulosic feedstocks,
30 including wood, forest, ~~((+or+))~~ or field residue~~((+))~~ and dedicated
31 energy crops, and that does not include wood treated with chemical
32 preservations such as creosote, pentachlorophenol, or copper-chrome-
33 arsenic.

34 (2) Upon every person engaging within this state in the business
35 of splitting or processing dried peas; as to such persons the amount
36 of tax with respect to such business is equal to the value of the
37 peas split or processed, multiplied by the rate of 0.138 percent.

38 (3) Upon every nonprofit corporation and nonprofit association
39 engaging within this state in research and development, as to such
40 corporations and associations, the amount of tax with respect to such

1 activities is equal to the gross income derived from such activities
2 multiplied by the rate of 0.484 percent.

3 (4) Upon every person engaging within this state in the business
4 of slaughtering, breaking and/or processing perishable meat products
5 and/or selling the same at wholesale only and not at retail; as to
6 such persons the tax imposed is equal to the gross proceeds derived
7 from such sales multiplied by the rate of 0.138 percent.

8 (5) Upon every person engaging within this state in the business
9 of acting as a travel agent or tour operator; as to such persons the
10 amount of the tax with respect to such activities is equal to the
11 gross income derived from such activities multiplied by the rate of
12 0.275 percent.

13 (6) Upon every person engaging within this state in business as
14 an international steamship agent, international customs house broker,
15 international freight forwarder, vessel and/or cargo charter broker
16 in foreign commerce, and/or international air cargo agent; as to such
17 persons the amount of the tax with respect to only international
18 activities is equal to the gross income derived from such activities
19 multiplied by the rate of 0.275 percent.

20 (7) Upon every person engaging within this state in the business
21 of stevedoring and associated activities pertinent to the movement of
22 goods and commodities in waterborne interstate or foreign commerce;
23 as to such persons the amount of tax with respect to such business is
24 equal to the gross proceeds derived from such activities multiplied
25 by the rate of 0.275 percent. Persons subject to taxation under this
26 subsection are exempt from payment of taxes imposed by chapter 82.16
27 RCW for that portion of their business subject to taxation under this
28 subsection. Stevedoring and associated activities pertinent to the
29 conduct of goods and commodities in waterborne interstate or foreign
30 commerce are defined as all activities of a labor, service or
31 transportation nature whereby cargo may be loaded or unloaded to or
32 from vessels or barges, passing over, onto or under a wharf, pier, or
33 similar structure; cargo may be moved to a warehouse or similar
34 holding or storage yard or area to await further movement in import
35 or export or may move to a consolidation freight station and be
36 stuffed, unstuffed, containerized, separated or otherwise segregated
37 or aggregated for delivery or loaded on any mode of transportation
38 for delivery to its consignee. Specific activities included in this
39 definition are: Wharfage, handling, loading, unloading, moving of
40 cargo to a convenient place of delivery to the consignee or a

1 convenient place for further movement to export mode; documentation
2 services in connection with the receipt, delivery, checking, care,
3 custody and control of cargo required in the transfer of cargo;
4 imported automobile handling prior to delivery to consignee; terminal
5 stevedoring and incidental vessel services, including but not limited
6 to plugging and unplugging refrigerator service to containers,
7 trailers, and other refrigerated cargo receptacles, and securing ship
8 hatch covers.

9 (8) (a) Upon every person engaging within this state in the
10 business of disposing of low-level waste, as defined in RCW
11 43.145.010; as to such persons the amount of the tax with respect to
12 such business is equal to the gross income of the business, excluding
13 any fees imposed under chapter 43.200 RCW, multiplied by the rate of
14 3.3 percent.

15 (b) If the gross income of the taxpayer is attributable to
16 activities both within and without this state, the gross income
17 attributable to this state must be determined in accordance with the
18 methods of apportionment required under RCW 82.04.460.

19 (9) Upon every person engaging within this state as an insurance
20 producer or title insurance agent licensed under chapter 48.17 RCW or
21 a surplus line broker licensed under chapter 48.15 RCW; as to such
22 persons, the amount of the tax with respect to such licensed
23 activities is equal to the gross income of such business multiplied
24 by the rate of 0.484 percent.

25 (10) Upon every person engaging within this state in business as
26 a hospital, as defined in chapter 70.41 RCW, that is operated as a
27 nonprofit corporation or by the state or any of its political
28 subdivisions, as to such persons, the amount of tax with respect to
29 such activities is equal to the gross income of the business
30 multiplied by the rate of 0.75 percent through June 30, 1995, and 1.5
31 percent thereafter.

32 (11) (a) Beginning October 1, 2005, upon every person engaging
33 within this state in the business of manufacturing commercial
34 airplanes, or components of such airplanes, or making sales, at
35 retail or wholesale, of commercial airplanes or components of such
36 airplanes, manufactured by the seller, as to such persons the amount
37 of tax with respect to such business is, in the case of
38 manufacturers, equal to the value of the product manufactured and the
39 gross proceeds of sales of the product manufactured, or in the case

1 of processors for hire, equal to the gross income of the business,
2 multiplied by the rate of:

3 (i) 0.4235 percent from October 1, 2005, through June 30, 2007;
4 and

5 (ii) 0.2904 percent beginning July 1, 2007.

6 (b) Beginning July 1, 2008, upon every person who is not eligible
7 to report under the provisions of (a) of this subsection (11) and is
8 engaging within this state in the business of manufacturing tooling
9 specifically designed for use in manufacturing commercial airplanes
10 or components of such airplanes, or making sales, at retail or
11 wholesale, of such tooling manufactured by the seller, as to such
12 persons the amount of tax with respect to such business is, in the
13 case of manufacturers, equal to the value of the product manufactured
14 and the gross proceeds of sales of the product manufactured, or in
15 the case of processors for hire, be equal to the gross income of the
16 business, multiplied by the rate of 0.2904 percent.

17 (c) For the purposes of this subsection (11), "commercial
18 airplane" and "component" have the same meanings as provided in RCW
19 82.32.550.

20 (d) In addition to all other requirements under this title, a
21 person reporting under the tax rate provided in this subsection (11)
22 must file a complete annual tax performance report with the
23 department under RCW 82.32.534.

24 (e)(i) Except as provided in (e)(ii) of this subsection (11),
25 this subsection (11) does not apply on and after July 1, 2040.

26 (ii) With respect to the manufacturing of commercial airplanes or
27 making sales, at retail or wholesale, of commercial airplanes, this
28 subsection (11) does not apply on and after July 1st of the year in
29 which the department makes a determination that any final assembly or
30 wing assembly of any version or variant of a commercial airplane that
31 is the basis of a siting of a significant commercial airplane
32 manufacturing program in the state under RCW 82.32.850 has been sited
33 outside the state of Washington. This subsection (11)(e)(ii) only
34 applies to the manufacturing or sale of commercial airplanes that are
35 the basis of a siting of a significant commercial airplane
36 manufacturing program in the state under RCW 82.32.850.

37 (12)(a) Until July 1, (~~2024~~) 2056, upon every person engaging
38 within this state in the business of extracting timber or extracting
39 for hire timber; as to such persons the amount of tax with respect to
40 the business is, in the case of extractors, equal to the value of

1 products, including by-products, extracted, or in the case of
2 extractors for hire, equal to the gross income of the business,
3 multiplied by the rate of 0.4235 percent from July 1, 2006, through
4 June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30,
5 ((2024)) 2056.

6 (b) Until July 1, ((2024)) 2056, upon every person engaging
7 within this state in the business of manufacturing or processing for
8 hire: (i) Timber into timber products or wood products; or (ii)
9 timber products into other timber products or wood products; as to
10 such persons the amount of the tax with respect to the business is,
11 in the case of manufacturers, equal to the value of products,
12 including by-products, manufactured, or in the case of processors for
13 hire, equal to the gross income of the business, multiplied by the
14 rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and
15 0.2904 percent from July 1, 2007, through June 30, ((2024)) 2056.

16 (c) Until July 1, ((2024)) 2056, upon every person engaging
17 within this state in the business of selling at wholesale: (i) Timber
18 extracted by that person; (ii) timber products manufactured by that
19 person from timber or other timber products; or (iii) wood products
20 manufactured by that person from timber or timber products; as to
21 such persons the amount of the tax with respect to the business is
22 equal to the gross proceeds of sales of the timber, timber products,
23 or wood products multiplied by the rate of 0.4235 percent from July
24 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007,
25 through June 30, ((2024)) 2056.

26 (d) Until July 1, ((2024)) 2056, upon every person engaging
27 within this state in the business of selling standing timber; as to
28 such persons the amount of the tax with respect to the business is
29 equal to the gross income of the business multiplied by the rate of
30 0.2904 percent. For purposes of this subsection (12)(d), "selling
31 standing timber" means the sale of timber apart from the land, where
32 the buyer is required to sever the timber within thirty months from
33 the date of the original contract, regardless of the method of
34 payment for the timber and whether title to the timber transfers
35 before, upon, or after severance.

36 (e) For purposes of this subsection, the following definitions
37 apply:

38 (i) "Biocomposite surface products" means surface material
39 products containing, by weight or volume, more than fifty percent

1 recycled paper and that also use nonpetroleum-based phenolic resin as
2 a bonding agent.

3 (ii) "Paper and paper products" means products made of interwoven
4 cellulosic fibers held together largely by hydrogen bonding. "Paper
5 and paper products" includes newsprint; office, printing, fine, and
6 pressure-sensitive papers; paper napkins, towels, and toilet tissue;
7 kraft bag, construction, and other kraft industrial papers;
8 paperboard, liquid packaging containers, containerboard, corrugated,
9 and solid-fiber containers including linerboard and corrugated
10 medium; and related types of cellulosic products containing
11 primarily, by weight or volume, cellulosic materials. "Paper and
12 paper products" does not include books, newspapers, magazines,
13 periodicals, and other printed publications, advertising materials,
14 calendars, and similar types of printed materials.

15 (iii) "Recycled paper" means paper and paper products having
16 fifty percent or more of their fiber content that comes from
17 postconsumer waste. For purposes of this subsection (12)(e)(iii),
18 "postconsumer waste" means a finished material that would normally be
19 disposed of as solid waste, having completed its life cycle as a
20 consumer item.

21 (iv) "Timber" means forest trees, standing or down, on privately
22 or publicly owned land. "Timber" does not include Christmas trees
23 that are cultivated by agricultural methods or short-rotation
24 hardwoods as defined in RCW 84.33.035.

25 (v) "Timber products" means:

26 (A) Logs, wood chips, sawdust, wood waste, and similar products
27 obtained wholly from the processing of timber, short-rotation
28 hardwoods as defined in RCW 84.33.035, or both;

29 (B) Pulp, including market pulp and pulp derived from recovered
30 paper or paper products; and

31 (C) Recycled paper, but only when used in the manufacture of
32 biocomposite surface products.

33 (vi) "Wood products" means paper and paper products; dimensional
34 lumber; engineered wood products such as particleboard, oriented
35 strand board, medium density fiberboard, and plywood; wood doors;
36 wood windows; and biocomposite surface products.

37 (f) Except for small harvesters as defined in RCW 84.33.035, a
38 person reporting under the tax rate provided in this subsection (12)
39 must file a complete annual tax performance report with the
40 department under RCW 82.32.534.

1 (13) Upon every person engaging within this state in inspecting,
2 testing, labeling, and storing canned salmon owned by another person,
3 as to such persons, the amount of tax with respect to such activities
4 is equal to the gross income derived from such activities multiplied
5 by the rate of 0.484 percent.

6 (14)(a) Upon every person engaging within this state in the
7 business of printing a newspaper, publishing a newspaper, or both,
8 the amount of tax on such business is equal to the gross income of
9 the business multiplied by the rate of 0.35 percent until July 1,
10 2024, and 0.484 percent thereafter.

11 (b) A person reporting under the tax rate provided in this
12 subsection (14) must file a complete annual tax performance report
13 with the department under RCW 82.32.534.

14 NEW SECTION. **Sec. 15.** The provisions of RCW 82.32.805 and
15 82.32.808 do not apply to section 14 of this act.

16 NEW SECTION. **Sec. 16.** Sections 1 through 6, 8 through 12, and
17 17 of this act constitute a new chapter in Title 43 RCW.

18 NEW SECTION. **Sec. 17.** This chapter expires July 1, 2025.

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