

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2938

64th Legislature
2016 Regular Session

Passed by the House March 8, 2016
Yeas 92 Nays 4

Speaker of the House of Representatives

Passed by the Senate March 2, 2016
Yeas 47 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2938** as passed by House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2938

AS AMENDED BY THE SENATE

Passed Legislature - 2016 Regular Session

State of Washington 64th Legislature 2016 Regular Session

By House Finance (originally sponsored by Representatives Orcutt and Walkinshaw)

READ FIRST TIME 02/09/16.

1 AN ACT Relating to encouraging participation in Washington trade
2 conventions by modifying tax provisions related to establishing
3 substantial nexus; amending RCW 82.04.067; adding a new section to
4 chapter 82.32 RCW; creating a new section; and providing an effective
5 date.

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

7 NEW SECTION. **Sec. 1.** (1) This section is the tax preference
8 performance statement for the tax preference contained in section 3
9 of this act. This performance statement is only intended to be used
10 for subsequent evaluation of the tax preference. It is not intended
11 to create a private right of action by any party or be used to
12 determine eligibility for preferential tax treatment.

13 (2) The legislature categorizes this tax preference as one
14 intended to induce certain designated behavior by taxpayers as
15 indicated in RCW 82.32.808(2)(a).

16 (3) It is the legislature's specific public policy objective to
17 encourage participation in Washington trade conventions. It is the
18 legislature's intent to allow a business to participate in one trade
19 convention in Washington each year without that participation being
20 the sole basis for establishing physical presence nexus with the
21 state for tax purposes. Pursuant to chapter 43.136 RCW, the joint

1 legislative audit and review committee must review the new tax
2 preference established under section 3 of this act by December 31,
3 2025.

4 (4) If a review finds that the number of businesses participating
5 in trade conventions in Washington has increased from 2015 levels,
6 then the legislature intends for the legislative auditor to recommend
7 extending the expiration date of the tax preference. If the joint
8 legislative audit and review committee finds that the number of
9 businesses participating in trade conventions in Washington has not
10 increased above 2015 levels, then the joint legislative audit and
11 review committee must make recommendations on how the tax preference
12 can be improved to accomplish that legislative objective. To obtain
13 the data necessary to perform this review, the joint legislative
14 audit and review committee must request the required information from
15 the department of revenue and the Washington state convention center
16 operated under chapter 36.100 RCW.

17 **Sec. 2.** RCW 82.04.067 and 2015 3rd sp.s. c 5 s 204 are each
18 amended to read as follows:

19 (1) A person engaging in business is deemed to have substantial
20 nexus with this state if the person is:

21 (a) An individual and is a resident or domiciliary of this state;

22 (b) A business entity and is organized or commercially domiciled
23 in this state; or

24 (c) A nonresident individual or a business entity that is
25 organized or commercially domiciled outside this state, and in the
26 immediately preceding tax year the person had:

27 (i) More than fifty thousand dollars of property in this state;

28 (ii) More than fifty thousand dollars of payroll in this state;

29 (iii) More than two hundred fifty thousand dollars of receipts
30 from this state; or

31 (iv) At least twenty-five percent of the person's total property,
32 total payroll, or total receipts in this state.

33 (2)(a) Property counting toward the thresholds in subsection
34 (1)(c)(i) and (iv) of this section is the average value of the
35 taxpayer's property, including intangible property, owned or rented
36 and used in this state during the immediately preceding tax year.

37 (b)(i) Property owned by the taxpayer, other than loans and
38 credit card receivables owned by the taxpayer, is valued at its
39 original cost basis. Loans and credit card receivables owned by the

1 taxpayer are valued at their outstanding principal balance, without
2 regard to any reserve for bad debts. However, if a loan or credit
3 card receivable is charged off in whole or in part for federal income
4 tax purposes, the portion of the loan or credit card receivable
5 charged off is deducted from the outstanding principal balance.

6 (ii) Property rented by the taxpayer is valued at eight times the
7 net annual rental rate. For purposes of this subsection, "net annual
8 rental rate" means the annual rental rate paid by the taxpayer less
9 any annual rental rate received by the taxpayer from subrentals.

10 (c) The average value of property must be determined by averaging
11 the values at the beginning and ending of the tax year; but the
12 department may require the averaging of monthly values during the tax
13 year if reasonably required to properly reflect the average value of
14 the taxpayer's property.

15 (d)(i) For purposes of this subsection (2), loans and credit card
16 receivables are deemed owned and used in this state as follows:

17 (A) Loans secured by real property, personal property, or both
18 real and personal property are deemed owned and used in the state if
19 the real property or personal property securing the loan is located
20 within this state. If the property securing the loan is located both
21 within this state and one or more other states, the loan is deemed
22 owned and used in this state if more than fifty percent of the fair
23 market value of the real or personal property is located within this
24 state. If more than fifty percent of the fair market value of the
25 real or personal property is not located within any one state, then
26 the loan is deemed owned and used in this state if the borrower is
27 located in this state. The determination of whether the real or
28 personal property securing a loan is located within this state must
29 be made, as of the time the original agreement was made, and any and
30 all subsequent substitutions of collateral must be disregarded.

31 (B) Loans not secured by real or personal property are deemed
32 owned and used in this state if the borrower is located in this
33 state.

34 (C) Credit card receivables are deemed owned and used in this
35 state if the billing address of the cardholder is in this state.

36 (ii)(A) Except as otherwise provided in (d)(ii)(B) of this
37 subsection (2), the definitions in the multistate tax commission's
38 recommended formula for the apportionment and allocation of net
39 income of financial institutions as existing on June 1, 2010, or such

1 subsequent date as may be provided by the department by rule,
2 consistent with the purposes of this section, apply to this section.

3 (B) "Credit card" means a card or device existing for the purpose
4 of obtaining money, property, labor, or services on credit.

5 (e) Notwithstanding anything else to the contrary in this
6 subsection, property counting toward the thresholds in subsection
7 (1)(c)(i) and (iv) of this section does not include a person's
8 ownership of, or rights in, computer software as defined in RCW
9 82.04.215, including computer software used in providing a digital
10 automated service; master copies of software; and digital goods and
11 digital codes residing on servers located in this state.

12 (3)(a) Payroll counting toward the thresholds in subsection
13 (1)(c)(ii) and (iv) of this section is the total amount paid by the
14 taxpayer for compensation in this state during the immediately
15 preceding tax year plus nonemployee compensation paid to
16 representative third parties in this state. Nonemployee compensation
17 paid to representative third parties includes the gross amount paid
18 to nonemployees who represent the taxpayer in interactions with the
19 taxpayer's clients and includes sales commissions.

20 (b) Employee compensation is paid in this state if the
21 compensation is properly reportable to this state for unemployment
22 compensation tax purposes, regardless of whether the compensation was
23 actually reported to this state.

24 (c) Nonemployee compensation is paid in this state if the service
25 performed by the representative third party occurs entirely or
26 primarily within this state.

27 (d) For purposes of this subsection, "compensation" means wages,
28 salaries, commissions, and any other form of remuneration paid to
29 employees or nonemployees and defined as gross income under 26 U.S.C.
30 Sec. 61 of the federal internal revenue code of 1986, as existing on
31 June 1, 2010.

32 (4) Receipts counting toward the thresholds in subsection
33 (1)(c)(iii) and (iv) of this section are:

34 (a) Those amounts included in the numerator of the receipts
35 factor under RCW 82.04.462;

36 (b) For financial institutions, those amounts included in the
37 numerator of the receipts factor under the rule adopted by the
38 department as authorized in RCW 82.04.460(2); and

39 (c) For persons taxable under RCW 82.04.257(1) or 82.04.270 with
40 respect to wholesale sales, the gross proceeds of sales taxable under

1 those statutory provisions and sourced to this state in accordance
2 with RCW 82.32.730.

3 (5)(a) Each December, the department must review the cumulative
4 percentage change in the consumer price index. The department must
5 adjust the thresholds in subsection (1)(c)(i) through (iii) of this
6 section if the consumer price index has changed by five percent or
7 more since the later of June 1, 2010, or the date that the thresholds
8 were last adjusted under this subsection. For purposes of determining
9 the cumulative percentage change in the consumer price index, the
10 department must compare the consumer price index available as of
11 December 1st of the current year with the consumer price index as of
12 the later of June 1, 2010, or the date that the thresholds were last
13 adjusted under this subsection. The thresholds must be adjusted to
14 reflect that cumulative percentage change in the consumer price
15 index. The adjusted thresholds must be rounded to the nearest one
16 thousand dollars. Any adjustment will apply to tax periods that begin
17 after the adjustment is made.

18 (b) As used in this subsection, "consumer price index" means the
19 consumer price index for all urban consumers (CPI-U) available from
20 the bureau of labor statistics of the United States department of
21 labor.

22 (6)(a) Subsections (1) through (5) of this section only apply
23 with respect to the taxes on persons engaged in apportionable
24 activities as defined in RCW 82.04.460 or making wholesale sales
25 taxable under RCW 82.04.257(1) or 82.04.270. For purposes of the
26 taxes imposed under this chapter on any activity not included in the
27 definition of apportionable activities in RCW 82.04.460, other than
28 the business of making wholesale sales taxed under RCW 82.04.257(1)
29 or 82.04.270, except as provided in section 3 of this act, a person
30 is deemed to have a substantial nexus with this state if the person
31 has a physical presence in this state during the tax year, which need
32 only be demonstrably more than a slightest presence.

33 (b) For purposes of this subsection, a person is physically
34 present in this state if the person has property or employees in this
35 state.

36 (c)(i) A person is also physically present in this state for the
37 purposes of this subsection if the person, either directly or through
38 an agent or other representative, engages in activities in this state
39 that are significantly associated with the person's ability to
40 establish or maintain a market for its products in this state.

1 (ii) A remote seller as defined in RCW 82.08.052 is presumed to
2 be engaged in activities in this state that are significantly
3 associated with the remote seller's ability to establish or maintain
4 a market for its products in this state if the remote seller is
5 presumed to have a substantial nexus with this state under RCW
6 82.08.052. The presumption in this subsection (6)(c)(ii) may be
7 rebutted as provided in RCW 82.08.052. To the extent that the
8 presumption in RCW 82.08.052 is no longer operative pursuant to RCW
9 82.32.762, the presumption in this subsection (6)(c)(ii) is no longer
10 operative. Nothing in this section may be construed to affect in any
11 way RCW 82.04.424, 82.08.050(11), or 82.12.040(5) or to narrow the
12 scope of the terms "agent" or "other representative" in this
13 subsection (6)(c).

14 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.32
15 RCW to read as follows:

16 (1) For purposes of the taxes imposed or authorized under
17 chapters 82.04, 82.08, 82.12, and 82.14 RCW, the department may not
18 make a determination of nexus based solely on the attendance or
19 participation of one or more representatives of a person at a single
20 trade convention per year in Washington state in determining if such
21 person is physically present in this state for the purposes of
22 establishing substantial nexus with this state.

23 (2) Subsection (1) of this section does not apply to persons
24 making retail sales at a trade convention, including persons taking
25 orders for products or services where receipt will occur in
26 Washington state.

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

29 (a) "Not marketed to the general public" means that the sponsor
30 of a trade convention limits its marketing efforts for the trade
31 convention to its members and specific invited guests of the
32 sponsoring organization.

33 (b) "Physically present in this state" and "substantial nexus
34 with this state" have the same meaning as provided in RCW 82.04.067.

35 (c) "Trade convention" means an exhibition for a specific
36 industry or profession, which is not marketed to the general public,
37 for the purposes of:

38 (i) Exhibiting, demonstrating, and explaining services, products,
39 or equipment to potential customers; or

1 (ii) The exchange of information, ideas, and attitudes in regards
2 to that industry or profession.

3 NEW SECTION. **Sec. 4.** This act takes effect July 1, 2016.

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