S-1359.2

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**SECOND SUBSTITUTE SENATE BILL 5396**

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

**By** Senate Ways & Means (originally sponsored by Senators Lovelett, Saldaña, Conway, Das, Kuderer, Nguyen, and Wilson, C.)

AN ACT Relating to expanding the sales and use tax exemption for farmworker housing; amending RCW 82.08.02745 and 82.12.02685; creating a new section; providing an effective date; and providing expiration dates.

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

**Sec.**  RCW 82.08.02745 and 2014 c 140 s 18 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to charges made for labor and services rendered by any person in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures, in which at least 50 percent of housing units in the development are used as ((~~agricultural employee~~)) farmworker housing, or to sales of tangible personal property that becomes an ingredient or component of the buildings or other structures during the course of the constructing, repairing, decorating, or improving the buildings or other structures. The exemption is provided for all housing units in the development and is available only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department by rule.

(2) The exemption provided in this section for ((~~agricultural employee~~)) farmworker housing provided ((~~to~~)) on a year-round ((~~employees of the agricultural employer,~~)) basis only applies if that housing is built to the current building code for single-family or multifamily dwellings according to the state building code, chapter 19.27 RCW.

(3) Any ((~~agricultural employee~~)) farmworker housing built under this section must be used according to this section for at least five consecutive years from the date the housing is approved for occupancy, or the full amount of tax otherwise due is immediately due and payable together with interest, but not penalties, from the date the housing is approved for occupancy until the date of payment. If at any time ((~~agricultural employee~~)) farmworker housing ((~~that is not located on agricultural land~~)) ceases to be used in the manner specified in subsection (2) of this section, the full amount of tax otherwise due is immediately due and payable with interest, but not penalties, from the date the housing ceases to be used as ((~~agricultural employee~~)) farmworker housing until the date of payment.

(4) The exemption provided in this section does not apply to housing built for the occupancy of an employer, family members of an employer, or persons owning stock or shares in a farm partnership or corporation business. The exemption provided in this section does not apply to housing built exclusively for workers in the United States on an H-2A visa under the United States citizenship and immigration services.

(5) If during any agricultural season in the qualifying five years under subsection (3) of this section the housing is occupied by a farmworker who does not have an H-2A visa, then the housing will be considered not to be exclusively built for workers on an H-2A visa.

(6) For purposes of this section and RCW 82.12.02685, the following definitions apply unless the context clearly requires otherwise.

(a) ((~~"Agricultural employee" or "employee" has the same meaning as given in RCW 19.30.010;~~

~~(b)~~)) "Agricultural employer" or "employer" has the same meaning as given in RCW 19.30.010((~~; and~~

~~(c) "Agricultural employee~~)), and includes any employer engaged in aquaculture as defined in RCW 15.85.020.

(b) "Farm work" means services relating to:

(i) Cultivating the soil, raising or harvesting, or catching, netting, handling, planting, drying, packing, grading, storing, or preserving in its unmanufactured state any agricultural or aquacultural commodity;

(ii) Delivering to storage, market, or a carrier for transportation to market or to processing any agricultural or aquacultural commodity; or

(iii) Working in a processing plant and directly handling agricultural or aquacultural product.

(c) "Farmworker" means a single person, or all members of a household, whether such persons are related or not, if the combined household income earned from farm work is at least $3,000 per calendar year.

(d) "Farmworker housing" means all facilities provided by an agricultural employer, housing authority, local government, state or federal agency, nonprofit community or neighborhood-based organization that is exempt from income tax under section 501(c) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)), or for-profit provider of housing for housing ((~~agricultural employees~~)) farmworkers on a year-round or seasonal basis, including bathing, food handling, hand washing, laundry, and toilet facilities, single-family and multifamily dwelling units and dormitories, and includes labor camps under RCW 70.114A.110. ((~~"Agricultural employee~~))

(i) "Farmworker housing" includes:

(A) Housing occupied by a household with at least one member who is a farmworker; and

(B) Housing occupied by a farmworker on a seasonal basis, where the housing is not used as farmworker housing for a portion of the year, such as when it is rented to the general public when not being used for farmworker housing.

(ii) "Farmworker housing" does not include:

((~~(i)~~)) (A) Housing regularly provided on a commercial basis to the general public;

((~~(ii)~~)) (B) Housing provided by a housing authority unless at least eighty percent of the occupants are ((~~agricultural employees~~)) farmworkers whose adjusted income is less than fifty percent of median family income, adjusted for household size, for the county where the housing is provided; and

((~~(iii)~~)) (C) Housing provided to ((~~agricultural employees~~)) farmworkers providing services related to the growing, raising, or producing of marijuana.

(7) This section expires January 1, 2032.

**Sec.**  RCW 82.12.02685 and 1997 c 438 s 2 are each amended to read as follows:

(1) The provisions of this chapter shall not apply in respect to the use of tangible personal property that becomes an ingredient or component of buildings or other structures, in which at least 50 percent of housing units are used as ((~~agricultural employee~~)) farmworker housing, during the course of constructing, repairing, decorating, or improving the buildings or other structures by any person.

(2) The exemption provided in this section for ((~~agricultural employee~~)) farmworker housing provided ((~~to~~)) on a year-round ((~~employees of the agricultural employer,~~)) basis only applies if that housing is built to the current building code for single-family or multifamily dwellings according to the state building code, chapter 19.27 RCW.

(3) Any ((~~agricultural employee~~)) farmworker housing built under this section shall be used according to this section for at least five consecutive years from the date the housing is approved for occupancy, or the full amount of a tax otherwise due shall be immediately due and payable together with interest, but not penalties, from the date the housing is approved for occupancy until the date of payment. If at any time ((~~agricultural employee~~)) farmworker housing ((~~that is not located on agricultural land~~)) ceases to be used in the manner specified in subsection (2) of this section, the full amount of tax otherwise due shall be immediately due and payable with interest, but not penalties, from the date the housing ceases to be used as ((~~agricultural employee~~)) farmworker housing until the date of payment.

(4) The exemption provided in this section shall not apply to housing built for the occupancy of an employer, family members of an employer, or persons owning stock or shares in a farm partnership or corporation business.

(5) If during any agricultural season in the qualifying five years under subsection (3) of this section the housing is occupied by a farmworker who does not have an H-2A visa, then the housing will be considered not to be exclusively built for workers on an H-2A visa.

(6) The definitions in RCW 82.08.02745((~~(5)~~)) (6) apply to this section.

(7) This section expires January 1, 2032.

NEW SECTION. **Sec.**  (1) This section is the tax preference performance statement for the tax preferences contained in sections 1 and 2, chapter . . ., Laws of 2021 (sections 1 and 2 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 to be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes these tax preferences as ones intended to induce certain designated behavior by taxpayers as indicated in RCW 82.32.808(2)(a).

(3) It is the legislature's specific public policy objective to increase the supply of farmworker housing.

(4) If a review finds that new farmworker housing is developed utilizing these preferences, then the legislature intends to extend the expiration date of these tax preferences.

(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to any data collected by the state.

NEW SECTION. **Sec.**  This act takes effect October 1, 2021.

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