
HOUSE BILL 1815

State of Washington **68th Legislature** **2023 Regular Session**

By Representatives Berg, Stokesbary, Fitzgibbon, and Ormsby

Read first time 02/10/23. Referred to Committee on Finance.

1 AN ACT Relating to creating a business and occupation tax
2 deduction and increasing the tax rate for persons conducting payment
3 card processing activities; amending RCW 82.04.290 and 82.04.29004;
4 reenacting and amending RCW 82.04.299; adding a new section to
5 chapter 82.04 RCW; creating new sections; and providing an effective
6 date.

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

8 NEW SECTION. **Sec. 1.** The unique nature of payment system
9 arrangements distinguishes payment card processing companies from
10 other taxpayers. Due to the unique nature of payment card processing
11 companies' activities related to interchange fees and network fees,
12 the legislature intends to address the business and occupation
13 taxation of payment card processing companies' activities on a
14 prospective and retroactive basis through the deduction and rate
15 authorized in this act.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.04
17 RCW to read as follows:

18 (1) In computing the tax under RCW 82.04.290(4), a payment card
19 processing company may deduct from the measure of the tax amounts

1 received by persons other than the payment card processing company in
2 the following forms:

3 (a) Interchange fees; and

4 (b) Network fees.

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

7 (a) "Interchange fee" means a fee set by a payment network, or by
8 agreement between an issuing bank and a merchant or merchant bank,
9 that an issuing bank retains from the amounts settled to the merchant
10 as compensation for the services the issuing bank provides in issuing
11 a credit, debit, or prepaid card to a cardholder, advancing proceeds
12 to settle a credit, debit, or prepaid card transaction, and incurring
13 a portion of the risks relating to the transaction.

14 (b) "Issuing bank" means a bank that issues payment network-
15 branded credit, debit, or prepaid cards to cardholders.

16 (c) "Merchant bank" means a bank that is a participant in payment
17 networks that contracts, directly or indirectly, with a merchant,
18 enabling that merchant to accept a payment network-branded credit,
19 debit, or prepaid card and receive cash proceeds from the sale.

20 (d) "Network fees" means fees a payment network charges and
21 receives as compensation for its services, including for facilitating
22 the payment of a credit, debit, or prepaid card transaction from
23 cardholders to a merchant through its network.

24 (e) "Payment card processing company" means a company, including
25 a merchant bank, that acquires, either directly or indirectly,
26 credit, debit, or prepaid card transactions from merchants,
27 facilitates the submission of those transactions to payment networks,
28 and facilitates the payment of proceeds of those transactions to
29 merchants.

30 (f) "Payment network" means an operator of a system or network
31 connecting one or more issuing banks to one or more merchant banks
32 that facilitates financial transactions through the use of a credit,
33 debit, or prepaid product.

34 **Sec. 3.** RCW 82.04.290 and 2020 c 2 s 3 are each amended to read
35 as follows:

36 (1) Upon every person engaging within this state in the business
37 of providing qualifying international investment management services,
38 as to such persons, the amount of tax with respect to such business

1 is equal to the gross income or gross proceeds of sales of the
2 business multiplied by a rate of 0.275 percent.

3 (2) (a) Upon every person engaging within this state in any
4 business activity other than or in addition to an activity taxed
5 explicitly under another section in this chapter or subsection (1) or
6 (3) of this section; as to such persons the amount of tax on account
7 of such activities is equal to the gross income of the business
8 multiplied by the rate of:

9 (i) 1.75 percent; or

10 (ii) 1.5 percent for:

11 (A) Any person subject to the surcharge imposed under RCW
12 82.04.299;

13 (B) Any person whose gross income of the business subject to the
14 tax imposed under this subsection (2), for the immediately preceding
15 calendar year, was less than one million dollars, unless (I) the
16 person is affiliated with one or more other persons, and (II) the
17 aggregate gross income of the business subject to the tax imposed
18 under this subsection (2) for all affiliated persons was greater than
19 or equal to one million dollars for the immediately preceding
20 calendar year; and

21 (C) Hospitals as defined in RCW 70.41.020, including any hospital
22 that comes within the scope of chapter 71.12 RCW if the hospital is
23 also licensed under chapter 70.41 RCW. This subsection (2) (a) (ii) (C)
24 must not be construed as modifying RCW 82.04.260 (10).

25 (b) This subsection (2) includes, among others, and without
26 limiting the scope hereof (whether or not title to materials used in
27 the performance of such business passes to another by accession,
28 confusion or other than by outright sale), persons engaged in the
29 business of rendering any type of service which does not constitute a
30 "sale at retail" or a "sale at wholesale." The value of advertising,
31 demonstration, and promotional supplies and materials furnished to an
32 agent by his or her principal or supplier to be used for
33 informational, educational, and promotional purposes is not
34 considered a part of the agent's remuneration or commission and is
35 not subject to taxation under this section.

36 (c) 14.3 percent of the revenues collected under (a) (i) of this
37 subsection (2) must be deposited into the workforce education
38 investment account created in RCW 43.79.195.

39 (d) (i) To aid in the effective administration of this subsection
40 (2), the department may require a person claiming to be subject to

1 the 1.5 percent tax rate under (a)(ii)(B) of this subsection (2) to
2 identify all of the person's affiliates, including their department
3 tax registration number or unified business identifier number, as may
4 be applicable, or to certify that the person is not affiliated with
5 any other person. Requests under this subsection (2)(d)(i) must be in
6 writing and may be made electronically.

7 (ii) If the department establishes, by clear, cogent, and
8 convincing evidence, that a person, with intent to evade the
9 additional taxes due under the 1.75 percent tax rate in (a)(i) of
10 this subsection (2), failed to provide the department with complete
11 and accurate information in response to a written request under
12 (d)(i) of this subsection (2) within thirty days of such request, the
13 person is ineligible for the 1.5 percent tax rate in (a)(ii) of this
14 subsection (2) for the entire current calendar year and the following
15 four calendar years. However, the department must waive the
16 provisions of this subsection (2)(d)(ii) for any tax reporting period
17 that the person is otherwise eligible for the 1.5 percent tax rate in
18 (a)(ii) of this subsection (2) if (A) the department has not
19 previously determined that the person failed to fully comply with
20 (d)(i) of this subsection (2), and (B) within thirty days of the
21 notice of additional tax due as a result of the person's failure to
22 fully comply with (d)(i) of this subsection (2) the department
23 determines that the person has come into full compliance with (d)(i)
24 of this subsection (2). This subsection (2)(d) applies only with
25 respect to persons claiming entitlement to the 1.5 percent tax rate
26 solely by reason of (a)(ii)(B) of this subsection (2).

27 (e) For the purposes of (a)(ii)(B) of this subsection (2), if a
28 taxpayer is subject to the reconciliation provisions of RCW
29 82.04.462(4), and calculates gross income of the business subject to
30 the tax imposed under this subsection (2) for the immediately
31 preceding calendar year, or aggregate gross income of the business
32 subject to the tax imposed under this subsection (2) for the
33 immediately preceding calendar year for all affiliated persons, based
34 on incomplete information, the taxpayer must correct the reporting
35 for the current calendar year when complete information for the
36 immediately preceding calendar year is available.

37 (f) For purposes of this subsection (2), the definitions in this
38 subsection (2)(f) apply:

1 (i) "Affiliate" means a person that directly or indirectly,
2 through one or more intermediaries, controls, is controlled by, or is
3 under common control with another person; and

4 (ii) "Control" means the possession, directly or indirectly, of
5 more than eighty percent of the power to direct or cause the
6 direction of the management and policies of a person, whether through
7 the ownership of voting shares, by contract, or otherwise.

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

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

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

18 (4) (a) Upon every person engaging within this state as a payment
19 card processing company as defined in section 2 of this act, as to
20 such persons, the amount of tax with respect to its payment card
21 processing activities is equal to the gross income of the business
22 from such activities multiplied by the rate of 3.0 percent.

23 (b) The gross income of the business of a payment card processing
24 company with respect to its payment card processing activities is the
25 merchant discount of those merchants with which the payment card
26 processing company has directly or indirectly contracted to perform
27 payment card processing activities.

28 (c) For payment card processing activities in which more than one
29 payment card processing company receives a portion of the merchant
30 discount, each company is required to include in its gross income the
31 portion of the merchant discount it is entitled to retain.

32 (d) For purposes of this subsection (4), the following
33 definitions apply:

34 (i) "Merchant discount" means the aggregate fee, or negotiated
35 discount, incurred by a merchant for the processing of payment card
36 transactions under its contract with a payment card processing
37 company when it accepts a payment network-branded credit, debit, or
38 prepaid card in a sale transaction.

39 (ii) "Payment card processing activities" means acquiring, either
40 directly or indirectly, credit, debit, or prepaid card transactions

1 from merchants, facilitating the submission of those transactions to
2 payment networks, and facilitating the payment of proceeds of those
3 transactions to merchants.

4 **Sec. 4.** RCW 82.04.29004 and 2019 c 420 s 2 are each amended to
5 read as follows:

6 (1) Beginning January 1, 2020, in addition to any other taxes
7 imposed under this chapter, an additional tax is imposed on specified
8 financial institutions. The additional tax is equal to the gross
9 income of the business taxable under RCW 82.04.290 (2) and (4)
10 multiplied by the rate of 1.2 percent.

11 (2) The definitions in this subsection apply throughout this
12 section unless the context clearly requires otherwise.

13 (a) "Affiliated" means a person that directly or indirectly,
14 through one or more intermediaries, controls, is controlled by, or is
15 under common control with another person. For purposes of this
16 subsection (2)(a), "control" means the possession, directly or
17 indirectly, of more than (~~fifty~~) 50 percent of the power to direct
18 or cause the direction of the management and policies of a person,
19 whether through the ownership of voting shares, by contract, or
20 otherwise.

21 (b) "Consolidated financial institution group" means all
22 financial institutions that are affiliated with each other.

23 (c) "Consolidated financial statement" means a consolidated
24 financial institution group's consolidated reports of condition and
25 income filed with the federal financial institutions examination
26 council, or successor agency.

27 (d) "Financial institution" means:

28 (i) Any corporation or other business entity chartered under
29 Titles 30A, 30B, 31, 32, and 33 RCW, or registered under the federal
30 bank holding company act of 1956, as amended, or registered as a
31 savings and loan holding company under the federal national housing
32 act, as amended;

33 (ii) A national bank organized and existing as a national bank
34 association pursuant to the provisions of the national bank act, 12
35 U.S.C. Sec. 21 et seq.;

36 (iii) A savings association or federal savings bank as defined in
37 the federal deposit insurance act, 12 U.S.C. Sec. 1813(b)(1);

38 (iv) Any bank or thrift institution incorporated or organized
39 under the laws of any state;

1 (v) Any corporation organized under the provisions of 12 U.S.C.
2 Sec. 611 through 631;

3 (vi) Any agency or branch of a foreign depository as defined in
4 12 U.S.C. Sec. 3101 that is not exempt under RCW 82.04.315;

5 (vii) A production credit association organized under the federal
6 farm credit act of 1933, all of whose stock held by the federal
7 production credit corporation has been retired;

8 (viii) Any corporation or other business entity who receives
9 gross income taxable under RCW 82.04.290, and whose voting interests
10 are more than (~~fifty~~) 50 percent owned, directly or indirectly, by
11 any person or business entity described in (d)(i) through (vii) of
12 this subsection other than an insurance company liable for the
13 insurance premiums tax under RCW 48.14.020 or any other company
14 taxable under chapter 48.14 RCW;

15 (ix) (A) A corporation or other business entity that receives more
16 than (~~fifty~~) 50 percent of its total gross income for federal
17 income tax purposes from finance leases. For purposes of this
18 subsection, a "finance lease" means a lease that meets two
19 requirements:

20 (I) It is the type of lease permitted to be made by national
21 banks (see 12 U.S.C. Sec. 24(7) and (10), comptroller of the currency
22 regulations, part 23, leasing (added by 56 C.F.R. Sec. 28314, June
23 20, 1991, effective July 22, 1991), and regulation Y of the federal
24 reserve system 12 C.F.R. Part 225.25, as amended); and

25 (II) It is the economic equivalent of an extension of credit,
26 i.e., the lease is treated by the lessor as a loan for federal income
27 tax purposes. In no event does a lease qualify as an extension of
28 credit where the lessor takes depreciation on such property for
29 federal income tax purposes.

30 (B) For this classification to apply, the average of the gross
31 income in the current tax year and immediately preceding two tax
32 years must satisfy the more than (~~fifty~~) 50 percent requirement;

33 (x) Any other person or business entity, other than an insurance
34 general agent taxable under RCW 82.04.280(1)(e), an insurance
35 business exempt from the business and occupation tax under RCW
36 82.04.320, a real estate broker taxable under RCW 82.04.255, a
37 securities dealer or international investment management company
38 taxable under RCW 82.04.290(2), that receives more than (~~fifty~~) 50
39 percent of its gross receipts from activities that a person described

1 in (d) (ii) through (vii) and (ix) of this subsection is authorized to
2 transact.

3 (e) (i) "Specified financial institution" means a financial
4 institution that is a member of a consolidated financial institution
5 group that reported on its consolidated financial statement for the
6 previous calendar year annual net income of at least (~~one billion~~
7 ~~dollars~~) \$1,000,000,000, not including net income attributable to
8 noncontrolling interests, as the terms "net income" and
9 "noncontrolling interest" are used in the consolidated financial
10 statement.

11 (ii) If financial institutions are no longer required to file
12 consolidated financial statements, "specified financial institution"
13 means any person that was subject to the additional tax in this
14 section in at least two of the previous four calendar years.

15 (3) The department must notify the fiscal committees of the
16 legislature if financial institutions are no longer required to file
17 consolidated financial statements.

18 (4) To aid in the effective administration of the additional tax
19 imposed in this section, the department may require a person believed
20 to be a specified financial institution to disclose whether it is a
21 member of a consolidated financial institution group and, if so, to
22 identify all other members of its consolidated financial institution
23 group. A person failing to comply with this subsection is deemed to
24 have intended to evade tax payable under this section and is subject
25 to the penalty in RCW 82.32.090(7) on any tax due under this section
26 by the person and any financial institution affiliated with the
27 person.

28 (5) Taxes collected under this section must be deposited into the
29 general fund.

30 **Sec. 5.** RCW 82.04.299 and 2022 c 170 s 1 and 2022 c 56 s 4 are
31 each reenacted and amended to read as follows:

32 (1) (a) Beginning with business activities occurring on or after
33 April 1, 2020, in addition to the taxes imposed under RCW 82.04.290

34 (2) and (4), a workforce education investment surcharge is imposed on
35 select advanced computing businesses. The surcharge is equal to the
36 gross income of the business subject to the tax under RCW 82.04.290
37 (2) and (4), multiplied by the rate of 1.22 percent.

38 (b) Except as provided in (e) of this subsection (1), in no case
39 will the combined surcharge imposed under this subsection (1) paid by

1 all members of an affiliated group be more than (~~nine million~~
2 ~~dollars~~) \$9,000,000 annually.

3 (c) For persons subject to the surcharge imposed under this
4 subsection (1) that report under one or more tax classifications, the
5 surcharge applies only to business activities taxed under RCW
6 82.04.290 (2) and (4).

7 (d) The surcharge imposed under this subsection (1) must be
8 reported and paid on a quarterly basis in a manner as required by the
9 department. Returns and amounts payable under this subsection (1) are
10 due by the last day of the month immediately following the end of the
11 reporting period covered by the return. All other taxes must be
12 reported and paid as required under RCW 82.32.045.

13 (e) (i) To aid in the effective administration of the surcharge in
14 this subsection (1), the department may require persons believed to
15 be engaging in advanced computing or affiliated with a person
16 believed to be engaging in advanced computing to disclose whether
17 they are a member of an affiliated group and, if so, to identify all
18 other members of the affiliated group subject to the surcharge.

19 (ii) If the department establishes, by clear, cogent, and
20 convincing evidence, that one or more members of an affiliated group,
21 with intent to evade the surcharge under this subsection (1), failed
22 to fully comply with this subsection (1)(e), the department must
23 assess against that person, or those persons collectively, a penalty
24 equal to (~~fifty~~) 50 percent of the amount of the total surcharge
25 payable by all members of that affiliated group for the calendar year
26 during which the person or persons failed to fully comply with this
27 subsection (1)(e). The penalty under this subsection (1)(e) is in
28 lieu of and not in addition to the evasion penalty under RCW
29 82.32.090(7).

30 (f) For the purposes of this subsection (1) the following
31 definitions apply:

32 (i) "Advanced computing" means designing or developing computer
33 software or computer hardware, whether directly or contracting with
34 another person, including: Modifications to computer software or
35 computer hardware; cloud computing services; or operating as a
36 marketplace facilitator as defined by RCW 82.08.0531, an online
37 search engine, or online social networking platform;

38 (ii) "Affiliate" and "affiliated" means a person that directly or
39 indirectly, through one or more intermediaries, controls, is
40 controlled by, or is under common control with another person;

1 (iii) "Affiliated group" means a group of two or more persons
2 that are affiliated with each other;

3 (iv) "Cloud computing services" means on-demand delivery of
4 computing resources, such as networks, servers, storage,
5 applications, and services, over the internet;

6 (v) "Control" means the possession, directly or indirectly, of
7 more than (~~fifty~~) 50 percent of the power to direct or cause the
8 direction of the management and policies of a person, whether through
9 the ownership of voting shares, by contract, or otherwise; and

10 (vi) "Select advanced computing business" means a person who is a
11 member of an affiliated group with at least one member of the
12 affiliated group engaging in the business of advanced computing, and
13 the affiliated group has worldwide gross revenue of more than
14 (~~twenty-five billion dollars~~) \$25,000,000,000 during the
15 immediately preceding calendar year. A person who is primarily
16 engaged within this state in the provision of commercial mobile
17 service, as that term is defined in 47 U.S.C. Sec. 332(d)(1), shall
18 not be considered a select advanced computing business. A person who
19 is primarily engaged in this state in the operation and provision of
20 access to transmission facilities and infrastructure that the person
21 owns or leases for the transmission of voice, data, text, sound, and
22 video using wired telecommunications networks shall not be considered
23 a select advanced computing business. A person that is primarily
24 engaged in business as a "financial institution" as defined in RCW
25 82.04.29004, as that section existed on January 1, 2020, shall not be
26 considered a select advanced computing business. For purposes of this
27 subsection (1)(f)(vi), "primarily" is determined based on gross
28 income of the business.

29 (2)(a) The workforce education investment surcharge under this
30 section does not apply to:

31 (i) Any hospital as defined in RCW 70.41.020, including any
32 hospital that comes within the scope of chapter 71.12 RCW if the
33 hospital is also licensed under chapter 70.41 RCW; or

34 (ii) A provider clinic offering primary care, multispecialty and
35 surgical services, including behavioral health services, and any
36 affiliate of the provider clinic if the affiliate is an organization
37 that offers health care services or provides administrative support
38 for a provider clinic, or is an independent practice association or
39 accountable care organization.

1 (b) The exemptions under this subsection (2) do not apply to
2 amounts received by any member of an affiliated group other than the
3 businesses described in (a) of this subsection.

4 (c) For purposes of the exemption in (a)(ii) of this subsection:

5 (i) "Health care services" means services offered by health care
6 providers relating to the prevention, cure, or treatment of illness,
7 injury, or disease.

8 (ii) "Primary care" means wellness and prevention services and
9 the diagnosis and treatment of health conditions.

10 (3) Revenues from the surcharge under this section must be
11 deposited directly into the workforce education investment account
12 established in RCW 43.79.195.

13 (4) The department has the authority to determine through an
14 audit or other investigation whether a person is subject to the
15 surcharge imposed in this section.

16 NEW SECTION. **Sec. 6.** RCW 82.32.805 and 82.32.808 do not apply
17 to this act.

18 NEW SECTION. **Sec. 7.** This act applies retroactively to tax
19 periods open for assessment under RCW 82.32.050, including any
20 disputed assessments pending before the department of revenue, board
21 of tax appeals, or any court of law, and prospectively, except that
22 no person is entitled to a refund of overpaid tax, interest, or
23 penalties that results from the retroactive application. Taxes due as
24 a result of this section if not previously paid must be paid within
25 90 days of the effective date of this section and in such cases are
26 not subject to penalties or interest.

27 NEW SECTION. **Sec. 8.** This act takes effect October 1, 2023.

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