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HOUSE BILL 1958

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State of Washington

63rd Legislature

2013 Regular Session

By Representatives Reykdal, Nealey, Lytton, Springer, Goodman, Wilcox, Vick, and Orcutt

1 AN ACT Relating to affirming centralized payroll services as  
2 nontaxable between affiliated companies; and adding a new section to  
3 chapter 82.04 RCW.

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

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

7 (1) This chapter does not apply to gross proceeds that a qualified  
8 employer of record engaged in providing paymaster services derived from  
9 amounts received from an affiliated business entity to advance or  
10 reimburse employee costs of a qualified employee. However, no  
11 exclusion from gross proceeds is allowed under this section for any  
12 employee costs incurred in connection with a contractual obligation of  
13 the taxpayer to provide services.

14 (2) The definitions in this subsection apply throughout this  
15 section unless the context clearly requires otherwise.

16 (a) "Affiliated" has the same meaning as provided in RCW  
17 82.32.655(7).

18 (b) "Concurrent employer" is any employer within an affiliated

1 group that has a functional employment relationship with a qualified  
2 employee.

3 (c) "Employee costs" are the actual cost of wages and salaries,  
4 benefits, workers' compensation, payroll taxes, withholding, or other  
5 assessments paid to or on behalf of an employee.

6 (d) "Functional employment relationship" means having control over  
7 the work schedule and activities of the employees and control over all  
8 employment decisions such as salary, discipline, hiring, or layoffs.

9 (e) "Identified share" is a share that is fixed and certain,  
10 although it may vary in accordance with actual hours worked for each  
11 concurrent employer. A concurrent employer's identified share for any  
12 employee must be consistent with the amount of labor provided by the  
13 employee to the concurrent employer. An identified share must be  
14 established in a written agreement enforceable against both parties.

15 (f) "Paymaster services" means providing payroll and related human  
16 resource services.

17 (g) "Qualified employee" means an employee with whom an affiliate  
18 has a functional employment relationship. Except as provided in (g)(i)  
19 and (ii) of this subsection (2), neither the employer of record, nor  
20 any other affiliate, may have a functional employment relationship with  
21 the employee.

22 (i) An employee may be considered a qualified employee and have a  
23 functional employment relationship with two or more affiliates, who  
24 share employee costs only if:

25 (A) Each affiliate is entitled to an identified share of the  
26 functional employment relationship and is solely contractually  
27 obligated to the qualified employee for the proportionate share of  
28 employee costs; and

29 (B) No affiliate has any liability to any other affiliate for any  
30 share of employee costs for any qualified employee in excess of that  
31 affiliate's identified share.

32 (ii) If one of the affiliates is an employer of record, an employee  
33 may be considered a qualified employee and have a functional employment  
34 relationship with two or more affiliates who share employee costs only  
35 if:

36 (A) Each affiliate, including the employer of record, is entitled  
37 to an identified share of the functional employment relationship and is  
38 solely contractually obligated to the employee for the proportionate

1 share of employee costs. An otherwise qualified employer of record may  
2 retain statutory or common law liability to the employees or to third  
3 parties in excess of the employer of record's identified share of  
4 employee costs;

5 (B) No affiliate has any liability to any other affiliate for any  
6 share of employee costs in excess of that affiliate's identified share;  
7 and

8 (C) The employer of record is not selling labor-related services to  
9 any other affiliate with an identified share of the employment costs.  
10 For the purposes of this subsection (2)(g), an employer of record is  
11 presumed to be selling labor-related services, if the employer of  
12 record is in the business of selling to third parties the type of labor  
13 or services being performed by the employee.

14 (h) "Qualified employer of record" is a person who:

15 (i) Has no functional employment relationship with a qualified  
16 employee, except as described in (g) of this subsection;

17 (ii) Has no contractual liability with a qualified employee for the  
18 employee costs, except as provided in (g) of this subsection. A  
19 qualified employer of record may have statutory or common law liability  
20 to the qualified employees or to third parties for employee costs; and

21 (iii) Is not providing staffing services as defined in RCW  
22 82.04.540.

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