

**RCW 82.04.299 Workforce education investment surcharge.** (1) (a)

Beginning with business activities occurring on or after April 1, 2020, in addition to the taxes imposed under RCW 82.04.290(2), a workforce education investment surcharge is imposed on select advanced computing businesses. The surcharge is equal to the gross income of the business subject to the tax under RCW 82.04.290(2), multiplied by the rate of 1.22 percent.

(b) Except as provided in (e) of this subsection (1), in no case will the combined surcharge imposed under this subsection (1) paid by all members of an affiliated group be more than nine million dollars annually.

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

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

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

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

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

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

(ii) "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;

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

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

(v) "Control" means the possession, directly or indirectly, of more than fifty 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; and

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

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

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

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

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

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

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

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

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

(4) The department has the authority to determine through an audit or other investigation whether a person is subject to the surcharge imposed in this section. [2022 c 170 § 1; 2022 c 56 § 4; 2020 c 2 § 4; 2019 c 406 § 74.]

**Reviser's note:** This section was amended by 2022 c 56 § 4 and by 2022 c 170 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Tax preference performance statement exemption—Automatic expiration date exemption—2022 c 170:** "RCW 82.32.805 and 82.32.808 do apply to this act." [2022 c 170 § 2.]

**Effective date—2022 c 170:** "This act takes effect July 1, 2022." [2022 c 170 § 3.]

**Retroactive application—2022 c 56 § 4:** "Section 4 of this act applies retroactively to January 1, 2020." [2022 c 56 § 14.]

**Retroactive application—2020 c 2 § 4:** "Section 4 of this act applies both prospectively and retroactively to January 1, 2020." [2020 c 2 § 8.]

**Tax preference performance statement exemption—Automatic expiration date exemption—Effective dates—2020 c 2:** See notes following RCW 82.04.290.

**Effective date—2019 c 406 § 74:** "Section 74 of this act takes effect January 1, 2020." [2019 c 406 § 77.]

**Findings—Intent—2019 c 406:** See note following RCW 43.79.195.

**Findings—Short title—2019 c 406:** See notes following RCW 28B.92.200.

**Findings—2019 c 406:** See note following RCW 28B.94.020.

**Findings—Intent—2019 c 406:** See note following RCW 28C.30.050.

**Findings—Intent—2019 c 406:** See note following RCW 43.216.135.