

ESB 6016 - H COMM AMD  
By Committee on Finance

ADOPTED 04/27/2019

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** In 1995, the legislature enacted a  
4 business and occupation tax rate for persons providing international  
5 investment management services. The legislature finds that the  
6 original intent of this tax rate was to reduce a competitive  
7 disadvantage for a limited number of firms providing international  
8 investment management services. The fiscal note for the bill stated  
9 that "only a very limited taxpayer group would benefit from the  
10 reduced rate." The legislature further finds that as a result of the  
11 adoption of economic nexus; a single factor, market-based  
12 apportionment methodology; and significant ambiguity in the statute  
13 governing the qualifications for the tax rate; a much larger number  
14 of businesses are claiming the tax rate than was contemplated in  
15 1995. Therefore, the legislature intends in sections 2 and 3 of this  
16 act to clarify the scope of activities and persons eligible for the  
17 tax rate to more closely align with the legislature's original  
18 intent.

19 **Sec. 2.** RCW 82.04.290 and 2014 c 97 s 404 are each amended to  
20 read as follows:

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

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

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

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

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

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

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

24 For purposes of RCW 82.04.290:

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

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

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

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

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

37 ~~(2) "Investment management services" means investment research,~~  
38 ~~investment consulting, portfolio management, fund administration,~~

1 ~~fund distribution, investment transactions, or related investment~~  
2 ~~services.~~

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

4 ~~(a) ):~~

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (ii) For purposes of this subsection (3)(a), "control" means the  
38 possession, directly or indirectly, of more than fifty percent of the  
39 power to direct or cause the direction of the management and policies

1 of a person, whether through the ownership of voting shares, by  
2 contract, or otherwise.

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

5 (c) "Collective investment fund" includes:

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

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

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

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

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

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

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

38 (4) Investments are located outside the United States if the  
39 underlying assets in which the investment constitutes a beneficial

1 interest reside or are created, issued or held outside the United  
2 States.

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

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

17 NEW SECTION. Sec. 4. (1) The legislature finds that a strong  
18 financial cluster is critical to the economic health of Washington  
19 state. The legislature further finds that anchor institutions are key  
20 to growing a strong financial cluster, including international  
21 investment management firms. Therefore, the legislature finds that  
22 maintaining a competitive tax policy in Washington state enables the  
23 state to maintain its anchor investment management firms.

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

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

1        NEW SECTION.    **Sec. 5.**    (1) This section is the tax preference  
2 performance statement for the tax preferences contained in sections 6  
3 and 7, chapter . . ., Laws of 2019 (sections 6 and 7 of this act).  
4 This performance statement is only intended to be used for subsequent  
5 evaluation of the tax preferences. It is not intended to create a  
6 private right of action by any party or be used to determine  
7 eligibility for preferential tax treatment.

8        (2) The legislature categorizes these tax preferences as ones  
9 intended to improve industry competitiveness, as indicated in RCW  
10 82.32.808(2)(b) and to reduce structural inefficiencies in the tax  
11 structure as indicated in RCW 82.32.808(2)(d).

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

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

25        **Sec. 6.**    RCW 82.08.207 and 2013 2nd sp.s. c 13 s 702 are each  
26 amended to read as follows:

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

35        (2) Sellers making tax-exempt sales under this section must  
36 obtain an exemption certificate from the buyer in a form and manner  
37 prescribed by the department. The seller must retain a copy of the  
38 exemption certificate for the seller's files. In lieu of an exemption  
39 certificate, a seller may capture the relevant data elements as

1 allowed under the streamlined sales and use tax agreement. For  
2 sellers who electronically file their taxes, the department must  
3 provide a separate tax reporting line for exemption amounts claimed  
4 under this section.

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

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

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

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

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

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

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

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

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

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

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

9 **Sec. 7.** RCW 82.12.207 and 2013 2nd sp.s. c 13 s 703 are each  
10 amended to read as follows:

11 (1) The tax imposed by RCW 82.12.020 does not apply to the use of  
12 standard financial information by qualifying international investment  
13 management companies or persons affiliated, as defined in RCW  
14 82.04.293, with a qualifying international investment management  
15 company. The exemption provided in this section applies regardless of  
16 whether the standard financial information is in a tangible format or  
17 resides on a tangible storage medium or is a digital product  
18 transferred electronically to the qualifying international investment  
19 management company.

20 (2) The definitions, conditions, and requirements in RCW  
21 82.08.207 apply to this section.

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

23 NEW SECTION. **Sec. 8.** If any provision of this act or its  
24 application to any person or circumstance is held invalid, the  
25 remainder of the act or the application of the provision to other  
26 persons or circumstances is not affected.

27 NEW SECTION. **Sec. 9.** The provisions of RCW 82.32.805 and  
28 82.32.808 do not apply to sections 2 and 3 of this act.

29 NEW SECTION. **Sec. 10.** Sections 2 and 3 of this act are  
30 necessary for the immediate preservation of the public peace, health,  
31 or safety, or support of the state government and its existing public  
32 institutions, and take effect July 1, 2019."

33 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.

--- **END** ---