

AN ACT Relating to imposing an employer compensation tax
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** INTENT. TBD

NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this section apply throughout this chapter, unless the context clearly requires otherwise.

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

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

(3) "Business" has the meaning provided in RCW 82.04.140. Depending on the context, "business" may also mean an employer engaging in business in Washington.

(4) (a) "Compensation" means remuneration as that term is defined in RCW 50A.05.010, net distributions, incentive payments, including guaranteed payments, whether based on profit or otherwise, earned for services rendered or work performed, whether paid directly or through an agent, and whether in cash or paid in any medium other than cash.

(b) "Compensation" does not include payments to an owner of a pass-through entity that is not earned for services rendered or work performed, such as return of capital, investment income, or other income from passive activities.

(5) "Compensation expense" means the compensation paid in the state to an employee if:

(a) The employee is primarily assigned within Washington;

(b) The employee is not primarily assigned to any place of business for the tax year and the employee performs fifty percent or more of his or her service for the tax year in Washington; or

(c) The employee is not primarily assigned to any place of business for the tax year, the employee does not perform fifty percent or more of his or her service in any state, and the employee resides in Washington.

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

(7) (a) "Employee" has the meaning provided in RCW 50A.05.010.

(b) "Employee" also includes individuals who are:

(i) Members of limited liability companies;

(ii) Members of professional limited liability companies;

(iii) Partners; and

(iv) Other owners of pass-through entities.

(8) "Employer" has the meaning provided in RCW 50A.05.010.

(9) (a) "Employment" has the meaning provided in RCW 50A.05.010.

(b) "Employment" also includes self-employed individuals.

(10) "Engaging in business" has the meaning provided in RCW 82.04.150.

(11) "Net distribution" means the draws from net income by any owner of a pass-through entity. Taxable distributions are limited by the amount of draws or net income for that owner, whichever is less. If the owner's draw exceeds that individual's net profit, the excess draw is a return of capital. A return of capital is not taxable because it is a liquidation of an owner's assets.

(12) "Pass-through entity" includes a trust, partnership, corporation described in subchapter S of the internal revenue code of 1986, as amended, limited liability company, limited liability partnership, professional corporation, and any other person or entity which is not subject to the income tax imposed by subtitle A, chapter 1 of the internal revenue code of 1986, as amended, or which

is allowed a deduction in computing such tax for distributions to the owners or beneficiaries of such person or entity.

(13) "Person" has the meaning provided in RCW 82.04.030.

(14) (a) "Small business" means any business that reports annual compensation expense of no more than seven million dollars in the immediately preceding tax year, unless (i) the person is affiliated with one or more persons, or (ii) the aggregate annual compensation expense of the business subject to the tax imposed under this chapter for all affiliated persons was greater than or equal to seven million dollars for the immediately preceding tax year.

(b) The amount of compensation expense in this subsection (14) will be adjusted pursuant to section 4 of this act.

(15) "Tax year" means a twelve-month period from January 1st to December 31st.

(16) "Taxpayer" means any employer who engages in any business in Washington or who performs any act for which a tax is imposed under this chapter.

NEW SECTION. **Sec. 3.** EMPLOYER COMPENSATION TAX. (1) Beginning January 1, 2022, an employer compensation tax is imposed on employers engaging in business. The tax imposed by this chapter is levied on employers and must be paid quarterly. The employer is responsible for paying the tax required under this chapter, and the employer may not make any deductions from the employees' compensation to pay for this tax.

(2) (a) The tax is measured by the employer's compensation expense for the tax year attributable to work performed or services rendered by the employer's employees in Washington, less any deductions authorized under subsection (3) of this section, multiplied by the applicable rate set forth in subsection (2) (b) of this section.

(b) The following tax rates apply:

(i) For businesses with world-wide annual compensation expense during the current or immediately preceding tax year of at least

seven million dollars but less than one hundred million dollars, the rate is one-quarter of one percent; and

(ii) For businesses with world-wide annual compensation expense during the current or immediately preceding tax year of at least one hundred million dollars, the rate is one-half of one percent.

(3) Taxpayers may deduct the payroll expense attributable to any employee with annual compensation that is less than one hundred fifty thousand dollars from the measure of the tax, as adjusted under section 4 of this act.

(4) (a) The following are exempt from the payroll expense tax authorized by this chapter:

(i) A small business;

(ii) Other businesses that Washington does not have authority to tax based on federal law; and

(iii) Federally recognized Indian tribes.

(5) A limited liability company, a professional liability company, a partnership, or any other pass-through entity, shall report and pay the tax on employer compensation with respect to employees defined in section 2(8)(b) of this act. Self-employed individuals shall report and pay the tax on the payroll expense with respect to themselves.

(6) Temporary employment agencies that supply temporary employees to businesses engaging in business within Washington, and pay the temporary employee's compensation, shall report and pay the tax on all such temporary employees. Businesses engaging temporary employees who are on the business' payroll shall report and pay the tax on the compensation expense of such temporary employees, whether or not they are from an employment agency.

NEW SECTION. **Sec. 4.** ADJUSTMENTS. Beginning on January 1, 2023, and on January 1st of every odd year thereafter, the department must adjust the amounts in section 3(2) of this act and the dollar threshold used to define small business in section 2(14) of this act as follows:

(1) The amounts shall increase commensurate with the rate of growth of the prior year's June-to-June consumer price index (CPI-U) for the Seattle-Tacoma-Bellevue area as published by the United States department of labor;

(2) If the annual change in the CPI-U is negative, no adjustment to the amounts must be made; and

(3) The amounts calculated must be rounded to the nearest whole dollar.

NEW SECTION. **Sec. 5.** Sections 1 through 4 of this act constitute a new chapter in Title 82 RCW.

NEW SECTION. **Sec. 6.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 7.** This act is effective August 1, 2021.

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