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**HOUSE BILL 1793**

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**State of Washington**                      **68th Legislature**                      **2023 Regular Session**

**By** Representatives Gregerson, Berg, Street, Reed, Ramel, and Ormsby

Read first time 02/08/23. Referred to Committee on Finance.

1            AN ACT Relating to funding digital equity by imposing a tax on  
2 certain wireless devices; amending RCW 82.32.145; adding a new  
3 section to chapter 28A.650 RCW; adding a new chapter to Title 82 RCW;  
4 prescribing penalties; and providing an effective date.

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

6            NEW SECTION.    **Sec. 1.** A new section is added to chapter 28A.650  
7 RCW to read as follows:

8            The learning device and technology account is created in the  
9 state treasury. Revenues to the account consist of revenues collected  
10 under section 3 of this act and appropriations, grants, and donations  
11 directed for deposit into the account. Expenditures from the account  
12 must be used for the purposes of this chapter and RCW 43.330.5393.  
13 Moneys in the account may be spent only after appropriation.

14            NEW SECTION.    **Sec. 2.** The definitions in this section apply  
15 throughout this chapter unless the context clearly requires  
16 otherwise.

- 17            (1) "Buyer" has the same meaning as in RCW 82.08.010.  
18            (2) (a) "Retail sale" has the same meaning as in RCW 82.04.050.  
19            (b) "Retail sale" also means the transfer of a smart wireless  
20 device to a buyer that is partially or fully discounted by the seller

1 in exchange for the buyer purchasing other products or services  
2 furnished in connection with the smart wireless device.

3 (3) "Seller" has the same meaning as in RCW 82.08.010.

4 (4) (a) "Selling price" has the same meaning as in RCW 82.08.010.

5 (b) "Selling price" also means:

6 (i) In the case of a smart wireless device that is sold to the  
7 buyer under conditions where the selling price does not represent the  
8 true value of the smart wireless device and is sold together with  
9 other products or services for one nonitemized price, the retail  
10 selling price of the same product or similar products of like quality  
11 and character, sold in an arm's length transaction; and

12 (ii) In the case of installment sales of a smart wireless device,  
13 the total aggregate consideration to be paid by the buyer to the  
14 seller for the smart wireless device.

15 (5) "Smart wireless device" means any type of instrument, device,  
16 machine, or equipment that is capable of wireless access to the  
17 internet. This includes, but is not limited to, smart phones, laptop  
18 computers, tablets, wearable devices, smart speakers, gaming  
19 consoles, smart gyms, and smart televisions.

20 NEW SECTION. **Sec. 3.** (1) There is levied and collected a tax on  
21 each retail sale in this state of a smart wireless device. The amount  
22 of the tax is \$2 for a device with a selling price of more than \$250.

23 (2) The revenue collected under this section must be deposited in  
24 the learning device and technology account created in section 1 of  
25 this act.

26 NEW SECTION. **Sec. 4.** (1) The tax imposed in this chapter must  
27 be paid by the buyer to the seller. Each seller must collect from the  
28 buyer the full amount of the tax payable with respect to each taxable  
29 sale.

30 (2) The tax required by this chapter, to be collected by the  
31 seller, is held in trust by the seller until paid to the department.  
32 Any seller who appropriates or converts the tax collected to the  
33 seller's own use or to any use other than the payment of the tax to  
34 the extent that the money required to be collected is not available  
35 for payment on the due date as prescribed in this chapter is guilty  
36 of a gross misdemeanor.

37 (3) If any seller fails to collect the tax imposed in this  
38 chapter or, having collected the tax, fails to pay it to the

1 department in the manner prescribed by this chapter, whether such  
2 failure is the result of the seller's own acts or the result of acts  
3 or conditions beyond the seller's control, the seller is,  
4 nevertheless, personally liable to the state for the amount of the  
5 tax.

6 (4) The tax required by this chapter to be collected by the  
7 seller must be stated separately from the selling price in any sales  
8 invoice or other instrument of sale.

9 NEW SECTION. **Sec. 5.** Chapter 82.32 RCW applies to the  
10 administration of this chapter.

11 **Sec. 6.** RCW 82.32.145 and 2020 c 301 s 6 are each amended to  
12 read as follows:

13 (1) Whenever the department has issued a warrant under RCW  
14 82.32.210 for the collection of unpaid trust fund taxes from a  
15 limited liability business entity and that business entity has been  
16 terminated, dissolved, or abandoned, or is insolvent, the department  
17 may pursue collection of the entity's unpaid trust fund taxes,  
18 including penalties and interest on those taxes, against any or all  
19 of the responsible individuals. For purposes of this subsection,  
20 "insolvent" means the condition that results when the sum of the  
21 entity's debts exceeds the fair market value of its assets. The  
22 department may presume that an entity is insolvent if the entity  
23 refuses to disclose to the department the nature of its assets and  
24 liabilities.

25 (2) Personal liability under this section may be imposed for  
26 state and local trust fund taxes.

27 (3)(a) For a responsible individual who is the current or a  
28 former chief executive or chief financial officer, liability under  
29 this section applies regardless of fault or whether the individual  
30 was or should have been aware of the unpaid trust fund tax liability  
31 of the limited liability business entity.

32 (b) For any other responsible individual, liability under this  
33 section applies only if he or she willfully fails to pay or to cause  
34 to be paid to the department the trust fund taxes due from the  
35 limited liability business entity.

36 (4)(a) Except as provided in this subsection (4)(a), a  
37 responsible individual who is the current or a former chief executive  
38 or chief financial officer is liable under this section only for

1 trust fund tax liability accrued during the period that he or she was  
2 the chief executive or chief financial officer. However, if the  
3 responsible individual had the responsibility or duty to remit  
4 payment of the limited liability business entity's trust fund taxes  
5 to the department during any period of time that the person was not  
6 the chief executive or chief financial officer, that individual is  
7 also liable for trust fund tax liability that became due during the  
8 period that he or she had the duty to remit payment of the limited  
9 liability business entity's taxes to the department but was not the  
10 chief executive or chief financial officer.

11 (b) All other responsible individuals are liable under this  
12 section only for trust fund tax liability that became due during the  
13 period he or she had the responsibility or duty to remit payment of  
14 the limited liability business entity's taxes to the department.

15 (5) Persons described in subsection (3)(b) of this section are  
16 exempt from liability under this section in situations where  
17 nonpayment of the limited liability business entity's trust fund  
18 taxes is due to reasons beyond their control as determined by the  
19 department by rule.

20 (6) Any person having been issued a notice of assessment under  
21 this section is entitled to the appeal procedures under RCW  
22 82.32.160, 82.32.170, 82.32.180, 82.32.190, and 82.32.200.

23 (7) This section does not relieve the limited liability business  
24 entity of its trust fund tax liability or otherwise impair other tax  
25 collection remedies afforded by law.

26 (8) Collection authority and procedures prescribed in this  
27 chapter apply to collections under this section.

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

30 (a) "Chief executive" means: The president of a corporation; or  
31 for other entities or organizations other than corporations or if the  
32 corporation does not have a president as one of its officers, the  
33 highest ranking executive manager or administrator in charge of the  
34 management of the company or organization.

35 (b) "Chief financial officer" means: The treasurer of a  
36 corporation; or for entities or organizations other than corporations  
37 or if a corporation does not have a treasurer as one of its officers,  
38 the highest senior manager who is responsible for overseeing the  
39 financial activities of the entire company or organization.

1 (c) "Limited liability business entity" means a type of business  
2 entity that generally shields its owners from personal liability for  
3 the debts, obligations, and liabilities of the entity, or a business  
4 entity that is managed or owned in whole or in part by an entity that  
5 generally shields its owners from personal liability for the debts,  
6 obligations, and liabilities of the entity. Limited liability  
7 business entities include corporations, limited liability companies,  
8 limited liability partnerships, trusts, general partnerships and  
9 joint ventures in which one or more of the partners or parties are  
10 also limited liability business entities, and limited partnerships in  
11 which one or more of the general partners are also limited liability  
12 business entities.

13 (d) "Manager" has the same meaning as in RCW 25.15.006.

14 (e) "Member" has the same meaning as in RCW 25.15.006, except  
15 that the term only includes members of member-managed limited  
16 liability companies.

17 (f) "Officer" means any officer or assistant officer of a  
18 corporation, including the president, vice president, secretary, and  
19 treasurer.

20 (g) (i) "Responsible individual" includes any current or former  
21 officer, manager, member, partner, or trustee of a limited liability  
22 business entity with an unpaid tax warrant issued by the department.

23 (ii) "Responsible individual" also includes any current or former  
24 employee or other individual, but only if the individual had the  
25 responsibility or duty to remit payment of the limited liability  
26 business entity's unpaid trust fund tax liability reflected in a tax  
27 warrant issued by the department.

28 (iii) Whenever any taxpayer has one or more limited liability  
29 business entities as a member, manager, or partner, "responsible  
30 individual" also includes any current and former officers, members,  
31 or managers of the limited liability business entity or entities or  
32 of any other limited liability business entity involved directly in  
33 the management of the taxpayer. For purposes of this subsection  
34 (9)(g)(iii), "taxpayer" means a limited liability business entity  
35 with an unpaid tax warrant issued against it by the department.

36 (h) "Trust fund taxes" means taxes collected from purchasers and  
37 held in trust under RCW 82.08.050, including taxes imposed under RCW  
38 82.08.020, 82.08.150, ~~((and))~~ 82.51.010, and section 3 of this act.

1 (i) "Willfully fails to pay or to cause to be paid" means that  
2 the failure was the result of an intentional, conscious, and  
3 voluntary course of action.

4 NEW SECTION. **Sec. 7.** Sections 2 through 5 of this act  
5 constitute a new chapter in Title 82 RCW.

6 NEW SECTION. **Sec. 8.** This act takes effect January 1, 2024.

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