
HOUSE BILL 2286

State of Washington 63rd Legislature 2014 Regular Session

By Representatives Reykdal, Jinkins, Ryu, Roberts, and Hunt

Read first time 01/15/14. Referred to Committee on Finance.

1 AN ACT Relating to funding an increase in the small business tax
2 credit by repealing certain farm-related tax preferences; amending RCW
3 82.04.4451 and 82.04.050; creating new sections; repealing RCW
4 82.08.855 and 82.12.855; providing an effective date; and providing an
5 expiration date.

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

7 NEW SECTION. **Sec. 1.** (1) The legislature finds that a fair and
8 effective tax structure is essential for Washington's economic growth.
9 The legislature further finds the business and occupation tax is
10 imposed on the gross receipts of all business activities that occur in
11 Washington, regardless of a business's profitability, and the tax does
12 not permit deductions for business expenses. The legislature further
13 finds that the business and occupation tax structure results in a
14 disproportionate tax burden on smaller businesses, which are more
15 likely to struggle with profitability than larger businesses. The
16 legislature further finds Washington provides a small business tax
17 credit, which helps provide relief from the regressive nature of the
18 current business and occupation tax system.

1 (2)(a) This subsection is the tax preference performance statement
2 for the small business tax credit provided in section 2 of this act.
3 The performance statement is only intended to be used for subsequent
4 evaluation of the tax preference. It is not intended to create a
5 private right of action by any party or be used to determine
6 eligibility for preferential tax treatment.

7 (b) The legislature categorizes the tax preference as one intended
8 to reduce structural inefficiencies in the tax structure in RCW
9 82.32.808(2)(d).

10 (c) It is the legislature's specific public policy objective to
11 reduce the regressive nature of the business and occupation tax
12 structure by increasing the small business credit.

13 (d) To measure the effectiveness of the expanded credit provided in
14 this act in achieving the specific public policy objective described in
15 (c) of this subsection, the joint legislative audit and review
16 committee must, at minimum, evaluate the following:

17 (i) Annual changes in the number of businesses claiming the small
18 business tax credit. Recent years prior to the effective date of this
19 section must be included for comparison purposes;

20 (ii) A comparison of the change in gross income of businesses,
21 categorized by their four digit north American industry classification
22 number, that claim and do not claim the small business tax credit.
23 Recent years prior to the effective date of this section must be
24 included for comparison purposes;

25 (iii) A comparison of the change in the effective tax rate of
26 businesses, categorized by their four digit north American industry
27 classification number, that claim and do not claim the small business
28 tax credit. Recent years prior to the effective date of this section
29 must be included for comparison purposes.

30 (e)(i) The department of revenue must provide data needed for the
31 joint legislative audit and review committee analysis in (d) of this
32 subsection.

33 (ii) In addition to the data source described under (e)(i) of this
34 subsection, the joint legislative audit and review committee may use
35 any other data it deems necessary in performing the evaluation under
36 (d) of this subsection.

1 **Sec. 2.** RCW 82.04.4451 and 2010 1st sp.s. c 23 s 1102 are each
2 amended to read as follows:

3 (1) In computing the tax imposed under this chapter, a credit is
4 allowed against the amount of tax otherwise due under this chapter, as
5 provided in this section. Except for taxpayers that report at least
6 fifty percent of their taxable amount under RCW 82.04.255,
7 82.04.290(2)(a), and 82.04.285, the maximum credit for a taxpayer for
8 a reporting period is (~~(thirty-five)~~) eighty-seven dollars and fifty
9 cents multiplied by the number of months in the reporting period, as
10 determined under RCW 82.32.045. For a taxpayer that reports at least
11 fifty percent of its taxable amount under RCW 82.04.255,
12 82.04.290(2)(a), and 82.04.285, the maximum credit for a reporting
13 period is (~~(seventy)~~) one hundred seventy-five dollars multiplied by
14 the number of months in the reporting period, as determined under RCW
15 82.32.045.

16 (2) When the amount of tax otherwise due under this chapter is
17 equal to or less than the maximum credit, a credit is allowed equal to
18 the amount of tax otherwise due under this chapter.

19 (3) When the amount of tax otherwise due under this chapter exceeds
20 the maximum credit, a reduced credit is allowed equal to twice the
21 maximum credit, minus the tax otherwise due under this chapter, but not
22 less than zero.

23 (4) The department may prepare a tax credit table consisting of tax
24 ranges using increments of no more than five dollars and a
25 corresponding tax credit to be applied to those tax ranges. The table
26 shall be prepared in such a manner that no taxpayer will owe a greater
27 amount of tax by using the table than would be owed by performing the
28 calculation under subsections (1) through (3) of this section. A table
29 prepared by the department under this subsection must be used by all
30 taxpayers in taking the credit provided in this section.

31 NEW SECTION. **Sec. 3.** The following acts or parts of acts are each
32 repealed:

33 (1) RCW 82.08.855 (Exemptions--Replacement parts for qualifying
34 farm machinery and equipment) and 2007 c 332 s 1 & 2006 c 172 s 1; and

35 (2) RCW 82.12.855 (Exemptions--Replacement parts for qualifying
36 farm machinery and equipment) and 2007 c 332 s 2 & 2006 c 172 s 2.

1 **Sec. 4.** RCW 82.04.050 and 2013 2nd sp.s. c 13 s 802 are each
2 amended to read as follows:

3 (1)(a) "Sale at retail" or "retail sale" means every sale of
4 tangible personal property (including articles produced, fabricated, or
5 imprinted) to all persons irrespective of the nature of their business
6 and including, among others, without limiting the scope hereof, persons
7 who install, repair, clean, alter, improve, construct, or decorate real
8 or personal property of or for consumers other than a sale to a person
9 who:

10 (i) Purchases for the purpose of resale as tangible personal
11 property in the regular course of business without intervening use by
12 such person, but a purchase for the purpose of resale by a regional
13 transit authority under RCW 81.112.300 is not a sale for resale; or

14 (ii) Installs, repairs, cleans, alters, imprints, improves,
15 constructs, or decorates real or personal property of or for consumers,
16 if such tangible personal property becomes an ingredient or component
17 of such real or personal property without intervening use by such
18 person; or

19 (iii) Purchases for the purpose of consuming the property purchased
20 in producing for sale as a new article of tangible personal property or
21 substance, of which such property becomes an ingredient or component or
22 is a chemical used in processing, when the primary purpose of such
23 chemical is to create a chemical reaction directly through contact with
24 an ingredient of a new article being produced for sale; or

25 (iv) Purchases for the purpose of consuming the property purchased
26 in producing ferrosilicon which is subsequently used in producing
27 magnesium for sale, if the primary purpose of such property is to
28 create a chemical reaction directly through contact with an ingredient
29 of ferrosilicon; or

30 (v) Purchases for the purpose of providing the property to
31 consumers as part of competitive telephone service, as defined in RCW
32 82.04.065; or

33 (vi) Purchases for the purpose of satisfying the person's
34 obligations under an extended warranty as defined in subsection (7) of
35 this section, if such tangible personal property replaces or becomes an
36 ingredient or component of property covered by the extended warranty
37 without intervening use by such person.

1 (b) The term includes every sale of tangible personal property that
2 is used or consumed or to be used or consumed in the performance of any
3 activity defined as a "sale at retail" or "retail sale" even though
4 such property is resold or used as provided in (a)(i) through (vi) of
5 this subsection following such use.

6 (c) The term also means every sale of tangible personal property to
7 persons engaged in any business that is taxable under RCW 82.04.280(1)
8 (a), (b), and (g), 82.04.290, and 82.04.2908.

9 (2) The term "sale at retail" or "retail sale" includes the sale of
10 or charge made for tangible personal property consumed and/or for labor
11 and services rendered in respect to the following:

12 (a) The installing, repairing, cleaning, altering, imprinting, or
13 improving of tangible personal property of or for consumers, including
14 charges made for the mere use of facilities in respect thereto, but
15 excluding charges made for the use of self-service laundry facilities,
16 and also excluding sales of laundry service to nonprofit health care
17 facilities, and excluding services rendered in respect to live animals,
18 birds and insects;

19 (b) The constructing, repairing, decorating, or improving of new or
20 existing buildings or other structures under, upon, or above real
21 property of or for consumers, including the installing or attaching of
22 any article of tangible personal property therein or thereto, whether
23 or not such personal property becomes a part of the realty by virtue of
24 installation, and also includes the sale of services or charges made
25 for the clearing of land and the moving of earth excepting the mere
26 leveling of land used in commercial farming or agriculture;

27 (c) The constructing, repairing, or improving of any structure
28 upon, above, or under any real property owned by an owner who conveys
29 the property by title, possession, or any other means to the person
30 performing such construction, repair, or improvement for the purpose of
31 performing such construction, repair, or improvement and the property
32 is then reconveyed by title, possession, or any other means to the
33 original owner;

34 (d) The cleaning, fumigating, razing, or moving of existing
35 buildings or structures, but does not include the charge made for
36 janitorial services; and for purposes of this section the term
37 "janitorial services" means those cleaning and caretaking services
38 ordinarily performed by commercial janitor service businesses

1 including, but not limited to, wall and window washing, floor cleaning
2 and waxing, and the cleaning in place of rugs, drapes and upholstery.
3 The term "janitorial services" does not include painting, papering,
4 repairing, furnace or septic tank cleaning, snow removal or
5 sandblasting;

6 (e) Automobile towing and similar automotive transportation
7 services, but not in respect to those required to report and pay taxes
8 under chapter 82.16 RCW;

9 (f) The furnishing of lodging and all other services by a hotel,
10 rooming house, tourist court, motel, trailer camp, and the granting of
11 any similar license to use real property, as distinguished from the
12 renting or leasing of real property, and it is presumed that the
13 occupancy of real property for a continuous period of one month or more
14 constitutes a rental or lease of real property and not a mere license
15 to use or enjoy the same. For the purposes of this subsection, it is
16 presumed that the sale of and charge made for the furnishing of lodging
17 for a continuous period of one month or more to a person is a rental or
18 lease of real property and not a mere license to enjoy the same;

19 (g) The installing, repairing, altering, or improving of digital
20 goods for consumers;

21 (h) Persons taxable under (a), (b), (c), (d), (e), (f), and (g) of
22 this subsection when such sales or charges are for property, labor and
23 services which are used or consumed in whole or in part by such persons
24 in the performance of any activity defined as a "sale at retail" or
25 "retail sale" even though such property, labor and services may be
26 resold after such use or consumption. Nothing contained in this
27 subsection may be construed to modify subsection (1) of this section
28 and nothing contained in subsection (1) of this section may be
29 construed to modify this subsection.

30 (3) The term "sale at retail" or "retail sale" includes the sale of
31 or charge made for personal, business, or professional services
32 including amounts designated as interest, rents, fees, admission, and
33 other service emoluments however designated, received by persons
34 engaging in the following business activities:

35 (a)(i) Amusement and recreation services including but not limited
36 to golf, pool, billiards, skating, bowling, ski lifts and tows, day
37 trips for sightseeing purposes, and others, when provided to consumers.

1 (ii) Until July 1, 2017, amusement and recreation services do not
2 include the opportunity to dance provided by an establishment in
3 exchange for a cover charge.

4 (iii) For purposes of this subsection (3)(a):

5 (A) "Cover charge" means a charge, regardless of its label, to
6 enter an establishment or added to the purchaser's bill by an
7 establishment or otherwise collected after entrance to the
8 establishment, and the purchaser is provided the opportunity to dance
9 in exchange for payment of the charge.

10 (B) "Opportunity to dance" means that an establishment provides a
11 designated physical space, on either a temporary or permanent basis,
12 where customers are allowed to dance and the establishment either
13 advertises or otherwise makes customers aware that it has an area for
14 dancing;

15 (b) Abstract, title insurance, and escrow services;

16 (c) Credit bureau services;

17 (d) Automobile parking and storage garage services;

18 (e) Landscape maintenance and horticultural services but excluding
19 (i) horticultural services provided to farmers and (ii) pruning,
20 trimming, repairing, removing, and clearing of trees and brush near
21 electric transmission or distribution lines or equipment, if performed
22 by or at the direction of an electric utility;

23 (f) Service charges associated with tickets to professional
24 sporting events; and

25 (g) The following personal services: Physical fitness services,
26 tanning salon services, tattoo parlor services, steam bath services,
27 turkish bath services, escort services, and dating services.

28 (4)(a) The term also includes the renting or leasing of tangible
29 personal property to consumers.

30 (b) The term does not include the renting or leasing of tangible
31 personal property where the lease or rental is for the purpose of
32 sublease or subrent.

33 (5) The term also includes the providing of "competitive telephone
34 service," "telecommunications service," or "ancillary services," as
35 those terms are defined in RCW 82.04.065, to consumers.

36 (6)(a) The term also includes the sale of prewritten computer
37 software to a consumer, regardless of the method of delivery to the end
38 user. For purposes of this subsection (6)(a), the sale of prewritten

1 computer software includes the sale of or charge made for a key or an
2 enabling or activation code, where the key or code is required to
3 activate prewritten computer software and put the software into use.
4 There is no separate sale of the key or code from the prewritten
5 computer software, regardless of how the sale may be characterized by
6 the vendor or by the purchaser.

7 The term "retail sale" does not include the sale of or charge made
8 for:

9 (i) Custom software; or

10 (ii) The customization of prewritten computer software.

11 (b)(i) The term also includes the charge made to consumers for the
12 right to access and use prewritten computer software, where possession
13 of the software is maintained by the seller or a third party,
14 regardless of whether the charge for the service is on a per use, per
15 user, per license, subscription, or some other basis.

16 (ii)(A) The service described in (b)(i) of this subsection (6)
17 includes the right to access and use prewritten computer software to
18 perform data processing.

19 (B) For purposes of this subsection (6)(b)(ii), "data processing"
20 means the systematic performance of operations on data to extract the
21 required information in an appropriate form or to convert the data to
22 usable information. Data processing includes check processing, image
23 processing, form processing, survey processing, payroll processing,
24 claim processing, and similar activities.

25 (7) The term also includes the sale of or charge made for an
26 extended warranty to a consumer. For purposes of this subsection,
27 "extended warranty" means an agreement for a specified duration to
28 perform the replacement or repair of tangible personal property at no
29 additional charge or a reduced charge for tangible personal property,
30 labor, or both, or to provide indemnification for the replacement or
31 repair of tangible personal property, based on the occurrence of
32 specified events. The term "extended warranty" does not include an
33 agreement, otherwise meeting the definition of extended warranty in
34 this subsection, if no separate charge is made for the agreement and
35 the value of the agreement is included in the sales price of the
36 tangible personal property covered by the agreement. For purposes of
37 this subsection, "sales price" has the same meaning as in RCW
38 82.08.010.

1 (8)(a) The term also includes the following sales to consumers of
2 digital goods, digital codes, and digital automated services:

3 (i) Sales in which the seller has granted the purchaser the right
4 of permanent use;

5 (ii) Sales in which the seller has granted the purchaser a right of
6 use that is less than permanent;

7 (iii) Sales in which the purchaser is not obligated to make
8 continued payment as a condition of the sale; and

9 (iv) Sales in which the purchaser is obligated to make continued
10 payment as a condition of the sale.

11 (b) A retail sale of digital goods, digital codes, or digital
12 automated services under this subsection (8) includes any services
13 provided by the seller exclusively in connection with the digital
14 goods, digital codes, or digital automated services, whether or not a
15 separate charge is made for such services.

16 (c) For purposes of this subsection, "permanent" means perpetual or
17 for an indefinite or unspecified length of time. A right of permanent
18 use is presumed to have been granted unless the agreement between the
19 seller and the purchaser specifies or the circumstances surrounding the
20 transaction suggest or indicate that the right to use terminates on the
21 occurrence of a condition subsequent.

22 (9) The term also includes the charge made for providing tangible
23 personal property along with an operator for a fixed or indeterminate
24 period of time. A consideration of this is that the operator is
25 necessary for the tangible personal property to perform as designed.
26 For the purpose of this subsection (9), an operator must do more than
27 maintain, inspect, or set up the tangible personal property.

28 (10) The term does not include the sale of or charge made for labor
29 and services rendered in respect to the building, repairing, or
30 improving of any street, place, road, highway, easement, right-of-way,
31 mass public transportation terminal or parking facility, bridge,
32 tunnel, or trestle which is owned by a municipal corporation or
33 political subdivision of the state or by the United States and which is
34 used or to be used primarily for foot or vehicular traffic including
35 mass transportation vehicles of any kind.

36 (11) The term also does not include sales of ~~((chemical sprays or~~
37 ~~washes to persons for the purpose of postharvest treatment of fruit for~~
38 ~~the prevention of scald, fungus, mold, or decay, nor does it include~~

1 ~~sales-of~~) feed, seed, seedlings, (~~fertilizer,~~) agents for enhanced
2 pollination including insects such as bees, and spray materials to:
3 (a) Persons who participate in the federal conservation reserve
4 program, the environmental quality incentives program, the wetlands
5 reserve program, and the wildlife habitat incentives program, or their
6 successors administered by the United States department of agriculture;
7 (b) farmers for the purpose of producing for sale any agricultural
8 product; and (c) farmers acting under cooperative habitat development
9 or access contracts with an organization exempt from federal income tax
10 under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code or
11 the Washington state department of fish and wildlife to produce or
12 improve wildlife habitat on land that the farmer owns or leases.

13 (12) The term does not include the sale of or charge made for labor
14 and services rendered in respect to the constructing, repairing,
15 decorating, or improving of new or existing buildings or other
16 structures under, upon, or above real property of or for the United
17 States, any instrumentality thereof, or a county or city housing
18 authority created pursuant to chapter 35.82 RCW, including the
19 installing, or attaching of any article of tangible personal property
20 therein or thereto, whether or not such personal property becomes a
21 part of the realty by virtue of installation. Nor does the term
22 include the sale of services or charges made for the clearing of land
23 and the moving of earth of or for the United States, any
24 instrumentality thereof, or a county or city housing authority. Nor
25 does the term include the sale of services or charges made for cleaning
26 up for the United States, or its instrumentalities, radioactive waste
27 and other by-products of weapons production and nuclear research and
28 development.

29 (13) The term does not include the sale of or charge made for
30 labor, services, or tangible personal property pursuant to agreements
31 providing maintenance services for bus, rail, or rail fixed guideway
32 equipment when a regional transit authority is the recipient of the
33 labor, services, or tangible personal property, and a transit agency,
34 as defined in RCW 81.104.015, performs the labor or services.

35 (14) The term does not include the sale for resale of any service
36 described in this section if the sale would otherwise constitute a
37 "sale at retail" and "retail sale" under this section.

1 NEW SECTION. **Sec. 5.** Section 3 of this act applies to sales or
2 uses occurring on or after July 1, 2014, for replacement parts for
3 qualifying farm machinery and equipment.

4 NEW SECTION. **Sec. 6.** This act takes effect July 1, 2014.

5 NEW SECTION. **Sec. 7.** Section 2 of this act expires July 1, 2024.

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