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HOUSE BILL 2221

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State of Washington

55th Legislature

1997 Regular Session

By Representatives Appelwick, Chopp, Dickerson, Blalock, Regala, Scott, Wood, Tokuda, O'Brien, Conway and Mason; by request of Governor Locke

Read first time 02/27/97. Referred to Committee on Finance.

1 AN ACT Relating to business and occupation tax; amending RCW  
2 82.04.255, 82.04.290, 82.04.293, and 82.04.4452; creating a new  
3 section; repealing RCW 82.04.055; and providing an effective date.

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

5 **Sec. 1.** RCW 82.04.255 and 1996 c 1 s 1 are each amended to read as  
6 follows:

7 Upon every person engaging within the state as a real estate  
8 broker; as to such persons, the amount of the tax with respect to such  
9 business shall be equal to the gross income of the business, multiplied  
10 by the rate of (~~1.75~~) 1.5 percent.

11 The measure of the tax on real estate commissions earned by the  
12 real estate broker shall be the gross commission earned by the  
13 particular real estate brokerage office including that portion of the  
14 commission paid to salesmen or associate brokers in the same office on  
15 a particular transaction: PROVIDED, HOWEVER, That where a real estate  
16 commission is divided between an originating brokerage office and a  
17 cooperating brokerage office on a particular transaction, each  
18 brokerage office shall pay the tax only upon their respective shares of  
19 said commission: AND PROVIDED FURTHER, That where the brokerage office

1 has paid the tax as provided herein, salesmen or associate brokers  
2 within the same brokerage office shall not be required to pay a similar  
3 tax upon the same transaction.

4 **Sec. 2.** RCW 82.04.290 and 1996 c 1 s 2 are each amended to read as  
5 follows:

6 ~~(1) ((Upon every person engaging within this state in the business~~  
7 ~~of providing selected business services other than or in addition to~~  
8 ~~those enumerated in RCW 82.04.250 or 82.04.270; as to such persons the~~  
9 ~~amount of tax on account of such activities shall be equal to the gross~~  
10 ~~income of the business multiplied by the rate of 2.0 percent.~~

11 ~~(2) Upon every person engaging within this state in banking, loan,~~  
12 ~~security, investment management, investment advisory, or other~~  
13 ~~financial businesses, other than or in addition to those enumerated in~~  
14 ~~subsection (3) of this section; as to such persons, the amount of the~~  
15 ~~tax with respect to such business shall be equal to the gross income of~~  
16 ~~the business, multiplied by the rate of 1.6 percent.~~

17 ~~(3))~~ Upon every person engaging within this state in the business  
18 of providing international investment management services, as to such  
19 persons, the amount of tax with respect to such business shall be equal  
20 to the gross income or gross proceeds of sales of the business  
21 multiplied by a rate of 0.275 percent.

22 ~~((4))~~ (2) Upon every person engaging within this state in any  
23 business activity other than or in addition to those enumerated in RCW  
24 82.04.230, 82.04.240, 82.04.250, 82.04.255, 82.04.260, 82.04.270, and  
25 82.04.280, and subsection ~~((s)) (1) ((, (2), and (3)))~~ of this section;  
26 as to such persons the amount of tax on account of such activities  
27 shall be equal to the gross income of the business multiplied by the  
28 rate of ~~((1.75))~~ 1.5 percent.

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

1 remuneration or commission and shall not be subject to taxation under  
2 this section.

3 **Sec. 3.** RCW 82.04.293 and 1995 c 229 s 1 are each amended to read  
4 as follows:

5 For purposes of RCW 82.04.290(~~(+3)~~):

6 (1) A person is engaged in the business of providing international  
7 investment management services, if:

8 (a) Such person is engaged primarily in the business of providing  
9 investment management services; and

10 (b) At least ten percent of the gross income of such person is  
11 derived from providing investment management services to any of the  
12 following: (i) Persons or collective investment funds residing outside  
13 the United States; or (ii) persons or collective investment funds with  
14 at least ten percent of their investments located outside the United  
15 States.

16 (2) "Investment management services" means investment research,  
17 investment consulting, portfolio management, fund administration, fund  
18 distribution, investment transactions, or related investment services.

19 (3) "Collective investment fund" includes:

20 (a) A mutual fund or other regulated investment company, as defined  
21 in section 851(a) of the internal revenue code of 1986, as amended;

22 (b) An "investment company," as that term is used in section 3(a)  
23 of the investment company act of 1940, as well as any entity that would  
24 be an investment company for this purpose but for the exemptions  
25 contained in section 3(c)(1) or (11);

26 (c) An "employee benefit plan," which includes any plan, trust,  
27 commingled employee benefit trust, or custodial arrangement that is  
28 subject to the employee retirement income security act of 1974, as  
29 amended, 29 U.S.C. Sec. 1001 et seq., or that is described in sections  
30 125, 401, 403, 408, 457, and 501(c)(9) and (17) through (23) of the  
31 internal revenue code of 1986, as amended, or a similar plan maintained  
32 by a state or local government, or a plan, trust, or custodial  
33 arrangement established to self-insure benefits required by federal,  
34 state, or local law;

35 (d) A fund maintained by a tax-exempt organization, as defined in  
36 section 501(c)(3) of the internal revenue code of 1986, as amended, for  
37 operating, quasi-endowment, or endowment purposes;

1 (e) Funds that are established for the benefit of such tax-exempt  
2 organizations, such as charitable remainder trusts, charitable lead  
3 trusts, charitable annuity trusts, or other similar trusts; or

4 (f) Collective investment funds similar to those described in (a)  
5 through (e) of this subsection created under the laws of a foreign  
6 jurisdiction.

7 (4) Investments are located outside the United States if the  
8 underlying assets in which the investment constitutes a beneficial  
9 interest reside or are created, issued or held outside the United  
10 States.

11 **Sec. 4.** RCW 82.04.4452 and 1994 sp.s. c 5 s 2 are each amended to  
12 read as follows:

13 (1) In computing the tax imposed under this chapter, a credit is  
14 allowed for each person whose research and development spending during  
15 the year in which the credit is claimed exceeds 0.92 percent of the  
16 person's taxable amount during the same calendar year.

17 (2) The credit is equal to the greater of the amount of qualified  
18 research and development expenditures of a person or eighty percent of  
19 amounts received by a person other than a public educational or  
20 research institution in compensation for the conduct of qualified  
21 research and development, multiplied by the rate (~~of 0.515 percent~~)  
22 provided in RCW 82.04.260(6) in the case of a nonprofit corporation or  
23 nonprofit association engaging within this state in research and  
24 development, and (~~2.5 percent~~) the rate provided in RCW 82.04.290(2)  
25 for every other person.

26 (3) Any person entitled to the credit provided in subsection (2) of  
27 this section as a result of qualified research and development  
28 conducted under contract may assign all or any portion of the credit to  
29 the person contracting for the performance of the qualified research  
30 and development.

31 (4) The credit, including any credit assigned to a person under  
32 subsection (3) of this section, shall be taken against taxes due for  
33 the same calendar year in which the qualified research and development  
34 expenditures are incurred. The credit, including any credit assigned  
35 to a person under subsection (3) of this section, for each calendar  
36 year shall not exceed the lesser of two million dollars or the amount  
37 of tax otherwise due under this chapter for the calendar year.

1 (5) Any person taking the credit, including any credit assigned to  
2 a person under subsection (3) of this section, whose research and  
3 development spending during the calendar year in which the credit is  
4 claimed fails to exceed 0.92 percent of the person's taxable amount  
5 during the same calendar year shall be liable for payment of the  
6 additional taxes represented by the amount of credit taken together  
7 with interest, but not penalties. Interest shall be due at the rate  
8 provided for delinquent excise taxes retroactively to the date the  
9 credit was taken until the taxes are paid. Any credit assigned to a  
10 person under subsection (3) of this section that is disallowed as a  
11 result of this section may be taken by the person who performed the  
12 qualified research and development subject to the limitations set forth  
13 in subsection (4) of this section.

14 (6) Any person claiming the credit, and any person assigning a  
15 credit as provided in subsection (3) of this section, shall file an  
16 affidavit form prescribed by the department which shall include the  
17 amount of the credit claimed, an estimate of the anticipated qualified  
18 research and development expenditures during the calendar year for  
19 which the credit is claimed, an estimate of the taxable amount during  
20 the calendar year for which the credit is claimed, and such additional  
21 information as the department may prescribe.

22 (7) A person claiming the credit shall agree to supply the  
23 department with information necessary to measure the results of the tax  
24 credit program for qualified research and development expenditures.

25 (8) The department shall use the information required under  
26 subsection (7) of this section to perform three assessments on the tax  
27 credit program authorized under this section. The assessments will  
28 take place in 1997, 2000, and 2003. The department shall prepare  
29 reports on each assessment and deliver their reports by September 1,  
30 1997, September 1, 2000, and September 1, 2003. The assessments shall  
31 measure the effect of the program on job creation, the number of jobs  
32 created for Washington residents, company growth, the introduction of  
33 new products, the diversification of the state's economy, growth in  
34 research and development investment, the movement of firms or the  
35 consolidation of firms' operations into the state, and such other  
36 factors as the department selects.

37 (9) For the purpose of this section:

38 (a) "Qualified research and development expenditures" means  
39 operating expenses, including wages, compensation of a proprietor or a

1 partner in a partnership as determined under rules adopted by the  
2 department, benefits, supplies, and computer expenses, directly  
3 incurred in qualified research and development by a person claiming the  
4 credit provided in this section. The term does not include amounts  
5 paid to a person other than a public educational or research  
6 institution to conduct qualified research and development. Nor does  
7 the term include capital costs and overhead, such as expenses for land,  
8 structures, or depreciable property.

9 (b) "Qualified research and development" shall have the same  
10 meaning as in RCW 82.63.010.

11 (c) "Research and development spending" means qualified research  
12 and development expenditures plus eighty percent of amounts paid to a  
13 person other than a public educational or research institution to  
14 conduct qualified research and development.

15 (d) "Taxable amount" means the taxable amount subject to the tax  
16 imposed in this chapter required to be reported on the person's  
17 combined excise tax returns during the year in which the credit is  
18 claimed, less any taxable amount for which a credit is allowed under  
19 RCW 82.04.440.

20 (10) This section shall expire December 31, 2004.

21 NEW SECTION. **Sec. 5.** RCW 82.04.055 and 1993 sp.s. c 25 s 201 are  
22 each repealed.

23 NEW SECTION. **Sec. 6.** This act does not affect any existing right  
24 acquired or liability or obligation incurred under the sections amended  
25 or repealed in this act or under any rule or order adopted under those  
26 sections, nor does it affect any proceeding instituted under those  
27 sections.

28 NEW SECTION. **Sec. 7.** This act takes effect July 1, 1998.

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