**6016.E AMH FIN H3194.1 - NOT FOR FLOOR USE**

**ESB 6016** - H COMM AMD

By Committee on Finance

**ADOPTED 04/27/2019**

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec.**  In 1995, the legislature enacted a business and occupation tax rate for persons providing international investment management services. The legislature finds that the original intent of this tax rate was to reduce a competitive disadvantage for a limited number of firms providing international investment management services. The fiscal note for the bill stated that "only a very limited taxpayer group would benefit from the reduced rate." The legislature further finds that as a result of the adoption of economic nexus; a single factor, market-based apportionment methodology; and significant ambiguity in the statute governing the qualifications for the tax rate; a much larger number of businesses are claiming the tax rate than was contemplated in 1995. Therefore, the legislature intends in sections 2 and 3 of this act to clarify the scope of activities and persons eligible for the tax rate to more closely align with the legislature's original intent.

**Sec.**  RCW 82.04.290 and 2014 c 97 s 404 are each amended to read as follows:

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

(2)(a) Upon every person engaging within this state in any business activity other than or in addition to an activity taxed explicitly under another section in this chapter or subsection (1) or (3) of this section; as to such persons the amount of tax on account of such activities is equal to the gross income of the business multiplied by the rate of 1.5 percent.

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

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

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

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

**Sec.**  RCW 82.04.293 and 1997 c 7 s 3 are each amended to read as follows:

For purposes of RCW 82.04.290:

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

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

(b) At least ten percent of the gross income of such person is derived from providing investment management services to any of the following:

(i) ((~~Persons or~~)) Collective investment funds ((~~residing~~)) commercially domiciled, as defined in RCW 82.56.010, outside the United States; or

(ii) ((~~persons or~~)) Collective investment funds with at least ten percent of their investments located outside the United States((~~.~~

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

~~(3) "Collective investment fund" includes:~~

~~(a)~~));

(c) More than twenty-five percent of such person's employees are located in this state; and

(d) Such person is a member of an affiliated group that collectively has:

(i) Ten or more offices located in at least eight foreign countries;

(ii) At least five hundred full-time employees worldwide;

(iii) Worldwide gross revenue of more than four hundred million dollars during the entire current or immediately preceding calendar year; and

(iv) Average assets under management of more than two hundred billion dollars during the entire current or immediately preceding calendar year.

(2) An affiliate of a person engaged in the business of providing qualifying international investment management services is deemed to also be engaged in the business of providing qualifying international investment management services if the affiliate:

(a) Is primarily engaged in providing portfolio management, fund administration, fund distribution, or transfer agent services, or any combination of these activities, to, either directly or indirectly through such affiliate's affiliated group, any of the following:

(i) Collective investment funds commercially domiciled, as defined in RCW 82.56.010, outside the United States; or

(ii) Collective investment funds with at least ten percent of their investments located outside the United States; and

(b) Satisfies the requirement under subsection (1)(c) of this section.

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

(a)(i) "Affiliate" and "affiliated" mean a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person.

(ii) For purposes of this subsection (3)(a), "control" means the possession, directly or indirectly, of more than fifty percent of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise.

(b) "Affiliated group" means any group of two or more persons that are all affiliated with each other.

(c) "Collective investment fund" includes:

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

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

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

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

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

((~~(f)~~)) (vi) Collective investment funds similar to those described in ((~~(a)~~)) (c)(i) through ((~~(e)~~)) (v) of this subsection (3) created under the laws of a foreign jurisdiction.

(d) "Investment management services" means managing the collective assets of a collective investment fund by engaging, either directly or indirectly through such person's affiliated group, in all of the following activities: (i) Portfolio management; (ii) fund administration; (iii) fund distribution; and (iv) transfer agent services.

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

(5) If a person engaged in the business of providing international investment management services no longer meets the Washington state employment eligibility requirements under subsection (1)(c) of this section, then an amount equal to the entire economic benefit accruing to the person in the current and immediately prior nine consecutive calendar years, or the consecutive years since the effective date of this act, whichever is less, as a result of the preferential tax rate under RCW 82.04.290(1) is immediately due and payable.

(6) The department must assess interest, but not penalties, on the amounts due under this section. The interest must be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW and accrue until the taxes for which a tax preference has been used are repaid.

NEW SECTION. **Sec.**  (1) The legislature finds that a strong financial cluster is critical to the economic health of Washington state. The legislature further finds that anchor institutions are key to growing a strong financial cluster, including international investment management firms. Therefore, the legislature finds that maintaining a competitive tax policy in Washington state enables the state to maintain its anchor investment management firms.

(2) The legislature finds that standard financial information has not historically been subject to sales tax. In 2007 the legislature clarified that sales tax does not apply to electronically delivered standard financial information purchased by investment management companies or financial institutions. In 2013, the legislature provided clarification by passing a sales and use tax exemption for standard financial information purchased by investment management companies.

(3) The legislature further finds that taxation of such standard financial information would be uncompetitive and inconsistent with the fundamental structure of sales tax as a tax on retail transactions. Therefore, it is the legislature's intent to conform with a previously determined policy objective of exempting certain standard financial information purchased by investment management companies from sales and use tax in order to improve industry competitiveness.

NEW SECTION. **Sec.**  (1) This section is the tax preference performance statement for the tax preferences contained in sections 6 and 7, chapter . . ., Laws of 2019 (sections 6 and 7 of this act). This performance statement is only intended to be used for subsequent evaluation of the tax preferences. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes these tax preferences as ones intended to improve industry competitiveness, as indicated in RCW 82.32.808(2)(b) and to reduce structural inefficiencies in the tax structure as indicated in RCW 82.32.808(2)(d).

(3) It is the legislature's specific public policy objective to maintain a viable financial cluster. It is the legislature's intent to exempt sales and use taxes on sales of standard financial information to qualifying international investment management companies, in order to maintain the presence of at least one international investment management services firm headquartered in Washington state with at least two hundred billion dollars of assets under management.

(4) If a review finds that there is at least one international investment management services firm with at least two hundred billion dollars of assets under management headquartered in Washington state, then the legislature intends to extend the expiration date of the tax preferences.

**Sec.**  RCW 82.08.207 and 2013 2nd sp.s. c 13 s 702 are each amended to read as follows:

(1) The tax imposed by RCW 82.08.020 does not apply to sales of standard financial information to qualifying international investment management companies or persons affiliated with a qualifying international investment management company. The exemption provided in this section applies regardless of whether the standard financial information is provided to the buyer in a tangible format or on a tangible storage medium or as a digital product transferred electronically.

(2) Sellers making tax-exempt sales under this section must obtain an exemption certificate from the buyer in a form and manner prescribed by the department. The seller must retain a copy of the exemption certificate for the seller's files. In lieu of an exemption certificate, a seller may capture the relevant data elements as allowed under the streamlined sales and use tax agreement. For sellers who electronically file their taxes, the department must provide a separate tax reporting line for exemption amounts claimed under this section.

(3) A buyer may not continue to claim the exemption under this section once the buyer has purchased standard financial information during the current calendar year with an aggregate total selling price in excess of fifteen million dollars and an exemption has been claimed under this section or RCW 82.12.207 for such standard financial information. The fifteen million dollar limitation under this subsection does not apply to any other exemption under this chapter that applies to standard financial information. Sellers are not responsible for ensuring a buyer's compliance with the fifteen million dollar limitation under this subsection. Sellers may not be assessed for uncollected sales tax on a sale to a buyer claiming an exemption under this section after having exceeded the fifteen million dollar limitation under this subsection, except as provided in RCW 82.08.050 (4) and (5).

(4) The definitions in this subsection and RCW 82.04.293 apply throughout this section unless the context clearly requires otherwise.

(a)((~~(i)~~)) "Qualifying international investment management company" means a person((~~:~~

~~(A) Who is primarily engaged in the business of providing investment management services; and~~

~~(B) Who has gross income that is at least ten percent derived from providing investment management services to:~~

~~(I) Persons or collective investment funds residing outside the United States; or~~

~~(II) Collective investment funds with at least ten percent of their investments located outside the United States.~~

~~(ii) The definitions in RCW 82.04.293 apply to this subsection (4)(a)~~)) who is eligible for the tax rate in RCW 82.04.290(1).

(b)(i) "Standard financial information" means financial data, facts, or information, or financial information services, not generated, compiled, or developed only for a single customer. Standard financial information includes, but is not limited to, financial market data, bond ratings, credit ratings, and deposit, loan, or mortgage reports.

(ii) For purposes of this subsection (4)(b), "financial market data" means market pricing information, such as for securities, commodities, and derivatives; corporate actions for publicly and privately traded companies, such as dividend schedules and reorganizations; corporate attributes, such as domicile, currencies used, and exchanges where shares are traded; and currency information.

(5) This section expires July 1, ((~~2021~~)) 2031.

**Sec.**  RCW 82.12.207 and 2013 2nd sp.s. c 13 s 703 are each amended to read as follows:

(1) The tax imposed by RCW 82.12.020 does not apply to the use of standard financial information by qualifying international investment management companies or persons affiliated, as defined in RCW 82.04.293, with a qualifying international investment management company. The exemption provided in this section applies regardless of whether the standard financial information is in a tangible format or resides on a tangible storage medium or is a digital product transferred electronically to the qualifying international investment management company.

(2) The definitions, conditions, and requirements in RCW 82.08.207 apply to this section.

(3) This section expires July 1, ((~~2021~~)) 2031.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec.**  The provisions of RCW 82.32.805 and 82.32.808 do not apply to sections 2 and 3 of this act.

NEW SECTION. **Sec.**  Sections 2 and 3 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2019."

Correct the title.

EFFECT: Limits the period for the claw back to nine years or the years since the effective date of the act, whichever is less.