
ENGROSSED SENATE BILL 6016

State of Washington

66th Legislature

2019 Regular Session

By Senators Lias, Rolfes, and Hunt

Read first time 04/17/19. Referred to Committee on Ways & Means.

1 AN ACT Relating to the taxation of international investment
2 management companies; amending RCW 82.04.290, 82.04.293, 82.08.207,
3 and 82.12.207; creating new sections; providing expiration dates;
4 providing an effective date; and declaring an emergency.

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

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

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

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

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

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

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

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

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

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

37 For purposes of RCW 82.04.290:

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

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

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

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

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

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

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

16 ~~(a))~~;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (c) "Collective investment fund" includes:

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

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

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

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

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

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

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

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

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

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

26 NEW SECTION. Sec. 4. (1) The legislature finds that a strong
27 financial cluster is critical to the economic health of Washington
28 state. The legislature further finds that anchor institutions are key
29 to growing a strong financial cluster, including international
30 investment management firms. Therefore, the legislature finds that
31 maintaining a competitive tax policy in Washington state enables the
32 state to maintain its anchor investment management firms.

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

1 standard financial information purchased by investment management
2 companies.

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

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

18 (2) The legislature categorizes these tax preferences as ones
19 intended to improve industry competitiveness, as indicated in RCW
20 82.32.808(2)(b) and to reduce structural inefficiencies in the tax
21 structure as indicated in RCW 82.32.808(2)(d).

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

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

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

37 (1) The tax imposed by RCW 82.08.020 does not apply to sales of
38 standard financial information to qualifying international investment

1 management companies or persons affiliated with a qualifying
2 international investment management company. The exemption provided
3 in this section applies regardless of whether the standard financial
4 information is provided to the buyer in a tangible format or on a
5 tangible storage medium or as a digital product transferred
6 electronically.

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

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

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

33 (a) ~~((i))~~ "Qualifying international investment management
34 company" means a person ~~(÷~~

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

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

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

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

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

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

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

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

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

21 (1) The tax imposed by RCW 82.12.020 does not apply to the use of
22 standard financial information by qualifying international investment
23 management companies or persons affiliated, as defined in RCW
24 82.04.293, with a qualifying international investment management
25 company. The exemption provided in this section applies regardless of
26 whether the standard financial information is in a tangible format or
27 resides on a tangible storage medium or is a digital product
28 transferred electronically to the qualifying international investment
29 management company.

30 (2) The definitions, conditions, and requirements in RCW
31 82.08.207 apply to this section.

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

33 NEW SECTION. **Sec. 8.** If any provision of this act or its
34 application to any person or circumstance is held invalid, the
35 remainder of the act or the application of the provision to other
36 persons or circumstances is not affected.

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

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

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