
HOUSE BILL 2479

State of Washington

64th Legislature

2016 Regular Session

By Representative Lytton; by request of Office of Financial Management

1 AN ACT Relating to investing in education by modifying and
2 improving the fairness of Washington's excise tax system by narrowing
3 or eliminating tax preferences; amending RCW 82.12.0263, 82.08.0273,
4 82.08.0293, 82.12.0293, and 82.45.010; adding new sections to chapter
5 82.12 RCW; adding new sections to chapter 82.08 RCW; adding a new
6 section to chapter 82.32 RCW; adding a new section to chapter 43.135
7 RCW; adding a new section to chapter 39.42 RCW; creating new
8 sections; prescribing penalties; and providing an effective date.

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

10 **PART I**

11 **Narrowing the Use Tax Exemption for Extracted Fuel**

12 **Sec. 101.** RCW 82.12.0263 and 1980 c 37 s 62 are each amended to
13 read as follows:

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

1 partially organic by-products of pulp, paper, and wood manufacturing
2 processes.

3 NEW SECTION. Sec. 102. A new section is added to chapter 82.12
4 RCW to read as follows:

5 The value of the article used with respect to refinery fuel gas
6 under this chapter is the most recent monthly United States natural
7 gas wellhead price, as published by the federal energy information
8 administration.

9 **PART II**

10 **Repealing the Nonresident Sales and Use Tax Exemption**

11 **Sec. 201.** RCW 82.08.0273 and 2014 c 140 s 17 are each amended to
12 read as follows:

13 (1) (~~The tax levied by RCW 82.08.020 does not apply to~~) Subject
14 to the conditions and limitations in this section, an exemption from
15 the tax levied by RCW 82.08.020 in the form of a remittance from the
16 department is provided for sales to nonresidents of this state of
17 tangible personal property, digital goods, and digital codes(~~(~~
18 ~~when~~)). The exemption only applies if:

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

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

23 (i) Such state, possession, territory, or province does not
24 impose, or have imposed on its behalf, a generally applicable retail
25 sales tax, use tax, value added tax, gross receipts tax on retailing
26 activities, or similar generally applicable tax, of three percent or
27 more; or

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

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

36 (2) Notwithstanding anything to the contrary in this chapter, if
37 parts or other tangible personal property are installed by the seller

1 during the course of repairing, cleaning, altering, or improving
2 motor vehicles, trailers, or campers and the seller makes a separate
3 charge for the tangible personal property, the tax levied by RCW
4 82.08.020 does not apply to the separately stated charge to a
5 nonresident purchaser for the tangible personal property but only if
6 the separately stated charge does not exceed either the seller's
7 current publicly stated retail price for the tangible personal
8 property or, if no publicly stated retail price is available, the
9 seller's cost for the tangible personal property. However, the
10 exemption provided by this section does not apply if tangible
11 personal property is installed by the seller during the course of
12 repairing, cleaning, altering, or improving motor vehicles, trailers,
13 or campers and the seller makes a single nonitemized charge for
14 providing the tangible personal property and service. All of the
15 ~~((requirements))~~ provisions in subsections (1) and (3) through
16 ~~((6))~~ (7) of this section apply to this subsection.

17 (3)(a) Any person claiming exemption from retail sales tax under
18 the provisions of this section must ~~((display proof of his or her
19 current nonresident status as provided in this section))~~ pay the
20 state and local sales tax to the seller at the time of purchase and
21 then request a remittance from the department in accordance with this
22 subsection and subsection (4) of this section. A request for
23 remittance must include proof of the person's status as a nonresident
24 at the time of the purchase for which a remittance is requested. The
25 request for a remittance must also include any additional information
26 and documentation as required by the department, which may include a
27 description of the item purchased for which a remittance is
28 requested, the sales price of the item, the amount of state sales tax
29 paid on the item, the date of the purchase, the name of the seller
30 and the physical address where the sale took place, and copies of
31 sales receipts showing the qualified purchases.

32 (b) Acceptable proof of a nonresident person's status includes
33 one piece of identification such as a valid driver's license from the
34 jurisdiction in which the out-of-state residency is claimed or a
35 valid identification card which has a photograph of the holder and is
36 issued by the out-of-state jurisdiction. Identification under this
37 subsection (3)(b) must show the holder's residential address and have
38 as one of its legal purposes the establishment of residency in that
39 out-of-state jurisdiction.

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

6 ~~(4)(a) ((Nothing in this section requires the vendor to make tax
7 exempt retail sales to nonresidents. A vendor may choose to make
8 sales to nonresidents, collect the sales tax, and remit the amount of
9 sales tax collected to the state as otherwise provided by law. If the
10 vendor chooses to make a sale to a nonresident without collecting the
11 sales tax, the vendor must examine the purchaser's proof of
12 nonresidence, determine whether the proof is acceptable under
13 subsection (3)(b) of this section, and maintain records for each
14 nontaxable sale which must show the type of proof accepted, including
15 any identification numbers where appropriate, and the expiration
16 date, if any.~~

17 ~~(b) In lieu of using the method provided in (a) of this
18 subsection to document an exempt sale to a nonresident, a seller may
19 accept from the purchaser a properly completed uniform exemption
20 certificate approved by the streamlined sales and use tax agreement
21 governing board or any other exemption certificate as may be
22 authorized by the department and properly completed by the purchaser.
23 A nonresident purchaser who uses an exemption certificate authorized
24 in this subsection (4)(b) must include the purchaser's driver's
25 license number or other state issued identification number and the
26 state of issuance.~~

27 ~~(c) In lieu of using the methods provided in (a) and (b) of this
28 subsection to document an exempt sale to a nonresident, a seller may
29 capture the relevant data elements as allowed under the streamlined
30 sales and use tax agreement.~~

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

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

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

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

12 ~~(7)) (i) Beginning January 1, 2017, through December 31, 2017, a~~
13 ~~person may request a remittance from the department for state sales~~
14 ~~taxes paid by the person on qualified retail purchases made in~~
15 ~~Washington between July 1, 2016, and December 31, 2016.~~

16 ~~(ii) Beginning January 1, 2018, a person may request a remittance~~
17 ~~from the department during any calendar year for state sales taxes~~
18 ~~paid by the person on qualified retail purchases made in Washington~~
19 ~~during the immediately preceding calendar year only. No application~~
20 ~~may be made with respect to purchases made before the immediately~~
21 ~~preceding calendar year.~~

22 ~~(b) The remittance request, including proof of nonresident status~~
23 ~~and any other documentation and information required by the~~
24 ~~department, must be made using an electronic application process as~~
25 ~~prescribed by the department. Only one remittance request may be made~~
26 ~~by a person per calendar year.~~

27 ~~(c) The total amount of a remittance request must be at least~~
28 ~~twenty-five dollars. The department must deny any request for a~~
29 ~~remittance that is less than twenty-five dollars.~~

30 ~~(d) The department will examine the applicant's proof of~~
31 ~~nonresident status and any other documentation and information as~~
32 ~~required in the application to determine whether the applicant is~~
33 ~~entitled to a remittance under this section.~~

34 ~~(5)(a) Any person making fraudulent statements to the department,~~
35 ~~which includes the offer of fraudulent or fraudulently procured~~
36 ~~identification or fraudulent sales receipts, in order to receive a~~
37 ~~remittance of retail sales tax is guilty of perjury under chapter~~
38 ~~9A.72 RCW.~~

39 ~~(b) Any person requesting a remittance of sales tax from the~~
40 ~~department by providing proof of identification or sales receipts not~~

1 the person's own, or counterfeit identification or sales receipts,
2 with intent to violate the provisions of this section, is guilty of a
3 misdemeanor and, in addition, is liable for the tax and subject to a
4 penalty equal to the greater of one hundred dollars or the tax due on
5 such purchases.

6 (6) The exemption provided by this section is for state sales
7 taxes.

8 (7) A nonresident who receives a refund of sales tax from the
9 seller for any reason with respect to a purchase made in this state
10 is not entitled to a remittance for the tax paid on the purchase. A
11 person who receives both a remittance under this section and a refund
12 from the seller with respect to the same purchase must immediately
13 repay the remittance to the department. Interest as provided in
14 chapter 82.32 RCW applies to amounts due under this section from the
15 date that the department made the remittance until the amount due
16 under this subsection is paid to the department. A person who
17 receives a remittance with respect to a purchase for which the person
18 had, at the time the person submitted the application for a
19 remittance, already received a refund of sales tax from the seller is
20 also liable for the evasion penalty in RCW 82.32.090(7) and is
21 ineligible to receive any further remittances from the department
22 under this section.

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

25 **PART III**

26 **Eliminating the Sales and Use Tax Exemption for Bottled Water**

27 **Sec. 301.** RCW 82.08.0293 and 2014 c 140 s 22 are each amended to
28 read as follows:

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

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

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

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

4 (2) The exemption of "food and food ingredients" provided for in
5 subsection (1) of this section does not apply to prepared food, soft
6 drinks, bottled water, or dietary supplements. (~~For purposes of this~~
7 ~~subsection, the following definitions apply:~~) The definitions in
8 this subsection apply throughout this section unless the context
9 clearly requires otherwise.

10 (a) "Bottled water" means water that is placed in a safety sealed
11 container or package for human consumption. "Bottled water" is
12 calorie free and does not contain sweeteners or other additives
13 except that it may contain: (i) Antimicrobial agents; (ii) fluoride;
14 (iii) carbonation; (iv) vitamins, minerals, and electrolytes; (v)
15 oxygen; (vi) preservatives; and (vii) only those flavors, extracts,
16 or essences derived from a spice or fruit. "Bottled water" includes
17 water that is delivered to the buyer in a reusable container that is
18 not sold with the water.

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

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

22 (A) A vitamin;

23 (B) A mineral;

24 (C) An herb or other botanical;

25 (D) An amino acid;

26 (E) A dietary substance for use by humans to supplement the diet
27 by increasing the total dietary intake; or

28 (F) A concentrate, metabolite, constituent, extract, or
29 combination of any ingredient described in this subsection;

30 (ii) Is intended for ingestion in tablet, capsule, powder,
31 softgel, gelcap, or liquid form, or if not intended for ingestion in
32 such form, is not represented as conventional food and is not
33 represented for use as a sole item of a meal or of the diet; and

34 (iii) Is required to be labeled as a dietary supplement,
35 identifiable by the "supplement facts" box found on the label as
36 required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered
37 as of January 1, 2003.

38 (~~(b)~~) (c)(i) "Prepared food" means:

39 (A) Food sold in a heated state or heated by the seller;

1 (B) Food sold with eating utensils provided by the seller,
2 including plates, knives, forks, spoons, glasses, cups, napkins, or
3 straws. A plate does not include a container or packaging used to
4 transport the food; or

5 (C) Two or more food ingredients mixed or combined by the seller
6 for sale as a single item, except:

7 (I) Food that is only cut, repackaged, or pasteurized by the
8 seller; or

9 (II) Raw eggs, fish, meat, poultry, and foods containing these
10 raw animal foods requiring cooking by the consumer as recommended by
11 the federal food and drug administration in chapter 3, part 401.11 of
12 The Food Code, published by the food and drug administration, as
13 amended or renumbered as of January 1, 2003, so as to prevent
14 foodborne illness.

15 (ii) "Prepared food" does not include the following food or food
16 ingredients, if the food or food ingredients are sold without eating
17 utensils provided by the seller:

18 (A) Food sold by a seller whose proper primary North American
19 industry classification system (NAICS) classification is
20 manufacturing in sector 311, except subsector 3118 (bakeries), as
21 provided in the "North American industry classification system—United
22 States, 2002";

23 (B) Food sold in an unheated state by weight or volume as a
24 single item; or

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

28 ((~~e~~)) (d) "Soft drinks" means nonalcoholic beverages that
29 contain natural or artificial sweeteners. Soft drinks do not include
30 beverages that contain: Milk or milk products; soy, rice, or similar
31 milk substitutes; or greater than fifty percent of vegetable or fruit
32 juice by volume.

33 (3) Notwithstanding anything in this section to the contrary, the
34 exemption of "food and food ingredients" provided in this section
35 applies to food and food ingredients that are furnished, prepared, or
36 served as meals:

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

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

4 (c) That are provided to residents, sixty-two years of age or
5 older, of a qualified low-income senior housing facility by the
6 lessor or operator of the facility. The sale of a meal that is billed
7 to both spouses of a marital community or both domestic partners of a
8 domestic partnership meets the age requirement in this subsection
9 (3)(c) if at least one of the spouses or domestic partners is at
10 least sixty-two years of age. For purposes of this subsection,
11 "qualified low-income senior housing facility" means a facility:

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

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

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

20 (4)(a) Subsection (1) of this section notwithstanding, the retail
21 sale of food and food ingredients is subject to sales tax under RCW
22 82.08.020 if the food and food ingredients are sold through a vending
23 machine. Except as provided in (b) of this subsection, the selling
24 price of food and food ingredients sold through a vending machine for
25 purposes of RCW 82.08.020 is fifty-seven percent of the gross
26 receipts.

27 (b) For soft drinks and hot prepared food and food ingredients,
28 other than food and food ingredients which are heated after they have
29 been dispensed from the vending machine, the selling price is the
30 total gross receipts of such sales divided by the sum of one plus the
31 sales tax rate expressed as a decimal.

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

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

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

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

6 (3) Notwithstanding anything in this section to the contrary, the
7 exemption of "food and food ingredients" provided in this section
8 applies to food and food ingredients which are furnished, prepared,
9 or served as meals:

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

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

16 (c) That are provided to residents, sixty-two years of age or
17 older, of a qualified low-income senior housing facility by the
18 lessor or operator of the facility. The sale of a meal that is billed
19 to both spouses of a marital community or both domestic partners of a
20 domestic partnership meets the age requirement in this subsection
21 (3)(c) if at least one of the spouses or domestic partners is at
22 least sixty-two years of age. For purposes of this subsection,
23 "qualified low-income senior housing facility" has the same meaning
24 as in RCW 82.08.0293.

25 NEW SECTION. **Sec. 303.** A new section is added to chapter 82.08
26 RCW to read as follows:

27 (1) Subject to the conditions in this section, the tax levied by
28 RCW 82.08.020 does not apply to sales of bottled water dispensed or
29 to be dispensed to patients pursuant to a prescription for use in the
30 cure, mitigation, treatment, or prevention of disease or other
31 medical condition.

32 (2) For purposes of this section, "prescription" means an order,
33 formula, or recipe issued in any form of oral, written, electronic,
34 or other means of transmission by a duly licensed practitioner
35 authorized by the laws of this state to prescribe.

36 (3) Except for sales of bottled water delivered to the buyer in a
37 reusable container that is not sold with the water, sellers must
38 collect tax on sales subject to this exemption. Any buyer that has
39 paid at least twenty-five dollars in state and local sales taxes on

1 purchases of bottled water subject to this exemption may apply for a
2 refund of the taxes directly from the department in a form and manner
3 prescribed by the department. The department must deny any refund
4 application if the amount of the refund requested is less than
5 twenty-five dollars. No refund may be made for taxes paid more than
6 four years after the end of the calendar year in which the tax was
7 paid to the seller.

8 (4) The provisions of RCW 82.32.060 apply to refunds authorized
9 under this section.

10 (5) With respect to sales of bottled water delivered to the buyer
11 in a reusable container that is not sold with the water, buyers
12 claiming the exemption provided in this section must provide the
13 seller with an exemption certificate in a form and manner prescribed
14 by the department. The seller must retain a copy of the certificate
15 for the seller's files.

16 NEW SECTION. **Sec. 304.** A new section is added to chapter 82.12
17 RCW to read as follows:

18 (1) The provisions of this chapter do not apply in respect to the
19 use of bottled water dispensed or to be dispensed to patients
20 pursuant to a prescription for use in the cure, mitigation,
21 treatment, or prevention of disease or medical condition.

22 (2) For the purposes of this section, "prescription" has the same
23 meaning as provided in section 303 of this act.

24 NEW SECTION. **Sec. 305.** A new section is added to chapter 82.08
25 RCW to read as follows:

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

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

31 (i) The public water system providing the drinking water has
32 issued a public notification that the drinking water may pose a
33 health risk, and the notification is still in effect on the date that
34 the bottled water was purchased;

35 (ii) Test results on the person's drinking water, which are no
36 more than twelve months old, from a laboratory certified to perform
37 drinking water testing show that the person's drinking water does not

1 meet safe drinking water standards applicable to public water
2 systems; or

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

6 (2) Except for sales of bottled water delivered to the buyer in a
7 reusable container that is not sold with the water, sellers must
8 collect tax on sales subject to this exemption. Any buyer that has
9 paid at least twenty-five dollars in state and local sales taxes on
10 purchases of bottled water subject to this exemption may apply for a
11 refund of the taxes directly from the department in a form and manner
12 prescribed by the department. The department must deny any refund
13 application if the amount of the refund requested is less than
14 twenty-five dollars. No refund may be made for taxes paid more than
15 four years after the end of the calendar year in which the tax was
16 paid to the seller.

17 (3) The provisions of RCW 82.32.060 apply to refunds authorized
18 under this section.

19 (4)(a) With respect to sales of bottled water delivered to the
20 buyer in a reusable container that is not sold with the water, buyers
21 claiming the exemption provided in this section must provide the
22 seller with an exemption certificate in a form and manner prescribed
23 by the department. The seller must retain a copy of the certificate
24 for the seller's files.

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

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

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

32 NEW SECTION. **Sec. 307.** Sections 303 through 306 of this act are
33 not subject to RCW 82.32.805 and 82.32.808.

34 **PART IV**
35 **Real Estate Excise Tax on Foreclosures**

1 NEW SECTION. **Sec. 401.** The legislature finds that the existing
2 real estate excise tax exemption for transfers occurring in the
3 context of bank foreclosures and the enforcement of judgments by
4 creditors does not benefit distressed homeowners except in limited
5 circumstances. The exemption has been broadly used to exempt sales
6 made to third-party buyers by combining an unrelated sales
7 transaction into the foreclosure proceeding. In addition, there have
8 been questions raised in litigation whether the exemption applies to
9 orders of sales arising in any court context, rather than those
10 expressly identified in the existing exemption. It is the intent of
11 the legislature to (1) eliminate the real estate excise tax exemption
12 for transfers that occur in foreclosures except in circumstances
13 where the tax would impact the owner of the property, and (2)
14 restructure the existing statute to preserve the exemption for deeds
15 given in lieu of the foreclosure process and transfers made to
16 extinguish existing security interests. Because this restructuring is
17 intended only to clarify and preserve existing exemptions, the
18 legislature does not intend for the provisions of RCW 82.32.805 or
19 82.32.808 to apply to this act.

20 **Sec. 402.** RCW 82.45.010 and 2014 c 58 s 24 are each amended to
21 read as follows:

22 (1) As used in this chapter, the term "sale" has its ordinary
23 meaning and includes any conveyance, grant, assignment, quitclaim, or
24 transfer of the ownership of or title to real property, including
25 standing timber, or any estate or interest therein for a valuable
26 consideration, and any contract for such conveyance, grant,
27 assignment, quitclaim, or transfer, and any lease with an option to
28 purchase real property, including standing timber, or any estate or
29 interest therein or other contract under which possession of the
30 property is given to the purchaser, or any other person at the
31 purchaser's direction, and title to the property is retained by the
32 vendor as security for the payment of the purchase price. The term
33 also includes the grant, assignment, quitclaim, sale, or transfer of
34 improvements constructed upon leased land.

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

1 (b) For the sole purpose of determining whether, pursuant to the
2 exercise of an option, a controlling interest was transferred or
3 acquired within a twelve-month period, the date that the option
4 agreement was executed is the date on which the transfer or
5 acquisition of the controlling interest is deemed to occur. For all
6 other purposes under this chapter, the date upon which the option is
7 exercised is the date of the transfer or acquisition of the
8 controlling interest.

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

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

18 (ii) When persons are not commonly owned or controlled, they must
19 be treated as acting in concert only when the unity with which the
20 purchasers have negotiated and will consummate the transfer of
21 ownership interests supports a finding that they are acting as a
22 single entity. If the acquisitions are completely independent, with
23 each purchaser buying without regard to the identity of the other
24 purchasers, then the acquisitions are considered separate
25 acquisitions.

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

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

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

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

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

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

1 (f) The assignment of property or interest in property from one
2 spouse or one domestic partner to the other spouse or other domestic
3 partner in accordance with the terms of a decree of dissolution of
4 marriage or state registered domestic partnership or in fulfillment
5 of a property settlement agreement.

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

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

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

15 (j) Any transfer or conveyance made pursuant to a foreclosure of
16 a mortgage or deed of trust or an order of sale by the court in any
17 mortgage, deed of trust, or lien foreclosure proceeding or upon
18 execution of a judgment(~~(, or deed in lieu of foreclosure to satisfy~~
19 ~~a mortgage or deed of trust)) pursuant to chapter 6.17 RCW, when:~~

20 (i) The transfer or conveyance is to other than the mortgagee,
21 beneficiary of the deed of trust, lienholder, or judgment creditor,
22 and the selling price exceeds the amount of the lien, security
23 interest, or judgment that is the subject of the foreclosure or
24 execution; or

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

28 (k) A conveyance to the federal housing administration or
29 veterans administration by an authorized mortgagee made pursuant to a
30 contract of insurance or guaranty with the federal housing
31 administration or veterans administration.

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

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

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

1 (o) A sale to a regional transit authority or public corporation
2 under RCW 81.112.320 under a sale/leaseback agreement under RCW
3 81.112.300.

4 (p) A transfer of real property, however effected, if it consists
5 of a mere change in identity or form of ownership of an entity where
6 there is no change in the beneficial ownership. These include
7 transfers to a corporation or partnership which is wholly owned by
8 the transferor and/or the transferor's spouse or domestic partner or
9 children of the transferor or the transferor's spouse or domestic
10 partner. However, if thereafter such transferee corporation or
11 partnership voluntarily transfers such real property, or such
12 transferor, spouse or domestic partner, or children of the transferor
13 or the transferor's spouse or domestic partner voluntarily transfer
14 stock in the transferee corporation or interest in the transferee
15 partnership capital, as the case may be, to other than (i) the
16 transferor and/or the transferor's spouse or domestic partner or
17 children of the transferor or the transferor's spouse or domestic
18 partner, (ii) a trust having the transferor and/or the transferor's
19 spouse or domestic partner or children of the transferor or the
20 transferor's spouse or domestic partner as the only beneficiaries at
21 the time of the transfer to the trust, or (iii) a corporation or
22 partnership wholly owned by the original transferor and/or the
23 transferor's spouse or domestic partner or children of the transferor
24 or the transferor's spouse or domestic partner, within three years of
25 the original transfer to which this exemption applies, and the tax on
26 the subsequent transfer has not been paid within sixty days of
27 becoming due, excise taxes become due and payable on the original
28 transfer as otherwise provided by law.

29 (q)(i) A transfer that for federal income tax purposes does not
30 involve the recognition of gain or loss for entity formation,
31 liquidation or dissolution, and reorganization, including but not
32 limited to nonrecognition of gain or loss because of application of
33 26 U.S.C. Sec. 332, 337, 351, 368(a)(1), 721, or 731 of the internal
34 revenue code of 1986, as amended.

35 (ii) However, the transfer described in (q)(i) of this subsection
36 cannot be preceded or followed within a twelve-month period by
37 another transfer or series of transfers, that, when combined with the
38 otherwise exempt transfer or transfers described in (q)(i) of this
39 subsection, results in the transfer of a controlling interest in the
40 entity for valuable consideration, and in which one or more persons

1 previously holding a controlling interest in the entity receive cash
2 or property in exchange for any interest the person or persons acting
3 in concert hold in the entity. This subsection (3) (q)(ii) does not
4 apply to that part of the transfer involving property received that
5 is the real property interest that the person or persons originally
6 contributed to the entity or when one or more persons who did not
7 contribute real property or belong to the entity at a time when real
8 property was purchased receive cash or personal property in exchange
9 for that person or persons' interest in the entity. The real estate
10 excise tax under this subsection (3)(q)(ii) is imposed upon the
11 person or persons who previously held a controlling interest in the
12 entity.

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

16 NEW SECTION. **Sec. 403.** RCW 82.32.805 and 82.32.808 do not apply
17 to sections 401 and 402 of this act.

18 **PART V**

19 **Transfers to Education Legacy Trust Account**

20 NEW SECTION. **Sec. 501.** A new section is added to chapter 82.32
21 RCW to read as follows:

22 (1) By the last workday of the second and fourth calendar
23 quarters, the state treasurer must transfer the amount specified in
24 subsection (2) of this section from the general fund to the education
25 legacy trust account. The first transfer under this subsection (1)
26 must occur by December 31, 2016.

27 (2) By December 15th and June 15th of each year, the department
28 must estimate the increase in state general fund revenues from the
29 changes made under parts I through IV of this act for the current and
30 prior calendar quarters and notify the state treasurer of the
31 increase.

32 NEW SECTION. **Sec. 502.** A new section is added to chapter 43.135
33 RCW to read as follows:

34 RCW 43.135.034(4) does not apply to the transfers under section
35 501 of this act.

