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HOUSE BILL 1285

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State of Washington

67th Legislature

2021 Regular Session

By Representatives Ormsby and Ortiz-Self

1 AN ACT Relating to modifying the business and occupation tax  
2 exemption for certain fruit and vegetable businesses; and amending  
3 RCW 82.04.4266 and 82.32.534.

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

5 **Sec. 1.** RCW 82.04.4266 and 2020 c 139 s 5 are each amended to  
6 read as follows:

7 (1) This chapter does not apply to the value of products or the  
8 gross proceeds of sales derived from:

9 (a) Manufacturing fruits or vegetables by canning, preserving,  
10 freezing, processing, or dehydrating fresh fruits or vegetables; or

11 (b) Selling at wholesale fruits or vegetables manufactured by the  
12 seller by canning, preserving, freezing, processing, or dehydrating  
13 fresh fruits or vegetables and sold to purchasers who transport in  
14 the ordinary course of business the goods out of this state. A person  
15 taking an exemption under this subsection (1)(b) must keep and  
16 preserve records for the period required by RCW 82.32.070  
17 establishing that the goods were transported by the purchaser in the  
18 ordinary course of business out of this state.

19 (2) For purposes of this section, "fruits" and "vegetables" do  
20 not include marijuana, useable marijuana, or marijuana-infused  
21 products.

1 (3) A person claiming the exemption provided in this section must  
2 file a complete annual tax performance report with the department  
3 under RCW 82.32.534.

4 (4)(a) A person claiming the exemption provided in this section  
5 must annually disclose any adjudicated action arising from any legal  
6 judgments, lawsuits, proceedings, or charges, against the applicant,  
7 that are related to any employment, labor, or civil rights laws of  
8 any jurisdiction that have occurred within the two years prior to the  
9 present year's filing deadline. Such employment, labor, or civil  
10 rights laws include:

11 (i) Wage and hour laws as provided in RCW 49.12.020 and  
12 49.12.150;

13 (ii) Breaks and schedules rules as set by the department of labor  
14 and industries;

15 (iii) Human rights or discrimination laws as provided in RCW  
16 49.60.030;

17 (iv) Sexual harassment laws as provided in chapter 49.60 RCW;

18 (v) Workplace pregnancy accommodations as provided in RCW  
19 43.10.005;

20 (vi) Health and safety laws as provided in chapter 49.17 RCW; or

21 (vii) Laws, rules, or regulations related to wrongful termination  
22 or unfair labor practices.

23 (b) The disclosure required in (a) of this subsection must be  
24 made on forms prescribed by the department and must be submitted  
25 annually by a date set by the department. The department must set the  
26 first due date no later than December 31, 2021.

27 (c) The department must provide the disclosure required in (a) of  
28 this subsection to the department of labor and industries, and the  
29 department of labor and industries must subsequently verify the  
30 disclosed information against its own records. Organizations  
31 representing workers, including labor unions and worker centers, may  
32 submit reports of applicable adjudicated actions against a person  
33 required to make a disclosure in (a) of this subsection, to the  
34 department of labor and industries. The department of labor and  
35 industries must notify the department of the accuracy of each  
36 disclosure upon completing its verification.

37 (d) A person is not eligible for the exemption provided in  
38 subsection (1) of this section for a given calendar year if the  
39 person has been found to have violated any employment, labor, or  
40 civil rights laws of any jurisdiction in the two years prior to the

1 present year's filing deadline of the disclosure required in (a) of  
2 this subsection.

3 (e) A person found to be ineligible for the exemption as provided  
4 in subsection (1) of this section may in a later year claim a refund  
5 equal to the value of the exemption for the prior unclaimed tax year,  
6 if the adjudicated action, as disclosed in (a) of this subsection, is  
7 overturned on an appeal and the person submits to the department  
8 evidence of a favorable final judgment regarding the appealed  
9 compliance matter, and the department, after review, notifies the  
10 person of his or her eligibility to claim the value of the exemption  
11 for the prior unclaimed tax year. The conditions of RCW 82.32.060  
12 apply to this subsection (4) (e).

13 (5) This section expires July 1, 2025.

14 **Sec. 2.** RCW 82.32.534 and 2017 c 135 s 1 are each amended to  
15 read as follows:

16 (1) (a) (i) Beginning in calendar year 2018, every person claiming  
17 a tax preference that requires an annual tax performance report under  
18 this section must file a complete annual report with the department.  
19 The report is due by May 31st of the year following any calendar year  
20 in which a person becomes eligible to claim the tax preference that  
21 requires a report under this section.

22 (ii) If the tax preference is a deferral of tax, the first annual  
23 tax performance report must be filed by May 31st of the calendar year  
24 following the calendar year in which the investment project is  
25 certified by the department as operationally complete, and an annual  
26 tax performance report must be filed by May 31st of each of the seven  
27 succeeding calendar years.

28 (iii) The department may extend the due date for timely filing of  
29 annual reports under this section as provided in RCW 82.32.590.

30 (b) The report must include information detailing employment and  
31 wages for employment positions in Washington for the year that the  
32 tax preference was claimed. However, persons engaged in manufacturing  
33 commercial airplanes or components of such airplanes may report  
34 employment, wage, and benefit information per job at the  
35 manufacturing site for the year that the tax preference was claimed.  
36 The report must not include names of employees. The report must also  
37 detail employment by the total number of full-time, part-time, and  
38 temporary positions for the year that the tax preference was claimed.  
39 In lieu of reporting employment and wage data required under this

1 subsection, taxpayers may instead opt to allow the employment  
2 security department to release the same employment and wage  
3 information from unemployment insurance records to the department and  
4 the joint legislative audit and review committee. This option is  
5 intended to reduce the reporting burden for taxpayers, and each  
6 taxpayer electing to use this option must affirm that election in  
7 accordance with procedures approved by the employment security  
8 department.

9 (c) Persons receiving the benefit of the tax preference provided  
10 by RCW 82.16.0421 or claiming any of the tax preferences provided by  
11 RCW 82.04.2909, 82.04.4481, 82.08.805, 82.12.805, or 82.12.022(5)  
12 must indicate on the annual report the quantity of product produced  
13 in this state during the time period covered by the report.

14 (d) If a person filing a report under this section did not file a  
15 report with the department in the previous calendar year, the report  
16 filed under this section must also include employment, wage, and  
17 benefit information for the calendar year immediately preceding the  
18 calendar year for which a tax preference was claimed.

19 (2)(a) As part of the annual report, the department and the joint  
20 legislative audit and review committee may request additional  
21 information necessary to measure the results of, or determine  
22 eligibility for, the tax preference.

23 (b) The report must include the amount of the tax preference  
24 claimed for the calendar year covered by the report. For a person  
25 that claimed an exemption provided in RCW 82.08.025651 or  
26 82.12.025651, the report must include the amount of tax exempted  
27 under those sections in the prior calendar year for each general area  
28 or category of research and development for which exempt machinery  
29 and equipment and labor and services were acquired in the prior  
30 calendar year.

31 (3) Other than information requested under subsection (2)(a) of  
32 this section, the information contained in an annual report filed  
33 under this section is not subject to the confidentiality provisions  
34 of RCW 82.32.330 and (~~may be disclosed to the public~~) must be made  
35 available for the public to inspect, and the department will make all  
36 such information publicly available upon request.

37 (4)(a) Except as otherwise provided by law, if a person claims a  
38 tax preference that requires an annual report under this section but  
39 fails to submit a complete report by the due date or any extension  
40 under RCW 82.32.590, the department must declare:

1 (i) Thirty-five percent of the amount of the tax preference  
2 claimed for the previous calendar year to be immediately due and  
3 payable;

4 (ii) An additional fifteen percent of the amount of the tax  
5 preference claimed for the previous calendar year to be immediately  
6 due and payable if the person has previously been assessed under this  
7 subsection (4) for failure to submit a report under this section for  
8 the same tax preference; and

9 (iii) If the tax preference is a deferral of tax, the amount  
10 immediately due under this subsection is twelve and one-half percent  
11 of the deferred tax. If the economic benefits of the deferral are  
12 passed to a lessee, the lessee is responsible for payment to the  
13 extent the lessee has received the economic benefit.

14 (b) The department may not assess interest or penalties on  
15 amounts due under this subsection.

16 (5) The department must use the information from this section to  
17 prepare summary descriptive statistics by category. No fewer than  
18 three taxpayers may be included in any category. The department must  
19 report these statistics to the legislature each year by December  
20 31st.

21 (6) For the purposes of this section:

22 (a) "Person" has the meaning provided in RCW 82.04.030 and also  
23 includes the state and its departments and institutions.

24 (b) "Tax preference" has the meaning provided in RCW 43.136.021  
25 and includes only the tax preferences requiring a report under this  
26 section.

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