
HOUSE BILL 2940

State of Washington 65th Legislature 2018 Regular Session

By Representatives Lytton, Chapman, Frame, Tarleton, Tharinger, Ormsby, Pollet, and Macri

Read first time 01/26/18. Referred to Committee on Finance.

1 AN ACT Relating to making the business and occupation tax more
2 progressive; amending RCW 82.32.045; reenacting and amending RCW
3 34.05.328; adding new sections to chapter 82.04 RCW; creating new
4 sections; repealing RCW 82.04.4451; and providing an effective date.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature recognizes that as a
7 result of the state's regressive tax structure, Washington's small
8 businesses are overburdened. Despite low profit margins, the
9 legislature finds that small businesses are taxed at the same rate as
10 our high profit corporations, without benefiting from the special tax
11 preferences that many of our large corporations enjoy.

12 (2) It is the intent of the legislature to make the state's
13 business tax system more fair for small businesses by reforming the
14 current business and occupation tax or eventually implementing a new,
15 more equitable business activities tax. The legislature also intends
16 to take the necessary steps to evaluate the continuing need for
17 business and occupation tax preferences.

18 **Sec. 2.** RCW 82.32.045 and 2010 1st sp.s. c 23 s 1103 are each
19 amended to read as follows:

1 (1) Except as otherwise provided in this chapter, payments of the
2 taxes imposed under chapters 82.04, 82.08, 82.12, 82.14, and 82.16
3 RCW, along with reports and returns on forms prescribed by the
4 department, are due monthly within twenty-five days after the end of
5 the month in which the taxable activities occur.

6 (2) The department of revenue may relieve any taxpayer or class
7 of taxpayers from the obligation of remitting monthly and may require
8 the return to cover other longer reporting periods, but in no event
9 may returns be filed for a period greater than one year. For these
10 taxpayers, tax payments are due on or before the last day of the
11 month next succeeding the end of the period covered by the return.

12 (3) The department of revenue may also require verified annual
13 returns from any taxpayer, setting forth such additional information
14 as it may deem necessary to correctly determine tax liability.

15 (4) Notwithstanding subsections (1) and (2) of this section, the
16 department may relieve any person of the requirement to file returns
17 and pay the tax otherwise due if the following conditions are met:

18 (a) The person's value of products, gross proceeds of sales, or
19 gross income of the business, from all business activities taxable
20 under chapter 82.04 RCW, is less than(~~(+~~

21 ~~(i) Twenty-eight thousand dollars per year; or~~

22 ~~(ii) Forty-six thousand six hundred sixty-seven dollars per year~~
23 ~~for persons generating at least fifty percent of their taxable amount~~
24 ~~from activities taxable under RCW 82.04.255, 82.04.290(2)(a), and~~
25 ~~82.04.285)) one hundred twenty-five thousand dollars per year;~~

26 (b) The person's gross income of the business from all activities
27 taxable under chapter 82.16 RCW is less than twenty-four thousand
28 dollars per year; and

29 (c) The person is not required to collect or pay to the
30 department of revenue any other tax or fee which the department is
31 authorized to collect.

32 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.04
33 RCW to read as follows:

34 (1) In computing the amount of tax due under this chapter,
35 beginning January 1, 2020, a person must calculate its margin for
36 purposes of determining eligibility for a credit or liability for a
37 surcharge, as provided in this section. A person's margin for the
38 current tax year is determined by deducting the person's cost of
39 goods sold and cost of labor, accrued for the immediately preceding

1 tax year, from the greater of the person's total gross income of the
2 business, or value of products manufactured or extracted, for that
3 same tax year.

4 (2) If the person's margin is:

5 (a) Less than two hundred fifty thousand dollars, a person is
6 eligible for a credit equal to the tax otherwise due under this
7 chapter for the reporting period;

8 (b) Equal to or greater than two hundred fifty thousand dollars
9 but less than one million dollars, no credit under (a) of this
10 subsection is allowed, and the surcharge in (c) of this subsection
11 does not apply; or

12 (c) One million dollars or more, a surcharge is imposed. Except
13 as provided in subsection (3) of this section, the surcharge is equal
14 to the tax otherwise payable under this chapter by the person,
15 multiplied by six percent.

16 (3)(a) Before the surcharge under (c) of this subsection takes
17 effect, the department may adjust the surcharge rate by rule if, as a
18 result of the rule making to implement this section, the department
19 determines that estimated collections of tax under this chapter will
20 fall below or exceed projections by at least one percent during the
21 first eighteen months in which the surcharge under subsection (2)(c)
22 of this section is effective, based on the latest published fiscal
23 note for chapter . . . , Laws of 2018 (this act).

24 (b) Within the first twelve months of the surcharge under (c) of
25 this subsection taking effect, the department may adjust the
26 surcharge rate by emergency rule if the department estimates that
27 collections of tax under this chapter will fall below or exceed
28 projections by at least one percent during the first eighteen months
29 in which the surcharge under (c) of this subsection is effective,
30 based on the latest published fiscal note for chapter . . . , Laws of
31 2018 (this act).

32 (c) Surcharge rate adjustments under (a) and (b) of this
33 subsection must:

34 (i) Be no more than the amount necessary for chapter . . . , Laws
35 of 2018 (this act) to achieve revenue neutrality for the period
36 beginning January 1, 2020, through June 30, 2021, as projected by the
37 department;

38 (ii) Be carried to the fourth decimal place; and

39 (iii) Take effect on the date determined by the department by
40 rule. A surcharge rate adjustment is prospective only and must take

1 effect on the first day of a calendar quarter that is at least sixty
2 days following the date that the department publishes the adjusted
3 surcharge rate on its public web site.

4 (d) The director of the office of financial management must
5 approve any surcharge rate adjustment under (a) or (b) of this
6 subsection.

7 (4) A new business is exempt from this section.

8 (5) By October 1, 2019, the department must adopt rules it deems
9 necessary for the administration of this section. Such rules must
10 include:

11 (a) Definitions of the terms "cost of goods sold" and "cost of
12 labor." Such definitions must:

13 (i) Include items of costs that are commonly maintained by
14 prudent businesses in their books and records. However, the
15 department may, in its discretion, exclude items of direct and
16 indirect costs it deems useful in simplifying the margin calculation
17 for taxpayers, reducing the likelihood of disputes between the
18 department and taxpayers, and preventing inflated cost deductions in
19 the margin calculation under this section; and

20 (ii) Ensure that no items of costs are deducted twice in
21 determining a person's margin under this section.

22 (b) Include a definition of the term "new business," which must,
23 to the extent possible, limit the exemption under subsection (4) of
24 this section to bona fide new businesses and prevent existing
25 businesses from avoiding a surcharge or claiming a credit under this
26 section.

27 (c) Provide for a reasonable method of allocating or apportioning
28 costs of goods sold and labor, consistent with the purposes of this
29 section.

30 (d) Include provisions intended to deny taxpayers the tax
31 benefits of engaging in arrangements or transactions that take
32 advantage of the provisions of this section to unfairly avoid taxes
33 under this chapter.

34 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.04
35 RCW to read as follows:

36 (1) In computing the tax imposed under this chapter, an eligible
37 new business is entitled to a credit under this section. The amount
38 of the credit under this section is equal to the tax otherwise due
39 under this chapter for the person's initial taxable year.

1 (2) Persons who believe they will qualify for the credit under
2 this section and whose reporting frequency for the taxes imposed
3 under this chapter is less than annual may claim the credit under
4 this section on each of the person's tax returns for the person's
5 initial taxable year. However, as soon as any person claiming the
6 credit under this section has reported a gross taxable amount of at
7 least two hundred fifty thousand dollars in the initial year, the
8 person may no longer claim the credit under this section and must
9 also correct its prior tax returns to eliminate the credit claimed
10 under this section on the original tax returns.

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

13 (a) "Eligible new business" means a new business that is exempt
14 from the provisions of section 3 of this act and whose gross taxable
15 amount for the initial taxable year is less than two hundred fifty
16 thousand dollars.

17 (b) "Gross taxable amount" means a person's combined gross income
18 of the business and value of any products manufactured or extracted,
19 from engaging in business activities within this state, less the
20 amount of any gross proceeds of sales of products manufactured or
21 extracted by the person to the extent that such gross proceeds of
22 sales are included both in the person's gross income of the business
23 and value of products manufactured or extracted.

24 (c) "Initial taxable year" means the first year in which the
25 eligible new business engages within this state in business
26 activities taxable under this chapter.

27 **Sec. 5.** RCW 34.05.328 and 2011 c 298 s 21 and 2011 c 149 s 1 are
28 each reenacted and amended to read as follows:

29 (1) Before adopting a rule described in subsection (5) of this
30 section, an agency must:

31 (a) Clearly state in detail the general goals and specific
32 objectives of the statute that the rule implements;

33 (b) Determine that the rule is needed to achieve the general
34 goals and specific objectives stated under (a) of this subsection,
35 and analyze alternatives to rule making and the consequences of not
36 adopting the rule;

37 (c) Provide notification in the notice of proposed rule making
38 under RCW 34.05.320 that a preliminary cost-benefit analysis is
39 available. The preliminary cost-benefit analysis must fulfill the

1 requirements of the cost-benefit analysis under (d) of this
2 subsection. If the agency files a supplemental notice under RCW
3 34.05.340, the supplemental notice must include notification that a
4 revised preliminary cost-benefit analysis is available. A final cost-
5 benefit analysis must be available when the rule is adopted under RCW
6 34.05.360;

7 (d) Determine that the probable benefits of the rule are greater
8 than its probable costs, taking into account both the qualitative and
9 quantitative benefits and costs and the specific directives of the
10 statute being implemented;

11 (e) Determine, after considering alternative versions of the rule
12 and the analysis required under (b), (c), and (d) of this subsection,
13 that the rule being adopted is the least burdensome alternative for
14 those required to comply with it that will achieve the general goals
15 and specific objectives stated under (a) of this subsection;

16 (f) Determine that the rule does not require those to whom it
17 applies to take an action that violates requirements of another
18 federal or state law;

19 (g) Determine that the rule does not impose more stringent
20 performance requirements on private entities than on public entities
21 unless required to do so by federal or state law;

22 (h) Determine if the rule differs from any federal regulation or
23 statute applicable to the same activity or subject matter and, if so,
24 determine that the difference is justified by the following:

25 (i) A state statute that explicitly allows the agency to differ
26 from federal standards; or

27 (ii) Substantial evidence that the difference is necessary to
28 achieve the general goals and specific objectives stated under (a) of
29 this subsection; and

30 (i) Coordinate the rule, to the maximum extent practicable, with
31 other federal, state, and local laws applicable to the same activity
32 or subject matter.

33 (2) In making its determinations pursuant to subsection (1)(b)
34 through (h) of this section, the agency must place in the rule-making
35 file documentation of sufficient quantity and quality so as to
36 persuade a reasonable person that the determinations are justified.

37 (3) Before adopting rules described in subsection (5) of this
38 section, an agency must place in the rule-making file a rule
39 implementation plan for rules filed under each adopting order. The
40 plan must describe how the agency intends to:

1 (a) Implement and enforce the rule, including a description of
2 the resources the agency intends to use;

3 (b) Inform and educate affected persons about the rule;

4 (c) Promote and assist voluntary compliance; and

5 (d) Evaluate whether the rule achieves the purpose for which it
6 was adopted, including, to the maximum extent practicable, the use of
7 interim milestones to assess progress and the use of objectively
8 measurable outcomes.

9 (4) After adopting a rule described in subsection (5) of this
10 section regulating the same activity or subject matter as another
11 provision of federal or state law, an agency must do all of the
12 following:

13 (a) Coordinate implementation and enforcement of the rule with
14 the other federal and state entities regulating the same activity or
15 subject matter by making every effort to do one or more of the
16 following:

17 (i) Deferring to the other entity;

18 (ii) Designating a lead agency; or

19 (iii) Entering into an agreement with the other entities
20 specifying how the agency and entities will coordinate implementation
21 and enforcement.

22 If the agency is unable to comply with this subsection (4)(a),
23 the agency must report to the legislature pursuant to (b) of this
24 subsection;

25 (b) Report to the joint administrative rules review committee:

26 (i) The existence of any overlap or duplication of other federal
27 or state laws, any differences from federal law, and any known
28 overlap, duplication, or conflict with local laws; and

29 (ii) Make recommendations for any legislation that may be
30 necessary to eliminate or mitigate any adverse effects of such
31 overlap, duplication, or difference.

32 (5)(a) Except as provided in (b) of this subsection, this section
33 applies to:

34 (i) Significant legislative rules of the departments of ecology,
35 labor and industries, health, revenue, social and health services,
36 and natural resources, the employment security department, the forest
37 practices board, the office of the insurance commissioner, and to the
38 legislative rules of the department of fish and wildlife implementing
39 chapter 77.55 RCW; and

1 (ii) Any rule of any agency, if this section is voluntarily made
2 applicable to the rule by the agency, or is made applicable to the
3 rule by a majority vote of the joint administrative rules review
4 committee within forty-five days of receiving the notice of proposed
5 rule making under RCW 34.05.320.

6 (b) This section does not apply to:

7 (i) Emergency rules adopted under RCW 34.05.350;

8 (ii) Rules relating only to internal governmental operations that
9 are not subject to violation by a nongovernment party;

10 (iii) Rules adopting or incorporating by reference without
11 material change federal statutes or regulations, Washington state
12 statutes, rules of other Washington state agencies, shoreline master
13 programs other than those programs governing shorelines of statewide
14 significance, or, as referenced by Washington state law, national
15 consensus codes that generally establish industry standards, if the
16 material adopted or incorporated regulates the same subject matter
17 and conduct as the adopting or incorporating rule;

18 (iv) Rules that only correct typographical errors, make address
19 or name changes, or clarify language of a rule without changing its
20 effect;

21 (v) Rules the content of which is explicitly and specifically
22 dictated by statute;

23 (vi) Rules that set or adjust fees under the authority of RCW
24 19.02.075 or that set or adjust fees or rates pursuant to legislative
25 standards, including fees set or adjusted under the authority of RCW
26 19.80.045;

27 (vii) Rules of the department of social and health services
28 relating only to client medical or financial eligibility and rules
29 concerning liability for care of dependents; (~~(e)~~)

30 (viii) Rules of the department of revenue that adopt a uniform
31 expiration date for reseller permits as authorized in RCW 82.32.780
32 and 82.32.783 ; or

33 (ix) Rules of the department of revenue authorized in section 3
34 of this act.

35 (c) For purposes of this subsection:

36 (i) A "procedural rule" is a rule that adopts, amends, or repeals
37 (A) any procedure, practice, or requirement relating to any agency
38 hearings; (B) any filing or related process requirement for making
39 application to an agency for a license or permit; or (C) any policy

1 statement pertaining to the consistent internal operations of an
2 agency.

3 (ii) An "interpretive rule" is a rule, the violation of which
4 does not subject a person to a penalty or sanction, that sets forth
5 the agency's interpretation of statutory provisions it administers.

6 (iii) A "significant legislative rule" is a rule other than a
7 procedural or interpretive rule that (A) adopts substantive
8 provisions of law pursuant to delegated legislative authority, the
9 violation of which subjects a violator of such rule to a penalty or
10 sanction; (B) establishes, alters, or revokes any qualification or
11 standard for the issuance, suspension, or revocation of a license or
12 permit; or (C) adopts a new, or makes significant amendments to, a
13 policy or regulatory program.

14 (d) In the notice of proposed rule making under RCW 34.05.320, an
15 agency must state whether this section applies to the proposed rule
16 pursuant to (a)(i) of this subsection, or if the agency will apply
17 this section voluntarily.

18 (6) By January 31, 1996, and by January 31st of each even-
19 numbered year thereafter, the office of regulatory assistance, after
20 consulting with state agencies, counties, and cities, and business,
21 labor, and environmental organizations, must report to the governor
22 and the legislature regarding the effects of this section on the
23 regulatory system in this state. The report must document:

24 (a) The rules proposed to which this section applied and to the
25 extent possible, how compliance with this section affected the
26 substance of the rule, if any, that the agency ultimately adopted;

27 (b) The costs incurred by state agencies in complying with this
28 section;

29 (c) Any legal action maintained based upon the alleged failure of
30 any agency to comply with this section, the costs to the state of
31 such action, and the result;

32 (d) The extent to which this section has adversely affected the
33 capacity of agencies to fulfill their legislatively prescribed
34 mission;

35 (e) The extent to which this section has improved the
36 acceptability of state rules to those regulated; and

37 (f) Any other information considered by the office of financial
38 management to be useful in evaluating the effect of this section.

1 NEW SECTION. **Sec. 6.** (1)(a) A taskforce on business and
2 occupation tax fairness is established. The task force is composed of
3 the following twelve members:

4 (i) A representative of the governor's office;

5 (ii) A representative of the department of revenue;

6 (iii) A representative of the department of commerce;

7 (iv) A representative from each of the two largest caucuses of
8 the senate, who must be appointed by the president of the senate; and

9 (v) A representative from each of the two largest caucuses of the
10 house of representatives, who must be appointed by the speaker of the
11 house of representatives.

12 (b) The governor must appoint the remaining five members of the
13 task force, taking into consideration representation from: Large
14 businesses, small and independent businesses, advocates of policies
15 advancing the interests of economic security and social opportunity,
16 and persons with expertise in Washington state tax law and policy in
17 an academic or private sector setting.

18 (c) The task force may seek input or collaborate with any other
19 parties it deems necessary.

20 (d) The terms of legislative members of the task force continue
21 until such members no longer wish to serve on the task force or no
22 longer serve in the legislature, whichever occurs first. A
23 legislative vacancy must be filled by the appointment of a legislator
24 from the same legislative chamber and caucus as the original
25 appointment. The appropriate appointing authority must make the
26 appointment within thirty days of the vacancy occurring.

27 (2) The task force must choose its chair from among its
28 membership. The task force meets at the call of the chair. The chair
29 of the task force must cause all meeting notices and task force
30 documents to be sent to the task force members.

31 (3) The department of revenue must provide staff support for the
32 task force.

33 (4) Legislative members of the task force are reimbursed for
34 travel expenses in accordance with RCW 44.04.120. Nonlegislative
35 members of the task force, except those representing an employer or
36 organization, are entitled to be reimbursed for travel expenses in
37 accordance with RCW 43.03.050 and 43.03.060.

38 (5) The task force must:

1 (a) Review existing business and occupation tax preferences to
2 determine whether any are no longer needed as a result of the
3 enactment of this act;

4 (b) Make decisions by a simple majority of the task force; and

5 (c) Provide a report, in compliance with RCW 43.01.036, to the
6 appropriate fiscal committees of the house of representatives and
7 senate by January 1, 2022.

8 (6) The report required in subsection (5) of this section may
9 include:

10 (a) Recommendations for the elimination of business and
11 occupation tax preferences;

12 (b) Additional or alternative options for improving the fairness
13 of the business and occupation tax or replacing the business and
14 occupation tax with a more equitable business activities tax;

15 (c) Recommendations for future legislative oversight of the
16 department of revenue's implementation of this act; and

17 (d) A minority report if the task force does not reach complete
18 agreement on the contents of the report.

19 NEW SECTION. **Sec. 7.** RCW 82.04.4451 (Credit against tax due—
20 Maximum credit—Table) and 2010 1st sp.s. c 23 s 1102, 1997 c 238 s 2,
21 & 1994 sp.s. c 2 s 1 are each repealed.

22 NEW SECTION. **Sec. 8.** This act may be known and cited as the
23 small business tax fairness act.

24 NEW SECTION. **Sec. 9.** RCW 82.32.805 and 82.32.808 do not apply
25 to this act.

26 NEW SECTION. **Sec. 10.** Sections 2, 4, 6, and 7 of this act take
27 effect January 1, 2020.

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