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SECOND SUBSTITUTE HOUSE BILL 1904

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State of Washington                      65th Legislature                      2017 Regular Session

By House Finance (originally sponsored by Representative Smith)

1            AN ACT Relating to the sale and taxation of Washingtonians'  
2 personal information and related data; amending RCW 82.04.050,  
3 82.04.192, 82.04.2907, 82.04.460, 82.04.462, 82.08.0291, and  
4 82.32.087; adding a new section to chapter 82.04 RCW; creating a new  
5 section; and providing an effective date.

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

7            NEW SECTION.    **Sec. 1.**    (1) The legislature intends to update and  
8 adapt state tax policy to the forms of commerce that have emerged  
9 with new technologies. The legislature recognizes that consumers are  
10 increasingly conducting their professional and personal affairs  
11 online and on devices such as smartphones or tablets. These  
12 activities include applying for jobs, researching symptoms and  
13 communicating with health care providers, applying for permits and  
14 licenses, mapping routes, communicating with friends and family, and  
15 consuming news and entertainment. Through these daily activities,  
16 consumers generate enormous and unprecedented quantities of data  
17 about themselves, including their locations, behaviors, and  
18 preferences.

19            (2) The legislature further recognizes that technological  
20 advances have made it possible to more easily and quickly gather,

1 analyze, and export vast amounts of personal information, whether  
2 such information is obtained through electronic or other means.

3 (3) The legislature finds that there are various businesses  
4 engaged in accumulating the personal data that is available to be  
5 collected on Washingtonians, aggregating or compiling that  
6 information, and reselling it without any compensation to the people  
7 of the state. This is a new business model that has flourished and is  
8 anticipated to grow as more people and more devices are connected  
9 with ever-increasing frequency for an ever greater number of  
10 innovative applications. As such, the legislature intends to have  
11 this unique and growing industry set apart with its own individual  
12 tax rate. This will provide transparency on the number of businesses  
13 and volume of activity in this industry, and allow for fair  
14 compensation of Washingtonians on whose information these businesses  
15 profit.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.04  
17 RCW to be codified between RCW 82.04.230 and 82.04.298 to read as  
18 follows:

19 (1) Upon every person engaging within this state in the business  
20 of making sales of personal information or exchanging personal  
21 information for consideration; as to such persons the amount of tax  
22 with respect to such business is equal to the gross income of the  
23 business multiplied by the rate of 3.3 percent.

24 (2) For the purposes of this section, "personal information"  
25 means information that identifies, relates to, describes, or is  
26 capable of being associated with, a particular individual, including  
27 but not limited to his or her name; physical address, mailing  
28 address, or other location information; telephone number; email  
29 address; internet protocol address; signature; physical  
30 characteristics or description; biometric data; driver's license  
31 number, state identification card number, passport number, social  
32 security number, or other government-issued identification number;  
33 bank account number, debit card number, credit card number, or any  
34 other financial information; insurance information; medical  
35 information; employment information; and educational information.  
36 "Personal information" also includes browser habits, consumer  
37 preferences and any other data that can be attributed to an  
38 individual and can be used for marketing, or determining access and

1 costs related to insurance, credit, or health care. "Personal  
2 information" does not include photographs or internet access.

3 (3) For the purposes of this section, "engaging within this  
4 state" has the same meaning as provided in RCW 82.04.066, and also  
5 means that a person generates gross income of the business from  
6 personal information, as defined in subsection (2) of this section,  
7 of individuals located in this state. For purposes of this  
8 subsection, an individual is located in this state if any of the  
9 addresses, as defined in RCW 82.04.462(5), utilized by that  
10 individual is located in this state.

11 (4) Nothing in this section may be construed as to impose a tax  
12 on internet access.

13 **Sec. 3.** RCW 82.04.050 and 2015 3rd sp.s. c 6 s 1105 are each  
14 amended to read as follows:

15 (1)(a) "Sale at retail" or "retail sale" means every sale of  
16 tangible personal property (including articles produced, fabricated,  
17 or imprinted) to all persons irrespective of the nature of their  
18 business and including, among others, without limiting the scope  
19 hereof, persons who install, repair, clean, alter, improve,  
20 construct, or decorate real or personal property of or for consumers  
21 other than a sale to a person who:

22 (i) Purchases for the purpose of resale as tangible personal  
23 property in the regular course of business without intervening use by  
24 such person, but a purchase for the purpose of resale by a regional  
25 transit authority under RCW 81.112.300 is not a sale for resale; or

26 (ii) Installs, repairs, cleans, alters, imprints, improves,  
27 constructs, or decorates real or personal property of or for  
28 consumers, if such tangible personal property becomes an ingredient  
29 or component of such real or personal property without intervening  
30 use by such person; or

31 (iii) Purchases for the purpose of consuming the property  
32 purchased in producing for sale as a new article of tangible personal  
33 property or substance, of which such property becomes an ingredient  
34 or component or is a chemical used in processing, when the primary  
35 purpose of such chemical is to create a chemical reaction directly  
36 through contact with an ingredient of a new article being produced  
37 for sale; or

38 (iv) Purchases for the purpose of consuming the property  
39 purchased in producing ferrosilicon which is subsequently used in

1 producing magnesium for sale, if the primary purpose of such property  
2 is to create a chemical reaction directly through contact with an  
3 ingredient of ferrosilicon; or

4 (v) Purchases for the purpose of providing the property to  
5 consumers as part of competitive telephone service, as defined in RCW  
6 82.04.065; or

7 (vi) Purchases for the purpose of satisfying the person's  
8 obligations under an extended warranty as defined in subsection (7)  
9 of this section, if such tangible personal property replaces or  
10 becomes an ingredient or component of property covered by the  
11 extended warranty without intervening use by such person.

12 (b) The term includes every sale of tangible personal property  
13 that is used or consumed or to be used or consumed in the performance  
14 of any activity defined as a "sale at retail" or "retail sale" even  
15 though such property is resold or used as provided in (a)(i) through  
16 (vi) of this subsection following such use.

17 (c) The term also means every sale of tangible personal property  
18 to persons engaged in any business that is taxable under RCW  
19 82.04.280(1) (a), (b), and (g), 82.04.290, and 82.04.2908.

20 (2) The term "sale at retail" or "retail sale" includes the sale  
21 of or charge made for tangible personal property consumed and/or for  
22 labor and services rendered in respect to the following:

23 (a) The installing, repairing, cleaning, altering, imprinting, or  
24 improving of tangible personal property of or for consumers,  
25 including charges made for the mere use of facilities in respect  
26 thereto, but excluding charges made for the use of self-service  
27 laundry facilities, and also excluding sales of laundry service to  
28 nonprofit health care facilities, and excluding services rendered in  
29 respect to live animals, birds and insects;

30 (b) The constructing, repairing, decorating, or improving of new  
31 or existing buildings or other structures under, upon, or above real  
32 property of or for consumers, including the installing or attaching  
33 of any article of tangible personal property therein or thereto,  
34 whether or not such personal property becomes a part of the realty by  
35 virtue of installation, and also includes the sale of services or  
36 charges made for the clearing of land and the moving of earth  
37 excepting the mere leveling of land used in commercial farming or  
38 agriculture;

39 (c) The constructing, repairing, or improving of any structure  
40 upon, above, or under any real property owned by an owner who conveys

1 the property by title, possession, or any other means to the person  
2 performing such construction, repair, or improvement for the purpose  
3 of performing such construction, repair, or improvement and the  
4 property is then reconveyed by title, possession, or any other means  
5 to the original owner;

6 (d) The cleaning, fumigating, razing, or moving of existing  
7 buildings or structures, but does not include the charge made for  
8 janitorial services; and for purposes of this section the term  
9 "janitorial services" means those cleaning and caretaking services  
10 ordinarily performed by commercial janitor service businesses  
11 including, but not limited to, wall and window washing, floor  
12 cleaning and waxing, and the cleaning in place of rugs, drapes and  
13 upholstery. The term "janitorial services" does not include painting,  
14 papering, repairing, furnace or septic tank cleaning, snow removal or  
15 sandblasting;

16 (e) Automobile towing and similar automotive transportation  
17 services, but not in respect to those required to report and pay  
18 taxes under chapter 82.16 RCW;

19 (f) The furnishing of lodging and all other services by a hotel,  
20 rooming house, tourist court, motel, trailer camp, and the granting  
21 of any similar license to use real property, as distinguished from  
22 the renting or leasing of real property, and it is presumed that the  
23 occupancy of real property for a continuous period of one month or  
24 more constitutes a rental or lease of real property and not a mere  
25 license to use or enjoy the same. For the purposes of this  
26 subsection, it is presumed that the sale of and charge made for the  
27 furnishing of lodging for a continuous period of one month or more to  
28 a person is a rental or lease of real property and not a mere license  
29 to enjoy the same;

30 (g) The installing, repairing, altering, or improving of digital  
31 goods for consumers;

32 (h) Persons taxable under (a), (b), (c), (d), (e), (f), and (g)  
33 of this subsection when such sales or charges are for property, labor  
34 and services which are used or consumed in whole or in part by such  
35 persons in the performance of any activity defined as a "sale at  
36 retail" or "retail sale" even though such property, labor and  
37 services may be resold after such use or consumption. Nothing  
38 contained in this subsection may be construed to modify subsection  
39 (1) of this section and nothing contained in subsection (1) of this  
40 section may be construed to modify this subsection.

1 (3) The term "sale at retail" or "retail sale" includes the sale  
2 of or charge made for personal, business, or professional services  
3 including amounts designated as interest, rents, fees, admission, and  
4 other service emoluments however designated, received by persons  
5 engaging in the following business activities:

6 (a) Abstract, title insurance, and escrow services;

7 (b) ~~((Credit bureau services;~~

8 ~~(+))~~) Automobile parking and storage garage services;

9 ~~((+d))~~) (c) Landscape maintenance and horticultural services but  
10 excluding (i) horticultural services provided to farmers and (ii)  
11 pruning, trimming, repairing, removing, and clearing of trees and  
12 brush near electric transmission or distribution lines or equipment,  
13 if performed by or at the direction of an electric utility;

14 ~~((+e))~~) (d) Service charges associated with tickets to  
15 professional sporting events;

16 ~~((+f))~~) (e) The following personal services: Tanning salon  
17 services, tattoo parlor services, steam bath services, turkish bath  
18 services, escort services, and dating services; and

19 ~~((+g))~~) (f)(i) Operating an athletic or fitness facility,  
20 including all charges for the use of such a facility or for any  
21 associated services and amenities, except as provided in ~~((+g))~~) (f)  
22 (ii) of this subsection.

23 (ii) Notwithstanding anything to the contrary in ~~((+g))~~) (f)(i)  
24 of this subsection (3), the term "sale at retail" and "retail sale"  
25 under this subsection does not include:

26 (A) Separately stated charges for the use of an athletic or  
27 fitness facility where such use is primarily for a purpose other than  
28 engaging in or receiving instruction in a physical fitness activity;

29 (B) Separately stated charges for the use of a discrete portion  
30 of an athletic or fitness facility, other than a pool, where such  
31 discrete portion of the facility does not by itself meet the  
32 definition of "athletic or fitness facility" in this subsection;

33 (C) Separately stated charges for services, such as advertising,  
34 massage, nutritional consulting, and body composition testing, that  
35 do not require the customer to engage in physical fitness activities  
36 to receive the service. The exclusion in this subsection (3)~~((+g))~~)  
37 (f)(ii)(C) does not apply to personal training services and  
38 instruction in a physical fitness activity;

39 (D) Separately stated charges for physical therapy provided by a  
40 physical therapist, as those terms are defined in RCW 18.74.010, or

1 occupational therapy provided by an occupational therapy  
2 practitioner, as those terms are defined in RCW 18.59.020, when  
3 performed pursuant to a referral from an authorized health care  
4 practitioner or in consultation with an authorized health care  
5 practitioner. For the purposes of this subsection (3)((~~g~~)) (f)  
6 (ii)(D), an authorized health care practitioner means a health care  
7 practitioner licensed under chapter 18.83, 18.25, 18.36A, 18.57,  
8 18.57A, 18.71, or 18.71A RCW;

9 (E) Rent or association fees charged by a landlord or residential  
10 association to a tenant or residential owner with access to an  
11 athletic or fitness facility maintained by the landlord or  
12 residential association, unless the rent or fee varies depending on  
13 whether the tenant or owner has access to the facility;

14 (F) Services provided in the regular course of employment by an  
15 employee with access to an athletic or fitness facility maintained by  
16 the employer for use without charge by its employees or their family  
17 members;

18 (G) The provision of access to an athletic or fitness facility by  
19 an educational institution to its students and staff. However,  
20 charges made by an educational institution to its alumni or other  
21 members of the public for the use of any of the educational  
22 institution's athletic or fitness facilities are a retail sale under  
23 this subsection (3)((~~g~~)) (f). For purposes of this subsection (3)  
24 ((~~g~~)) (f)(ii)(G), "educational institution" has the same meaning as  
25 in RCW 82.04.170; and

26 (H) Yoga, tai chi, or chi gong classes held at a community  
27 center, park, gymnasium, college or university, hospital or other  
28 medical facility, private residence, or any facility that is not  
29 primarily used for physical fitness activities other than yoga, tai  
30 chi, or chi gong classes.

31 (iii) Nothing in ((~~g~~)) (f)(ii) of this subsection (3) may be  
32 construed to affect the taxation of sales made by the operator of an  
33 athletic or fitness facility, where such sales are defined as a  
34 retail sale under any provision of this section other than this  
35 subsection (3).

36 (iv) For the purposes of this subsection (3)((~~g~~)) (f), the  
37 following definitions apply:

38 (A) "Athletic or fitness facility" means an indoor or outdoor  
39 facility or portion of a facility that is primarily used for:  
40 Exercise classes; strength and conditioning programs; personal

1 training services; tennis, racquetball, handball, squash, or  
2 pickleball; yoga; boxing, kickboxing, wrestling, martial arts, or  
3 mixed martial arts training; or other activities requiring the use of  
4 exercise or strength training equipment, such as treadmills,  
5 elliptical machines, stair climbers, stationary cycles, rowing  
6 machines, pilates equipment, balls, climbing ropes, jump ropes, and  
7 weightlifting equipment.

8 (B) "Physical fitness activities" means activities that involve  
9 physical exertion for the purpose of improving or maintaining the  
10 general fitness, strength, flexibility, conditioning, or health of  
11 the participant.

12 (4)(a) The term also includes the renting or leasing of tangible  
13 personal property to consumers.

14 (b) The term does not include the renting or leasing of tangible  
15 personal property where the lease or rental is for the purpose of  
16 sublease or subrent.

17 (5) The term also includes the providing of "competitive  
18 telephone service," "telecommunications service," or "ancillary  
19 services," as those terms are defined in RCW 82.04.065, to consumers.

20 (6)(a) The term also includes the sale of prewritten computer  
21 software to a consumer, regardless of the method of delivery to the  
22 end user. For purposes of (a) and (b) of this subsection, the sale of  
23 prewritten computer software includes the sale of or charge made for  
24 a key or an enabling or activation code, where the key or code is  
25 required to activate prewritten computer software and put the  
26 software into use. There is no separate sale of the key or code from  
27 the prewritten computer software, regardless of how the sale may be  
28 characterized by the vendor or by the purchaser.

29 (b) The term "retail sale" does not include the sale of or charge  
30 made for:

- 31 (i) Custom software; or
- 32 (ii) The customization of prewritten computer software.

33 (c)(i) The term also includes the charge made to consumers for  
34 the right to access and use prewritten computer software, where  
35 possession of the software is maintained by the seller or a third  
36 party, regardless of whether the charge for the service is on a per  
37 use, per user, per license, subscription, or some other basis.

38 (ii)(A) The service described in (c)(i) of this subsection (6)  
39 includes the right to access and use prewritten computer software to  
40 perform data processing.



1 (B) For purposes of this subsection (6)(c)(ii), "data processing"  
2 means the systematic performance of operations on data to extract the  
3 required information in an appropriate form or to convert the data to  
4 usable information. Data processing includes check processing, image  
5 processing, form processing, survey processing, payroll processing,  
6 claim processing, and similar activities.

7 (7) The term also includes the sale of or charge made for an  
8 extended warranty to a consumer. For purposes of this subsection,  
9 "extended warranty" means an agreement for a specified duration to  
10 perform the replacement or repair of tangible personal property at no  
11 additional charge or a reduced charge for tangible personal property,  
12 labor, or both, or to provide indemnification for the replacement or  
13 repair of tangible personal property, based on the occurrence of  
14 specified events. The term "extended warranty" does not include an  
15 agreement, otherwise meeting the definition of extended warranty in  
16 this subsection, if no separate charge is made for the agreement and  
17 the value of the agreement is included in the sales price of the  
18 tangible personal property covered by the agreement. For purposes of  
19 this subsection, "sales price" has the same meaning as in RCW  
20 82.08.010.

21 (8)(a) The term also includes the following sales to consumers of  
22 digital goods, digital codes, and digital automated services:

23 (i) Sales in which the seller has granted the purchaser the right  
24 of permanent use;

25 (ii) Sales in which the seller has granted the purchaser a right  
26 of use that is less than permanent;

27 (iii) Sales in which the purchaser is not obligated to make  
28 continued payment as a condition of the sale; and

29 (iv) Sales in which the purchaser is obligated to make continued  
30 payment as a condition of the sale.

31 (b) A retail sale of digital goods, digital codes, or digital  
32 automated services under this subsection (8) includes any services  
33 provided by the seller exclusively in connection with the digital  
34 goods, digital codes, or digital automated services, whether or not a  
35 separate charge is made for such services.

36 (c) For purposes of this subsection, "permanent" means perpetual  
37 or for an indefinite or unspecified length of time. A right of  
38 permanent use is presumed to have been granted unless the agreement  
39 between the seller and the purchaser specifies or the circumstances

1 surrounding the transaction suggest or indicate that the right to use  
2 terminates on the occurrence of a condition subsequent.

3 (9) The term also includes the charge made for providing tangible  
4 personal property along with an operator for a fixed or indeterminate  
5 period of time. A consideration of this is that the operator is  
6 necessary for the tangible personal property to perform as designed.  
7 For the purpose of this subsection (9), an operator must do more than  
8 maintain, inspect, or set up the tangible personal property.

9 (10) The term does not include the sale of or charge made for  
10 labor and services rendered in respect to the building, repairing, or  
11 improving of any street, place, road, highway, easement, right-of-  
12 way, mass public transportation terminal or parking facility, bridge,  
13 tunnel, or trestle which is owned by a municipal corporation or  
14 political subdivision of the state or by the United States and which  
15 is used or to be used primarily for foot or vehicular traffic  
16 including mass transportation vehicles of any kind.

17 (11) The term also does not include sales of chemical sprays or  
18 washes to persons for the purpose of postharvest treatment of fruit  
19 for the prevention of scald, fungus, mold, or decay, nor does it  
20 include sales of feed, seed, seedlings, fertilizer, agents for  
21 enhanced pollination including insects such as bees, and spray  
22 materials to: (a) Persons who participate in the federal conservation  
23 reserve program, the environmental quality incentives program, the  
24 wetlands reserve program, and the wildlife habitat incentives  
25 program, or their successors administered by the United States  
26 department of agriculture; (b) farmers for the purpose of producing  
27 for sale any agricultural product; (c) farmers for the purpose of  
28 providing bee pollination services; and (d) farmers acting under  
29 cooperative habitat development or access contracts with an  
30 organization exempt from federal income tax under 26 U.S.C. Sec.  
31 501(c)(3) of the federal internal revenue code or the Washington  
32 state department of fish and wildlife to produce or improve wildlife  
33 habitat on land that the farmer owns or leases.

34 (12) The term does not include the sale of or charge made for  
35 labor and services rendered in respect to the constructing,  
36 repairing, decorating, or improving of new or existing buildings or  
37 other structures under, upon, or above real property of or for the  
38 United States, any instrumentality thereof, or a county or city  
39 housing authority created pursuant to chapter 35.82 RCW, including  
40 the installing, or attaching of any article of tangible personal

1 property therein or thereto, whether or not such personal property  
2 becomes a part of the realty by virtue of installation. Nor does the  
3 term include the sale of services or charges made for the clearing of  
4 land and the moving of earth of or for the United States, any  
5 instrumentality thereof, or a county or city housing authority. Nor  
6 does the term include the sale of services or charges made for  
7 cleaning up for the United States, or its instrumentalities,  
8 radioactive waste and other by-products of weapons production and  
9 nuclear research and development.

10 (13) The term does not include the sale of or charge made for  
11 labor, services, or tangible personal property pursuant to agreements  
12 providing maintenance services for bus, rail, or rail fixed guideway  
13 equipment when a regional transit authority is the recipient of the  
14 labor, services, or tangible personal property, and a transit agency,  
15 as defined in RCW 81.104.015, performs the labor or services.

16 (14) The term does not include the sale for resale of any service  
17 described in this section if the sale would otherwise constitute a  
18 "sale at retail" and "retail sale" under this section.

19 (15)(a) The term "sale at retail" or "retail sale" includes  
20 amounts charged, however labeled, to consumers to engage in any of  
21 the activities listed in this subsection (15)(a), including the  
22 furnishing of any associated equipment or, except as otherwise  
23 provided in this subsection, providing instruction in such  
24 activities, where such charges are not otherwise defined as a "sale  
25 at retail" or "retail sale" in this section:

26 (i)(A) Golf, including any variant in which either golf balls or  
27 golf clubs are used, such as miniature golf, hitting golf balls at a  
28 driving range, and golf simulators, and including fees charged by a  
29 golf course to a player for using his or her own cart. However,  
30 charges for golf instruction are not a retail sale, provided that if  
31 the instruction involves the use of a golfing facility that would  
32 otherwise require the payment of a fee, such as green fees or driving  
33 range fees, such fees, including the applicable retail sales tax,  
34 must be separately identified and charged by the golfing facility  
35 operator to the instructor or the person receiving the instruction.

36 (B) Notwithstanding (a)(i)(A) of this subsection (15) and except  
37 as otherwise provided in this subsection (15)(a)(i)(B), the term  
38 "sale at retail" or "retail sale" does not include amounts charged to  
39 participate in, or conduct, a golf tournament or other competitive  
40 event. However, amounts paid by event participants to the golf

1 facility operator are retail sales under this subsection (15)(a)(i).  
2 Likewise, amounts paid by the event organizer to the golf facility  
3 are retail sales under this subsection (15)(a)(i), if such amounts  
4 vary based on the number of event participants;

5 (ii) Ballooning, hang gliding, indoor or outdoor sky diving,  
6 paragliding, parasailing, and similar activities;

7 (iii) Air hockey, billiards, pool, foosball, darts, shuffleboard,  
8 ping pong, and similar games;

9 (iv) Access to amusement park, theme park, and water park  
10 facilities, including but not limited to charges for admission and  
11 locker or cabana rentals. Discrete charges for rides or other  
12 attractions or entertainment that are in addition to the charge for  
13 admission are not a retail sale under this subsection (15)(a)(iv).  
14 For the purposes of this subsection, an amusement park or theme park  
15 is a location that provides permanently affixed amusement rides,  
16 games, and other entertainment, but does not include parks or zoos  
17 for which the primary purpose is the exhibition of wildlife, or  
18 fairs, carnivals, and festivals as defined in (b)(i) of this  
19 subsection;

20 (v) Batting cage activities;

21 (vi) Bowling, but not including competitive events, except that  
22 amounts paid by the event participants to the bowling alley operator  
23 are retail sales under this subsection (15)(a)(vi). Likewise, amounts  
24 paid by the event organizer to the operator of the bowling alley are  
25 retail sales under this subsection (15)(a)(vi), if such amounts vary  
26 based on the number of event participants;

27 (vii) Climbing on artificial climbing structures, whether indoors  
28 or outdoors;

29 (viii) Day trips for sightseeing purposes;

30 (ix) Bungee jumping, zip lining, and riding inside a ball,  
31 whether inflatable or otherwise;

32 (x) Horseback riding offered to the public, where the seller  
33 furnishes the horse to the buyer and providing instruction is not the  
34 primary focus of the activity, including guided rides, but not  
35 including therapeutic horseback riding provided by an instructor  
36 certified by a nonprofit organization that offers national or  
37 international certification for therapeutic riding instructors;

38 (xi) Fishing, including providing access to private fishing areas  
39 and charter or guided fishing, except that fishing contests and

1 license fees imposed by a government entity are not a retail sale  
2 under this subsection;

3 (xii) Guided hunting and hunting at game farms and shooting  
4 preserves, except that hunting contests and license fees imposed by a  
5 government entity are not a retail sale under this subsection;

6 (xiii) Swimming, but only in respect to (A) recreational or  
7 fitness swimming that is open to the public, such as open swim, lap  
8 swimming, and special events like kids night out and pool parties  
9 during open swim time, and (B) pool parties for private events, such  
10 as birthdays, family gatherings, and employee outings. Fees for  
11 swimming lessons, to participate in swim meets and other  
12 competitions, or to join a swim team, club, or aquatic facility are  
13 not retail sales under this subsection (15)(a)(xiii);

14 (xiv) Go-karting, bumper cars, and other motorized activities  
15 where the seller provides the vehicle and the premises where the  
16 buyer will operate the vehicle;

17 (xv) Indoor or outdoor playground activities, such as inflatable  
18 bounce structures and other inflatables; mazes; trampolines; slides;  
19 ball pits; games of tag, including laser tag and soft-dart tag; and  
20 human gyroscope rides, regardless of whether such activities occur at  
21 the seller's place of business, but not including playground  
22 activities provided for children by a licensed child day care center  
23 or licensed family day care provider as those terms are defined in  
24 RCW 43.215.010;

25 (xvi) Shooting sports and activities, such as target shooting,  
26 skeet, trap, sporting clays, "5" stand, and archery, but only in  
27 respect to discrete charges to members of the public to engage in  
28 these activities, but not including fees to enter a competitive  
29 event, instruction that is entirely or predominately classroom based,  
30 or to join or renew a membership at a club, range, or other facility;

31 (xvii) Paintball and airsoft activities;

32 (xviii) Skating, including ice skating, roller skating, and  
33 inline skating, but only in respect to discrete charges to members of  
34 the public to engage in skating activities, but not including skating  
35 lessons, competitive events, team activities, or fees to join or  
36 renew a membership at a skating facility, club, or other  
37 organization;

38 (xix) Nonmotorized snow sports and activities, such as downhill  
39 and cross-country skiing, snowboarding, ski jumping, sledding, snow  
40 tubing, snowshoeing, and similar snow sports and activities, whether

1 engaged in outdoors or in an indoor facility with or without snow,  
2 but only in respect to discrete charges to the public for the use of  
3 land or facilities to engage in nonmotorized snow sports and  
4 activities, such as fees, however labeled, for the use of ski lifts  
5 and tows and daily or season passes for access to trails or other  
6 areas where nonmotorized snow sports and activities are conducted.  
7 However, fees for the following are not retail sales under this  
8 subsection (15)(a)(xix): (A) Instructional lessons; (B) permits  
9 issued by a governmental entity to park a vehicle on or access public  
10 lands; and (C) permits or leases granted by an owner of private  
11 timberland for recreational access to areas used primarily for  
12 growing and harvesting timber; and

13 (xx) Scuba diving; snorkeling; river rafting; surfing;  
14 kiteboarding; flyboarding; water slides; inflatables, such as water  
15 pillows, water trampolines, and water rollers; and similar water  
16 sports and activities.

17 (b) Notwithstanding anything to the contrary in this subsection  
18 (15), the term "sale at retail" or "retail sale" does not include  
19 charges:

20 (i) Made for admission to, and rides or attractions at, fairs,  
21 carnivals, and festivals. For the purposes of this subsection, fairs,  
22 carnivals, and festivals are events that do not exceed twenty-one  
23 days and a majority of the amusement rides, if any, are not affixed  
24 to real property;

25 (ii) Made by an educational institution to its students and staff  
26 for activities defined as retail sales by (a)(i) through (xx) of this  
27 subsection. However, charges made by an educational institution to  
28 its alumni or other members of the general public for these  
29 activities are a retail sale under this subsection (15). For purposes  
30 of this subsection (15)(b)(ii), "educational institution" has the  
31 same meaning as in RCW 82.04.170;

32 (iii) Made by a vocational school for commercial diver training  
33 that is licensed by the workforce training and education coordinating  
34 board under chapter 28C.10 RCW; or

35 (iv) Made for day camps offered by a nonprofit organization or  
36 state or local governmental entity that provide youth not older than  
37 age eighteen, or that are focused on providing individuals with  
38 disabilities or mental illness, the opportunity to participate in a  
39 variety of supervised activities.

1       **Sec. 4.** RCW 82.04.192 and 2010 c 111 s 203 are each amended to  
2 read as follows:

3       (1) "Digital audio works" means works that result from the  
4 fixation of a series of musical, spoken, or other sounds, including  
5 ringtones.

6       (2) "Digital audiovisual works" means a series of related images  
7 which, when shown in succession, impart an impression of motion,  
8 together with accompanying sounds, if any.

9       (3)(a) "Digital automated service," except as provided in (b) of  
10 this subsection (3), means any service transferred electronically  
11 that uses one or more software applications.

12       (b) "Digital automated service" does not include:

13       (i) Any service that primarily involves the application of human  
14 effort by the seller, and the human effort originated after the  
15 customer requested the service;

16       (ii) The loaning or transferring of money or the purchase, sale,  
17 or transfer of financial instruments. For purposes of this subsection  
18 (3)(b)(ii), "financial instruments" include cash, accounts receivable  
19 and payable, loans and notes receivable and payable, debt securities,  
20 equity securities, as well as derivative contracts such as forward  
21 contracts, swap contracts, and options;

22       (iii) Dispensing cash or other physical items from a machine;

23       (iv) Payment processing services;

24       (v) Parimutuel wagering and handicapping contests as authorized  
25 by chapter 67.16 RCW;

26       (vi) Telecommunications services and ancillary services as those  
27 terms are defined in RCW 82.04.065;

28       (vii) The internet and internet access as those terms are defined  
29 in RCW 82.04.297;

30       (viii) The service described in RCW 82.04.050(6)((~~b~~)) (c);

31       (ix) Online educational programs provided by a:

32       (A) Public or private elementary or secondary school; or

33       (B) An institution of higher education as defined in sections  
34 1001 or 1002 of the federal higher education act of 1965 (Title 20  
35 U.S.C. Secs. 1001 and 1002), as existing on July 1, 2009. For  
36 purposes of this subsection (3)(b)(ix)(B), an online educational  
37 program must be encompassed within the institution's accreditation;

38       (x) Live presentations, such as lectures, seminars, workshops, or  
39 courses, where participants are connected to other participants via  
40 the internet or telecommunications equipment, which allows audience

1 members and the presenter or instructor to give, receive, and discuss  
2 information with each other in real time;

3 (xi) Travel agent services, including online travel services, and  
4 automated systems used by travel agents to book reservations;

5 (xii)(A) A service that allows the person receiving the service  
6 to make online sales of products or services, digital or otherwise,  
7 using either: (I) The service provider's web site; or (II) the  
8 service recipient's web site, but only when the service provider's  
9 technology is used in creating or hosting the service recipient's web  
10 site or is used in processing orders from customers using the service  
11 recipient's web site.

12 (B) The service described in this subsection (3)(b)(xii) does not  
13 include the underlying sale of the products or services, digital or  
14 otherwise, by the person receiving the service;

15 (xiii) Advertising services. For purposes of this subsection  
16 (3)(b)(xiii), "advertising services" means all services directly  
17 related to the creation, preparation, production, or the  
18 dissemination of advertisements. Advertising services include layout,  
19 art direction, graphic design, mechanical preparation, production  
20 supervision, placement, and rendering advice to a client concerning  
21 the best methods of advertising that client's products or services.  
22 Advertising services also include online referrals, search engine  
23 marketing and lead generation optimization, web campaign planning,  
24 the acquisition of advertising space in the internet media, and the  
25 monitoring and evaluation of web site traffic for purposes of  
26 determining the effectiveness of an advertising campaign. Advertising  
27 services do not include web hosting services and domain name  
28 registration;

29 (xiv) The mere storage of digital products, digital codes,  
30 computer software, or master copies of software. This exclusion from  
31 the definition of digital automated services includes providing space  
32 on a server for web hosting or the backing up of data or other  
33 information;

34 (xv) Data processing services. For purposes of this subsection  
35 (3)(b)(xv), "data processing service" means a primarily automated  
36 service provided to a business or other organization where the  
37 primary object of the service is the systematic performance of  
38 operations by the service provider on data supplied in whole or in  
39 part by the customer to extract the required information in an  
40 appropriate form or to convert the data to usable information. Data



1 processing services include check processing, image processing, form  
2 processing, survey processing, payroll processing, claim processing,  
3 and similar activities. Data processing does not include the service  
4 described in RCW 82.04.050(6)((~~b~~)) (c); (~~and~~)

5 (xvi) Any business activity taxable under section 2 of this act;  
6 and

7 (xvii) Digital goods.

8 (4) "Digital books" means works that are generally recognized in  
9 the ordinary and usual sense as books.

10 (5) "Digital code" means a code that provides a purchaser with  
11 the right to obtain one or more digital products, if all of the  
12 digital products to be obtained through the use of the code have the  
13 same sales and use tax treatment. "Digital code" does not include a  
14 code that represents a stored monetary value that is deducted from a  
15 total as it is used by the purchaser. "Digital code" also does not  
16 include a code that represents a redeemable card, gift card, or gift  
17 certificate that entitles the holder to select digital products of an  
18 indicated cash value. A digital code may be obtained by any means,  
19 including email or by tangible means regardless of its designation as  
20 song code, video code, book code, or some other term.

21 (6)(a) "Digital goods," except as provided in (b) of this  
22 subsection (6), means sounds, images, data, facts, or information, or  
23 any combination thereof, transferred electronically, including, but  
24 not limited to, specified digital products and other products  
25 transferred electronically not included within the definition of  
26 specified digital products.

27 (b) The term "digital goods" does not include:

28 (i) Telecommunications services and ancillary services as those  
29 terms are defined in RCW 82.04.065;

30 (ii) Computer software as defined in RCW 82.04.215;

31 (iii) The internet and internet access as those terms are defined  
32 in RCW 82.04.297;

33 (iv)(A) Except as provided in (b)(iv)(B) of this subsection (6),  
34 the representation of a personal or professional service in  
35 electronic form, such as an electronic copy of an engineering report  
36 prepared by an engineer, where the service primarily involves the  
37 application of human effort by the service provider, and the human  
38 effort originated after the customer requested the service.

39 (B) The exclusion in (b)(iv)(A) of this subsection (6) does not  
40 apply to photographers in respect to amounts received for the taking

1 of photographs that are transferred electronically to the customer,  
2 but only if the customer is an end user, as defined in RCW  
3 82.04.190(11), of the photographs. Such amounts are considered to be  
4 for the sale of digital goods; (~~and~~)

5 (v) Personal information as defined in section 2 of this act; and  
6 (vi) Services and activities excluded from the definition of  
7 digital automated services in subsection (3)(b)(i) through (~~xv~~)  
8 (xvi) of this section and not otherwise described in (b)(i) through  
9 (~~iv~~) (v) of this subsection (6).

10 (7) "Digital products" means digital goods and digital automated  
11 services.

12 (8) "Electronically transferred" or "transferred electronically"  
13 means obtained by the purchaser by means other than tangible storage  
14 media. It is not necessary that a copy of the product be physically  
15 transferred to the purchaser. So long as the purchaser may access the  
16 product, it will be considered to have been electronically  
17 transferred to the purchaser.

18 (9) "Specified digital products" means electronically transferred  
19 digital audiovisual works, digital audio works, and digital books.

20 (10) "Subscription radio services" means the sale of audio  
21 programming by a radio broadcaster as defined in RCW 82.08.02081,  
22 except as otherwise provided in this subsection. "Subscription radio  
23 services" does not include audio programming that is sold on a pay-  
24 per-program basis or that allows the buyer to access a library of  
25 programs at any time for a specific charge for that service.

26 (11) "Subscription television services" means the sale of video  
27 programming by a television broadcaster as defined in RCW  
28 82.08.02081, except as otherwise provided in this subsection.  
29 "Subscription television services" does not include video programming  
30 that is sold on a pay-per-program basis or that allows the buyer to  
31 access a library of programs at any time for a specific charge for  
32 that service, but only if the seller is not subject to a franchise  
33 fee in this state under the authority of Title 47 U.S.C. Sec. 542(a)  
34 on the gross revenue derived from the sale.

35 **Sec. 5.** RCW 82.04.2907 and 2015 3rd sp.s. c 5 s 101 are each  
36 amended to read as follows:

37 (1) Upon every person engaging within this state in the business  
38 of receiving income from royalties, the amount of tax with respect to

1 the business is equal to the gross income from royalties multiplied  
2 by the rate provided in RCW 82.04.290(2)(a).

3 (2) For the purposes of this section, "gross income from  
4 royalties" means compensation for the use of intangible property,  
5 including charges in the nature of royalties, regardless of where the  
6 intangible property will be used. For purposes of this subsection,  
7 "intangible property" includes copyrights, patents, licenses,  
8 franchises, trademarks, trade names, and similar items. "Gross income  
9 from royalties" does not include compensation for any natural  
10 resource, gross income of the business from the sale of, or exchange  
11 for consideration, personal information as defined in section 2 of  
12 this act, the licensing of prewritten computer software to the end  
13 user, or the licensing of digital goods, digital codes, or digital  
14 automated services to the end user as defined in RCW 82.04.190(11).

15 **Sec. 6.** RCW 82.04.460 and 2014 c 97 s 304 are each amended to  
16 read as follows:

17 (1) Except as otherwise provided in this section, any person  
18 earning apportionable income taxable under this chapter and also  
19 taxable in another state must, for the purpose of computing tax  
20 liability under this chapter, apportion to this state, in accordance  
21 with RCW 82.04.462, that portion of the person's apportionable income  
22 derived from business activities performed within this state.

23 (2) The department must by rule provide a method of apportioning  
24 the apportionable income of financial institutions, where such  
25 apportionable income is taxable under RCW 82.04.290. The rule adopted  
26 by the department must, to the extent feasible, be consistent with  
27 the multistate tax commission's recommended formula for the  
28 apportionment and allocation of net income of financial institutions  
29 as existing on June 1, 2010, or such subsequent date as may be  
30 provided by the department by rule, consistent with the purposes of  
31 this section, except that:

32 (a) The department's rule must provide for a single factor  
33 apportionment method based on the receipts factor; and

34 (b) The definition of "financial institution" contained in  
35 appendix A to the multistate tax commission's recommended formula for  
36 the apportionment and allocation of net income of financial  
37 institutions is advisory only.

38 (3) The department may by rule provide a method or methods of  
39 apportioning or allocating gross income derived from sales of

1 telecommunications service and competitive telephone service taxed  
2 under this chapter, if the gross proceeds of sales subject to tax  
3 under this chapter do not fairly represent the extent of the  
4 taxpayer's income attributable to this state. The rule must provide  
5 for an equitable and constitutionally permissible division of the tax  
6 base.

7 (4) For purposes of this section, the following definitions apply  
8 unless the context clearly requires otherwise:

9 (a) "Apportionable income" means gross income of the business  
10 generated from engaging in apportionable activities, including income  
11 received from apportionable activities performed outside this state  
12 if the income would be taxable under this chapter if received from  
13 activities in this state, less the exemptions and deductions  
14 allowable under this chapter. For purposes of this subsection,  
15 "apportionable activities" means only those activities taxed under:

- 16 (i) RCW 82.04.255;
- 17 (ii) RCW 82.04.260 (3), (5), (6), (7), (8), (9), (10), and (13);
- 18 (iii) RCW 82.04.280(1)(e);
- 19 (iv) RCW 82.04.285;
- 20 (v) RCW 82.04.286;
- 21 (vi) RCW 82.04.290;
- 22 (vii) RCW 82.04.2907;
- 23 (viii) RCW 82.04.2908;
- 24 (ix) RCW 82.04.263, but only to the extent of any activity that  
25 would be taxable under any of the provisions enumerated under (a)(i)  
26 through (viii) of this subsection (4) if the tax classification in  
27 RCW 82.04.263 did not exist; (~~and~~)
- 28 (x) RCW 82.04.260(14) and 82.04.280(1)(a), but only with respect  
29 to advertising; and
- 30 (xi) Section 2 of this act.

31 (b)(i) "Taxable in another state" means that the taxpayer is  
32 subject to a business activities tax by another state on its income  
33 received from engaging in apportionable activities; or the taxpayer  
34 is not subject to a business activities tax by another state on its  
35 income received from engaging in apportionable activities, but any  
36 other state has jurisdiction to subject the taxpayer to a business  
37 activities tax on such income under the substantial nexus standards  
38 in RCW 82.04.067(1).

39 (ii) For purposes of this subsection (4)(b), "business activities  
40 tax" and "state" have the same meaning as in RCW 82.04.462.

1       **Sec. 7.** RCW 82.04.462 and 2014 c 97 s 305 are each amended to  
2 read as follows:

3       (1) The apportionable income of a person within the scope of RCW  
4 82.04.460(1) is apportioned to Washington by multiplying its  
5 apportionable income by the receipts factor. Persons who are subject  
6 to tax under more than one of the tax classifications enumerated in  
7 RCW 82.04.460(4)(a) (i) through ~~((x))~~ (xi) must calculate a  
8 separate receipts factor for each tax classification that the person  
9 is taxable under.

10       (2) For purposes of subsection (1) of this section, the receipts  
11 factor is a fraction and is calculated as provided in subsections (3)  
12 ~~((and)),~~ (4), and (5) of this section and, for financial  
13 institutions, as provided in the rule adopted by the department under  
14 the authority of RCW 82.04.460(2).

15       (3)(a) The numerator of the receipts factor is the total gross  
16 income of the business of the taxpayer attributable to this state  
17 during the tax year from engaging in an apportionable activity. The  
18 denominator of the receipts factor is the total gross income of the  
19 business of the taxpayer from engaging in an apportionable activity  
20 everywhere in the world during the tax year.

21       (b) Except as otherwise provided in this section, for purposes of  
22 computing the receipts factor, gross income of the business generated  
23 from each apportionable activity is attributable to the state:

24       (i) Where the customer received the benefit of the taxpayer's  
25 service or, in the case of gross income from royalties, where the  
26 customer used the taxpayer's intangible property. When a customer  
27 receives the benefit of the taxpayer's services or uses the  
28 taxpayer's intangible property in this and one or more other states  
29 and the amount of gross income of the business that was received by  
30 the taxpayer in return for the services received or intangible  
31 property used by the customer in this state can be reasonably  
32 determined by the taxpayer, such amount of gross income must be  
33 attributed to this state.

34       (ii) If the customer received the benefit of the service or used  
35 the intangible property in more than one state and if the taxpayer is  
36 unable to attribute gross income of the business under the provisions  
37 of (b)(i) of this subsection (3), gross income of the business must  
38 be attributed to the state in which the benefit of the service was  
39 primarily received or in which the intangible property was primarily  
40 used.

1 (iii) If the taxpayer is unable to attribute gross income of the  
2 business under the provisions of (b)(i) or (ii) of this subsection  
3 (3), gross income of the business must be attributed to the state  
4 from which the customer ordered the service or, in the case of  
5 royalties, the office of the customer from which the royalty  
6 agreement with the taxpayer was negotiated.

7 (iv) If the taxpayer is unable to attribute gross income of the  
8 business under the provisions of (b)(i), (ii), or (iii) of this  
9 subsection (3), gross income of the business must be attributed to  
10 the state to which the billing statements or invoices are sent to the  
11 customer by the taxpayer.

12 (v) If the taxpayer is unable to attribute gross income of the  
13 business under the provisions of (b)(i), (ii), (iii), or (iv) of this  
14 subsection (3), gross income of the business must be attributed to  
15 the state from which the customer sends payment to the taxpayer.

16 (vi) If the taxpayer is unable to attribute gross income of the  
17 business under the provisions of (b)(i), (ii), (iii), (iv), or (v) of  
18 this subsection (3), gross income of the business must be attributed  
19 to the state where the customer is located as indicated by the  
20 customer's address: (A) Shown in the taxpayer's business records  
21 maintained in the regular course of business; or (B) obtained during  
22 consummation of the sale or the negotiation of the contract for  
23 services or for the use of the taxpayer's intangible property,  
24 including any address of a customer's payment instrument when readily  
25 available to the taxpayer and no other address is available.

26 (vii) If the taxpayer is unable to attribute gross income of the  
27 business under the provisions of (b)(i), (ii), (iii), (iv), (v), or  
28 (vi) of this subsection (3), gross income of the business must be  
29 attributed to the commercial domicile of the taxpayer.

30 (viii) For purposes of this subsection (3)(b), "customer" means a  
31 person or entity to whom the taxpayer makes a sale or renders  
32 services or from whom the taxpayer otherwise receives gross income of  
33 the business. "Customer" includes anyone who pays royalties or  
34 charges in the nature of royalties for the use of the taxpayer's  
35 intangible property.

36 (c) Gross income of the business from engaging in an  
37 apportionable activity must be excluded from the denominator of the  
38 receipts factor if, in respect to such activity, at least some of the  
39 activity is performed in this state, and the gross income is  
40 attributable under (b) of this subsection (3) to a state in which the

1 taxpayer is not taxable. For purposes of this subsection (3)(c), "not  
2 taxable" means that the taxpayer is not subject to a business  
3 activities tax by that state, except that a taxpayer is taxable in a  
4 state in which it would be deemed to have a substantial nexus with  
5 that state under the standards in RCW 82.04.067(1) regardless of  
6 whether that state imposes such a tax. "Business activities tax"  
7 means a tax measured by the amount of, or economic results of,  
8 business activity conducted in a state. The term includes taxes  
9 measured in whole or in part on net income or gross income or  
10 receipts. "Business activities tax" does not include a sales tax, use  
11 tax, or a similar transaction tax, imposed on the sale or acquisition  
12 of goods or services, whether or not denominated a gross receipts tax  
13 or a tax imposed on the privilege of doing business.

14 (d) This subsection (3) does not apply to financial institutions  
15 with respect to apportionable income taxable under RCW 82.04.290.  
16 Financial institutions must calculate the receipts factor as provided  
17 in subsection (4) of this section and the rule adopted by the  
18 department under the authority of RCW 82.04.460(2) with respect to  
19 apportionable income taxable under RCW 82.04.290. Financial  
20 institutions that are subject to tax under any other tax  
21 classification enumerated in RCW 82.04.460(4)(a) (i) through (v) and  
22 (vii) through (~~(+x+)~~) (xi) must calculate a separate receipts factor,  
23 as provided in this section, for each of the other tax  
24 classifications that the financial institution is taxable under.

25 (4) A taxpayer may calculate the receipts factor for the current  
26 tax year based on the most recent calendar year for which information  
27 is available for the full calendar year. If a taxpayer does not  
28 calculate the receipts factor for the current tax year based on  
29 previous calendar year information as authorized in this subsection,  
30 the business must use current year information to calculate the  
31 receipts factor for the current tax year. In either case, a taxpayer  
32 must correct the reporting for the current tax year when complete  
33 information is available to calculate the receipts factor for that  
34 year, but not later than October 31st of the following tax year.  
35 Interest will apply to any additional tax due on a corrected tax  
36 return. Interest must be computed and assessed as provided in RCW  
37 82.32.050 and accrues until the additional taxes are paid. Penalties  
38 as provided in RCW 82.32.090 will apply to any such additional tax  
39 due only if the current tax year reporting is not corrected and the  
40 additional tax is not paid by October 31st of the following tax year.

1 Interest as provided in RCW 82.32.060 will apply to any tax paid in  
2 excess of that properly due on a return as a result of a taxpayer  
3 using previous calendar year data or incomplete current-year data to  
4 calculate the receipts factor.

5 (5)(a)(i) Except as provided in (a)(ii) of this subsection (5),  
6 for purposes of computing the receipts factor under subsection (3) of  
7 this section, gross income of the business generating sales of, or  
8 exchanging for consideration, personal information must be  
9 attributable to this state in the ratio, expressed as a percentage,  
10 that the number of Washington addresses in the personal information  
11 bears to all addresses in the personal information. Only personal  
12 information used to generate the gross income of the business to be  
13 attributed under this subsection (5)(a)(i) is applicable in  
14 calculating the ratio described in this subsection (5)(a)(i).

15 (ii) If the taxpayer is unable to attribute gross income of the  
16 business under the provisions of (a)(i) of this subsection (5), gross  
17 income of the business generated from making sales of, or exchanging  
18 for consideration, personal information must be attributed to this  
19 state in the ratio, expressed as a percentage, that the population of  
20 this state bears to all the states of the United States in the  
21 taxpayer's market, or by any other reasonable methods of attribution  
22 allowed by the department.

23 (b) For the purposes of this subsection:

24 (i) "Addresses" means physical, mailing, or internet protocol  
25 addresses, or similar addresses; and

26 (ii) "Personal information" has the same meaning as provided in  
27 section 2 of this act.

28 (6) Unless the context clearly requires otherwise, the  
29 definitions in this subsection apply throughout this section.

30 (a) "Apportionable activities" and "apportionable income" have  
31 the same meaning as in RCW 82.04.460.

32 (b) "State" means a state of the United States, the District of  
33 Columbia, the Commonwealth of Puerto Rico, any territory or  
34 possession of the United States, or any foreign country or political  
35 subdivision of a foreign country.

36 **Sec. 8.** RCW 82.08.0291 and 2015 c 169 s 4 are each amended to  
37 read as follows:

38 The tax imposed by RCW 82.08.020 does not apply to sales defined  
39 as a sale at retail and retail sale under RCW 82.04.050 (3)((+g))



1 (f) or (15), by a nonprofit youth organization, as defined in RCW  
2 82.04.4271, to members of the organization; and the tax does not  
3 apply to physical fitness classes provided by a local government.

4 **Sec. 9.** RCW 82.32.087 and 2015 c 169 s 11 are each amended to  
5 read as follows:

6 (1) The director may grant a direct pay permit to a taxpayer who  
7 demonstrates, to the satisfaction of the director, that the taxpayer  
8 meets the requirements of this section. The direct pay permit allows  
9 the taxpayer to accrue and remit directly to the department use tax  
10 on the acquisition of tangible personal property or sales tax on the  
11 sale of or charges made for labor and/or services, in accordance with  
12 all of the applicable provisions of this title. Any taxpayer that  
13 uses a direct pay permit must remit state and local sales or use tax  
14 directly to the department. The agreement by the purchaser to remit  
15 tax directly to the department, rather than pay sales or use tax to  
16 the seller, relieves the seller of the obligation to collect sales or  
17 use tax and requires the buyer to pay use tax on the tangible  
18 personal property and sales tax on the sale of or charges made for  
19 labor and/or services.

20 (2)(a) A taxpayer may apply for a permit under this section if:  
21 (i) The taxpayer's cumulative tax liability is reasonably expected to  
22 be two hundred forty thousand dollars or more in the current calendar  
23 year; or (ii) the taxpayer makes purchases subject to the taxes  
24 imposed under chapter 82.08 or 82.12 RCW in excess of ten million  
25 dollars per calendar year. For the purposes of this section, "tax  
26 liability" means the amount required to be remitted to the department  
27 for taxes administered under this chapter, except for the taxes  
28 imposed or authorized by chapters 82.14A, 82.14B, 82.24, 82.27,  
29 82.29A, and 84.33 RCW.

30 (b) Application for a permit must be made in writing to the  
31 director in a form and manner prescribed by the department. A  
32 taxpayer who transacts business in two or more locations may submit  
33 one application to cover the multiple locations.

34 (c) The director must review a direct pay permit application in a  
35 timely manner and must notify the applicant, in writing, of the  
36 approval or denial of the application. The department must approve or  
37 deny an application based on the applicant's ability to comply with  
38 local government use tax coding capabilities and responsibilities;  
39 requirements for vendor notification; recordkeeping obligations;

1 electronic data capabilities; and tax reporting procedures.  
2 Additionally, an application may be denied if the director determines  
3 that denial would be in the best interest of collecting taxes due  
4 under this title. The department must provide a direct pay permit to  
5 an approved applicant with the notice of approval. The direct pay  
6 permit must clearly state that the holder is solely responsible for  
7 the accrual and payment of the tax imposed under chapters 82.08 and  
8 82.12 RCW and that the seller is relieved of liability to collect tax  
9 imposed under chapters 82.08 and 82.12 RCW on all sales to the direct  
10 pay permit holder. The taxpayer may petition the director for  
11 reconsideration of a denial.

12 (d) A taxpayer who uses a direct pay permit must continue to  
13 maintain records that are necessary to a determination of the tax  
14 liability in accordance with this title. A direct pay permit is not  
15 transferable and the use of a direct pay permit may not be assigned  
16 to a third party.

17 (3) Taxes for which the direct pay permit is used are due and  
18 payable on the tax return for the reporting period in which the  
19 taxpayer (a) receives the tangible personal property purchased or in  
20 which the labor and/or services are performed or (b) receives an  
21 invoice for such property or such labor and/or services, whichever  
22 period is earlier.

23 (4) The holder of a direct pay permit must furnish a copy of the  
24 direct pay permit to each vendor with whom the taxpayer has opted to  
25 use a direct pay permit. Sellers who make sales upon which the sales  
26 or use tax is not collected by reason of the provisions of this  
27 section, in addition to existing requirements under this title, must  
28 maintain a copy of the direct pay permit and any such records or  
29 information as the department may specify.

30 (5) A direct pay permit is subject to revocation by the director  
31 at any time the department determines that the taxpayer has violated  
32 any provision of this section or that revocation would be in the best  
33 interests of collecting the taxes due under this title. The notice of  
34 revocation must be in writing and is effective either as of the end  
35 of the taxpayer's next normal reporting period or a date deemed  
36 appropriate by the director and identified in the revocation notice.  
37 The taxpayer may petition the director for reconsideration of a  
38 revocation and reinstatement of the permit.

39 (6) Any taxpayer who chooses to no longer use a direct pay permit  
40 or whose permit is revoked by the department, must return the permit

1 to the department and immediately make a good faith effort to notify  
2 all vendors to whom the permit was given, advising them that the  
3 permit is no longer valid.

4 (7) Except as provided in this subsection, the direct pay permit  
5 may be used for any purchase of tangible personal property and any  
6 retail sale under RCW 82.04.050. The direct pay permit may not be  
7 used for:

8 (a) Purchases of meals or beverages;

9 (b) Purchases of motor vehicles, trailers, boats, airplanes, and  
10 other property subject to requirements for title transactions by the  
11 department of licensing;

12 (c) Purchases for which a reseller permit or other documentation  
13 authorized under RCW 82.04.470 may be used;

14 (d) Purchases that meet the definitions of RCW 82.04.050 (2) (e)  
15 and (f), (3) (a) (~~through (c), (e), (f), and (g)~~), (b), and (d)  
16 through (f), (5) and (15); or

17 (e) Other activities subject to tax under chapter 82.08 or 82.12  
18 RCW that the department by rule designates, consistent with the  
19 purposes of this section, as activities for which a direct pay permit  
20 is not appropriate and may not be used.

21 NEW SECTION. **Sec. 10.** If any provision of this act or its  
22 application to any person or circumstance is held invalid, the  
23 remainder of the act or the application of the provision to other  
24 persons or circumstances is not affected.

25 NEW SECTION. **Sec. 11.** This act takes effect January 1, 2018.

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