

**HB 2487 - H AMD 2393**

By Representative Macri

**ADOPTED AS AMENDED 03/06/2026**

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** (1) The legislature finds that unintended  
4 tax loopholes adversely impact the state budget and reduce amounts  
5 available to fund schools and other essential services.

6 (2) The legislature further finds that in 1935 the legislature  
7 enacted as RCW 82.04.320 a business and occupation tax exemption that  
8 applied to "any person in respect to insurance business upon which a  
9 tax based on gross premiums is paid to the state." The Washington  
10 supreme court, in *Armstrong v. State*, 61 Wn.2d 116 (1962),  
11 unanimously held that the purpose of the exemption was to prevent  
12 insurance businesses from paying two state taxes on the same income,  
13 not to create a means for noninsurers to avoid paying any state tax.  
14 The legislature affirms the sole purpose of this exemption is to  
15 prevent double taxation.

16 (3) The legislature further finds that the business and  
17 occupation tax is a tax on the gross receipts of most businesses in  
18 the state, subject to specific deductions and exemptions. The tax  
19 generally applies at each point of sale in the process of providing a  
20 good or service and on sales between affiliated businesses.

21 (4) The legislature further finds that, in *Envolve Pharmacy*  
22 *Solutions, Inc. v. Department of Revenue*, 4 Wn.3d 142 (2024), a  
23 majority of the Washington supreme court broadly construed the  
24 exemption in RCW 82.04.320 to permit pharmacy benefit managers, and  
25 likely other businesses that do not earn premium income and do not  
26 pay a premium tax, to avoid paying business and occupation tax on  
27 amounts they receive from insurance businesses that do pay premium  
28 tax, contrary to the purpose of the exemption as construed in  
29 *Armstrong*. The court relied in large part on the legislature's use of  
30 passive voice, rather than active voice, when it enacted the  
31 exemption in 1935. If left unchecked, the decision in *Envolve*

1 *Pharmacy Solutions, Inc.* would create a large and unintended drain on  
2 the state's budget.

3 (5) Therefore, the legislature finds that it is necessary to  
4 restore parity between the language used in RCW 82.04.320 and the  
5 intended purpose of that business and occupation tax exemption by  
6 restating the exemption in active voice. To streamline the  
7 administration of the tax as applied to insurers, the legislature  
8 intends to consolidate the similar tax exemptions in RCW 82.04.320  
9 and 82.04.322 into a single exemption. The legislature intends the  
10 clarification to the exemption in this act to have no impact on any  
11 tax obligation for income received by an insurer for the granting of  
12 an annuity, in accordance with RCW 48.14.020(1)(a), which states that  
13 such income is not a premium for the purpose of the insurance premium  
14 tax.

15 (6) The legislature further finds that on October 2, 2019, the  
16 department of revenue issued public guidance in the form of an  
17 interim guidance statement that explained, in part, that a person  
18 claiming the exemptions in RCW 82.04.320 must show proof that it paid  
19 premium tax to the state with respect to the gross income it claims  
20 as exempt from business and occupation tax. The supreme court's  
21 decision in *Envolve Pharmacy Solutions, Inc.* forced the department to  
22 rescind that guidance.

23 (7) The legislature intends for section 2 of this act to apply  
24 both prospectively and retroactively to tax periods beginning on or  
25 after October 2, 2019, the date that the department of revenue issued  
26 the interim guidance statement. By applying section 2 of this act  
27 retroactively to October 2, 2019, the legislature intends to treat  
28 businesses that did not follow the department's guidance equally to  
29 those businesses that followed the guidance. The legislature intends  
30 that enforcement actions by the department of revenue against persons  
31 governed by the exemption under RCW 82.04.322 before the effective  
32 date of this section remain valid.

33 **Sec. 2.** RCW 82.04.320 and 2021 c 281 s 10 are each amended to  
34 read as follows:

35 ~~(1) ((Except as otherwise provided in this section, this chapter~~  
36 ~~does not apply to any person in respect to insurance business upon~~  
37 ~~which a tax based on gross premiums is paid to the state.~~

38 ~~(2) The provisions of this section do not exempt any person~~  
39 ~~engaging in the business of representing any insurance company,~~

1 ~~whether as general or local agent, or acting as broker for such~~  
2 ~~companies.~~

3 ~~(3) The provisions of this section do not exempt any bonding~~  
4 ~~company from tax with respect to gross income derived from the~~  
5 ~~completion of any contract as to which it is a surety, or as to any~~  
6 ~~liability as successor to the liability of the defaulting contractor.~~

7 (4)) This chapter does not apply to insurance business activity  
8 performed by an insurer that is directly subject to the payment of  
9 insurance premium taxes in Washington state pursuant to chapter  
10 48.14, 48.15, or 48.201 RCW. Only the person who paid the insurance  
11 premium tax can claim this exemption.

12 (2) This chapter does not apply to gross premiums and prepayments  
13 received by a person that is exempt from premium taxes under RCW  
14 48.14.0201(6).

15 (3) This chapter does not apply to consideration received by an  
16 insurer for annuities regulated under chapters 48.23 and 48.24 RCW.

17 (4) For purposes of this section, for periods preceding May 12,  
18 2021, eligible captive insurers as defined in RCW 48.201.020 are  
19 deemed, in respect to their insurance business, to have paid a tax  
20 under RCW 48.14.020 or 48.201.040 on ((gross)) their receipt of  
21 premiums ((to the state)).

22 (5) Eligible captive insurers affiliated with a public  
23 institution of higher education that are exempt from paying a premium  
24 tax under RCW 48.201.040 are exempt from the tax imposed by this  
25 chapter in respect to their insurance business. For purposes of this  
26 subsection (5), the definitions in RCW 48.201.020 apply.

27 (6) The department must, in consultation with the office of the  
28 insurance commissioner, adopt rules, and draft and issue tax  
29 guidance, to carry out the purpose and facilitate enforcement of this  
30 section.

31 (7) For the purposes of this section:

32 (a) "Insurance business" means activities performed by an insurer  
33 as defined in RCW 48.01.050 for which insurance premium taxes are  
34 paid.

35 (b) "Insurer" has the same meaning as in RCW 48.01.050.

36 (c) "Person" has the same meaning as in RCW 82.04.030, and  
37 includes a surplus line broker who pays premium taxes pursuant to  
38 chapter 48.15 RCW.

39 (d) "Premium" has the same meaning as in RCW 48.18.170.

1        NEW SECTION.        **Sec. 3.**        RCW 82.04.322 (Exemptions—Health  
2 maintenance organization, health care service contractor, certified  
3 health plan) and 1993 c 492 s 303 are each repealed.

4        NEW SECTION.        **Sec. 4.**        A new section is added to chapter 82.04  
5 RCW to read as follows:

6        (1) Except as provided in subsection (5) of this section, the  
7 department must waive penalties and interest otherwise due under  
8 chapter 82.32 RCW if all of the following conditions are met:

9        (a) The penalties and interest are for delinquent taxes due under  
10 chapter 82.04 RCW as a result of a person taking the exemption under  
11 either RCW 82.04.320 or 82.04.322, or both, on gross income that is  
12 not subject to the insurance premiums tax under chapter 48.14 or  
13 48.15 RCW; and

14        (b) The penalties and interest are for delinquent taxes due on  
15 the gross income of the business between October 2, 2019, and March  
16 31, 2026.

17        (2) (a) The taxpayer must submit a completed application for a  
18 penalty and interest waiver under this section in a form and manner  
19 prescribed by the department.

20        (b) An application for a penalty and interest waiver under this  
21 section must be submitted to the department on or before December 31,  
22 2026.

23        (c) The taxpayer must remit full payment by the due date listed  
24 on the invoice issued by the department. If payment is late or  
25 incomplete, additional interest and late payment penalties apply.

26        (3) A waiver of penalties and interest provided by this section  
27 does not apply to other delinquent taxes that are not directly  
28 related to the exemption under either RCW 82.04.320 or 82.04.322, or  
29 both.

30        (4) The tax liability for which a penalty and interest waiver is  
31 requested under this section is subject to verification by the  
32 department as provided in RCW 82.32.050. This section does not  
33 preclude the assessment of taxes, penalties, and interest with  
34 respect to any amounts determined by the department to have been  
35 underpaid for any tax period for which the taxpayer previously  
36 received penalty and interest relief under this section.

37        (5) Penalties for evasion, negligence, and avoidance pursuant to  
38 RCW 82.32.090 are not eligible for the penalty and interest waiver  
39 under this section.

1 (6) This section expires January 1, 2029.

2 **Sec. 5.** RCW 82.04.299 and 2025 c 420 s 301 and 2025 c 401 s 5  
3 are each reenacted and amended to read as follows:

4 (1)(a) Beginning with business activities occurring on or after  
5 April 1, 2020, in addition to the taxes imposed under RCW 82.04.290  
6 (2) and (4), a workforce education investment surcharge is imposed on  
7 select advanced computing businesses.

8 (i) Beginning April 1, 2020, through December 31, 2025, the  
9 surcharge is equal to the gross income of the business subject to the  
10 tax under RCW 82.04.290 (2) and (4), multiplied by the rate of 1.22  
11 percent.

12 (ii) Beginning January 1, 2026, the surcharge is equal to the  
13 gross income of the business subject to the tax under RCW 82.04.290  
14 (2), multiplied by the rate of 7.5 percent.

15 (b) Except as provided in (e) of this subsection (1), in no case  
16 will the combined surcharge imposed under this subsection (1) paid by  
17 all members of an affiliated group be more than \$75,000,000 annually.

18 (c) For persons subject to the surcharge imposed under this  
19 subsection (1) that report under one or more tax classifications, the  
20 surcharge applies only to business activities taxed under RCW  
21 82.04.290 (2) and (4).

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

28 (e)(i) To aid in the effective administration of the surcharge in  
29 this subsection (1), the department may require persons believed to  
30 be engaging in advanced computing or affiliated with a person  
31 believed to be engaging in advanced computing to disclose whether  
32 they are a member of an affiliated group and, if so, to identify all  
33 other members of the affiliated group subject to the surcharge.

34 (ii) If the department establishes, by clear, cogent, and  
35 convincing evidence, that one or more members of an affiliated group,  
36 with intent to evade the surcharge under this subsection (1), failed  
37 to fully comply with this subsection (1)(e), the department must  
38 assess against that person, or those persons collectively, a penalty  
39 equal to 50 percent of the amount of the total surcharge payable by

1 all members of that affiliated group for the calendar year during  
2 which the person or persons failed to fully comply with this  
3 subsection (1)(e). The penalty under this subsection (1)(e) is in  
4 lieu of and not in addition to the evasion penalty under RCW  
5 82.32.090(7).

6 (f) For the purposes of this subsection (1) the following  
7 definitions apply:

8 (i) "Advanced computing" means designing or developing computer  
9 software or computer hardware, whether directly or contracting with  
10 another person, including: Modifications to computer software or  
11 computer hardware; cloud computing services; or operating as a  
12 marketplace facilitator as defined by RCW 82.08.0531, an online  
13 search engine, or online social networking platform;

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

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

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

22 (v) "Control" means the possession, directly or indirectly, of  
23 more than 50 percent of the power to direct or cause the direction of  
24 the management and policies of a person, whether through the  
25 ownership of voting shares, by contract, or otherwise; and

26 (vi) "Select advanced computing business" means a person who is a  
27 member of an affiliated group with at least one member of the  
28 affiliated group engaging in the business of advanced computing, and  
29 the affiliated group has worldwide gross revenue of more than  
30 \$25,000,000,000 during the immediately preceding calendar year. A  
31 person who is primarily engaged within this state in the provision of  
32 commercial mobile service, as that term is defined in 47 U.S.C. Sec.  
33 332(d)(1), shall not be considered a select advanced computing  
34 business. A person who is primarily engaged in this state in the  
35 operation and provision of access to transmission facilities and  
36 infrastructure that the person owns or leases for the transmission of  
37 voice, data, text, sound, and video using wired telecommunications  
38 networks shall not be considered a select advanced computing  
39 business. A person that is primarily engaged in business as a  
40 "financial institution" as defined in RCW 82.04.29004, as that

1 section existed on January 1, 2020, shall not be considered a select  
2 advanced computing business. For purposes of this subsection  
3 (1)(f)(vi), "primarily" is determined based on gross income of the  
4 business.

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

7 (i) Any hospital as defined in RCW 70.41.020, including any  
8 hospital that comes within the scope of chapter 71.12 RCW if the  
9 hospital is also licensed under chapter 70.41 RCW; (~~(e)~~)

10 (ii) A provider clinic offering primary care, multispecialty and  
11 surgical services, including behavioral health services, and any  
12 affiliate of the provider clinic if the affiliate is an organization  
13 that offers health care services or provides administrative support  
14 for a provider clinic, or is an independent practice association or  
15 accountable care organization;

16 (iii) An insurer, as defined in RCW 48.01.050, required to report  
17 and pay insurance premium taxes to the state pursuant to chapter  
18 48.14, 48.15, or 48.201 RCW, during the same reporting period; or

19 (iv) A person that is exempt from premium taxes under RCW  
20 48.14.0201(6) during the same reporting period.

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

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

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

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

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

33 (4) Beginning in fiscal year 2028, and each year thereafter, when  
34 the number of qualified Washington state applicants exceeds the  
35 available enrollments by 100 at computer science engineering degree  
36 programs in four-year state universities, then a commensurate number  
37 of computer science and engineering degree enrollments at those state  
38 universities must be automatically added and funded for the surcharge  
39 imposed under this section to accommodate the additional demand.

1 (5) The department has the authority to determine through an  
2 audit or other investigation whether a person is subject to the  
3 surcharge imposed in this section.

4 NEW SECTION. **Sec. 6.** Section 2 of this act applies both  
5 prospectively and retroactively to October 2, 2019.

6 NEW SECTION. **Sec. 7.** Section 5 of this act applies both  
7 prospectively and retroactively to January 1, 2022.

8 NEW SECTION. **Sec. 8.** This act does not affect any final  
9 judgment, no longer subject to appeal, entered by a court of  
10 competent jurisdiction before the effective date of this act."

11 Correct the title.

EFFECT: (1) Modifies the insurance premium exemption to the business and occupation (B&O) tax such that B&O tax does not apply to: (a) Insurance business activity performed by an insurer that is directly subject to the payment of insurance premium taxes in Washington pursuant to state law, subject to the rule that only the person who paid the insurance premium tax can claim this exemption; (b) gross premiums and prepayments received by a person that is exempt from premium taxes under state law; or (c) consideration received by an insurer for annuities regulated under state law.

(2) Requires the Department of Revenue (DOR) to consult with the Office of the Insurance Commissioner to adopt rules, and draft and issue tax guidance, to carry out the purpose and facilitate enforcement of the insurance premium exemption.

(3) Defines "insurance business" as activities performed by an insurer for which insurance premium taxes are paid. Defines "insurer" and "person."

(4) Adds a new section directing the Department of Revenue to waive penalties and interest on B&O taxes otherwise due as a result of a person taking an insurance premium exemption on gross income not subject to that exemption, but only if the penalties and interest are for taxes due on gross income of the business between October 2, 2019, and March 31, 2026. Waiver under this section is subject to various requirements and limitations. This section expires on January 1, 2029.

(5) Creates an exemption from the advanced computing surcharge for insurers required to report and pay insurance premium taxes to the state during the same reporting period, and persons exempt from premium taxes during the same reporting period. This exemption applies both prospectively and retroactively to January 1, 2022.

(6) Modifies the final judgment savings clause by stating the act does not affect any final judgment, no longer subject to appeal, entered by a court of competent jurisdiction before the effective date of the act.

(7) Modifies the bill's intent section by (a) affirming the sole purpose of the insurance premium exemption is to prevent double taxation, (b) describing the nature and function of the B&O tax, (c)

stating the clarification provided by the bill is not intended to affect any tax obligation for income received by an insurer for the granting of an annuity, and (d) stating the legislature's intent for section 2 of the bill to apply retroactively.

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