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**SENATE BILL 5398**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senators Wellman and Billig

1 AN ACT Relating to providing small business excise tax relief to  
2 address the financial hardship caused by COVID-19; adding a new  
3 section to chapter 82.04 RCW; adding a new section to chapter 82.32  
4 RCW; creating a new section; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 82.04  
7 RCW to read as follows:

8 (1) An eligible small business is subject to relief from tax  
9 under this chapter for taxes due and payable during the small  
10 business excise tax relief period as provided in this section. The  
11 tax relief provided under this section shall be in the form of a  
12 deduction and subject to any adjustments required under subsections  
13 (3) and (4) of this section.

14 (2) An eligible small business claiming tax relief under this  
15 section is still required to file a tax return and submit any other  
16 taxes, including state and local sales taxes, that are due and  
17 payable.

18 (3)(a) The tax relief authorized under this section shall be  
19 reported on the combined excise tax return as a deduction. The  
20 maximum amount an eligible small business may claim as a deduction  
21 under this section is the gross amount reported on the tax return for

1 the reporting period reduced by any otherwise allowable deductions  
2 under this chapter and making any additional adjustment required  
3 under subsection (4) of this section.

4 (b) The deduction under this section is reportable on the  
5 combined excise tax return under the "other" category line item on  
6 the deduction detail for each business and occupation tax  
7 classification reported. The taxpayer must indicate on the return  
8 that some or all of the amount deducted as "other" is derived from  
9 the tax relief provided under this section.

10 (4) For taxpayers filing on an annual basis, the maximum amount  
11 that may be deducted under this subsection (4) for taxes due and  
12 payable in April 2021, or July if the tax return filing deadline is  
13 extended, for the calendar year 2020 reporting period is one-half of:  
14 The gross amount reported on the tax return reduced by any other  
15 allowable deductions under this chapter.

16 (5) The definitions in this subsection apply to this section.

17 (a) "Affiliate" has the same meaning as provided under RCW  
18 82.04.290.

19 (b) "Eligible small business" means a small business that:

20 (i) Reported gross income under this chapter during calendar  
21 years 2019 and 2020 greater than zero dollars during calendar years  
22 2019 and 2020; and

23 (ii) Reported gross income of the business in calendar year 2020  
24 that was at least 50 percent less than the gross income of the  
25 business reported by the small business in calendar year 2019.

26 (c) "Small business" means any person whose gross income of the  
27 business subject to tax under this chapter, for calendar year 2019,  
28 was less than \$50,000,000, unless (i) the person is affiliated with  
29 one or more other persons, and (ii) the aggregate gross income of the  
30 business subject to the tax imposed under this chapter for all  
31 affiliated persons was greater than or equal to \$50,000,000 for  
32 calendar year 2019.

33 (d) "Small business excise tax relief period" means:

34 (i) Taxes due and payable in 2021 during the month of April, or  
35 July if the tax return filing deadline is extended, for taxpayers  
36 filing on an annual basis;

37 (ii) Taxes due and payable in 2021 during the months of July and  
38 October for taxpayers filing on a quarterly basis; and

39 (iii) Taxes due and payable in 2021 during the months of June  
40 through November for taxpayers reporting on a monthly basis.

1        NEW SECTION.    **Sec. 2.**    A new section is added to chapter 82.32  
2    RCW to read as follows:

3        (1) Subject to the requirements in subsections (2) and (3) of  
4    this section, the department shall waive or cancel interest and  
5    penalties imposed under this chapter if the interest and penalties  
6    are:

7        (a) Imposed on business and occupation taxes that were originally  
8    due and payable during the small business excise tax relief period as  
9    defined under section 1 of this act; and

10       (b) Imposed on a taxpayer who made a good faith error in  
11    determining eligibility for the small business excise tax relief  
12    under section 1 of this act.

13       (2) The department shall assume a good faith error under  
14    subsection (1) of this section if:

15       (a) The taxpayer's taxable income in calendar years 2019 or 2020  
16    did not exceed \$55,000,000; and

17       (b) Taxable income for taxes due and payable in calendar year  
18    2020 did not exceed 60 percent of taxable income for taxes due and  
19    payable in calendar year 2019.

20       (3) The department may adopt rules providing additional  
21    circumstances constituting a good faith error under this section.

22       NEW SECTION.    **Sec. 3.**    The provisions of RCW 82.32.805 and  
23    82.32.808 do not apply to this act.

24       NEW SECTION.    **Sec. 4.**    This act is necessary for the immediate  
25    preservation of the public peace, health, or safety, or support of  
26    the state government and its existing public institutions, and takes  
27    effect immediately.

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