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**SENATE BILL 5799**

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**State of Washington**

**67th Legislature**

**2022 Regular Session**

**By** Senators Robinson and Lovick

Read first time 01/11/22. Referred to Committee on Business,  
Financial Services & Trade.

1 AN ACT Relating to modifying the application of the workforce  
2 education investment surcharge to provider clinics and affiliated  
3 organizations; amending RCW 82.04.299; creating a new section; and  
4 providing an effective date.

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

6 **Sec. 1.** RCW 82.04.299 and 2020 c 2 s 4 are each amended to read  
7 as follows:

8 (1)(a) Beginning with business activities occurring on or after  
9 April 1, 2020, in addition to the taxes imposed under RCW  
10 82.04.290(2), a workforce education investment surcharge is imposed  
11 on select advanced computing businesses. The surcharge is equal to  
12 the gross income of the business subject to the tax under RCW  
13 82.04.290(2), multiplied by the rate of 1.22 percent.

14 (b) Except as provided in (e) of this subsection (1), in no case  
15 will the combined surcharge imposed under this subsection (1) paid by  
16 all members of an affiliated group be more than nine million dollars  
17 annually.

18 (c) For persons subject to the surcharge imposed under this  
19 subsection (1) that report under one or more tax classifications, the  
20 surcharge applies only to business activities taxed under RCW  
21 82.04.290(2).

1 (d) The surcharge imposed under this subsection (1) must be  
2 reported and paid on a quarterly basis in a manner as required by the  
3 department. Returns and amounts payable under this subsection (1) are  
4 due by the last day of the month immediately following the end of the  
5 reporting period covered by the return. All other taxes must be  
6 reported and paid as required under RCW 82.32.045.

7 (e) (i) To aid in the effective administration of the surcharge in  
8 this subsection (1), the department may require persons believed to  
9 be engaging in advanced computing or affiliated with a person  
10 believed to be engaging in advanced computing to disclose whether  
11 they are a member of an affiliated group and, if so, to identify all  
12 other members of the affiliated group subject to the surcharge.

13 (ii) If the department establishes, by clear, cogent, and  
14 convincing evidence, that one or more members of an affiliated group,  
15 with intent to evade the surcharge under this subsection (1), failed  
16 to fully comply with this subsection (1)(e), the department must  
17 assess against that person, or those persons collectively, a penalty  
18 equal to fifty percent of the amount of the total surcharge payable  
19 by all members of that affiliated group for the calendar year during  
20 which the person or persons failed to fully comply with this  
21 subsection (1)(e). The penalty under this subsection (1)(e) is in  
22 lieu of and not in addition to the evasion penalty under RCW  
23 82.32.090(7).

24 (f) For the purposes of this subsection (1) the following  
25 definitions apply:

26 (i) "Advanced computing" means designing or developing computer  
27 software or computer hardware, whether directly or contracting with  
28 another person, including modifications to computer software or  
29 computer hardware, cloud computing services, or operating an online  
30 marketplace, an online search engine, or online social networking  
31 platform;

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

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

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

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

5 (vi) "Select advanced computing business" means a person who is a  
6 member of an affiliated group with at least one member of the  
7 affiliated group engaging in the business of advanced computing, and  
8 the affiliated group has worldwide gross revenue of more than twenty-  
9 five billion dollars during the immediately preceding calendar year.  
10 A person who is primarily engaged within this state in the provision  
11 of commercial mobile service, as that term is defined in 47 U.S.C.  
12 Sec. 332(d)(1), shall not be considered a select advanced computing  
13 business. A person who is primarily engaged in this state in the  
14 operation and provision of access to transmission facilities and  
15 infrastructure that the person owns or leases for the transmission of  
16 voice, data, text, sound, and video using wired telecommunications  
17 networks shall not be considered a select advanced computing  
18 business. A person that is primarily engaged in business as a  
19 "financial institution" as defined in RCW 82.04.29004, as that  
20 section existed on January 1, 2020, shall not be considered a select  
21 advanced computing business. For purposes of this subsection  
22 (1)(f)(vi), "primarily" is determined based on gross income of the  
23 business.

24 (2)(a) The workforce education investment surcharge under this  
25 section does not apply to ~~((any))~~:

26 (i) Any hospital as defined in RCW 70.41.020, including any  
27 hospital that comes within the scope of chapter 71.12 RCW if the  
28 hospital is also licensed under chapter 70.41 RCW; or

29 (ii) A provider clinic offering primary care, multispecialty and  
30 surgical services, including behavioral health services, and any  
31 affiliate of the provider clinic if the affiliate is an organization  
32 that offers health care services or provides administrative support  
33 for a provider clinic, or is an independent practice association or  
34 accountable care organization.

35 (b) The exemptions under this subsection (2) do not apply to  
36 amounts received by any member of an affiliated group other than the  
37 businesses described in (a) of this subsection.

38 (c) For purposes of the exemption in (a)(ii) of this subsection:

1       (i) "Health care services" means services offered by health care  
2 providers relating to the prevention, cure, or treatment of illness,  
3 injury, or disease.

4       (ii) "Primary care" means wellness and prevention services and  
5 the diagnosis and treatment of health conditions.

6       (3) Revenues from the surcharge under this section must be  
7 deposited directly into the workforce education investment account  
8 established in RCW 43.79.195.

9       (4) The department has the authority to determine through an  
10 audit or other investigation whether a person is subject to the  
11 surcharge imposed in this section.

12       NEW SECTION. Sec. 2. RCW 82.32.805 and 82.32.808 do apply to  
13 this act.

14       NEW SECTION. Sec. 3. This act takes effect July 1, 2022.

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