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**SENATE BILL 5398**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senators Wellman, Das, Dhingra, Hasegawa, Kuderer, Nguyen, Nobles, Randall, Saldaña, and Wilson, C.

AN ACT Relating to providing small business excise tax relief to address the financial hardship caused by COVID-19; adding a new section to chapter 82.04 RCW; adding a new section to chapter 82.32 RCW; creating a new section; and declaring an emergency.

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

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

(1) An eligible small business is subject to relief from tax under this chapter for taxes due and payable during the small business excise tax relief period as provided in this section. The tax relief provided under this section shall be in the form of a deduction and subject to any adjustments required under subsections (3) and (4) of this section.

(2) An eligible small business claiming tax relief under this section is still required to file a tax return and submit any other taxes, including state and local sales taxes, that are due and payable.

(3)(a) The tax relief authorized under this section shall be reported on the combined excise tax return as a deduction. The maximum amount an eligible small business may claim as a deduction under this section is the gross amount reported on the tax return for the reporting period reduced by any otherwise allowable deductions under this chapter and making any additional adjustment required under subsection (4) of this section.

(b) The deduction under this section is reportable on the combined excise tax return under the "other" category line item on the deduction detail for each business and occupation tax classification reported. The taxpayer must indicate on the return that some or all of the amount deducted as "other" is derived from the tax relief provided under this section.

(4) For taxpayers filing on an annual basis, the maximum amount that may be deducted under this subsection (4) for taxes due and payable in April 2021, or July if the tax return filing deadline is extended, for the calendar year 2020 reporting period is one-half of: The gross amount reported on the tax return reduced by any other allowable deductions under this chapter.

(5) The definitions in this subsection apply to this section.

(a) "Affiliate" has the same meaning as provided under RCW 82.04.290.

(b) "Eligible small business" means a small business that:

(i) Reported gross income under this chapter during calendar years 2019 and 2020 greater than zero dollars during calendar years 2019 and 2020; and

(ii) Reported gross income of the business in calendar year 2020 that was at least 50 percent less than the gross income of the business reported by the small business in calendar year 2019.

(c) "Small business" means any person whose gross income of the business subject to tax under this chapter, for calendar year 2019, was less than $50,000,000, unless (i) the person is affiliated with one or more other persons, and (ii) the aggregate gross income of the business subject to the tax imposed under this chapter for all affiliated persons was greater than or equal to $50,000,000 for calendar year 2019.

(d) "Small business excise tax relief period" means:

(i) Taxes due and payable in 2021 during the month of April, or July if the tax return filing deadline is extended, for taxpayers filing on an annual basis;

(ii) Taxes due and payable in 2021 during the months of July and October for taxpayers filing on a quarterly basis; and

(iii) Taxes due and payable in 2021 during the months of June through November for taxpayers reporting on a monthly basis.

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

(1) Subject to the requirements in subsections (2) and (3) of this section, the department shall waive or cancel interest and penalties imposed under this chapter if the interest and penalties are:

(a) Imposed on business and occupation taxes that were originally due and payable during the small business excise tax relief period as defined under section 1 of this act; and

(b) Imposed on a taxpayer who made a good faith error in determining eligibility for the small business excise tax relief under section 1 of this act.

(2) The department shall assume a good faith error under subsection (1) of this section if:

(a) The taxpayer's taxable income in calendar years 2019 or 2020 did not exceed $55,000,000; and

(b) Taxable income for taxes due and payable in calendar year 2020 did not exceed 60 percent of taxable income for taxes due and payable in calendar year 2019.

(3) The department may adopt rules providing additional circumstances constituting a good faith error under this section.

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

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

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