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69th Legislature

2025 Regular Session

By Representatives Berg, Orcutt, Fitzgibbon, Gregerson, Parshley, and Ormsby

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1 AN ACT Relating to creating a business and occupation tax
2 deduction and increasing the rate for persons conducting payment card
3 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 processors from other
10 taxpayers. Due to the unique nature of processors' activities related
11 to interchange fees and network fees, the legislature intends to
12 address the business and occupation taxation of processors'
13 activities on a prospective basis through the deduction and rate
14 authorized in this act. The legislature does not intend for
15 inferences as to the taxability of prior periods to be drawn from the
16 passage of this act.

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

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

- 4 (a) Interchange fees;
- 5 (b) Network fees; and
- 6 (c) Portions of fees retained by other processors.

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

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

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

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

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

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

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

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

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

38 (2)(a) Upon every person engaging within this state in any
39 business activity other than or in addition to an activity taxed

1 explicitly under (~~another section in~~) this chapter (~~or subsection~~
2 ~~(1) or (3) of this section~~); as to such persons the amount of tax on
3 account of such activities is equal to the gross income of the
4 business multiplied by the rate of:

5 (i) 1.75 percent; or

6 (ii) 1.5 percent for:

7 (A) Any person subject to the surcharge imposed under RCW
8 82.04.299;

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

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

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

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

35 (d)(i) To aid in the effective administration of this subsection
36 (2), the department may require a person claiming to be subject to
37 the 1.5 percent tax rate under (a)(ii)(B) of this subsection (2) to
38 identify all of the person's affiliates, including their department
39 tax registration number or unified business identifier number, as may
40 be applicable, or to certify that the person is not affiliated with

1 any other person. Requests under this subsection (2)(d)(i) must be in
2 writing and may be made electronically.

3 (ii) If the department establishes, by clear, cogent, and
4 convincing evidence, that a person, with intent to evade the
5 additional taxes due under the 1.75 percent tax rate in (a)(i) of
6 this subsection (2), failed to provide the department with complete
7 and accurate information in response to a written request under
8 (d)(i) of this subsection (2) within (~~thirty~~) 30 days of such
9 request, the person is ineligible for the 1.5 percent tax rate in
10 (a)(ii) of this subsection (2) for the entire current calendar year
11 and the following four calendar years. However, the department must
12 waive the provisions of this subsection (2)(d)(ii) for any tax
13 reporting period that the person is otherwise eligible for the 1.5
14 percent tax rate in (a)(ii) of this subsection (2) if (A) the
15 department has not previously determined that the person failed to
16 fully comply with (d)(i) of this subsection (2), and (B) within
17 (~~thirty~~) 30 days of the notice of additional tax due as a result of
18 the person's failure to fully comply with (d)(i) of this subsection
19 (2) the department determines that the person has come into full
20 compliance with (d)(i) of this subsection (2). This subsection (2)(d)
21 applies only with respect to persons claiming entitlement to the 1.5
22 percent tax rate solely by reason of (a)(ii)(B) of this subsection
23 (2).

24 (e) For the purposes of (a)(ii)(B) of this subsection (2), if a
25 taxpayer is subject to the reconciliation provisions of RCW
26 82.04.462(4), and calculates gross income of the business subject to
27 the tax imposed under this subsection (2) for the immediately
28 preceding calendar year, or aggregate gross income of the business
29 subject to the tax imposed under this subsection (2) for the
30 immediately preceding calendar year for all affiliated persons, based
31 on incomplete information, the taxpayer must correct the reporting
32 for the current calendar year when complete information for the
33 immediately preceding calendar year is available.

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

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

39 (ii) "Control" means the possession, directly or indirectly, of
40 more than (~~eighty~~) 80 percent of the power to direct or cause the

1 direction of the management and policies of a person, whether through
2 the ownership of voting shares, by contract, or otherwise.

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

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

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

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

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

22 (A) The processor:

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

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

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

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

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

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

34 (ii) "Financial institution" has the same meaning as in RCW
35 82.04.080.

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (d) "Financial institution" means:

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

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

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

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

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

10 (vi) Any agency or branch of a foreign depository as defined in
11 12 U.S.C. Sec. 3101 that is not exempt under RCW 82.04.315;

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

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

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

27 (I) It is the type of lease permitted to be made by national
28 banks (see 12 U.S.C. Sec. 24(7) and (10), comptroller of the currency
29 regulations, part 23, leasing (added by 56 C.F.R. Sec. 28314, June
30 20, 1991, effective July 22, 1991), and regulation Y of the federal
31 reserve system 12 C.F.R. Part 225.25, as amended); and

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

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

1 (x) Any other person or business entity, other than an insurance
2 general agent taxable under RCW 82.04.280(1)(e), an insurance
3 business exempt from the business and occupation tax under RCW
4 82.04.320, a real estate broker taxable under RCW 82.04.255, a
5 securities dealer or international investment management company
6 taxable under RCW 82.04.290(2), that receives more than (~~fifty~~) 50
7 percent of its gross receipts from activities that a person described
8 in (d)(ii) through (vii) and (ix) of this subsection is authorized to
9 transact.

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

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

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

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

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

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

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

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

11 (c) For persons subject to the surcharge imposed under this
12 subsection (1) that report under one or more tax classifications, the
13 surcharge applies only to business activities taxed under RCW
14 82.04.290 (2) and (4).

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

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

27 (ii) If the department establishes, by clear, cogent, and
28 convincing evidence, that one or more members of an affiliated group,
29 with intent to evade the surcharge under this subsection (1), failed
30 to fully comply with this subsection (1)(e), the department must
31 assess against that person, or those persons collectively, a penalty
32 equal to (~~fifty~~) 50 percent of the amount of the total surcharge
33 payable by all members of that affiliated group for the calendar year
34 during which the person or persons failed to fully comply with this
35 subsection (1)(e). The penalty under this subsection (1)(e) is in
36 lieu of and not in addition to the evasion penalty under RCW
37 82.32.090(7).

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

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

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

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

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

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

19 (vi) "Select advanced computing business" means a person who is a
20 member of an affiliated group with at least one member of the
21 affiliated group engaging in the business of advanced computing, and
22 the affiliated group has worldwide gross revenue of more than
23 (~~twenty-five billion dollars~~) \$25,000,000,000 during the
24 immediately preceding calendar year. A person who is primarily
25 engaged within this state in the provision of commercial mobile
26 service, as that term is defined in 47 U.S.C. Sec. 332(d)(1), shall
27 not be considered a select advanced computing business. A person who
28 is primarily engaged in this state in the operation and provision of
29 access to transmission facilities and infrastructure that the person
30 owns or leases for the transmission of voice, data, text, sound, and
31 video using wired telecommunications networks shall not be considered
32 a select advanced computing business. A person that is primarily
33 engaged in business as a "financial institution" as defined in RCW
34 82.04.29004, as that section existed on January 1, 2020, shall not be
35 considered a select advanced computing business. For purposes of this
36 subsection (1)(f)(vi), "primarily" is determined based on gross
37 income of the business.

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

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

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

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

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

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

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

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

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

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

27 NEW SECTION. **Sec. 7.** This act takes effect January 1, 2026.

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