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**SENATE BILL 5216**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senators Carlyle, Conway, Hasegawa, Hunt, Nguyen, and Wilson, C.

AN ACT Relating to additional transparency and accountability for tax preferences; amending RCW 82.32.330, 43.136.045, 43.88A.040, 82.32.808, 82.32.534, and 43.06.400; adding new sections to chapter 82.32 RCW; and creating a new section.

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

NEW SECTION. **Sec.**  (1) The legislature finds that Washington has among the largest number of tax preferences (i.e., credits, exemptions, deductions, and preferential rates) in the nation due in large part to the unique nature of the state's tax structure. The legislature finds that measuring and assessing the efficacy of such preferences is essential to ensure the most effective use of public resources, and that public access to easily available data is vital to conduct such evaluations.

(2) The legislature finds that comprehensive analysis and evaluation of the efficacy of tax preferences assists lawmakers and the public in understanding the benefits of specific tax policy decisions to taxpayers, local economies, and the state. The legislature further finds the relevant information critical for such analysis is frequently not reported to the state department of revenue by taxpayers or is not publicly available. The legislature further finds the lack of accurate and ascertainable information has prevented the joint legislative audit and review committee tax preference performance review process from achieving the rigor of evaluation necessary to draw firm conclusions. The legislature further finds that this also limits the ability of lawmakers to access data of material importance for assessing proposed tax preference legislation or to fairly and accurately evaluate the merits of existing tax preferences. The legislature further finds that Washington state has been a leader among states since passage of the public disclosure act by initiative in 1972 in public disclosure of government records, state budget documents, and campaign finance and spending. The legislature further finds that similar leadership in the area of the public disclosure of tax preferences would allow the legislature and the public to assess the true impact of current tax policy or proposed tax legislation in a manner that is currently unattainable due to aggregated, anonymous data. Therefore, the legislature intends to establish consistent standards for the collection of data for the purposes of improving analysis of tax preferences and their benefits and public policy objective outcomes for taxpayers and relevant industries. The legislature further intends to make such information subject to public disclosure wherever possible to enable and improve lawmakers' and the public's understanding of the benefits and costs of tax preferences while ensuring that the release of such information does not cause economic harm to taxpayers claiming such preferences.

**Part I**

**Improving Tax Preference Data Collection**

NEW SECTION. **Sec.**  A new section is added to chapter 82.32 RCW to read as follows:

In determining a taxpayer's taxable amount, a taxpayer required to file a return with the department to report taxes due under chapter 82.04 or 82.16 RCW must separately report the amount of any tax deduction on such return. For purposes of this section, "deduction" has the same meaning as in section 102 of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 82.32 RCW to read as follows:

(1) The department must establish a reporting code to uniquely identify selected business tax incentives. The department may, at its sole discretion, establish reporting codes to uniquely identify any other tax preferences reported to the department on a return required under this chapter.

(2) Subsection (1) of this section applies only to returns filed electronically.

(3) The department must establish unique reporting codes described under subsection (4) of this section by January 1, 2023.

(4)(a) For purposes of this section and except as provided in (c) of this subsection, "selected business tax incentive" means any of the tax preferences specified in (b) of this subsection, if the department determines that all or a majority of the taxpayers entitled or likely to claim the tax preference are businesses.

(b) Selected business tax incentives are limited to the following tax preferences meeting the requirements in (a) of this subsection:

(i) Deductions and credits under chapters 82.04 and 82.16 RCW;

(ii) Sales and use tax exemptions and credits. This subsection (4)(b)(ii) does not include exclusions from the definition of retail sale, selling price, or other definitional exclusions; and

(iii) Preferential business and occupation tax rates.

(c) "Selected business tax incentive" does not include any tax preference:

(i) Enacted as part of the revenue act of 1935 (chapter 180, Laws of 1935);

(ii) Enacted for the purposes of ensuring compliance with the state Constitution or the Constitution or laws of the United States;

(iii) Enacted for the purpose of eliminating multiple taxation of the same activity, transaction, or income;

(iv) That requires taxpayers to file a tax preference report under RCW 82.32.534; or

(v) That is obsolete or redundant.

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

(i) "Business" means a person engaging in business but does not include:

(A) A nonprofit entity;

(B) A public entity, including any entity created by one or more governments; or

(C) An individual in his or her capacity as an employee.

(ii) "Deduction" means a tax preference that allows specified amounts to be deducted from the measure of tax, and the statute authorizing the deduction explicitly contains some form of the word "deduct."

(iii) "Preferential business and occupation tax rate" means a reduced tax rate under chapter 82.04 RCW provided to a specified group of taxpayers otherwise taxable under a nonpreferential rate within an existing tax classification rather than to all taxpayers within the existing tax classification, regardless of whether the reduced tax rate applies to activities that were formerly taxed at a lower rate in addition to activities that were formerly taxed at a higher rate. "Preferential business and occupation tax rate" does not include the general rates for persons engaging in business as an extractor, extractor for hire, manufacturer, or processor for hire; persons making retail sales; persons making wholesale sales; persons engaging in the activities taxed under RCW 82.04.280(1) (b) or (g); or persons engaging in activities taxed under RCW 82.04.290(2)(a).

(iv) "Taxpayer" means a person who is registered with the department to file returns for any of the taxes imposed in chapter 82.04, 82.08, 82.12, or 82.16 RCW. With respect to sales and use tax exemptions, "taxpayer" also includes any person regardless of whether the person is registered with the department for tax purposes.

(5) The department must by rule provide a list of all selected business incentives and must endeavor to keep the rule up-to-date.

**Part II**

**Authorizing Public Disclosure of State Tax Information for Nonprofits and Governmental Entities**

**Sec.**  RCW 82.32.330 and 2011 c 174 s 404 are each amended to read as follows:

(1) For purposes of this section:

(a) "Disclose" means to make known to any person in any manner whatever a return or tax information;

(b) "Return" means a tax or information return or claim for refund required by, or provided for or permitted under, the laws of this state which is filed with the department of revenue by, on behalf of, or with respect to a person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists that are supplemental to, or part of, the return so filed;

(c) "Tax information" means (i) a taxpayer's identity, (ii) the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability deficiencies, overassessments, or tax payments, whether taken from the taxpayer's books and records or any other source, (iii) whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, (iv) a part of a written determination that is not designated as a precedent and disclosed pursuant to RCW 82.32.410, or a background file document relating to a written determination, and (v) other data received by, recorded by, prepared by, furnished to, or collected by the department of revenue with respect to the determination of the existence, or possible existence, of liability, or the amount thereof, of a person under the laws of this state for a tax, penalty, interest, fine, forfeiture, or other imposition, or offense. However, data, material, or documents that do not disclose information related to a specific or identifiable taxpayer do not constitute tax information under this section. Except as provided by RCW 82.32.410, nothing in this chapter requires any person possessing data, material, or documents made confidential and privileged by this section to delete information from such data, material, or documents so as to permit its disclosure;

(d) "State agency" means every Washington state office, department, division, bureau, board, commission, or other state agency;

(e) "Taxpayer identity" means the taxpayer's name, address, telephone number, registration number, or any combination thereof, or any other information disclosing the identity of the taxpayer; and

(f) "Department" means the department of revenue or its officer, agent, employee, or representative.

(2) Returns and tax information are confidential and privileged, and except as authorized by this section, neither the department of revenue nor any other person may disclose any return or tax information.

(3) This section does not prohibit the department of revenue from:

(a) Disclosing such return or tax information in a civil or criminal judicial proceeding or an administrative proceeding:

(i) In respect of any tax imposed under the laws of this state if the taxpayer or its officer or other person liable under this title or chapter 83.100 RCW is a party in the proceeding;

(ii) In which the taxpayer about whom such return or tax information is sought and another state agency are adverse parties in the proceeding; or

(iii) Brought by the department under RCW 18.27.040 or 19.28.071;

(b) Disclosing, subject to such requirements and conditions as the director prescribes by rules adopted pursuant to chapter 34.05 RCW, such return or tax information regarding a taxpayer to such taxpayer or to such person or persons as that taxpayer may designate in a request for, or consent to, such disclosure, or to any other person, at the taxpayer's request, to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. However, tax information not received from the taxpayer must not be so disclosed if the director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal liability of the taxpayer or another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the department that provides for the reciprocal exchange of information with other government agencies which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the taxpayer by the order of any court;

(c) Disclosing the name of a taxpayer against whom a warrant under RCW 82.32.210 has been either issued or filed and remains outstanding for a period of at least ((~~ten~~)) 10 working days. The department is not required to disclose any information under this subsection if a taxpayer has entered a deferred payment arrangement with the department for the payment of a warrant that has not been filed and is making payments upon such deficiency that will fully satisfy the indebtedness within twelve months;

(d) Publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof;

(e) Disclosing such return or tax information, for official purposes only, to the governor or attorney general, or to any state agency, or to any committee or subcommittee of the legislature dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions;

(f) Permitting the department of revenue's records to be audited and examined by the proper state officer, his or her agents and employees;

(g) Disclosing any such return or tax information to a peace officer as defined in RCW 9A.04.110 or county prosecuting attorney, for official purposes. The disclosure may be made only in response to a search warrant, subpoena, or other court order, unless the disclosure is for the purpose of criminal tax enforcement. A peace officer or county prosecuting attorney who receives the return or tax information may disclose that return or tax information only for use in the investigation and a related court proceeding, or in the court proceeding for which the return or tax information originally was sought;

(h) Disclosing any such return or tax information to the proper officer of the internal revenue service of the United States, the Canadian government or provincial governments of Canada, or to the proper officer of the tax department of any state or city or town or county, for official purposes, but only if the statutes of the United States, Canada or its provincial governments, or of such other state or city or town or county, as the case may be, grants substantially similar privileges to the proper officers of this state;

(i) Disclosing any such return or tax information to the United States department of justice, including the bureau of alcohol, tobacco, firearms and explosives, the department of defense, the immigration and customs enforcement and the customs and border protection agencies of the United States department of homeland security, the United States coast guard, the alcohol and tobacco tax and trade bureau of the United States department of treasury, and the United States department of transportation, or any authorized representative of these federal agencies, for official purposes;

(j) Publishing or otherwise disclosing the text of a written determination designated by the director as a precedent pursuant to RCW 82.32.410;

(k) Disclosing, in a manner that is not associated with other tax information, the taxpayer name, entity type, business address, mailing address, revenue tax registration numbers, reseller permit numbers and the expiration date and status of such permits, North American industry classification system or standard industrial classification code of a taxpayer, and the dates of opening and closing of business. This subsection may not be construed as giving authority to the department to give, sell, or provide access to any list of taxpayers for any commercial purpose;

(l) Disclosing such return or tax information that is also maintained by another Washington state or local governmental agency as a public record available for inspection and copying under the provisions of chapter 42.56 RCW or is a document maintained by a court of record and is not otherwise prohibited from disclosure;

(m) Disclosing such return or tax information to the United States department of agriculture for the limited purpose of investigating food stamp fraud by retailers;

(n) Disclosing to a financial institution, escrow company, or title company, in connection with specific real property that is the subject of a real estate transaction, current amounts due the department for a filed tax warrant, judgment, or lien against the real property;

(o) Disclosing to a person against whom the department has asserted liability as a successor under RCW 82.32.140 return or tax information pertaining to the specific business of the taxpayer to which the person has succeeded;

(p) Disclosing real estate excise tax affidavit forms filed under RCW 82.45.150 in the possession of the department, including real estate excise tax affidavit forms for transactions exempt or otherwise not subject to tax;

(q) Disclosing to local taxing jurisdictions the identity of sellers granted relief under RCW 82.32.430(5)(b)(i) and the period for which relief is granted;

(r) Disclosing such return or tax information to the court in respect to the department's application for a subpoena under RCW 82.32.117;

(s) Disclosing to a person against whom the department has asserted liability under RCW 83.100.120 return or tax information pertaining to that person's liability for tax under chapter 83.100 RCW;

(t) Disclosing such return or tax information to the streamlined sales tax governing board, member states of the streamlined sales tax governing board, or authorized representatives of such board or states, for the limited purposes of:

(i) Conducting on behalf of member states sales and use tax audits of taxpayers; or

(ii) Auditing certified service providers or certified automated systems providers; ((~~or~~))

(u) Disclosing the amount of any tax preference claimed by a taxpayer filing an annual tax preference report under RCW 82.32.534 or any new tax preference as provided in RCW 82.32.808(8);

(v) Disclosing such return or tax information if the taxpayer is a local governmental entity or nonprofit organization; and

(w) Disclosing any such return or tax information when the disclosure is specifically authorized under any other section of the Revised Code of Washington.

(4)(a) The department may disclose return or taxpayer information to a person under investigation or during any court or administrative proceeding against a person under investigation as provided in this subsection (4). The disclosure must be in connection with the department's official duties relating to an audit, collection activity, or a civil or criminal investigation. The disclosure may occur only when the person under investigation and the person in possession of data, materials, or documents are parties to the return or tax information to be disclosed. The department may disclose return or tax information such as invoices, contracts, bills, statements, resale or exemption certificates, or checks. However, the department may not disclose general ledgers, sales or cash receipt journals, check registers, accounts receivable/payable ledgers, general journals, financial statements, expert's workpapers, income tax returns, state tax returns, tax return workpapers, or other similar data, materials, or documents.

(b) Before disclosure of any tax return or tax information under this subsection (4), the department must, through written correspondence, inform the person in possession of the data, materials, or documents to be disclosed. The correspondence must clearly identify the data, materials, or documents to be disclosed. The department may not disclose any tax return or tax information under this subsection (4) until the time period allowed in (c) of this subsection has expired or until the court has ruled on any challenge brought under (c) of this subsection.

(c) The person in possession of the data, materials, or documents to be disclosed by the department has ((~~twenty~~)) 20 days from the receipt of the written request required under (b) of this subsection to petition the superior court of the county in which the petitioner resides for injunctive relief. The court must limit or deny the request of the department if the court determines that:

(i) The data, materials, or documents sought for disclosure are cumulative or duplicative, or are obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) The production of the data, materials, or documents sought would be unduly burdensome or expensive, taking into account the needs of the department, the amount in controversy, limitations on the petitioner's resources, and the importance of the issues at stake; or

(iii) The data, materials, or documents sought for disclosure contain trade secret information that, if disclosed, could harm the petitioner.

(d) The department must reimburse reasonable expenses for the production of data, materials, or documents incurred by the person in possession of the data, materials, or documents to be disclosed.

(e) Requesting information under (b) of this subsection that may indicate that a taxpayer is under investigation does not constitute a disclosure of tax return or tax information under this section.

(5) Service of a subpoena issued under RCW 82.32.117 does not constitute a disclosure of return or tax information under this section. Notwithstanding anything else to the contrary in this section, a person served with a subpoena under RCW 82.32.117 may disclose the existence or content of the subpoena to that person's legal counsel.

(6) Any person acquiring knowledge of any return or tax information in the course of his or her employment with the department of revenue and any person acquiring knowledge of any return or tax information as provided under subsection (3) (e), (f), (g), (h), (i), or (m) of this section, who discloses any such return or tax information to another person not entitled to knowledge of such return or tax information under the provisions of this section, is guilty of a misdemeanor. If the person guilty of such violation is an officer or employee of the state, such person must forfeit such office or employment and is incapable of holding any public office or employment in this state for a period of two years thereafter.

**Part III**

**Requiring a Joint Legislative Audit and Review Committee Review of the Senior Citizen Property Tax Relief Program and Research and Development Incentives**

**Sec.**  RCW 43.136.045 and 2011 c 335 s 2 are each amended to read as follows:

(1) The citizen commission for performance measurement of tax preferences must develop a schedule to accomplish an orderly review of tax preferences at least once every ((~~ten~~)) 10 years. In determining the schedule, the commission must consider the order the tax preferences were enacted into law, in addition to other factors including but not limited to grouping preferences for review by type of industry, economic sector, or policy area. The commission may elect to include, anywhere in the schedule, a tax preference that has a statutory expiration date. The commission must omit from the schedule tax preferences that are required by constitutional law, sales and use tax exemptions for machinery and equipment for manufacturing, ((~~research and development, or testing,~~)) the small business credit for the business and occupation tax, sales and use tax exemptions for food and prescription drugs, ((~~property tax relief for retired persons,~~)) and property tax valuations based on current use, and may omit any tax preference that the commission determines is a critical part of the structure of the tax system. As an alternative to the process under RCW 43.136.055, the commission may recommend to the joint legislative audit and review committee an expedited review process for any tax preference.

(2) The commission must revise the schedule as needed each year, taking into account newly enacted or terminated tax preferences. The commission must deliver the schedule to the joint legislative audit and review committee by September 1st of each year.

(3) The commission must provide a process for effective citizen input during its deliberations.

**Part IV**

**Authorizing Legislators to Request Additional Information on Fiscal Notes for Tax Incentives**

**Sec.**  RCW 43.88A.040 and 1979 c 151 s 148 are each amended to read as follows:

(1) The office of financial management ((~~shall~~)) must also provide a fiscal note on any legislative proposal at the request of any legislator. Such fiscal note ((~~shall~~)) must be returned to the requesting legislator, and copies ((~~shall~~)) must be filed with the appropriate legislative committees pursuant to RCW 43.88A.030 at the time such proposed legislation is introduced in either house.

(2) For any legislative proposal creating a new tax preference designated as an economic development incentive under RCW 82.32.808(2) (b) or (c), a legislator may request that the fiscal note include information regarding existing tax preferences that are currently available to taxpayers who would qualify for the new tax preference. The information, to the extent practicable, must include a brief description of any such existing tax preference and its total annual and biennial fiscal impact, in a form and manner determined by the department of revenue. If an existing tax preference's approximate fiscal impact is unknown, it must be noted in the fiscal note for the new tax preference.

**Part V**

**Requiring Clawback Provisions in Economic Development Tax Preferences Targeting a Small Number of Taxpayers**

**Sec.**  RCW 82.32.808 and 2020 c 139 s 58 are each amended to read as follows:

(1) As provided in this section, every bill enacting a new tax preference must include a tax preference performance statement, unless the legislation enacting the new tax preference contains an explicit exemption from the requirements of this section.

(2) A tax preference performance statement must state the legislative purpose for the new tax preference. The tax preference performance statement must indicate one or more of the following general categories, by reference to the applicable category specified in this subsection, as the legislative purpose of the new tax preference:

(a) Tax preferences intended to induce certain designated behavior by taxpayers;

(b) Tax preferences intended to improve industry competitiveness;

(c) Tax preferences intended to create or retain jobs;

(d) Tax preferences intended to reduce structural inefficiencies in the tax structure;

(e) Tax preferences intended to provide tax relief for certain businesses or individuals; or

(f) A general purpose not identified in (a) through (e) of this subsection.

(3) In addition to identifying the general legislative purpose of the tax preference under subsection (2) of this section, the tax preference performance statement must provide additional detailed information regarding the legislative purpose of the new tax preference.

(4) A new tax preference performance statement must specify clear, relevant, and ascertainable metrics and data requirements that allow the joint legislative audit and review committee and the legislature to measure the effectiveness of the new tax preference in achieving the purpose designated under subsection (2) of this section.

(5) If the tax preference performance statement for a new tax preference indicates a legislative purpose described in subsection (2)(b) or (c) of this section, any taxpayer claiming the new tax preference must file an annual tax performance report in accordance with RCW 82.32.534.

(6) If a new tax preference indicates a legislative purpose described in subsection (2)(b) or (c) of this section and the fiscal note for the new tax preference indicates that at least 90 percent of the benefit of the tax preference will accrue to 10 or fewer taxpayers, the new tax preference must include provisions requiring taxpayers using the tax preference to pay back the amount of the tax savings from the preference if the employment or wage standards, or both, specified in the tax preference performance statement are not met.

(7)(a) Taxpayers claiming a new tax preference must report the amount of the tax preference claimed by the taxpayer to the department as otherwise required by statute or determined by the department as part of the taxpayer's regular tax reporting responsibilities. For new tax preferences allowing certain types of gross income of the business to be excluded from business and occupation or public utility taxation, the tax return must explicitly report the amount of the exclusion, regardless of whether it is structured as an exemption or deduction, if the taxpayer is otherwise required to report taxes to the department on a monthly or quarterly basis. For a new sales and use tax exemption, the total purchase price or value of the exempt product or service subject to the exemption claimed by the buyer must be reported on an addendum to the buyer's tax return if the buyer is otherwise required to report taxes to the department on a monthly or quarterly basis and the buyer is required to submit an exemption certificate, or similar document, to the seller.

(b) This subsection does not apply to:

(i) Property tax exemptions;

(ii) Tax preferences required by constitutional law;

(iii) Tax preferences for which the tax benefit to the taxpayer is less than ((~~one thousand dollars~~)) $1,000 per calendar year; or

(iv) Taxpayers who are annual filers.

(c) The department may waive the filing requirements of this subsection for taxpayers who are not required to file electronically any return or report under this chapter.

((~~(7)~~)) (8)(a) Except as otherwise provided in this subsection, the amount ((~~claimed~~)) of tax savings by a taxpayer for any new tax preference is subject to public disclosure and is not considered confidential tax information under RCW 82.32.330, if the reporting periods subject to disclosure ended at least ((~~twenty-four~~)) 24 months prior to the date of disclosure and the taxpayer is required to report the amount of the tax preference claimed by the taxpayer to the department under subsection ((~~(6)~~)) (7) of this section.

(b)(i) The department may waive the public disclosure requirement under (a) of this subsection ((~~(7)~~)) (8) for good cause. Good cause may be demonstrated by a reasonable showing of economic harm to a taxpayer if the information specified under this subsection is disclosed. The waiver under this subsection ((~~(7)~~)) (8)(b)(i) only applies to the new tax preferences provided in chapter 13, Laws of 2013 2nd sp. sess.

(ii) The amount of ((~~the tax preference claimed by a taxpayer~~)) tax savings by a taxpayer for any new tax preference during a calendar year is confidential under RCW 82.32.330 and may not be disclosed under this subsection if the amount for the calendar year is less than ((~~ten thousand dollars~~)) $10,000.

(c) In lieu of the disclosure and waiver requirements under this subsection, the requirements under RCW 82.32.534 apply to any tax preference that requires a tax performance report.

((~~(8)~~)) (9) If a new tax preference does not include the information required under subsections (2) through (4) of this section, the joint legislative audit and review committee is not required to perform a tax preference review under chapter 43.136 RCW, and it is legislatively presumed that it is the intent of the legislature to allow the new tax preference to expire upon its scheduled expiration date.

((~~(9)~~)) (10) For the purposes of this section, "tax preference" and "new tax preference" have the same meaning as provided in RCW 82.32.805.

((~~(10)~~)) (11) The provisions of this section do not apply to the extent that legislation creating a new tax preference provides an exemption, in whole or in part, from this section, whether or not such exemption is codified.

**Sec.**  RCW 82.32.534 and 2017 c 135 s 1 are each amended to read as follows:

(1)(a)(i) Beginning in calendar year 2018, every person claiming a tax preference that requires an annual tax performance report under this section must file a complete annual report with the department. The report is due by May 31st of the year following any calendar year in which a person becomes eligible to claim the tax preference that requires a report under this section.

(ii) If the tax preference is a deferral of tax, the first annual tax performance report must be filed by May 31st of the calendar year following the calendar year in which the investment project is certified by the department as operationally complete, and an annual tax performance report must be filed by May 31st of each of the seven succeeding calendar years.

(iii) The department may extend the due date for timely filing of annual reports under this section as provided in RCW 82.32.590.

(b) The report must include information detailing employment and wages for employment positions in Washington for the year that the tax preference was claimed. However, persons engaged in manufacturing commercial airplanes or components of such airplanes may report employment, wage, and benefit information per job at the manufacturing site for the year that the tax preference was claimed. The report must not include names of employees. The report must also detail employment by the total number of full-time, part-time, and temporary positions for the year that the tax preference was claimed. In lieu of reporting employment and wage data required under this subsection, taxpayers may instead opt to allow the employment security department to release the same employment and wage information from unemployment insurance records to the department and the joint legislative audit and review committee. This option is intended to reduce the reporting burden for taxpayers, and each taxpayer electing to use this option must affirm that election in accordance with procedures approved by the employment security department.

(c) Persons receiving the benefit of the tax preference provided by RCW 82.16.0421 or claiming any of the tax preferences provided by RCW 82.04.2909, 82.04.4481, 82.08.805, 82.12.805, or 82.12.022(5) must indicate on the annual report the quantity of product produced in this state during the time period covered by the report.

(d) If a person filing a report under this section did not file a report with the department in the previous calendar year, the report filed under this section must also include employment, wage, and benefit information for the calendar year immediately preceding the calendar year for which a tax preference was claimed.

(2)(a) As part of the annual report, the department and the joint legislative audit and review committee may request additional information necessary to measure the results of, or determine eligibility for, the tax preference.

(b) The report must include the amount of the tax ((~~preference claimed~~)) savings for the taxpayer from the tax preference for the calendar year covered by the report. For a person that claimed an exemption provided in RCW 82.08.025651 or 82.12.025651, the report must include the amount of tax exempted under those sections in the prior calendar year for each general area or category of research and development for which exempt machinery and equipment and labor and services were acquired in the prior calendar year.

(3) Other than information requested under subsection (2)(a) of this section, the information contained in an annual report filed under this section is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(4)(a) Except as otherwise provided by law, if a person claims a tax preference that requires an annual report under this section but fails to submit a complete report by the due date or any extension under RCW 82.32.590, the department must declare:

(i) ((~~Thirty-five~~)) 35 percent of the amount of the tax preference claimed for the previous calendar year to be immediately due and payable;

(ii) An additional ((~~fifteen~~)) 15 percent of the amount of the tax preference claimed for the previous calendar year to be immediately due and payable if the person has previously been assessed under this subsection (4) for failure to submit a report under this section for the same tax preference; and

(iii) If the tax preference is a deferral of tax, the amount immediately due under this subsection is ((~~twelve and one-half~~)) 12.5 percent of the deferred tax. If the economic benefits of the deferral are passed to a lessee, the lessee is responsible for payment to the extent the lessee has received the economic benefit.

(b) The department may not assess interest or penalties on amounts due under this subsection.

(5) The department must use the information from this section to prepare summary descriptive statistics by category. No fewer than three taxpayers may be included in any category. The department must report these statistics to the legislature each year by December 31st.

(6) For the purposes of this section:

(a) "Person" has the meaning provided in RCW 82.04.030 and also includes the state and its departments and institutions.

(b) "Tax preference" has the meaning provided in RCW 43.136.021 and includes only the tax preferences requiring a report under this section.

**Part VI**

**Updating and Modernizing the Department of Revenue Tax Exemption Report**

**Sec.**  RCW 43.06.400 and 2013 c 225 s 605 are each amended to read as follows:

(1) ((~~Beginning~~)) Except as otherwise provided in this section, beginning in January ((~~1984~~)) 2025, and in January of every ((~~fourth~~)) second year thereafter, the department of revenue must submit to the legislature prior to the regular session a listing of the amount of reduction for the current and next biennium in the revenues of the state or the revenues of local government collected by the state as a result of tax exemptions. The listing must include an estimate of the revenue lost from the tax exemption, the purpose of the tax exemption, the persons, organizations, or parts of the population which benefit from the tax exemption, and whether or not the tax exemption conflicts with another state program. The listing must include but not be limited to the following revenue sources:

(a) Real and personal property tax exemptions, deferrals, and special valuation programs under Title 84 RCW;

(b) Business and occupation tax exemptions, deductions, and credits under chapter 82.04 RCW;

(c) Retail sales and use tax exemptions under chapters 82.08, 82.12, and 82.14 RCW;

(d) Public utility tax exemptions and deductions under chapter 82.16 RCW;

(e) Food fish and shellfish tax exemptions under chapter 82.27 RCW;

(f) Leasehold excise tax exemptions under chapter 82.29A RCW;

(g) Motor vehicle and special fuel tax exemptions and refunds under chapter 82.38 RCW;

(h) Aircraft fuel tax exemptions under chapter 82.42 RCW;

(i) Motor vehicle excise tax exclusions under chapter 82.44 RCW; and

(j) Insurance premiums tax exemptions under chapter 48.14 RCW.

(2) The department of revenue must prepare the listing required by this section with the assistance of any other agencies or departments as may be required.

(3) The department of revenue must present the listing to the ways and means committees of each house in public hearings.

(4) Beginning in January ((~~1984~~)) 2026, and every ((~~four~~)) two years thereafter the governor is requested to review the report from the department of revenue and may submit recommendations to the legislature with respect to the repeal or modification of any tax exemption. The ways and means committees of each house and the appropriate standing committee of each house must hold public hearings and take appropriate action on the recommendations submitted by the governor.

(5) ((~~As used in this section, "tax exemption" means an exemption, exclusion, or deduction from the base of a tax; a credit against a tax; a deferral of a tax; or a preferential tax rate.~~

~~(6) For purposes of the listing due in January 2012, the department of revenue does not have to prepare or update the listing with respect to any tax exemption that would not be likely to increase state revenue if the exemption was repealed or otherwise eliminated.~~)) The January 2026 listing and every subsequent listing must include the following additional sections:

(a) A section with the estimated effective tax rate for each industry. In addition, an estimate for each industry of employment levels, major taxes paid per employee within each industry, and the industry's average wage;

(b) A section that shows state general fund collections as a percentage of state gross domestic product and state personal income;

(c) A section that provides a summary of the transparency and accountability requirements under RCW 82.32.805 and 82.32.808; and

(d) The joint legislative audit and review committee's recommendation for the tax preference, along with the citizen's commission recommendation, for the most recent analysis of the tax preference, if a review has been completed.

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

(a) "Effective tax rate" means the sum of Washington's major taxes paid within each industry divided by the reported taxable income for each industry.

(b) "Industry" means the North American industry classification system code identified at the three-digit level.

(c) "Major taxes" means the following state taxes: Business and occupation taxes, property taxes, estimated sales taxes, public utility taxes, unemployment insurance contributions, and workers' compensation premiums.

(d) "Taxable income" means the taxable amount reported for business and occupation taxes under chapter 82.04 RCW and public utility taxes under chapter 82.16 RCW. "Taxable income" does not include any amount for which a credit is allowed under RCW 82.04.440.

(e) "Tax exemption" means an exemption, exclusion, or deduction from the base of a tax, a credit against a tax, a deferral of a tax, or a preferential tax rate.

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