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**SENATE BILL 5733**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senators Mullet, L. Wilson, and Gildon

Read first time 02/09/23. Referred to Committee on Business, Financial Services, Gaming & Trade.

1 AN ACT Relating to creating a business and occupation tax  
2 deduction and increasing the tax rate for persons conducting payment  
3 card processing activities; amending RCW 82.04.290 and 82.04.29004;  
4 reenacting and amending RCW 82.04.299; adding a new section to  
5 chapter 82.04 RCW; creating new sections; and providing an effective  
6 date.

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

8 NEW SECTION. **Sec. 1.** The unique nature of payment system  
9 arrangements distinguishes payment card processing companies from  
10 other taxpayers. Due to the unique nature of payment card processing  
11 companies' activities related to interchange fees and network fees,  
12 the legislature intends to address the business and occupation  
13 taxation of payment card processing companies' activities on a  
14 prospective and retroactive basis through the deduction and rate  
15 authorized in this act.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.04  
17 RCW to read as follows:

18 (1) In computing the tax under RCW 82.04.290(4), a payment card  
19 processing company may deduct from the measure of the tax amounts

1 received by persons other than the payment card processing company in  
2 the following forms:

3 (a) Interchange fees; and

4 (b) Network fees.

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

7 (a) "Interchange fee" means a fee set by a payment network, or by  
8 agreement between an issuing bank and a merchant or merchant bank,  
9 that an issuing bank retains from the amounts settled to the merchant  
10 as compensation for the services the issuing bank provides in issuing  
11 a credit, debit, or prepaid card to a cardholder, advancing proceeds  
12 to settle a credit, debit, or prepaid card transaction, and incurring  
13 a portion of the risks relating to the transaction.

14 (b) "Issuing bank" means a bank that issues payment network-  
15 branded credit, debit, or prepaid cards to cardholders.

16 (c) "Merchant bank" means a bank that is a participant in payment  
17 networks that contracts, directly or indirectly, with a merchant,  
18 enabling that merchant to accept a payment network-branded credit,  
19 debit, or prepaid card and receive cash proceeds from the sale.

20 (d) "Network fees" means fees a payment network charges and  
21 receives as compensation for its services, including for facilitating  
22 the payment of a credit, debit, or prepaid card transaction from  
23 cardholders to a merchant through its network.

24 (e) "Payment card processing company" means a company, including  
25 a merchant bank, that acquires, either directly or indirectly,  
26 credit, debit, or prepaid card transactions from merchants,  
27 facilitates the submission of those transactions to payment networks,  
28 and facilitates the payment of proceeds of those transactions to  
29 merchants.

30 (f) "Payment network" means an operator of a system or network  
31 connecting one or more issuing banks to one or more merchant banks  
32 that facilitates financial transactions through the use of a credit,  
33 debit, or prepaid product.

34 **Sec. 3.** RCW 82.04.290 and 2020 c 2 s 3 are each amended to read  
35 as follows:

36 (1) Upon every person engaging within this state in the business  
37 of providing qualifying international investment management services,  
38 as to such persons, the amount of tax with respect to such business

1 is equal to the gross income or gross proceeds of sales of the  
2 business multiplied by a rate of 0.275 percent.

3 (2) (a) Upon every person engaging within this state in any  
4 business activity other than or in addition to an activity taxed  
5 explicitly under another section in this chapter or subsection (1) or  
6 (3) of this section; as to such persons the amount of tax on account  
7 of such activities is equal to the gross income of the business  
8 multiplied by the rate of:

9 (i) 1.75 percent; or

10 (ii) 1.5 percent for:

11 (A) Any person subject to the surcharge imposed under RCW  
12 82.04.299;

13 (B) Any person whose gross income of the business subject to the  
14 tax imposed under this subsection (2), for the immediately preceding  
15 calendar year, was less than one million dollars, unless (I) the  
16 person is affiliated with one or more other persons, and (II) the  
17 aggregate gross income of the business subject to the tax imposed  
18 under this subsection (2) for all affiliated persons was greater than  
19 or equal to one million dollars for the immediately preceding  
20 calendar year; and

21 (C) Hospitals as defined in RCW 70.41.020, including any hospital  
22 that comes within the scope of chapter 71.12 RCW if the hospital is  
23 also licensed under chapter 70.41 RCW. This subsection (2) (a) (ii) (C)  
24 must not be construed as modifying RCW 82.04.260 (10).

25 (b) This subsection (2) includes, among others, and without  
26 limiting the scope hereof (whether or not title to materials used in  
27 the performance of such business passes to another by accession,  
28 confusion or other than by outright sale), persons engaged in the  
29 business of rendering any type of service which does not constitute a  
30 "sale at retail" or a "sale at wholesale." The value of advertising,  
31 demonstration, and promotional supplies and materials furnished to an  
32 agent by his or her principal or supplier to be used for  
33 informational, educational, and promotional purposes is not  
34 considered a part of the agent's remuneration or commission and is  
35 not subject to taxation under this section.

36 (c) 14.3 percent of the revenues collected under (a) (i) of this  
37 subsection (2) must be deposited into the workforce education  
38 investment account created in RCW 43.79.195.

39 (d) (i) To aid in the effective administration of this subsection  
40 (2), the department may require a person claiming to be subject to

1 the 1.5 percent tax rate under (a)(ii)(B) of this subsection (2) to  
2 identify all of the person's affiliates, including their department  
3 tax registration number or unified business identifier number, as may  
4 be applicable, or to certify that the person is not affiliated with  
5 any other person. Requests under this subsection (2)(d)(i) must be in  
6 writing and may be made electronically.

7 (ii) If the department establishes, by clear, cogent, and  
8 convincing evidence, that a person, with intent to evade the  
9 additional taxes due under the 1.75 percent tax rate in (a)(i) of  
10 this subsection (2), failed to provide the department with complete  
11 and accurate information in response to a written request under  
12 (d)(i) of this subsection (2) within thirty days of such request, the  
13 person is ineligible for the 1.5 percent tax rate in (a)(ii) of this  
14 subsection (2) for the entire current calendar year and the following  
15 four calendar years. However, the department must waive the  
16 provisions of this subsection (2)(d)(ii) for any tax reporting period  
17 that the person is otherwise eligible for the 1.5 percent tax rate in  
18 (a)(ii) of this subsection (2) if (A) the department has not  
19 previously determined that the person failed to fully comply with  
20 (d)(i) of this subsection (2), and (B) within thirty days of the  
21 notice of additional tax due as a result of the person's failure to  
22 fully comply with (d)(i) of this subsection (2) the department  
23 determines that the person has come into full compliance with (d)(i)  
24 of this subsection (2). This subsection (2)(d) applies only with  
25 respect to persons claiming entitlement to the 1.5 percent tax rate  
26 solely by reason of (a)(ii)(B) of this subsection (2).

27 (e) For the purposes of (a)(ii)(B) of this subsection (2), if a  
28 taxpayer is subject to the reconciliation provisions of RCW  
29 82.04.462(4), and calculates gross income of the business subject to  
30 the tax imposed under this subsection (2) for the immediately  
31 preceding calendar year, or aggregate gross income of the business  
32 subject to the tax imposed under this subsection (2) for the  
33 immediately preceding calendar year for all affiliated persons, based  
34 on incomplete information, the taxpayer must correct the reporting  
35 for the current calendar year when complete information for the  
36 immediately preceding calendar year is available.

37 (f) For purposes of this subsection (2), the definitions in this  
38 subsection (2)(f) apply:

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

4 (ii) "Control" means the possession, directly or indirectly, of  
5 more than eighty percent of the power to direct or cause the  
6 direction of the management and policies of a person, whether through  
7 the ownership of voting shares, by contract, or otherwise.

8 (3) (a) Until July 1, 2040, upon every person engaging within this  
9 state in the business of performing aerospace product development for  
10 others, as to such persons, the amount of tax with respect to such  
11 business is equal to the gross income of the business multiplied by a  
12 rate of 0.9 percent.

13 (b) A person reporting under the tax rate provided in this  
14 subsection (3) must file a complete annual report with the department  
15 under RCW 82.32.534.

16 (c) "Aerospace product development" has the meaning as provided  
17 in RCW 82.04.4461.

18 (4) (a) Upon every person engaging within this state as a payment  
19 card processing company as defined in section 2 of this act, as to  
20 such persons, the amount of tax with respect to its payment card  
21 processing activities is equal to the gross income of the business  
22 from such activities multiplied by the rate of 3.0 percent.

23 (b) The gross income of the business of a payment card processing  
24 company with respect to its payment card processing activities is the  
25 merchant discount of those merchants with which the payment card  
26 processing company has directly or indirectly contracted to perform  
27 payment card processing activities.

28 (c) For payment card processing activities in which more than one  
29 payment card processing company receives a portion of the merchant  
30 discount, each company is required to include in its gross income the  
31 portion of the merchant discount it is entitled to retain.

32 (d) For purposes of this subsection (4), the following  
33 definitions apply:

34 (i) "Merchant discount" means the aggregate fee, or negotiated  
35 discount, incurred by a merchant for the processing of payment card  
36 transactions under its contract with a payment card processing  
37 company when it accepts a payment network-branded credit, debit, or  
38 prepaid card in a sale transaction.

39 (ii) "Payment card processing activities" means acquiring, either  
40 directly or indirectly, credit, debit, or prepaid card transactions

1 from merchants, facilitating the submission of those transactions to  
2 payment networks, and facilitating the payment of proceeds of those  
3 transactions to merchants.

4 **Sec. 4.** RCW 82.04.29004 and 2019 c 420 s 2 are each amended to  
5 read as follows:

6 (1) Beginning January 1, 2020, in addition to any other taxes  
7 imposed under this chapter, an additional tax is imposed on specified  
8 financial institutions. The additional tax is equal to the gross  
9 income of the business taxable under RCW 82.04.290 (2) and (4)  
10 multiplied by the rate of 1.2 percent.

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

13 (a) "Affiliated" means a person that directly or indirectly,  
14 through one or more intermediaries, controls, is controlled by, or is  
15 under common control with another person. For purposes of this  
16 subsection (2)(a), "control" means the possession, directly or  
17 indirectly, of more than (~~fifty~~) 50 percent of the power to direct  
18 or cause the direction of the management and policies of a person,  
19 whether through the ownership of voting shares, by contract, or  
20 otherwise.

21 (b) "Consolidated financial institution group" means all  
22 financial institutions that are affiliated with each other.

23 (c) "Consolidated financial statement" means a consolidated  
24 financial institution group's consolidated reports of condition and  
25 income filed with the federal financial institutions examination  
26 council, or successor agency.

27 (d) "Financial institution" means:

28 (i) Any corporation or other business entity chartered under  
29 Titles 30A, 30B, 31, 32, and 33 RCW, or registered under the federal  
30 bank holding company act of 1956, as amended, or registered as a  
31 savings and loan holding company under the federal national housing  
32 act, as amended;

33 (ii) A national bank organized and existing as a national bank  
34 association pursuant to the provisions of the national bank act, 12  
35 U.S.C. Sec. 21 et seq.;

36 (iii) A savings association or federal savings bank as defined in  
37 the federal deposit insurance act, 12 U.S.C. Sec. 1813(b)(1);

38 (iv) Any bank or thrift institution incorporated or organized  
39 under the laws of any state;

1 (v) Any corporation organized under the provisions of 12 U.S.C.  
2 Sec. 611 through 631;

3 (vi) Any agency or branch of a foreign depository as defined in  
4 12 U.S.C. Sec. 3101 that is not exempt under RCW 82.04.315;

5 (vii) A production credit association organized under the federal  
6 farm credit act of 1933, all of whose stock held by the federal  
7 production credit corporation has been retired;

8 (viii) Any corporation or other business entity who receives  
9 gross income taxable under RCW 82.04.290, and whose voting interests  
10 are more than (~~(fifty)~~) 50 percent owned, directly or indirectly, by  
11 any person or business entity described in (d)(i) through (vii) of  
12 this subsection other than an insurance company liable for the  
13 insurance premiums tax under RCW 48.14.020 or any other company  
14 taxable under chapter 48.14 RCW;

15 (ix) (A) A corporation or other business entity that receives more  
16 than (~~(fifty)~~) 50 percent of its total gross income for federal  
17 income tax purposes from finance leases. For purposes of this  
18 subsection, a "finance lease" means a lease that meets two  
19 requirements:

20 (I) It is the type of lease permitted to be made by national  
21 banks (see 12 U.S.C. Sec. 24(7) and (10), comptroller of the currency  
22 regulations, part 23, leasing (added by 56 C.F.R. Sec. 28314, June  
23 20, 1991, effective July 22, 1991), and regulation Y of the federal  
24 reserve system 12 C.F.R. Part 225.25, as amended); and

25 (II) It is the economic equivalent of an extension of credit,  
26 i.e., the lease is treated by the lessor as a loan for federal income  
27 tax purposes. In no event does a lease qualify as an extension of  
28 credit where the lessor takes depreciation on such property for  
29 federal income tax purposes.

30 (B) For this classification to apply, the average of the gross  
31 income in the current tax year and immediately preceding two tax  
32 years must satisfy the more than (~~(fifty)~~) 50 percent requirement;

33 (x) Any other person or business entity, other than an insurance  
34 general agent taxable under RCW 82.04.280(1)(e), an insurance  
35 business exempt from the business and occupation tax under RCW  
36 82.04.320, a real estate broker taxable under RCW 82.04.255, a  
37 securities dealer or international investment management company  
38 taxable under RCW 82.04.290(2), that receives more than (~~(fifty)~~) 50  
39 percent of its gross receipts from activities that a person described

1 in (d) (ii) through (vii) and (ix) of this subsection is authorized to  
2 transact.

3 (e) (i) "Specified financial institution" means a financial  
4 institution that is a member of a consolidated financial institution  
5 group that reported on its consolidated financial statement for the  
6 previous calendar year annual net income of at least (~~one billion~~  
7 ~~dollars~~) \$1,000,000,000, not including net income attributable to  
8 noncontrolling interests, as the terms "net income" and  
9 "noncontrolling interest" are used in the consolidated financial  
10 statement.

11 (ii) If financial institutions are no longer required to file  
12 consolidated financial statements, "specified financial institution"  
13 means any person that was subject to the additional tax in this  
14 section in at least two of the previous four calendar years.

15 (3) The department must notify the fiscal committees of the  
16 legislature if financial institutions are no longer required to file  
17 consolidated financial statements.

18 (4) To aid in the effective administration of the additional tax  
19 imposed in this section, the department may require a person believed  
20 to be a specified financial institution to disclose whether it is a  
21 member of a consolidated financial institution group and, if so, to  
22 identify all other members of its consolidated financial institution  
23 group. A person failing to comply with this subsection is deemed to  
24 have intended to evade tax payable under this section and is subject  
25 to the penalty in RCW 82.32.090(7) on any tax due under this section  
26 by the person and any financial institution affiliated with the  
27 person.

28 (5) Taxes collected under this section must be deposited into the  
29 general fund.

30 **Sec. 5.** RCW 82.04.299 and 2022 c 170 s 1 and 2022 c 56 s 4 are  
31 each reenacted and amended to read as follows:

32 (1) (a) Beginning with business activities occurring on or after  
33 April 1, 2020, in addition to the taxes imposed under RCW 82.04.290

34 (2) and (4), a workforce education investment surcharge is imposed on  
35 select advanced computing businesses. The surcharge is equal to the  
36 gross income of the business subject to the tax under RCW 82.04.290  
37 (2) and (4), multiplied by the rate of 1.22 percent.

38 (b) Except as provided in (e) of this subsection (1), in no case  
39 will the combined surcharge imposed under this subsection (1) paid by



1 all members of an affiliated group be more than (~~nine million~~  
2 ~~dollars~~) \$9,000,000 annually.

3 (c) For persons subject to the surcharge imposed under this  
4 subsection (1) that report under one or more tax classifications, the  
5 surcharge applies only to business activities taxed under RCW  
6 82.04.290 (2) and (4).

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

13 (e) (i) To aid in the effective administration of the surcharge in  
14 this subsection (1), the department may require persons believed to  
15 be engaging in advanced computing or affiliated with a person  
16 believed to be engaging in advanced computing to disclose whether  
17 they are a member of an affiliated group and, if so, to identify all  
18 other members of the affiliated group subject to the surcharge.

19 (ii) If the department establishes, by clear, cogent, and  
20 convincing evidence, that one or more members of an affiliated group,  
21 with intent to evade the surcharge under this subsection (1), failed  
22 to fully comply with this subsection (1)(e), the department must  
23 assess against that person, or those persons collectively, a penalty  
24 equal to (~~fifty~~) 50 percent of the amount of the total surcharge  
25 payable by all members of that affiliated group for the calendar year  
26 during which the person or persons failed to fully comply with this  
27 subsection (1)(e). The penalty under this subsection (1)(e) is in  
28 lieu of and not in addition to the evasion penalty under RCW  
29 82.32.090(7).

30 (f) For the purposes of this subsection (1) the following  
31 definitions apply:

32 (i) "Advanced computing" means designing or developing computer  
33 software or computer hardware, whether directly or contracting with  
34 another person, including: Modifications to computer software or  
35 computer hardware; cloud computing services; or operating as a  
36 marketplace facilitator as defined by RCW 82.08.0531, an online  
37 search engine, or online social networking platform;

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

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

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

6 (v) "Control" means the possession, directly or indirectly, of  
7 more than (~~(fifty)~~) 50 percent of the power to direct or cause the  
8 direction of the management and policies of a person, whether through  
9 the ownership of voting shares, by contract, or otherwise; and

10 (vi) "Select advanced computing business" means a person who is a  
11 member of an affiliated group with at least one member of the  
12 affiliated group engaging in the business of advanced computing, and  
13 the affiliated group has worldwide gross revenue of more than  
14 (~~(twenty-five billion dollars)~~) \$25,000,000,000 during the  
15 immediately preceding calendar year. A person who is primarily  
16 engaged within this state in the provision of commercial mobile  
17 service, as that term is defined in 47 U.S.C. Sec. 332(d)(1), shall  
18 not be considered a select advanced computing business. A person who  
19 is primarily engaged in this state in the operation and provision of  
20 access to transmission facilities and infrastructure that the person  
21 owns or leases for the transmission of voice, data, text, sound, and  
22 video using wired telecommunications networks shall not be considered  
23 a select advanced computing business. A person that is primarily  
24 engaged in business as a "financial institution" as defined in RCW  
25 82.04.29004, as that section existed on January 1, 2020, shall not be  
26 considered a select advanced computing business. For purposes of this  
27 subsection (1)(f)(vi), "primarily" is determined based on gross  
28 income of the business.

29 (2)(a) The workforce education investment surcharge under this  
30 section does not apply to:

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

34 (ii) A provider clinic offering primary care, multispecialty and  
35 surgical services, including behavioral health services, and any  
36 affiliate of the provider clinic if the affiliate is an organization  
37 that offers health care services or provides administrative support  
38 for a provider clinic, or is an independent practice association or  
39 accountable care organization.

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

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

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

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

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

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

16 NEW SECTION. **Sec. 6.** RCW 82.32.805 and 82.32.808 do not apply  
17 to this act.

18 NEW SECTION. **Sec. 7.** This act applies retroactively to tax  
19 periods open for assessment under RCW 82.32.050, including any  
20 disputed assessments pending before the department of revenue, board  
21 of tax appeals, or any court of law, and prospectively, except that  
22 no person is entitled to a refund of overpaid tax, interest, or  
23 penalties that results from the retroactive application. Taxes due as  
24 a result of this section if not previously paid must be paid within  
25 90 days of the effective date of this section and in such cases are  
26 not subject to penalties or interest.

27 NEW SECTION. **Sec. 8.** This act takes effect October 1, 2023.

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