S-1742.1

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SENATE BILL 5777**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 69th Legislature 2025 Regular Session**

**By** Senators Robinson, Braun, and J. Wilson

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

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

NEW SECTION. **Sec.**  The unique nature of payment system arrangements distinguishes payment card processors from other taxpayers. Due to the unique nature of processors' activities related to interchange fees and network fees, the legislature intends to address the business and occupation taxation of processors' activities on a prospective basis through the deduction and rate authorized in this act. The legislature does not intend for inferences as to the taxability of prior periods to be drawn from the passage of this act.

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

(1) In computing the tax under RCW 82.04.290(4), a processor may deduct from the measure of the tax amounts retained by persons other than the processor in the following forms:

(a) Interchange fees;

(b) Network fees; and

(c) Portions of fees retained by other processors.

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

(a) "Acquirer" means a person that contracts directly or indirectly with a merchant to provide settlement for the merchant's electronic transactions over a payment card network. "Acquirer" does not include a person that acts only as a processor for the services it provides to the merchant.

(b) "Interchange fee" means an amount received by an issuer with respect to the interchange of a transaction conducted by a merchant.

(c) "Issuer" means any person that authorizes the use of a card to perform an electronic transaction.

(d) "Network fees" means fees received by payment networks associated with the processing of a transaction or with the acceptance of the payment network's brand.

(e) "Payment network" means an entity that directly or indirectly provides the proprietary services, infrastructure, and software that route information and data to an issuer from an acquirer to conduct the authorization, clearance, and settlement of electronic transactions; and a merchant uses in order to accept as a form of payment a brand of card or other device that may be used to carry out electronic transactions.

(f) "Processor" means a person, including an acquirer or issuer, that processes or routes electronic transactions for issuers, acquirers, or merchants.

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

(1) Upon every person engaging within this state in the business of providing qualifying international investment management services, as to such persons, the amount of tax with respect to such business is equal to the gross income or gross proceeds of sales of the business multiplied by a rate of 0.275 percent.

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

(i) 1.75 percent; or

(ii) 1.5 percent for:

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

(B) Any person whose gross income of the business subject to the tax imposed under this subsection (2), for the immediately preceding calendar year, was less than ((~~one million dollars~~)) $1,000,000, unless (I) the person is affiliated with one or more other persons, and (II) the aggregate gross income of the business subject to the tax imposed under this subsection (2) for all affiliated persons was greater than or equal to ((~~one million dollars~~)) $1,000,000 for the immediately preceding calendar year; and

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

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

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

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

(ii) If the department establishes, by clear, cogent, and convincing evidence, that a person, with intent to evade the additional taxes due under the 1.75 percent tax rate in (a)(i) of this subsection (2), failed to provide the department with complete and accurate information in response to a written request under (d)(i) of this subsection (2) within ((~~thirty~~)) 30 days of such request, the person is ineligible for the 1.5 percent tax rate in (a)(ii) of this subsection (2) for the entire current calendar year and the following four calendar years. However, the department must waive the provisions of this subsection (2)(d)(ii) for any tax reporting period that the person is otherwise eligible for the 1.5 percent tax rate in (a)(ii) of this subsection (2) if (A) the department has not previously determined that the person failed to fully comply with (d)(i) of this subsection (2), and (B) within ((~~thirty~~)) 30 days of the notice of additional tax due as a result of the person's failure to fully comply with (d)(i) of this subsection (2) the department determines that the person has come into full compliance with (d)(i) of this subsection (2). This subsection (2)(d) applies only with respect to persons claiming entitlement to the 1.5 percent tax rate solely by reason of (a)(ii)(B) of this subsection (2).

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

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

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

(ii) "Control" means the possession, directly or indirectly, of more than ((~~eighty~~)) 80 percent of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise.

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

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

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

(4)(a) Except as provided in (b) of this subsection (4), upon every processor engaging within this state in payment card processing activities, as to such persons, the amount of tax with respect to such business is equal to the gross income of the business from such payment card processing activities multiplied by the rate of 3.0 percent.

(b)(i) This subsection (4) does not apply to payment card processing activities involving credit, debit, or prepaid card transactions in which:

(A) The processor:

(I) Also operates the payment network or is affiliated with the operator of the payment network; and

(II) Makes related payments to an affiliated financial institution; or

(B) The payment card processing company is also the issuer.

(ii) Payment card processing activities excluded from this subsection (4) are subject to tax under subsection (2) of this section without any deduction under section 2 of this act.

(c) For purposes of this subsection (4), the following definitions apply:

(i) "Affiliated" has the same meaning as in RCW 82.04.299.

(ii) "Financial institution" has the same meaning as in RCW 82.04.080.

(iii) "Issuer" has the same meaning as in section 2 of this act.

(iv) "Payment card processing activities" means services related to directly or indirectly acquiring, processing, or routing electronic transactions for issuers, acquirers, payment networks, or merchants. "Payment card processing activities" does not include:

(A) Issuing and authorizing the use of payment cards;

(B) Authorization, clearance, and settlement of electronic transactions by a payment network; or

(C) Retail services or the retail sale of hardware or software.

(v) "Payment network" has the same meaning as in section 2 of this act.

(vi) "Processor" has the same meaning as in section 2 of this act.

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

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

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

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

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

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

(d) "Financial institution" means:

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

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

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

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

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

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

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

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

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

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

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

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

(x) Any other person or business entity, other than an insurance general agent taxable under RCW 82.04.280(1)(e), an insurance business exempt from the business and occupation tax under RCW 82.04.320, a real estate broker taxable under RCW 82.04.255, a securities dealer or international investment management company taxable under RCW 82.04.290(2), that receives more than ((~~fifty~~)) 50 percent of its gross receipts from activities that a person described in (d)(ii) through (vii) and (ix) of this subsection is authorized to transact.

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

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

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

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

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

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

(1)(a) Beginning with business activities occurring on or after April 1, 2020, in addition to the taxes imposed under RCW 82.04.290 (2) and (4), a workforce education investment surcharge is imposed on select advanced computing businesses. The surcharge is equal to the gross income of the business subject to the tax under RCW 82.04.290 (2) and (4), multiplied by the rate of 1.22 percent.

(b) Except as provided in (e) of this subsection (1), in no case will the combined surcharge imposed under this subsection (1) paid by all members of an affiliated group be more than ((~~nine million dollars~~)) $9,000,000 annually.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NEW SECTION. **Sec.**  This act takes effect January 1, 2026.

**--- END ---**