**5277 AMS HASE S2734.2 - NOT FOR FLOOR USE**

**SB 5277** - S AMD **258**

By Senator Hasegawa

**NOT ADOPTED 03/31/2023**

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec.**  (1) This section is the tax preference performance statement for the tax preferences contained in sections 2 through 5, chapter . . ., Laws of 2023 (sections 2 through 5 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 create or retain jobs and provide tax relief for certain businesses or individuals as indicated in RCW 82.32.808(2) (c) and (e).

(3) It is the legislature's specific public policy objective to create and retain jobs and continue providing tax relief to the food processing industry.

(4) To measure the effectiveness of the deductions in sections 2 through 5 of this act in achieving the public policy objectives described in subsection (3) of this section, the joint legislative audit and review committee must evaluate the following:

(a) The number of businesses that claim the deductions in sections 2 through 5 of this act;

(b) The change in total taxable income for taxpayers claiming the deductions under sections 2 through 5 of this act;

(c) The change in total employment for taxpayers claiming the deductions under sections 2 through 5 of this act; and

(d) For each calendar year, the total amount of deductions claimed under sections 2 through 5 of this act as a percentage of total taxable income for taxpayers within taxable income categories.

(5) The information provided in the annual report submitted by the taxpayers under RCW 82.32.534, tax data collected by the department of revenue, and data collected by the employment security department is intended to provide the informational basis for the evaluation under subsection (4) of this section.

(6) In addition to the data sources described under subsection (5) of this section, the joint legislative audit and review committee may use any other data it deems necessary in performing the evaluation under subsection (4) of this section.

**Sec.**  RCW 82.04.4268 and 2020 c 139 s 6 are each amended to read as follows:

(1)(a) In computing tax there may be deducted from the measure of tax, the value of products or the gross proceeds of sales derived from:

((~~(a)~~)) (i) Manufacturing dairy products; or

((~~(b) Selling~~)) (ii) Except as provided otherwise in (b) of this subsection, selling dairy products manufactured by the seller to purchasers who either transport in the ordinary course of business the goods out of this state or purchasers who use such dairy products as an ingredient or component in the manufacturing of a dairy product. A person taking ((~~an exemption~~)) a deduction under this subsection (1)((~~(b)~~)) (a)(ii) must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state or sold to a manufacturer for use as an ingredient or component in the manufacturing of a dairy product.

(b) The deduction provided under (a)(ii) of this subsection does not apply to the sales of dairy products on or after July 1, 2025, where a dairy product is used by the purchaser as an ingredient or component in the manufacturing in Washington of a dairy product.

(2) "Dairy products" has the same meaning as provided in RCW 82.04.260.

(3) A person claiming the ((~~exemption~~)) deduction provided in this section must file a complete annual tax performance report with the department under RCW 82.32.534.

(4) Beginning in calendar year 2024, the total amount a person may claim under subsection (1)(a) of this section in any calendar year may not exceed $125,000,000. Amounts taxable under this chapter based on the limitation in this subsection are subject to the tax rate specified in RCW 82.04.260(1)(c).

(5) This section expires July 1, ((~~2025~~)) 2035.

**Sec.**  RCW 82.04.4266 and 2022 c 16 s 142 are each amended to read as follows:

(1) ((~~This chapter does not apply to~~)) In computing tax there may be deducted from the measure of tax, the value of products or the gross proceeds of sales derived from:

(a) Manufacturing fruits or vegetables by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables; or

(b) Selling at wholesale fruits or vegetables manufactured by the seller by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables and sold to purchasers who transport in the ordinary course of business the goods out of this state. A person taking ((~~an exemption~~)) a deduction under this subsection (1)(b) must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state.

(2) For purposes of this section, "fruits" and "vegetables" do not include cannabis, useable cannabis, or cannabis-infused products.

(3) A person claiming the ((~~exemption~~)) deduction provided in this section must file a complete annual tax performance report with the department under RCW 82.32.534.

(4) Beginning in calendar year 2024, the total amount a person may claim under this section in any calendar year may not exceed $125,000,000. Amounts taxable under this chapter based on the limitation in this subsection are subject to the tax rate specified in RCW 82.04.260(1)(d).

(5) This section expires July 1, ((~~2025~~)) 2035.

**Sec.**  RCW 82.04.4269 and 2020 c 139 s 7 are each amended to read as follows:

(1) ((~~This chapter does not apply to~~)) In computing tax there may be deducted from the measure of tax, the value of products or the gross proceeds of sales derived from:

(a) Manufacturing seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; or

(b) Selling manufactured seafood products that remain in a raw, raw frozen, or raw salted state to purchasers who transport in the ordinary course of business the goods out of this state. A person taking ((~~an exemption~~)) a deduction under this subsection (1)(b) must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state.

(2) A person claiming the ((~~exemption~~)) deduction provided in this section must file a complete annual tax performance report with the department under RCW 82.32.534.

(3) Beginning in calendar year 2024, the total amount a person may claim under this section in any calendar year may not exceed $125,000,000. Amounts taxable under this chapter based on the limitation in this subsection are subject to the tax rate specified in RCW 82.04.260(1)(b).

(4) This section expires July 1, ((~~2025~~)) 2035.

**Sec.**  RCW 82.04.260 and 2022 c 16 s 140 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of manufacturing:

(a) Wheat into flour, barley into pearl barley, soybeans into soybean oil, canola into canola oil, canola meal, or canola by-products, or sunflower seeds into sunflower oil; as to such persons the amount of tax with respect to such business is equal to the value of the flour, pearl barley, oil, canola meal, or canola by-product manufactured, multiplied by the rate of 0.138 percent;

(b) Beginning July 1, ((~~2025~~)) 2035, seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; or selling manufactured seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing, to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business is equal to the value of the products manufactured or the gross proceeds derived from such sales, multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(c)(i) Except as provided otherwise in (c)(iii) of this subsection, ((~~from~~)) beginning July 1, ((~~2025~~)) 2035, until January 1, ((~~2036~~)) 2046, dairy products; or selling dairy products that the person has manufactured to purchasers who either transport in the ordinary course of business the goods out of state or purchasers who use such dairy products as an ingredient or component in the manufacturing of a dairy product; as to such persons the tax imposed is equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state or sold to a manufacturer for use as an ingredient or component in the manufacturing of a dairy product.

(ii) For the purposes of this subsection (1)(c), "dairy products" means:

(A) Products, not including any cannabis-infused product, that as of September 20, 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135, including by-products from the manufacturing of the dairy products, such as whey and casein; and

(B) Products comprised of not less than ((~~seventy~~)) 70 percent dairy products that qualify under (c)(ii)(A) of this subsection, measured by weight or volume.

(iii) The preferential tax rate provided to taxpayers under this subsection (1)(c) does not apply to sales of dairy products on or after July 1, 2023, where a dairy product is used by the purchaser as an ingredient or component in the manufacturing in Washington of a dairy product;

(d)(i) Beginning July 1, ((~~2025~~)) 2035, fruits or vegetables by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables, or selling at wholesale fruits or vegetables manufactured by the seller by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables and sold to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business is equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state.

(ii) For purposes of this subsection (1)(d), "fruits" and "vegetables" do not include cannabis, useable cannabis, or cannabis-infused products; and

(e) Wood biomass fuel; as to such persons the amount of tax with respect to the business is equal to the value of wood biomass fuel manufactured, multiplied by the rate of 0.138 percent. For the purposes of this section, "wood biomass fuel" means a liquid or gaseous fuel that is produced from lignocellulosic feedstocks, including wood, forest, or field residue and dedicated energy crops, and that does not include wood treated with chemical preservations such as creosote, pentachlorophenol, or copper-chrome-arsenic.

(2) Upon every person engaging within this state in the business of splitting or processing dried peas; as to such persons the amount of tax with respect to such business is equal to the value of the peas split or processed, multiplied by the rate of 0.138 percent.

(3) Upon every nonprofit corporation and nonprofit association engaging within this state in research and development, as to such corporations and associations, the amount of tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

(4) Upon every person engaging within this state in the business of slaughtering, breaking and/or processing perishable meat products and/or selling the same at wholesale only and not at retail; as to such persons the tax imposed is equal to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent.

(5)(a) Upon every person engaging within this state in the business of acting as a travel agent or tour operator and whose annual taxable amount for the prior calendar year from such business was ((~~two hundred fifty thousand dollars~~)) $250,000 or less; as to such persons the amount of the tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(b) Upon every person engaging within this state in the business of acting as a travel agent or tour operator and whose annual taxable amount for the prior calendar year from such business was more than ((~~two hundred fifty thousand dollars~~)) $250,000; as to such persons the amount of the tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.275 percent through June 30, 2019, and 0.9 percent beginning July 1, 2019.

(6) Upon every person engaging within this state in business as an international steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent; as to such persons the amount of the tax with respect to only international activities is equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(7) Upon every person engaging within this state in the business of stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce; as to such persons the amount of tax with respect to such business is equal to the gross proceeds derived from such activities multiplied by the rate of 0.275 percent. Persons subject to taxation under this subsection are exempt from payment of taxes imposed by chapter 82.16 RCW for that portion of their business subject to taxation under this subsection. Stevedoring and associated activities pertinent to the conduct of goods and commodities in waterborne interstate or foreign commerce are defined as all activities of a labor, service or transportation nature whereby cargo may be loaded or unloaded to or from vessels or barges, passing over, onto or under a wharf, pier, or similar structure; cargo may be moved to a warehouse or similar holding or storage yard or area to await further movement in import or export or may move to a consolidation freight station and be stuffed, unstuffed, containerized, separated or otherwise segregated or aggregated for delivery or loaded on any mode of transportation for delivery to its consignee. Specific activities included in this definition are: Wharfage, handling, loading, unloading, moving of cargo to a convenient place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to plugging and unplugging refrigerator service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

(8)(a) Upon every person engaging within this state in the business of disposing of low-level waste, as defined in RCW 70A.380.010; as to such persons the amount of the tax with respect to such business is equal to the gross income of the business, excluding any fees imposed under chapter 70A.384 RCW, multiplied by the rate of 3.3 percent.

(b) If the gross income of the taxpayer is attributable to activities both within and without this state, the gross income attributable to this state must be determined in accordance with the methods of apportionment required under RCW 82.04.460.

(9) Upon every person engaging within this state as an insurance producer or title insurance agent licensed under chapter 48.17 RCW or a surplus line broker licensed under chapter 48.15 RCW; as to such persons, the amount of the tax with respect to such licensed activities is equal to the gross income of such business multiplied by the rate of 0.484 percent.

(10) Upon every person engaging within this state in business as a hospital, as defined in chapter 70.41 RCW, that is operated as a nonprofit corporation or by the state or any of its political subdivisions, as to such persons, the amount of tax with respect to such activities is equal to the gross income of the business multiplied by the rate of 0.75 percent through June 30, 1995, and 1.5 percent thereafter.

(11)(a) Beginning October 1, 2005, upon every person engaging within this state in the business of manufacturing commercial airplanes, or components of such airplanes, or making sales, at retail or wholesale, of commercial airplanes or components of such airplanes, manufactured by the seller, as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured and the gross proceeds of sales of the product manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of:

(i) 0.4235 percent from October 1, 2005, through June 30, 2007;

(ii) 0.2904 percent beginning July 1, 2007, through March 31, 2020; and

(iii) Beginning April 1, 2020, 0.484 percent, subject to any reduction required under (e) of this subsection (11). The tax rate in this subsection (11)(a)(iii) applies to all business activities described in this subsection (11)(a).

(b) Beginning July 1, 2008, upon every person who is not eligible to report under the provisions of (a) of this subsection (11) and is engaging within this state in the business of manufacturing tooling specifically designed for use in manufacturing commercial airplanes or components of such airplanes, or making sales, at retail or wholesale, of such tooling manufactured by the seller, as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured and the gross proceeds of sales of the product manufactured, or in the case of processors for hire, be equal to the gross income of the business, multiplied by the rate of:

(i) 0.2904 percent through March 31, 2020; and

(ii) Beginning April 1, 2020, the following rates, which are subject to any reduction required under (e) of this subsection (11):

(A) The rate under RCW 82.04.250(1) on the business of making retail sales of tooling specifically designed for use in manufacturing commercial airplanes or components of such airplanes; and

(B) 0.484 percent on all other business activities described in this subsection (11)(b).

(c) For the purposes of this subsection (11), "commercial airplane" and "component" have the same meanings as provided in RCW 82.32.550.

(d)(i) In addition to all other requirements under this title, a person reporting under the tax rate provided in this subsection (11) must file a complete annual tax performance report with the department under RCW 82.32.534. However, this requirement does not apply to persons reporting under the tax rate in (a)(iii) of this subsection (11), so long as that rate remains 0.484 percent, or under any of the tax rates in (b)(ii)(A) and (B) of this subsection (11), so long as those tax rates remain the rate imposed pursuant to RCW 82.04.250(1) and 0.484 percent, respectively.

(ii) Nothing in (d)(i) of this subsection (11) may be construed as affecting the obligation of a person reporting under a tax rate provided in this subsection (11) to file a complete annual tax performance report with the department under RCW 82.32.534: (A) Pursuant to another provision of this title as a result of claiming a tax credit or exemption; or (B) pursuant to (d)(i) of this subsection (11) as a result of claiming the tax rates in (a)(ii) or (b)(i) of this subsection (11) for periods ending before April 1, 2020.

(e)(i) After March 31, 2021, the tax rates under (a)(iii) and (b)(ii) of this subsection (11) must be reduced to 0.357 percent provided the conditions in RCW 82.04.2602 are met. The effective date of the rates authorized under this subsection (11)(e) must occur on the first day of the next calendar quarter that is at least ((~~sixty~~)) 60 days after the department receives the last of the two written notices pursuant to RCW 82.04.2602 (3) and (4).

(ii) Both a significant commercial airplane manufacturer separately and the rest of the aerospace industry as a whole, receiving the rate of 0.357 percent under this subsection (11)(e) are subject to the aerospace apprenticeship utilization rates required under RCW 49.04.220 by April 1, 2026, or five years after the effective date of the 0.357 percent rate authorized under this subsection (11)(e), whichever is later, as determined by the department of labor and industries.

(iii) The provisions of RCW 82.32.805 and 82.32.808 do not apply to this subsection (11)(e).

(f)(i) Except as provided in (f)(ii) of this subsection (11), this subsection (11) does not apply on and after July 1, 2040.

(ii) With respect to the manufacturing of commercial airplanes or making sales, at retail or wholesale, of commercial airplanes, this subsection (11) does not apply on and after July 1st of the year in which the department makes a determination that any final assembly or wing assembly of any version or variant of a commercial airplane that is the basis of a siting of a significant commercial airplane manufacturing program in the state under RCW 82.32.850 has been sited outside the state of Washington. This subsection (11)(f)(ii) only applies to the manufacturing or sale of commercial airplanes that are the basis of a siting of a significant commercial airplane manufacturing program in the state under RCW 82.32.850. This subsection (11)(f)(ii) continues to apply during the time that a person is subject to the tax rate in (a)(iii) of this subsection (11).

(g) For the purposes of this subsection, "a significant commercial airplane manufacturer" means a manufacturer of commercial airplanes with at least ((~~fifty thousand~~)) 50,000 full-time employees in Washington as of January 1, 2021.

(12)(a) Until July 1, 2045, upon every person engaging within this state in the business of extracting timber or extracting for hire timber; as to such persons the amount of tax with respect to the business is, in the case of extractors, equal to the value of products, including by-products, extracted, or in the case of extractors for hire, equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2045.

(b) Until July 1, 2045, upon every person engaging within this state in the business of manufacturing or processing for hire: (i) Timber into timber products or wood products; (ii) timber products into other timber products or wood products; or (iii) products defined in RCW 19.27.570(1); as to such persons the amount of the tax with respect to the business is, in the case of manufacturers, equal to the value of products, including by-products, manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2045.

(c) Until July 1, 2045, upon every person engaging within this state in the business of selling at wholesale: (i) Timber extracted by that person; (ii) timber products manufactured by that person from timber or other timber products; (iii) wood products manufactured by that person from timber or timber products; or (iv) products defined in RCW 19.27.570(1) manufactured by that person; as to such persons the amount of the tax with respect to the business is equal to the gross proceeds of sales of the timber, timber products, wood products, or products defined in RCW 19.27.570(1) multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2045.

(d) Until July 1, 2045, upon every person engaging within this state in the business of selling standing timber; as to such persons the amount of the tax with respect to the business is equal to the gross income of the business multiplied by the rate of 0.2904 percent. For purposes of this subsection (12)(d), "selling standing timber" means the sale of timber apart from the land, where the buyer is required to sever the timber within ((~~thirty~~)) 30 months from the date of the original contract, regardless of the method of payment for the timber and whether title to the timber transfers before, upon, or after severance.

(e) For purposes of this subsection, the following definitions apply:

(i) "Biocomposite surface products" means surface material products containing, by weight or volume, more than ((~~fifty~~)) 50 percent recycled paper and that also use nonpetroleum‑based phenolic resin as a bonding agent.

(ii) "Paper and paper products" means products made of interwoven cellulosic fibers held together largely by hydrogen bonding. "Paper and paper products" includes newsprint; office, printing, fine, and pressure-sensitive papers; paper napkins, towels, and toilet tissue; kraft bag, construction, and other kraft industrial papers; paperboard, liquid packaging containers, containerboard, corrugated, and solid-fiber containers including linerboard and corrugated medium; and related types of cellulosic products containing primarily, by weight or volume, cellulosic materials. "Paper and paper products" does not include books, newspapers, magazines, periodicals, and other printed publications, advertising materials, calendars, and similar types of printed materials.

(iii) "Recycled paper" means paper and paper products having ((~~fifty~~)) 50 percent or more of their fiber content that comes from postconsumer waste. For purposes of this subsection (12)(e)(iii), "postconsumer waste" means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item.

(iv) "Timber" means forest trees, standing or down, on privately or publicly owned land. "Timber" does not include Christmas trees that are cultivated by agricultural methods or short-rotation hardwoods as defined in RCW 84.33.035.

(v) "Timber products" means:

(A) Logs, wood chips, sawdust, wood waste, and similar products obtained wholly from the processing of timber, short-rotation hardwoods as defined in RCW 84.33.035, or both;

(B) Pulp, including market pulp and pulp derived from recovered paper or paper products; and

(C) Recycled paper, but only when used in the manufacture of biocomposite surface products.

(vi) "Wood products" means paper and paper products; dimensional lumber; engineered wood products such as particleboard, oriented strand board, medium density fiberboard, and plywood; wood doors; wood windows; and biocomposite surface products.

(f) Except for small harvesters as defined in RCW 84.33.035, a person reporting under the tax rate provided in this subsection (12) must file a complete annual tax performance report with the department under RCW 82.32.534.

(g) Nothing in this subsection (12) may be construed to affect the taxation of any activity defined as a retail sale in RCW 82.04.050(2) (b) or (c), defined as a wholesale sale in RCW 82.04.060(2), or taxed under RCW 82.04.280(1)(g).

(13) Upon every person engaging within this state in inspecting, testing, labeling, and storing canned salmon owned by another person, as to such persons, the amount of tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

(14)(a) Upon every person engaging within this state in the business of printing a newspaper, publishing a newspaper, or both, the amount of tax on such business is equal to the gross income of the business multiplied by the rate of 0.35 percent until July 1, 2024, and 0.484 percent thereafter.

(b) A person reporting under the tax rate provided in this subsection (14) must file a complete annual tax performance report with the department under RCW 82.32.534."

**SB 5277** - S AMD **258**

By Senator Hasegawa

**NOT ADOPTED 03/31/2023**

On page 1, line 2 of the title, after "processors;" strike the remainder of the title and insert "amending RCW 82.04.4268, 82.04.4266, 82.04.4269, and 82.04.260; creating a new section; and providing expiration dates."

EFFECT: Changes the dairy, fruit and vegetable, and seafood processing B&O tax exemptions to deductions. Limits the total amount a business may deduct each year to $125 million. Specifies that the preferential tax rate of 0.138 percent applies to amounts subject to B&O tax due to the deduction limit.