
SUBSTITUTE SENATE BILL 5541

State of Washington

64th Legislature

2015 Regular Session

By Senate Ways & Means (originally sponsored by Senator Hill; by request of Department of Revenue)

READ FIRST TIME 04/02/15.

1 AN ACT Relating to improving tax fairness for businesses engaged
2 in electronic commerce by eliminating inconsistent tax treatment of
3 digital business inputs, ensuring that prewritten computer software
4 developers remain eligible for the manufacturing machinery and
5 equipment sales and use tax exemption, and providing greater clarity
6 for out-of-state sellers concerning their tax obligations; amending
7 RCW 82.08.02087, 82.12.02087, 82.08.195, and 82.04.067; reenacting
8 and amending RCW 82.08.02565; adding a new section to chapter 82.08
9 RCW; adding a new section to chapter 82.32 RCW; creating new
10 sections; providing an effective date; providing an expiration date;
11 and declaring an emergency.

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

13 **Part I**
14 **Sales and use tax exemptions for digital automated services used**
15 **solely for business purposes**

16 NEW SECTION. **Sec. 101.** (1) In 2009 the legislature enacted
17 comprehensive legislation addressing the excise taxation of digital
18 products. The term "digital products" encompasses two categories of
19 electronically transferred goods and services: "Digital goods," such

1 as a digital music file or an e-book, and "digital automated
2 services," such as an online research application.

3 (2) In general, the legislation provided that retail sales of
4 digital products are subject to retail sales tax, unless specifically
5 exempted. One of the exemptions provided in the 2009 enactment, as
6 modified by 2010 clean-up legislation, was for sales of digital goods
7 used solely for business purposes. The legislature's purpose in
8 enacting this exemption was to provide businesses with a meaningful
9 sales and use tax exemption for digital business inputs. This
10 exemption is not currently subject to an expiration date or to
11 accountability reporting requirements.

12 (3) The legislature finds that there has been a significant
13 migration of digital business inputs from digital goods to digital
14 automated services in the past several years, which was not
15 anticipated in 2009 and 2010. The legislature further finds that this
16 migration has significantly undermined the effect of the
17 legislature's policy choice to provide substantial sales and use tax
18 relief for the acquisition of digital business inputs.

19 (4) Therefore, the legislature intends in sections 102 and 103 of
20 this act to reaffirm and restore the policy choice it made in 2009 of
21 providing substantial sales and use tax relief to businesses for
22 their acquisition of digital business inputs. This intent is
23 accomplished by providing prospectively a sales and use tax exemption
24 for digital automated services used solely for business
25 purposes. Because this exemption provides parity for digital goods
26 and digital automated services used solely for business purposes and
27 functions to restore the legislature's goal of exempting digital
28 business inputs from sales and use tax, sections 102 and 103 of this
29 act are exempt from the provisions of RCW 82.32.805 and 82.32.808.

30 **Sec. 102.** RCW 82.08.02087 and 2010 c 111 s 402 are each amended
31 to read as follows:

32 (1) The tax imposed by RCW 82.08.020 does not apply to the sale
33 to a business of digital ~~((goods))~~ products, and services rendered in
34 respect to digital goods, where the digital ~~((goods))~~ products, and
35 services rendered in respect to digital goods are purchased solely
36 for business purposes. The exemption provided by this section also
37 applies to the sale to a business of a digital code if all of the
38 digital ~~((goods))~~ products to be obtained through the use of the code
39 will be used solely for business purposes.

1 (2) (~~The exemption is available only when the buyer provides the~~
2 ~~seller with~~) Sellers making tax-exempt sales under this section must
3 obtain from the purchaser an exemption certificate in a form and
4 manner prescribed by the department. The seller must retain a copy of
5 the certificate for the seller's files.

6 (3) The exemption in this section is not subject to the
7 provisions of RCW 82.32.805 and 82.32.808.

8 (4) For purposes of this section, the following definitions
9 apply:

10 (a) "Business purposes" means any purpose relevant to the
11 business needs of the taxpayer claiming an exemption under this
12 section. Business purposes do not include any personal, family, or
13 household purpose. The term also does not include any activity
14 conducted by a government entity as that term is defined in RCW
15 7.25.005; and

16 (b) "Services rendered in respect to digital goods" means those
17 services defined as a retail sale in RCW 82.04.050(2)(g).

18 **Sec. 103.** RCW 82.12.02087 and 2010 c 111 s 502 are each amended
19 to read as follows:

20 (1) The provisions of this chapter do not apply to the use by a
21 business of digital (~~goods~~) products, and services rendered in
22 respect to digital goods, where the digital (~~goods~~) products and
23 services rendered in respect to digital goods are used solely for
24 business purposes. The exemption provided by this section also
25 applies to the use by a business of a digital code if all of the
26 digital (~~goods~~) products to be obtained through the use of the code
27 will be used solely for business purposes.

28 (2) The exemption in this section is not subject to the
29 provisions of RCW 82.32.805 and 82.32.808.

30 (3) For purposes of this section, the definitions in RCW
31 82.08.02087 apply.

32 **Sec. 104.** RCW 82.08.195 and 2010 c 111 s 601 are each amended to
33 read as follows:

34 (1) Except as provided in subsection (6) of this section, a
35 bundled transaction is subject to the tax imposed by RCW 82.08.020 if
36 the retail sale of any of its component products would be subject to
37 the tax imposed by RCW 82.08.020.

1 (2) The transactions described in RCW 82.08.190(4) (a) and (b)
2 are subject to the tax imposed by RCW 82.08.020 if the service that
3 is the true object of the transaction is subject to the tax imposed
4 by RCW 82.08.020. If the service that is the true object of the
5 transaction is not subject to the tax imposed by RCW 82.08.020, the
6 transaction is not subject to the tax imposed by RCW 82.08.020.

7 (3) The transaction described in RCW 82.08.190(4)(c) is not
8 subject to the tax imposed by RCW 82.08.020.

9 (4) The transaction described in RCW 82.08.190(4)(d) is not
10 subject to the tax imposed by RCW 82.08.020.

11 (5) In the case of a bundled transaction that includes any of the
12 following: Telecommunications service, ancillary service, internet
13 access, or audio or video programming service:

14 (a) If the price is attributable to products that are taxable and
15 products that are not taxable, the portion of the price attributable
16 to the nontaxable products are subject to the tax imposed by RCW
17 82.08.020 unless the seller can identify by reasonable and verifiable
18 standards the portion from its books and records that are kept in the
19 regular course of business for other purposes including, but not
20 limited to, nontax purposes;

21 (b) If the price is attributable to products that are subject to
22 tax at different tax rates, the total price is attributable to the
23 products subject to the tax at the highest tax rate unless the seller
24 can identify by reasonable and verifiable standards the portion of
25 the price attributable to the products subject to the tax imposed by
26 RCW 82.08.020 at the lower rate from its books and records that are
27 kept in the regular course of business for other purposes including,
28 but not limited to, nontax purposes.

29 (6) The tax imposed by RCW 82.08.020 does not apply in respect to
30 a bundled transaction consisting entirely of the sale of services or
31 of services and prepared food, if the sale is to a resident, sixty-
32 two years of age or older, of a qualified low-income senior housing
33 facility by the lessor or operator of the facility. A single bundled
34 transaction involving both spouses of a marital community or both
35 domestic partners of a domestic partnership meets the age requirement
36 in this subsection if at least one of the spouses or domestic
37 partners is at least sixty-two years of age. For purposes of this
38 subsection, "qualified low-income senior housing facility" has the
39 same meaning as in RCW 82.08.0293.

1 (7) In the case of the sale of a code that provides a purchaser
2 with the right to obtain more than one digital product or one or more
3 digital products and other products or services, and all of the
4 products and services, digital or otherwise, to be obtained through
5 the use of the code do not have the same sales and use tax treatment,
6 for purposes of the tax imposed by RCW 82.08.020:

7 (a) The transaction is deemed to be the sale of the products and
8 services to be obtained through the use of the code; and

9 (b)(i) The tax imposed by RCW 82.08.020 applies to the entire
10 selling price of the code, except as provided in (b)(ii) of this
11 subsection (7).

12 (ii) If the seller can identify by reasonable and verifiable
13 standards the portion of the selling price attributable to the
14 products and services that are not subject to the tax imposed by RCW
15 82.08.020 from its books and records that are kept in the regular
16 course of business for other purposes including, but not limited to,
17 nontax purposes, the tax imposed by RCW 82.08.020 does not apply to
18 that portion of the selling price of the code attributable to the
19 products and services that are not subject to the tax imposed by RCW
20 82.08.020 nor to that portion of the selling price of the code
21 attributable to any digital ~~((goods))~~ products, the sale of which is
22 exempt under RCW 82.08.02087.

23 **Part II**

24 **Clarifying the sales and use tax exemption for machinery equipment**
25 **used in manufacturing, research and development, or testing**
26 **operations**

27 NEW SECTION. **Sec. 201.** (1) The legislature in 1995 established
28 sales and use tax exemptions for manufacturing machinery and
29 equipment, commonly referred to as the "M&E exemption." In 1996, the
30 legislature expanded the exemption to include machinery and equipment
31 used by a manufacturer in a research and development operation.

32 (2) The legislature finds that software developers that created
33 and produced prewritten computer software have historically qualified
34 for this exemption because the production of prewritten computer
35 software contained on a disc or other tangible storage media provided
36 to the buyer is considered to be a manufacturing activity. The
37 legislature further finds that changes in the software industry have
38 resulted in most prewritten computer software sold today being

1 delivered to buyers electronically. As a result of this change,
2 questions have been raised about the continued applicability of the
3 machinery and equipment exemption to the development and production
4 of prewritten computer software.

5 (3) Therefore, the legislature intends in section 202 of this act
6 to clarify its intent that the machinery and equipment exemption
7 applies to developers of prewritten computer software, regardless of
8 how the software is delivered to buyers. As a clarification of its
9 intent, the legislature does not intend section 202 of this act to be
10 considered the expansion of an existing tax preference for purposes
11 of RCW 82.32.805 and 82.32.808.

12 **Sec. 202.** RCW 82.08.02565 and 2014 c 216 s 401 and 2014 c 140 s
13 13 are each reenacted and amended to read as follows:

14 (1)(a) The tax levied by RCW 82.08.020 does not apply to sales to
15 a manufacturer or processor for hire of machinery and equipment used
16 directly in a manufacturing operation or research and development
17 operation, to sales to a person engaged in testing for a manufacturer
18 or processor for hire of machinery and equipment used directly in a
19 testing operation, or to sales of or charges made for labor and
20 services rendered in respect to installing, repairing, cleaning,
21 altering, or improving the machinery and equipment.

22 (b) Except as provided in (c) of this subsection, sellers making
23 tax-exempt sales under this section must obtain from the purchaser an
24 exemption certificate in a form and manner prescribed by the
25 department by rule. The seller must retain a copy of the certificate
26 for the seller's files.

27 (c)(i) The exemption under this section is in the form of a
28 remittance for a gas distribution business, as defined in RCW
29 82.16.010, claiming the exemption for machinery and equipment used
30 for the production of compressed natural gas or liquefied natural gas
31 for use as a transportation fuel.

32 (ii) A gas distribution business claiming an exemption from state
33 and local tax in the form of a remittance under this section must pay
34 the tax under RCW 82.08.020 and all applicable local sales taxes.
35 Beginning July 1, 2017, the gas distribution business may then apply
36 to the department for remittance of state and local sales and use
37 taxes. A gas distribution business may not apply for a remittance
38 more frequently than once a quarter. The gas distribution business
39 must specify the amount of exempted tax claimed and the qualifying

1 purchases for which the exemption is claimed. The gas distribution
2 business must retain, in adequate detail, records to enable the
3 department to determine whether the business is entitled to an
4 exemption under this section, including: Invoices; proof of tax paid;
5 and documents describing the machinery and equipment.

6 (iii) The department must determine eligibility under this
7 section based on the information provided by the gas distribution
8 business, which is subject to audit verification by the department.
9 The department must on a quarterly basis remit exempted amounts to
10 qualifying businesses who submitted applications during the previous
11 quarter.

12 (iv) Beginning July 1, 2028, a gas distribution business may not
13 apply for a refund under this section or RCW 82.12.02565.

14 (2) For purposes of this section and RCW 82.12.02565:

15 (a) "Machinery and equipment" means industrial fixtures, devices,
16 and support facilities, and tangible personal property that becomes
17 an ingredient or component thereof, including repair parts and
18 replacement parts. "Machinery and equipment" includes pollution
19 control equipment installed and used in a manufacturing operation,
20 testing operation, or research and development operation to prevent
21 air pollution, water pollution, or contamination that might otherwise
22 result from the manufacturing operation, testing operation, or
23 research and development operation. "Machinery and equipment" also
24 includes digital goods.

25 (b) "Machinery and equipment" does not include:

26 (i) Hand-powered tools;

27 (ii) Property with a useful life of less than one year;

28 (iii) Buildings, other than machinery and equipment that is
29 permanently affixed to or becomes a physical part of a building; and

30 (iv) Building fixtures that are not integral to the manufacturing
31 operation, testing operation, or research and development operation
32 that are permanently affixed to and become a physical part of a
33 building, such as utility systems for heating, ventilation, air
34 conditioning, communications, plumbing, or electrical.

35 (c) Machinery and equipment is "used directly" in a manufacturing
36 operation, testing operation, or research and development operation
37 if the machinery and equipment:

38 (i) Acts upon or interacts with an item of tangible personal
39 property;

1 (ii) Conveys, transports, handles, or temporarily stores an item
2 of tangible personal property at the manufacturing site or testing
3 site;

4 (iii) Controls, guides, measures, verifies, aligns, regulates, or
5 tests tangible personal property at the site or away from the site;

6 (iv) Provides physical support for or access to tangible personal
7 property;

8 (v) Produces power for, or lubricates machinery and equipment;

9 (vi) Produces another item of tangible personal property for use
10 in the manufacturing operation, testing operation, or research and
11 development operation;

12 (vii) Places tangible personal property in the container,
13 package, or wrapping in which the tangible personal property is
14 normally sold or transported; or

15 (viii) Is integral to research and development as defined in RCW
16 82.63.010.

17 (d) "Manufacturer" means a person that qualifies as a
18 manufacturer under RCW 82.04.110. "Manufacturer" also includes a
19 person that:

20 (i) Prints newspapers or other materials; or

21 (ii) Is engaged in the development of prewritten computer
22 software that is not transferred to purchasers by means of tangible
23 storage media.

24 (e) "Manufacturing" means only those activities that come within
25 the definition of "to manufacture" in RCW 82.04.120 and are taxed as
26 manufacturing or processing for hire under chapter 82.04 RCW, or
27 would be taxed as such if such activity were conducted in this state
28 or if not for an exemption or deduction. "Manufacturing" also
29 includes printing newspapers or other materials. An activity is not
30 taxed as manufacturing or processing for hire under chapter 82.04 RCW
31 if the activity is within the purview of chapter 82.16 RCW.

32 (f) "Manufacturing operation" means the manufacturing of
33 articles, substances, or commodities for sale as tangible personal
34 property. A manufacturing operation begins at the point where the raw
35 materials enter the manufacturing site and ends at the point where
36 the processed material leaves the manufacturing site. With respect to
37 the production of class A or exceptional quality biosolids by a
38 wastewater treatment facility, the manufacturing operation begins at
39 the point where class B biosolids undergo additional processing to
40 achieve class A or exceptional quality standards. Notwithstanding

1 anything to the contrary in this section, the term also includes that
2 portion of a cogeneration project that is used to generate power for
3 consumption within the manufacturing site of which the cogeneration
4 project is an integral part. The term does not include the
5 preparation of food products on the premises of a person selling food
6 products at retail.

7 (g) "Cogeneration" means the simultaneous generation of
8 electrical energy and low-grade heat from the same fuel.

9 (h) "Research and development operation" means engaging in
10 research and development as defined in RCW 82.63.010 by a
11 manufacturer or processor for hire.

12 (i) "Testing" means activities performed to establish or
13 determine the properties, qualities, and limitations of tangible
14 personal property.

15 (j) "Testing operation" means the testing of tangible personal
16 property for a manufacturer or processor for hire. A testing
17 operation begins at the point where the tangible personal property
18 enters the testing site and ends at the point where the tangible
19 personal property leaves the testing site. The term also includes the
20 testing of tangible personal property for use in that portion of a
21 cogeneration project that is used to generate power for consumption
22 within the manufacturing site of which the cogeneration project is an
23 integral part. The term does not include the testing of tangible
24 personal property for use in the production of electricity by a light
25 and power business as defined in RCW 82.16.010 or the preparation of
26 food products on the premises of a person selling food products at
27 retail.

28 (3) This section does not apply (a) to sales of machinery and
29 equipment used directly in the manufacturing, research and
30 development, or testing of marijuana, useable marijuana, or
31 marijuana-infused products, or (b) to sales of or charges made for
32 labor and services rendered in respect to installing, repairing,
33 cleaning, altering, or improving such machinery and equipment.

34 Part III

35 Remote sellers

36 NEW SECTION. **Sec. 301.** (1) The commerce clause of the United
37 States Constitution as currently interpreted by the United States
38 supreme court prohibits states from imposing sales or use tax

1 collection obligations on out-of-state businesses unless the business
2 has a substantial nexus with the taxing state.

3 (2) The legislature recognizes that under the United States
4 supreme court's decision in *Quill Corp. v. North Dakota*, 504 U.S. 298
5 (1992), a substantial nexus for sales and use tax collection purposes
6 requires that the taxpayer have a physical presence in the taxing
7 state.

8 (3) The legislature further recognizes that the requisite
9 physical presence can be established directly through a taxpayer's
10 own activities in the taxing state, or indirectly, through
11 independent contractors, agents, or other representatives who act on
12 behalf of the taxpayer in the taxing state.

13 (4) However, the legislature finds that because the United States
14 supreme court has not clearly defined the circumstances under which a
15 physical presence is sufficient to establish a substantial nexus for
16 tax purposes, frequent conflicts have arisen throughout the country
17 among state taxing authorities, taxpayers, tax practitioners, and
18 courts.

19 (5) Therefore, the legislature intends to provide more clarity
20 for out-of-state sellers that compensate Washington residents for
21 referring customers to the out-of-state seller by providing clear
22 statutory guidelines for determining when these out-of-state sellers
23 are required to collect Washington's retail sales tax.

24 (6) Nothing in Part III of this act may be construed as relieving
25 in-state businesses and other businesses having a substantial nexus
26 with Washington through a direct physical presence in this state from
27 their Washington sales and use tax collection obligations.

28 NEW SECTION. **Sec. 302.** A new section is added to chapter 82.08
29 RCW to be codified between RCW 82.08.050 and 82.08.054 to read as
30 follows:

31 (1) For purposes of this chapter, a remote seller is presumed to
32 have a substantial nexus with this state and is obligated to collect
33 retail sales tax if the remote seller enters into an agreement with a
34 resident of this state under which the resident, for a commission or
35 other consideration, directly or indirectly refers potential
36 customers, whether by a link on an internet web site or otherwise, to
37 the remote seller, if the cumulative gross receipts from sales by the
38 remote seller to customers in this state who are referred to the
39 remote seller by all residents with this type of an agreement with

1 the remote seller exceed ten thousand dollars during the preceding
2 calendar year. This presumption may be rebutted by proof that the
3 resident with whom the remote seller has an agreement did not engage
4 in any solicitation in this state on behalf of the remote seller that
5 would satisfy the nexus requirement of the United States Constitution
6 during the calendar year in question. Proof may be shown by (a)
7 establishing, in a manner acceptable to the department, that (i) each
8 in-state person with whom the remote seller has an agreement is
9 prohibited from engaging in any solicitation activities in this state
10 that refer potential customers to the remote seller, and (ii) such
11 in-state person or persons have complied with that prohibition, or
12 (b) any other means as may be approved by the department.

13 (2) "Remote seller" means a seller that makes retail sales in
14 this state through one or more agreements described in subsection (1)
15 of this section, and the seller's other physical presence in this
16 state, if any, is not sufficient to establish a retail sales or use
17 tax collection obligation under the commerce clause of the United
18 States Constitution.

19 (3) Nothing in this section may be construed to affect in any way
20 RCW 82.04.424, 82.08.050(11), or 82.12.040(5).

21 (4) This section is subject to section 304 of this act.

22 **Sec. 303.** RCW 82.04.067 and 2010 1st sp.s. c 23 s 104 are each
23 amended to read as follows:

24 (1) A person engaging in business is deemed to have substantial
25 nexus with this state if the person is:

26 (a) An individual and is a resident or domiciliary of this state;

27 (b) A business entity and is organized or commercially domiciled
28 in this state; or

29 (c) A nonresident individual or a business entity that is
30 organized or commercially domiciled outside this state, and in any
31 tax year the person has:

32 (i) More than fifty thousand dollars of property in this state;

33 (ii) More than fifty thousand dollars of payroll in this state;

34 (iii) More than two hundred fifty thousand dollars of receipts
35 from this state; or

36 (iv) At least twenty-five percent of the person's total property,
37 total payroll, or total receipts in this state.

38 (2)(a) Property counting toward the thresholds in subsection
39 (1)(c)(i) and (iv) of this section is the average value of the

1 taxpayer's property, including intangible property, owned or rented
2 and used in this state during the tax year.

3 (b)(i) Property owned by the taxpayer, other than loans and
4 credit card receivables owned by the taxpayer, is valued at its
5 original cost basis. Loans and credit card receivables owned by the
6 taxpayer are valued at their outstanding principal balance, without
7 regard to any reserve for bad debts. However, if a loan or credit
8 card receivable is charged off in whole or in part for federal income
9 tax purposes, the portion of the loan or credit card receivable
10 charged off is deducted from the outstanding principal balance.

11 (ii) Property rented by the taxpayer is valued at eight times the
12 net annual rental rate. For purposes of this subsection, "net annual
13 rental rate" means the annual rental rate paid by the taxpayer less
14 any annual rental rate received by the taxpayer from subrentals.

15 (c) The average value of property must be determined by averaging
16 the values at the beginning and ending of the tax year; but the
17 department may require the averaging of monthly values during the tax
18 year if reasonably required to properly reflect the average value of
19 the taxpayer's property.

20 (d)(i) For purposes of this subsection (2), loans and credit card
21 receivables are deemed owned and used in this state as follows:

22 (A) Loans secured by real property, personal property, or both
23 real and personal property((~~r~~)) are deemed owned and used in the
24 state if the real property or personal property securing the loan is
25 located within this state. If the property securing the loan is
26 located both within this state and one or more other states, the loan
27 is deemed owned and used in this state if more than fifty percent of
28 the fair market value of the real or personal property is located
29 within this state. If more than fifty percent of the fair market
30 value of the real or personal property is not located within any one
31 state, then the loan is deemed owned and used in this state if the
32 borrower is located in this state. The determination of whether the
33 real or personal property securing a loan is located within this
34 state must be made, as of the time the original agreement was made,
35 and any and all subsequent substitutions of collateral must be
36 disregarded.

37 (B) Loans not secured by real or personal property are deemed
38 owned and used in this state if the borrower is located in this
39 state.

1 (C) Credit card receivables are deemed owned and used in this
2 state if the billing address of the cardholder is in this state.

3 (ii)(A) Except as otherwise provided in (d)(ii)(B) of this
4 subsection (2), the definitions in the multistate tax commission's
5 recommended formula for the apportionment and allocation of net
6 income of financial institutions as existing on June 1, 2010, or such
7 subsequent date as may be provided by the department by rule,
8 consistent with the purposes of this section, apply to this section.

9 (B) "Credit card" means a card or device existing for the purpose
10 of obtaining money, property, labor, or services on credit.

11 (e) Notwithstanding anything else to the contrary in this
12 subsection, property counting toward the thresholds in subsection
13 (1)(c)(i) and (iv) of this section does not include a person's
14 ownership of, or rights in, computer software as defined in RCW
15 82.04.215, including computer software used in providing a digital
16 automated service; master copies of software; and digital goods and
17 digital codes residing on servers located in this state.

18 (3)(a) Payroll counting toward the thresholds in subsection
19 (1)(c)(ii) and (iv) of this section is the total amount paid by the
20 taxpayer for compensation in this state during the tax year plus
21 nonemployee compensation paid to representative third parties in this
22 state. Nonemployee compensation paid to representative third parties
23 includes the gross amount paid to nonemployees who represent the
24 taxpayer in interactions with the taxpayer's clients and includes
25 sales commissions.

26 (b) Employee compensation is paid in this state if the
27 compensation is properly reportable to this state for unemployment
28 compensation tax purposes, regardless of whether the compensation was
29 actually reported to this state.

30 (c) Nonemployee compensation is paid in this state if the service
31 performed by the representative third party occurs entirely or
32 primarily within this state.

33 (d) For purposes of this subsection, "compensation" means wages,
34 salaries, commissions, and any other form of remuneration paid to
35 employees or nonemployees and defined as gross income under 26 U.S.C.
36 Sec. 61 of the federal internal revenue code of 1986, as existing on
37 June 1, 2010.

38 (4) Receipts counting toward the thresholds in subsection
39 (1)(c)(iii) and (iv) of this section are those amounts included in
40 the numerator of the receipts factor under RCW 82.04.462 and, for

1 financial institutions, those amounts included in the numerator of
2 the receipts factor under the rule adopted by the department as
3 authorized in RCW 82.04.460(2).

4 (5)(a) Each December, the department must review the cumulative
5 percentage change in the consumer price index. The department must
6 adjust the thresholds in subsection (1)(c)(i) through (iii) of this
7 section if the consumer price index has changed by five percent or
8 more since the later of June 1, 2010, or the date that the thresholds
9 were last adjusted under this subsection. For purposes of determining
10 the cumulative percentage change in the consumer price index, the
11 department must compare the consumer price index available as of
12 December 1st of the current year with the consumer price index as of
13 the later of June 1, 2010, or the date that the thresholds were last
14 adjusted under this subsection. The thresholds must be adjusted to
15 reflect that cumulative percentage change in the consumer price
16 index. The adjusted thresholds must be rounded to the nearest one
17 thousand dollars. Any adjustment will apply to tax periods that begin
18 after the adjustment is made.

19 (b) As used in this subsection, "consumer price index" means the
20 consumer price index for all urban consumers (CPI-U) available from
21 the bureau of labor statistics of the United States department of
22 labor.

23 (6)(a) Subsections (1) through (5) of this section only apply
24 with respect to the taxes imposed under this chapter on apportionable
25 activities as defined in RCW 82.04.460. For purposes of the taxes
26 imposed under this chapter on any activity not included in the
27 definition of apportionable activities in RCW 82.04.460, a person is
28 deemed to have a substantial nexus with this state if the person has
29 a physical presence in this state, which need only be demonstrably
30 more than a slightest presence.

31 (b) For purposes of this subsection, a person is physically
32 present in this state if the person has property or employees in this
33 state.

34 (c)(i) A person is also physically present in this state for the
35 purposes of this subsection if the person, either directly or through
36 an agent or other representative, engages in activities in this state
37 that are significantly associated with the person's ability to
38 establish or maintain a market for its products in this state.

39 (ii) A remote seller as defined in section 302 of this act is
40 presumed to be engaged in activities in this state that are

1 significantly associated with the remote seller's ability to
2 establish or maintain a market for its products in this state if the
3 remote seller is presumed to have a substantial nexus with this state
4 under section 302 of this act. The presumption in this subsection
5 (6)(c)(ii) may be rebutted as provided in section 302 of this act. To
6 the extent that the presumption in section 302 of this act is no
7 longer operative pursuant to section 304 of this act, the presumption
8 in this subsection (6)(c)(ii) is no longer operative. Nothing in this
9 section may be construed to affect in any way RCW 82.04.424,
10 82.08.050(11), or 82.12.040(5) or to narrow the scope of the terms
11 "agent" or "other representative" in this subsection (6)(c).

12 NEW SECTION. Sec. 304. A new section is added to chapter 82.32
13 RCW to read as follows:

14 (1) If the department determines that a change, taking effect
15 after the effective date of this section, in the streamlined sales
16 and use tax agreement or federal law creates a conflict with any
17 provision of section 302 of this act, such conflicting provision or
18 provisions of section 302 of this act, including any related
19 provisions that would not function as originally intended, have no
20 further force and effect as of the date the change in the streamlined
21 sales and use tax agreement or federal law becomes effective.

22 (2) For purposes of this section:

23 (a) A change in federal law conflicts with section 302 of this
24 act if the change clearly allows states to impose greater sales and
25 use tax collection obligations on remote sellers than provided for,
26 or clearly prevents states from imposing sales and use tax collection
27 obligations on remote sellers to the extent provided for, under
28 section 302 of this act.

29 (b) A change in the streamlined sales and use tax agreement
30 conflicts with section 302 of this act if one or more provisions of
31 section 302 of this act causes this state to be found out of
32 compliance with the streamlined sales and use tax agreement by its
33 governing board.

34 (3) If the department makes a determination under this section
35 that a change in federal law or the streamlined sales and use tax
36 agreement conflicts with one or more provisions of section 302 of
37 this act, the department:

38 (a) May adopt rules in accordance with chapter 34.05 RCW that are
39 consistent with the streamlined sales and use tax agreement and that

1 impose sales and use tax collection obligations on remote sellers to
2 the fullest extent allowed under state and federal law; and

3 (b) Must include information on its web site informing taxpayers
4 and the public (i) of the provision or provisions of section 302 of
5 this act that will have no further force and effect, (ii) when such
6 change will become effective, and (iii) about how to participate in
7 any rule making conducted by the department in accordance with (a) of
8 this subsection (3).

9 (4) For purposes of this section, "remote seller" has the same
10 meaning as in section 302 of this act.

11 **Part IV**
12 **Miscellaneous**

13 NEW SECTION. **Sec. 401.** If any provision of this act or its
14 application to any person or circumstance is held invalid, the
15 remainder of the act or the application of the provision to other
16 persons or circumstances is not affected.

17 NEW SECTION. **Sec. 402.** Section 202 of this act applies
18 prospectively and retroactively.

19 NEW SECTION. **Sec. 403.** This act is necessary for the immediate
20 preservation of the public peace, health, or safety, or support of
21 the state government and its existing public institutions, and takes
22 effect July 1, 2015.

23 NEW SECTION. **Sec. 404.** Part III of this act expires July 1,
24 2025.

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