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**SENATE BILL 5281**

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

**By** Senators Rolfes, Saldaña, Nguyen, and Wilson, C.

AN ACT Relating to modifying the business and occupation tax exemption for certain fruit and vegetable businesses; and amending RCW 82.04.4266 and 82.32.534.

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

**Sec.**  RCW 82.04.4266 and 2020 c 139 s 5 are each amended to read as follows:

(1) This chapter does not apply to 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 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 marijuana, useable marijuana, or marijuana-infused products.

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

(4)(a) A person claiming the exemption provided in this section must annually disclose any adjudicated action arising from any legal judgments, lawsuits, proceedings, or charges, against the applicant, that are related to any employment, labor, or civil rights laws of any jurisdiction that have occurred within the two years prior to the present year's filing deadline. Such employment, labor, or civil rights laws include:

(i) Wage and hour laws as provided in RCW 49.12.020 and 49.12.150;

(ii) Breaks and schedules rules as set by the department of labor and industries;

(iii) Human rights or discrimination laws as provided in RCW 49.60.030;

(iv) Sexual harassment laws as provided in chapter 49.60 RCW;

(v) Workplace pregnancy accommodations as provided in RCW 43.10.005;

(vi) Health and safety laws as provided in chapter 49.17 RCW; or

(vii) Laws, rules, or regulations related to wrongful termination or unfair labor practices.

(b) The disclosure required in (a) of this subsection must be made on forms prescribed by the department and must be submitted annually by a date set by the department. The department must set the first due date no later than December 31, 2021.

(c) The department must provide the disclosure required in (a) of this subsection to the department of labor and industries, and the department of labor and industries must subsequently verify the disclosed information against its own records. Organizations representing workers, including labor unions and worker centers, may submit reports of applicable adjudicated actions against a person required to make a disclosure in (a) of this subsection, to the department of labor and industries. The department of labor and industries must notify the department of the accuracy of each disclosure upon completing its verification.

(d) A person is not eligible for the exemption provided in subsection (1) of this section for a given calendar year if the person has been found to have violated any employment, labor, or civil rights laws of any jurisdiction in the two years prior to the present year's filing deadline of the disclosure required in (a) of this subsection.

(e) A person found to be ineligible for the exemption as provided in subsection (1) of this section may in a later year claim a refund equal to the value of the exemption for the prior unclaimed tax year, if the adjudicated action, as disclosed in (a) of this subsection, is overturned on an appeal and the person submits to the department evidence of a favorable final judgment regarding the appealed compliance matter, and the department, after review, notifies the person of his or her eligibility to claim the value of the exemption for the prior unclaimed tax year. The conditions of RCW 82.32.060 apply to this subsection (4)(e).

(5) This section expires July 1, 2025.

**Sec.**  RCW 82.32.534 and 2017 c 135 s 1 are each amended to read as follows:

(1)(a)(i) Beginning in calendar year 2018, every person claiming a tax preference that requires an annual tax performance report under this section must file a complete annual report with the department. The report is due by May 31st of the year following any calendar year in which a person becomes eligible to claim the tax preference that requires a report under this section.

(ii) If the tax preference is a deferral of tax, the first annual tax performance report must be filed by May 31st of the calendar year following the calendar year in which the investment project is certified by the department as operationally complete, and an annual tax performance report must be filed by May 31st of each of the seven succeeding calendar years.

(iii) The department may extend the due date for timely filing of annual reports under this section as provided in RCW 82.32.590.

(b) The report must include information detailing employment and wages for employment positions in Washington for the year that the tax preference was claimed. However, persons engaged in manufacturing commercial airplanes or components of such airplanes may report employment, wage, and benefit information per job at the manufacturing site for the year that the tax preference was claimed. The report must not include names of employees. The report must also detail employment by the total number of full-time, part-time, and temporary positions for the year that the tax preference was claimed. In lieu of reporting employment and wage data required under this subsection, taxpayers may instead opt to allow the employment security department to release the same employment and wage information from unemployment insurance records to the department and the joint legislative audit and review committee. This option is intended to reduce the reporting burden for taxpayers, and each taxpayer electing to use this option must affirm that election in accordance with procedures approved by the employment security department.

(c) Persons receiving the benefit of the tax preference provided by RCW 82.16.0421 or claiming any of the tax preferences provided by RCW 82.04.2909, 82.04.4481, 82.08.805, 82.12.805, or 82.12.022(5) must indicate on the annual report the quantity of product produced in this state during the time period covered by the report.

(d) If a person filing a report under this section did not file a report with the department in the previous calendar year, the report filed under this section must also include employment, wage, and benefit information for the calendar year immediately preceding the calendar year for which a tax preference was claimed.

(2)(a) As part of the annual report, the department and the joint legislative audit and review committee may request additional information necessary to measure the results of, or determine eligibility for, the tax preference.

(b) The report must include the amount of the tax preference claimed for the calendar year covered by the report. For a person that claimed an exemption provided in RCW 82.08.025651 or 82.12.025651, the report must include the amount of tax exempted under those sections in the prior calendar year for each general area or category of research and development for which exempt machinery and equipment and labor and services were acquired in the prior calendar year.

(3) Other than information requested under subsection (2)(a) of this section, the information contained in an annual report filed under this section is not subject to the confidentiality provisions of RCW 82.32.330 and ((~~may be disclosed to the public~~)) must be made available for the public to inspect, and the department will make all such information publicly available upon request.

(4)(a) Except as otherwise provided by law, if a person claims a tax preference that requires an annual report under this section but fails to submit a complete report by the due date or any extension under RCW 82.32.590, the department must declare:

(i) Thirty-five percent of the amount of the tax preference claimed for the previous calendar year to be immediately due and payable;

(ii) An additional fifteen percent of the amount of the tax preference claimed for the previous calendar year to be immediately due and payable if the person has previously been assessed under this subsection (4) for failure to submit a report under this section for the same tax preference; and

(iii) If the tax preference is a deferral of tax, the amount immediately due under this subsection is twelve and one-half percent of the deferred tax. If the economic benefits of the deferral are passed to a lessee, the lessee is responsible for payment to the extent the lessee has received the economic benefit.

(b) The department may not assess interest or penalties on amounts due under this subsection.

(5) The department must use the information from this section to prepare summary descriptive statistics by category. No fewer than three taxpayers may be included in any category. The department must report these statistics to the legislature each year by December 31st.

(6) For the purposes of this section:

(a) "Person" has the meaning provided in RCW 82.04.030 and also includes the state and its departments and institutions.

(b) "Tax preference" has the meaning provided in RCW 43.136.021 and includes only the tax preferences requiring a report under this section.

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