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SENATE BILL 5257

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By Senators Holmquist, Kohl-Welles, Hewitt, Franklin, Kline, King, and Keiser; by request of Employment Security Department

Read first time 01/19/09. Referred to Committee on Labor, Commerce & Consumer Protection.

1 AN ACT Relating to correcting statutory references in the  
2 calculation of predecessor and successor employer contribution rates;  
3 amending RCW 50.29.062 and 50.29.063; and creating a new section.

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

5 **Sec. 1.** RCW 50.29.062 and 2006 c 47 s 2 are each amended to read  
6 as follows:

7 Except as provided in RCW 50.29.063, predecessor and successor  
8 employer contribution rates shall be computed in the following manner:

9 (1) If the successor is an employer, as defined in RCW 50.04.080,  
10 at the time of the transfer of a business, the following applies:

11 (a) The successor's contribution rate shall remain unchanged for  
12 the remainder of the rate year in which the transfer occurs; and

13 (b) Beginning January 1st following the transfer, the successor's  
14 contribution rate for each rate year shall be based on a combination of  
15 the following:

16 (i) The successor's experience with payrolls and benefits; and

17 (ii) Any experience assigned to the predecessor involved in the  
18 transfer. If only a portion of the business was transferred, then the

1 experience attributable to the acquired portion is assigned to the  
2 successor.

3 (2) If the successor is not an employer at the time of the  
4 transfer, the following applies:

5 (a) For transfers before January 1, 2005:

6 (i) Except as provided in (ii) of this subsection (2)(a), the  
7 successor shall pay contributions at the lowest rate determined under  
8 either of the following:

9 (A) The contribution rate of the rate class assigned to the  
10 predecessor employer at the time of the transfer for the remainder of  
11 that rate year. Any experience relating to the assignment of that rate  
12 class attributable to the predecessor is transferred to the successor.  
13 Beginning with the January 1st following the transfer, the successor's  
14 contribution rate shall be based on a combination of the transferred  
15 experience of the acquired business and the successor's experience  
16 after the transfer; or

17 (B) The contribution rate equal to the average industry rate as  
18 determined by the commissioner, but not less than one percent, and  
19 continuing until the successor qualifies for a different rate in its  
20 own right. Assignment of employers by the commissioner to industrial  
21 classification, for purposes of this subsection, must be in accordance  
22 with established classification practices found in the North American  
23 industry classification system issued by the federal office of  
24 management and budget to the fourth digit provided in the North  
25 American industry classification system.

26 (ii) If the successor simultaneously acquires the business or a  
27 portion of the business of two or more employers in different rate  
28 classes, its rate, from the date the transfer occurred until the end of  
29 that rate year and until it qualifies in its own right for a new rate,  
30 shall be the rate of the highest rate class applicable at the time of  
31 the acquisition to any predecessor employer who is a party to the  
32 acquisition, but not less than one percent.

33 (b) For transfers on or after January 1, 2005:

34 (i) Except as provided in (ii) and (iii) of this subsection (2)(b),  
35 the successor shall pay contributions:

36 (A) At the contribution rate assigned to the predecessor employer  
37 at the time of the transfer for the remainder of that rate year. Any

1 experience attributable to the predecessor relating to the assignment  
2 of the predecessor's rate class is transferred to the successor.

3 (B) Beginning January 1st following the transfer, the successor's  
4 contribution rate for each rate year shall be based on an array  
5 calculation factor rate that is a combination of the following: The  
6 successor's experience with payrolls and benefits; and any experience  
7 assigned to the predecessor involved in the transfer. If only a  
8 portion of the business was transferred, then the experience  
9 attributable to the acquired portion is assigned to the successor if  
10 qualified under RCW 50.29.010(6) by including the transferred  
11 experience. If not qualified under RCW 50.29.010(6), the contribution  
12 rate shall equal the sum of the rates determined by the commissioner  
13 under RCW 50.29.025(2) (~~((c)(ii) and~~) (d)(ii)(~~(7)~~) and 50.29.041, if  
14 applicable, and continuing until the successor qualifies for a  
15 different rate, including the transferred experience.

16 (ii) If there is a substantial continuity of ownership, control, or  
17 management by the successor of the business of the predecessor, the  
18 successor shall pay contributions at the contribution rate determined  
19 for the predecessor employer at the time of the transfer for the  
20 remainder of that rate year. Any experience attributable to the  
21 predecessor relating to the assignment of the predecessor's rate class  
22 is transferred to the successor. Beginning January 1st following the  
23 transfer, the successor's array calculation factor rate shall be based  
24 on a combination of the transferred experience of the acquired business  
25 and the successor's experience after the transfer.

26 (iii) If the successor simultaneously acquires the business or a  
27 portion of the business of two or more employers with different  
28 contribution rates, the successor's rate, from the date the transfer  
29 occurred until the end of that rate year and until it qualifies in its  
30 own right for a new rate, shall be the sum of the rates determined by  
31 the commissioner under RCW 50.29.025(2) (a) and (b), and 50.29.041,  
32 applicable at the time of the acquisition, to the predecessor employer  
33 who, among the parties to the acquisition, had the largest total  
34 payroll in the completed calendar quarter immediately preceding the  
35 date of transfer, but not less than the sum of the rates determined by  
36 the commissioner under RCW 50.29.025(2) (~~((c)(ii) and~~) (d)(ii)(~~(7)~~)  
37 and 50.29.041, if applicable.

38 (3) With respect to predecessor employers:

1 (a) The contribution rate on any payroll retained by a predecessor  
2 employer shall remain unchanged for the remainder of the rate year in  
3 which the transfer occurs.

4 (b) In all cases, beginning January 1st following the transfer, the  
5 predecessor's contribution rate or the predecessor's array calculation  
6 factor for each rate year shall be based on its experience with  
7 payrolls and benefits as of the regular computation date for that rate  
8 year excluding the experience of the transferred business or  
9 transferred portion of business as that experience has transferred to  
10 the successor: PROVIDED, That if all of the predecessor's business is  
11 transferred to a successor or successors, the predecessor shall not be  
12 a qualified employer until it satisfies the requirements of a  
13 "qualified employer" as set forth in RCW 50.29.010.

14 (4) For purposes of this section, "transfer of a business" means  
15 the same as RCW 50.29.063(4)(c).

16 **Sec. 2.** RCW 50.29.063 and 2007 c 327 s 3 are each amended to read  
17 as follows:

18 (1) If it is found that a significant purpose of the transfer of a  
19 business was to obtain a reduced array calculation factor rate, then  
20 the following applies:

21 (a) If the successor was an employer at the time of the transfer,  
22 then the experience rating accounts of the employers involved shall be  
23 combined into a single account and the employers assigned the higher of  
24 the predecessor or successor array calculation factor rate to take  
25 effect as of the date of the transfer.

26 (b) If the successor was not an employer at the time of the  
27 transfer, then the experience rating account of the acquired business  
28 must not be transferred and, instead, the sum of the rate determined by  
29 the commissioner under RCW 50.29.025(2) (~~((c)(ii) and~~) (d)(ii)(~~(7)~~)  
30 and 50.29.041, if applicable, shall be assigned.

31 (2) If any part of a delinquency for which an assessment is made  
32 under this title is due to an intent to knowingly evade the  
33 successorship provisions of RCW 50.29.062 and this section, then with  
34 respect to the employer, and to any business found to be knowingly  
35 promoting the evasion of such provisions:

36 (a) The commissioner shall, for the rate year in which the  
37 commissioner makes the determination under this subsection and for each

1 of the three consecutive rate years following that rate year, assign to  
2 the employer or business the total rate, which is the sum of the  
3 recalculated array calculation factor rate and a civil penalty  
4 assessment rate, calculated as follows:

5 (i) Recalculate the array calculation factor rate as the array  
6 calculation factor rate that should have applied to the employer or  
7 business under RCW 50.29.025 and 50.29.062; and

8 (ii) Calculate a civil penalty assessment rate in an amount that,  
9 when added to the array calculation factor rate determined under (a)(i)  
10 of this subsection for the applicable rate year, results in a total  
11 rate equal to the maximum array calculation factor rate under RCW  
12 50.29.025 plus two percent, which total rate is not limited by any  
13 maximum array calculation factor rate established in RCW  
14 50.29.025(2)(b)(ii);

15 (b) The employer or business may be prosecuted under the penalties  
16 prescribed in RCW 50.36.020; and

17 (c) The employer or business must pay for the employment security  
18 department's reasonable expenses of auditing the employer's or  
19 business's books and collecting the civil penalty assessment.

20 (3) If the person knowingly evading the successorship provisions,  
21 or knowingly attempting to evade these provisions, or knowingly  
22 promoting the evasion of these provisions, is not an employer, the  
23 person is subject to a civil penalty assessment of five thousand  
24 dollars per occurrence. In addition, the person is subject to the  
25 penalties prescribed in RCW 50.36.020 as if the person were an  
26 employer. The person must also pay for the employment security  
27 department's reasonable expenses of auditing his or her books and  
28 collecting the civil penalty assessment.

29 (4) For purposes of this section:

30 (a) "Knowingly" means having actual knowledge of or acting with  
31 deliberate ignorance or reckless disregard for the prohibition involved  
32 and includes, but is not limited to, intent to evade,  
33 misrepresentation, or willful nondisclosure.

34 (b) "Person" means and includes an individual, a trust, estate,  
35 partnership, association, company, or corporation.

36 (c) "Transfer of a business" includes the transfer or acquisition  
37 of substantially all or a portion of the operating assets, which may  
38 include the employer's workforce.

1 (5) Any decision to assess a penalty under this section shall be  
2 made by the chief administrative officer of the tax branch or his or  
3 her designee.

4 (6) Nothing in this section shall be construed to deny an employer  
5 the right to appeal the assessment of a penalty in the manner provided  
6 in RCW 50.32.030.

7 (7) The commissioner shall engage in prevention, detection, and  
8 collection activities related to evasion of the successorship  
9 provisions of RCW 50.29.062 and this section, and establish procedures  
10 to enforce this section.

11 NEW SECTION. **Sec. 3.** If any part of this act is found to be in  
12 conflict with federal requirements that are a prescribed condition to  
13 the allocation of federal funds to the state or the eligibility of  
14 employers in this state for federal unemployment tax credits, the  
15 conflicting part of this act is inoperative solely to the extent of the  
16 conflict, and the finding or determination does not affect the  
17 operation of the remainder of this act. Rules adopted under this act  
18 must meet federal requirements that are a necessary condition to the  
19 receipt of federal funds by the state or the granting of federal  
20 unemployment tax credits to employers in this state.

21 NEW SECTION. **Sec. 4.** If any provision of this act or its  
22 application to any person or circumstance is held invalid, the  
23 remainder of the act or the application of the provision to other  
24 persons or circumstances is not affected.

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