
SUBSTITUTE HOUSE BILL 2186

State of Washington

65th Legislature

2017 Regular Session

By House Finance (originally sponsored by Representatives Lytton, Jinkins, and Macri)

READ FIRST TIME 04/04/17.

1 AN ACT Relating to investing in Washington families by improving
2 the fairness of the state's excise tax system by narrowing or
3 eliminating tax preferences, imposing a business and occupation tax
4 surcharge while eliminating tax liability for small businesses,
5 enacting an excise tax on capital gains, modifying the real estate
6 excise tax, making administrative changes, and implementing
7 marketplace fairness in Washington; amending RCW 82.32.045,
8 82.08.0293, 82.12.0293, 82.12.0263, 82.04.290, 82.08.0273, 82.45.060,
9 82.45.010, 82.45.080, 18.27.110, 18.27.200, 82.08.050, 82.12.040,
10 82.32.145, 82.32.060, 82.04.293, 82.04.440, 82.04.44525, and
11 82.04.4463; reenacting and amending RCW 82.04.280 and 82.32.790;
12 adding new sections to chapter 82.04 RCW; adding new sections to
13 chapter 82.32 RCW; adding new sections to chapter 82.08 RCW; adding
14 new sections to chapter 82.12 RCW; adding a new section to chapter
15 43.135 RCW; adding a new section to chapter 39.42 RCW; adding new
16 chapters to Title 82 RCW; creating new sections; repealing RCW
17 82.04.4451 and 82.04.272; repealing 2010 c 106 s 206, 2009 c 461 s 3,
18 2006 c 300 s 7, and 2003 c 149 s 4; prescribing penalties; providing
19 effective dates; providing expiration dates; and declaring an
20 emergency.

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

1 (1) "Accessory dwelling unit" means a separate habitable living
2 area that is subordinate to the principal single-family dwelling
3 unit, which is either internal to, attached to, or located on the
4 same property tax parcel as, the principal single-family dwelling
5 unit.

6 (2) "Adjusted capital gain" means federal net long-term capital
7 gain:

8 (a) Plus any loss from a sale or exchange that is exempt from the
9 tax imposed in this chapter, to the extent such loss was included in
10 calculating federal net long-term capital gain; and

11 (b) Less any gain from a sale or exchange that is exempt from the
12 tax imposed in this chapter, to the extent such gain was included in
13 calculating federal net long-term capital gain.

14 (3) "Capital asset" has the same meaning as provided by Title 26
15 U.S.C. Sec. 1221 of the internal revenue code and also includes any
16 other property if the sale or exchange of the property results in a
17 gain that is treated as a long-term capital gain under Title 26
18 U.S.C. Sec. 1231 or any other provision of the internal revenue code.

19 (4) "Federal net long-term capital gain" means the net long-term
20 capital gain reportable for federal income tax purposes.

21 (5) "Individual" means a natural person.

22 (6) "Internal revenue code" means the United States internal
23 revenue code of 1986, as amended, as of the effective date of this
24 section, or such subsequent date as the department may provide by
25 rule consistent with the purpose of this chapter.

26 (7) "Long-term capital asset" means a capital asset that is held
27 for more than one year.

28 (8)(a) "Resident" means an individual:

29 (i) Who is domiciled in this state during the taxable year,
30 unless the individual (A) maintained no permanent place of abode in
31 this state during the entire taxable year, (B) maintained a permanent
32 place of abode outside of this state during the entire taxable year,
33 and (C) spent in the aggregate not more than thirty days of the
34 taxable year in this state; or

35 (ii) Who is not domiciled in this state during the taxable year
36 but maintained a place of abode and was physically present in this
37 state for more than one hundred eighty-three days during the taxable
38 year.

1 (b) For purposes of this subsection, "day" includes any portion
2 of a day, except that a continuous period of twenty-four hours or
3 less may not constitute more than one day.

4 (c) An individual who is a resident under (a) of this subsection
5 is a resident for that portion of a taxable year in which the
6 individual was domiciled in this state or maintained a place of abode
7 in this state.

8 (9) "Taxable year" means the taxpayer's taxable year as
9 determined under the internal revenue code.

10 (10) "Taxpayer" means an individual subject to tax under this
11 chapter.

12 (11) "Washington capital gains" means an individual's adjusted
13 capital gains allocated to this state as provided in section 106 of
14 this act, less:

15 (a) Twenty-five thousand dollars; or

16 (b) Fifty thousand dollars for individuals filing joint returns
17 under this chapter.

18 NEW SECTION. **Sec. 102.** (1) Beginning January 1, 2018, a tax is
19 imposed on all individuals for the privilege of selling or exchanging
20 long-term capital assets, or receiving Washington capital gains. The
21 tax equals seven percent multiplied by the individual's Washington
22 capital gains.

23 (2) If an individual's Washington capital gains are less than
24 zero for a taxable year, no tax is due under this section. No such
25 losses may be carried back or carried forward to another taxable
26 year.

27 (3)(a) The tax imposed in this section applies to (i) the sale or
28 exchange of long-term capital assets owned by the taxpayer, whether
29 the taxpayer was the legal or a beneficial owner of such assets at
30 the time of the sale or exchange, or (ii) Washington capital gains
31 otherwise realized by the taxpayer.

32 (b) For purposes of this chapter, an individual is a beneficial
33 owner of long-term capital assets held by an entity that is a pass-
34 through or disregarded entity for federal tax purposes, such as a
35 partnership, limited liability company, S-corporation, or trust, to
36 the extent of the individual's ownership interest in the entity as
37 reported for federal income tax purposes.

1 NEW SECTION. **Sec. 103.** This chapter does not apply to the sale
2 or exchange of:

3 (1) Any residential dwelling, which means property consisting
4 solely of (a) a single-family residence, a residential condominium
5 unit, or a residential cooperative unit, including any accessory
6 dwelling unit associated with such residence or residential unit, (b)
7 a multifamily residential building consisting of one or more common
8 walls and fewer than four units, or (c) a floating home as defined in
9 RCW 82.45.032;

10 (2) Assets held under a retirement savings account under Title 26
11 U.S.C. Sec. 401(k) of the internal revenue code, a tax-sheltered
12 annuity or a custodial account described in Title 26 U.S.C. Sec.
13 403(b) of the internal revenue code, a deferred compensation plan
14 under Title 26 U.S.C. Sec. 457(b) of the internal revenue code, an
15 individual retirement account or an individual retirement annuity
16 described in Title 26 U.S.C. Sec. 408 of the internal revenue code, a
17 Roth individual retirement account described in Title 26 U.S.C. Sec.
18 408A of the internal revenue code, an employee defined contribution
19 program, an employee defined benefit plan, or a similar retirement
20 savings vehicle;

21 (3) Assets pursuant to or under imminent threat of condemnation
22 proceedings by the United States, the state or any of its political
23 subdivisions, or a municipal corporation;

24 (4) Cattle, horses, or breeding livestock held for more than
25 twelve months if for the taxable year of the sale or exchange, more
26 than fifty percent of the taxpayer's gross income for the taxable
27 year, including from the sale or exchange of capital assets, is from
28 farming or ranching;

29 (5) Agricultural or timber land by an individual who has regular,
30 continuous, and substantial involvement in the operation of the
31 agricultural or timberland that meets the criteria for material
32 participation in an activity under Title 26 U.S.C. Sec. 469(h) of the
33 internal revenue code for the ten years prior to the date of the sale
34 or exchange of the agricultural or timber land;

35 (6) Property used in a trade or business if the property
36 qualifies for an income tax deduction under Title 26 U.S.C. Sec. 167
37 or 179 of the internal revenue code; and

38 (7) Timber, or the receipt of Washington capital gains as
39 dividends and distributions from real estate investment trusts
40 derived from gains from the sale or exchange of timber. "Timber"

1 means forest trees, standing or down, on privately or publicly owned
2 land, and includes Christmas trees and short-rotation hardwoods. The
3 sale or exchange of timber includes the cutting or disposal of timber
4 qualifying for capital gains treatment under Title 26 U.S.C. Sec.
5 631(a) or (b) of the internal revenue code.

6 NEW SECTION. **Sec. 104.** The tax imposed under this chapter is in
7 addition to any other taxes imposed by the state or any of its
8 political subdivisions, or a municipal corporation, with respect to
9 the same sale or exchange, including the taxes imposed in or under
10 the authority of chapter 82.04, 82.08, 82.12, 82.14, 82.45, or 82.46
11 RCW.

12 NEW SECTION. **Sec. 105.** In computing tax, there may be deducted
13 from the measure of tax amounts that the state is prohibited from
14 taxing under the Constitution of this state or the Constitution or
15 laws of the United States.

16 NEW SECTION. **Sec. 106.** (1) For purposes of the tax imposed
17 under this chapter, adjusted capital gains are allocated as follows:

18 (a) Adjusted capital gains from the sale or exchange of real
19 property are allocated to this state if the real property is located
20 in this state or a majority of the fair market value of the real
21 property is located in this state.

22 (b) Adjusted capital gains from the sale or exchange of tangible
23 personal property are allocated to this state if the property was
24 located in this state at the time of the sale or exchange. Adjusted
25 capital gains from the sale or exchange of tangible personal property
26 are also allocated to this state even though the property was not
27 located in this state at the time of the sale or exchange if:

28 (i) The property was located in the state at any time during the
29 taxable year in which the sale or exchange occurred or the
30 immediately preceding taxable year;

31 (ii) The taxpayer was a resident at the time the sale or exchange
32 occurred; and

33 (iii) The taxpayer is not subject to the payment of an income or
34 excise tax legally imposed on the adjusted capital gain by another
35 taxing jurisdiction.

1 (c) Adjusted capital gains derived from intangible personal
2 property are allocated to this state if the taxpayer was domiciled in
3 this state at the time the sale or exchange occurred.

4 (2)(a) A credit is allowed against the tax imposed in section 102
5 of this act equal to the amount of any legally imposed income or
6 excise tax paid by the taxpayer to another taxing jurisdiction on
7 capital gains derived from capital assets within the other taxing
8 jurisdiction to the extent such capital gains are included in the
9 taxpayer's Washington capital gains. The amount of credit under this
10 subsection may not exceed the total amount of tax due under this
11 chapter, and there is no carryback or carryforward of any unused
12 credits.

13 (b) As used in this section, "taxing jurisdiction" means a state
14 of the United States other than the state of Washington, the District
15 of Columbia, the Commonwealth of Puerto Rico, any territory or
16 possession of the United States, or any foreign country or political
17 subdivision of a foreign country.

18 NEW SECTION. **Sec. 107.** (1) Except as otherwise provided in this
19 section or RCW 82.32.080, taxpayers owing tax under this chapter must
20 file, on forms prescribed by the department, a return with the
21 department on or before the date the taxpayer's federal income tax
22 return for the taxable year is required to be filed.

23 (2) In addition to the Washington return required to be filed
24 under subsection (1) of this section, taxpayers owing tax under this
25 chapter must file with the department on or before the date the
26 federal return is required to be filed a copy of the federal income
27 tax return along with all schedules and supporting documentation.

28 (3) Each taxpayer required to file a return under this section
29 must, without assessment, notice, or demand, pay any tax due thereon
30 to the department on or before the date fixed for the filing of the
31 return, regardless of any filing extension. If any tax due under this
32 chapter is not paid by the due date, interest and penalties as
33 provided in chapter 82.32 RCW apply to the deficiency.

34 (4) The department may by rule require that certain individuals
35 and other persons file, at times and on forms prescribed by the
36 department, informational returns for any period.

37 (5) If a taxpayer has obtained an extension of time for filing
38 the federal income tax return for the taxable year, the taxpayer is
39 entitled to the same extension of time for filing the return required

1 under this section if the taxpayer provides the department, before
2 the due date provided in subsection (1) of this section, the
3 extension confirmation number or other evidence satisfactory to the
4 department confirming the federal extension. An extension under this
5 subsection for the filing of a return under this chapter is not an
6 extension of time to pay the tax due under this chapter.

7 (6)(a) If any return due under subsection (1) of this section,
8 along with a copy of the federal income tax return, is not filed with
9 the department by the due date or any extension granted by the
10 department, the department must assess a penalty in the amount of
11 five percent of the tax due for the taxable year covered by the
12 return for each month or portion of a month that the return remains
13 unfiled. The total penalty assessed under this subsection may not
14 exceed twenty-five percent of the tax due for the taxable year
15 covered by the delinquent return. The penalty under this subsection
16 is in addition to any penalties assessed for the late payment of any
17 tax due on the return.

18 (b) The department must waive or cancel the penalty imposed under
19 this subsection if:

20 (i) The department is persuaded that the taxpayer's failure to
21 file the return by the due date was due to circumstances beyond the
22 taxpayer's control; or

23 (ii) The taxpayer has not been delinquent in filing any return
24 due under this section during the preceding five calendar years.

25 NEW SECTION. **Sec. 108.** (1) If the federal income tax
26 liabilities of both spouses are determined on a joint federal return
27 for the taxable year, they must file a joint return under this
28 chapter.

29 (2) Except as otherwise provided in this subsection, if the
30 federal income tax liability of either spouse is determined on a
31 separate federal return for the taxable year, they must file separate
32 returns under this chapter. State registered domestic partners may
33 file a joint return under this chapter even if they filed separate
34 federal returns for the taxable year.

35 (3) In any case in which a joint return is filed under this
36 section, the liability of each spouse or state registered domestic
37 partner is joint and several, unless:

1 (a) The spouse is relieved of liability for federal tax purposes
2 as provided under Title 26 U.S.C. Sec. 6015 of the internal revenue
3 code; or

4 (b) The department determines that the domestic partner qualifies
5 for relief as provided by rule of the department. Such rule, to the
6 extent possible without being inconsistent with this chapter, must
7 follow Title 26 U.S.C. Sec. 6015.

8 NEW SECTION. **Sec. 109.** To the extent not inconsistent with the
9 provisions of this chapter, the following statutes apply to the
10 administration of taxes imposed under this chapter: RCW 82.32.050,
11 82.32.055, 82.32.060, 82.32.070, 82.32.080, 82.32.085, 82.32.090,
12 82.32.100, 82.32.105, 82.32.110, 82.32.117, 82.32.120, 82.32.130,
13 82.32.135, 82.32.150, 82.32.160, 82.32.170, 82.32.180, 82.32.190,
14 82.32.200, 82.32.210, 82.32.212, 82.32.220, 82.32.230, 82.32.235,
15 82.32.237, 82.32.240, 82.32.245, 82.32.265, 82.32.300, 82.32.310,
16 82.32.320, 82.32.330, 82.32.340, 82.32.350, 82.32.360, 82.32.410,
17 82.32.805, 82.32.808, and section 114 of this act.

18 NEW SECTION. **Sec. 110.** (1) Any taxpayer who knowingly attempts
19 to evade payment of the tax imposed under this chapter is guilty of a
20 class C felony as provided in chapter 9A.20 RCW.

21 (2) Any taxpayer who knowingly fails to pay tax, make returns,
22 keep records, or supply information, as required under this title, is
23 guilty of a gross misdemeanor as provided in chapter 9A.20 RCW.

24 NEW SECTION. **Sec. 111.** All revenue from taxes collected under
25 this chapter, including penalties and interest on such taxes, must be
26 deposited in the education legacy trust account created in RCW
27 83.100.230.

28 NEW SECTION. **Sec. 112.** Notwithstanding any common law rule of
29 strict construction of statutes imposing taxes, this chapter, being
30 necessary for the welfare of the state and its inhabitants, must be
31 liberally construed in support of application of the tax.

32 NEW SECTION. **Sec. 113.** A new section is added to chapter 82.04
33 RCW to read as follows:

1 A deduction is allowed against a person's gross income of the
2 business to the extent necessary to avoid taxing the same amounts
3 under this chapter and section 102 of this act.

4 NEW SECTION. **Sec. 114.** A new section is added to chapter 82.32
5 RCW to read as follows:

6 (1) The department may enter into reciprocal tax collection
7 agreements with the taxing officials of any other state imposing a
8 specified tax. Agreements authorized under this section must require
9 each state to offset delinquent specified taxes owed by a taxpayer to
10 one party to the agreement, including any associated penalties,
11 interest, or other additions, against refunds of overpaid specified
12 taxes owed to the taxpayer by the other party to the agreement. Such
13 agreements may also include provisions governing the sharing of
14 information relevant to the administration of specified taxes.
15 However, the department may not share return or tax information with
16 other states except as allowed under RCW 82.32.330. Likewise, the
17 department may not share federal tax information with other states
18 without the express written consent of the internal revenue service.

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

21 (a) "Specified taxes" means generally applicable state and local
22 sales tax and use taxes, broad-based state gross receipts taxes,
23 state income taxes, and stand-alone state taxes on capital gains or
24 interest and dividends. "Specified taxes" include, but are not
25 limited to, the taxes imposed in or under the authority of chapters
26 82.04, 82.08, 82.12, 82.14, 82.16, and 82.--- RCW (the new chapter
27 created in section 1101 of this act), and similar taxes imposed by
28 another state. For purposes of this subsection (2)(a), "gross
29 receipts tax," "income tax," "sales tax," and "use tax" have the same
30 meanings as provided in RCW 82.56.010.

31 (b) "State" has the same meaning as provided in RCW 82.56.010.

32 **Part II**
33 **B&O Rate Change & Deduction**

34 NEW SECTION. **Sec. 201.** (1) This section is the tax preference
35 performance statement for the tax preference contained in section
36 203, chapter . . . , Laws of 2017 (section 203 of this act). This
37 performance statement is only intended to be used for subsequent

1 evaluation of the tax preference. It is not intended to create a
2 private right of action by any party or to be used to determine
3 eligibility for preferential tax treatment.

4 (2) The legislature categorizes this tax preference as one
5 intended to provide tax relief for certain businesses or individuals,
6 as indicated in RCW 82.32.808(2)(e).

7 (3) It is the legislature's specific public policy objective to
8 reduce the tax burden on individuals and businesses imposed by the
9 existing business and occupation tax rates.

10 (4) If the review finds that more than one hundred thousand
11 businesses in the state per year are experiencing tax relief from
12 this tax preference, then the legislature intends to extend the
13 expiration date of this tax preference.

14 (5) In order to obtain the data necessary to perform the review
15 in subsection (4) of this section, the joint legislative audit and
16 review committee may refer to any data collected by the state.

17 NEW SECTION. **Sec. 202.** RCW 82.04.4451 (Credit against tax due—
18 Maximum credit—Table) and 2010 1st sp.s. c 23 s 1102, 1997 c 238 s 2,
19 & 1994 sp.s. c 2 s 1 are each repealed.

20 NEW SECTION. **Sec. 203.** A new section is added to chapter 82.04
21 RCW to read as follows:

22 (1) In computing the tax imposed under this chapter, each year a
23 person may deduct from the measure of tax an amount up to:

24 (a) Two hundred fifty thousand dollars if the person meets the
25 eligibility requirements in subsection (6)(a)(i) of this section; or

26 (b) One hundred thousand dollars if the person meets the
27 eligibility requirements in subsection (6)(a)(ii) of this section.

28 (2)(a) A person who is eligible to claim the deduction under this
29 section and who is also entitled to claim a multiple activities tax
30 credit under RCW 82.04.440 may, in lieu of claiming the deduction
31 under this section, elect to claim the deduction in the form of
32 credit as provided in this section. The credit for a calendar year is
33 equal to the lesser of the tax otherwise due under this chapter for
34 that calendar year or an amount determined by:

35 (i) For a person who is eligible for the deduction under
36 subsection (1)(a) of this section, multiplying two hundred fifty
37 thousand dollars by the highest tax rate applicable to any of the

1 activities conducted by the taxpayer that qualify the taxpayer for a
2 multiple activities tax credit under RCW 82.04.440; or

3 (ii) For a person who is eligible for the deduction under
4 subsection (1)(b) of this section, multiplying one hundred thousand
5 dollars by the highest tax rate applicable to any of the activities
6 conducted by the taxpayer that qualify the taxpayer for a multiple
7 activities tax credit under RCW 82.04.440.

8 (b) For purposes of this subsection (2), "tax rate" means the
9 base tax rate applicable to a particular business activity, plus the
10 rate of any additional tax imposed on that business activity under
11 another provision of this chapter.

12 (c) An election under this subsection to claim the deduction in
13 the form of a credit applies for a full calendar year.

14 (3) No tax under this chapter is due when, in the case of the
15 deduction, the measure of tax for a reporting period is equal to or
16 less than the available deduction, or in the case of the credit, the
17 tax otherwise due for a reporting period is equal to or less than the
18 available credit. Any unused portion of the deduction or credit under
19 this section may be carried forward for tax reporting periods in the
20 same calendar year but otherwise may not be carried forward or
21 backward to tax reporting periods in other calendar years. For
22 taxpayers who report taxes due under this chapter to the department
23 more frequently than annually, the deduction and credit under this
24 section must be used in a prior tax reporting period in the current
25 calendar year before it may be carried forward and used in a
26 subsequent tax reporting period in the current calendar year, unless
27 the taxpayer had no tax liability under this chapter in any prior tax
28 reporting period in the current calendar year. No refunds are allowed
29 for the deduction and credit under this section.

30 (4) For taxpayers subject to taxes imposed under multiple
31 provisions of this chapter, the deduction under this section must be
32 applied to the measure of tax in order of the business activities
33 taxed at the highest to lowest rates.

34 (5) The deduction and credit under this section are in addition
35 to any other applicable deductions, exemptions, and credits allowed
36 for the taxes due under this chapter. The deduction and credit in
37 this section must be claimed, in the case of the deduction, after all
38 other deductions are claimed, and in the case of the credit, after
39 all other credits are claimed.

1 (6)(a)(i) A person is eligible for the deduction under subsection
2 (1)(a) of this section or credit under subsection (2)(a)(i) of this
3 section if the person's taxable amount was less than or equal to two
4 hundred fifty thousand dollars for the calendar year immediately
5 preceding the current calendar year.

6 (ii) A person is eligible for the deduction under subsection
7 (1)(b) of this section or credit under subsection (2)(a)(ii) of this
8 section if the person's taxable amount exceeded two hundred fifty
9 thousand dollars, but was less than five hundred thousand dollars,
10 for the calendar year immediately preceding the current calendar
11 year.

12 (b) For purposes of this subsection, if a person is a successor
13 to another person, the successor's taxable amount for the calendar
14 year immediately preceding the successor's first full calendar year
15 of engaging in business within this state, includes the predecessor's
16 taxable amount for the calendar year immediately preceding the
17 successor's first full calendar year of engaging in business within
18 this state.

19 (c) For purposes of this subsection (6), the following
20 definitions apply:

21 (i) "Successor" has the same meaning as in RCW 82.04.180(1).

22 (ii) "Taxable amount" means the taxable amount subject to the tax
23 imposed in this chapter required to be reported on the person's
24 excise tax returns, less any taxable amount for which a multiple
25 activities tax credit is allowed under RCW 82.04.440.

26 (7) This section expires January 1, 2033.

27 NEW SECTION. **Sec. 204.** A new section is added to chapter 82.04
28 RCW to read as follows:

29 (1) Beginning July 1, 2017, upon every person engaging within the
30 state in selected business activities, an additional tax is imposed.
31 The amount of the additional tax imposed on a person under this
32 section is equal to the tax payable by the person under all other
33 applicable provisions of this chapter on selected business
34 activities, multiplied by twenty percent.

35 (2) The additional tax under this section is due in the form and
36 manner determined by the department.

37 (3) For purposes of this section, "selected business activities"
38 means business activities subject to tax under RCW 82.04.230;
39 82.04.240; 82.04.250 (1) or (2); 82.04.255; 82.04.257; 82.04.260 (3),

1 (9), (10), or (13); 82.04.263; 82.04.270; 82.04.280; 82.04.285;
2 82.04.290(2), including the activities described in RCW 82.04.29001,
3 82.04.29005, 82.04.297, and 82.04.540; 82.04.2905; 82.04.2906;
4 82.04.2907; and 82.04.298; and beginning July 1, 2024, the activities
5 taxed under RCW 82.04.260(14).

6 **Sec. 205.** RCW 82.32.045 and 2010 1st sp.s. c 23 s 1103 are each
7 amended to read as follows:

8 (1) Except as otherwise provided in this chapter, payments of the
9 taxes imposed under chapters 82.04, 82.08, 82.12, 82.14, and 82.16
10 RCW, along with reports and returns on forms prescribed by the
11 department, are due monthly within twenty-five days after the end of
12 the month in which the taxable activities occur.

13 (2) The department of revenue may relieve any taxpayer or class
14 of taxpayers from the obligation of remitting monthly and may require
15 the return to cover other longer reporting periods, but in no event
16 may returns be filed for a period greater than one year. For these
17 taxpayers, tax payments are due on or before the last day of the
18 month next succeeding the end of the period covered by the return.

19 (3) The department of revenue may also require verified annual
20 returns from any taxpayer, setting forth such additional information
21 as it may deem necessary to correctly determine tax liability.

22 (4) Notwithstanding subsections (1) and (2) of this section, the
23 department may relieve any person of the requirement to file returns
24 and pay any taxes otherwise due under chapters 82.04 and 82.16 RCW if
25 the following conditions are met:

26 (a) The person's value of products, gross proceeds of sales, or
27 gross income of the business, from all business activities taxable
28 under chapter 82.04 RCW, is less than((+

29 ~~(i) Twenty eight thousand dollars per year; or~~
30 ~~(ii) Forty six thousand six hundred sixty seven dollars per year~~
31 ~~for persons generating at least fifty percent of their taxable amount~~
32 ~~from activities taxable under RCW 82.04.255, 82.04.290(2)(a), and~~
33 ~~82.04.285)) one hundred fifty thousand dollars per year;~~

34 (b) The person's gross income of the business from all activities
35 taxable under chapter 82.16 RCW is less than twenty-four thousand
36 dollars per year; and

37 (c) The person is not required to collect or pay to the
38 department of revenue any other tax or fee which the department is
39 authorized to collect.

1 Part III

2 Eliminating or Narrowing Tax Preferences

3 Subpart A

4 Eliminating the Sales and Use Tax Exemption for Bottled Water

5 Sec. 301. RCW 82.08.0293 and 2014 c 140 s 22 are each amended to
6 read as follows:

7 (1) The tax levied by RCW 82.08.020 does not apply to sales of
8 food and food ingredients. "Food and food ingredients" means
9 substances, whether in liquid, concentrated, solid, frozen, dried, or
10 dehydrated form, that are sold for ingestion or chewing by humans and
11 are consumed for their taste or nutritional value. "Food and food
12 ingredients" does not include:

13 (a) "Alcoholic beverages," which means beverages that are
14 suitable for human consumption and contain one-half of one percent or
15 more of alcohol by volume;

16 (b) "Tobacco," which means cigarettes, cigars, chewing or pipe
17 tobacco, or any other item that contains tobacco; and

18 (c) Marijuana, useable marijuana, or marijuana-infused products.

19 (2) The exemption of "food and food ingredients" provided for in
20 subsection (1) of this section does not apply to prepared food, soft
21 drinks, bottled water, or dietary supplements. (~~For purposes of this~~
22 ~~subsection, the following definitions apply:~~) The definitions in
23 this subsection apply throughout this section unless the context
24 clearly requires otherwise.

25 (a) "Bottled water" means water that is placed in a safety sealed
26 container or package for human consumption. Bottled water is calorie
27 free and does not contain sweeteners or other additives except that
28 it may contain: (i) Antimicrobial agents; (ii) fluoride; (iii)
29 carbonation; (iv) vitamins, minerals, and electrolytes; (v) oxygen;
30 (vi) preservatives; and (vii) only those flavors, extracts, or
31 essences derived from a spice or fruit. "Bottled water" includes
32 water that is delivered to the buyer in a reusable container that is
33 not sold with the water.

34 (b) "Dietary supplement" means any product, other than tobacco,
35 intended to supplement the diet that:

36 (i) Contains one or more of the following dietary ingredients:

37 (A) A vitamin;

38 (B) A mineral;

1 (C) An herb or other botanical;
2 (D) An amino acid;
3 (E) A dietary substance for use by humans to supplement the diet
4 by increasing the total dietary intake; or
5 (F) A concentrate, metabolite, constituent, extract, or
6 combination of any ingredient described in this subsection;
7 (ii) Is intended for ingestion in tablet, capsule, powder,
8 softgel, gelcap, or liquid form, or if not intended for ingestion in
9 such form, is not represented as conventional food and is not
10 represented for use as a sole item of a meal or of the diet; and
11 (iii) Is required to be labeled as a dietary supplement,
12 identifiable by the "supplement facts" box found on the label as
13 required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered
14 as of January 1, 2003.
15 ((~~b~~)) (c)(i) "Prepared food" means:
16 (A) Food sold in a heated state or heated by the seller;
17 (B) Food sold with eating utensils provided by the seller,
18 including plates, knives, forks, spoons, glasses, cups, napkins, or
19 straws. A plate does not include a container or packaging used to
20 transport the food; or
21 (C) Two or more food ingredients mixed or combined by the seller
22 for sale as a single item, except:
23 (I) Food that is only cut, repackaged, or pasteurized by the
24 seller; or
25 (II) Raw eggs, fish, meat, poultry, and foods containing these
26 raw animal foods requiring cooking by the consumer as recommended by
27 the federal food and drug administration in chapter 3, part 401.11 of
28 The Food Code, published by the food and drug administration, as
29 amended or renumbered as of January 1, 2003, so as to prevent
30 foodborne illness.
31 (ii) "Prepared food" does not include the following food or food
32 ingredients, if the food or food ingredients are sold without eating
33 utensils provided by the seller:
34 (A) Food sold by a seller whose proper primary North American
35 industry classification system (NAICS) classification is
36 manufacturing in sector 311, except subsector 3118 (bakeries), as
37 provided in the "North American industry classification system—United
38 States, 2002";
39 (B) Food sold in an unheated state by weight or volume as a
40 single item; or

1 (C) Bakery items. The term "bakery items" includes bread, rolls,
2 buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes,
3 tortes, pies, tarts, muffins, bars, cookies, or tortillas.

4 ((+e)) (d) "Soft drinks" means nonalcoholic beverages that
5 contain natural or artificial sweeteners. Soft drinks do not include
6 beverages that contain: Milk or milk products; soy, rice, or similar
7 milk substitutes; or greater than fifty percent of vegetable or fruit
8 juice by volume.

9 (3) Notwithstanding anything in this section to the contrary, the
10 exemption of "food and food ingredients" provided in this section
11 applies to food and food ingredients that are furnished, prepared, or
12 served as meals:

13 (a) Under a state administered nutrition program for the aged as
14 provided for in the older Americans act (P.L. 95-478 Title III) and
15 RCW 74.38.040(6);

16 (b) That are provided to senior citizens, individuals with
17 disabilities, or low-income persons by a not-for-profit organization
18 organized under chapter 24.03 or 24.12 RCW; or

19 (c) That are provided to residents, sixty-two years of age or
20 older, of a qualified low-income senior housing facility by the
21 lessor or operator of the facility. The sale of a meal that is billed
22 to both spouses of a marital community or both domestic partners of a
23 domestic partnership meets the age requirement in this subsection
24 (3)(c) if at least one of the spouses or domestic partners is at
25 least sixty-two years of age. For purposes of this subsection,
26 "qualified low-income senior housing facility" means a facility:

27 (i) That meets the definition of a qualified low-income housing
28 project under 26 U.S.C. Sec. 42 of the federal internal revenue code,
29 as existing on August 1, 2009;

30 (ii) That has been partially funded under 42 U.S.C. Sec. 1485;
31 and

32 (iii) For which the lessor or operator has at any time been
33 entitled to claim a federal income tax credit under 26 U.S.C. Sec. 42
34 of the federal internal revenue code.

35 (4)(a) Subsection (1) of this section notwithstanding, the retail
36 sale of food and food ingredients is subject to sales tax under RCW
37 82.08.020 if the food and food ingredients are sold through a vending
38 machine. Except as provided in (b) of this subsection, the selling
39 price of food and food ingredients sold through a vending machine for

1 purposes of RCW 82.08.020 is fifty-seven percent of the gross
2 receipts.

3 (b) For soft drinks, bottled water, and hot prepared food and
4 food ingredients, other than food and food ingredients which are
5 heated after they have been dispensed from the vending machine, the
6 selling price is the total gross receipts of such sales divided by
7 the sum of one plus the sales tax rate expressed as a decimal.

8 (c) For tax collected under this subsection (4), the requirements
9 that the tax be collected from the buyer and that the amount of tax
10 be stated as a separate item are waived.

11 **Sec. 302.** RCW 82.12.0293 and 2011 c 2 s 303 are each amended to
12 read as follows:

13 (1) The provisions of this chapter do not apply in respect to the
14 use of food and food ingredients for human consumption. "Food and
15 food ingredients" has the same meaning as in RCW 82.08.0293.

16 (2) The exemption of "food and food ingredients" provided for in
17 subsection (1) of this section does not apply to prepared food, soft
18 drinks, bottled water, or dietary supplements. "Prepared food," "soft
19 drinks," "bottled water," and "dietary supplements" have the same
20 meanings as in RCW 82.08.0293.

21 (3) Notwithstanding anything in this section to the contrary, the
22 exemption of "food and food ingredients" provided in this section
23 applies to food and food ingredients which are furnished, prepared,
24 or served as meals:

25 (a) Under a state administered nutrition program for the aged as
26 provided for in the older Americans act (P.L. 95-478 Title III) and
27 RCW 74.38.040(6);

28 (b) Which are provided to senior citizens, individuals with
29 disabilities, or low-income persons by a not-for-profit organization
30 organized under chapter 24.03 or 24.12 RCW; or

31 (c) That are provided to residents, sixty-two years of age or
32 older, of a qualified low-income senior housing facility by the
33 lessor or operator of the facility. The sale of a meal that is billed
34 to both spouses of a marital community or both domestic partners of a
35 domestic partnership meets the age requirement in this subsection
36 (3)(c) if at least one of the spouses or domestic partners is at
37 least sixty-two years of age. For purposes of this subsection,
38 "qualified low-income senior housing facility" has the same meaning
39 as in RCW 82.08.0293.

1 (1)(a) Subject to the conditions in this section, the tax levied
2 by RCW 82.08.020 does not apply to sales of bottled water to persons
3 whose primary source of drinking water is unsafe.

4 (b) For purposes of this subsection and section 306 of this act,
5 a person's primary source of drinking water is unsafe if:

6 (i) The public water system providing the drinking water has
7 issued a public notification that the drinking water may pose a
8 health risk, and the notification is still in effect on the date that
9 the bottled water was purchased;

10 (ii) Test results on the person's drinking water, which are no
11 more than twelve months old, from a laboratory certified to perform
12 drinking water testing show that the person's drinking water does not
13 meet safe drinking water standards applicable to public water
14 systems; or

15 (iii) The person otherwise establishes, to the department's
16 satisfaction, that the person's drinking water does not meet safe
17 drinking water standards applicable to public water systems.

18 (2) Except for sales of bottled water delivered to the buyer in a
19 reusable container that is not sold with the water, sellers must
20 collect tax on sales subject to this exemption. Any buyer that has
21 paid at least twenty-five dollars in state and local sales taxes on
22 purchases of bottled water subject to this exemption may apply for a
23 refund of the taxes directly from the department in a form and manner
24 prescribed by the department. The department must deny any refund
25 application if the amount of the refund requested is less than
26 twenty-five dollars. No refund may be made for taxes paid more than
27 four years after the end of the calendar year in which the tax was
28 paid to the seller.

29 (3)(a) With respect to sales of bottled water delivered to the
30 buyer in a reusable container that is not sold with the water, buyers
31 claiming the exemption provided in this section must provide the
32 seller with an exemption certificate in a form and manner prescribed
33 by the department. The seller must retain a copy of the certificate
34 for the seller's files.

35 (b) The department may waive the requirement for an exemption
36 certificate in the event of disaster or similar circumstance.

37 NEW SECTION. **Sec. 306.** A new section is added to chapter 82.12
38 RCW to read as follows:

1 The provisions of this chapter do not apply in respect to the use
2 of bottled water by persons whose primary source of drinking water is
3 unsafe as provided in section 305 of this act.

4 **Subpart B**

5 **Repealing the Preferential Business and Occupation Tax Rate for**
6 **Warehousing and Reselling Prescription Drugs**

7 NEW SECTION. **Sec. 307.** RCW 82.04.272 (Tax on warehousing and
8 reselling prescription drugs) and 2013 c 19 s 127, 2003 c 168 s 401,
9 & 1998 c 343 s 1 are each repealed.

10 NEW SECTION. **Sec. 308.** Section 307 of this act applies to taxes
11 due for reporting periods beginning on or after the effective date of
12 section 307 of this act.

13 **Subpart C**

14 **Narrowing a Use Tax Exemption for Self-Produced Fuel**

15 **Sec. 309.** RCW 82.12.0263 and 1980 c 37 s 62 are each amended to
16 read as follows:

17 The provisions of this chapter (~~shall~~) do not apply in respect
18 to the use of biomass fuel by the extractor or manufacturer thereof
19 when used directly in the operation of the particular extractive
20 operation or manufacturing plant which produced or manufactured the
21 same. For purposes of this section, "biomass fuel" means wood waste
22 and other wood residuals, including forest derived biomass, but does
23 not include firewood or wood pellets. "Biomass fuel" also includes
24 partially organic by-products of pulp, paper, and wood manufacturing
25 processes.

26 NEW SECTION. **Sec. 310.** A new section is added to chapter 82.12
27 RCW to read as follows:

28 (1) The value of the article used with respect to refinery fuel
29 gas under this chapter is the most recent monthly United States
30 natural gas wellhead price, as published by the federal energy
31 information administration.

32 (2) In lieu of the use tax rate provided in RCW 82.12.020,
33 refinery fuel gas is subject to a rate of 3.852 percent.

1 business of rendering any type of service which does not constitute a
2 "sale at retail" or a "sale at wholesale." The value of advertising,
3 demonstration, and promotional supplies and materials furnished to an
4 agent by his or her principal or supplier to be used for
5 informational, educational, and promotional purposes is not
6 considered a part of the agent's remuneration or commission and is
7 not subject to taxation under this section.

8 ~~((3)(a) Until July 1, 2040, upon every person engaging within
9 this state in the business of performing aerospace product
10 development for others, as to such persons, the amount of tax with
11 respect to such business is equal to the gross income of the business
12 multiplied by a rate of 0.9 percent.~~

13 ~~(b) A person reporting under the tax rate provided in this
14 subsection (3) must file a complete annual report with the department
15 under RCW 82.32.534.~~

16 ~~(c) "Aerospace product development" has the meaning as provided
17 in RCW 82.04.4461.)~~

18 NEW SECTION. Sec. 313. Section 312 of this act applies to taxes
19 due for reporting periods beginning on or after the effective date of
20 section 312 of this act.

21 **Subpart E**

22 **Nonresident Sales Tax Exemption Remittance**

23 **Sec. 314.** RCW 82.08.0273 and 2014 c 140 s 17 are each amended to
24 read as follows:

25 (1) ~~((The tax levied by RCW 82.08.020 does not apply to))~~ Subject
26 to the conditions and limitations in this section, an exemption from
27 the tax levied by RCW 82.08.020 in the form of a remittance from the
28 department is provided for sales to nonresidents of this state of
29 tangible personal property, digital goods, and digital codes(~~(7~~
30 ~~when))~~). The exemption only applies if:

31 (a) The property is for use outside this state;

32 (b) The purchaser is a bona fide resident of a province or
33 territory of Canada or a state, territory, or possession of the
34 United States, other than the state of Washington; and

35 (i) Such state, possession, territory, or province does not
36 impose, or have imposed on its behalf, a generally applicable retail
37 sales tax, use tax, value added tax, gross receipts tax on retailing

1 activities, or similar generally applicable tax, of three percent or
2 more; or

3 (ii) If imposing a tax described in (b)(i) of this subsection,
4 provides an exemption for sales to Washington residents by reason of
5 their residence; and

6 (c) The purchaser agrees, when requested, to grant the department
7 of revenue access to such records and other forms of verification at
8 ~~((his or her))~~ the purchaser's place of residence to assure that such
9 purchases are not first used substantially in the state of
10 Washington.

11 (2) Notwithstanding anything to the contrary in this chapter, if
12 parts or other tangible personal property are installed by the seller
13 during the course of repairing, cleaning, altering, or improving
14 motor vehicles, trailers, or campers and the seller makes a separate
15 charge for the tangible personal property, the tax levied by RCW
16 82.08.020 does not apply to the separately stated charge to a
17 nonresident purchaser for the tangible personal property but only if
18 the seller certifies in writing to the purchaser that the separately
19 stated charge does not exceed either the seller's current publicly
20 stated retail price for the tangible personal property or, if no
21 publicly stated retail price is available, the seller's cost for the
22 tangible personal property. However, the exemption provided by this
23 section does not apply if tangible personal property is installed by
24 the seller during the course of repairing, cleaning, altering, or
25 improving motor vehicles, trailers, or campers and the seller makes a
26 single nonitemized charge for providing the tangible personal
27 property and service. All of the ~~((requirements))~~ provisions in
28 subsections (1) and (3) through ~~((+6))~~ (7) of this section apply to
29 this subsection.

30 (3)(a) Any person claiming exemption from retail sales tax under
31 the provisions of this section must ~~((display proof of his or her
32 current nonresident status as provided in this section))~~ pay the
33 state and local sales tax to the seller at the time of purchase and
34 then request a remittance from the department in accordance with this
35 subsection and subsection (4) of this section. A request for
36 remittance must include proof of the person's status as a nonresident
37 at the time of the purchase for which a remittance is requested. The
38 request for a remittance must also include any additional information
39 and documentation as required by the department, which may include a
40 description of the item purchased for which a remittance is

1 requested, the sales price of the item, the amount of sales tax paid
2 on the item, the date of the purchase, the name of the seller and the
3 physical address where the sale took place, and copies of sales
4 receipts showing the qualified purchases.

5 (b) Acceptable proof of a nonresident person's status includes
6 one piece of identification such as a valid driver's license from the
7 jurisdiction in which the out-of-state residency is claimed or a
8 valid identification card which has a photograph of the holder and is
9 issued by the out-of-state jurisdiction. Identification under this
10 subsection (3)(b) must show the holder's residential address and have
11 as one of its legal purposes the establishment of residency in that
12 out-of-state jurisdiction.

13 ~~((c) In lieu of furnishing proof of a person's nonresident~~
14 ~~status under (b) of this subsection (3), a person claiming exemption~~
15 ~~from retail sales tax under the provisions of this section may~~
16 ~~provide the seller with an exemption certificate in compliance with~~
17 ~~subsection (4)(b) of this section.))~~

18 ~~(4)(a) ((Nothing in this section requires the vendor to make tax~~
19 ~~exempt retail sales to nonresidents. A vendor may choose to make~~
20 ~~sales to nonresidents, collect the sales tax, and remit the amount of~~
21 ~~sales tax collected to the state as otherwise provided by law. If the~~
22 ~~vendor chooses to make a sale to a nonresident without collecting the~~
23 ~~sales tax, the vendor must examine the purchaser's proof of~~
24 ~~nonresidence, determine whether the proof is acceptable under~~
25 ~~subsection (3)(b) of this section, and maintain records for each~~
26 ~~nontaxable sale which must show the type of proof accepted, including~~
27 ~~any identification numbers where appropriate, and the expiration~~
28 ~~date, if any.~~

29 ~~(b) In lieu of using the method provided in (a) of this~~
30 ~~subsection to document an exempt sale to a nonresident, a seller may~~
31 ~~accept from the purchaser a properly completed uniform exemption~~
32 ~~certificate approved by the streamlined sales and use tax agreement~~
33 ~~governing board or any other exemption certificate as may be~~
34 ~~authorized by the department and properly completed by the purchaser.~~
35 ~~A nonresident purchaser who uses an exemption certificate authorized~~
36 ~~in this subsection (4)(b) must include the purchaser's driver's~~
37 ~~license number or other state issued identification number and the~~
38 ~~state of issuance.~~

39 ~~(c) In lieu of using the methods provided in (a) and (b) of this~~
40 ~~subsection to document an exempt sale to a nonresident, a seller may~~

1 capture the relevant data elements as allowed under the streamlined
2 sales and use tax agreement.

3 ~~(5)(a) Any person making fraudulent statements, which includes
4 the offer of fraudulent identification or fraudulently procured
5 identification to a vendor, in order to purchase goods without paying
6 retail sales tax is guilty of perjury under chapter 9A.72 RCW.~~

7 ~~(b) Any person making tax exempt purchases under this section by
8 displaying proof of identification not his or her own, or counterfeit
9 identification, with intent to violate the provisions of this
10 section, is guilty of a misdemeanor and, in addition, is liable for
11 the tax and subject to a penalty equal to the greater of one hundred
12 dollars or the tax due on such purchases.~~

13 ~~(6)(a) Any vendor who makes sales without collecting the tax and
14 who fails to maintain records of sales to nonresidents as provided in
15 this section is personally liable for the amount of tax due.~~

16 ~~(b) Any vendor who makes sales without collecting the retail
17 sales tax under this section and who has actual knowledge that the
18 purchaser's proof of identification establishing out-of-state
19 residency is fraudulent is guilty of a misdemeanor and, in addition,
20 is liable for the tax and subject to a penalty equal to the greater
21 of one thousand dollars or the tax due on such sales. In addition,
22 both the purchaser and the vendor are liable for any penalties and
23 interest assessable under chapter 82.32 RCW.~~

24 ~~(7))~~ (i) Beginning January 1, 2018, through December 31, 2018, a
25 person may request a remittance from the department for state sales
26 taxes paid by the person on qualified retail purchases made in
27 Washington between July 1, 2017, and December 31, 2017.

28 (ii) Beginning January 1, 2019, a person may request a remittance
29 from the department during any calendar year for state sales taxes
30 paid by the person on qualified retail purchases made in Washington
31 during the immediately preceding calendar year only. No application
32 may be made with respect to purchases made before the immediately
33 preceding calendar year.

34 (b) The remittance request, including proof of nonresident status
35 and any other documentation and information required by the
36 department, must be provided in a form and manner as prescribed by
37 the department. Only one remittance request may be made by a person
38 per calendar year.

1 (c) The total amount of a remittance request must be at least
2 twenty-five dollars. The department must deny any request for a
3 remittance that is less than twenty-five dollars.

4 (d) The department will examine the applicant's proof of
5 nonresident status and any other documentation and information as
6 required in the application to determine whether the applicant is
7 entitled to a remittance under this section.

8 (5)(a) Any person making fraudulent statements to the department,
9 which includes the offer of fraudulent or fraudulently procured
10 identification or fraudulent sales receipts, in order to receive a
11 remittance of retail sales tax is guilty of perjury under chapter
12 9A.72 RCW and is ineligible to receive any further remittances from
13 the department under this section.

14 (b) Any person obtaining a remittance of retail sales tax from
15 the department by providing proof of identification or sales receipts
16 not the person's own, or counterfeit identification or sales receipts
17 is (i) liable for repayment of the remittance, including interest as
18 provided in chapter 82.32 RCW from the date the remittance was
19 transmitted to the person until repaid in full, (ii) liable for a
20 civil penalty equal to the greater of one hundred dollars or the
21 amount of the remittance obtained in violation of this subsection
22 (5)(b), and (iii) ineligible to receive any further remittances from
23 the department under this section.

24 (c) Any person assisting another person in obtaining a remittance
25 of retail sales tax in violation of (b) of this subsection is jointly
26 and severally liable for amounts due under (b) of this subsection and
27 is also ineligible to receive any further remittances from the
28 department under this section.

29 (6) A person who receives a refund of sales tax from the seller
30 for any reason with respect to a purchase made in this state is not
31 entitled to a remittance for the tax paid on the purchase. A person
32 who receives both a remittance under this section and a refund of
33 sales tax from the seller with respect to the same purchase must
34 immediately repay the remittance to the department. Interest as
35 provided in chapter 82.32 RCW applies to amounts due under this
36 section from the date that the department made the remittance until
37 the amount due under this subsection is paid to the department. A
38 person who receives a remittance with respect to a purchase for which
39 the person had, at the time the person submitted the application for
40 a remittance, already received a refund of sales tax from the seller

1 is also liable for a civil penalty equal to the greater of one
2 hundred dollars or the amount of the remittance obtained in violation
3 of this subsection and is ineligible to receive any further
4 remittances from the department under this section.

5 (7) The exemption provided by this section is only for the state
6 portion of the sales tax. For purposes of this section, the state
7 portion of the sales tax is not reduced by any local sales tax that
8 is deducted or credited against the state sales tax as provided by
9 law.

10 (8) The exemption in this section does not apply to sales of
11 marijuana, useable marijuana, or marijuana-infused products.

12 **Part IV**

13 **Real Estate Excise Taxes**

14 **Subpart A**

15 **Graduated Real Estate Excise Tax Rates**

16 NEW SECTION. Sec. 401. (1) This section is the tax preference
17 performance statement for the tax preference contained in section
18 402, chapter . . . , Laws of 2017 (section 402 of this act). This
19 performance statement is only intended to be used for subsequent
20 evaluation of the tax preference. It is not intended to create a
21 private right of action by any party or to be used to determine
22 eligibility for preferential tax treatment.

23 (2) The legislature categorizes this tax preference as one
24 intended to provide tax relief for certain businesses or individuals,
25 as indicated in RCW 82.32.808(2)(e).

26 (3) It is the legislature's specific public policy objective to
27 reduce the tax burden on individuals and businesses who sell real
28 property subject to the real estate excise tax.

29 (4) If the review finds that more than one thousand transactions
30 in the state per year are experiencing tax relief from the
31 preferential excise tax rates in section 402(1)(a) of this act, then
32 the legislature intends to extend the expiration date of this tax
33 preference.

34 (5) In order to obtain the data necessary to perform the review
35 in subsection (4) of this section, the joint legislative audit and
36 review committee may refer to any data collected by the state.

1 **Sec. 403.** RCW 82.45.010 and 2014 c 58 s 24 are each amended to
2 read as follows:

3 (1) As used in this chapter, the term "sale" has its ordinary
4 meaning and includes any conveyance, grant, assignment, quitclaim, or
5 transfer of the ownership of or title to real property, including
6 standing timber, or any estate or interest therein for a valuable
7 consideration, and any contract for such conveyance, grant,
8 assignment, quitclaim, or transfer, and any lease with an option to
9 purchase real property, including standing timber, or any estate or
10 interest therein or other contract under which possession of the
11 property is given to the purchaser, or any other person at the
12 purchaser's direction, and title to the property is retained by the
13 vendor as security for the payment of the purchase price. The term
14 also includes the grant, assignment, quitclaim, sale, or transfer of
15 improvements constructed upon leased land.

16 (2)(a) The term "sale" also includes the transfer or acquisition
17 within any twelve-month period of a controlling interest in any
18 entity with an interest in real property located in this state for a
19 valuable consideration.

20 (b) For the sole purpose of determining whether, pursuant to the
21 exercise of an option, a controlling interest was transferred or
22 acquired within a twelve-month period, the date that the option
23 agreement was executed is the date on which the transfer or
24 acquisition of the controlling interest is deemed to occur. For all
25 other purposes under this chapter, the date upon which the option is
26 exercised is the date of the transfer or acquisition of the
27 controlling interest.

28 (c) For purposes of this subsection, all acquisitions of persons
29 acting in concert must be aggregated for purposes of determining
30 whether a transfer or acquisition of a controlling interest has taken
31 place. The department must adopt standards by rule to determine when
32 persons are acting in concert. In adopting a rule for this purpose,
33 the department must consider the following:

34 (i) Persons must be treated as acting in concert when they have a
35 relationship with each other such that one person influences or
36 controls the actions of another through common ownership; and

37 (ii) When persons are not commonly owned or controlled, they must
38 be treated as acting in concert only when the unity with which the
39 purchasers have negotiated and will consummate the transfer of
40 ownership interests supports a finding that they are acting as a

1 single entity. If the acquisitions are completely independent, with
2 each purchaser buying without regard to the identity of the other
3 purchasers, then the acquisitions are considered separate
4 acquisitions.

5 (3) The term "sale" does not include:

6 (a) A transfer by gift, devise, or inheritance.

7 (b) A transfer by transfer on death deed, to the extent that it
8 is not in satisfaction of a contractual obligation of the decedent
9 owed to the recipient of the property.

10 (c) A transfer of any leasehold interest other than of the type
11 mentioned above.

12 (d) A cancellation or forfeiture of a vendee's interest in a
13 contract for the sale of real property, whether or not such contract
14 contains a forfeiture clause, or deed in lieu of foreclosure of (~~a~~
15 ~~mortgage~~) either a mortgage or deed of trust, except to the extent
16 of any additional consideration provided to the grantor.

17 (e) The partition of property by tenants in common by agreement
18 or as the result of a court decree.

19 (f) The assignment of property or interest in property from one
20 spouse or one domestic partner to the other spouse or other domestic
21 partner in accordance with the terms of a decree of dissolution of
22 marriage or state registered domestic partnership or in fulfillment
23 of a property settlement agreement.

24 (g) The assignment or other transfer of a vendor's interest in a
25 contract for the sale of real property, even though accompanied by a
26 conveyance of the vendor's interest in the real property involved.

27 (h) Transfers by appropriation or decree in condemnation
28 proceedings brought by the United States, the state or any political
29 subdivision thereof, or a municipal corporation.

30 (i) A mortgage, deed of trust, or other transfer of an interest
31 in real property merely to secure a debt, or the assignment,
32 reconveyance, or release thereof.

33 (j) Any transfer or conveyance made pursuant to a foreclosure of
34 a mortgage or deed of trust or an order of sale by the court in any
35 mortgage, deed of trust, or lien foreclosure proceeding or upon
36 execution of a judgment(~~(, or deed in lieu of foreclosure to satisfy~~
37 ~~a mortgage or deed of trust)) pursuant to chapter 6.17 RCW, but only~~

38 when:

39 (i) The transfer or conveyance is to other than the mortgagee,
40 beneficiary of the deed of trust, lienholder, or judgment creditor,

1 and the selling price exceeds the amount of the lien, security
2 interest, or judgment that is the subject of the foreclosure or
3 execution; or

4 (ii) The transfer or conveyance is to the United States, this
5 state, or any political subdivision thereof, or a municipal
6 corporation of this state.

7 (k) A conveyance to the federal housing administration or
8 veterans administration by an authorized mortgagee made pursuant to a
9 contract of insurance or guaranty with the federal housing
10 administration or veterans administration.

11 (l) A transfer in compliance with the terms of any lease or
12 contract upon which the tax as imposed by this chapter has been paid
13 or where the lease or contract was entered into prior to the date
14 this tax was first imposed.

15 (m) The sale of any grave or lot in an established cemetery.

16 (n) A sale by the United States, this state or any political
17 subdivision thereof, or a municipal corporation of this state.

18 (o) A sale to a regional transit authority or public corporation
19 under RCW 81.112.320 under a sale/leaseback agreement under RCW
20 81.112.300.

21 (p) A transfer of real property, however effected, if it consists
22 of a mere change in identity or form of ownership of an entity where
23 there is no change in the beneficial ownership. These include
24 transfers to a corporation or partnership which is wholly owned by
25 the transferor and/or the transferor's spouse or domestic partner or
26 children of the transferor or the transferor's spouse or domestic
27 partner. However, if thereafter such transferee corporation or
28 partnership voluntarily transfers such real property, or such
29 transferor, spouse or domestic partner, or children of the transferor
30 or the transferor's spouse or domestic partner voluntarily transfer
31 stock in the transferee corporation or interest in the transferee
32 partnership capital, as the case may be, to other than (i) the
33 transferor and/or the transferor's spouse or domestic partner or
34 children of the transferor or the transferor's spouse or domestic
35 partner, (ii) a trust having the transferor and/or the transferor's
36 spouse or domestic partner or children of the transferor or the
37 transferor's spouse or domestic partner as the only beneficiaries at
38 the time of the transfer to the trust, or (iii) a corporation or
39 partnership wholly owned by the original transferor and/or the
40 transferor's spouse or domestic partner or children of the transferor

1 or the transferor's spouse or domestic partner, within three years of
2 the original transfer to which this exemption applies, and the tax on
3 the subsequent transfer has not been paid within sixty days of
4 becoming due, excise taxes become due and payable on the original
5 transfer as otherwise provided by law.

6 (q)(i) A transfer that for federal income tax purposes does not
7 involve the recognition of gain or loss for entity formation,
8 liquidation or dissolution, and reorganization, including but not
9 limited to nonrecognition of gain or loss because of application of
10 26 U.S.C. Sec. 332, 337, 351, 368(a)(1), 721, or 731 of the internal
11 revenue code of 1986, as amended.

12 (ii) However, the transfer described in (q)(i) of this subsection
13 cannot be preceded or followed within a twelve-month period by
14 another transfer or series of transfers, that, when combined with the
15 otherwise exempt transfer or transfers described in (q)(i) of this
16 subsection, results in the transfer of a controlling interest in the
17 entity for valuable consideration, and in which one or more persons
18 previously holding a controlling interest in the entity receive cash
19 or property in exchange for any interest the person or persons acting
20 in concert hold in the entity. This subsection (3) (q)(ii) does not
21 apply to that part of the transfer involving property received that
22 is the real property interest that the person or persons originally
23 contributed to the entity or when one or more persons who did not
24 contribute real property or belong to the entity at a time when real
25 property was purchased receive cash or personal property in exchange
26 for that person or persons' interest in the entity. The real estate
27 excise tax under this subsection (3)(q)(ii) is imposed upon the
28 person or persons who previously held a controlling interest in the
29 entity.

30 (r) A qualified sale of a manufactured/mobile home community, as
31 defined in RCW 59.20.030, that takes place on or after June 12, 2008,
32 but before December 31, 2018.

33 **Sec. 404.** RCW 82.45.080 and 2010 1st sp.s. c 23 s 210 are each
34 amended to read as follows:

35 (1) Except as otherwise provided in this chapter, the tax levied
36 under this chapter is the obligation of the seller and the department
37 may, at the department's option, enforce the obligation through an
38 action of debt against the seller or the department may proceed in
39 the manner prescribed for the foreclosure of mortgages. The

1 department's use of one course of enforcement is not an election not
2 to pursue the other.

3 (2) When a transfer or conveyance made pursuant to a judicial or
4 nonjudicial foreclosure of a mortgage, deed of trust, lien, or
5 enforcement of a judgment is subject to tax under this chapter, and
6 notwithstanding any other provisions of law, the tax levied under
7 this chapter is the obligation of the transferee or grantee, and
8 provisions of this chapter applicable to the seller apply to the
9 transferee or grantee. The department may enforce the obligation
10 against the transferee or grantee as provided in subsection (1) of
11 this section.

12 (3) For purposes of this section and notwithstanding any other
13 provisions of law, the seller is the parent corporation of a wholly
14 owned subsidiary, when such subsidiary is the transferor to a third-
15 party transferee and the subsidiary is dissolved before paying the
16 tax imposed under this chapter.

17 Part V

18 Requiring Local Governments that Issue Building Permits to Supply 19 Subcontractor Information to the Department of Revenue

20 **Sec. 501.** RCW 18.27.110 and 1997 c 314 s 11 are each amended to
21 read as follows:

22 (1)(a) No city, town or county ((shall)) may issue a construction
23 building permit for work which is to be done by any contractor
24 required to be registered under this chapter without verification
25 ((that such contractor is currently registered as required by law.
26 When such verification is made, nothing contained in this section is
27 intended to be, nor shall be construed to create, or form the basis
28 for any liability under this chapter on the part of any city, town or
29 county, or its officers, employees or agents. However, failure to
30 verify the contractor registration number results in liability to the
31 city, town, or county to a penalty to be imposed according to RCW
32 18.27.100(7)(a)) of the contractor's unified business identifier
33 number and that such contractor is currently registered as required
34 by law. Information regarding the contractor must be obtained at the
35 time the building permit is applied for. The requirement in this
36 subsection (1)(a) to verify a contractor's registration and unified
37 business identifier number does not apply with respect to
38 subcontractors.

1 (b)(i) When a general contractor, including a property owner
2 acting as a general contractor, requests a final inspection, the
3 city, town, or county that issued the building permit must request
4 from the general contractor the name, unified business identifier
5 number, and contractor registration number of any subcontractors that
6 performed any portion of the work under the building permit. The
7 department of revenue must develop a form for this purpose and make
8 it available, at no cost, to the cities, towns, and counties.

9 (ii) Cities, towns, and counties may charge general contractors
10 and property owners acting as a general contractor a fee to defray
11 the cost of collecting the information required in this subsection
12 (1)(b) and providing the information to the department of revenue as
13 required in (f) of this subsection (1).

14 (iii) This subsection (1)(b) only applies with respect to
15 construction on single-family dwellings and multifamily residential
16 buildings as defined in RCW 19.27.015.

17 (c) A general contractor or building permit applicant must
18 provide a city, town, or county with complete and accurate
19 information about the contractor and any subcontractors as requested
20 by the city, town, or county pursuant to (a) and (b) of this
21 subsection (1).

22 (d) When the verification is made and the information requested,
23 as required in (a) and (b) of this subsection (1), nothing contained
24 in this section is intended to be, nor may be construed to create, or
25 form the basis for any liability under this chapter on the part of
26 any city, town, or county, or its officers, employees, or agents.

27 (e) However, failure to comply with the provisions of (a) of this
28 subsection (1) results in liability to the city, town, or county to a
29 penalty to be imposed according to RCW 18.27.100(8)(a). The state
30 auditor must monitor compliance with the provisions of (b) of this
31 subsection (1).

32 (f) Cities, towns, and counties must furnish the information
33 collected pursuant to (a) and (b) of this subsection (1) to the
34 department of revenue monthly at no charge to the department. The
35 information must be provided in a format requested by the department.
36 The department of revenue must, upon request, share such information
37 with the department of labor and industries and the employment
38 security department.

39 (2) At the time of issuing the building permit, all cities,
40 towns, or counties are responsible for:

1 (a) Printing the contractor registration number on the building
2 permit; and

3 (b) Providing a written notice to the building permit applicant
4 informing them of contractor registration laws and the potential risk
5 and monetary liability to the homeowner for using an unregistered
6 contractor.

7 (3) If a building permit is obtained by an applicant or
8 contractor who falsifies information to obtain an exemption provided
9 under RCW 18.27.090 or who violates subsection (1)(c) of this section
10 by providing materially incomplete or inaccurate information to a
11 city, town, or county, the building permit (~~shall~~) must be
12 forfeited.

13 **Sec. 502.** RCW 18.27.200 and 2007 c 436 s 9 are each amended to
14 read as follows:

15 (1) It is a violation of this chapter and an infraction for any
16 contractor to:

17 (a) Advertise, offer to do work, submit a bid, or perform any
18 work as a contractor without being registered as required by this
19 chapter;

20 (b) Advertise, offer to do work, submit a bid, or perform any
21 work as a contractor when the contractor's registration is suspended
22 or revoked;

23 (c) Transfer a valid registration to an unregistered contractor
24 or allow an unregistered contractor to work under a registration
25 issued to another contractor;

26 (d) If the contractor is a contractor as defined in RCW
27 18.106.010, violate RCW 18.106.320; (~~or~~)

28 (e) Subcontract to, or use, an unregistered contractor; or

29 (f) Provide materially incomplete or inaccurate information to a
30 city, town, or county pursuant to a request for information as
31 required by RCW 18.27.110.

32 (2) Each day that a contractor works without being registered as
33 required by this chapter, works while the contractor's registration
34 is suspended or revoked, or works under a registration issued to
35 another contractor is a separate infraction. Each worksite at which a
36 contractor works without being registered as required by this
37 chapter, works while the contractor's registration is suspended or
38 revoked, or works under a registration issued to another contractor
39 is a separate infraction.

1 **Part VI**
2 **Remote Sellers, Referrers, and Marketplace Facilitators**
3

4 **Subpart A**
5 **Findings and Intent**

6 NEW SECTION. **Sec. 601.** (1) The legislature finds that states
7 fail to collect more than twenty-three billion dollars annually in
8 sales taxes from remote sales over the internet and through catalogs.
9 The legislature further finds that Washington and its local
10 governments will lose out on an estimated three hundred fifty-three
11 million dollars in sales and use taxes in fiscal year 2018 from
12 remote sales, reducing funds that would otherwise be available for
13 the public education system, health care services, infrastructure,
14 and other vital public services.

15 (2) The legislature finds that Colorado adopted a law requiring
16 out-of-state retailers that do not collect Colorado's sales tax to
17 report tax-related information to their Colorado customers and the
18 Colorado department of revenue. The legislature further finds that in
19 2016 the United States court of appeals for the tenth circuit upheld
20 that law.

21 (3) The legislature intends by this act to address the
22 significant harm and unfairness brought about by the physical
23 presence nexus rule. To achieve this objective, this act adopts a new
24 program. Under the new program, remote sellers meeting a specified
25 threshold of gross receipts from retail sales into this state would
26 have the option to either collect retail sales or use tax on taxable
27 retail sales into this state or comply with certain sales and use tax
28 notice and reporting provisions. This option is also available to
29 other persons such as marketplace facilitators for facilitated sales
30 on behalf of third-party remote sellers. The sales and use tax notice
31 and reporting provisions in this act are similar to the multistate
32 tax commission's draft model sales and use tax notice and reporting
33 statute and Colorado's sales and use tax notice and reporting law.

34 **Subpart B**
35 **Sales and Use Tax Collection**

1 NEW SECTION. **Sec. 602.** A new section is added to chapter 82.08
2 RCW to be codified between RCW 82.08.052 and 82.08.054 to read as
3 follows:

4 (1)(a) Beginning January 1, 2018, and for any calendar year
5 thereafter, remote sellers, referrers, and marketplace facilitators
6 meeting the criteria in subsection (2) of this section or that have a
7 physical presence in this state, must elect to either collect and
8 remit retail sales or use tax on all taxable retail sales into this
9 state pursuant to this chapter and chapters 82.12 and 82.32 RCW or
10 comply with section 605 of this act.

11 (b) For marketplace facilitators, the election provided in (a) of
12 this subsection (1) applies only with respect to:

13 (i) Retail sales through the marketplace facilitator's
14 marketplace by or on behalf of marketplace sellers who do not have a
15 physical presence in this state; and

16 (ii) A marketplace facilitator's own retail sales, if the
17 marketplace facilitator does not have a physical presence in this
18 state.

19 (c) For referrers, the election provided in (a) of this
20 subsection (1) applies only with respect to:

21 (i) Retail sales directly resulting from a referral of the
22 purchaser to a marketplace seller who does not have a physical
23 presence in this state; and

24 (ii) A referrer's own retail sales, if the referrer does not have
25 a physical presence in this state.

26 (d) An election under (a) of this subsection (1) to collect
27 retail sales or use tax is binding on the remote seller, referrer, or
28 marketplace facilitator until January 1st of the calendar year that
29 is at least twelve consecutive months after the remote seller,
30 referrer, or marketplace facilitator began collecting retail sales or
31 use tax under such election. A remote seller, referrer, or
32 marketplace facilitator who has made an election under this
33 subsection to collect retail sales or use tax may change its election
34 and comply with section 605 of this act by providing written notice
35 to the department in a form and manner required by the department.
36 Such an election change may take effect only on the first day of the
37 calendar year that is at least thirty days following the date that
38 the department received written notice from the remote seller,
39 referrer, or marketplace facilitator of its change in election.

1 (e)(i) Remote sellers, referrers, and marketplace facilitators
2 complying with section 605 of this act may change their election
3 under this subsection (1) at any time by collecting and remitting
4 retail sales or use taxes under this chapter or chapter 82.12 RCW on
5 taxable retail sales sourced to this state. Such an election is
6 binding as provided in (d) of this subsection (1).

7 (ii) Remote sellers, referrers, and marketplace facilitators
8 electing for the first time to collect retail sales or use tax must
9 begin collecting state and local retail sales or use taxes on taxable
10 retail sales sourced to this state beginning on the first day of the
11 calendar month that is at least thirty days from the date that the
12 remote seller, referrer, or marketplace facilitator met either
13 threshold described in subsection (2) of this section.

14 (f) If the department discovers that any remote seller, referrer,
15 or marketplace facilitator required to make an election under this
16 subsection (1) is not registered with the department and collecting
17 retail sales or use tax, the remote seller, referrer, or marketplace
18 facilitator is conclusively presumed to have elected to comply with
19 the notice and reporting requirements of section 605 of this act.

20 (2)(a) A remote seller or marketplace facilitator is subject to
21 subsection (1) of this section if, during the current or immediately
22 preceding calendar year, the gross receipts of the remote seller or
23 marketplace facilitator from retail sales sourced to this state under
24 RCW 82.32.730 are at least ten thousand dollars.

25 (b) A referrer is subject to subsection (1) of this section if,
26 during the current or immediately preceding calendar year, the gross
27 income of the business received from the referrer's referral services
28 apportioned to Washington under RCW 82.04.462, whether or not subject
29 to tax under chapter 82.04 RCW, and from retail sales sourced to this
30 state under RCW 82.32.730, if any, is at least ten thousand dollars.

31 (3) This section is subject to the provisions of section 613 of
32 this act.

33 (4) For the purposes of this section, "marketplace facilitator,"
34 "referrer," and "remote seller" have the same meaning as provided in
35 section 604 of this act.

36 NEW SECTION. **Sec. 603.** A new section is added to chapter 82.08
37 RCW to be codified between section 602 of this act and RCW 82.08.054
38 to read as follows:

1 (1) For purposes of this chapter and chapter 82.12 RCW, a
2 marketplace facilitator or referrer is deemed to be an agent of any
3 marketplace seller making retail sales through the marketplace
4 facilitator's physical or electronic marketplace or directly
5 resulting from a referral of the purchaser by the referrer.

6 (2) A marketplace facilitator or referrer is relieved of
7 liability under this chapter and chapter 82.12 RCW for failure to
8 collect the correct amount of tax to the extent that the marketplace
9 facilitator or referrer can show to the department's satisfaction
10 that the error was due to incorrect information given to the
11 marketplace facilitator or referrer by the marketplace seller, unless
12 the marketplace facilitator, or referrer, and marketplace seller are
13 affiliated persons. Where the marketplace facilitator or referrer is
14 relieved of liability under this subsection (2), the marketplace
15 seller is solely liable for the amount of uncollected tax due.

16 (3)(a) Subject to the limits in (b) and (c) of this subsection
17 (3), a marketplace facilitator or referrer is relieved of liability
18 under this chapter and chapter 82.12 RCW for the failure to collect
19 tax on taxable retail sales to the extent that the marketplace
20 facilitator or referrer can show to the department's satisfaction
21 that:

22 (i) The taxable retail sale was made through the marketplace
23 facilitator's marketplace or directly resulting from a referral of
24 the purchaser by the referrer;

25 (ii) The taxable retail sale was made solely as the agent of a
26 marketplace seller, and the marketplace facilitator, or referrer, and
27 marketplace seller are not affiliated persons; and

28 (iii) The failure to collect sales tax was not due to an error in
29 sourcing the sale under RCW 82.32.730.

30 (b) Liability relief for a marketplace facilitator under (a) of
31 this subsection (3) for a calendar year is limited as follows:

32 (i) For calendar year 2018, the liability relief may not exceed
33 ten percent of the total tax due under this chapter and chapter 82.12
34 RCW on taxable retail sales by the marketplace facilitator as agent
35 of a marketplace seller and sourced to this state under RCW 82.32.730
36 during the same calendar year.

37 (ii) For calendar years 2019, 2020, 2021, 2022, and 2023, the
38 liability relief may not exceed five percent of the total tax due
39 under this chapter and chapter 82.12 RCW on taxable retail sales by
40 the marketplace facilitator as agent of a marketplace seller and

1 sourced to this state under RCW 82.32.730 during the same calendar
2 year.

3 (iii) Beginning in calendar year 2024, the liability relief may
4 not exceed three percent of the total tax due under this chapter and
5 chapter 82.12 RCW on taxable retail sales by the marketplace
6 facilitator as agent of a marketplace seller and sourced to this
7 state under RCW 82.32.730 during the same calendar year.

8 (c) Liability relief for a referrer under (a) of this subsection
9 (3) for a calendar year is limited as follows:

10 (i) For calendar year 2018, the liability relief may not exceed
11 ten percent of the total tax due under this chapter and chapter 82.12
12 RCW on taxable retail sales directly resulting from a referral of the
13 purchaser to the marketplace seller by the referrer and sourced to
14 this state under RCW 82.32.730 during the same calendar year.

15 (ii) For calendar years 2019, 2020, 2021, 2022, and 2023, the
16 liability relief may not exceed five percent of the total tax due
17 under this chapter and chapter 82.12 RCW on taxable retail sales
18 directly resulting from a referral of the purchaser to the
19 marketplace seller by the referrer and sourced to this state under
20 RCW 82.32.730 during the same calendar year.

21 (iii) Beginning in calendar year 2024, the liability relief may
22 not exceed three percent of the total tax due under this chapter and
23 chapter 82.12 RCW on taxable retail sales directly resulting from a
24 referral of the purchaser to the marketplace seller by the referrer
25 and sourced to this state under RCW 82.32.730 during the same
26 calendar year.

27 (d) Where the marketplace facilitator or referrer is relieved of
28 liability under this subsection (3), the marketplace seller is also
29 relieved of liability for the amount of uncollected tax due, subject
30 to the limitations in subsection (4) of this section.

31 (4) A marketplace seller is relieved of its obligation to collect
32 the taxes imposed under this chapter and chapter 82.12 RCW on all
33 taxable retail sales through a marketplace operated by a marketplace
34 facilitator or directly resulting from a referral of the purchaser to
35 the marketplace seller by the referrer if the marketplace seller has
36 obtained documentation from the marketplace facilitator or referrer
37 indicating that the marketplace facilitator or referrer is registered
38 with the department and will collect all applicable taxes due under
39 this chapter and chapter 82.12 RCW on all taxable retail sales made
40 on behalf of the marketplace seller through the marketplace operated

1 by the marketplace facilitator or taxable retail sales directly
2 resulting from a referral of the purchaser to the marketplace seller
3 by the referrer. The documentation required by this subsection (4)
4 must be provided in a form and manner prescribed by or acceptable to
5 the department. This subsection (4) does not relieve a marketplace
6 seller from liability for uncollected taxes due under this chapter or
7 chapter 82.12 RCW resulting from a marketplace facilitator's or
8 referrer's failure to collect the proper amount of tax due when the
9 error was due to incorrect information given to the marketplace
10 facilitator or referrer by the marketplace seller.

11 (5) A marketplace seller that is also a remote seller subject to
12 section 602(1) of this act is relieved of its obligation to collect
13 sales or use taxes imposed under this chapter and chapter 82.12 RCW
14 on all taxable retail sales through a marketplace operated by a
15 marketplace facilitator that provides the marketplace seller with
16 written confirmation that the marketplace facilitator has elected to
17 comply with the notice and reporting requirements of section 605 of
18 this act in lieu of collecting sales and use taxes.

19 (6) No class action may be brought against a marketplace
20 facilitator or referrer in any court of this state on behalf of
21 purchasers arising from or in any way related to an overpayment of
22 sales or use tax collected by the marketplace facilitator or
23 referrer, regardless of whether that claim is characterized as a tax
24 refund claim. Nothing in this subsection affects a purchaser's right
25 to seek a refund from the department as provided under chapter 82.32
26 RCW.

27 (7) Nothing in this section affects the obligation of any
28 purchaser to remit sales or use tax as to any applicable taxable
29 transaction in which the seller or the seller's agent does not
30 collect and remit sales tax.

31 (8) This section is subject to the provisions of section 613 of
32 this act.

33 (9) The definitions in section 604 of this act apply to this
34 section.

35 NEW SECTION. **Sec. 604.** The definitions in this section apply
36 throughout this chapter unless the context clearly requires
37 otherwise.

38 (1) "Affiliated person" means a person that, with respect to
39 another person:

1 (a) Has an ownership interest of more than five percent, whether
2 direct or indirect, in the other person; or

3 (b) Is related to the other person because a third person, or
4 group of third persons who are affiliated persons with respect to
5 each other, holds an ownership interest of more than five percent,
6 whether direct or indirect, in the related persons.

7 (2) "Consumer" has the same meaning as provided in chapters
8 82.04, 82.08, and 82.12 RCW.

9 (3) "Marketplace facilitator" means a person that contracts with
10 sellers to facilitate for consideration, regardless of whether
11 deducted as fees from the transaction, the sale of the seller's
12 products through a physical or electronic marketplace operated by the
13 person, and engages:

14 (a) Directly or indirectly, through one or more affiliated
15 persons in any of the following:

16 (i) Transmitting or otherwise communicating the offer or
17 acceptance between the buyer and seller;

18 (ii) Owning or operating the infrastructure, electronic or
19 physical, or technology that brings buyers and sellers together;

20 (iii) Providing a virtual currency that buyers are allowed or
21 required to use to purchase products from the seller; or

22 (iv) Software development or research and development activities
23 related to any of the activities described in (b) of this subsection
24 (3), if such activities are directly related to a physical or
25 electronic marketplace operated by the person or an affiliated
26 person; and

27 (b) In any of the following activities with respect to the
28 seller's products:

29 (i) Payment processing services;

30 (ii) Fulfillment or storage services;

31 (iii) Listing products for sale;

32 (iv) Setting prices;

33 (v) Branding sales as those of the marketplace facilitator;

34 (vi) Order taking;

35 (vii) Advertising or promotion; or

36 (viii) Providing customer service or accepting or assisting with
37 returns or exchanges.

38 (4) "Marketplace seller" means a seller that makes retail sales
39 through any physical or electronic marketplaces operated by a
40 marketplace facilitator or directly resulting from a referral by a

1 referrer, regardless of whether the seller is required to be
2 registered with the department as provided in RCW 82.32.030.

3 (5) "Platform" means an electronic or physical medium, including
4 a web site or catalog, operated by a referrer.

5 (6) "Product" has the same meaning as provided in RCW 82.32.023.

6 (7) "Purchaser" means any consumer who purchases or leases a
7 product sourced to this state under RCW 82.32.730.

8 (8) "Referral" means the transfer by a referrer of a potential
9 customer to a marketplace seller who advertises or lists products for
10 sale on the referrer's platform.

11 (9) "Referrer" means a person who contracts or otherwise agrees
12 with a seller to list or advertise for sale one or more items in any
13 medium, including a web site or catalog; receives a commission, fee,
14 or other consideration from the seller for the listing or
15 advertisement; transfers, via telephone, internet link, or other
16 means, a purchaser to a seller or an affiliated person to complete
17 the sale; and does not collect receipts from the purchasers for the
18 transaction.

19 (10) "Remote seller" means any seller, other than a marketplace
20 facilitator or referrer, who does not have a physical presence in
21 this state and makes retail sales to purchasers.

22 (11) "Retail sale" and "sale" have the same meaning as provided
23 in chapter 82.04 RCW.

24 (12) "Seller" has the same meaning as in RCW 82.08.010 and
25 includes marketplace facilitators, whether making sales in their own
26 right or on behalf of marketplace sellers, and referrers.

27 NEW SECTION. **Sec. 605.** (1) Except as otherwise provided in
28 subsection (5) of this section, a seller that does not collect the
29 tax imposed under chapter 82.08 or 82.12 RCW on a taxable retail sale
30 must comply with the applicable notice and reporting requirements of
31 this section. For taxable retail sales made through a marketplace
32 facilitator, or other agent, the marketplace facilitator, or other
33 agent must comply with the notice and reporting requirements of this
34 section, and the principal is not subject to the notice and reporting
35 requirements of this section with respect to those sales. If the
36 referrer makes an election to comply with the applicable notice and
37 reporting requirements of this section, marketplace sellers to whom a
38 referral is made by the referrer remain subject to the applicable
39 notice and reporting requirements under this section for their sales

1 unless the marketplace sellers collect the tax imposed under chapter
2 82.08 or 82.12 RCW on taxable retail sales sourced to this state
3 under RCW 82.32.730.

4 (2)(a) A seller, other than a referrer acting in its capacity as
5 a referrer, subject to the notice and reporting requirements of this
6 section must:

7 (i) Post a conspicuous notice on its marketplace, platform, web
8 site, catalog, or any other similar medium that informs Washington
9 purchasers that:

10 (A) Sales or use tax is due on certain purchases;

11 (B) Washington requires the purchaser to file a use tax return;

12 and

13 (C) The notice is provided under the requirements of this
14 section; and

15 (ii) Provide a notice to each consumer at the time of each retail
16 sale. The notice under this subsection (2)(a)(ii) must include the
17 following information:

18 (A) A statement that neither sales nor use tax is being collected
19 or remitted upon the sale;

20 (B) A statement that the consumer may be required to remit sales
21 or use tax directly to the department; and

22 (C) Instructions for obtaining additional information from the
23 department regarding whether and how to remit the sales or use tax to
24 the department.

25 (b) The notice under (a)(ii) of this subsection (2) must be
26 prominently displayed on all invoices and order forms including,
27 where applicable, electronic and catalog invoices and order forms,
28 and upon each sales receipt or similar document provided to the
29 purchaser, whether in paper or electronic form. No indication may be
30 made that sales or use tax is not imposed upon the transaction,
31 unless:

32 (i) Such indication is followed immediately with the notice
33 required by (a)(ii) of this subsection (2); or

34 (ii) The transaction with respect to which the indication is
35 given is exempt from sales and use tax pursuant to law.

36 (3) A referrer subject to the notice and reporting requirements
37 of this section must:

38 (a) Post a conspicuous notice on its platform that informs
39 Washington purchasers:

40 (i) That sales or use tax is due on certain purchases;

1 (ii) That the seller may or may not collect and remit retail
2 sales tax on a purchase;

3 (iii) That Washington requires the purchaser to file a use tax
4 return if retail sales tax is not assessed at the time of a taxable
5 sale by the seller;

6 (iv) That the notice is provided under the requirements of this
7 section;

8 (v) Of the instructions for obtaining additional information from
9 the department regarding whether and how to remit the sales or use
10 tax to the department; and

11 (vi) That if the seller to whom the purchaser is referred does
12 not collect retail sales tax on a subsequent purchase by the
13 purchaser, the seller may be required to provide information to the
14 purchaser and the department about the purchaser's potential sales or
15 use tax liability.

16 (b) The notice under (a) of this subsection (3) must be
17 prominently displayed on the platform and may include pop-up boxes or
18 notification by other means that appear when the referrer transfers a
19 purchaser to a marketplace seller or an affiliated person to complete
20 the sale.

21 (4)(a) A seller, other than a referrer acting in its capacity as
22 a referrer, subject to the notice and reporting requirements of
23 subsection (2) of this section must, no later than January 31st of
24 each year, provide a report to each consumer for whom the seller was
25 required to provide a notice under subsection (2)(a)(ii) of this
26 section.

27 (b) The report under this subsection (4) must include:

28 (i) A statement that the seller did not collect sales or use tax
29 on the consumer's transactions with the seller and that the consumer
30 may be required to remit such tax directly to the department;

31 (ii) A list, by date, generally indicating the type of product
32 purchased or leased during the immediately preceding calendar year by
33 the consumer from the seller, sourced to this state under RCW
34 82.32.730, and the price of each product;

35 (iii) Instructions for obtaining additional information from the
36 department regarding whether and how to remit the sales or use tax to
37 the department;

38 (iv) A statement that the seller is required to submit a report
39 to the department pursuant to subsection (6) of this section stating

1 the total dollar amount of the consumer's purchases from the seller;
2 and

3 (v) Any information as the department may reasonably require.

4 (c)(i) The report required under this subsection (4) must be sent
5 to the consumer's billing address or, if unknown, the consumer's
6 shipping address, by first-class mail, in an envelope marked
7 prominently with words indicating important tax information is
8 enclosed.

9 (ii) If no billing or shipping address is known, the report must
10 be sent electronically to the consumer's last known email address
11 with a subject heading indicating important tax information is
12 enclosed.

13 (5)(a) A referrer subject to the notice requirements under
14 subsection (3) of this section must, no later than January 31st of
15 each year, provide notice to each marketplace seller to whom the
16 referrer transferred a potential purchaser located in Washington
17 during the previous calendar year.

18 (b) The notice under this subsection (5) must include:

19 (i) A statement that Washington imposes a sales or use tax on
20 retail sales;

21 (ii) A statement that a seller, meeting the threshold in section
22 602(2) of this act, is required to either collect and remit retail
23 sales or use tax on all taxable retail sales sourced to this state
24 under RCW 82.32.730 or to comply with this section; and

25 (iii) Instructions for obtaining additional information from the
26 department.

27 (c) By January 31st of each year, a referrer required to provide
28 the notice under this subsection must provide the department with:

29 (i) A list of sellers who received the referrer's notice under
30 this subsection. The information must be provided electronically in a
31 form and manner required by the department.

32 (ii) An affidavit signed under penalty of perjury from an officer
33 of the referrer affirming that the referrer made reasonable efforts
34 to comply with the applicable sales and use tax notice and reporting
35 requirements of this section.

36 (6)(a) A seller, other than a referrer acting in its capacity as
37 a referrer, subject to the notice and reporting requirements of this
38 section must, no later than January 31st of each year, file a report
39 with the department.

1 (b) The report under this subsection (6) must include, with
2 respect to each consumer to whom the seller is required to provide a
3 report under subsection (4) of this section by January 31st of the
4 current calendar year:

5 (i) The consumer's name;

6 (ii) The billing address and, if different, the last known
7 mailing address;

8 (iii) The shipping address for each product sold or leased to
9 such consumer for delivery to a location in this state during the
10 immediately preceding calendar year; and

11 (iv) The total dollar amount of all such purchases by such
12 consumer.

13 (c) The report under this subsection (6) must also include an
14 affidavit signed under penalty of perjury from an officer of the
15 seller affirming that the seller made reasonable efforts to comply
16 with the applicable sales and use tax notice and reporting
17 requirements in this section.

18 (d) Except for the affidavit, the report under this subsection
19 (6) must be filed electronically in a form and manner required by the
20 department.

21 (7) A seller who is registered with the department to collect and
22 remit retail sales and use tax, and who makes a reasonable effort to
23 comply with the requirements of RCW 82.08.050 and 82.12.040, is not
24 required to provide notice or file reports under this section.

25 (8) Every seller subject to this chapter must keep and preserve,
26 for a period of five years, suitable records as may be necessary for
27 the department to verify the seller's compliance with this chapter.
28 All of the seller's books, records, and invoices must be open for
29 examination at any reasonable time by the department. The department
30 may require the attendance of any officer of the seller or any
31 employee of the seller having knowledge pertinent to the department's
32 investigation of the seller's compliance with this chapter, at a time
33 and place fixed in a subpoena issued under RCW 82.32.117, and may
34 take the person's testimony under oath.

35 (9) In exercising discretion in enforcing the provisions of this
36 chapter, the department may take into consideration available
37 resources, whether the anticipated benefits from any potential
38 enforcement activities are likely to exceed the department's expected
39 enforcement costs, and any other factors the department deems
40 appropriate.

1 NEW SECTION. **Sec. 606.** (1)(a) The department must assess a
2 penalty against any seller, other than a referrer acting in its
3 capacity as a referrer, that fails to provide notice to consumers
4 pursuant to section 605(2)(a) of this act, in addition to any other
5 applicable penalties, in the amount of twenty thousand dollars. The
6 department may assess the penalty under this subsection only once per
7 calendar year, regardless of the number of notices a seller fails to
8 provide pursuant to section 605(2)(a) of this act during the calendar
9 year. The department may apply this penalty at any time during a
10 calendar year and no more frequently than annually.

11 (b) The department must assess a penalty against any referrer
12 that fails to provide notice to consumers pursuant to section 605(3)
13 of this act, in addition to any other applicable penalties, in the
14 amount of twenty thousand dollars. The department may apply this
15 penalty at any time during a calendar year and no more frequently
16 than annually.

17 (2)(a) The department must assess a penalty against a seller who
18 fails to provide a report as required by section 605(4) of this act,
19 in addition to any other applicable penalties, in the amount of eight
20 and one-half percent of gross receipts from sales sourced to this
21 state under RCW 82.32.730 for the calendar year for which the report
22 was required to be made.

23 (b) The department must assess a penalty against a referrer who
24 fails to provide the notice and list required by section 605(5) of
25 this act, in addition to any other applicable penalties, in the
26 amount of eight and one-half percent of the gross income of the
27 business received from the referrer's referral services apportioned
28 to Washington under RCW 82.04.460, whether or not subject to tax
29 under chapter 82.04 RCW, for the calendar year for which the notice
30 and list was required to be made. The department may assess the
31 penalty under this subsection only once per calendar year, regardless
32 of the number of failures to comply with section 605(5) of this act
33 during the calendar year.

34 (3) The department must assess a penalty against any seller,
35 other than a referrer acting in its capacity as a referrer, who fails
36 to provide a report to the department as required by section 605(6)
37 of this act, in addition to any other applicable penalties, in the
38 amount of twenty-five dollars multiplied by the number of consumers
39 that should have been included on such report, but not less than
40 twenty thousand dollars for any calendar year.

1 (4) The penalties imposed under subsections (1) through (3) of
2 this section are cumulative.

3 (5) No penalty may be imposed by the department under subsections
4 (1) through (4) of this section more than four years after the close
5 of the calendar year in which the notice or report giving rise to the
6 penalty was required to have been provided. This subsection (5) does
7 not apply to penalties reassessed under subsection (9) of this
8 section.

9 (6) When assessing a penalty under this section, the department
10 may use any reasonable estimation technique where necessary or
11 appropriate to determine the amount of any penalty.

12 (7) Interest accrues on the amount of the total penalty that has
13 been assessed under this section until the total penalty amount is
14 paid in full. Interest imposed under this section must be computed
15 and assessed as provided in RCW 82.32.050 as if the penalty imposed
16 under this subsection was a tax liability.

17 (8) The department must notify a seller by mail, or
18 electronically as provided in RCW 82.32.135, of the amount of any
19 penalty and interest due under this section. Amounts due under this
20 section must be paid in full within thirty days from the date of the
21 notice, or within such further time as the department may provide in
22 its sole discretion.

23 (9)(a)(i) A seller is entitled to a conditional waiver of
24 penalties and interest imposed under this section if the seller
25 enters into a written agreement with the department electing to
26 collect retail sales or use tax or fully comply with all applicable
27 notice and reporting requirements of this chapter, beginning by a
28 date acceptable to the department. An election to collect retail
29 sales or use tax must be for a period of at least twelve consecutive
30 months and is subject to the provisions of section 602(1)(d) of this
31 act.

32 (ii) The department may grant a waiver of penalties and interest
33 under this subsection (9)(a) for penalties and interest assessed for
34 a seller's failure to comply with the notice and reporting
35 requirements for one or more violations.

36 (iii) The department may not grant more than one request by a
37 seller for a waiver of penalties and interest under this subsection
38 (9)(a).

39 (iv) The department must reassess penalties and interest
40 conditionally waived under this subsection (9)(a) if the department

1 finds that, after the date that the seller agreed to fully comply
2 with the applicable notice and reporting requirements of this
3 chapter, the seller failed to:

4 (A) Provide notice under section 605(2)(a)(ii) of this act to at
5 least ninety-five percent of the consumers entitled to such notice in
6 any given calendar year or portion of the initial calendar year in
7 which the agreement required under this subsection was in effect if
8 the agreement was in effect for less than the entire calendar year;

9 (B) Timely provide the reports required under section 605(4) of
10 this act to all consumers who received notice from the seller under
11 section 605(2)(a)(ii) of this act during any calendar year, unless
12 the department finds that any such failure was due to circumstances
13 beyond the seller's control;

14 (C) Timely provide the reports required under section 605(6) of
15 this act during any calendar year, unless the department finds that
16 any such failure was due to circumstances beyond the seller's
17 control; or

18 (D) With respect to referrers, timely provide the notice required
19 under section 605(3) of this act and the notice and list required
20 under section 605(5) of this act during any calendar year, unless the
21 department finds that any such failure was due to circumstances
22 beyond the referrer's control.

23 (v) The department must reassess penalties and interest
24 conditionally waived under this subsection (9)(a) if the department
25 finds that, after the date that the seller elected to collect retail
26 sales or use tax, the seller failed to register with the department
27 and make a reasonable effort to comply with the requirements of RCW
28 82.08.050 and 82.12.040.

29 (vi) The department may not reassess penalties and interest
30 conditionally waived under this subsection (9)(a) more than four
31 calendar years following the calendar year in which the department
32 granted the conditional waiver under this subsection (9)(a).

33 (vii) The provisions of subsection (8) of this section apply to
34 penalties and interest reassessed under this subsection (9)(a). The
35 department may add additional interest on penalties reassessed under
36 this subsection (9)(a) only if the total amount of penalties
37 reassessed under this subsection (9)(a) is not paid in full by the
38 date due. Additional interest authorized under this subsection
39 (9)(a)(vii) applies beginning on the day immediately following the

1 day that the reassessed penalties were due and accrues until the
2 total amount of reassessed penalties are paid in full.

3 (b) The department must waive penalties and interest imposed
4 under this section if the department determines that the failure of
5 the seller to fully comply with the notice or reporting requirements
6 was due to circumstances beyond the seller's control.

7 (c) A request for a waiver of penalties and interest under this
8 subsection must be received by the department in writing and before
9 the penalties and interest for which a waiver is requested are due
10 pursuant to subsection (8) of this section. The department must deny
11 any request for a waiver of penalties and interest that does not
12 fully comply with the provisions of this subsection (9)(c).

13 NEW SECTION. **Sec. 607.** Chapter 82.32 RCW applies to the
14 administration of this chapter.

15 NEW SECTION. **Sec. 608.** Nothing in this chapter relieves sellers
16 or consumers who are subject to chapter 82.08 or 82.12 RCW from any
17 responsibilities imposed under those chapters. Nor does anything in
18 this chapter prevent the department from administering and enforcing
19 the taxes imposed under chapter 82.08 or 82.12 RCW with respect to
20 any seller or consumer who is subject to such taxes.

21 NEW SECTION. **Sec. 609.** A new section is added to chapter 82.32
22 RCW to be codified between RCW 82.32.045 and 82.32.050 to read as
23 follows:

24 (1) Except as otherwise provided in this section, taxes imposed
25 under chapter 82.08 or 82.12 RCW and payable by a consumer directly
26 to the department are due, on returns prescribed by the department,
27 by the earlier of March 1st of the calendar year immediately
28 following the calendar year in which the sale or use occurred or
29 within thirty days of the date of a notice from the department that
30 tax may be due.

31 (2) This section does not apply to the reporting and payment of
32 taxes imposed under chapters 82.08 and 82.12 RCW:

33 (a) On the retail sale or use of motor vehicles, vessels, or
34 aircraft; or

35 (b) By consumers who are engaged in business, unless the
36 department has relieved the consumer of the requirement to file
37 returns pursuant to RCW 82.32.045(4).

1 the tax, fails to pay it to the department in the manner prescribed
2 by this chapter, whether such failure is the result of the seller's
3 own acts or the result of acts or conditions beyond the seller's
4 control, the seller is, nevertheless, personally liable to the state
5 for the amount of the tax.

6 (4) Sellers are not relieved from personal liability for the
7 amount of the tax unless they maintain proper records of exempt or
8 nontaxable transactions and provide them to the department when
9 requested.

10 (5) Sellers are not relieved from personal liability for the
11 amount of tax if they fraudulently fail to collect the tax or if they
12 solicit purchasers to participate in an unlawful claim of exemption.

13 (6) Sellers are not relieved from personal liability for the
14 amount of tax if they accept an exemption certificate from a
15 purchaser claiming an entity-based exemption if:

16 (a) The subject of the transaction sought to be covered by the
17 exemption certificate is actually received by the purchaser at a
18 location operated by the seller in Washington; and

19 (b) Washington provides an exemption certificate that clearly and
20 affirmatively indicates that the claimed exemption is not available
21 in Washington. Graying out exemption reason types on a uniform form
22 and posting it on the department's web site is a clear and
23 affirmative indication that the grayed out exemptions are not
24 available.

25 (7)(a) Sellers are relieved from personal liability for the
26 amount of tax if they obtain a fully completed exemption certificate
27 or capture the relevant data elements required under the streamlined
28 sales and use tax agreement within ninety days, or a longer period as
29 may be provided by rule by the department, subsequent to the date of
30 sale.

31 (b) If the seller has not obtained an exemption certificate or
32 all relevant data elements required under the streamlined sales and
33 use tax agreement within the period allowed subsequent to the date of
34 sale, the seller may, within one hundred twenty days, or a longer
35 period as may be provided by rule by the department, subsequent to a
36 request for substantiation by the department, either prove that the
37 transaction was not subject to tax by other means or obtain a fully
38 completed exemption certificate from the purchaser, taken in good
39 faith.

1 (c) Sellers are relieved from personal liability for the amount
2 of tax if they obtain a blanket exemption certificate for a purchaser
3 with which the seller has a recurring business relationship. The
4 department may not request from a seller renewal of blanket exemption
5 certificates or updates of exemption certificate information or data
6 elements if there is a recurring business relationship between the
7 buyer and seller. For purposes of this subsection (7)(c), a
8 "recurring business relationship" means at least one sale transaction
9 within a period of twelve consecutive months.

10 (d) Sellers are relieved from personal liability for the amount
11 of tax if they obtain a copy of a direct pay permit issued under RCW
12 82.32.087.

13 (8) The amount of tax, until paid by the buyer to the seller or
14 to the department, constitutes a debt from the buyer to the seller.
15 Any seller who fails or refuses to collect the tax as required with
16 intent to violate the provisions of this chapter or to gain some
17 advantage or benefit, either direct or indirect, and any buyer who
18 refuses to pay any tax due under this chapter is guilty of a
19 misdemeanor.

20 (9) Except as otherwise provided in this subsection, the tax
21 required by this chapter to be collected by the seller must be stated
22 separately from the selling price in any sales invoice or other
23 instrument of sale. On all retail sales through vending machines, the
24 tax need not be stated separately from the selling price or collected
25 separately from the buyer. Except as otherwise provided in this
26 subsection, for purposes of determining the tax due from the buyer to
27 the seller and from the seller to the department it must be
28 conclusively presumed that the selling price quoted in any price
29 list, sales document, contract or other agreement between the parties
30 does not include the tax imposed by this chapter. But if the seller
31 advertises the price as including the tax or that the seller is
32 paying the tax, the advertised price may not be considered the
33 selling price.

34 (10) Where a buyer has failed to pay to the seller the tax
35 imposed by this chapter and the seller has not paid the amount of the
36 tax to the department, the department may, in its discretion, proceed
37 directly against the buyer for collection of the tax. If the
38 department proceeds directly against the buyer for collection of the
39 tax as authorized in this subsection, the department may add a
40 penalty of ten percent of the unpaid tax to the amount of the tax due

1 for failure of the buyer to pay the tax to the seller, regardless of
2 when the tax may be collected by the department. In addition to the
3 penalty authorized in this subsection, all of the provisions of
4 chapter 82.32 RCW, including those relative to interest and
5 penalties, apply. For the sole purpose of applying the various
6 provisions of chapter 82.32 RCW, the twenty-fifth day of the month
7 following the tax period in which the purchase was made will be
8 considered as the due date of the tax.

9 ~~(11) ((Notwithstanding subsections (1) through (10) of this
10 section, any person making sales is not obligated to collect the tax
11 imposed by this chapter if:~~

12 ~~(a) The person's activities in this state, whether conducted
13 directly or through another person, are limited to:~~

14 ~~(i) The storage, dissemination, or display of advertising;~~

15 ~~(ii) The taking of orders; or~~

16 ~~(iii) The processing of payments; and~~

17 ~~(b) The activities are conducted electronically via a web site on
18 a server or other computer equipment located in Washington that is
19 not owned or operated by the person making sales into this state nor
20 owned or operated by an affiliated person. "Affiliated persons" has
21 the same meaning as provided in RCW 82.04.424.~~

22 ~~(12) Subsection (11) of this section expires when: (a) The United
23 States congress grants individual states the authority to impose
24 sales and use tax collection duties on remote sellers; or (b) it is
25 determined by a court of competent jurisdiction, in a judgment not
26 subject to review, that a state can impose sales and use tax
27 collection duties on remote sellers.~~

28 ~~(13) For purposes of this section:)) The definitions in this
29 subsection apply throughout this section unless the context clearly
30 requires otherwise.~~

31 (a) "Exemption certificate" means documentation furnished by a
32 buyer to a seller to claim an exemption from sales tax. An exemption
33 certificate includes a reseller permit or other documentation
34 authorized in RCW 82.04.470 furnished by a buyer to a seller to
35 substantiate a wholesale sale(~~(; and)~~).

36 (b) "Seller" includes a certified service provider, as defined in
37 RCW 82.32.020, acting as agent for the seller.

38 **Sec. 612.** RCW 82.12.040 and 2015 c 169 s 9 are each amended to
39 read as follows:

1 (1) Every person who (~~maintains in this state a place of~~
2 ~~business or a stock of goods, or engages in business activities~~
3 ~~within this state~~) is subject to a collection obligation under
4 chapter 82.08 RCW, except a person making a valid election to comply
5 with the notice and reporting provisions of section 605 of this act,
6 must obtain from the department a certificate of registration, and
7 must, at the time of making sales of tangible personal property,
8 digital goods, digital codes, digital automated services, extended
9 warranties, or sales of any service defined as a retail sale in RCW
10 82.04.050 (2) (a) or (g) or (6)(~~(b)~~) (c), or making transfers of
11 either possession or title, or both, of tangible personal property
12 for use in this state, collect from the purchasers or transferees the
13 tax imposed under this chapter. The tax to be collected under this
14 section must be in an amount equal to the purchase price multiplied
15 by the rate in effect for the retail sales tax under RCW 82.08.020.
16 (~~For the purposes of this chapter, the phrase "maintains in this~~
17 ~~state a place of business" includes the solicitation of sales and/or~~
18 ~~taking of orders by sales agents or traveling representatives. For~~
19 ~~the purposes of this chapter, "engages in business activity within~~
20 ~~this state" includes every activity which is sufficient under the~~
21 ~~Constitution of the United States for this state to require~~
22 ~~collection of tax under this chapter. The department must in rules~~
23 ~~specify activities which constitute engaging in business activity~~
24 ~~within this state, and must keep the rules current with future court~~
25 ~~interpretations of the Constitution of the United States.)~~)

26 (2) Every person who engages in this state in the business of
27 acting as an independent selling agent for persons who do not hold a
28 valid certificate of registration, and who receives compensation by
29 reason of sales of tangible personal property, digital goods, digital
30 codes, digital automated services, extended warranties, or sales of
31 any service defined as a retail sale in RCW 82.04.050 (2) (a) or (g)
32 or (6)(~~(b)~~) (c), of his or her principals for use in this state,
33 must, at the time such sales are made, collect from the purchasers
34 the tax imposed on the purchase price under this chapter, and for
35 that purpose is deemed a retailer as defined in this chapter.

36 (3) The tax required to be collected by this chapter is deemed to
37 be held in trust by the retailer until paid to the department, and
38 any retailer who appropriates or converts the tax collected to the
39 retailer's own use or to any use other than the payment of the tax
40 provided herein to the extent that the money required to be collected

1 is not available for payment on the due date as prescribed is guilty
2 of a misdemeanor. In case any seller fails to collect the tax herein
3 imposed or having collected the tax, fails to pay the same to the
4 department in the manner prescribed, whether such failure is the
5 result of the seller's own acts or the result of acts or conditions
6 beyond the seller's control, the seller is nevertheless personally
7 liable to the state for the amount of such tax, unless the seller has
8 taken from the buyer a copy of a direct pay permit issued under RCW
9 82.32.087.

10 (4) Any retailer who refunds, remits, or rebates to a purchaser,
11 or transferee, either directly or indirectly, and by whatever means,
12 all or any part of the tax levied by this chapter is guilty of a
13 misdemeanor.

14 ~~(5) ((Notwithstanding subsections (1) through (4) of this~~
15 ~~section, any person making sales is not obligated to collect the tax~~
16 ~~imposed by this chapter if:~~

17 ~~(a) The person's activities in this state, whether conducted~~
18 ~~directly or through another person, are limited to:~~

19 ~~(i) The storage, dissemination, or display of advertising;~~

20 ~~(ii) The taking of orders; or~~

21 ~~(iii) The processing of payments; and~~

22 ~~(b) The activities are conducted electronically via a web site on~~
23 ~~a server or other computer equipment located in Washington that is~~
24 ~~not owned or operated by the person making sales into this state nor~~
25 ~~owned or operated by an affiliated person. "Affiliated persons" has~~
26 ~~the same meaning as provided in RCW 82.04.424.~~

27 ~~(6) Subsection (5) of this section expires when: (a) The United~~
28 ~~States congress grants individual states the authority to impose~~
29 ~~sales and use tax collection duties on remote sellers; or (b) it is~~
30 ~~determined by a court of competent jurisdiction, in a judgment not~~
31 ~~subject to review, that a state can impose sales and use tax~~
32 ~~collection duties on remote sellers.~~

33 ~~(7))~~ Notwithstanding subsections (1) through (4) of this
34 section, any person making sales is not obligated to collect the tax
35 imposed by this chapter if the person would have been obligated to
36 collect retail sales tax on the sale absent a specific exemption
37 provided in chapter 82.08 RCW, and there is no corresponding use tax
38 exemption in this chapter. Nothing in this subsection ~~((7))~~ (5) may
39 be construed as relieving purchasers from liability for reporting and
40 remitting the tax due under this chapter directly to the department.

1 (~~(8)~~) (6) Notwithstanding subsections (1) through (4) of this
2 section, any person making sales is not obligated to collect the tax
3 imposed by this chapter if the state is prohibited under the
4 Constitution or laws of the United States from requiring the person
5 to collect the tax imposed by this chapter.

6 (~~(9)~~) (7) Notwithstanding subsections (1) through (4) of this
7 section, any licensed dealer facilitating a firearm sale or transfer
8 between two unlicensed persons by conducting background checks under
9 chapter 9.41 RCW is not obligated to collect the tax imposed by this
10 chapter.

11 NEW SECTION. **Sec. 613.** A new section is added to chapter 82.32
12 RCW to read as follows:

13 (1) If the department determines that a change, taking effect
14 after the effective date of this section, in the streamlined sales
15 and use tax agreement or federal law creates a conflict with any
16 provision of section 602 or 603 of this act, such conflicting
17 provision or provisions of section 602 or 603 of this act, including
18 any related provisions that would not function as originally
19 intended, have no further force and effect as of the date the change
20 in the streamlined sales and use tax agreement or federal law becomes
21 effective.

22 (2) For purposes of this section:

23 (a) A change in federal law conflicts with section 602 or 603 of
24 this act if the change clearly allows states to impose greater sales
25 and use tax collection obligations on remote sellers, referrers, or
26 marketplace facilitators than provided for, or clearly prevents
27 states from imposing sales and use tax collection obligations on
28 remote sellers, referrers, or marketplace facilitators to the extent
29 provided for, under section 602 or 603 of this act.

30 (b) A change in the streamlined sales and use tax agreement
31 conflicts with section 602 or 603 of this act if one or more
32 provisions of section 602 or 603 of this act causes this state to be
33 found out of compliance with the streamlined sales and use tax
34 agreement by its governing board.

35 (3) If the department makes a determination under this section
36 that a change in federal law or the streamlined sales and use tax
37 agreement conflicts with one or more provisions of section 602 or 603
38 of this act, the department:

1 (a) May adopt rules in accordance with chapter 34.05 RCW that are
2 consistent with the streamlined sales and use tax agreement and that
3 impose sales and use tax collection obligations on remote sellers,
4 referrers, or marketplace facilitators to the fullest extent allowed
5 under state and federal law; and

6 (b) Must include information on its web site informing taxpayers
7 and the public (i) of the provision or provisions of section 602 or
8 603 of this act that will have no further force and effect, (ii) when
9 such change will become effective, and (iii) about how to participate
10 in any rule making conducted by the department in accordance with (a)
11 of this subsection (3).

12 (4) For purposes of this section, "remote seller," "referrer,"
13 and "marketplace facilitator" have the same meaning as provided in
14 section 604 of this act.

15 Part VII

16 **Expanding Individual Liability for an Entity's Unpaid Tax Obligations**

17 **Sec. 701.** RCW 82.32.145 and 2015 c 188 s 121 are each amended to
18 read as follows:

19 (1) Whenever the department has issued a warrant under RCW
20 82.32.210 for the collection of unpaid (~~(trust—fund)~~) recoverable
21 taxes from a limited liability business entity and that business
22 entity has been terminated, dissolved, or abandoned, or is insolvent,
23 the department may pursue collection of the entity's unpaid (~~(trust~~
24 ~~fund)~~) recoverable taxes, including penalties and interest on those
25 taxes, against any or all of the responsible individuals. For
26 purposes of this subsection, "insolvent" means the condition that
27 results when the sum of the entity's debts exceeds the fair market
28 value of its assets. The department may presume that an entity is
29 insolvent if the entity refuses to disclose to the department the
30 nature of its assets and liabilities.

31 (2) Personal liability under this section may be imposed only for
32 state and local (~~(trust—fund)~~) recoverable taxes.

33 (3)(a) For a responsible individual who is the current or a
34 former chief executive or chief financial officer, liability under
35 this section applies regardless of fault or whether the individual
36 was or should have been aware of the unpaid (~~(trust—fund)~~)
37 recoverable tax liability of the limited liability business entity.

1 This subsection (3)(a) applies only with respect to recoverable tax
2 liability described in subsection (4)(a)(i) of this section.

3 (b) For any other responsible individual, liability under this
4 section applies only if he or she willfully fails to pay or to cause
5 to be paid to the department the ((~~trust-fund~~)) recoverable taxes due
6 from the limited liability business entity.

7 (4)(a)(i) Except as provided in (a)(ii) of this subsection (4)
8 ((~~a~~)), a responsible individual who is the current or a former
9 chief executive or chief financial officer is liable under this
10 section only for ((~~trust-fund~~)) recoverable tax liability accrued
11 during the period that he or she was the chief executive or chief
12 financial officer.

13 (ii) However, if the responsible individual had the
14 responsibility or duty to remit payment of the limited liability
15 business entity's ((~~trust-fund~~)) recoverable taxes to the department
16 during any period of time that the person was not the chief executive
17 or chief financial officer, that individual is also liable for
18 ((~~trust-fund~~)) recoverable tax liability that became due during the
19 period that he or she had the duty to remit payment of the limited
20 liability business entity's taxes to the department but was not the
21 chief executive or chief financial officer. The provisions of
22 subsection (3)(b) of this section apply to recoverable tax liability
23 imposed under this subsection (4)(a)(ii).

24 (b) All other responsible individuals are liable under this
25 section only for ((~~trust-fund~~)) recoverable tax liability that became
26 due during the period he or she had the responsibility or duty to
27 remit payment of the limited liability business entity's taxes to the
28 department.

29 (5) Persons described in subsection (3)(b) of this section are
30 exempt from liability under this section in situations where
31 nonpayment of the limited liability business entity's ((~~trust-fund~~))
32 recoverable taxes is due to reasons beyond their control as
33 determined by the department by rule.

34 (6) Any person having been issued a notice of assessment under
35 this section is entitled to the appeal procedures under RCW
36 82.32.160, 82.32.170, 82.32.180, 82.32.190, and 82.32.200.

37 (7) This section does not relieve the limited liability business
38 entity of its ((~~trust-fund~~)) recoverable tax liability or otherwise
39 impair other tax collection remedies afforded by law.

1 (8) Collection authority and procedures prescribed in this
2 chapter apply to collections under this section.

3 (9) The definitions in this subsection apply throughout this
4 section unless the context clearly requires otherwise.

5 (a) "Chief executive" means: The president of a corporation; or
6 for other entities or organizations other than corporations or if the
7 corporation does not have a president as one of its officers, the
8 highest ranking executive manager or administrator in charge of the
9 management of the company or organization.

10 (b) "Chief financial officer" means: The treasurer of a
11 corporation; or for entities or organizations other than corporations
12 or if a corporation does not have a treasurer as one of its officers,
13 the highest senior manager who is responsible for overseeing the
14 financial activities of the entire company or organization.

15 (c) "Limited liability business entity" means a type of business
16 entity that generally shields its owners from personal liability for
17 the debts, obligations, and liabilities of the entity, or a business
18 entity that is managed or owned in whole or in part by an entity that
19 generally shields its owners from personal liability for the debts,
20 obligations, and liabilities of the entity. Limited liability
21 business entities include corporations, limited liability companies,
22 limited liability partnerships, trusts, general partnerships and
23 joint ventures in which one or more of the partners or parties are
24 also limited liability business entities, and limited partnerships in
25 which one or more of the general partners are also limited liability
26 business entities.

27 (d) "Manager" has the same meaning as in RCW 25.15.006.

28 (e) "Member" has the same meaning as in RCW 25.15.006, except
29 that the term only includes members of member-managed limited
30 liability companies.

31 (f) "Officer" means any officer or assistant officer of a
32 corporation, including the president, vice president, secretary, and
33 treasurer.

34 (g) "Recoverable tax" means:

35 (i) State sales and use taxes imposed under chapters 82.08 and
36 82.12 RCW, including spirits taxes imposed under RCW 82.08.150,
37 whether collected by a limited liability business entity or imposed
38 on a limited liability business entity as a purchaser or consumer;

39 (ii) Local sales and use taxes imposed under the authority of
40 chapter 82.14 RCW, RCW 81.104.170, or any other provision of law, and

1 administered by the department, whether collected by a limited
2 liability business entity or imposed on a limited liability business
3 entity as a purchaser or consumer;

4 (iii) State business and occupation taxes imposed under chapter
5 82.04 RCW;

6 (iv) Cigarette taxes imposed under chapter 82.24 RCW; and

7 (v) Tobacco products taxes imposed under chapter 82.26 RCW.

8 (h)(i) "Responsible individual" includes any current or former
9 officer, manager, member, partner, or trustee of a limited liability
10 business entity with an unpaid tax warrant issued by the department.

11 (ii) "Responsible individual" also includes any current or former
12 employee or other individual, but only if the individual had the
13 responsibility or duty to remit payment of the limited liability
14 business entity's unpaid ~~((trust fund))~~ recoverable tax liability
15 reflected in a tax warrant issued by the department.

16 (iii) Whenever any taxpayer has one or more limited liability
17 business entities as a member, manager, or partner, "responsible
18 individual" also includes any current and former officers, members,
19 or managers of the limited liability business entity or entities or
20 of any other limited liability business entity involved directly in
21 the management of the taxpayer. For purposes of this subsection (9)
22 ~~((g))~~ (h)(iii), "taxpayer" means a limited liability business
23 entity with an unpaid tax warrant issued against it by the
24 department.

25 ~~((h) "Trust fund taxes" means taxes collected from purchasers~~
26 ~~and held in trust under RCW 82.08.050, including taxes imposed under~~
27 ~~RCW 82.08.020 and 82.08.150.))~~

28 (i) "Willfully fails to pay or to cause to be paid" means that
29 the failure was the result of an intentional, conscious, and
30 voluntary course of action.

31 NEW SECTION. Sec. 702. Section 701 of this act applies
32 beginning with assessments issued by the department of revenue under
33 RCW 82.32.145 on or after the effective date of this section,
34 regardless of when the underlying recoverable tax liability of the
35 limited liability entity was incurred.

36 **Part VIII**

37 **Reducing Interest on Tax Refunds**

1 **Sec. 801.** RCW 82.32.060 and 2009 c 176 s 4 are each amended to
2 read as follows:

3 (1) If, upon receipt of an application by a taxpayer for a refund
4 or for an audit of the taxpayer's records, or upon an examination of
5 the returns or records of any taxpayer, it is determined by the
6 department that within the statutory period for assessment of taxes,
7 penalties, or interest prescribed by RCW 82.32.050 any amount of tax,
8 penalty, or interest has been paid in excess of that properly due,
9 the excess amount paid within, or attributable to, such period must
10 be credited to the taxpayer's account or must be refunded to the
11 taxpayer, at the taxpayer's option. Except as provided in subsection
12 (2) of this section, no refund or credit may be made for taxes,
13 penalties, or interest paid more than four years prior to the
14 beginning of the calendar year in which the refund application is
15 made or examination of records is completed.

16 (2)(a) The execution of a written waiver under RCW 82.32.050 or
17 82.32.100 will extend the time for making a refund or credit of any
18 taxes paid during, or attributable to, the years covered by the
19 waiver if, prior to the expiration of the waiver period, an
20 application for refund of such taxes is made by the taxpayer or the
21 department discovers a refund or credit is due.

22 (b) A refund or credit must be allowed for an excess payment
23 resulting from the failure to claim a bad debt deduction, credit, or
24 refund under RCW 82.04.4284, 82.08.037, 82.12.037, 82.14B.150, or
25 82.16.050(5) for debts that became bad debts under 26 U.S.C. Sec.
26 166, as amended or renumbered as of January 1, 2003, less than four
27 years prior to the beginning of the calendar year in which the refund
28 application is made or examination of records is completed.

29 (3) Any such refunds must be made by means of vouchers approved
30 by the department and by the issuance of state warrants drawn upon
31 and payable from such funds as the legislature may provide. However,
32 taxpayers who are required to pay taxes by electronic funds transfer
33 under RCW 82.32.080 must have any refunds paid by electronic funds
34 transfer if the department has the necessary account information to
35 facilitate a refund by electronic funds transfer.

36 (4) Any judgment for which a recovery is granted by any court of
37 competent jurisdiction, not appealed from, for tax, penalties, and
38 interest which were paid by the taxpayer, and costs, in a suit by any
39 taxpayer must be paid in the same manner, as provided in subsection

1 (3) of this section, upon the filing with the department of a
2 certified copy of the order or judgment of the court.

3 ~~((a) Interest at the rate of three percent per annum must be
4 allowed by the department and by any court on the amount of any
5 refund, credit, or other recovery allowed to a taxpayer for taxes,
6 penalties, or interest paid by the taxpayer before January 1, 1992.
7 This rate of interest applies for all interest allowed through
8 December 31, 1998. Interest allowed after December 31, 1998, must be
9 computed at the rate as computed under RCW 82.32.050(2). The rate so
10 computed must be adjusted on the first day of January of each year
11 for use in computing interest for that calendar year.~~

12 ~~(b) For refunds or credits of amounts paid or other recovery
13 allowed to a taxpayer after December 31, 1991, the rate of interest
14 must be the rate as computed for assessments under RCW 82.32.050(2)
15 less one percent. This rate of interest applies for all interest
16 allowed through December 31, 1998. Interest allowed after December
17 31, 1998, must be computed at the rate as computed under RCW
18 82.32.050(2). The rate so computed must be adjusted on the first day
19 of January of each year for use in computing interest for that
20 calendar year.))~~

21 (5)(a) Interest must be added to the amount of any refund,
22 credit, or other recovery allowed under this section for excess
23 taxes, penalties, or interest paid by the taxpayer at the following
24 rates:

25 (i) For all interest allowed through December 31, 2017, and for
26 interest allowed after December 31, 2017, except specified interest,
27 the interest rate is the same as provided in RCW 82.32.050(2).

28 (ii) For specified interest allowed beginning January 1, 2018,
29 the interest rate is the same as provided in RCW 82.32.050(2),
30 reduced by two percentage points.

31 (b) The rate so computed under (a) of this subsection must be
32 adjusted on the first day of January of each year for use in
33 computing interest for that calendar year.

34 (c) For purposes of this subsection (5), the following
35 definitions apply:

36 (i) "Combined excise tax return" means any version of the return
37 used by taxpayers to report taxes imposed under chapters 82.04,
38 82.08, 82.12, or 82.16 RCW, whether such return is filed
39 electronically or on a paper document; and

1 (b) of this subsection from the general fund to the education legacy
2 trust account. The first transfer under this subsection (1) must
3 occur by December 31, 2017.

4 (b) By December 15th and by June 15th of each fiscal year, the
5 department must estimate the net increase in state general fund
6 revenues from the changes made under parts II, III, and VI of this
7 act for the applicable six-month period of the current fiscal year
8 and the same six-month period of fiscal year 2017 and notify the
9 state treasurer of the increase.

10 (2)(a) By the last workday of each fiscal year quarter, the state
11 treasurer must transfer the amount specified in (b) of this
12 subsection from the general fund to the education legacy trust
13 account. The first transfer under this subsection (2) must occur by
14 September 30, 2017.

15 (b) By September 15th, December 15th, April 15th, and June 15th
16 of each fiscal year, the department must estimate the net increase in
17 state revenues from changes made under part IV of this act for the
18 applicable current fiscal year quarter and the same fiscal year
19 quarter of fiscal year 2017 and notify the state treasurer of the
20 increase.

21 NEW SECTION. **Sec. 902.** A new section is added to chapter 43.135
22 RCW to read as follows:

23 RCW 43.135.034(4) does not apply to the transfers under section
24 901 of this act.

25 NEW SECTION. **Sec. 903.** A new section is added to chapter 39.42
26 RCW to read as follows:

27 The purpose of parts II through IV and VI of this act is to levy
28 revenues for the support of education-related expenditures from the
29 education legacy trust account. For this reason, general state
30 revenues transferred to the education legacy trust account under
31 section 901 of this act are excluded from the calculation of general
32 state revenues for purposes of Article VIII, section 1 of the state
33 Constitution and RCW 39.42.130 and 39.42.140.

1 **Part X**

2 **General Conforming Amendments**

3 **Sec. 1001.** RCW 82.04.293 and 1997 c 7 s 3 are each amended to
4 read as follows:

5 For purposes of RCW ((82.04.290)) 82.08.207 and 82.12.207:

6 (1) A person is engaged in the business of providing
7 international investment management services, if:

8 (a) Such person is engaged primarily in the business of providing
9 investment management services; and

10 (b) At least ten percent of the gross income of such person is
11 derived from providing investment management services to any of the
12 following: (i) Persons or collective investment funds residing
13 outside the United States; or (ii) persons or collective investment
14 funds with at least ten percent of their investments located outside
15 the United States.

16 (2) "Investment management services" means investment research,
17 investment consulting, portfolio management, fund administration,
18 fund distribution, investment transactions, or related investment
19 services.

20 (3) "Collective investment fund" includes:

21 (a) A mutual fund or other regulated investment company, as
22 defined in section 851(a) of the internal revenue code of 1986, as
23 amended;

24 (b) An "investment company," as that term is used in section 3(a)
25 of the investment company act of 1940, as well as any entity that
26 would be an investment company for this purpose but for the
27 exemptions contained in section 3(c)(1) or (11);

28 (c) An "employee benefit plan," which includes any plan, trust,
29 commingled employee benefit trust, or custodial arrangement that is
30 subject to the employee retirement income security act of 1974, as
31 amended, 29 U.S.C. Sec. 1001 et seq., or that is described in
32 sections 125, 401, 403, 408, 457, and 501(c)(9) and (17) through (23)
33 of the internal revenue code of 1986, as amended, or a similar plan
34 maintained by a state or local government, or a plan, trust, or
35 custodial arrangement established to self-insure benefits required by
36 federal, state, or local law;

37 (d) A fund maintained by a tax-exempt organization, as defined in
38 section 501(c)(3) of the internal revenue code of 1986, as amended,
39 for operating, quasi-endowment, or endowment purposes;

1 (e) Funds that are established for the benefit of such tax-exempt
2 organizations, such as charitable remainder trusts, charitable lead
3 trusts, charitable annuity trusts, or other similar trusts; or

4 (f) Collective investment funds similar to those described in (a)
5 through (e) of this subsection created under the laws of a foreign
6 jurisdiction.

7 (4) Investments are located outside the United States if the
8 underlying assets in which the investment constitutes a beneficial
9 interest reside or are created, issued or held outside the United
10 States.

11 (5) This section expires July 1, 2021.

12 **Sec. 1002.** RCW 82.04.440 and 2011 c 2 s 205 are each amended to
13 read as follows:

14 (1) Every person engaged in activities that are subject to tax
15 under two or more provisions of RCW 82.04.230 through 82.04.298,
16 inclusive, is taxable under each provision applicable to those
17 activities.

18 (2) Persons taxable under RCW 82.04.2909(2), 82.04.250,
19 82.04.270, 82.04.294(2), or 82.04.260 (1)(b), (c), or (d), (4), (11),
20 or (12) with respect to selling products in this state, including
21 those persons who are also taxable under RCW 82.04.261 or section 204
22 of this act, with respect to selling products in this state, are
23 allowed a credit against those taxes for any (a) manufacturing taxes
24 paid with respect to the manufacturing of products so sold in this
25 state, and/or (b) extracting taxes paid with respect to the
26 extracting of products so sold in this state or ingredients of
27 products so sold in this state. Extracting taxes taken as credit
28 under subsection (3) of this section may also be taken under this
29 subsection, if otherwise allowable under this subsection. The amount
30 of the credit may not exceed the tax liability arising under this
31 chapter with respect to the sale of those products.

32 (3) Persons taxable as manufacturers under RCW 82.04.240 or
33 82.04.260 (1)(b) or (12), including those persons who are also
34 taxable under RCW 82.04.261 or section 204 of this act, with respect
35 to the manufacturing of products in this state, are allowed a credit
36 against those taxes for any extracting taxes paid with respect to
37 extracting the ingredients of the products so manufactured in this
38 state. The amount of the credit may not exceed the tax liability

1 arising under this chapter with respect to the manufacturing of those
2 products.

3 (4) Persons taxable under RCW 82.04.230, 82.04.240,
4 82.04.2909(1), 82.04.294(1), 82.04.2404, or 82.04.260 (1), (2), (4),
5 (11), or (12), including those persons who are also taxable under RCW
6 82.04.261 or section 204 of this act, with respect to extracting or
7 manufacturing products in this state, are allowed a credit against
8 those taxes for any (i) gross receipts taxes paid to another state
9 with respect to the sales of the products so extracted or
10 manufactured in this state, (ii) manufacturing taxes paid with
11 respect to the manufacturing of products using ingredients so
12 extracted in this state, or (iii) manufacturing taxes paid with
13 respect to manufacturing activities completed in another state for
14 products so manufactured in this state. The amount of the credit may
15 not exceed the tax liability arising under this chapter with respect
16 to the extraction or manufacturing of those products.

17 (5) (~~For the purpose of this section:~~) The definitions in this
18 subsection apply throughout this section unless the context clearly
19 requires otherwise.

20 (a) "Gross receipts tax" means a tax:

21 (i) Which is imposed on or measured by the gross volume of
22 business, in terms of gross receipts or in other terms, and in the
23 determination of which the deductions allowed would not constitute
24 the tax an income tax or value added tax; and

25 (ii) Which is also not, pursuant to law or custom, separately
26 stated from the sales price.

27 (b) "State" means (i) the state of Washington, (ii) a state of
28 the United States other than Washington, or any political subdivision
29 of such other state, (iii) the District of Columbia, and (iv) any
30 foreign country or political subdivision thereof.

31 (c) "Manufacturing tax" means a gross receipts tax imposed on the
32 act or privilege of engaging in business as a manufacturer, and
33 includes:

34 (i) The taxes imposed in RCW 82.04.240, 82.04.2404,
35 82.04.2909(1), 82.04.260 (1), (2), (4), (11), and (12), and
36 82.04.294(1);

37 (ii) The tax imposed under RCW 82.04.261 and section 204 of this
38 act on persons who are engaged in business as a manufacturer; and

39 (iii) Similar gross receipts taxes paid to other states.

1 (d) "Extracting tax" means a gross receipts tax imposed on the
2 act or privilege of engaging in business as an extractor, and
3 includes:

4 (i) The tax imposed on extractors in RCW 82.04.230 and
5 82.04.260(12);

6 (ii) The ~~((tax))~~ taxes imposed under RCW 82.04.261 and section
7 204 of this act on persons who are engaged in business as an
8 extractor; and

9 (iii) Similar gross receipts taxes paid to other states.

10 (e) "Business", "manufacturer", "extractor", and other terms used
11 in this section have the meanings given in RCW 82.04.020 through
12 ~~((82.04.212 [82.04.217]))~~ 82.04.217, notwithstanding the use of those
13 terms in the context of describing taxes imposed by other states.

14 **Sec. 1003.** RCW 82.04.44525 and 2009 c 535 s 1104 are each
15 amended to read as follows:

16 (1) Subject to the limits in this section, an eligible person is
17 allowed a credit against the tax due under this chapter. The credit
18 is based on qualified employment positions in eligible areas. The
19 credit is available to persons who are engaged in international
20 services as defined in this section. In order to receive the credit,
21 the international service activities must take place at a business
22 within the eligible area.

23 (2)(a) The credit ~~((shall))~~ equals three thousand dollars for
24 each qualified employment position created after July 1, 1998, in an
25 eligible area. A credit is earned for the calendar year the person is
26 hired to fill the position, plus the four subsequent consecutive
27 years, if the position is maintained for those four years.

28 (b) Credit may not be taken for hiring of persons into positions
29 that exist on July 1, 1998. Credit is authorized for new employees
30 hired for new positions created after July 1, 1998. New positions
31 filled by existing employees are eligible for the credit under this
32 section only if the position vacated by the existing employee is
33 filled by a new hire.

34 (c) When a position is newly created, if it is filled before July
35 1st, this position is eligible for the full yearly credit. If it is
36 filled after June 30th, this position is eligible for half of the
37 credit.

38 (d) Credit may be accrued and carried over until it is used. No
39 refunds may be granted for credits under this section.

1 (3) (~~For the purposes of this section:~~) The definitions in this
2 subsection apply throughout this section unless the context clearly
3 requires otherwise.

4 (a) "Eligible area" means: (i) A community empowerment zone under
5 RCW 43.31C.020; or (ii) a contiguous group of census tracts that
6 meets the unemployment and poverty criteria of RCW 43.31C.030 and is
7 designated under subsection (4) of this section;

8 (b) "Eligible person" means a person, as defined in RCW
9 82.04.030, who in an eligible area at a specific location is engaged
10 in the business of providing international services;

11 (c)(i) "International services" means the provision of a service,
12 as defined under (c)(~~(iii)~~) (ii) of this subsection, that is
13 subject to tax under RCW 82.04.290 (1) or (2) (~~or (3)~~), and either:

14 (A) Is for a person domiciled outside the United States; or

15 (B) The service itself is for use primarily outside of the United
16 States.

17 (ii) (~~"International services" excludes any service taxable~~
18 ~~under RCW 82.04.290(1).~~

19 ~~(iii)~~) Eligible services are: Computer; data processing;
20 information; legal; accounting and tax preparation; engineering;
21 architectural; business consulting; business management; public
22 relations and advertising; surveying; geological consulting; real
23 estate appraisal; or financial services. For the purposes of this
24 section these services mean the following:

25 (A) "Computer services" are services such as computer
26 programming, custom software modification, customization of canned
27 software, custom software installation, custom software maintenance,
28 custom software repair, training in the use of software, computer
29 systems design, and custom software update services;

30 (B) "Data processing services" are services such as word
31 processing, data entry, data retrieval, data search, information
32 compilation, payroll processing, business accounts processing, data
33 production, and other computerized data and information storage or
34 manipulation. "Data processing services" also includes the use of a
35 computer or computer time for data processing whether the processing
36 is performed by the provider of the computer or by the purchaser or
37 other beneficiary of the service;

38 (C) "Information services" are services such as electronic data
39 retrieval or research that entails furnishing financial or legal

1 information, data or research, internet access as defined in RCW
2 82.04.297, general or specialized news, or current information;

3 (D) "Legal services" are services such as representation by an
4 attorney, or other person when permitted, in an administrative or
5 legal proceeding, legal drafting, paralegal services, legal research
6 services, and court reporting services, arbitration, and mediation
7 services;

8 (E) "Accounting and tax preparation services" are services such
9 as accounting, auditing, actuarial, bookkeeping, or tax preparation
10 services;

11 (F) "Engineering services" are services such as civil,
12 electrical, mechanical, petroleum, marine, nuclear, and design
13 engineering, machine designing, machine tool designing, and sewage
14 disposal system designing services;

15 (G) "Architectural services" are services such as structural or
16 landscape design or architecture, interior design, building design,
17 building program management, and space planning services;

18 (H) "Business consulting services" are services such as primarily
19 providing operating counsel, advice, or assistance to the management
20 or owner of any business, private, nonprofit, or public organization,
21 including but not limited to those in the following areas:
22 Administrative management consulting; general management consulting;
23 human resource consulting or training; management engineering
24 consulting; management information systems consulting; manufacturing
25 management consulting; marketing consulting; operations research
26 consulting; personnel management consulting; physical distribution
27 consulting; site location consulting; economic consulting; motel,
28 hotel, and resort consulting; restaurant consulting; government
29 affairs consulting; and lobbying;

30 (I) "Business management services" are services such as
31 administrative management, business management, and office
32 management. "Business management services" does not include property
33 management or property leasing, motel, hotel, and resort management,
34 or automobile parking management;

35 (J) "Public relations and advertising services" are services such
36 as layout, art direction, graphic design, copy writing, mechanical
37 preparation, opinion research, marketing research, marketing, or
38 production supervision;

39 (K) "Surveying services" are services such as land surveying;

1 (L) "Geological consulting services" are services rendered for
2 the oil, gas, and mining industry and other earth resource
3 industries, and other services such as soil testing;

4 (M) "Real estate appraisal services" are services such as market
5 appraisal and other real estate valuation; and

6 (N) "Financial services" are services such as banking, loan,
7 security, investment management, investment advisory, mortgage
8 servicing, contract collection, and finance leasing services, engaged
9 in by financial businesses, or businesses similar to or in
10 competition with financial businesses; and

11 (d) "Qualified employment position" means a permanent full-time
12 position to provide international services. If an employee is either
13 voluntarily or involuntarily separated from employment, the
14 employment position is considered filled on a full-time basis if the
15 employer is either training or actively recruiting a replacement
16 employee.

17 (4) By ordinance, the legislative authority of a city, or
18 legislative authorities of contiguous cities by ordinance of each
19 city's legislative authority, with population greater than eighty
20 thousand, located in a county containing no community empowerment
21 zones as designated under RCW 43.31C.020, may designate a contiguous
22 group of census tracts within the city or cities as an eligible area
23 under this section. Each of the census tracts must meet the
24 unemployment and poverty criteria of RCW 43.31C.030. Upon making the
25 designation, the city or cities (~~shall~~) must transmit to the
26 department of revenue a certification letter and a map, each
27 explicitly describing the boundaries of the census tract. This
28 designation must be made by December 31, 1998.

29 (5) No application is necessary for the tax credit. The person
30 must keep records necessary for the department to verify eligibility
31 under this section. This information includes:

32 (a) Employment records for the previous six years;

33 (b) Information relating to description of international service
34 activity engaged in at the eligible location by the person; and

35 (c) Information relating to customers of international service
36 activity engaged in at that location by the person.

37 (6) If at any time the department finds that a person is not
38 eligible for tax credit under this section, the amount of taxes for
39 which a credit has been used (~~shall be~~) is immediately due. The
40 department (~~shall~~) must assess interest, but not penalties, on the

1 credited taxes for which the person is not eligible. The interest
2 (~~shall~~) must be assessed at the rate provided for delinquent excise
3 taxes under chapter 82.32 RCW, (~~shall~~) must be assessed
4 retroactively to the date the tax credit was taken, and (~~shall~~)
5 must accrue until the taxes for which a credit has been used are
6 repaid.

7 (7) The employment security department (~~shall~~) must provide to
8 the department of revenue such information needed by the department
9 of revenue to verify eligibility under this section.

10 **Sec. 1004.** RCW 82.04.4463 and 2013 3rd sp.s. c 2 s 10 are each
11 amended to read as follows:

12 (1) In computing the tax imposed under this chapter, a credit is
13 allowed for property taxes and leasehold excise taxes paid during the
14 calendar year.

15 (2) The credit is equal to:

16 (a)(i)(A) Property taxes paid on buildings, and land upon which
17 the buildings are located, constructed after December 1, 2003, and
18 used exclusively in manufacturing commercial airplanes or components
19 of such airplanes; and

20 (B) Leasehold excise taxes paid with respect to buildings
21 constructed after January 1, 2006, the land upon which the buildings
22 are located, or both, if the buildings are used exclusively in
23 manufacturing commercial airplanes or components of such airplanes;
24 and

25 (C) Property taxes or leasehold excise taxes paid on, or with
26 respect to, buildings constructed after June 30, 2008, the land upon
27 which the buildings are located, or both, and used exclusively for
28 aerospace product development, manufacturing tooling specifically
29 designed for use in manufacturing commercial airplanes or their
30 components, or in providing aerospace services, by persons not within
31 the scope of (a)(i)(A) and (B) of this subsection (2) and are taxable
32 under RCW 82.04.290(~~(+3)~~) (1), 82.04.260(11)(b), or 82.04.250(3); or

33 (ii) Property taxes attributable to an increase in assessed value
34 due to the renovation or expansion, after: (A) December 1, 2003, of a
35 building used exclusively in manufacturing commercial airplanes or
36 components of such airplanes; and (B) June 30, 2008, of buildings
37 used exclusively for aerospace product development, manufacturing
38 tooling specifically designed for use in manufacturing commercial
39 airplanes or their components, or in providing aerospace services, by

1 persons not within the scope of (a)(ii)(A) of this subsection (2) and
2 are taxable under RCW 82.04.290(~~(+3+)~~) (1), 82.04.260(11)(b), or
3 82.04.250(3); and

4 (b) An amount equal to:

5 (i)(A) Property taxes paid, by persons taxable under RCW
6 82.04.260(11)(a), on machinery and equipment exempt under RCW
7 82.08.02565 or 82.12.02565 and acquired after December 1, 2003;

8 (B) Property taxes paid, by persons taxable under RCW
9 82.04.260(11)(b), on machinery and equipment exempt under RCW
10 82.08.02565 or 82.12.02565 and acquired after June 30, 2008; or

11 (C) Property taxes paid, by persons taxable under RCW
12 82.04.250(3) or 82.04.290(~~(+3+)~~) (1), on computer hardware, computer
13 peripherals, and software exempt under RCW 82.08.975 or 82.12.975 and
14 acquired after June 30, 2008.

15 (ii) For purposes of determining the amount eligible for credit
16 under (i)(A) and (B) of this subsection (2)(b), the amount of
17 property taxes paid is multiplied by a fraction.

18 (A) The numerator of the fraction is the total taxable amount
19 subject to the tax imposed under RCW 82.04.260(11) (a) or (b) on the
20 applicable business activities of manufacturing commercial airplanes,
21 components of such airplanes, or tooling specifically designed for
22 use in the manufacturing of commercial airplanes or components of
23 such airplanes.

24 (B) The denominator of the fraction is the total taxable amount
25 subject to the tax imposed under all manufacturing classifications in
26 chapter 82.04 RCW.

27 (C) For purposes of both the numerator and denominator of the
28 fraction, the total taxable amount refers to the total taxable amount
29 required to be reported on the person's returns for the calendar year
30 before the calendar year in which the credit under this section is
31 earned. The department may provide for an alternative method for
32 calculating the numerator in cases where the tax rate provided in RCW
33 82.04.260(11) for manufacturing was not in effect during the full
34 calendar year before the calendar year in which the credit under this
35 section is earned.

36 (D) No credit is available under (b)(i)(A) or (B) of this
37 subsection (2) if either the numerator or the denominator of the
38 fraction is zero. If the fraction is greater than or equal to nine-
39 tenths, then the fraction is rounded to one.

1 (E) As used in (b)(ii)(C) of this subsection (2), "returns" means
2 the tax returns for which the tax imposed under this chapter is
3 reported to the department.

4 (3) The definitions in this subsection apply throughout this
5 section, unless the context clearly indicates otherwise.

6 (a) "Aerospace product development" has the same meaning as
7 provided in RCW 82.04.4461.

8 (b) "Aerospace services" has the same meaning given in RCW
9 82.08.975.

10 (c) "Commercial airplane" and "component" have the same meanings
11 as provided in RCW 82.32.550.

12 (4) A credit earned during one calendar year may be carried over
13 to be credited against taxes incurred in a subsequent calendar year,
14 but may not be carried over a second year. No refunds may be granted
15 for credits under this section.

16 (5) In addition to all other requirements under this title, a
17 person claiming the credit under this section must file a complete
18 annual report with the department under RCW 82.32.534.

19 (6) This section expires July 1, 2040.

20 **Sec. 1005.** RCW 82.04.280 and 2010 c 106 s 205 are each reenacted
21 and amended to read as follows:

22 (1) Upon every person engaging within this state in the business
23 of: (a) Printing materials other than newspapers, and of publishing
24 periodicals or magazines; (b) building, repairing or improving any
25 street, place, road, highway, easement, right-of-way, mass public
26 transportation terminal or parking facility, bridge, tunnel, or
27 trestle which is owned by a municipal corporation or political
28 subdivision of the state or by the United States and which is used or
29 to be used, primarily for foot or vehicular traffic including mass
30 transportation vehicles of any kind and including any readjustment,
31 reconstruction or relocation of the facilities of any public, private
32 or cooperatively owned utility or railroad in the course of such
33 building, repairing or improving, the cost of which readjustment,
34 reconstruction, or relocation, is the responsibility of the public
35 authority whose street, place, road, highway, easement, right-of-way,
36 mass public transportation terminal or parking facility, bridge,
37 tunnel, or trestle is being built, repaired or improved; (c)
38 extracting for hire or processing for hire, except persons taxable as
39 extractors for hire or processors for hire under another section of

1 this chapter; (d) operating a cold storage warehouse or storage
2 warehouse, but not including the rental of cold storage lockers; (e)
3 representing and performing services for fire or casualty insurance
4 companies as an independent resident managing general agent licensed
5 under the provisions of chapter 48.17 RCW; (f) radio and television
6 broadcasting, excluding network, national and regional advertising
7 computed as a standard deduction based on the national average
8 thereof as annually reported by the federal communications
9 commission, or in lieu thereof by itemization by the individual
10 broadcasting station, and excluding that portion of revenue
11 represented by the out-of-state audience computed as a ratio to the
12 station's total audience as measured by the 100 micro-volt signal
13 strength and delivery by wire, if any; (g) engaging in activities
14 which bring a person within the definition of consumer contained in
15 RCW 82.04.190(6); as to such persons, the amount of tax on such
16 business is equal to the gross income of the business multiplied by
17 the rate of 0.484 percent.

18 (2) For the purposes of this section, the following definitions
19 apply unless the context clearly requires otherwise.

20 (a) "Cold storage warehouse" means a storage warehouse used to
21 store fresh and/or frozen perishable fruits or vegetables, meat,
22 seafood, dairy products, or fowl, or any combination thereof, at a
23 desired temperature to maintain the quality of the product for
24 orderly marketing.

25 (b) "Storage warehouse" means a building or structure, or any
26 part thereof, in which goods, wares, or merchandise are received for
27 storage for compensation, except field warehouses, fruit warehouses,
28 fruit packing plants, warehouses licensed under chapter 22.09 RCW,
29 public garages storing automobiles, railroad freight sheds, docks and
30 wharves, and "self-storage" or "mini storage" facilities whereby
31 customers have direct access to individual storage areas by separate
32 entrance. (~~("Storage warehouse" does not include a building or
33 structure, or that part of such building or structure, in which an
34 activity taxable under RCW 82.04.272 is conducted.)~~)

35 (c) "Periodical or magazine" means a printed publication, other
36 than a newspaper, issued regularly at stated intervals at least once
37 every three months, including any supplement or special edition of
38 the publication.

1 **Sec. 1006.** RCW 82.32.790 and 2010 c 114 s 201 and 2010 c 106 s
2 401 are each reenacted and amended to read as follows:

3 (1)(a) (~~Section 206, chapter 106, Laws of 2010,~~) Sections 104,
4 110, 117, 123, 125, 129, 131, and 150, chapter 114, Laws of 2010,
5 (~~section 3, chapter 461, Laws of 2009, section 7, chapter 300, Laws~~
6 ~~of 2006,~~) and sections ((4)) 1, 2, 3, and 5 through 10, chapter 149,
7 Laws of 2003 are contingent upon the siting and commercial operation
8 of a significant semiconductor microchip fabrication facility in the
9 state of Washington.

10 (b) For the purposes of this section:

11 (i) "Commercial operation" means the same as "commencement of
12 commercial production" as used in RCW 82.08.965.

13 (ii) "Semiconductor microchip fabrication" means "manufacturing
14 semiconductor microchips" as defined in RCW 82.04.426.

15 (iii) "Significant" means the combined investment of new
16 buildings and new machinery and equipment in the buildings, at the
17 commencement of commercial production, will be at least one billion
18 dollars.

19 (2) (~~Chapter 149, Laws of 2003 takes~~) The sections referenced
20 in subsection (1) of this section take effect the first day of the
21 month in which a contract for the construction of a significant
22 semiconductor fabrication facility is signed, as determined by the
23 director of the department of revenue.

24 (3)(a) The department of revenue must provide notice of the
25 effective date of (~~sections 104, 110, 117, 123, 125, 129, 131, and~~
26 ~~150, chapter 114, Laws of 2010[,]~~ ~~section 3, chapter 461, Laws of~~
27 ~~2009, section 7, chapter 300, Laws of 2006, and section 4, chapter~~
28 ~~149, Laws of 2003~~) the sections referenced in subsection (1) of this
29 section to affected taxpayers, the legislature, and others as deemed
30 appropriate by the department.

31 (b) If, after making a determination that a contract has been
32 signed and (~~chapter 149, Laws of 2003 is~~) the sections referenced
33 in subsection (1) of this section are effective, the department
34 discovers that commencement of commercial production did not take
35 place within three years of the date the contract was signed, the
36 department must make a determination that chapter 149, Laws of 2003
37 is no longer effective, and all taxes that would have been otherwise
38 due are deemed deferred taxes and are immediately assessed and
39 payable from any person reporting tax under RCW 82.04.240(2) or
40 claiming an exemption or credit under (~~section 2 or 5 through 10,~~

1 ~~chapter 149, Laws of 2003))~~ RCW 82.04.426, 82.04.448, 82.08.965,
2 82.12.965, 82.08.970, 82.12.970, or 84.36.645. The department is not
3 authorized to make a second determination regarding the effective
4 date of (~~chapter 149, Laws of 2003))~~ the sections referenced in
5 subsection (1) of this section.

6 NEW SECTION. Sec. 1007. The following acts or parts of acts are
7 each repealed:

- 8 (1) 2010 c 106 s 206;
- 9 (2) 2009 c 461 s 3;
- 10 (3) 2006 c 300 s 7; and
- 11 (4) 2003 c 149 s 4.

12 Part XI

13 Miscellaneous Provisions

14 NEW SECTION. Sec. 1101. Sections 101 through 112 of this act
15 constitute a new chapter in Title 82 RCW.

16 NEW SECTION. Sec. 1102. Sections 604 through 608 of this act
17 constitute a new chapter in Title 82 RCW.

18 NEW SECTION. Sec. 1103. This act does not affect any existing
19 right acquired or liability or obligation incurred under the sections
20 amended or repealed or under any rule or order adopted under those
21 sections, nor does it affect any proceeding instituted under those
22 sections.

23 NEW SECTION. Sec. 1104. (1) If any provision of this act or its
24 application to any person or circumstance is held invalid, the
25 remainder of the act or the application of the provision to other
26 persons or circumstances is not affected.

27 (2) If the department of revenue is prevented from enforcing
28 chapter 82.08 or 82.12 RCW against persons without a physical
29 presence in this state because any provision of this act or its
30 application to any person or circumstance is held invalid, the
31 department of revenue must impose such provisions to the fullest
32 extent allowed under the Constitution and laws of the United States.

1 NEW SECTION. **Sec. 1105.** The tax collection, reporting, and
2 payment obligations imposed by this act apply prospectively only.

3 NEW SECTION. **Sec. 1106.** (1) Except as otherwise provided in
4 this section, this act is necessary for the immediate preservation of
5 the public peace, health, or safety, or support of the state
6 government and its existing public institutions, and takes effect
7 July 1, 2017.

8 (2) Section 801 and part VI of this act take effect January 1,
9 2018.

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