
SENATE BILL 6873

State of Washington

61st Legislature

2010 Regular Session

By Senators Murray, Kline, Kohl-Welles, Regala, Ranker, Keiser, Fairley, Oemig, Fraser, and Jacobsen

Read first time 02/24/10. Referred to Committee on Ways & Means.

1 AN ACT Relating to increasing state revenues to preserve funding
2 for essential public services by preventing abusive tax avoidance
3 transactions, narrowing or eliminating certain tax preferences, and
4 providing equitable tax treatment; amending RCW 82.04.220, 82.04.2907,
5 82.04.460, 82.32.090, 82.12.020, 82.45.033, 82.45.070, 82.45.080,
6 82.45.100, 82.45.220, 43.07.390, 82.04.4292, 82.08.0273, 82.04.423,
7 82.04.4266, 82.04.250, 82.04.250, 82.04.298, 82.04.334, 82.04.4463,
8 82.08.806, 82.32.545, 82.32.550, 82.32.630, 82.32.632, 82.45.195,
9 35.102.150, 48.14.080, 82.48.010, 82.48.020, 82.48.030, 82.48.070,
10 82.48.080, 82.48.110, 82.45.010, 82.45.080, 82.32.145, 82.60.020,
11 82.62.010, 82.16.020, 82.16.020, 82.04.4282, 82.08.037, 82.12.037,
12 82.12.010, 82.14.230, 82.16.110, 82.08.890, 82.12.890, 54.28.011,
13 82.08.010, 82.08.962, and 82.12.962; reenacting and amending RCW
14 82.45.010, 82.04.260, 82.04.261, 82.04.440, 82.04.360, 82.04.050, and
15 82.04.050; adding new sections to chapter 82.04 RCW; adding new
16 sections to chapter 82.32 RCW; adding a new section to chapter 82.48
17 RCW; adding a new section to chapter 82.08 RCW; adding a new section to
18 chapter 82.12 RCW; creating new sections; repealing RCW 82.04.44525,
19 82.04.272, 82.04.062, 82.08.811, 82.12.811, and 82.04.394; providing
20 effective dates; providing contingent effective dates; providing

1 expiration dates; and declaring an emergency.

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

3 **PART I**

4 **Minimum Nexus Standards**

5 NEW SECTION. **Sec. 101.** (1) The legislature finds that out-of-
6 state businesses that do not have a physical presence in Washington
7 earn significant income from Washington residents from providing
8 services or collecting royalties on the use of intangible property in
9 this state. The legislature further finds that these businesses
10 receive significant benefits and opportunities provided by the state,
11 such as: Laws providing protection of business interests or regulating
12 consumer credit; access to courts and judicial process to enforce
13 business rights, including debt collection and intellectual property
14 rights; an orderly and regulated marketplace; and police and fire
15 protection and a transportation system benefiting in-state agents and
16 other representatives of out-of-state businesses. Therefore, the
17 legislature intends to extend the state's business and occupation tax
18 to these companies to ensure that they pay their fair share of the cost
19 of services that this state renders and the infrastructure it provides.

20 (2)(a) The legislature also finds that the current cost
21 apportionment method in RCW 82.04.460(1) for apportioning most service
22 income has been difficult for both taxpayers and the department to
23 apply due in large part (i) to the difficulty in assigning certain
24 costs of doing business inside or outside of this state, and (ii) to
25 its dissimilarity with the apportionment methods used in other states
26 for their business activity taxes.

27 (b) The legislature further finds that there is a trend among
28 states to adopt a single factor apportionment formula based on sales.
29 The legislature recognizes that adoption of a sales factor only
30 apportionment method has the advantages of simplifying apportionment
31 and making Washington a more attractive place for businesses to expand
32 their property and payroll. For these reasons, the legislature adopts
33 single factor sales apportionment for purposes of apportioning royalty
34 income and certain service income.

1 (c) Nothing in this act may be construed, however, to authorize
2 apportionment of the gross income or value of products taxable under
3 the following business and occupation tax classifications: Retailing,
4 wholesaling, manufacturing, processing for hire, extracting, extracting
5 for hire, printing, government contracting, public road construction,
6 the classifications in RCW 82.04.280 (2), (4), (6), and (7), and any
7 other activity not specifically included in the definition of
8 apportionable activities in RCW 82.04.460.

9 **Sec. 102.** RCW 82.04.220 and 1961 c 15 s 82.04.220 are each amended
10 to read as follows:

11 (1) There is levied and ((shall be)) collected from every person
12 that has a substantial nexus with this state a tax for the act or
13 privilege of engaging in business activities. ((Such)) The tax ((shall
14 be)) is measured by the application of rates against value of products,
15 gross proceeds of sales, or gross income of the business, as the case
16 may be.

17 (2) A person who has a substantial nexus with this state in any tax
18 year will be deemed to have a substantial nexus with this state for the
19 following four tax years.

20 NEW SECTION. **Sec. 103.** A new section is added to chapter 82.04
21 RCW to read as follows:

22 "Engaging within this state" and "engaging within the state," when
23 used in connection with any apportionable activity as defined in RCW
24 82.04.460, means that a person generates gross income of the business
25 from sources within this state, such as customers or intangible
26 property located in this state, regardless of whether the person is
27 physically present in this state.

28 NEW SECTION. **Sec. 104.** A new section is added to chapter 82.04
29 RCW to read as follows:

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

- 32 (a) An individual and is a resident or domiciliary of this state;
- 33 (b) A business entity and is organized or commercially domiciled in
- 34 this state; or

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

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

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

6 (iii) More than five hundred thousand dollars of receipts from this
7 state; or

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

10 (2)(a) Property counting toward the thresholds in subsection
11 (1)(c)(i) and (iv) of this section is the average value of the
12 taxpayer's property, including intangible property, owned or rented and
13 used in this state during the tax year.

14 (b)(i) Property owned by the taxpayer, other than loans and credit
15 card receivables owned by the taxpayer, is valued at its original cost
16 basis. Loans and credit card receivables owned by the taxpayer are
17 valued at their outstanding principal balance, without regard to any
18 reserve for bad debts. However, if a loan or credit card receivable is
19 charged off in whole or in part for federal income tax purposes, the
20 portion of the loan or credit card receivable charged off is deducted
21 from the outstanding principal balance.

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

26 (c) The average value of property must be determined by averaging
27 the values at the beginning and ending of the tax year; but the
28 department may require the averaging of monthly values during the tax
29 year if reasonably required to properly reflect the average value of
30 the taxpayer's property.

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

33 (A) Loans secured by real property, personal property, or both real
34 and personal property, are deemed owned and used in the state if the
35 real property or personal property securing the loan is located within
36 this state. If the property securing the loan is located both within
37 this state and one or more other states, the loan is deemed owned and
38 used in this state if more than fifty percent of the fair market value

1 of the real or personal property is located within this state. If more
2 than fifty percent of the fair market value of the real or personal
3 property is not located within any one state, then the loan is deemed
4 owned and used in this state if the borrower is located in this state.
5 The determination of whether the real or personal property securing a
6 loan is located within this state must be made, as of the time the
7 original agreement was made, and any and all subsequent substitutions
8 of collateral must be disregarded.

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

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

13 (ii) The definitions in section 106 of this act apply to this
14 subsection.

15 (e) Notwithstanding anything else to the contrary in this
16 subsection, property counting toward the thresholds in subsection
17 (1)(c)(i) and (iv) of this section does not include a person's
18 ownership of, or rights in, computer software as defined in RCW
19 82.04.215, including computer software used in providing a digital
20 automated service; master copies of software; and digital goods and
21 digital codes residing on servers located in this state.

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

30 (b) Compensation is paid in this state if the compensation is
31 properly reportable to this state for unemployment compensation tax
32 purposes, regardless of whether the compensation was actually reported
33 to this state.

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

37 (d) For purposes of this subsection, "compensation" means wages,
38 salaries, commissions, and any other form of remuneration paid to

1 employees or nonemployees and defined as gross income under 26 U.S.C.
2 Sec. 61 of the federal internal revenue code of 1986, as existing on
3 July 1, 2010.

4 (4) Receipts counting toward the thresholds in subsection
5 (1)(c)(iii) and (iv) of this section are:

6 (a) Those amounts included in the numerator of the receipts factor
7 under sections 105 and 106 of this act;

8 (b) Gross proceeds of sales of the taxpayer in this state, which
9 include only retail sales and wholesale sales. For purposes of this
10 subsection (4)(b), gross proceeds of sales are in this state if the
11 sale is sourced to this state under RCW 82.32.730 for sales tax
12 purposes or would have been sourced to this state under RCW 82.32.730
13 if the sale had been taxable under chapter 82.08 RCW;

14 (c) Gross income of the business of the taxpayer, not otherwise
15 included within (a) or (b) of this subsection (4), if the gross income
16 is attributed to this state. For purposes of determining whether gross
17 income is attributed to this state under this subsection (4)(c), the
18 provisions of section 105(3)(b) of this act apply; and

19 (d) The value of products manufactured or extracted in this state
20 by the taxpayer either directly or by contracting with a processor for
21 hire or an extractor for hire for the necessary labor or mechanical
22 services, less any amounts already included in the receipts factor in
23 (b) of this subsection (4) with respect to the sale of the products
24 manufactured or extracted in this state.

25 (5)(a) Each December, the department must review the cumulative
26 percentage change in the consumer price index. The department must
27 adjust the thresholds in subsection (1)(c)(i) through (iii) of this
28 section if the consumer price index has changed by five percent or more
29 since the later of July 1, 2010, or the date that the thresholds were
30 last adjusted under this subsection. For purposes of determining the
31 cumulative percentage change in the consumer price index, the
32 department must compare the consumer price index available as of
33 December 1st of the current year with the consumer price index as of
34 the later of July 1, 2010, or the date that the thresholds were last
35 adjusted under this subsection. The thresholds must be adjusted to
36 reflect that cumulative percentage change in the consumer price index.
37 The adjusted thresholds must be rounded to the nearest one thousand

1 dollars. Any adjustment will apply to tax periods that begin after the
2 adjustment is made.

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

6 (6) A person with a substantial nexus with this state under the
7 provisions of subsection (1) of this section based on the amount of
8 receipts in this state is nevertheless not subject to taxes imposed
9 under this chapter on any activity not included in the definition of
10 apportionable activities in RCW 82.04.460, unless the person has a
11 physical presence in this state, which need only be demonstrably more
12 than a slightest presence. For purposes of this subsection, a person
13 is physically present in this state if the person has property or
14 employees in this state or the person, either directly or through an
15 agent or other representative, engages in activities in this state that
16 are significantly associated with the person's ability to establish or
17 maintain a market for its products in this state.

18 NEW SECTION. **Sec. 105.** A new section is added to chapter 82.04
19 RCW to read as follows:

20 (1) The apportionable income of a person within the scope of RCW
21 82.04.460(1) is apportioned to Washington by multiplying its
22 apportionable income by the receipts factor. Persons who are subject
23 to tax under more than one of the tax classifications enumerated in RCW
24 82.04.460(3)(a) (i) through (ix) must calculate a separate receipts
25 factor for each tax classification that the person is taxable under.

26 (2) For purposes of subsection (1) of this section, the receipts
27 factor is a fraction and is calculated as provided in subsections (3)
28 and (4) of this section and section 106 of this act.

29 (3)(a) The numerator of the receipts factor is the total gross
30 income of the business of the taxpayer attributable to this state
31 during the tax year from engaging in an apportionable activity. The
32 denominator of the receipts factor is the total gross income of the
33 business of the taxpayer from engaging in an apportionable activity
34 everywhere in the world during the tax year.

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

1 (i) Where the customer received the benefit of the taxpayer's
2 service or, in the case of gross income from royalties, where the
3 customer used the taxpayer's intangible property.

4 (ii) If the customer received the benefit of the service or used
5 the intangible property in more than one state, gross income of the
6 business must be attributed to the state in which the benefit of the
7 service was primarily received or in which the intangible property was
8 primarily used.

9 (iii) If the taxpayer is unable to attribute gross income of the
10 business under the provisions of (b)(i) or (ii) of this subsection (3),
11 gross income of the business must be attributed to the state from which
12 the customer ordered the service or, in the case of royalties, the
13 office of the customer from which the royalty agreement with the
14 taxpayer was negotiated.

15 (iv) If the taxpayer is unable to attribute gross income of the
16 business under the provisions of (b)(i), (ii), or (iii) of this
17 subsection (3), gross income of the business must be attributed to the
18 state to which the billing statements or invoices are sent to the
19 customer by the taxpayer.

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

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

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

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

7 (c) Gross income of the business from engaging in an apportionable
8 activity must be excluded from the denominator of the receipts factor
9 if, in respect to such activity, at least some of the activity is
10 performed in this state, and the gross income is attributable under (b)
11 of this subsection (3) to a state in which the taxpayer is not taxable.
12 For purposes of this subsection (3)(c), "not taxable" means that the
13 taxpayer is not subject to a business activities tax by that state,
14 except that a taxpayer is taxable in a state in which it would be
15 deemed to have a substantial nexus with that state under the standards
16 in section 104(1) of this act regardless of whether that state imposes
17 such a tax. "Business activities tax" means a tax measured by the
18 amount of, or economic results of, business activity conducted in a
19 state. The term includes taxes measured in whole or in part on net
20 income or gross income or receipts. "Business activities tax" does not
21 include a sales tax, use tax, or a similar transaction tax, imposed on
22 the sale or acquisition of goods or services, whether or not
23 denominated a gross receipts tax or a tax imposed on the privilege of
24 doing business.

25 (d) This subsection (3) does not apply to financial institutions
26 with respect to apportionable income taxable under RCW 82.04.290.
27 Financial institutions must calculate the receipts factor as provided
28 in section 106 of this act and subsection (4) of this section with
29 respect to apportionable income taxable under RCW 82.04.290. For
30 purposes of this subsection, "financial institution" has the same
31 meaning as in section 106 of this act.

32 (4) A taxpayer may calculate the receipts factor for the current
33 tax year based on the most recent calendar year for which information
34 is available for the full calendar year. If a taxpayer does not
35 calculate the receipts factor for the current tax year based on
36 previous calendar year information as authorized in this subsection,
37 the business must use current year information to calculate the
38 receipts factor for the current tax year. In either case, a taxpayer

1 must correct the reporting for the current tax year when complete
2 information is available to calculate the receipts factor for that
3 year, but not later than October 31st of the following tax year.
4 Interest will apply to any additional tax due on a corrected tax
5 return. Interest must be assessed at the rate provided for delinquent
6 excise taxes under chapter 82.32 RCW, retroactively to the date the
7 original return was due, and will accrue until the additional taxes are
8 paid. Penalties as provided in RCW 82.32.090 will apply to any such
9 additional tax due only if the current tax year reporting is not
10 corrected and the additional tax is not paid by October 31st of the
11 following tax year. Interest as provided in RCW 82.32.060 will apply
12 to any tax paid in excess of that properly due on a return as a result
13 of a taxpayer using previous calendar year data or incomplete current-
14 year data to calculate the receipts factor.

15 (5) Unless the context clearly requires otherwise, the definitions
16 in this subsection apply throughout this section.

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

19 (b) "State" has the same meaning as in section 106 of this act.

20 NEW SECTION. **Sec. 106.** A new section is added to chapter 82.04
21 RCW to read as follows:

22 (1) A financial institution must, for purposes of apportioning
23 gross income of the business taxable under RCW 82.04.290 using the
24 apportionment method provided in section 105(1) of this act, calculate
25 the receipts factor as provided in this section and section 105(4) of
26 this act. Financial institutions that are subject to tax under any
27 other tax classification enumerated in RCW 82.04.460(3)(a) (i) through
28 (v) and (vii) through (ix) must calculate a separate receipts factor,
29 as provided in section 105 of this act, for each of the other tax
30 classifications that the financial institution is taxable under.

31 (2)(a)(i) The numerator of the receipts factor includes gross
32 income from interest, fees, and penalties on loans secured by real
33 property, personal property, or both real and personal property, if the
34 real or personal property is located within this state. If the
35 property securing the loan is located both within this state and one or
36 more other states, the income described in this subsection (2)(a)(i) is
37 included in the numerator of the receipts factor if more than fifty

1 percent of the fair market value of the real or personal property is
2 located within this state. If more than fifty percent of the fair
3 market value of the real or personal property is not located within any
4 one state, then the income described in this subsection (2)(a)(i) is
5 included in the numerator of the receipts factor if the borrower is
6 located in this state.

7 (ii) The denominator of the receipts factor includes gross income
8 from interest, fees, and penalties on loans secured by real property,
9 personal property, or both real and personal property, wherever the
10 property is located.

11 (iii) The determination of whether the real or personal property
12 securing a loan is located within this state must be made as of the
13 time the original agreement was made and any and all subsequent
14 substitutions of collateral must be disregarded.

15 (b) The numerator of the receipts factor includes gross income from
16 interest, fees, and penalties on loans not secured by real or personal
17 property if the borrower is located in this state. The denominator of
18 the receipts factor includes gross income from interest, fees, and
19 penalties on loans that are not secured by real or personal property,
20 regardless of where the borrower is located.

21 (c) The receipts factor includes gross income from net gains, which
22 may not be less than zero, on the sale of loans. Net gains on the sale
23 of loans includes income recorded under the coupon stripping rules of
24 26 U.S.C. Sec. 1286 of the federal internal revenue code of 1986, as
25 existing on July 1, 2010.

26 (i) The amount of net gains, which may not be less than zero, on
27 the sale of loans secured by real property, personal property, or both
28 real and personal property, included in the numerator of the receipts
29 factor is determined by multiplying such net gains by a fraction. The
30 numerator of the fraction is the amount included in the numerator of
31 the receipts factor under (a) of this subsection (2). The denominator
32 of the fraction is the amount included in the denominator of the
33 receipts factor under (a) of this subsection (2).

34 (ii) The amount of net gains, which may not be less than zero, from
35 the sale of loans not secured by real or personal property included in
36 the numerator of the receipts factor is determined by multiplying such
37 net gains by a fraction. The numerator of the fraction is the amount
38 included in the numerator of the receipts factor under (b) of this

1 subsection (2). The denominator of the fraction is the amount included
2 in the denominator of the receipts factor under (b) of this subsection
3 (2).

4 (iii) The denominator of the receipts factor includes gross income
5 from net gains, which may not be less than zero, on all sales of loans.

6 (d) Loan servicing fees are included in the receipts factor as
7 provided in (d)(i) and (ii) of this subsection (2).

8 (i)(A)(I) The numerator of the receipts factor includes gross
9 income from loan servicing fees derived from loans secured by real
10 property, personal property, or both real and personal property,
11 multiplied by a fraction. The numerator of the fraction is the amount
12 included in the numerator of the receipts factor under (a) of this
13 subsection (2). The denominator of the fraction is the amount included
14 in the denominator of the receipts factor under (a) of this subsection
15 (2).

16 (II) The denominator of the receipts factor includes gross income
17 from all loan servicing fees derived from loans secured by real
18 property, personal property, or both real and personal property.

19 (B)(I) The numerator of the receipts factor includes gross income
20 from loan servicing fees derived from loans not secured by real or
21 personal property multiplied by a fraction. The numerator of the
22 fraction is the amount included in the numerator of the receipts factor
23 under (b) of this subsection (2). The denominator of the fraction is
24 the amount included in the denominator of the receipts factor under (b)
25 of this subsection (2).

26 (II) The denominator of the receipts factor includes gross income
27 from all loan servicing fees derived from loans not secured by real or
28 personal property.

29 (ii) If the financial institution receives loan servicing fees for
30 servicing either the secured or the unsecured loans of another, the
31 numerator of the receipts factor includes such fees if the borrower is
32 located in this state. The denominator of the receipts factor includes
33 all such fees.

34 (e)(i) Interest, dividends, net gains (which may not be less than
35 zero), and other income from investment assets and activities and from
36 trading assets and activities, as provided in this subsection (2)(e),
37 are included in the receipts factor. Investment assets and activities
38 and trading assets and activities include but are not limited to:

1 Investment securities; trading account assets; federal funds;
2 securities purchased and sold under agreements to resell or repurchase;
3 options; futures contracts; forward contracts; notional principal
4 contracts such as swaps; equities; and foreign currency transactions.

5 (ii) The numerator of the receipts factor includes gross income
6 from interest, dividends, net gains (which may not be less than zero),
7 and other receipts from investment assets and activities and from
8 trading assets and activities described in (e)(i) of this subsection
9 (2) that are attributable to this state. The denominator of the
10 receipts factor includes all such gross income wherever earned.

11 (A) The amount of interest, dividends, net gains (which may not be
12 less than zero), and other income from investment assets and activities
13 in the investment account to be attributed to this state and included
14 in the numerator of the receipts factor is determined by multiplying
15 all such income from such assets and activities by a fraction. The
16 numerator of the fraction is the average value of such assets that are
17 properly assigned to a regular place of business of the financial
18 institution within this state. The denominator of the fraction is the
19 average value of all such assets.

20 (B)(I) The amount of interest from federal funds sold and purchased
21 and from securities purchased under resale agreements and securities
22 sold under repurchase agreements attributable to this state and
23 included in the numerator of the receipts factor is determined by
24 multiplying the amount described in (e)(ii)(B)(II) of this subsection
25 (2) from such funds and such securities by a fraction. The numerator
26 of the fraction is the average value of federal funds sold and
27 securities purchased under agreements to resell that are properly
28 assigned to a regular place of business of the financial institution
29 within this state. The denominator of the fraction is the average
30 value of all such funds and such securities.

31 (II) The amount used for purposes of making the calculation in
32 (e)(ii)(B)(I) of this subsection (2) is the amount by which interest
33 from federal funds sold and securities purchased under resale
34 agreements exceeds interest expense on federal funds purchased and
35 securities sold under repurchase agreements.

36 (C)(I) The amount of interest, dividends, gains and other income
37 from trading assets and activities, including but not limited to assets
38 and activities in the matched book, in the arbitrage book, and foreign

1 currency transactions, but excluding amounts described in (e)(ii)(A) or
2 (B) of this subsection (2), attributable to this state and included in
3 the numerator of the receipts factor is determined by multiplying the
4 amount described in (e)(ii)(C)(II) of this subsection (2) by a
5 fraction. The numerator of the fraction is the average value of such
6 trading assets that are properly assigned to a regular place of
7 business of the financial institution within this state. The
8 denominator of the fraction is the average value of all such assets.

9 (II) The amount used for purposes of making the calculation in
10 (e)(ii)(C)(I) of this subsection (2) is the amount by which interest,
11 dividends, gains and other receipts from trading assets and activities,
12 including but not limited to assets and activities in the matched book,
13 in the arbitrage book, and foreign currency transactions, exceed
14 amounts paid in lieu of interest, amounts paid in lieu of dividends,
15 and losses from such assets and activities.

16 (D) For purposes of this subsection (2)(e)(ii), average value must
17 be determined using the rules for determining the average value of
18 property set forth in section 104(2) of this act.

19 (iii) In lieu of using the method set forth in (e)(ii) of this
20 subsection (2), the financial institution may elect, or the department
21 may require, in order to fairly represent the business activity of the
22 financial institution in this state, the use of the method set forth in
23 this subsection (2)(e)(iii).

24 (A) The amount of interest, dividends, net gains (which may not be
25 less than zero), and other income from investment assets and activities
26 in the investment account to be attributed to this state and included
27 in the numerator of the receipts factor is determined by multiplying
28 all such income from such assets and activities by a fraction. The
29 numerator of the fraction is the gross income from such assets and
30 activities that are properly assigned to a regular place of business of
31 the financial institution within this state. The denominator of the
32 fraction is the gross income from all such assets and activities.

33 (B) The amount of interest from federal funds sold and purchased
34 and from securities purchased under resale agreements and securities
35 sold under repurchase agreements attributable to this state and
36 included in the numerator of the receipts factor is determined by
37 multiplying the amount described in (e)(ii)(B)(II) of this subsection
38 (2) from such funds and such securities by a fraction. The numerator

1 of the fraction is the gross income from such funds and such securities
2 that are properly assigned to a regular place of business of the
3 financial institution within this state. The denominator of the
4 fraction is the gross income from all such funds and such securities.

5 (C) The amount of interest, dividends, gains and other receipts
6 from trading assets and activities, including but not limited to assets
7 and activities in the matched book, in the arbitrage book, and foreign
8 currency transactions, but excluding amounts described in (e)(ii)(A) or
9 (B) of this subsection (2), attributable to this state and included in
10 the numerator of the receipts factor is determined by multiplying the
11 amount described in (e)(ii)(C)(II) of this subsection (2) by a
12 fraction. The numerator of the fraction is the gross income from such
13 trading assets and activities that are properly assigned to a regular
14 place of business of the financial institution within this state. The
15 denominator of the fraction is the gross income from all such assets
16 and activities.

17 (iv) If the financial institution elects or is required by the
18 department to use the method set forth in (e)(iii) of this subsection
19 (2), it must use this method for subsequent tax returns unless the
20 financial institution receives prior permission from the department to
21 use, or the department requires, a different method.

22 (v) The financial institution has the burden of proving that an
23 investment asset or activity or trading asset or activity was properly
24 assigned to a regular place of business outside of this state by
25 demonstrating that the day-to-day decisions regarding the asset or
26 activity occurred at a regular place of business outside this state.
27 If the day-to-day decisions regarding an investment asset or activity
28 or trading asset or activity occur at more than one regular place of
29 business and one such regular place of business is in this state and
30 one such regular place of business is outside this state, such asset or
31 activity is considered to be located at the regular place of business
32 of the financial institution where the investment or trading policies
33 or guidelines with respect to the asset or activity are established.
34 Such policies and guidelines are presumed, subject to rebuttal by
35 preponderance of the evidence, to be established at the commercial
36 domicile of the financial institution.

37 (f) The numerator of the receipts factor includes gross income from
38 interest, fees, and penalties on credit card receivables, and gross

1 income from fees charged to cardholders, such as annual fees, if the
2 billing address of the cardholder is in this state. The denominator of
3 the receipts factor includes gross income from interest, fees, and
4 penalties on all credit card receivables, and gross income from fees
5 charged to all cardholders, such as annual fees.

6 (g)(i) The numerator of the receipts factor includes gross income
7 from net gains, which may not be less than zero, from the sale of
8 credit card receivables multiplied by a fraction. The numerator of the
9 fraction is the amount included in the numerator of the receipts factor
10 under (f) of this subsection (2). The denominator of the fraction is
11 the amount included in the denominator of the receipts factor under (f)
12 of this subsection (2).

13 (ii) The denominator of the receipts factor includes gross income
14 from net gains, which may not be less than zero, from all sales of
15 credit card receivables.

16 (h)(i) The numerator of the receipts factor includes gross income
17 from all credit card issuer's reimbursement fees multiplied by a
18 fraction. The numerator of the fraction is the amount included in the
19 numerator of the receipts factor under (f) of this subsection (2). The
20 denominator of the fraction is the amount included in the denominator
21 of the receipts factor under (f) of this subsection (2).

22 (ii) The denominator of the receipts factor includes gross income
23 from all credit card issuer's reimbursement fees.

24 (i) The numerator of the receipts factor includes gross income from
25 merchant discounts if the commercial domicile of the merchant is in
26 this state. The denominator of the receipts factor includes gross
27 income from all merchant discounts. For purposes of this subsection
28 (2)(i), gross income must be computed net of any cardholder charge
29 backs but may not be reduced by any interchange transaction fees or by
30 any issuer's reimbursement fees paid to another for charges made by its
31 cardholders.

32 (j) Apportionable income that would be attributable under this
33 subsection (2) to a state in which the financial institution is not
34 taxable must be excluded from the denominator of the receipts factor if
35 at least some of the activity that generated the income is performed in
36 this state, and the gross income is attributable under this subsection
37 (2) to a state in which the taxpayer is not taxable. For purposes of

1 this subsection (2)(j), "not taxable" has the same meaning as in
2 section 105 of this act.

3 (k)(i) The numerator of the receipts factor includes apportionable
4 income taxable under RCW 82.04.290 and not otherwise included in the
5 receipts factor under this subsection (2) if the activity producing the
6 apportionable income is performed in this state. If the activity is
7 performed both inside and outside this state, the numerator of the
8 receipts factor includes apportionable income taxable under RCW
9 82.04.290 and not otherwise included in the receipts factor under this
10 subsection (2) if a greater proportion of the activity producing the
11 apportionable income is performed in this state based on cost of
12 performance.

13 (ii) The denominator of the receipts factor includes apportionable
14 income taxable under RCW 82.04.290 from activities performed
15 everywhere, where the apportionable income taxable under RCW 82.04.290
16 is not otherwise included in the receipts factor under this subsection
17 (2).

18 (3) Except as otherwise provided in subsection (4) of this section,
19 the definitions in the multistate tax commission's recommended formula
20 for the apportionment and allocation of net income of financial
21 institutions, adopted November 17, 1994, as existing on the effective
22 date of this section, apply to this section.

23 (4) Unless the context clearly requires otherwise, the definitions
24 in this subsection apply throughout this section.

25 (a) "Apportionable income" has the same meaning as in RCW
26 82.04.460.

27 (b) "Credit card" means a card or device existing for the purpose
28 of obtaining money, property, labor, or services on credit.

29 (c) "Financial institution" has the same meaning as in WAC 458-20-
30 14601. However, the department may not make any substantive changes to
31 the definition of "financial institution" in WAC 458-20-14601 unless
32 the changes implement a legislative amendment to this definition of
33 financial institution.

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

1 **Sec. 107.** RCW 82.04.2907 and 2009 c 535 s 407 are each amended to
2 read as follows:

3 (1) Upon every person engaging within this state in the business of
4 receiving income from royalties (~~((or charges in the nature of royalties~~
5 ~~for the granting of intangible rights, such as copyrights, licenses,~~
6 ~~patents, or franchise fees))~~), the amount of tax with respect to
7 (~~((such))~~) the business (~~((shall be))~~) is equal to the gross income from
8 royalties (~~((or charges in the nature of royalties from the business))~~)
9 multiplied by the rate of 0.484 percent.

10 (2) For the purposes of this section, "gross income from royalties"
11 means compensation for the use of intangible property, (~~((such as))~~)
12 including charges in the nature of royalties, regardless of where the
13 intangible property will be used. For purposes of this subsection,
14 "intangible property" includes copyrights, patents, licenses,
15 franchises, trademarks, trade names, and similar items. (~~((It))~~) "Gross
16 income from royalties" does not include compensation for any natural
17 resource, the licensing of prewritten computer software to the end
18 user, or the licensing (~~((or use))~~) of digital goods, digital codes, or
19 digital automated services to the end user as defined in RCW
20 82.04.190(11).

21 **Sec. 108.** RCW 82.04.460 and 2004 c 174 s 6 are each amended to
22 read as follows:

23 (1) Except as otherwise provided in this section, any person
24 (~~((rendering services))~~) earning apportionable income taxable under (~~((RCW~~
25 ~~82.04.290 or 82.04.2908))~~) this chapter and (~~((maintaining places of~~
26 ~~business both within and without this state which contribute to the~~
27 ~~rendition of such services shall))~~) also taxable in another state, must,
28 for the purpose of computing tax liability under (~~((RCW 82.04.290 or~~
29 ~~82.04.2908))~~) this chapter, apportion to this state, in accordance with
30 section 105 of this act, that portion of the person's (~~((gross))~~)
31 apportionable income (~~((which is))~~) derived from (~~((services rendered))~~)
32 business activities performed within this state. (~~((Where such~~
33 ~~apportionment cannot be accurately made by separate accounting methods,~~
34 ~~the taxpayer shall apportion to this state that proportion of the~~
35 ~~taxpayer's total income which the cost of doing business within the~~
36 ~~state bears to the total cost of doing business both within and without~~
37 ~~the state.))~~)

1 (2) ~~((Notwithstanding the provision of subsection (1) of this~~
2 ~~section, persons doing business both within and without the state who~~
3 ~~receive gross income from service charges, as defined in RCW 63.14.010~~
4 ~~(relating to amounts charged for granting the right or privilege to~~
5 ~~make deferred or installment payments) or who receive gross income from~~
6 ~~engaging in business as financial institutions within the scope of~~
7 ~~chapter 82.14A RCW (relating to city taxes on financial institutions)~~
8 ~~shall apportion or allocate gross income taxable under RCW 82.04.290 to~~
9 ~~this state pursuant to rules promulgated by the department consistent~~
10 ~~with uniform rules for apportionment or allocation developed by the~~
11 ~~states.~~

12 ~~(3))~~ The department ~~((shall))~~ may by rule provide a method or
13 methods of apportioning or allocating gross income derived from sales
14 of telecommunications service and competitive telephone service~~((s))~~
15 taxed under this chapter, if the gross proceeds of sales subject to tax
16 under this chapter do not fairly represent the extent of the taxpayer's
17 income attributable to this state. ~~((The rules shall be, so far as~~
18 ~~feasible, consistent with the methods of apportionment contained in~~
19 ~~this section and shall require the consideration of those facts,~~
20 ~~circumstances, and apportionment factors as will result in an equitable~~
21 ~~and constitutionally permissible division of the services.))~~ The rule
22 must provide for an equitable and constitutionally permissible division
23 of the tax base.

24 (3) For purposes of this section, the following definitions apply
25 unless the context clearly requires otherwise:

26 (a) "Apportionable income" means gross income of the business
27 generated from engaging in apportionable activities, including income
28 received from apportionable activities performed outside this state if
29 the income would be taxable under this chapter if received from
30 activities in this state, less the exemptions and deductions allowable
31 under this chapter. For purposes of this subsection, "apportionable
32 activities" means only those activities taxed under:

33 (i) RCW 82.04.255;

34 (ii) RCW 82.04.260 (3), (5), (6), (7), (8), (9), (10), and (13);

35 (iii) RCW 82.04.280(5);

36 (iv) RCW 82.04.285;

37 (v) RCW 82.04.286;

38 (vi) RCW 82.04.290;

1 (vii) RCW 82.04.2907;
2 (viii) RCW 82.04.2908; and
3 (ix) RCW 82.04.260(14), 82.04.263, and 82.04.280(1), but only to
4 the extent of any activity that would be taxable under any of the
5 provisions enumerated under (a)(i) through (viii) of this subsection
6 (3) if the tax classifications in RCW 82.04.260(14), 82.04.263, and
7 82.04.280(1) did not exist.

8 (b)(i) "Taxable in another state" means that the taxpayer is
9 subject to a business activities tax by another state on its income
10 received from engaging in apportionable activities; or the taxpayer is
11 not subject to a business activities tax by another state on its income
12 received from engaging in apportionable activities, but any other state
13 has jurisdiction to subject the taxpayer to a business activities tax
14 on such income under the substantial nexus standards in section 104(1)
15 of this act.

16 (ii) For purposes of this subsection (3)(b):

17 (A) "Business activities tax" has the same meaning as in section
18 105 of this act; and

19 (B) "State" has the same meaning as in section 106 of this act.

20 **PART II**

21 **Abusive Tax Transactions**

22 NEW SECTION. Sec. 201. A new section is added to chapter 82.32
23 RCW to read as follows:

24 (1) The department must disregard, for tax purposes, abusive tax
25 avoidance transactions. In disregarding an abusive tax avoidance
26 transaction, the department may:

27 (a) Recharacterize the nature of income, such as recharacterizing
28 dividends received from a related entity as income received for
29 providing services to that entity;

30 (b) Disregard the form of a corporate or other entity, even when
31 legal formalities have been observed, when the form of entity is used
32 as part of an abusive tax avoidance transaction;

33 (c) Treat the tax effects of the transaction, plan, or arrangement
34 according to its underlying substance rather than its form;

35 (d) Treat a series of formally separate steps as a single
36 transaction or a single transaction as a series of transactions; and

1 (e) Take any other reasonable steps necessary to deny the tax
2 benefit that would otherwise arise as a result of the abusive tax
3 avoidance transaction.

4 (2) For purposes of this section, "abusive tax avoidance
5 transaction" means the avoidance of any tax collected by the department
6 under the provisions of this chapter by means of a transaction, plan,
7 or arrangement that lacks economic substance.

8 (3)(a) A transaction, plan, or arrangement will be considered as
9 having economic substance only if:

10 (i) The transaction, plan, or arrangement changes in a meaningful
11 way, apart from its tax effects, the taxpayer's economic position;

12 (ii) The taxpayer has a substantial nontax purpose for entering
13 into the transaction, plan, or arrangement; and

14 (iii) The transaction, plan, or arrangement is an objectively
15 reasonable means of accomplishing the substantial nontax purpose.

16 (b) A transaction, plan, or arrangement that carries some risk of
17 loss and profit potential may nevertheless be found to lack economic
18 substance if the economic risks and profit potential are so
19 insignificant when compared to the tax benefits that a reasonable
20 person would conclude that the taxpayer would not have engaged in the
21 transaction, plan, or arrangement absent its tax effects.

22 (c) An objective of achieving favorable financial accounting
23 benefits arising from tax savings is not deemed to be a substantial
24 nontax purpose for entering into a transaction, plan, or arrangement.

25 (d)(i) Except as provided in (d)(ii) of this subsection (3) the
26 burden is on the department to establish that a transaction, plan, or
27 arrangement lacks economic substance.

28 (ii) If the taxpayer fails to produce records requested by the
29 department that are relevant in determining whether a transaction,
30 plan, or arrangement has economic substance, the burden is on the
31 taxpayer to establish that the transaction, plan, or arrangement has
32 economic substance.

33 (4)(a) Notwithstanding anything to the contrary in this section,
34 the department may not disregard or recharacterize transactions as
35 provided in subsection (1)(a) through (e) of this section between
36 affiliated persons, except where the form of the transaction or a
37 related series of transactions is adopted for the purpose of
38 disguising:

1 (i) Income received, or otherwise avoiding tax on the receipt of
2 income, from a person that is not affiliated with the taxpayer; or

3 (ii) The purchase or sale of property or services from or to a
4 person that is not affiliated with the taxpayer.

5 (b) For purposes of this subsection, "affiliated" means under
6 common control. "Control" means the possession, directly or
7 indirectly, of more than fifty percent of the power to direct or cause
8 the direction of the management and policies of a person, whether
9 through the ownership of voting shares, by contract, or otherwise.

10 (5) The provisions of this section are cumulative and nonexclusive
11 and do not affect any other remedies provided to the department under
12 statutory or common law.

13 (6) The department must by rule, and as resources allow, provide
14 guidance on what it considers to be an abusive tax avoidance
15 transaction. The adoption of a rule as required under this subsection
16 is not a condition precedent for the department to use the authority
17 provided in this section to disregard abusive tax avoidance
18 transactions. Any rules adopted under this section must include
19 examples of abusive tax avoidance transactions.

20 NEW SECTION. **Sec. 202.** A new section is added to chapter 82.32
21 RCW to read as follows:

22 (1)(a) The department may not use section 201 of this act to
23 disregard any transaction, plan, or arrangement initiated before July
24 1, 2010, if, in respect to such transaction, plan, or arrangement, the
25 taxpayer had reported its tax liability in conformance with either
26 specific written instructions provided by the department to the
27 taxpayer, a determination published under the authority of RCW
28 82.32.410, or other document published by the department.

29 (b) This section does not apply if the transaction, plan, or
30 arrangement engaged in by the taxpayer differs materially from the
31 transaction, plan, or arrangement that was addressed in the specific
32 written instructions, published determination, or other published
33 document.

34 (2) For purposes of this section, "specific written instructions"
35 means tax reporting instructions provided to a taxpayer and which
36 specifically identifies the taxpayer to whom the instructions apply.

1 Specific written instructions may be provided as part of an audit, tax
2 assessment, determination, closing agreement, or in response to a
3 binding ruling request.

4 **Sec. 203.** RCW 82.32.090 and 2006 c 256 s 6 are each amended to
5 read as follows:

6 (1) If payment of any tax due on a return to be filed by a taxpayer
7 is not received by the department of revenue by the due date, there
8 (~~shall be~~) is assessed a penalty of five percent of the amount of the
9 tax; and if the tax is not received on or before the last day of the
10 month following the due date, there (~~shall be~~) is assessed a total
11 penalty of fifteen percent of the amount of the tax under this
12 subsection; and if the tax is not received on or before the last day of
13 the second month following the due date, there (~~shall be~~) is assessed
14 a total penalty of twenty-five percent of the amount of the tax under
15 this subsection. No penalty so added shall be less than five dollars.

16 (2) If the department of revenue determines that any tax has been
17 substantially underpaid, there (~~shall be~~) is assessed a penalty of
18 five percent of the amount of the tax determined by the department to
19 be due. If payment of any tax determined by the department to be due
20 is not received by the department by the due date specified in the
21 notice, or any extension thereof, there (~~shall be~~) is assessed a
22 total penalty of fifteen percent of the amount of the tax under this
23 subsection; and if payment of any tax determined by the department to
24 be due is not received on or before the thirtieth day following the due
25 date specified in the notice of tax due, or any extension thereof,
26 there (~~shall be~~) is assessed a total penalty of twenty-five percent
27 of the amount of the tax under this subsection. No penalty so added
28 (~~shall~~) may be less than five dollars. As used in this section,
29 "substantially underpaid" means that the taxpayer has paid less than
30 eighty percent of the amount of tax determined by the department to be
31 due for all of the types of taxes included in, and for the entire
32 period of time covered by, the department's examination, and the amount
33 of underpayment is at least one thousand dollars.

34 (3) If a warrant (~~be~~) is issued by the department (~~of revenue~~)
35 for the collection of taxes, increases, and penalties, there (~~shall~~
36 ~~be~~) is added thereto a penalty of ten percent of the amount of the
37 tax, but not less than ten dollars.

1 (4) If the department finds that a person has engaged in any
2 business or performed any act upon which a tax is imposed under this
3 title and that person has not obtained from the department a
4 registration certificate as required by RCW 82.32.030, the department
5 (~~shall~~) must impose a penalty of five percent of the amount of tax
6 due from that person for the period that the person was not registered
7 as required by RCW 82.32.030. The department (~~shall~~) may not impose
8 the penalty under this subsection (4) if a person who has engaged in
9 business taxable under this title without first having registered as
10 required by RCW 82.32.030, prior to any notification by the department
11 of the need to register, obtains a registration certificate from the
12 department.

13 (5) If the department finds that all or any part of a deficiency
14 resulted from the disregard of specific written instructions as to
15 reporting or tax liabilities, the department (~~shall~~) must add a
16 penalty of ten percent of the amount of the additional tax found due
17 because of the failure to follow the instructions. A taxpayer
18 disregards specific written instructions when the department (~~of~~
19 ~~revenue~~) has informed the taxpayer in writing of the taxpayer's tax
20 obligations and the taxpayer fails to act in accordance with those
21 instructions unless the department has not issued final instructions
22 because the matter is under appeal pursuant to this chapter or
23 departmental regulations. The department (~~shall~~) may not assess the
24 penalty under this section upon any taxpayer who has made a good faith
25 effort to comply with the specific written instructions provided by the
26 department to that taxpayer. Specific written instructions may be
27 given as a part of a tax assessment, audit, determination, or closing
28 agreement, provided that such specific written instructions (~~shall~~)
29 apply only to the taxpayer addressed or referenced on such documents.
30 Any specific written instructions by the department (~~of—revenue~~
31 ~~shall~~) must be clearly identified as such and (~~shall~~) must inform
32 the taxpayer that failure to follow the instructions may subject the
33 taxpayer to the penalties imposed by this subsection.

34 (6) If the department finds that all or any part of a deficiency
35 resulted from engaging in an abusive tax avoidance transaction, as
36 defined in section 201 of this act, the department must assess a
37 penalty of thirty-five percent of the additional tax found to be due as
38 a result of engaging in the abusive tax avoidance transaction. The

1 penalty provided in this subsection may be assessed together with any
2 other applicable penalties provided in this section on the same tax
3 found to be due, except for the evasion penalty provided in subsection
4 (7) of this section. The department may not assess the penalty under
5 this subsection if, before the department discovers the taxpayer's use
6 of an abusive tax avoidance transaction, the taxpayer discloses its
7 participation in the abusive tax avoidance transaction to the
8 department.

9 (7) If the department finds that all or any part of the deficiency
10 resulted from an intent to evade the tax payable (~~hereunder~~), a
11 further penalty of fifty percent of the additional tax found to be due
12 (~~shall~~) must be added.

13 (~~(7)~~) (8) The penalties imposed under subsections (1) through (4)
14 of this section can each be imposed on the same tax found to be due.
15 This subsection does not prohibit or restrict the application of other
16 penalties authorized by law.

17 (~~(8)~~) (9) The department (~~of revenue~~) may not impose both the
18 evasion penalty and the penalty for disregarding specific written
19 instructions or the penalty provided in subsection (6) of this section
20 on the same tax found to be due.

21 (~~(9)~~) (10) For the purposes of this section, "return" means any
22 document a person is required by the state of Washington to file to
23 satisfy or establish a tax or fee obligation that is administered or
24 collected by the department (~~of revenue~~), and that has a statutorily
25 defined due date.

26 NEW SECTION. Sec. 204. (1) The legislature finds that this
27 state's tax policy with respect to the taxation of transactions between
28 affiliated entities and the income derived from such transactions
29 (intercompany transactions) has motivated some taxpayers to engage in
30 transactions designed solely or primarily to minimize the tax effects
31 of intercompany transactions. The legislature further finds that some
32 intercompany transactions result from taxpayers that are required to
33 establish affiliated entities to comply with regulatory mandates and
34 that transactions between such affiliates effectively increases the tax
35 burden in this state on the affiliated group of entities.

36 (2) Therefore, as existing resources allow, the department of
37 revenue is directed to conduct a review of the state's tax policy with

1 respect to the taxation of intercompany transactions. The review must
2 include the impacts of such transactions under the state's business and
3 occupation tax and state and local sales and use taxes. The department
4 may include other taxes in the review as it deems appropriate.

5 (3) In conducting the review, the department must examine how this
6 state's tax policy compares to the tax policy of other states with
7 respect to the taxation of intercompany transactions. The department's
8 review must include an analysis of potential alternatives to the
9 current policy of taxing intercompany transactions, including their
10 estimated revenue impacts if practicable.

11 (4) In conducting this review, the department may seek input from
12 members of the business community and others as it deems appropriate.

13 (5) The department must report its findings to the fiscal
14 committees of the house of representatives and senate by December 1,
15 2010. However, if the department has not completed its review by
16 December 1, 2010, the department must provide the fiscal committees of
17 the legislature with a brief status report by December 1, 2010, and the
18 final report by December 1, 2011.

19 **Sec. 205.** RCW 82.12.020 and 2009 c 535 s 305 are each amended to
20 read as follows:

21 (1) There is ~~((hereby))~~ levied and ~~((there shall be))~~ collected
22 from every person in this state a tax or excise for the privilege of
23 using within this state as a consumer any:

24 (a) Article of tangible personal property ~~((purchased at retail,~~
25 ~~or))~~ acquired by ~~((lease, gift, repossession, or bailment, or extracted~~
26 ~~or produced or manufactured by the person so using the same, or~~
27 ~~otherwise furnished to a person engaged in any business taxable under~~
28 ~~RCW 82.04.280 (2) or (7))~~ the user in any manner, including tangible
29 personal property acquired at a casual or isolated sale, and including
30 by-products used by the manufacturer thereof, except as otherwise
31 provided in this chapter, irrespective of whether the article or
32 similar articles are manufactured or are available for purchase within
33 this state;

34 (b) Prewritten computer software, regardless of the method of
35 delivery, but excluding prewritten computer software that is either
36 provided free of charge or is provided for temporary use in viewing
37 information, or both;

1 (c) Services defined as a retail sale in RCW 82.04.050 (2) (a) or
2 (g), (3)(a), or (6)(b), excluding services defined as a retail sale in
3 RCW 82.04.050(6)(b) that are provided free of charge;

4 (d) Extended warranty; or

5 (e)(i) Digital good, digital code, or digital automated service,
6 including the use of any services provided by a seller exclusively in
7 connection with digital goods, digital codes, or digital automated
8 services, whether or not a separate charge is made for such services.

9 (ii) With respect to the use of digital goods, digital automated
10 services, and digital codes acquired by purchase, the tax imposed in
11 this subsection (1)(e) applies in respect to:

12 (A) Sales in which the seller has granted the purchaser the right
13 of permanent use;

14 (B) Sales in which the seller has granted the purchaser a right of
15 use that is less than permanent;

16 (C) Sales in which the purchaser is not obligated to make continued
17 payment as a condition of the sale; and

18 (D) Sales in which the purchaser is obligated to make continued
19 payment as a condition of the sale.

20 (iii) With respect to digital goods, digital automated services,
21 and digital codes acquired other than by purchase, the tax imposed in
22 this subsection (1)(e) applies regardless of whether or not the
23 consumer has a right of permanent use or is obligated to make continued
24 payment as a condition of use.

25 (2) The provisions of this chapter do not apply in respect to the
26 use of any article of tangible personal property, extended warranty,
27 digital good, digital code, digital automated service, or service
28 taxable under RCW 82.04.050 (2) (a) or (g), (3)(a), or (6)(b), if the
29 sale to, or the use by, the present user or the present user's bailor
30 or donor has already been subjected to the tax under chapter 82.08 RCW
31 or this chapter and the tax has been paid by the present user or by the
32 present user's bailor or donor.

33 (3)(a) Except as provided in this section, payment of the tax
34 imposed by this chapter or chapter 82.08 RCW by one purchaser or user
35 of tangible personal property, extended warranty, digital good, digital
36 code, digital automated service, or other service does not have the
37 effect of exempting any other purchaser or user of the same property,

1 extended warranty, digital good, digital code, digital automated
2 service, or other service from the taxes imposed by such chapters.

3 (b) The tax imposed by this chapter does not apply:

4 (i) If the sale to, or the use by, the present user or his or her
5 bailor or donor has already been subjected to the tax under chapter
6 82.08 RCW or this chapter and the tax has been paid by the present user
7 or by his or her bailor or donor;

8 (ii) In respect to the use of any article of tangible personal
9 property acquired by bailment and the tax has once been paid based on
10 reasonable rental as determined by RCW 82.12.060 measured by the value
11 of the article at time of first use multiplied by the tax rate imposed
12 by chapter 82.08 RCW or this chapter as of the time of first use;

13 (iii) In respect to the use of any article of tangible personal
14 property acquired by bailment, if the property was acquired by a
15 previous bailee from the same bailor for use in the same general
16 activity and the original bailment was prior to June 9, 1961; or

17 (iv) To the use of digital goods or digital automated services,
18 which were obtained through the use of a digital code, if the sale of
19 the digital code to, or the use of the digital code by, the present
20 user or the present user's bailor or donor has already been subjected
21 to the tax under chapter 82.08 RCW or this chapter and the tax has been
22 paid by the present user or by the present user's bailor or donor.

23 (4)(a) Except as provided in (b) of this subsection (4), the tax is
24 levied and must be collected in an amount equal to the value of the
25 article used, value of the digital good or digital code used, value of
26 the extended warranty used, or value of the service used by the
27 taxpayer, multiplied by the applicable rates in effect for the retail
28 sales tax under RCW 82.08.020.

29 (b) In the case of a seller required to collect use tax from the
30 purchaser, the tax must be collected in an amount equal to the purchase
31 price multiplied by the applicable rate in effect for the retail sales
32 tax under RCW 82.08.020.

33 (5) For purposes of the tax imposed in this section, "person"
34 includes anyone within the definition of "buyer," "purchaser," and
35 "consumer" in RCW 82.08.010.

36 **Sec. 206.** RCW 82.45.010 and 2008 c 116 s 3 and 2008 c 6 s 701 are
37 each reenacted and amended to read as follows:

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

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

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

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

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

36 (~~(b)~~) (ii) When persons are not commonly owned or controlled,
37 they (~~(shall)~~) must be treated as acting in concert only when the unity
38 with which the purchasers have negotiated and will consummate the

1 transfer of ownership interests supports a finding that they are acting
2 as a single entity. If the acquisitions are completely independent,
3 with each purchaser buying without regard to the identity of the other
4 purchasers, then the acquisitions (~~(shall be)~~) are considered separate
5 acquisitions.

6 (3) The term "sale" (~~(shall)~~) does not include:

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

8 (b) A transfer of any leasehold interest other than of the type
9 mentioned above.

10 (c) A cancellation or forfeiture of a vendee's interest in a
11 contract for the sale of real property, whether or not such contract
12 contains a forfeiture clause, or deed in lieu of foreclosure of a
13 mortgage.

14 (d) The partition of property by tenants in common by agreement or
15 as the result of a court decree.

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

21 (f) The assignment or other transfer of a vendor's interest in a
22 contract for the sale of real property, even though accompanied by a
23 conveyance of the vendor's interest in the real property involved.

24 (g) Transfers by appropriation or decree in condemnation
25 proceedings brought by the United States, the state or any political
26 subdivision thereof, or a municipal corporation.

27 (h) A mortgage or other transfer of an interest in real property
28 merely to secure a debt, or the assignment thereof.

29 (i) Any transfer or conveyance made pursuant to a deed of trust or
30 an order of sale by the court in any mortgage, deed of trust, or lien
31 foreclosure proceeding or upon execution of a judgment, or deed in lieu
32 of foreclosure to satisfy a mortgage or deed of trust.

33 (j) A conveyance to the federal housing administration or veterans
34 administration by an authorized mortgagee made pursuant to a contract
35 of insurance or guaranty with the federal housing administration or
36 veterans administration.

37 (k) A transfer in compliance with the terms of any lease or

1 contract upon which the tax as imposed by this chapter has been paid or
2 where the lease or contract was entered into prior to the date this tax
3 was first imposed.

4 (l) The sale of any grave or lot in an established cemetery.

5 (m) A sale by the United States, this state or any political
6 subdivision thereof, or a municipal corporation of this state.

7 (n) A sale to a regional transit authority or public corporation
8 under RCW 81.112.320 under a sale/leaseback agreement under RCW
9 81.112.300.

10 (o) A transfer of real property, however effected, if it consists
11 of a mere change in identity or form of ownership of an entity where
12 there is no change in the beneficial ownership. These include
13 transfers to a corporation or partnership which is wholly owned by the
14 transferor and/or the transferor's spouse or domestic partner or
15 children of the transferor or the transferor's spouse or domestic
16 partner(~~(+PROVIDED, That)~~). However, if thereafter such transferee
17 corporation or partnership voluntarily transfers such real property, or
18 such transferor, spouse or domestic partner, or children of the
19 transferor or the transferor's spouse or domestic partner voluntarily
20 transfer stock in the transferee corporation or interest in the
21 transferee partnership capital, as the case may be, to other than
22 ~~((+1))~~ (i) the transferor and/or the transferor's spouse or domestic
23 partner or children of the transferor or the transferor's spouse or
24 domestic partner, ~~((+2))~~ (ii) a trust having the transferor and/or the
25 transferor's spouse or domestic partner or children of the transferor
26 or the transferor's spouse or domestic partner as the only
27 beneficiaries at the time of the transfer to the trust, or ~~((+3))~~
28 (iii) a corporation or partnership wholly owned by the original
29 transferor and/or the transferor's spouse or domestic partner or
30 children of the transferor or the transferor's spouse or domestic
31 partner, within three years of the original transfer to which this
32 exemption applies, and the tax on the subsequent transfer has not been
33 paid within sixty days of becoming due, excise taxes ~~((shall))~~ become
34 due and payable on the original transfer as otherwise provided by law.

35 (p)(i) A transfer that for federal income tax purposes does not
36 involve the recognition of gain or loss for entity formation,
37 liquidation or dissolution, and reorganization, including but not

1 limited to nonrecognition of gain or loss because of application of
2 (~~section~~) 26 U.S.C. Sec. 332, 337, 351, 368(a)(1), 721, or 731 of the
3 internal revenue code of 1986, as amended.

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

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

24 **Sec. 207.** RCW 82.45.033 and 1993 sp.s. c 25 s 505 are each amended
25 to read as follows:

26 (1) As used in this chapter, the term "controlling interest" has
27 the following meaning:

28 (~~(1)~~) (a) In the case of a corporation, either fifty percent or
29 more of the total combined voting power of all classes of stock of the
30 corporation entitled to vote, or fifty percent of the capital, profits,
31 or beneficial interest in the voting stock of the corporation; and

32 (~~(2)~~) (b) In the case of a partnership, association, trust, or
33 other entity, fifty percent or more of the capital, profits, or
34 beneficial interest in such partnership, association, trust, or other
35 entity.

36 (2) The department may, at the department's option, enforce the

1 obligation of the seller under this chapter as provided in this
2 subsection (2):

3 (a) In the transfer or acquisition of a controlling interest as
4 defined in subsection (1)(a) of this section, either against the
5 corporation in which a controlling interest is transferred or acquired,
6 against the person or persons who acquired the controlling interest in
7 the corporation or, when the corporation is not a publicly traded
8 company, against the person or persons who transferred the controlling
9 interest in the corporation; and

10 (b) In the transfer or acquisition of a controlling interest as
11 defined in subsection (1)(b) of this section, either against the entity
12 in which a controlling interest is transferred or acquired or against
13 the person or persons who transferred or acquired the controlling
14 interest in the entity.

15 **Sec. 208.** RCW 82.45.070 and 1969 ex.s. c 223 s 28A.45.070 are each
16 amended to read as follows:

17 The tax (~~herein~~) provided for in this chapter and any interest or
18 penalties thereon (~~shall be~~) is a specific lien upon each (~~piece~~)
19 parcel of real property located in this state that is either sold or
20 that is owned by an entity in which a controlling interest has been
21 transferred or acquired. The lien attaches from the time of sale until
22 the tax (~~shall have been~~) is paid, which lien may be enforced in the
23 manner prescribed for the foreclosure of mortgages.

24 **Sec. 209.** RCW 82.45.080 and 1980 c 154 s 3 are each amended to
25 read as follows:

26 (1) The tax levied under this chapter (~~shall be~~) is the
27 obligation of the seller and the department (~~of revenue~~) may, at the
28 department's option, enforce the obligation through an action of debt
29 against the seller or the department may proceed in the manner
30 prescribed for the foreclosure of mortgages (~~and resort to~~). The
31 department's use of one course of enforcement (~~shall~~) is not (~~be~~)
32 an election not to pursue the other.

33 (2) For purposes of this section and notwithstanding any other
34 provisions of law, the seller is the parent corporation of a wholly
35 owned subsidiary, when such subsidiary is the transferor to a third-

1 party transferee and the subsidiary is dissolved before paying the tax
2 imposed under this chapter.

3 **Sec. 210.** RCW 82.45.100 and 2007 c 111 s 112 are each amended to
4 read as follows:

5 (1) Payment of the tax imposed under this chapter is due and
6 payable immediately at the time of sale, and if not paid within one
7 month thereafter (~~shall~~) will bear interest from the time of sale
8 until the date of payment.

9 (a) Interest imposed before January 1, 1999, (~~shall-be~~) is
10 computed at the rate of one percent per month.

11 (b) Interest imposed after December 31, 1998, (~~shall-be~~) is
12 computed on a monthly basis at the rate as computed under RCW
13 82.32.050(2). The rate so computed (~~shall~~) must be adjusted on the
14 first day of January of each year for use in computing interest for
15 that calendar year. The department (~~of revenue shall~~) must provide
16 written notification to the county treasurers of the variable rate on
17 or before December 1st of the year preceding the calendar year in which
18 the rate applies.

19 (2) In addition to the interest described in subsection (1) of this
20 section, if the payment of any tax is not received by the county
21 treasurer or the department of revenue, as the case may be, within one
22 month of the date due, there (~~shall-be~~) is assessed a penalty of five
23 percent of the amount of the tax; if the tax is not received within two
24 months of the date due, there (~~shall~~) will be assessed a total
25 penalty of ten percent of the amount of the tax; and if the tax is not
26 received within three months of the date due, there (~~shall~~) will be
27 assessed a total penalty of twenty percent of the amount of the tax.
28 The payment of the penalty described in this subsection (~~shall-be~~) is
29 collectible from the seller only, and RCW 82.45.070 does not apply to
30 the penalties described in this subsection.

31 (3) If the tax imposed under this chapter is not received by the
32 due date, the transferee (~~shall-be~~) is personally liable for the tax,
33 along with any interest as provided in subsection (1) of this section,
34 unless(~~+~~

35 ~~a+))~~ an instrument evidencing the sale is recorded in the official
36 real property records of the county in which the property conveyed is
37 located(~~+-or~~

1 ~~(b) Either the transferor or transferee notifies the department of~~
2 ~~revenue in writing of the occurrence of the sale within thirty days~~
3 ~~following the date of the sale)).~~

4 (4) If upon examination of any affidavits or from other information
5 obtained by the department or its agents it appears that all or a
6 portion of the tax is unpaid, the department (~~shall~~) must assess
7 against the taxpayer the additional amount found to be due plus
8 interest and penalties as provided in subsections (1) and (2) of this
9 section. The department (~~shall~~) must notify the taxpayer by mail, or
10 electronically as provided in RCW 82.32.135, of the additional amount
11 and the same (~~shall~~) becomes due and (~~shall~~) must be paid within
12 thirty days from the date of the notice, or within such further time as
13 the department may provide.

14 (5) No assessment or refund may be made by the department more than
15 four years after the date of sale except upon a showing of:

16 (a) Fraud or misrepresentation of a material fact by the taxpayer;
17 (b) A failure by the taxpayer to record documentation of a sale or
18 otherwise report the sale to the county treasurer; or

19 (c) A failure of the transferor or transferee to report the sale
20 under RCW 82.45.090(2).

21 (6) Penalties collected on taxes due under this chapter under
22 subsection (2) of this section and RCW 82.32.090 (2) through (7)
23 (~~shall~~) must be deposited in the housing trust fund as described in
24 chapter 43.185 RCW.

25 **Sec. 211.** RCW 82.45.220 and 2005 c 326 s 3 are each amended to
26 read as follows:

27 (1) An organization that fails to report a transfer of the
28 controlling interest in the organization under RCW 43.07.390 to the
29 secretary of state and is later determined to be subject to real estate
30 excise taxes due to the transfer, (~~shall be~~) is subject to the
31 provisions of RCW 82.45.100 as well as the evasion penalty in RCW
32 82.32.090(~~(+6)~~) (7).

33 (2) Subsection (1) of this section also applies to the failure to
34 report to the secretary of state the granting of an option to acquire
35 an interest in the organization if the exercise of the option would
36 result in a sale as defined in RCW 82.45.010(2).

1 the deduction provided by RCW 82.04.4292 does not apply to fees that
2 are received in exchange for services, regardless of whether the source
3 of the fees is or may have been interest when paid by a borrower.

4 **Sec. 302.** RCW 82.04.4292 and 1980 c 37 s 12 are each amended to
5 read as follows:

6 (1) In computing tax there may be deducted from the measure of tax
7 by those engaged in banking, loan, security or other financial
8 businesses, amounts derived from interest received on investments or
9 loans primarily secured by first mortgages or trust deeds on
10 nontransient residential properties.

11 (2) Interest deductible under this section includes the portion of
12 fees charged to borrowers, including points and loan origination fees,
13 that is recognized over the life of the loan as an adjustment to yield
14 in the taxpayer's books and records according to generally accepted
15 accounting principles.

16 (3) Subsections (1) and (2) of this section notwithstanding, the
17 following is a nonexclusive list of items that are not deductible under
18 this section:

19 (a) Fees for specific services such as: Document preparation fees;
20 finder fees; brokerage fees; title examination fees; fees for credit
21 checks; notary fees; loan application fees; interest lock-in fees if
22 the loan is not made; servicing fees, including servicing fees received
23 by lenders when they sell loans or mortgage-backed or mortgage-related
24 securities in the secondary market while retaining the right to service
25 the loans or securities and receive a portion of the interest payments
26 as the servicing fee; and similar fees or amounts;

27 (b) Fees received in consideration for an agreement to make funds
28 available for a specific period of time at specified terms, commonly
29 referred to as commitment fees;

30 (c) Any other fees, or portion of a fee, that is not recognized
31 over the life of the loan as an adjustment to yield in the taxpayer's
32 books and records according to generally accepted accounting
33 principles; and

34 (d) Gains on the sale of valuable rights such as:

35 (i) Service release premiums, which are amounts received when
36 servicing rights are sold; and

37 (ii) Gains on the sale of loans.

1 single nonitemized charge for providing the tangible personal property
2 and service. All of the ~~((requirements))~~ provisions in subsections (1)
3 and (3) through ~~((+6))~~ (7) of this section apply to this subsection.

4 (3)(a) Any person claiming exemption from retail sales tax under
5 the provisions of this section must ~~((display))~~ pay the state and local
6 sales tax to the seller at the time of purchase and then request a
7 remittance from the department in accordance with this subsection and
8 subsection (4) of this section. A request for remittance must include
9 proof of ~~((his or her current nonresident))~~ the person's status as
10 ~~((provided in this section))~~ a nonresident at the time of the purchase
11 for which a remittance is requested. The request for a remittance must
12 also include any additional information and documentation as required
13 by the department, which may include a description of the item
14 purchased for which a remittance is requested, the sales price of the
15 item, the amount of state and local sales tax paid on the item, the
16 date of the purchase, the name of the seller and the physical address
17 where the sale took place, and copies of sales receipts showing the
18 qualified purchases.

19 (b) Acceptable proof of a nonresident person's status includes one
20 piece of identification such as a valid driver's license from the
21 jurisdiction in which the out-of-state residency is claimed or a valid
22 identification card which has a photograph of the holder and is issued
23 by the out-of-state jurisdiction. Identification under this subsection
24 (3)(b) must show the holder's residential address and have as one of
25 its legal purposes the establishment of residency in that out-of-state
26 jurisdiction.

27 (4) ~~((Nothing in this section requires the vendor to make tax~~
28 ~~exempt retail sales to nonresidents. A vendor may choose to make sales~~
29 ~~to nonresidents, collect the sales tax, and remit the amount of sales~~
30 ~~tax collected to the state as otherwise provided by law. If the vendor~~
31 ~~chooses to make a sale to a nonresident without collecting the sales~~
32 ~~tax, the vendor shall, in good faith, examine the proof of~~
33 ~~nonresidence, determine whether the proof is acceptable under~~
34 ~~subsection (3)(b) of this section, and maintain records for each~~
35 ~~nontaxable sale which shall show the type of proof accepted, including~~
36 ~~any identification numbers where appropriate, and the expiration date,~~
37 ~~if any))~~ (a)(i) Beginning January 1, 2011, through December 31, 2011,

1 a person may request a remittance from the department for state and
2 local sales taxes paid by the person on qualified retail purchases made
3 in Washington between July 1, 2010, and December 31, 2010.

4 (ii) Beginning January 1, 2012, a person may request a remittance
5 from the department during any calendar year for state and local sales
6 taxes paid by the person on qualified retail purchases made in
7 Washington during the immediately preceding calendar year only. No
8 application may be made with respect to purchases made before the
9 immediately preceding calendar year.

10 (b) The remittance request, including proof of nonresident status
11 and any other documentation and information required by the department,
12 must be made using an electronic application process as prescribed by
13 the department. Only one remittance request may be made by a person
14 per calendar year.

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

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

22 (5)(a) Any person making fraudulent statements to the department,
23 which includes the offer of fraudulent or fraudulently procured
24 identification or ~~((fraudulently procured identification to a vendor))~~
25 fraudulent sales receipts, in order to ~~((purchase goods without~~
26 ~~paying))~~ receive a remittance of retail sales tax is guilty of perjury
27 under chapter 9A.72 RCW.

28 (b) Any person ~~((making tax exempt purchases under this section by~~
29 ~~displaying))~~ requesting a remittance of sales tax from the department
30 by providing proof of identification or sales receipts not ~~((his or~~
31 ~~her))~~ the person's own, or counterfeit identification or sales
32 receipts, with intent to violate the provisions of this section, is
33 guilty of a misdemeanor and, in addition, is liable for the tax and
34 subject to a penalty equal to the greater of one hundred dollars or the
35 tax due on such purchases.

36 ~~((a) Any vendor who makes sales without collecting the tax to~~
37 ~~a person who does not hold valid identification establishing out of-~~

1 ~~state residency, and any vendor who fails to maintain records of sales~~
2 ~~to nonresidents as provided in this section, is personally liable for~~
3 ~~the amount of tax due.~~

4 ~~(b) Any vendor who makes sales without collecting the retail sales~~
5 ~~tax under this section and who has actual knowledge that the~~
6 ~~purchaser's proof of identification establishing out-of-state residency~~
7 ~~is fraudulent is guilty of a misdemeanor and, in addition, is liable~~
8 ~~for the tax and subject to a penalty equal to the greater of one~~
9 ~~thousand dollars or the tax due on such sales. In addition, both the~~
10 ~~purchaser and the vendor are liable for any penalties and interest~~
11 ~~assessable under chapter 82.32 RCW)) The exemption provided by this~~
12 ~~section is for both state and local sales taxes. For purposes of this~~
13 ~~section, "local sales tax" means a sales tax imposed by a local~~
14 ~~government under the authority of chapter 82.14 RCW, RCW 81.104.170, or~~
15 ~~other provision of law, and which is imposed on the same taxable event~~
16 ~~as the state sales tax imposed in this chapter.~~

17 (7) A nonresident who receives a refund of sales tax from the
18 seller for any reason with respect to a purchase made in this state is
19 not entitled to a remittance for the tax paid on the purchase. A
20 person who receives both a remittance under this section and a refund
21 from the seller with respect to the same purchase must immediately
22 repay the remittance to the department. Interest as provided in
23 chapter 82.32 RCW applies to amounts due under this section from the
24 date that the department made the remittance until the amount due under
25 this subsection is paid to the department. A person who receives a
26 remittance with respect to a purchase for which the person had, at the
27 time the person submitted the application for a remittance, already
28 received a refund of sales tax from the seller is also liable for the
29 evasion penalty in RCW 82.32.090(6) and is ineligible to receive any
30 further remittances from the department under this section.

31 **PART V**

32 **Direct Seller Business and Occupation Tax Exemption**

33 NEW SECTION. Sec. 501. (1) In 1983, the legislature provided a
34 business and occupation tax exemption in RCW 82.04.423 for certain out-
35 of-state sellers that sold consumer products exclusively to or through
36 a direct seller's representative, which was codified in RCW 82.04.423.

1 The intent of the legislature in enacting this exemption was to provide
2 a narrow exemption for out-of-state businesses engaged in direct sales
3 of consumer products, typically accomplished through in-home parties or
4 door-to-door selling.

5 (2) In *Dot Foods, Inc. v. Dep't of Revenue*, 166 Wn.2d 912 (2009),
6 the Washington state supreme court held that the exemption in RCW
7 82.04.423 applied to a taxpayer: (a) That sold nonconsumer products
8 through its representative in addition to consumer products; and (b)
9 whose consumer products were ultimately sold at retail in permanent
10 retail establishments. This decision raises questions about the
11 taxpayers intended to benefit from the narrow exemption in RCW
12 82.04.432.

13 (3) The legislature recognizes that some out-of-state businesses
14 selling consumer products in this state may be eligible for the
15 exemption under RCW 82.04.423 under the broadened interpretation or
16 could easily restructure their business operations to qualify for the
17 exemption. The legislature further finds that optimal tax policy does
18 not provide favorable treatment to out-of-state businesses, which a
19 broadened interpretation of RCW 82.04.423 could lead to; but rather,
20 the best tax policy is to have equitable tax treatment for businesses,
21 both within and without the state.

22 (4) Therefore, the legislature finds that it is necessary to
23 reaffirm the legislature's intent in establishing the direct sellers'
24 exemption by amending RCW 82.04.423 retroactively to conform the
25 exemption to the original intent of the legislature and by
26 prospectively ending the direct sellers' exemption effective July 1,
27 2010.

28 **Sec. 502.** RCW 82.04.423 and 1983 1st ex.s. c 66 s 5 are each
29 amended to read as follows:

30 (1) Prior to July 1, 2010, this chapter (~~shall~~) does not apply to
31 any person in respect to gross income derived from the business of
32 making sales at wholesale or retail if such person:

33 (a) Does not own or lease real property within this state; and

34 (b) Does not regularly maintain a stock of tangible personal
35 property in this state for sale in the ordinary course of business; and

36 (c) Is not a corporation incorporated under the laws of this state;

37 and

1 (d) Makes sales in this state exclusively to or through a direct
2 seller's representative.

3 (2) For purposes of this section, the term "direct seller's
4 representative" means a person who buys only consumer products on a
5 buy-sell basis or a deposit-commission basis for resale, by the buyer
6 or any other person, in the home or otherwise than in a permanent
7 retail establishment, or who sells at retail, or solicits the sale at
8 retail of, only consumer products in the home or otherwise than in a
9 permanent retail establishment; and

10 (a) Substantially all of the remuneration paid to such person,
11 whether or not paid in cash, for the performance of services described
12 in this subsection is directly related to sales or other output,
13 including the performance of services, rather than the number of hours
14 worked; and

15 (b) The services performed by the person are performed pursuant to
16 a written contract between such person and the person for whom the
17 services are performed and such contract provides that the person will
18 not be treated as an employee with respect to such purposes for federal
19 tax purposes.

20 (3) Nothing in this section (~~shall~~) may be construed to imply
21 that a person exempt from tax under this section was engaged in a
22 business activity taxable under this chapter prior to (~~the enactment~~
23 ~~of this section~~) August 23, 1983.

24 PART VI

25 Business and Occupation Tax Preferences for Manufacturers of Products 26 Derived from Certain Agricultural Products

27 NEW SECTION. Sec. 601. (1)(a) In 1967, the legislature authorized
28 a preferential business and occupation tax rate for slaughtering,
29 breaking, and/or processing perishable meat products and/or selling the
30 same at wholesale. The Washington state supreme court interpreted RCW
31 82.04.260(4), in *AgriLink Foods, Inc. v. Department of Revenue*, 153
32 Wn.2d 392 (2005), holding the preferential business and occupation tax
33 rate on the slaughtering, breaking, and/or processing of perishable
34 meat products applied to the processing of perishable meat products
35 into nonperishable finished products, such as canned food.

1 (b) In this act, the legislature intends to ensure that the
2 exemption applies to activities such as slaughtering, breaking, and/or
3 processing perishable meat products and/or selling such products at
4 wholesale by requiring that the end product be a perishable meat
5 product; a nonperishable meat product that is comprised primarily of
6 animal carcass by weight or volume, other than a canned meat product;
7 or a meat by-product.

8 (2) The legislature finds that the rationale of the Agrilink
9 decision, if applied to these tax preferences, could result in
10 preferential tax treatment for any processed food product that
11 contained any fresh fruit or vegetable as an ingredient, however small
12 the amount. Therefore, the legislature intends, by this act, to
13 provide direction on its policy regarding preferential tax treatment
14 for these activities.

15 (a) A business and occupation tax exemption is provided for (i)
16 manufacturing by canning, preserving, freezing, processing, or
17 dehydrating fresh fruits or vegetables, and (ii) selling such products
18 at wholesale by the manufacturer to purchasers who transport the goods
19 out of state in the ordinary course of business. This exemption
20 expires July 1, 2012, and is replaced by a preferential business and
21 occupation tax rate.

22 (b) The legislature intends to narrow the tax preference provided
23 to fruit and vegetable manufacturers by requiring that the end product
24 be comprised either (i) exclusively of fruits and/or vegetables, or
25 (ii) of any combination of fruits, vegetables, and certain other
26 substances that, cumulatively, may not exceed the amount of fruits and
27 vegetables contained in the product measured by weight or volume.

28 NEW SECTION. **Sec. 602.** A new section is added to chapter 82.04
29 RCW to read as follows:

30 (1) Upon every person engaging within this state in the business of
31 manufacturing:

32 (a) Perishable meat products, by slaughtering, breaking, or
33 processing, if the finished product is a perishable meat product; as to
34 such persons the tax imposed is equal to the value of the perishable
35 meat products manufactured, or, in the case of a processor for hire,
36 the gross income of the business, multiplied by the rate of 0.138
37 percent;

1 (b) Meat products, by dehydration, curing, smoking, or any
2 combination of these activities, if the finished meat products are not
3 canned; as to such persons the tax imposed is equal to the value of the
4 meat products manufactured, or, in the case of a processor for hire,
5 the gross income of the business, multiplied by the rate of 0.138
6 percent;

7 (c) Hides, tallow, meat meal, and other similar meat by-products,
8 if such products are derived in part from animals and manufactured in
9 a rendering plant licensed under chapter 16.68 RCW; as to such persons
10 the tax imposed is equal to the value of the products manufactured, or,
11 in the case of a processor for hire, the gross income of the business,
12 multiplied by the rate of 0.138 percent.

13 (2) Upon every person engaging within this state in the business of
14 selling at wholesale:

15 (a) Perishable meat products; as to such persons the tax imposed is
16 equal to the gross proceeds derived from such sales multiplied by the
17 rate of 0.138 percent;

18 (b) Meat products that have been manufactured by the seller by
19 dehydration, curing, smoking, or any combination of such activities, if
20 the finished meat products are not canned; as to such persons the tax
21 imposed is equal to the gross proceeds derived from such sales
22 multiplied by the rate of 0.138 percent;

23 (c) Hides, tallow, meat meal, and other similar meat by-products,
24 if such products are derived in part from animals and manufactured by
25 the seller in a rendering plant; as to such persons the tax imposed is
26 equal to the gross proceeds derived from such sales multiplied by the
27 rate of 0.138 percent.

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

30 (a) "Animal" means all members of the animal kingdom except humans,
31 fish, and insects.

32 (b) "Carcass" means all or any parts, including viscera, of a
33 slaughtered animal.

34 (c) "Fish" means any water-breathing animal, including shellfish.

35 (d) "Hide" means any unprocessed animal pelt or skin.

36 (e)(i) "Meat products" means:

37 (A) Products comprised exclusively of animal carcass; and

1 (B) Except as provided in (e)(ii) of this subsection (3), products,
2 such as jerky, sausage, and other cured meat products, that are
3 comprised primarily of animal carcass by weight or volume and may also
4 contain water; nitrates; nitrites; acids; binders and extenders;
5 natural or synthetic casings; colorings; flavorings such as soy sauce,
6 liquid smoke, seasonings, citric acid, sugar, molasses, corn syrup, and
7 vinegar; and similar substances.

8 (ii) "Meat products" does not include products containing any
9 cereal grains or cereal-grain products, dairy products, legumes and
10 legume products, fruit or vegetable products as defined in RCW
11 82.04.260, and similar ingredients, unless the ingredient is used as a
12 flavoring. For purposes of this subsection, "flavoring" means a
13 substance that contains the flavoring constituents derived from a
14 spice, fruit or fruit juice, vegetable or vegetable juice, edible
15 yeast, herb, bark, bud, root, leaf, or any other edible substance of
16 plant origin, whose primary function in food is flavoring or seasoning
17 rather than nutritional, and which may legally appear as "natural
18 flavor," "flavor," or "flavorings" in the ingredient statement on the
19 label of the meat product.

20 (iii) "Meat products" includes only products that are intended for
21 human consumption as food or animal consumption as feed.

22 (f) "Perishable" means having a high risk of spoilage within thirty
23 days of manufacture without any refrigeration or freezing.

24 (g) "Rendering plant" means any place of business or location where
25 dead animals or any part or portion thereof, or packing house refuse,
26 are processed for the purpose of obtaining the hide, skin, grease
27 residue, or any other by-product whatsoever.

28 **Sec. 603.** RCW 82.04.4266 and 2006 c 354 s 3 are each amended to
29 read as follows:

30 (1) This chapter (~~shall~~) does not apply to the value of products
31 or the gross proceeds of sales derived from:

32 (a) Manufacturing fruit(~~s~~) or vegetable(~~s~~) products by canning,
33 preserving, freezing, processing, or dehydrating fresh fruits or
34 vegetables; or

35 (b) Selling at wholesale fruit(~~s~~) or vegetable(~~s~~) products
36 manufactured by the seller by canning, preserving, freezing,
37 processing, or dehydrating fresh fruits or vegetables and sold to

1 purchasers who transport in the ordinary course of business the goods
2 out of this state. A person taking an exemption under this subsection
3 (1)(b) must keep and preserve records for the period required by RCW
4 82.32.070 establishing that the goods were transported by the purchaser
5 in the ordinary course of business out of this state.

6 (2)(a) "Fruit or vegetable products" means:

7 (i) Products comprised exclusively of fruits, vegetables, or both;
8 and

9 (ii) Products comprised of fruits, vegetables, or both, and which
10 may also contain water, sugar, salt, seasonings, preservatives,
11 binders, stabilizers, flavorings, yeast, and similar substances.
12 However, the amount of all ingredients contained in the product, other
13 than fruits, vegetables, and water, may not exceed the amount of fruits
14 and vegetables contained in the product measured by weight or volume.

15 (b) "Fruit or vegetable products" includes only products that are
16 intended for human consumption as food or animal consumption as feed.

17 (3) This section expires July 1, 2012.

18 **Sec. 604.** RCW 82.04.260 and 2009 c 479 s 64, 2009 c 461 s 1, and
19 2009 c 162 s 34 are each reenacted and amended to read as follows:

20 (1) Upon every person engaging within this state in the business of
21 manufacturing:

22 (a) Wheat into flour, barley into pearl barley, soybeans into
23 soybean oil, canola into canola oil, canola meal, or canola by-
24 products, or sunflower seeds into sunflower oil; as to such persons the
25 amount of tax with respect to such business (~~shall be~~) is equal to
26 the value of the flour, pearl barley, oil, canola meal, or canola by-
27 product manufactured, multiplied by the rate of 0.138 percent;

28 (b) Beginning July 1, 2012, seafood products that remain in a raw,
29 raw frozen, or raw salted state at the completion of the manufacturing
30 by that person; or selling manufactured seafood products that remain in
31 a raw, raw frozen, or raw salted state at the completion of the
32 manufacturing, to purchasers who transport in the ordinary course of
33 business the goods out of this state; as to such persons the amount of
34 tax with respect to such business (~~shall be~~) is equal to the value of
35 the products manufactured or the gross proceeds derived from such
36 sales, multiplied by the rate of 0.138 percent. Sellers must keep and

1 preserve records for the period required by RCW 82.32.070 establishing
2 that the goods were transported by the purchaser in the ordinary course
3 of business out of this state;

4 (c) Beginning July 1, 2012, dairy products that as of September 20,
5 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135,
6 including by-products from the manufacturing of the dairy products such
7 as whey and casein; or selling the same to purchasers who transport in
8 the ordinary course of business the goods out of state; as to such
9 persons the tax imposed (~~shall be~~) is equal to the value of the
10 products manufactured or the gross proceeds derived from such sales
11 multiplied by the rate of 0.138 percent. Sellers must keep and
12 preserve records for the period required by RCW 82.32.070 establishing
13 that the goods were transported by the purchaser in the ordinary course
14 of business out of this state;

15 (d)(i) Beginning July 1, 2012, fruit(~~s~~) or vegetable(~~s~~)
16 products by canning, preserving, freezing, processing, or dehydrating
17 fresh fruits or vegetables, or selling at wholesale fruit(~~s~~) or
18 vegetable(~~s~~) products manufactured by the seller by canning,
19 preserving, freezing, processing, or dehydrating fresh fruits or
20 vegetables and sold to purchasers who transport in the ordinary course
21 of business the goods out of this state; as to such persons the amount
22 of tax with respect to such business (~~shall be~~) is equal to the value
23 of the products manufactured or the gross proceeds derived from such
24 sales multiplied by the rate of 0.138 percent. Sellers must keep and
25 preserve records for the period required by RCW 82.32.070 establishing
26 that the goods were transported by the purchaser in the ordinary course
27 of business out of this state;

28 (ii) For purposes of this subsection, "fruit or vegetable products"
29 means:

30 (A) Products comprised exclusively of fruits, vegetables, or both;
31 or

32 (B) Products comprised of fruits, vegetables, or both, and which
33 may also contain water, sugar, salt, seasonings, preservatives,
34 binders, stabilizers, flavorings, yeast, and similar substances.
35 However, the amount of all ingredients contained in the product, other
36 than fruits, vegetables, and water, may not exceed the amount of fruits
37 and vegetables contained in the product measured by weight or volume;

1 (iii) "Fruit and vegetable products" includes only products that
2 are intended for human consumption as food or animal consumption as
3 feed;

4 (e) Until July 1, 2009, alcohol fuel, biodiesel fuel, or biodiesel
5 feedstock, as those terms are defined in RCW 82.29A.135; as to such
6 persons the amount of tax with respect to the business (~~shall be~~) is
7 equal to the value of alcohol fuel, biodiesel fuel, or biodiesel
8 feedstock manufactured, multiplied by the rate of 0.138 percent; and

9 (f) Alcohol fuel or wood biomass fuel, as those terms are defined
10 in RCW 82.29A.135; as to such persons the amount of tax with respect to
11 the business (~~shall be~~) is equal to the value of alcohol fuel or wood
12 biomass fuel manufactured, multiplied by the rate of 0.138 percent.

13 (2) Upon every person engaging within this state in the business of
14 splitting or processing dried peas; as to such persons the amount of
15 tax with respect to such business (~~shall be~~) is equal to the value of
16 the peas split or processed, multiplied by the rate of 0.138 percent.

17 (3) Upon every nonprofit corporation and nonprofit association
18 engaging within this state in research and development, as to such
19 corporations and associations, the amount of tax with respect to such
20 activities (~~shall be~~) is equal to the gross income derived from such
21 activities multiplied by the rate of 0.484 percent.

22 (4) (~~Upon every person engaging within this state in the business~~
23 ~~of slaughtering, breaking and/or processing perishable meat products~~
24 ~~and/or selling the same at wholesale only and not at retail; as to such~~
25 ~~persons the tax imposed shall be equal to the gross proceeds derived~~
26 ~~from such sales multiplied by the rate of 0.138 percent.~~

27 (~~5~~) Upon every person engaging within this state in the business
28 of acting as a travel agent or tour operator; as to such persons the
29 amount of the tax with respect to such activities (~~shall be~~) is equal
30 to the gross income derived from such activities multiplied by the rate
31 of 0.275 percent.

32 (~~6~~) (5) Upon every person engaging within this state in
33 business as an international steamship agent, international customs
34 house broker, international freight forwarder, vessel and/or cargo
35 charter broker in foreign commerce, and/or international air cargo
36 agent; as to such persons the amount of the tax with respect to only
37 international activities (~~shall be~~) is equal to the gross income
38 derived from such activities multiplied by the rate of 0.275 percent.

1 (~~(+7)~~) (6) Upon every person engaging within this state in the
2 business of stevedoring and associated activities pertinent to the
3 movement of goods and commodities in waterborne interstate or foreign
4 commerce; as to such persons the amount of tax with respect to such
5 business (~~(shall be)~~) is equal to the gross proceeds derived from such
6 activities multiplied by the rate of 0.275 percent. Persons subject to
7 taxation under this subsection (~~(shall be)~~) are exempt from payment of
8 taxes imposed by chapter 82.16 RCW for that portion of their business
9 subject to taxation under this subsection. Stevedoring and associated
10 activities pertinent to the conduct of goods and commodities in
11 waterborne interstate or foreign commerce are defined as all activities
12 of a labor, service or transportation nature whereby cargo may be
13 loaded or unloaded to or from vessels or barges, passing over, onto or
14 under a wharf, pier, or similar structure; cargo may be moved to a
15 warehouse or similar holding or storage yard or area to await further
16 movement in import or export or may move to a consolidation freight
17 station and be stuffed, unstuffed, containerized, separated or
18 otherwise segregated or aggregated for delivery or loaded on any mode
19 of transportation for delivery to its consignee. Specific activities
20 included in this definition are: Wharfage, handling, loading,
21 unloading, moving of cargo to a convenient place of delivery to the
22 consignee or a convenient place for further movement to export mode;
23 documentation services in connection with the receipt, delivery,
24 checking, care, custody and control of cargo required in the transfer
25 of cargo; imported automobile handling prior to delivery to consignee;
26 terminal stevedoring and incidental vessel services, including but not
27 limited to plugging and unplugging refrigerator service to containers,
28 trailers, and other refrigerated cargo receptacles, and securing ship
29 hatch covers.

30 (~~(+8)~~) (7)(a) Upon every person engaging within this state in the
31 business of disposing of low-level waste, as defined in RCW 43.145.010;
32 as to such persons the amount of the tax with respect to such business
33 (~~(shall be)~~) is equal to the gross income of the business, excluding
34 any fees imposed under chapter 43.200 RCW, multiplied by the rate of
35 3.3 percent.

36 (b) If the gross income of the taxpayer is attributable to
37 activities both within and without this state, the gross income

1 attributable to this state (~~(shall)~~) must be determined in accordance
2 with the methods of apportionment required under RCW 82.04.460.

3 (~~(+9)~~) (8) Upon every person engaging within this state as an
4 insurance producer or title insurance agent licensed under chapter
5 48.17 RCW or a surplus line broker licensed under chapter 48.15 RCW; as
6 to such persons, the amount of the tax with respect to such licensed
7 activities (~~(shall be)~~) is equal to the gross income of such business
8 multiplied by the rate of 0.484 percent.

9 (~~(+10)~~) (9) Upon every person engaging within this state in
10 business as a hospital, as defined in chapter 70.41 RCW, that is
11 operated as a nonprofit corporation or by the state or any of its
12 political subdivisions, as to such persons, the amount of tax with
13 respect to such activities (~~(shall be)~~) is equal to the gross income of
14 the business multiplied by the rate of 0.75 percent through June 30,
15 1995, and 1.5 percent thereafter.

16 (~~(+11)~~) (10)(a) Beginning October 1, 2005, upon every person
17 engaging within this state in the business of manufacturing commercial
18 airplanes, or components of such airplanes, or making sales, at retail
19 or wholesale, of commercial airplanes or components of such airplanes,
20 manufactured by the seller, as to such persons the amount of tax with
21 respect to such business (~~(shall)~~), in the case of manufacturers,
22 (~~(be)~~) is equal to the value of the product manufactured and the gross
23 proceeds of sales of the product manufactured, or in the case of
24 processors for hire, (~~(be)~~) is equal to the gross income of the
25 business, multiplied by the rate of:

26 (i) 0.4235 percent from October 1, 2005, through (~~(the later of)~~)
27 June 30, 2007; and

28 (ii) 0.2904 percent beginning July 1, 2007.

29 (b) Beginning July 1, 2008, upon every person who is not eligible
30 to report under the provisions of (a) of this subsection (~~(+11)~~) (10)
31 and is engaging within this state in the business of manufacturing
32 tooling specifically designed for use in manufacturing commercial
33 airplanes or components of such airplanes, or making sales, at retail
34 or wholesale, of such tooling manufactured by the seller, as to such
35 persons the amount of tax with respect to such business (~~(shall)~~), in
36 the case of manufacturers, (~~(be)~~) is equal to the value of the product
37 manufactured and the gross proceeds of sales of the product

1 manufactured, or in the case of processors for hire, ~~((be))~~ is equal to
2 the gross income of the business, multiplied by the rate of 0.2904
3 percent.

4 (c) For the purposes of this subsection ~~((+11+))~~ (10), "commercial
5 airplane" and "component" have the same meanings as provided in RCW
6 82.32.550.

7 (d) In addition to all other requirements under this title, a
8 person eligible for the tax rate under this subsection ~~((+11+))~~ (10)
9 must report as required under RCW 82.32.545.

10 (e) This subsection ~~((+11+))~~ (10) does not apply on and after July
11 1, 2024.

12 ~~((+12+))~~ (11)(a) Until July 1, 2024, upon every person engaging
13 within this state in the business of extracting timber or extracting
14 for hire timber; as to such persons the amount of tax with respect to
15 the business ~~((shall))~~, in the case of extractors, ~~((be))~~ is equal to
16 the value of products, including by-products, extracted, or in the case
17 of extractors for hire, ~~((be))~~ is equal to the gross income of the
18 business, multiplied by the rate of 0.4235 percent from July 1, 2006,
19 through June 30, 2007, and 0.2904 percent from July 1, 2007, through
20 June 30, 2024.

21 (b) Until July 1, 2024, upon every person engaging within this
22 state in the business of manufacturing or processing for hire: (i)
23 Timber into timber products or wood products; or (ii) timber products
24 into other timber products or wood products; as to such persons the
25 amount of the tax with respect to the business ~~((shall))~~, in the case
26 of manufacturers, ~~((be))~~ is equal to the value of products, including
27 by-products, manufactured, or in the case of processors for hire,
28 ~~((be))~~ is equal to the gross income of the business, multiplied by the
29 rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and
30 0.2904 percent from July 1, 2007, through June 30, 2024.

31 (c) Until July 1, 2024, upon every person engaging within this
32 state in the business of selling at wholesale: (i) Timber extracted by
33 that person; (ii) timber products manufactured by that person from
34 timber or other timber products; or (iii) wood products manufactured by
35 that person from timber or timber products; as to such persons the
36 amount of the tax with respect to the business ~~((shall-be))~~ is equal to
37 the gross proceeds of sales of the timber, timber products, or wood

1 products multiplied by the rate of 0.4235 percent from July 1, 2006,
2 through June 30, 2007, and 0.2904 percent from July 1, 2007, through
3 June 30, 2024.

4 (d) Until July 1, 2024, upon every person engaging within this
5 state in the business of selling standing timber; as to such persons
6 the amount of the tax with respect to the business (~~((shall be))~~) is
7 equal to the gross income of the business multiplied by the rate of
8 0.2904 percent. For purposes of this subsection (~~((+12+))~~) (11)(d),
9 "selling standing timber" means the sale of timber apart from the land,
10 where the buyer is required to sever the timber within thirty months
11 from the date of the original contract, regardless of the method of
12 payment for the timber and whether title to the timber transfers
13 before, upon, or after severance.

14 (e) For purposes of this subsection, the following definitions
15 apply:

16 (i) "Biocomposite surface products" means surface material products
17 containing, by weight or volume, more than fifty percent recycled paper
18 and that also use nonpetroleum-based phenolic resin as a bonding agent.

19 (ii) "Paper and paper products" means products made of interwoven
20 cellulosic fibers held together largely by hydrogen bonding. "Paper
21 and paper products" includes newsprint; office, printing, fine, and
22 pressure-sensitive papers; paper napkins, towels, and toilet tissue;
23 kraft bag, construction, and other kraft industrial papers; paperboard,
24 liquid packaging containers, containerboard, corrugated, and solid-
25 fiber containers including linerboard and corrugated medium; and
26 related types of cellulosic products containing primarily, by weight or
27 volume, cellulosic materials. "Paper and paper products" does not
28 include books, newspapers, magazines, periodicals, and other printed
29 publications, advertising materials, calendars, and similar types of
30 printed materials.

31 (iii) "Recycled paper" means paper and paper products having fifty
32 percent or more of their fiber content that comes from postconsumer
33 waste. For purposes of this subsection (~~((+12+))~~) (11)(e)(iii),
34 "postconsumer waste" means a finished material that would normally be
35 disposed of as solid waste, having completed its life cycle as a
36 consumer item.

37 (iv) "Timber" means forest trees, standing or down, on privately or

1 publicly owned land. "Timber" does not include Christmas trees that
2 are cultivated by agricultural methods or short-rotation hardwoods as
3 defined in RCW 84.33.035.

4 (v) "Timber products" means:

5 (A) Logs, wood chips, sawdust, wood waste, and similar products
6 obtained wholly from the processing of timber, short-rotation hardwoods
7 as defined in RCW 84.33.035, or both;

8 (B) Pulp, including market pulp and pulp derived from recovered
9 paper or paper products; and

10 (C) Recycled paper, but only when used in the manufacture of
11 biocomposite surface products.

12 (vi) "Wood products" means paper and paper products; dimensional
13 lumber; engineered wood products such as particleboard, oriented strand
14 board, medium density fiberboard, and plywood; wood doors; wood
15 windows; and biocomposite surface products.

16 ((+13)) (12) Upon every person engaging within this state in
17 inspecting, testing, labeling, and storing canned salmon owned by
18 another person, as to such persons, the amount of tax with respect to
19 such activities (~~shall be~~) is equal to the gross income derived from
20 such activities multiplied by the rate of 0.484 percent.

21 ((+14)) (13) Upon every person engaging within this state in the
22 business of printing a newspaper, publishing a newspaper, or both, the
23 amount of tax on such business is equal to the gross income of the
24 business multiplied by the rate of 0.2904 percent.

25 **Sec. 605.** RCW 82.04.250 and 2008 c 81 s 5 are each amended to read
26 as follows:

27 (1) Upon every person engaging within this state in the business of
28 making sales at retail, except persons taxable as retailers under other
29 provisions of this chapter, as to such persons, the amount of tax with
30 respect to such business (~~shall be~~) is equal to the gross proceeds of
31 sales of the business, multiplied by the rate of 0.471 percent.

32 (2) Upon every person engaging within this state in the business of
33 making sales at retail that are exempt from the tax imposed under
34 chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or
35 82.08.0263, except persons taxable under RCW 82.04.260(~~+11~~) (10) or
36 subsection (3) of this section, as to such persons, the amount of tax

1 with respect to such business (~~shall be~~) is equal to the gross
2 proceeds of sales of the business, multiplied by the rate of 0.484
3 percent.

4 (3) Upon every person classified by the federal aviation
5 administration as a federal aviation regulation part 145 certificated
6 repair station and that is engaging within this state in the business
7 of making sales at retail that are exempt from the tax imposed under
8 chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or
9 82.08.0263, as to such persons, the amount of tax with respect to such
10 business (~~shall be~~) is equal to the gross proceeds of sales of the
11 business, multiplied by the rate of .2904 percent.

12 **Sec. 606.** RCW 82.04.250 and 2007 c 54 s 5 are each amended to read
13 as follows:

14 (1) Upon every person engaging within this state in the business of
15 making sales at retail, except persons taxable as retailers under other
16 provisions of this chapter, as to such persons, the amount of tax with
17 respect to such business (~~shall be~~) is equal to the gross proceeds of
18 sales of the business, multiplied by the rate of 0.471 percent.

19 (2) Upon every person engaging within this state in the business of
20 making sales at retail that are exempt from the tax imposed under
21 chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or
22 82.08.0263, except persons taxable under RCW 82.04.260(~~(+11)~~) (10), as
23 to such persons, the amount of tax with respect to such business
24 (~~shall be~~) is equal to the gross proceeds of sales of the business,
25 multiplied by the rate of 0.484 percent.

26 **Sec. 607.** RCW 82.04.261 and 2007 c 54 s 7 and 2007 c 48 s 4 are
27 each reenacted and amended to read as follows:

28 (1) In addition to the taxes imposed under RCW 82.04.260(~~(+12)~~)
29 (11), a surcharge is imposed on those persons who are subject to any of
30 the taxes imposed under RCW 82.04.260(~~(+12)~~) (11). Except as
31 otherwise provided in this section, the surcharge is equal to 0.052
32 percent. The surcharge is added to the rates provided in RCW
33 82.04.260(~~(+12)~~) (11) (a), (b), (c), and (d). The surcharge and this
34 section expire July 1, 2024.

35 (2) All receipts from the surcharge imposed under this section

1 ((~~shall~~)) must be deposited into the forest and fish support account
2 created in RCW 76.09.405.

3 (3)(a) The surcharge imposed under this section ((~~shall-be~~)) is
4 suspended if:

5 (i) Receipts from the surcharge total at least eight million
6 dollars during any fiscal biennium; or

7 (ii) The office of financial management certifies to the department
8 that the federal government has appropriated at least two million
9 dollars for participation in forest and fish report-related activities
10 by federally recognized Indian tribes located within the geographical
11 boundaries of the state of Washington for any federal fiscal year.

12 (b)(i) The suspension of the surcharge under (a)(i) of this
13 subsection (3) ((~~shall~~)) takes effect on the first day of the calendar
14 month that is at least thirty days after the end of the month during
15 which the department determines that receipts from the surcharge total
16 at least eight million dollars during the fiscal biennium. The
17 surcharge ((~~shall-be~~)) is imposed again at the beginning of the
18 following fiscal biennium.

19 (ii) The suspension of the surcharge under (a)(ii) of this
20 subsection (3) ((~~shall~~)) takes effect on the later of the first day of
21 October of any federal fiscal year for which the federal government
22 appropriates at least two million dollars for participation in forest
23 and fish report-related activities by federally recognized Indian
24 tribes located within the geographical boundaries of the state of
25 Washington, or the first day of a calendar month that is at least
26 thirty days following the date that the office of financial management
27 makes a certification to the department under subsection (5) of this
28 section. The surcharge ((~~shall-be~~)) is imposed again on the first day
29 of the following July.

30 (4)(a) If, by October 1st of any federal fiscal year, the office of
31 financial management certifies to the department that the federal
32 government has appropriated funds for participation in forest and fish
33 report-related activities by federally recognized Indian tribes located
34 within the geographical boundaries of the state of Washington but the
35 amount of the appropriation is less than two million dollars, the
36 department ((~~shall~~)) must adjust the surcharge in accordance with this
37 subsection.

1 (b) The department (~~shall~~) must adjust the surcharge by an amount
2 that the department estimates will cause the amount of funds deposited
3 into the forest and fish support account for the state fiscal year that
4 begins July 1st and that includes the beginning of the federal fiscal
5 year for which the federal appropriation is made, to be reduced by
6 twice the amount of the federal appropriation for participation in
7 forest and fish report-related activities by federally recognized
8 Indian tribes located within the geographical boundaries of the state
9 of Washington.

10 (c) Any adjustment in the surcharge (~~shall~~) takes effect at the
11 beginning of a calendar month that is at least thirty days after the
12 date that the office of financial management makes the certification
13 under subsection (5) of this section.

14 (d) The surcharge (~~shall be~~) is imposed again at the rate
15 provided in subsection (1) of this section on the first day of the
16 following state fiscal year unless the surcharge is suspended under
17 subsection (3) of this section or adjusted for that fiscal year under
18 this subsection.

19 (e) Adjustments of the amount of the surcharge by the department
20 are final and (~~shall~~) may not be used to challenge the validity of
21 the surcharge imposed under this section.

22 (f) The department (~~shall~~) must provide timely notice to affected
23 taxpayers of the suspension of the surcharge or an adjustment of the
24 surcharge.

25 (5) The office of financial management (~~shall~~) must make the
26 certification to the department as to the status of federal
27 appropriations for tribal participation in forest and fish report-
28 related activities.

29 **Sec. 608.** RCW 82.04.298 and 2008 c 49 s 1 are each amended to read
30 as follows:

31 (1) The amount of tax with respect to a qualified grocery
32 distribution cooperative's sales of groceries or related goods for
33 resale, excluding items subject to tax under (~~RCW 82.04.260(4)~~)
34 section 602 of this act, to customer-owners of the grocery distribution
35 cooperative is equal to the gross proceeds of sales of the grocery
36 distribution cooperative multiplied by the rate of one and one-half
37 percent.

1 (2) A qualified grocery distribution cooperative is allowed a
2 deduction from the gross proceeds of sales of groceries or related
3 goods for resale, excluding items subject to tax under ((RCW
4 ~~82.04.260(4))~~) section 602 of this act, to customer-owners of the
5 grocery distribution cooperative that is equal to the portion of the
6 gross proceeds of sales for resale that represents the actual cost of
7 the merchandise sold by the grocery distribution cooperative to
8 customer-owners.

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

11 (a) "Grocery distribution cooperative" means an entity that sells
12 groceries and related items to customer-owners of the grocery
13 distribution cooperative and has customer-owners, in the aggregate, who
14 own a majority of the outstanding ownership interests of the grocery
15 distribution cooperative or of the entity controlling the grocery
16 distribution cooperative. "Grocery distribution cooperative" includes
17 an entity that controls a grocery distribution cooperative.

18 (b) "Qualified grocery distribution cooperative" means:

19 (i) A grocery distribution cooperative that has been determined by
20 a court of record of the state of Washington to be not engaged in
21 wholesaling or making sales at wholesale, within the meaning of RCW
22 82.04.270 or any similar provision of a municipal ordinance that
23 imposes a tax on gross receipts, gross proceeds of sales, or gross
24 income, with respect to purchases made by customer-owners, and
25 subsequently changes its form of doing business to make sales at
26 wholesale of groceries or related items to its customer-owners; or

27 (ii) A grocery distribution cooperative that has acquired
28 substantially all of the assets of a grocery distribution cooperative
29 described in (b)(i) of this subsection.

30 (c) "Customer-owner" means a person who has an ownership interest
31 in a grocery distribution cooperative and purchases groceries and
32 related items at wholesale from that grocery distribution cooperative.

33 (d) "Controlling" means holding fifty percent or more of the voting
34 interests of an entity and having at least equal power to direct or
35 cause the direction of the management and policies of the entity,
36 whether through the ownership of voting securities, by contract, or
37 otherwise.

1 **Sec. 609.** RCW 82.04.334 and 2007 c 48 s 3 are each amended to read
2 as follows:

3 This chapter does not apply to any sale of standing timber excluded
4 from the definition of "sale" in RCW 82.45.010(3). The definitions in
5 RCW 82.04.260(~~((+12+))~~) (11) apply to this section.

6 **Sec. 610.** RCW 82.04.440 and 2006 c 300 s 8 and 2006 c 84 s 6 are
7 each reenacted and amended to read as follows:

8 (1) Every person engaged in activities that are subject to tax
9 under two or more provisions of RCW 82.04.230 through 82.04.298,
10 inclusive, (~~((shall-be))~~) is taxable under each provision applicable to
11 those activities.

12 (2) Persons taxable under RCW 82.04.2909(2), 82.04.250, 82.04.270,
13 82.04.294(2), or 82.04.260 (1) (b), (c), (~~((+4+))~~) or (d), (10), or
14 (11), or (~~((+12+))~~) section 602(2) of this act with respect to selling
15 products in this state, including those persons who are also taxable
16 under RCW 82.04.261, (~~((shall-be))~~) are allowed a credit against those
17 taxes for any (a) manufacturing taxes paid with respect to the
18 manufacturing of products so sold in this state, and/or (b) extracting
19 taxes paid with respect to the extracting of products so sold in this
20 state or ingredients of products so sold in this state. Extracting
21 taxes taken as credit under subsection (3) of this section may also be
22 taken under this subsection, if otherwise allowable under this
23 subsection. The amount of the credit (~~((shall))~~) may not exceed the tax
24 liability arising under this chapter with respect to the sale of those
25 products.

26 (3) Persons taxable as manufacturers under RCW 82.04.240 or
27 82.04.260 (1)(b) or (~~((+12+))~~) (11), including those persons who are also
28 taxable under RCW 82.04.261, (~~((shall-be))~~) are allowed a credit against
29 those taxes for any extracting taxes paid with respect to extracting
30 the ingredients of the products so manufactured in this state. The
31 amount of the credit (~~((shall))~~) may not exceed the tax liability arising
32 under this chapter with respect to the manufacturing of those products.

33 (4) Persons taxable under RCW 82.04.230, 82.04.240, 82.04.2909(1),
34 82.04.294(1), 82.04.2404, or 82.04.260 (1), (2), (~~((+4+))~~) (10), or
35 (11), or (~~((+12+))~~) section 602(1) of this act, including those persons
36 who are also taxable under RCW 82.04.261, with respect to extracting or
37 manufacturing products in this state (~~((shall-be))~~) are allowed a credit

1 against those taxes for any (i) gross receipts taxes paid to another
2 state with respect to the sales of the products so extracted or
3 manufactured in this state, (ii) manufacturing taxes paid with respect
4 to the manufacturing of products using ingredients so extracted in this
5 state, or (iii) manufacturing taxes paid with respect to manufacturing
6 activities completed in another state for products so manufactured in
7 this state. The amount of the credit (~~(shall)~~) may not exceed the tax
8 liability arising under this chapter with respect to the extraction or
9 manufacturing of those products.

10 (5) For the purpose of this section:

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

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

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

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

22 (c) "Manufacturing tax" means a gross receipts tax imposed on the
23 act or privilege of engaging in business as a manufacturer, and
24 includes (i) the taxes imposed in RCW 82.04.240, 82.04.2404,
25 82.04.2909(1), 82.04.260 (1), (2), (~~((4))~~) (10), and (11), (~~and~~
26 ~~(12))~~) section 602(1) of this act, and 82.04.294(1); (ii) the tax
27 imposed under RCW 82.04.261 on persons who are engaged in business as
28 a manufacturer; and (iii) similar gross receipts taxes paid to other
29 states.

30 (d) "Extracting tax" means a gross receipts tax imposed on the act
31 or privilege of engaging in business as an extractor, and includes (i)
32 the tax imposed on extractors in RCW 82.04.230 and 82.04.260(~~((12))~~)
33 (11); (ii) the tax imposed under RCW 82.04.261 on persons who are
34 engaged in business as an extractor; and (iii) similar gross receipts
35 taxes paid to other states.

36 (e) "Business", "manufacturer", "extractor", and other terms used
37 in this section have the meanings given in RCW 82.04.020 through

1 82.04.212, notwithstanding the use of those terms in the context of
2 describing taxes imposed by other states.

3 **Sec. 611.** RCW 82.04.4463 and 2008 c 81 s 8 are each amended to
4 read as follows:

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

8 (2) The credit is equal to:

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

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

17 (C) Property taxes or leasehold excise taxes paid on, or with
18 respect to, buildings constructed after June 30, 2008, the land upon
19 which the buildings are located, or both, and used exclusively for
20 aerospace product development or in providing aerospace services, by
21 persons not within the scope of (a)(i)(A) and (B) of this subsection

22 (2) and are: (I) Engaged in manufacturing tooling specifically
23 designed for use in manufacturing commercial airplanes or their
24 components; or (II) taxable under RCW 82.04.290(3) or 82.04.250(3); or

25 (ii) Property taxes attributable to an increase in assessed value
26 due to the renovation or expansion, after: (A) December 1, 2003, of a
27 building used exclusively in manufacturing commercial airplanes or
28 components of such airplanes; and (B) June 30, 2008, of buildings used
29 exclusively for aerospace product development or in providing aerospace
30 services, by persons not within the scope of (a)(ii)(A) of this
31 subsection (2) and are: (I) Engaged in manufacturing tooling
32 specifically designed for use in manufacturing commercial airplanes or
33 their components; or (II) taxable under RCW 82.04.290(3) or
34 82.04.250(3); and

35 (b) An amount equal to:

36 (i)(A) Property taxes paid, by persons taxable under RCW

1 82.04.260(~~(+11)~~) (10)(a), on machinery and equipment exempt under RCW
2 82.08.02565 or 82.12.02565 and acquired after December 1, 2003;
3 (B) Property taxes paid, by persons taxable under RCW
4 82.04.260(~~(+11)~~) (10)(b), on machinery and equipment exempt under RCW
5 82.08.02565 or 82.12.02565 and acquired after June 30, 2008; or
6 (C) Property taxes paid, by persons taxable under RCW
7 (~~(82.04.0250(3) — [82.04.250(3)]~~) 82.04.250(3) or 82.04.290(3), on
8 computer hardware, computer peripherals, and software exempt under RCW
9 82.08.975 or 82.12.975 and acquired after June 30, 2008.

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

13 (~~(+I)~~) (A) The numerator of the fraction is the total taxable
14 amount subject to the tax imposed under RCW 82.04.260(~~(+11)~~) (10) (a)
15 or (b) on the applicable business activities of manufacturing
16 commercial airplanes, components of such airplanes, or tooling
17 specifically designed for use in the manufacturing of commercial
18 airplanes or components of such airplanes.

19 (~~(+II)~~) (B) The denominator of the fraction is the total taxable
20 amount subject to the tax imposed under all manufacturing
21 classifications in chapter 82.04 RCW.

22 (~~(+III)~~) (C) For purposes of both the numerator and denominator of
23 the fraction, the total taxable amount refers to the total taxable
24 amount required to be reported on the person's returns for the calendar
25 year before the calendar year in which the credit under this section is
26 earned. The department may provide for an alternative method for
27 calculating the numerator in cases where the tax rate provided in RCW
28 82.04.260(~~(+11)~~) (10) for manufacturing was not in effect during the
29 full calendar year before the calendar year in which the credit under
30 this section is earned.

31 (~~(+IV)~~) (D) No credit is available under (b)(i)(A) or (B) of this
32 subsection (2) if either the numerator or the denominator of the
33 fraction is zero. If the fraction is greater than or equal to nine-
34 tenths, then the fraction is rounded to one.

35 (~~(+V)~~) (E) As used in (~~(+III)~~) (b)(ii)(C) of this subsection
36 (2)(~~(+b)(ii)(C)~~), "returns" means the tax returns for which the tax
37 imposed under this chapter is reported to the department.

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

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

5 (b) "Aerospace services" has the same meaning given in RCW
6 82.08.975.

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

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

13 (5) In addition to all other requirements under this title, a
14 person taking the credit under this section must report as required
15 under RCW 82.32.545.

16 (6) This section expires July 1, 2024.

17 **Sec. 612.** RCW 82.08.806 and 2009 c 461 s 5 are each amended to
18 read as follows:

19 (1) The tax levied by RCW 82.08.020 does not apply to sales, to a
20 printer or publisher, of computer equipment, including repair parts and
21 replacement parts for such equipment, when the computer equipment is
22 used primarily in the printing or publishing of any printed material,
23 or to sales of or charges made for labor and services rendered in
24 respect to installing, repairing, cleaning, altering, or improving the
25 computer equipment. This exemption applies only to computer equipment
26 not otherwise exempt under RCW 82.08.02565.

27 (2) A person taking the exemption under this section must keep
28 records necessary for the department to verify eligibility under this
29 section. This exemption is available only when the purchaser provides
30 the seller with an exemption certificate in a form and manner
31 prescribed by the department. The seller (~~shall~~) must retain a copy
32 of the certificate for the seller's files.

33 (3) The definitions in this subsection (3) apply throughout this
34 section, unless the context clearly requires otherwise.

35 (a) "Computer" has the same meaning as in RCW 82.04.215.

36 (b) "Computer equipment" means a computer and the associated
37 physical components that constitute a computer system, including

1 monitors, keyboards, printers, modems, scanners, pointing devices, and
2 other computer peripheral equipment, cables, servers, and routers.
3 "Computer equipment" also includes digital cameras and computer
4 software.

5 (c) "Computer software" has the same meaning as in RCW 82.04.215.

6 (d) "Primarily" means greater than fifty percent as measured by
7 time.

8 (e) "Printer or publisher" means a person, as defined in RCW
9 82.04.030, who is subject to tax under RCW 82.04.260(~~(+14)~~) (13) or
10 82.04.280(1).

11 (4) "Computer equipment" does not include computer equipment that
12 is used primarily for administrative purposes including but not limited
13 to payroll processing, accounting, customer service, telemarketing, and
14 collection. If computer equipment is used simultaneously for
15 administrative and nonadministrative purposes, the administrative use
16 (~~shall~~) must be disregarded during the period of simultaneous use for
17 purposes of determining whether the computer equipment is used
18 primarily for administrative purposes.

19 **Sec. 613.** RCW 82.32.545 and 2008 c 81 s 10 are each amended to
20 read as follows:

21 (1) The legislature finds that accountability and effectiveness are
22 important aspects of setting tax policy. In order to make policy
23 choices regarding the best use of limited state resources the
24 legislature needs information on how a tax incentive is used.

25 (2)(a) A person who reports taxes under RCW 82.04.260(~~(+11)~~) (10),
26 82.04.250(3), or 82.04.290(3), or who claims an exemption or credit
27 under RCW 82.04.4461, 82.08.980, 82.12.980, 82.29A.137, 84.36.655, and
28 82.04.4463 (~~shall~~) must make an annual report to the department
29 detailing employment, wages, and employer-provided health and
30 retirement benefits for employment positions in Washington. However,
31 persons engaged in manufacturing commercial airplanes or components of
32 such airplanes may report employment, wage, and benefit information per
33 job at the manufacturing site. The report (~~shall~~) may not include
34 names of employees. The report (~~shall~~) must also detail employment
35 by the total number of full-time, part-time, and temporary positions.
36 The first report filed under this subsection (~~shall~~) must include
37 employment, wage, and benefit information for the twelve-month period

1 immediately before first use of a preferential tax rate under RCW
2 82.04.260(~~((11))~~) (10), 82.04.250(3), or 82.04.290(3), or tax exemption
3 or credit under RCW 82.04.4461, 82.08.980, 82.12.980, 82.29A.137,
4 84.36.655, and 82.04.4463, unless a survey covering this twelve-month
5 period was filed as required by a statute repealed by chapter 81, Laws
6 of 2008. The report is due by March 31st following any year in which
7 a preferential tax rate under RCW 82.04.260(~~((11))~~) (10), 82.04.250(3),
8 or 82.04.290(3), is used, or tax exemption or credit under RCW
9 82.04.4461, 82.08.980, 82.12.980, 82.29A.137, 84.36.655, and 82.04.4463
10 is taken. This information is not subject to the confidentiality
11 provisions of RCW 82.32.330 and may be disclosed to the public upon
12 request.

13 (b) If a person fails to submit an annual report under (a) of this
14 subsection by the due date of the report, the department (~~shall~~) must
15 declare the amount of taxes exempted or credited, or reduced in the
16 case of the preferential business and occupation tax rate, for that
17 year to be immediately due and payable. Excise taxes payable under
18 this subsection are subject to interest but not penalties, as provided
19 under this chapter. This information is not subject to the
20 confidentiality provisions of RCW 82.32.330 and may be disclosed to the
21 public upon request.

22 (3) By November 1, 2010, and by November 1, 2023, the fiscal
23 committees of the house of representatives and the senate, in
24 consultation with the department, (~~shall~~) must report to the
25 legislature on the effectiveness of chapter 1, Laws of 2003 2nd sp.
26 sess., chapter 177, Laws of 2006, and chapter 81, Laws of 2008 in
27 regard to keeping Washington competitive. The report (~~shall~~) must
28 measure the effect of these laws on job retention, net jobs created for
29 Washington residents, company growth, diversification of the state's
30 economy, cluster dynamics, and other factors as the committees select.
31 The reports (~~shall~~) must include a discussion of principles to apply
32 in evaluating whether the legislature should reenact any or all of the
33 tax preferences in chapter 1, Laws of 2003 2nd sp. sess., chapter 177,
34 Laws of 2006, and chapter 81, Laws of 2008.

35 **Sec. 614.** RCW 82.32.550 and 2008 c 81 s 12 are each amended to
36 read as follows:

37 (1)(~~(a) Chapter 1, Laws of 2003 2nd sp. sess. takes effect on the~~

1 ~~first day of the month in which the governor and a manufacturer of~~
2 ~~commercial airplanes sign a memorandum of agreement regarding an~~
3 ~~affirmative final decision to site a significant commercial airplane~~
4 ~~final assembly facility in Washington state. The department shall~~
5 ~~provide notice of the effective date of chapter 1, Laws of 2003 2nd sp.~~
6 ~~sess. to affected taxpayers, the legislature, and others as deemed~~
7 ~~appropriate by the department.~~

8 ~~(b) Chapter 1, Laws of 2003 2nd sp. sess. is contingent upon the~~
9 ~~siting of a significant commercial airplane final assembly facility in~~
10 ~~the state of Washington. If a memorandum of agreement under subsection~~
11 ~~(1) of this section is not signed by June 30, 2005, chapter 1, Laws of~~
12 ~~2003 2nd sp. sess. is null and void.~~

13 ~~(c)(i) The rate in RCW 82.04.260(11)(a)(ii) takes effect July 1,~~
14 ~~2007.~~

15 ~~(ii) If on December 31, 2007, final assembly of a superefficient~~
16 ~~airplane has not begun in Washington state, the department shall~~
17 ~~provide notice of such to affected taxpayers, the legislature, and~~
18 ~~others as deemed appropriate by the department.~~

19 ~~(2) The definitions in this subsection apply throughout this~~
20 ~~section.~~

21 ~~(a)) "Commercial airplane" has its ordinary meaning, which is an~~
22 ~~airplane certified by the federal aviation administration for~~
23 ~~transporting persons or property, and any military derivative of such~~
24 ~~an airplane.~~

25 ~~((b)) (2) "Component" means a part or system certified by the~~
26 ~~federal aviation administration for installation or assembly into a~~
27 ~~commercial airplane.~~

28 ~~((c) "Final assembly of a superefficient airplane" means the~~
29 ~~activity of assembling an airplane from components parts necessary for~~
30 ~~its mechanical operation such that the finished commercial airplane is~~
31 ~~ready to deliver to the ultimate consumer.~~

32 ~~(d) "Significant commercial airplane final assembly facility" means~~
33 ~~a location with the capacity to produce at least thirty six~~
34 ~~superefficient airplanes a year.~~

35 ~~(e) "Siting" means a final decision by a manufacturer to locate a~~
36 ~~significant commercial airplane final assembly facility in Washington~~
37 ~~state.~~

1 ~~(f))~~ (3) "Superefficient airplane" means a twin aisle airplane
2 that carries between two hundred and three hundred fifty passengers,
3 with a range of more than seven thousand two hundred nautical miles, a
4 cruising speed of approximately mach .85, and that uses fifteen to
5 twenty percent less fuel than other similar airplanes on the market.

6 **Sec. 615.** RCW 82.32.630 and 2007 c 48 s 6 are each amended to read
7 as follows:

8 (1) The legislature finds that accountability and effectiveness are
9 important aspects of setting tax policy. In order to make policy
10 choices regarding the best use of limited state resources, the
11 legislature needs information on how a tax incentive is used.

12 (2)(a) A person who reports taxes under RCW 82.04.260(~~((12) shall))~~
13 (11) must file a complete annual survey with the department. The
14 survey is due by March 31st following any year in which a person
15 reports taxes under RCW 82.04.260(~~((12))~~) (11). The department may
16 extend the due date for timely filing of annual surveys under this
17 section as provided in RCW 82.32.590. The survey (~~(shall))~~ must
18 include the amount of tax reduced under the preferential rate in RCW
19 82.04.260(~~((12))~~) (11). The survey (~~(shall))~~ must also include the
20 following information for employment positions in Washington:

21 (i) The number of total employment positions;

22 (ii) Full-time, part-time, and temporary employment positions as a
23 percent of total employment;

24 (iii) The number of employment positions according to the following
25 wage bands: Less than thirty thousand dollars; thirty thousand dollars
26 or greater, but less than sixty thousand dollars; and sixty thousand
27 dollars or greater. A wage band containing fewer than three
28 individuals may be combined with another wage band; and

29 (iv) The number of employment positions that have employer-provided
30 medical, dental, and retirement benefits, by each of the wage bands.

31 (b) The first survey filed under this subsection (~~(shall))~~ must
32 include employment, wage, and benefit information for the twelve-month
33 period immediately before first use of a preferential tax rate under
34 RCW 82.04.260(~~((12))~~) (11).

35 (c) As part of the annual survey, the department may request
36 additional information, including the amount of investment in equipment
37 used in the activities taxable under the preferential rate in RCW

1 82.04.260(~~(+12+)~~) (11), necessary to measure the results of, or
2 determine eligibility for, the preferential tax rate in RCW
3 82.04.260(~~(+12+)~~) (11).

4 (d) All information collected under this section, except the amount
5 of the tax reduced under the preferential rate in RCW 82.04.260(~~(+12+)~~)
6 (11), is deemed taxpayer information under RCW 82.32.330. Information
7 on the amount of tax reduced is not subject to the confidentiality
8 provisions of RCW 82.32.330 and may be disclosed to the public upon
9 request, except as provided in (e) of this subsection. If the amount
10 of the tax reduced as reported on the survey is different than the
11 amount actually reduced based on the taxpayer's excise tax returns or
12 otherwise allowed by the department, the amount actually reduced may be
13 disclosed.

14 (e) Persons for whom the actual amount of the tax reduction is less
15 than ten thousand dollars during the period covered by the survey may
16 request the department to treat the amount of the tax reduction as
17 confidential under RCW 82.32.330.

18 (f) Small harvesters as defined in RCW 84.33.035 are not required
19 to file the annual survey under this section.

20 (3) If a person fails to submit a complete annual survey under
21 subsection (2) of this section by the due date or any extension under
22 RCW 82.32.590, the department shall declare the amount of taxes reduced
23 under the preferential rate in RCW 82.04.260(~~(+12+)~~) (11) for the
24 period covered by the survey to be immediately due and payable. The
25 department (~~shall~~) must assess interest, but not penalties, on the
26 taxes. Interest (~~shall~~) must be assessed at the rate provided for
27 delinquent excise taxes under this chapter, retroactively to the date
28 the reduced taxes were due, and (~~shall~~) will accrue until the amount
29 of the reduced taxes is repaid.

30 (4) The department (~~shall~~) must use the information from the
31 annual survey required under subsection (2) of this section to prepare
32 summary descriptive statistics by category. The department (~~shall~~)
33 must report these statistics to the legislature each year by September
34 1st. The requirement to prepare and report summary descriptive
35 statistics (~~shall~~) ceases after September 1, 2025.

36 (5) By November 1, 2011, and November 1, 2023, the fiscal
37 committees of the house of representatives and the senate, in
38 consultation with the department, (~~shall~~) must report to the

1 legislature on the effectiveness of the preferential tax rate provided
2 in RCW 82.04.260(~~((+12+))~~) (11). The report shall measure the effect of
3 the preferential tax rate provided in RCW 82.04.260(~~((+12+))~~) (11) on job
4 retention, net jobs created for Washington residents, company growth,
5 and other factors as the committees select. The report (~~shall~~) must
6 include a discussion of principles to apply in evaluating whether the
7 legislature should continue the preferential tax rate provided in RCW
8 82.04.260(~~((+12+))~~) (11).

9 **Sec. 616.** RCW 82.32.632 and 2009 c 461 s 6 are each amended to
10 read as follows:

11 (1)(a) Every person claiming the preferential rate provided in RCW
12 82.04.260(~~((+14+))~~) (13) must file a complete annual report with the
13 department. The report is due by March 31st of the year following any
14 calendar year in which a person is eligible to claim the preferential
15 rate provided in RCW 82.04.260(~~((+14+))~~) (13). The department may extend
16 the due date for timely filing of annual reports under this section as
17 provided in RCW 82.32.590.

18 (b) The report must include information detailing employment,
19 wages, and employer-provided health and retirement benefits for
20 employment positions in Washington for the year that the preferential
21 rate was claimed. The report must not include names of employees. The
22 report must also detail employment by the total number of full-time,
23 part-time, and temporary positions for the year that the tax preference
24 was claimed.

25 (c) If a person filing a report under this section did not file a
26 report with the department in the previous calendar year, the report
27 filed under this section must also include employment, wage, and
28 benefit information for the calendar year immediately preceding the
29 calendar year for which the preferential rate provided in RCW
30 82.04.260(~~((+14+))~~) (13) was claimed.

31 (2) As part of the annual report, the department may request
32 additional information necessary to measure the results of, or
33 determine eligibility for, the preferential rate provided in RCW
34 82.04.260(~~((+14+))~~) (13).

35 (3) Other than information requested under subsection (2) of this
36 section, the information contained in an annual report filed under this

1 section is not subject to the confidentiality provisions of RCW
2 82.32.330 and may be disclosed to the public upon request.

3 (4) Except as otherwise provided by law, if a person claims the
4 preferential rate provided in RCW 82.04.260(~~((+14))~~) (13) but fails to
5 submit a report by the due date or any extension under RCW 82.32.590,
6 the department must declare the amount of the tax preference claimed
7 for the previous calendar year to be immediately due and payable. The
8 department must assess interest, but not penalties, on the amounts due
9 under this subsection. The interest must be assessed at the rate
10 provided for delinquent taxes under this chapter, retroactively to the
11 date the tax preference was claimed, and accrues until the taxes for
12 which the tax preference was claimed are repaid. Amounts due under
13 this subsection are not subject to the confidentiality provisions of
14 RCW 82.32.330 and may be disclosed to the public upon request.

15 (5) By November 1, 2014, and November 1, 2016, the fiscal
16 committees of the house of representatives and the senate, in
17 consultation with the department, must report to the legislature on the
18 effectiveness of the preferential rate provided in RCW
19 82.04.260(~~((+14))~~) (13). The report must measure the effect of the
20 preferential rate provided in RCW 82.04.260(~~((+14))~~) (13) on job
21 retention, net jobs created for Washington residents, industry growth,
22 and other factors as the committees select. The report must include a
23 discussion of principles to apply in evaluating whether the legislature
24 should continue the preferential rate provided in RCW 82.04.260(~~((+14))~~)
25 (13).

26 **Sec. 617.** RCW 82.45.195 and 2007 c 48 s 7 are each amended to read
27 as follows:

28 A sale of standing timber is exempt from tax under this chapter if
29 the gross income from such sale is taxable under RCW 82.04.260(~~((+12))~~)
30 (11)(d).

31 **Sec. 618.** RCW 35.102.150 and 2009 c 461 s 4 are each amended to
32 read as follows:

33 Notwithstanding RCW 35.102.130, a city that imposes a business and
34 occupation tax must allocate a person's gross income from the
35 activities of printing, and of publishing newspapers, periodicals, or
36 magazines, to the principal place in this state from which the

1 taxpayer's business is directed or managed. As used in this section,
2 the activities of printing, and of publishing newspapers, periodicals,
3 or magazines are those activities to which the tax rates in RCW
4 82.04.260(~~(+14)~~) (13) and 82.04.280(1) apply.

5 **Sec. 619.** RCW 48.14.080 and 2009 c 535 s 1102 are each amended to
6 read as follows:

7 (1) As to insurers, other than title insurers and taxpayers under
8 RCW 48.14.0201, the taxes imposed by this title (~~shall be~~) are in
9 lieu of all other taxes, except as otherwise provided in this section.

10 (2) Subsection (1) of this section does not apply with respect to:

11 (a) Taxes on real and tangible personal property;

12 (b) Excise taxes on the sale, purchase, use, or possession of (i)
13 real property; (ii) tangible personal property; (iii) extended
14 warranties; (iv) services, including digital automated services as
15 defined in RCW 82.04.192; and (v) digital goods and digital codes as
16 those terms are defined in RCW 82.04.192; and

17 (c) The tax imposed in RCW 82.04.260(~~(+10)~~) (9), regarding public
18 and nonprofit hospitals.

19 (3) For the purposes of this section, the term "taxes" includes
20 taxes imposed by the state or any county, city, town, municipal
21 corporation, quasi-municipal corporation, or other political
22 subdivision.

23 PART VII

24 **Ending the Preferential Business and Occupation Tax Treatment Received** 25 **by Directors of Corporations**

26 NEW SECTION. **Sec. 701.** (1) The legislature recognizes that the
27 business and occupation tax applies to all activities engaged in with
28 the object of gain, benefit, or advantage to the taxpayer or to another
29 person or class, directly or indirectly, unless a specific exemption
30 applies.

31 (2) One of the major business and occupation tax exemptions is
32 provided in RCW 82.04.360 for income earned as an employee or servant
33 as distinguished from income earned as an independent contractor. The
34 legislature's intent in providing this exemption was to exempt employee

1 wages from the business and occupation tax but not to exempt income
2 earned as an independent contractor.

3 (3) The legislature finds that corporate directors are not
4 employees or servants of the corporation whose board they serve on and
5 therefore are not entitled to a business and occupation tax exemption
6 under RCW 82.04.360. The legislature further finds that there are no
7 business and occupation tax exemptions for compensation received for
8 serving as a member of a corporation's board of directors.

9 (4) The legislature also finds that there is a widespread
10 misunderstanding among corporate directors that the business and
11 occupation tax does not apply to the compensation they receive for
12 serving as a director of a corporation. It is the legislature's
13 expectation that the department of revenue will take appropriate
14 measures to ensure that corporate directors understand and comply with
15 their business and occupation tax obligations with respect to their
16 director compensation. However, because of the widespread
17 misunderstanding by corporate directors of their liability for business
18 and occupation tax on director compensation, the legislature finds that
19 it is appropriate in this unique situation to provide limited relief
20 against the retroactive assessment of business and occupation taxes on
21 corporate director compensation.

22 (5) The legislature also reaffirms its intent that all income of
23 all independent contractors is subject to business and occupation tax
24 unless specifically exempt under the Constitution or laws of this state
25 or the United States.

26 **Sec. 702.** RCW 82.04.360 and 1991 c 324 s 19 and 1991 c 275 s 2 are
27 each reenacted and amended to read as follows:

28 (1) This chapter (~~shall~~) does not apply to any person in respect
29 to his or her employment in the capacity of an employee or servant as
30 distinguished from that of an independent contractor. For the purposes
31 of this section, the definition of employee shall include those persons
32 that are defined in section 3121(d)(3)(B) of the federal internal
33 revenue code of 1986, as amended through January 1, 1991.

34 (2) (~~(A booth renter, as defined by RCW 18.16.020, is an~~
35 ~~independent contractor for purposes of this chapter.)) Until July 1,
36 2010, this chapter does not apply to amounts received by an individual~~

1 from a corporation as compensation for serving as a member of that
2 corporation's board of directors. Beginning July 1, 2010, such amounts
3 are taxable under RCW 82.04.290(2).

4 NEW SECTION. Sec. 703. The sole reason for deleting the language
5 in RCW 82.04.360(2) is because RCW 18.16.020 no longer defines the term
6 "booth renter." This should not be construed as a substantive change
7 in the law.

8 NEW SECTION. Sec. 704. In accordance with Article VIII, section
9 5 of the state Constitution, sections 702 and 2705 of this act do not
10 authorize refunds of business and occupation tax validly collected
11 before July 1, 2010, on amounts received by an individual from a
12 corporation as compensation for serving as a member of that
13 corporation's board of directors.

14 **PART VIII**
15 **Airplane Excise Tax**

16 **Sec. 801.** RCW 82.48.010 and 1995 c 318 s 4 are each amended to
17 read as follows:

18 For the purposes of this chapter, unless otherwise required by the
19 context:

- 20 (1) "Department" means the department of transportation.
- 21 (2) "Aircraft" means any weight-carrying device or structure for
22 navigation of the air which is designed to be supported by the air;
- 23 ((+2)) (3) "Secretary" means the secretary of transportation;
- 24 ((+3)) (4) "Person" includes a firm, partnership, limited
25 liability company, or corporation((+)
- 26 ~~(4) "Small multi-engine fixed wing" means any piston-driven multi-~~
27 ~~engine fixed wing aircraft with a maximum gross weight as listed by the~~
28 ~~manufacturer of less than seventy-five hundred pounds; and~~
- 29 ~~(5) "Large multi-engine fixed wing" means any piston-driven multi-~~
30 ~~engine fixed wing aircraft with a maximum gross weight as listed by the~~
31 ~~manufacturer of seventy-five hundred pounds or more)).~~

32 **Sec. 802.** RCW 82.48.020 and 2000 c 229 s 4 are each amended to
33 read as follows:

1 ~~(1) ((An annual excise tax is hereby imposed for the privilege of~~
2 ~~using any aircraft in the state. A current certificate of air~~
3 ~~worthiness with a current inspection date from the appropriate federal~~
4 ~~agency and/or the purchase of aviation fuel shall constitute the~~
5 ~~necessary evidence of aircraft use or intended use. The tax shall))~~ An
6 annual excise tax is imposed for the privilege of using any aircraft in
7 the state. The amount of the tax is five-tenths of one percent of the
8 taxable value of the aircraft, as determined under section 803 of this
9 act.

10 (2) The tax imposed under this section must be collected annually
11 or under a staggered collection schedule as required by the secretary
12 by rule. ((No additional tax shall be imposed under this chapter upon
13 any aircraft upon the transfer of ownership thereof, if the tax imposed
14 by this chapter with respect to such aircraft has already been paid for
15 the year in which transfer of ownership occurs. A violation of this
16 subsection is a misdemeanor punishable as provided under chapter 9A.20
17 RCW.

18 ~~(2))~~ (3) Persons who are required to register aircraft under
19 chapter 47.68 RCW and who register aircraft in another state or foreign
20 country and avoid the ((Washington)) aircraft excise tax imposed under
21 this section are liable for ((such)) the unpaid excise tax. A
22 violation of this subsection is a gross misdemeanor.

23 (4) The department of revenue may, under chapter 82.32 RCW, assess
24 and collect the unpaid excise tax imposed under ((chapter 82.32 RCW))
25 this section, including the penalties and interest provided in chapter
26 82.32 RCW.

27 ~~((3))~~ (5) Except as provided under subsection((s (1) and (2)))
28 (3) of this section, a violation of this chapter is a misdemeanor
29 punishable as provided in chapter 9A.20 RCW.

30 NEW SECTION. Sec. 803. A new section is added to chapter 82.48
31 RCW to read as follows:

32 The department must prepare at least once each year a depreciation
33 schedule for use in the determination of fair market value for the
34 purposes of this chapter. The schedule must be based upon information
35 available to the department pertaining to the current fair market value
36 of aircraft. The fair market value of an aircraft for the purposes of
37 this chapter must be based on the most recent purchase price

1 depreciated according to the year of the most recent purchase of the
2 aircraft. The most recent purchase price is the consideration, whether
3 money, credit, rights, or other property expressed in terms of money,
4 paid or given or contracted to be paid or given by the purchaser to the
5 seller for the aircraft.

6 **Sec. 804.** RCW 82.48.030 and 1983 2nd ex.s. c 3 s 22 are each
7 amended to read as follows:

8 (1) ~~((The amount of the tax imposed by this chapter for each
9 calendar year shall be as follows:~~

10	Type of aircraft	Registration fee
11	Single engine fixed wing	\$ 50
12	Small multi-engine fixed wing	65
13	Large multi-engine fixed wing	80
14	Turboprop multi-engine fixed wing	100
15	Turbojet multi-engine fixed wing	125
16	Helicopter	75
17	Sailplane	20
18	Lighter than air	20
19	Home built	20

20 ~~(2))~~ The amount of tax imposed under ~~((subsection (1) of this~~
21 ~~section))~~ RCW 82.48.020 for each calendar year ~~((shall))~~ must be
22 divided into twelve parts corresponding to the months of the calendar
23 year, and the excise tax upon an aircraft registered for the first time
24 in this state after the last day of any month ~~((shall))~~ is only ~~((be))~~
25 levied for the remaining months of the calendar year including the
26 month in which the aircraft is being registered ~~((: PROVIDED, That))~~.
27 However, the minimum amount payable ~~((shall be))~~ is three dollars.

28 (2) For the purposes of this chapter, an aircraft ~~((shall be))~~ is
29 deemed registered for the first time in this state when such aircraft
30 was not ~~((previously))~~ required to be registered by this state for the
31 year immediately preceding the year in which application for
32 registration is made and was not so registered.

33 **Sec. 805.** RCW 82.48.070 and 1987 c 220 s 7 are each amended to
34 read as follows:

1 The secretary (~~shall~~) must give a receipt to each person paying
2 (~~the~~) excise tax under this chapter.

3 **Sec. 806.** RCW 82.48.080 and 1995 c 170 s 2 are each amended to
4 read as follows:

5 The secretary (~~shall~~) must regularly pay to the state treasurer
6 the excise taxes collected under this chapter(~~(, which shall be~~
7 ~~credited by the state treasurer as follows: Ninety percent to the~~
8 ~~general fund and ten percent to the aeronautics account in the~~
9 ~~transportation fund for administrative expenses)~~) for deposit into the
10 general fund.

11 **Sec. 807.** RCW 82.48.110 and 1967 ex.s. c 9 s 6 are each amended to
12 read as follows:

13 (~~The first tax to be collected under this chapter shall be for the~~
14 ~~calendar year 1968.)~~) (1) No aircraft with respect to which the excise
15 tax imposed by this chapter is payable (~~shall~~) may be listed and
16 assessed for ad valorem taxation so long as this chapter remains in
17 effect(~~(, and any such assessment heretofore made except under~~
18 ~~authority of section 13, chapter 49, Laws of 1949 and section~~
19 ~~82.48.110, chapter 15, Laws of 1961 is hereby directed to be canceled:~~
20 ~~PROVIDED, That)~~).

21 (2) Any aircraft, whether or not subject to the provisions of this
22 chapter, with respect to which the excise tax imposed by this chapter
23 will not be paid or has not been paid for any year (~~shall~~) must be
24 listed and assessed for ad valorem taxation in that year, and the ad
25 valorem tax liability resulting from such listing and assessment
26 (~~shall~~) must be collected in the same manner as though this chapter
27 had not been passed(~~(: PROVIDED FURTHER, That this chapter shall not~~
28 ~~be construed to affect any ad valorem tax based upon assessed~~
29 ~~valuations made in 1948 and/or any preceding year for taxes payable in~~
30 ~~1949 or any preceding year, which ad valorem tax liability tax for any~~
31 ~~such years shall remain payable and collectible in the same manner as~~
32 ~~though this chapter had not been passed)~~).

33 **PART IX**
34 **Foreclosure Exemption**

1 **Sec. 901.** RCW 82.45.010 and 2010 c ... s 206 (section 206 of this
2 act) are each amended to 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, assignment,
8 quitclaim, or transfer, and any lease with an option to purchase real
9 property, including standing timber, or any estate or interest therein
10 or other contract under which possession of the property is given to
11 the purchaser, or any other person at the purchaser's direction, and
12 title to the property is retained by the vendor as security for the
13 payment of the purchase price. The term also includes the grant,
14 assignment, quitclaim, sale, or transfer of improvements constructed
15 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 entity
18 with an interest in real property located in this state for a valuable
19 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 acquisition
24 of the controlling interest is deemed to occur. For all other purposes
25 under this chapter, the date upon which the option is exercised is the
26 date of the transfer or acquisition of the controlling interest.

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

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

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

1 ownership interests supports a finding that they are acting as a single
2 entity. If the acquisitions are completely independent, with each
3 purchaser buying without regard to the identity of the other
4 purchasers, then the acquisitions are considered separate acquisitions.

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

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

7 (b) A transfer of any leasehold interest other than of the type
8 mentioned above.

9 (c) A cancellation or forfeiture of a vendee's interest in a
10 contract for the sale of real property, whether or not such contract
11 contains a forfeiture clause, or deed in lieu of foreclosure of a
12 mortgage.

13 (d) The partition of property by tenants in common by agreement or
14 as the result of a court decree.

15 (e) The assignment of property or interest in property from one
16 spouse or one domestic partner to the other spouse or other domestic
17 partner in accordance with the terms of a decree of dissolution of
18 marriage or state registered domestic partnership or in fulfillment of
19 a property settlement agreement.

20 (f) The assignment or other transfer of a vendor's interest in a
21 contract for the sale of real property, even though accompanied by a
22 conveyance of the vendor's interest in the real property involved.

23 (g) Transfers by appropriation or decree in condemnation
24 proceedings brought by the United States, the state or any political
25 subdivision thereof, or a municipal corporation.

26 (h) A mortgage or other transfer of an interest in real property
27 merely to secure a debt, or the assignment thereof.

28 (i) ~~((Any))~~ A transfer or conveyance made (i) to the beneficiary of
29 a deed of trust pursuant to a trustee's sale in the nonjudicial
30 foreclosure of a deed of trust ((or)); (ii) to the mortgagee,
31 beneficiary of the deed of trust, or lienholder pursuant to an order of
32 sale by the court in the judicial foreclosure of any mortgage, deed of
33 trust, or lien ((foreclosure proceeding or upon execution of a
34 judgment, or)); (iii) to the mortgagee by the mortgagor or to the
35 beneficiary of a deed of trust by the grantor pursuant to deed in lieu
36 of foreclosure to satisfy a mortgage or deed of trust; or (iv) to the
37 judgment creditor pursuant to a writ of execution to enforce a
38 judgment.

1 (j) A conveyance to the federal housing administration or veterans
2 administration by an authorized mortgagee made pursuant to a contract
3 of insurance or guaranty with the federal housing administration or
4 veterans administration.

5 (k) A transfer in compliance with the terms of any lease or
6 contract upon which the tax as imposed by this chapter has been paid or
7 where the lease or contract was entered into prior to the date this tax
8 was first imposed.

9 (l) The sale of any grave or lot in an established cemetery.

10 (m) A sale by the United States, this state or any political
11 subdivision thereof, or a municipal corporation of this state.

12 (n) A sale to a regional transit authority or public corporation
13 under RCW 81.112.320 under a sale/leaseback agreement under RCW
14 81.112.300.

15 (o) A transfer of real property, however effected, if it consists
16 of a mere change in identity or form of ownership of an entity where
17 there is no change in the beneficial ownership. These include
18 transfers to a corporation or partnership which is wholly owned by the
19 transferor and/or the transferor's spouse or domestic partner or
20 children of the transferor or the transferor's spouse or domestic
21 partner. However, if thereafter such transferee corporation or
22 partnership voluntarily transfers such real property, or such
23 transferor, spouse or domestic partner, or children of the transferor
24 or the transferor's spouse or domestic partner voluntarily transfer
25 stock in the transferee corporation or interest in the transferee
26 partnership capital, as the case may be, to other than (i) the
27 transferor and/or the transferor's spouse or domestic partner or
28 children of the transferor or the transferor's spouse or domestic
29 partner, (ii) a trust having the transferor and/or the transferor's
30 spouse or domestic partner or children of the transferor or the
31 transferor's spouse or domestic partner as the only beneficiaries at
32 the time of the transfer to the trust, or (iii) a corporation or
33 partnership wholly owned by the original transferor and/or the
34 transferor's spouse or domestic partner or children of the transferor
35 or the transferor's spouse or domestic partner, within three years of
36 the original transfer to which this exemption applies, and the tax on
37 the subsequent transfer has not been paid within sixty days of becoming

1 due, excise taxes become due and payable on the original transfer as
2 otherwise provided by law.

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

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

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

29 **Sec. 902.** RCW 82.45.080 and 1980 c 154 s 3 are each amended to
30 read as follows:

31 (1) The tax levied under this chapter ~~((shall be))~~ is the
32 obligation of the seller and the department ~~((of revenue))~~ may, at the
33 department's option, enforce the obligation through an action of debt
34 against the seller or the department may proceed in the manner
35 prescribed for the foreclosure of mortgages ~~((and resort to))~~. The
36 department's use of one course of enforcement ~~((shall))~~ is not ~~((be))~~
37 an election not to pursue the other.

1 terminated, dissolved, or abandoned, or is insolvent, the department
2 may pursue collection of the entity's unpaid taxes, including penalties
3 and interest on those taxes, against any or all of the responsible
4 individuals. For purposes of this subsection, "insolvent" means the
5 condition that results when the sum of the entity's debts exceeds the
6 fair market value of its assets. The department may presume that an
7 entity is insolvent if the entity refuses to disclose to the department
8 the nature of its assets and liabilities.

9 (2) Personal liability under this section may be imposed for state
10 and local sales and use taxes, state business and occupation taxes, and
11 any other state and local taxes collected by the department in respect
12 to which the provisions of this chapter apply, regardless of whether
13 the tax is denominated a tax, fee, charge, or some other term.

14 (3)(a) For a responsible individual who is the current or a former
15 chief executive or chief financial officer, liability under this
16 section applies regardless of fault or whether the individual was or
17 should have been aware of the unpaid tax liability of the limited
18 liability business entity.

19 (b) For any other responsible individual, liability under this
20 section applies only if he or she willfully fails to pay or to cause to
21 be paid to the department the taxes due from the limited liability
22 business entity.

23 (4)(a) Except as provided in this subsection (4)(a), a responsible
24 individual who is the current or a former chief executive or chief
25 financial officer is liable under this section only for tax liability
26 accrued during the period that he or she was the chief executive or
27 chief financial officer. However, if the responsible individual had
28 the responsibility or duty to remit payment of the limited liability
29 business entity's taxes to the department during any period of time
30 that the person was not the chief executive or chief financial officer,
31 that individual is also liable for tax liability that became due during
32 the period that he or she had the duty to remit payment of the limited
33 liability business entity's taxes to the department but was not the
34 chief executive or chief financial officer.

35 (b) All other responsible individuals are liable under this section
36 only for tax liability that became due during the period he or she had
37 the ((control, supervision,)) responsibility((,)) or duty to ((act for

1 ~~the corporation described in subsection (1) of this section, plus~~
2 ~~interest and penalties on those taxes.~~

3 ~~(3))~~ remit payment of the limited liability business entity's
4 taxes to the department.

5 ~~(5) Persons ((liable under))~~ described in subsection ((+1)) (3)(b)
6 of this section are exempt from liability under this section in
7 situations where nonpayment of the ((retail sales tax funds held in
8 trust)) limited liability business entity's taxes is due to reasons

9 beyond their control as determined by the department by rule.

10 ~~((+4))~~ (6) Any person having been issued a notice of assessment
11 under this section is entitled to the appeal procedures under RCW
12 82.32.160, 82.32.170, 82.32.180, 82.32.190, and 82.32.200.

13 ~~((+5) This section applies only in situations where the department~~
14 ~~has determined that there is no reasonable means of collecting the~~
15 ~~retail sales tax funds held in trust directly from the corporation.~~

16 ~~(+6))~~ (7) This section does not relieve the ((corporation or))
17 limited liability ((company)) business entity of ((other tax
18 liabilities)) its tax liability or otherwise impair other tax
19 collection remedies afforded by law.

20 ~~((+7))~~ (8) Collection authority and procedures prescribed in this
21 chapter apply to collections under this section.

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

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

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

34 (c) "Limited liability business entity" means a type of business
35 entity that generally shields its owners from personal liability for
36 the debts, obligations, and liabilities of the entity, or a business
37 entity that is managed or owned in whole or in part by an entity that
38 generally shields its owners from personal liability for the debts,

1 obligations, and liabilities of the entity. Limited liability business
2 entities include corporations, limited liability companies, limited
3 liability partnerships, trusts, general partnerships and joint ventures
4 in which one or more of the partners or parties are also limited
5 liability business entities, and limited partnerships in which one or
6 more of the general partners are also limited liability business
7 entities.

8 (d) "Manager" has the same meaning as in RCW 25.15.005.

9 (e) "Member" has the same meaning as in RCW 25.15.005, except that
10 the term only includes members of member-managed limited liability
11 companies.

12 (f) "Officer" means any officer or assistant officer of a
13 corporation, including the president, vice-president, secretary, and
14 treasurer.

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

18 (ii) "Responsible individual" also includes any current or former
19 employee or other individual, but only if the individual had the
20 responsibility or duty to remit payment of the limited liability
21 business entity's unpaid tax liability reflected in a tax warrant
22 issued by the department.

23 (iii) Whenever any taxpayer has one or more limited liability
24 business entities as a member, manager, or partner, "responsible
25 individual" also includes any current and former officers, members, or
26 managers of the limited liability business entity or entities or of any
27 other limited liability business entity involved directly in the
28 management of the taxpayer. For purposes of this subsection
29 (9)(g)(iii), "taxpayer" means a limited liability business entity with
30 an unpaid tax warrant issued against it by the department.

31 (h) "Willfully fails to pay or to cause to be paid" means that the
32 failure was the result of an intentional, conscious, and voluntary
33 course of action.

34 **PART XI**

35 **Repealing the Business and Occupation Tax Credit for New Employment for** 36 **International Service Activities**

1 (C) The economic benefit of the deferral passed to the lessee is no
2 less than the amount of tax deferred by the lessor and is evidenced by
3 written documentation of any type of payment, credit, or other
4 financial arrangement between the lessor or owner of the qualified
5 building and the lessee.

6 (c) "Eligible investment project" does not include any portion of
7 an investment project undertaken by a light and power business as
8 defined in RCW 82.16.010(~~(+5)~~)(4), other than that portion of a
9 cogeneration project that is used to generate power for consumption
10 within the manufacturing site of which the cogeneration project is an
11 integral part, or investment projects (~~(which)~~) that have already
12 received deferrals under this chapter.

13 (5) "Investment project" means an investment in qualified buildings
14 or qualified machinery and equipment, including labor and services
15 rendered in the planning, installation, and construction of the
16 project.

17 (6) "Manufacturing" means the same as defined in RCW 82.04.120.
18 "Manufacturing" also includes:

19 (a) Before July 1, 2010: (i) Computer programming, the production
20 of computer software, and other computer-related services, but only
21 when the computer programming, production of computer software, or
22 other computer-related services are performed by a manufacturer as
23 defined in RCW 82.04.110 and contribute to the production of a new,
24 different, or useful substance or article of tangible personal property
25 for sale; (ii) the activities performed by research and development
26 laboratories and commercial testing laboratories(~~(7)~~); and (iii) the
27 conditioning of vegetable seeds; and

28 (b) Beginning July 1, 2010: (i) The activities performed by
29 research and development laboratories and commercial testing
30 laboratories; and (ii) the conditioning of vegetable seeds.

31 (7) "Person" has the meaning given in RCW 82.04.030.

32 (8) "Qualified buildings" means construction of new structures, and
33 expansion or renovation of existing structures for the purpose of
34 increasing floor space or production capacity used for manufacturing
35 (~~(and)~~) or research and development activities, including plant offices
36 and warehouses or other facilities for the storage of raw material or
37 finished goods if such facilities are an essential or an integral part
38 of a factory, mill, plant, or laboratory used for manufacturing or

1 research and development. If a building is used partly for
2 manufacturing or research and development and partly for other
3 purposes, the applicable tax deferral shall be determined by
4 apportionment of the costs of construction under rules adopted by the
5 department.

6 (9) "Qualified employment position" means a permanent full-time
7 employee employed in the eligible investment project during the entire
8 tax year. The term "entire tax year" means a full-time position that
9 is filled for a period of twelve consecutive months. The term "full-
10 time" means at least thirty-five hours a week, four hundred fifty-five
11 hours a quarter, or one thousand eight hundred twenty hours a year.

12 (10) "Qualified machinery and equipment" means all new industrial
13 and research fixtures, equipment, and support facilities that are an
14 integral and necessary part of a manufacturing or research and
15 development operation. "Qualified machinery and equipment" includes:
16 Computers; software; data processing equipment; laboratory equipment;
17 manufacturing components such as belts, pulleys, shafts, and moving
18 parts; molds, tools, and dies; operating structures; and all equipment
19 used to control or operate the machinery.

20 (11) "Recipient" means a person receiving a tax deferral under this
21 chapter.

22 (12) "Research and development" means the development, refinement,
23 testing, marketing, and commercialization of a product, service, or
24 process before commercial sales have begun, but only when such
25 activities are intended to ultimately result in the production of a
26 new, different, or useful substance or article of tangible personal
27 property for sale. As used in this subsection, "commercial sales"
28 excludes sales of prototypes or sales for market testing if the total
29 gross receipts from such sales of the product, service, or process do
30 not exceed one million dollars.

31 **Sec. 1302.** RCW 82.62.010 and 2007 c 485 s 1 are each amended to
32 read as follows:

33 Unless the context clearly requires otherwise, the definitions in
34 this section apply throughout this chapter.

35 (1) "Applicant" means a person applying for a tax credit under this
36 chapter.

37 (2) "Department" means the department of revenue.

1 (3) "Eligible area" means an area as defined in RCW 82.60.020.

2 (4)(a) "Eligible business project" means manufacturing or research
3 and development activities which are conducted by an applicant in an
4 eligible area at a specific facility, provided the applicant's average
5 qualified employment positions at the specific facility will be at
6 least fifteen percent greater in the four consecutive full calendar
7 quarters after the calendar quarter during which the first qualified
8 employment position is filled than the applicant's average qualified
9 employment positions at the same facility in the four consecutive full
10 calendar quarters immediately preceding the calendar quarter during
11 which the first qualified employment position is filled.

12 (b) "Eligible business project" does not include any portion of a
13 business project undertaken by a light and power business as defined in
14 RCW 82.16.010(~~((+5))~~)(4) or that portion of a business project creating
15 qualified full-time employment positions outside an eligible area.

16 (5) "First qualified employment position" means the first qualified
17 employment position filled for which a credit under this chapter is
18 sought.

19 (6) "Manufacturing" means the same as defined in RCW 82.04.120.
20 "Manufacturing" also includes:

21 (a) Before July 1, 2010: (i) Computer programming, the production
22 of computer software, and other computer-related services, but only
23 when the computer programming, production of computer software, or
24 other computer-related services are performed by a manufacturer as
25 defined in RCW 82.04.110 and contribute to the production of a new,
26 different, or useful substance or article of tangible personal property
27 for sale; and (ii) the activities performed by research and development
28 laboratories and commercial testing laboratories; and

29 (b) Beginning July 1, 2010: (i) The activities performed by
30 research and development laboratories and commercial testing
31 laboratories; and (ii) the conditioning of vegetable seeds.

32 (7) "Person" has the meaning given in RCW 82.04.030.

33 (8)(a)(i) "Qualified employment position" means a permanent full-
34 time employee employed in the eligible business project during four
35 consecutive full calendar quarters.

36 (ii) For seasonal employers, "qualified employment position" also
37 includes the equivalent of a full-time employee in work hours for four
38 consecutive full calendar quarters.

1 (b) For purposes of this subsection, "full time" means a normal
2 work week of at least thirty-five hours.

3 (c) Once a permanent, full-time employee has been employed, a
4 position does not cease to be a qualified employment position solely
5 due to periods in which the position goes vacant, as long as:

6 (i) The cumulative period of any vacancies in that position is not
7 more than one hundred twenty days in the four-quarter period; and

8 (ii) During a vacancy, the employer is training or actively
9 recruiting a replacement permanent, full-time employee for the
10 position.

11 (9) "Recipient" means a person receiving tax credits under this
12 chapter.

13 (10) "Research and development" means the development, refinement,
14 testing, marketing, and commercialization of a product, service, or
15 process before commercial sales have begun, but only when such
16 activities are intended to ultimately result in the production of a
17 new, different, or useful substance or article of tangible personal
18 property for sale. As used in this subsection, "commercial sales"
19 excludes sales of prototypes or sales for market testing if the total
20 gross receipts from such sales of the product, service, or process do
21 not exceed one million dollars.

22 (11) "Seasonal employee" means an employee of a seasonal employer
23 who works on a seasonal basis. For the purposes of this subsection and
24 subsection (12) of this section, "seasonal basis" means a continuous
25 employment period of less than twelve consecutive months.

26 (12) "Seasonal employer" means a person who regularly hires more
27 than fifty percent of its employees to work on a seasonal basis.

28 PART XIV

29 Equalizing Urban and Motor Transportation PUT Rates

30 **Sec. 1401.** RCW 82.16.020 and 2009 c 469 s 702 are each amended to
31 read as follows:

32 (1) There is levied and (~~there shall be~~) collected from every
33 person a tax for the act or privilege of engaging within this state in
34 any one or more of the businesses herein mentioned. The tax (~~shall~~
35 ~~be~~) is equal to the gross income of the business, multiplied by the
36 rate set out after the business, as follows:

- 1 (a) Express, sewerage collection, and telegraph businesses: Three
2 and six-tenths percent;
- 3 (b) Light and power business: Three and sixty-two one-hundredths
4 percent;
- 5 (c) Gas distribution business: Three and six-tenths percent;
- 6 (d) Urban transportation business: (~~Six-tenths~~) one and
7 eight-tenths of one percent;
- 8 (e) Vessels under sixty-five feet in length, except tugboats,
9 operating upon the waters within the state: Six-tenths of one percent;
- 10 (f) Motor transportation, railroad, railroad car, and tugboat
11 businesses, and all public service businesses other than ones mentioned
12 above: One and eight-tenths of one percent;
- 13 (g) Water distribution business: Four and seven-tenths percent;
- 14 (h) Log transportation business: One and twenty-eight one-
15 hundredths percent.
- 16 (2) An additional tax is imposed equal to the rate specified in RCW
17 82.02.030 multiplied by the tax payable under subsection (1) of this
18 section.
- 19 (3) Twenty percent of the moneys collected under subsection (1) of
20 this section on water distribution businesses and sixty percent of the
21 moneys collected under subsection (1) of this section on sewerage
22 collection businesses (~~shall~~) must be deposited in the public works
23 assistance account created in RCW 43.155.050.

24 **Sec. 1402.** RCW 82.16.020 and 1996 c 150 s 2 are each amended to
25 read as follows:

26 (1) There is levied and (~~there shall be~~) collected from every
27 person a tax for the act or privilege of engaging within this state in
28 any one or more of the businesses herein mentioned. The tax (~~shall~~
29 ~~be~~) is equal to the gross income of the business, multiplied by the
30 rate set out after the business, as follows:

- 31 (a) Express, sewerage collection, and telegraph businesses: Three
32 and six-tenths percent;
- 33 (b) Light and power business: Three and sixty-two one-hundredths
34 percent;
- 35 (c) Gas distribution business: Three and six-tenths percent;
- 36 (d) Urban transportation business: (~~Six-tenths~~) One and eight-
37 tenths of one percent;

1 (e) Vessels under sixty-five feet in length, except tugboats,
2 operating upon the waters within the state: Six-tenths of one percent;

3 (f) Motor transportation, railroad, railroad car, and tugboat
4 businesses, and all public service businesses other than ones mentioned
5 above: One and eight-tenths of one percent;

6 (g) Water distribution business: Four and seven-tenths percent.

7 (2) An additional tax is imposed equal to the rate specified in RCW
8 82.02.030 multiplied by the tax payable under subsection (1) of this
9 section.

10 (3) Twenty percent of the moneys collected under subsection (1) of
11 this section on water distribution businesses and sixty percent of the
12 moneys collected under subsection (1) of this section on sewerage
13 collection businesses (~~shall~~) must be deposited in the public works
14 assistance account created in RCW 43.155.050.

15 **PART XV**

16 **Modifying the Sales Tax Exemption for**
17 **Certain Fertilizers, Sprays, and Washes**

18 **Sec. 1501.** RCW 82.04.050 and 2009 c 563 s 301 and 2009 c 535 s 301
19 are each reenacted and amended to read as follows:

20 (1) "Sale at retail" or "retail sale" means every sale of tangible
21 personal property (including articles produced, fabricated, or
22 imprinted) to all persons irrespective of the nature of their business
23 and including, among others, without limiting the scope hereof, persons
24 who install, repair, clean, alter, improve, construct, or decorate real
25 or personal property of or for consumers other than a sale to a person
26 who presents a seller's permit or uniform exemption certificate in
27 conformity with RCW 82.04.470 and who:

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

32 (b) Installs, repairs, cleans, alters, imprints, improves,
33 constructs, or decorates real or personal property of or for consumers,
34 if such tangible personal property becomes an ingredient or component
35 of such real or personal property without intervening use by such
36 person; or

1 (c) Purchases for the purpose of consuming the property purchased
2 in producing for sale a new article of tangible personal property or
3 substance, of which such property becomes an ingredient or component or
4 is a chemical used in processing, when the primary purpose of such
5 chemical is to create a chemical reaction directly through contact with
6 an ingredient of a new article being produced for sale; or

7 (d) Purchases for the purpose of consuming the property purchased
8 in producing ferrosilicon which is subsequently used in producing
9 magnesium for sale, if the primary purpose of such property is to
10 create a chemical reaction directly through contact with an ingredient
11 of ferrosilicon; or

12 (e) Purchases for the purpose of providing the property to
13 consumers as part of competitive telephone service, as defined in RCW
14 82.04.065. The term shall include every sale of tangible personal
15 property which is used or consumed or to be used or consumed in the
16 performance of any activity classified as a "sale at retail" or "retail
17 sale" even though such property is resold or utilized as provided in
18 (a), (b), (c), (d), or (e) of this subsection following such use. The
19 term also means every sale of tangible personal property to persons
20 engaged in any business which is taxable under RCW 82.04.280 (2) and
21 (7), 82.04.290, and 82.04.2908; or

22 (f) Purchases for the purpose of satisfying the person's
23 obligations under an extended warranty as defined in subsection (7) of
24 this section, if such tangible personal property replaces or becomes an
25 ingredient or component of property covered by the extended warranty
26 without intervening use by such person.

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

30 (a) The installing, repairing, cleaning, altering, imprinting, or
31 improving of tangible personal property of or for consumers, including
32 charges made for the mere use of facilities in respect thereto, but
33 excluding charges made for the use of self-service laundry facilities,
34 and also excluding sales of laundry service to nonprofit health care
35 facilities, and excluding services rendered in respect to live animals,
36 birds and insects;

37 (b) The constructing, repairing, decorating, or improving of new or
38 existing buildings or other structures under, upon, or above real

1 property of or for consumers, including the installing or attaching of
2 any article of tangible personal property therein or thereto, whether
3 or not such personal property becomes a part of the realty by virtue of
4 installation, and shall also include the sale of services or charges
5 made for the clearing of land and the moving of earth excepting the
6 mere leveling of land used in commercial farming or agriculture;

7 (c) The constructing, repairing, or improving of any structure
8 upon, above, or under any real property owned by an owner who conveys
9 the property by title, possession, or any other means to the person
10 performing such construction, repair, or improvement for the purpose of
11 performing such construction, repair, or improvement and the property
12 is then reconveyed by title, possession, or any other means to the
13 original owner;

14 (d) The cleaning, fumigating, razing, or moving of existing
15 buildings or structures, but may not include the charge made for
16 janitorial services; and for purposes of this section the term
17 "janitorial services" shall mean those cleaning and caretaking services
18 ordinarily performed by commercial janitor service businesses
19 including, but not limited to, wall and window washing, floor cleaning
20 and waxing, and the cleaning in place of rugs, drapes and upholstery.
21 The term "janitorial services" does not include painting, papering,
22 repairing, furnace or septic tank cleaning, snow removal or
23 sandblasting;

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

27 (f) The furnishing of lodging and all other services by a hotel,
28 rooming house, tourist court, motel, trailer camp, and the granting of
29 any similar license to use real property, as distinguished from the
30 renting or leasing of real property, and it is presumed that the
31 occupancy of real property for a continuous period of one month or more
32 constitutes a rental or lease of real property and not a mere license
33 to use or enjoy the same. For the purposes of this subsection, it
34 shall be presumed that the sale of and charge made for the furnishing
35 of lodging for a continuous period of one month or more to a person is
36 a rental or lease of real property and not a mere license to enjoy the
37 same;

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

3 (h) Persons taxable under (a), (b), (c), (d), (e), (f), and (g) of
4 this subsection when such sales or charges are for property, labor and
5 services which are used or consumed in whole or in part by such persons
6 in the performance of any activity defined as a "sale at retail" or
7 "retail sale" even though such property, labor and services may be
8 resold after such use or consumption. Nothing contained in this
9 subsection shall be construed to modify subsection (1) of this section
10 and nothing contained in subsection (1) of this section may be
11 construed to modify this subsection.

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

17 (a) Amusement and recreation services including but not limited to
18 golf, pool, billiards, skating, bowling, ski lifts and tows, day trips
19 for sightseeing purposes, and others, when provided to consumers;

20 (b) Abstract, title insurance, and escrow services;

21 (c) Credit bureau services;

22 (d) Automobile parking and storage garage services;

23 (e) Landscape maintenance and horticultural services but excluding
24 (i) horticultural services provided to farmers and (ii) pruning,
25 trimming, repairing, removing, and clearing of trees and brush near
26 electric transmission or distribution lines or equipment, if performed
27 by or at the direction of an electric utility;

28 (f) Service charges associated with tickets to professional
29 sporting events; and

30 (g) The following personal services: Physical fitness services,
31 tanning salon services, tattoo parlor services, steam bath services,
32 turkish bath services, escort services, and dating services.

33 (4)(a) The term also includes:

34 (i) The renting or leasing of tangible personal property to
35 consumers; and

36 (ii) Providing tangible personal property along with an operator
37 for a fixed or indeterminate period of time. A consideration of this
38 is that the operator is necessary for the tangible personal property to

1 perform as designed. For the purpose of this subsection (4)(a)(ii), an
2 operator must do more than maintain, inspect, or set up the tangible
3 personal property.

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

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

10 (6)(a) The term also includes the sale of prewritten computer
11 software other than a sale to a person who presents a seller's permit
12 or uniform exemption certificate in conformity with RCW 82.04.470,
13 regardless of the method of delivery to the end user. For purposes of
14 this subsection (6)(a), the sale of prewritten computer software
15 includes the sale of or charge made for a key or an enabling or
16 activation code, where the key or code is required to activate
17 prewritten computer software and put the software into use. There is
18 no separate sale of the key or code from the prewritten computer
19 software, regardless of how the sale may be characterized by the vendor
20 or by the purchaser.

21 The term "retail sale" does not include the sale of or charge made
22 for:

23 (i) Custom software; or

24 (ii) The customization of prewritten computer software.

25 (b) The term also includes the charge made to consumers for the
26 right to access and use prewritten computer software, where possession
27 of the software is maintained by the seller or a third party,
28 regardless of whether the charge for the service is on a per use, per
29 user, per license, subscription, or some other basis.

30 (7) The term also includes the sale of or charge made for an
31 extended warranty to a consumer. For purposes of this subsection,
32 "extended warranty" means an agreement for a specified duration to
33 perform the replacement or repair of tangible personal property at no
34 additional charge or a reduced charge for tangible personal property,
35 labor, or both, or to provide indemnification for the replacement or
36 repair of tangible personal property, based on the occurrence of
37 specified events. The term "extended warranty" does not include an
38 agreement, otherwise meeting the definition of extended warranty in

1 this subsection, if no separate charge is made for the agreement and
2 the value of the agreement is included in the sales price of the
3 tangible personal property covered by the agreement. For purposes of
4 this subsection, "sales price" has the same meaning as in RCW
5 82.08.010.

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

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

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

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

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

16 (b) A retail sale of digital goods, digital codes, or digital
17 automated services under this subsection (8) includes any services
18 provided by the seller exclusively in connection with the digital
19 goods, digital codes, or digital automated services, whether or not a
20 separate charge is made for such services.

21 (c) For purposes of this subsection, "permanent" means perpetual or
22 for an indefinite or unspecified length of time. A right of permanent
23 use is presumed to have been granted unless the agreement between the
24 seller and the purchaser specifies or the circumstances surrounding the
25 transaction suggest or indicate that the right to use terminates on the
26 occurrence of a condition subsequent.

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

35 (10) The term also does not include sales of:

36 (a) Chemical sprays or washes (~~to persons for the purpose of~~
37 ~~postharvest treatment of fruit for the prevention of scald, fungus,~~

1 ~~mold, or decay, nor does it include sales of~~), fertilizer, and spray
2 materials as provided in section 1503 of this act; and

3 (b) Feed, seed, seedlings, (~~fertilizer,~~) and agents for enhanced
4 pollination including insects such as bees(~~, and spray materials~~) to:

5 ~~((a))~~ (i) Persons who participate in the federal conservation
6 reserve program, the environmental quality incentives program, the
7 wetlands reserve program, ~~(and)~~ or the wildlife habitat incentives
8 program, or their successors administered by the United States
9 department of agriculture;

10 ~~((b))~~ (ii) Farmers for the purpose of producing for sale any
11 agricultural product; and

12 ~~((c))~~ (iii) Farmers acting under cooperative habitat development
13 or access contracts with an organization exempt from federal income tax
14 under ~~(Title)~~ 26 U.S.C. Sec. 501(c)(3) of the federal internal
15 revenue code or the Washington state department of fish and wildlife to
16 produce or improve wildlife habitat on land that the farmer owns or
17 leases.

18 (11) The term does not include the sale of or charge made for labor
19 and services rendered in respect to the constructing, repairing,
20 decorating, or improving of new or existing buildings or other
21 structures under, upon, or above real property of or for the United
22 States, any instrumentality thereof, or a county or city housing
23 authority created pursuant to chapter 35.82 RCW, including the
24 installing, or attaching of any article of tangible personal property
25 therein or thereto, whether or not such personal property becomes a
26 part of the realty by virtue of installation. Nor does the term
27 include the sale of services or charges made for the clearing of land
28 and the moving of earth of or for the United States, any
29 instrumentality thereof, or a county or city housing authority. Nor
30 does the term include the sale of services or charges made for cleaning
31 up for the United States, or its instrumentalities, radioactive waste
32 and other by-products of weapons production and nuclear research and
33 development.

34 (12) The term does not include the sale of or charge made for
35 labor, services, or tangible personal property pursuant to agreements
36 providing maintenance services for bus, rail, or rail fixed guideway
37 equipment when a regional transit authority is the recipient of the

1 labor, services, or tangible personal property, and a transit agency,
2 as defined in RCW 81.104.015, performs the labor or services.

3 **Sec. 1502.** RCW 82.04.050 and 2009 c 563 s 301 and 2009 c 535 s 301
4 are each reenacted and amended to read as follows:

5 (1) "Sale at retail" or "retail sale" means every sale of tangible
6 personal property (including articles produced, fabricated, or
7 imprinted) to all persons irrespective of the nature of their business
8 and including, among others, without limiting the scope hereof, persons
9 who install, repair, clean, alter, improve, construct, or decorate real
10 or personal property of or for consumers other than a sale to a person
11 who presents a seller's permit or uniform exemption certificate in
12 conformity with RCW 82.04.470 and who:

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

17 (b) Installs, repairs, cleans, alters, imprints, improves,
18 constructs, or decorates real or personal property of or for consumers,
19 if such tangible personal property becomes an ingredient or component
20 of such real or personal property without intervening use by such
21 person; or

22 (c) Purchases for the purpose of consuming the property purchased
23 in producing for sale a new article of tangible personal property or
24 substance, of which such property becomes an ingredient or component or
25 is a chemical used in processing, when the primary purpose of such
26 chemical is to create a chemical reaction directly through contact with
27 an ingredient of a new article being produced for sale; or

28 (d) Purchases for the purpose of consuming the property purchased
29 in producing ferrosilicon which is subsequently used in producing
30 magnesium for sale, if the primary purpose of such property is to
31 create a chemical reaction directly through contact with an ingredient
32 of ferrosilicon; or

33 (e) Purchases for the purpose of providing the property to
34 consumers as part of competitive telephone service, as defined in RCW
35 82.04.065. The term shall include every sale of tangible personal
36 property which is used or consumed or to be used or consumed in the
37 performance of any activity classified as a "sale at retail" or "retail

1 sale" even though such property is resold or utilized as provided in
2 (a), (b), (c), (d), or (e) of this subsection following such use. The
3 term also means every sale of tangible personal property to persons
4 engaged in any business which is taxable under RCW 82.04.280 (2) and
5 (7), 82.04.290, and 82.04.2908; or

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

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

14 (a) The installing, repairing, cleaning, altering, imprinting, or
15 improving of tangible personal property of or for consumers, including
16 charges made for the mere use of facilities in respect thereto, but
17 excluding charges made for the use of self-service laundry facilities,
18 and also excluding sales of laundry service to nonprofit health care
19 facilities, and excluding services rendered in respect to live animals,
20 birds and insects;

21 (b) The constructing, repairing, decorating, or improving of new or
22 existing buildings or other structures under, upon, or above real
23 property of or for consumers, including the installing or attaching of
24 any article of tangible personal property therein or thereto, whether
25 or not such personal property becomes a part of the realty by virtue of
26 installation, and shall also include the sale of services or charges
27 made for the clearing of land and the moving of earth excepting the
28 mere leveling of land used in commercial farming or agriculture;

29 (c) The constructing, repairing, or improving of any structure
30 upon, above, or under any real property owned by an owner who conveys
31 the property by title, possession, or any other means to the person
32 performing such construction, repair, or improvement for the purpose of
33 performing such construction, repair, or improvement and the property
34 is then reconveyed by title, possession, or any other means to the
35 original owner;

36 (d) The cleaning, fumigating, razing, or moving of existing
37 buildings or structures, but may not include the charge made for
38 janitorial services; and for purposes of this section the term

1 "janitorial services" shall mean those cleaning and caretaking services
2 ordinarily performed by commercial janitor service businesses
3 including, but not limited to, wall and window washing, floor cleaning
4 and waxing, and the cleaning in place of rugs, drapes and upholstery.
5 The term "janitorial services" does not include painting, papering,
6 repairing, furnace or septic tank cleaning, snow removal or
7 sandblasting;

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

11 (f) The furnishing of lodging and all other services by a hotel,
12 rooming house, tourist court, motel, trailer camp, and the granting of
13 any similar license to use real property, as distinguished from the
14 renting or leasing of real property, and it is presumed that the
15 occupancy of real property for a continuous period of one month or more
16 constitutes a rental or lease of real property and not a mere license
17 to use or enjoy the same. For the purposes of this subsection, it
18 shall be presumed that the sale of and charge made for the furnishing
19 of lodging for a continuous period of one month or more to a person is
20 a rental or lease of real property and not a mere license to enjoy the
21 same;

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

24 (h) Persons taxable under (a), (b), (c), (d), (e), (f), and (g) of
25 this subsection when such sales or charges are for property, labor and
26 services which are used or consumed in whole or in part by such persons
27 in the performance of any activity defined as a "sale at retail" or
28 "retail sale" even though such property, labor and services may be
29 resold after such use or consumption. Nothing contained in this
30 subsection shall be construed to modify subsection (1) of this section
31 and nothing contained in subsection (1) of this section may be
32 construed to modify this subsection.

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

1 (a) Amusement and recreation services including but not limited to
2 golf, pool, billiards, skating, bowling, ski lifts and tows, day trips
3 for sightseeing purposes, and others, when provided to consumers;

4 (b) Abstract, title insurance, and escrow services;

5 (c) Credit bureau services;

6 (d) Automobile parking and storage garage services;

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

12 (f) Service charges associated with tickets to professional
13 sporting events; and

14 (g) The following personal services: Physical fitness services,
15 tanning salon services, tattoo parlor services, steam bath services,
16 turkish bath services, escort services, and dating services.

17 (4)(a) The term also includes:

18 (i) The renting or leasing of tangible personal property to
19 consumers; and

20 (ii) Providing tangible personal property along with an operator
21 for a fixed or indeterminate period of time. A consideration of this
22 is that the operator is necessary for the tangible personal property to
23 perform as designed. For the purpose of this subsection (4)(a)(ii), an
24 operator must do more than maintain, inspect, or set up the tangible
25 personal property.

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

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

32 (6)(a) The term also includes the sale of prewritten computer
33 software other than a sale to a person who presents a seller's permit
34 or uniform exemption certificate in conformity with RCW 82.04.470,
35 regardless of the method of delivery to the end user. For purposes of
36 this subsection (6)(a), the sale of prewritten computer software
37 includes the sale of or charge made for a key or an enabling or
38 activation code, where the key or code is required to activate

1 prewritten computer software and put the software into use. There is
2 no separate sale of the key or code from the prewritten computer
3 software, regardless of how the sale may be characterized by the vendor
4 or by the purchaser.

5 The term "retail sale" does not include the sale of or charge made
6 for:

- 7 (i) Custom software; or
- 8 (ii) The customization of prewritten computer software.

9 (b) The term also includes the charge made to consumers for the
10 right to access and use prewritten computer software, where possession
11 of the software is maintained by the seller or a third party,
12 regardless of whether the charge for the service is on a per use, per
13 user, per license, subscription, or some other basis.

14 (7) The term also includes the sale of or charge made for an
15 extended warranty to a consumer. For purposes of this subsection,
16 "extended warranty" means an agreement for a specified duration to
17 perform the replacement or repair of tangible personal property at no
18 additional charge or a reduced charge for tangible personal property,
19 labor, or both, or to provide indemnification for the replacement or
20 repair of tangible personal property, based on the occurrence of
21 specified events. The term "extended warranty" does not include an
22 agreement, otherwise meeting the definition of extended warranty in
23 this subsection, if no separate charge is made for the agreement and
24 the value of the agreement is included in the sales price of the
25 tangible personal property covered by the agreement. For purposes of
26 this subsection, "sales price" has the same meaning as in RCW
27 82.08.010.

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

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

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

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

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

1 (b) A retail sale of digital goods, digital codes, or digital
2 automated services under this subsection (8) includes any services
3 provided by the seller exclusively in connection with the digital
4 goods, digital codes, or digital automated services, whether or not a
5 separate charge is made for such services.

6 (c) For purposes of this subsection, "permanent" means perpetual or
7 for an indefinite or unspecified length of time. A right of permanent
8 use is presumed to have been granted unless the agreement between the
9 seller and the purchaser specifies or the circumstances surrounding the
10 transaction suggest or indicate that the right to use terminates on the
11 occurrence of a condition subsequent.

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

20 (10) The term also does not include sales of:

21 (a) Chemical sprays or washes ((to persons for the purpose of
22 postharvest treatment of fruit for the prevention of scald, fungus,
23 mold, or decay, nor does it include sales of)), fertilizer, and spray
24 materials as provided in section 1504 of this act; and

25 (b) Feed, seed, seedlings, ((fertilizer,)) and agents for enhanced
26 pollination including insects such as bees((, and spray materials)) to:

27 ((a)) (i) Persons who participate in the federal conservation
28 reserve program, the environmental quality incentives program, the
29 wetlands reserve program, ((and)) or the wildlife habitat incentives
30 program, or their successors administered by the United States
31 department of agriculture;

32 ((b)) (ii) Farmers for the purpose of producing for sale any
33 agricultural product; and

34 ((c)) (iii) Farmers acting under cooperative habitat development
35 or access contracts with an organization exempt from federal income tax
36 under ((Title)) 26 U.S.C. Sec. 501(c)(3) of the federal internal
37 revenue code or the Washington state department of fish and wildlife to

1 produce or improve wildlife habitat on land that the farmer owns or
2 leases.

3 (11) The term does not include the sale of or charge made for labor
4 and services rendered in respect to the constructing, repairing,
5 decorating, or improving of new or existing buildings or other
6 structures under, upon, or above real property of or for the United
7 States, any instrumentality thereof, or a county or city housing
8 authority created pursuant to chapter 35.82 RCW, including the
9 installing, or attaching of any article of tangible personal property
10 therein or thereto, whether or not such personal property becomes a
11 part of the realty by virtue of installation. Nor does the term
12 include the sale of services or charges made for the clearing of land
13 and the moving of earth of or for the United States, any
14 instrumentality thereof, or a county or city housing authority. Nor
15 does the term include the sale of services or charges made for cleaning
16 up for the United States, or its instrumentalities, radioactive waste
17 and other by-products of weapons production and nuclear research and
18 development.

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

25 NEW SECTION. **Sec. 1503.** A new section is added to chapter 82.04
26 RCW to read as follows:

27 (1) As provided by RCW 82.04.050(10), the term "sale at retail" or
28 "retail sale" does not include sales of:

29 (a) Registered chemical sprays or washes to persons for the purpose
30 of postharvest treatment of fruit for the prevention of scald, fungus,
31 mold, or decay; and

32 (b) Registered fertilizer and spray materials to:

33 (i) Persons who participate in the federal conservation reserve
34 program, the environmental quality incentives program, the wetlands
35 reserve program, or the wildlife habitat incentives program, or their
36 successors administered by the United States department of agriculture;

1 (ii) Farmers for the purpose of producing for sale any agricultural
2 product; and

3 (iii) Farmers acting under cooperative habitat development or
4 access contracts with an organization exempt from federal income tax
5 under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code or
6 the Washington state department of fish and wildlife to produce or
7 improve wildlife habitat on land that the farmer owns or leases.

8 (2) The definitions in this subsection apply to this section:

9 (a) "Brand name materials list" means a list established by the
10 state department of agriculture of materials allowed for use in organic
11 production, processing, or handling under standards of the national
12 organic program.

13 (b) "National organic program" means a program authorized by the
14 organic foods production act of 1990, as amended, 7 U.S.C. Sec. 6501 et
15 seq., and the rules adopted thereunder for agricultural products
16 marketed and labeled using the term "organic" or a derivative of the
17 term "organic."

18 (c) "Registered" means registration by the state department of
19 agriculture and inclusion in the brand name materials list as provided
20 under section 9, chapter . . . ([House Bill No. 2460] [Senate Bill No.
21 6228]), Laws of 2010.

22 NEW SECTION. **Sec. 1504.** A new section is added to chapter 82.04
23 RCW to read as follows:

24 (1) As provided by RCW 82.04.050(10), the term "sale at retail" or
25 "retail sale" does not include sales of:

26 (a) Listed chemical sprays or washes to persons for the purpose of
27 postharvest treatment of fruit for the prevention of scald, fungus,
28 mold, or decay; and

29 (b) Listed fertilizer and spray materials to:

30 (i) Persons who participate in the federal conservation reserve
31 program, the environmental quality incentives program, the wetlands
32 reserve program, or the wildlife habitat incentives program, or their
33 successors administered by the United States department of agriculture;

34 (ii) Farmers for the purpose of producing for sale any agricultural
35 product; and

36 (iii) Farmers acting under cooperative habitat development or
37 access contracts with an organization exempt from federal income tax

1 under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code or
2 the Washington state department of fish and wildlife to produce or
3 improve wildlife habitat on land that the farmer owns or leases.

4 (2) The definitions in this subsection apply to this section:

5 (a) "Listed" means inclusion in the OMRI products list published by
6 the organic materials review institute as of July 1, 2010, or such
7 subsequent date as the department may provide by rule, consistent with
8 the purposes of this section.

9 (b) "National organic program" means a program authorized by the
10 organic foods production act of 1990, as amended, 7 U.S.C. Sec. 6501 et
11 seq., and the rules adopted thereunder for agricultural products
12 marketed and labeled using the term "organic" or a derivative of the
13 term "organic."

14 (c) "OMRI products list" means a directory of products that the
15 organic materials review institute has reviewed and determined are
16 allowed for use in organic production, processing, or handling under
17 standards of the national organic program.

18 (d) "Organic materials review institute" means an organization
19 exempt from tax under 26 U.S.C. Sec. 501(c)(3) of the federal internal
20 revenue code that provides a third-party review of materials that are
21 allowed for use in organic production, processing, or handling under
22 standards of the national organic program.

23 PART XVI

24 Deductions, Fees, Dues, and Charges

25 **Sec. 1601.** RCW 82.04.4282 and 2009 c 535 s 410 are each amended to
26 read as follows:

27 In computing tax there may be deducted from the measure of tax
28 amounts derived from bona fide (1) dues and initiation fees paid to
29 nonprofit organizations exempt from the federal income tax under 26
30 U.S.C. Sec. 501(c)(3), (c)(4), (c)(5), (c)(6), (c)(8), (c)(10), or
31 (c)(19) of the federal internal revenue code, as amended as of January
32 1, 2010, (2) (~~dues, (3)~~) contributions, (~~(4)~~) (3) donations,
33 (~~(5)~~) (4) tuition fees, (~~(6)~~) (5) charges made by a nonprofit trade
34 or professional organization for attending or occupying space at a
35 trade show, convention, or educational seminar sponsored by the
36 nonprofit trade or professional organization, which trade show,

1 convention, or educational seminar is not open to the general public,
2 ((+7)) (6) charges made for operation of privately operated
3 kindergartens, and ((+8)) (7) endowment funds. This section may not
4 be construed to exempt any person, association, or society from tax
5 liability upon selling tangible personal property, digital goods,
6 digital codes, or digital automated services, or upon providing
7 facilities or other services for which a special charge is made to
8 members or others. If dues are in exchange for any significant amount
9 of goods or services rendered by the recipient thereof to members
10 without any additional charge to the member, or if the dues are
11 graduated upon the amount of goods or services rendered, the value of
12 such goods or services (~~shall~~) may not be considered as a deduction
13 under this section.

14 **PART XVII**

15 **Limiting the Bad Debt Deduction**

16 NEW SECTION. **Sec. 1701.** The legislature intends with sections
17 1702 and 1703 of this act to supersede the holding of the supreme court
18 of the state of Washington in *Puget Sound National Bank v. Department*
19 *of Revenue*, 123 Wn.2d 284 (1994).

20 **Sec. 1702.** RCW 82.08.037 and 2007 c 6 s 102 are each amended to
21 read as follows:

22 (1) A seller is entitled to a credit or refund for sales taxes
23 previously paid on bad debts, as that term is used in 26 U.S.C. Sec.
24 166, as amended or renumbered as of January 1, 2003.

25 (2) For purposes of this section, "bad debts" does not include:

26 (a) Amounts due on property that remains in the possession of the
27 seller until the full purchase price is paid;

28 (b) Expenses incurred in attempting to collect debt; (~~and~~)

29 (c) Debts sold or assigned by the seller to third parties, where
30 the third party is without recourse against the seller; and

31 (d) Repossessed property.

32 (3) If a credit or refund of sales tax is taken for a bad debt and
33 the debt is subsequently collected in whole or in part, the tax on the
34 amount collected must be paid and reported on the return filed for the
35 period in which the collection is made.

1 (4) Payments on a previously claimed bad debt are applied first
2 proportionally to the taxable price of the property or service and the
3 sales or use tax thereon, and secondly to interest, service charges,
4 and any other charges.

5 (5) If the seller uses a certified service provider as defined in
6 RCW 82.32.020 to administer its sales tax responsibilities, the
7 certified service provider may claim, on behalf of the seller, the
8 credit or refund allowed by this section. The certified service
9 provider must credit or refund the full amount received to the seller.

10 (6) The department (~~shall~~) must allow an allocation of bad debts
11 among member states to the streamlined sales tax agreement, as defined
12 in RCW 82.58.010(1), if the books and records of the person claiming
13 bad debts support the allocation.

14 (7) A person's right to claim a credit or refund under this section
15 is not assignable. No person other than the original seller in the
16 transaction that generated the bad debt or, as provided in subsection
17 (5) of this section, a certified service provider, is entitled to claim
18 a credit or refund under this section. If the original seller in the
19 transaction that generated the bad debt has sold or assigned the debt
20 instrument to a third party with recourse, the original seller may
21 claim a credit or refund under this section only after the debt
22 instrument is reassigned by the third party to the original seller.

23 **Sec. 1703.** RCW 82.12.037 and 2007 c 6 s 103 are each amended to
24 read as follows:

25 (1) A seller is entitled to a credit or refund for use taxes
26 previously paid on bad debts, as that term is used in 26 U.S.C. Sec.
27 166, as amended or renumbered as of January 1, 2003.

28 (2) For purposes of this section, "bad debts" does not include:

29 (a) Amounts due on property that remains in the possession of the
30 seller until the full purchase price is paid;

31 (b) Expenses incurred in attempting to collect debt; (~~and~~)

32 (c) Debts sold or assigned by the seller to third parties, where
33 the third party is without recourse against the seller; and

34 (d) Repossessed property.

35 (3) If a credit or refund of use tax is taken for a bad debt and
36 the debt is subsequently collected in whole or in part, the tax on the

1 amount collected must be paid and reported on the return filed for the
2 period in which the collection is made.

3 (4) Payments on a previously claimed bad debt are applied first
4 proportionally to the taxable price of the property or service and the
5 sales or use tax thereon, and secondly to interest, service charges,
6 and any other charges.

7 (5) If the seller uses a certified service provider as defined in
8 RCW 82.32.020 to administer its use tax responsibilities, the certified
9 service provider may claim, on behalf of the seller, the credit or
10 refund allowed by this section. The certified service provider must
11 credit or refund the full amount received to the seller.

12 (6) The department (~~shall~~) must allow an allocation of bad debts
13 among member states to the streamlined sales and use tax agreement, as
14 defined in RCW 82.58.010(1), if the books and records of the person
15 claiming bad debts support the allocation.

16 (7) A person's right to claim a credit or refund under this section
17 is not assignable. No person other than the original seller in the
18 transaction that generated the bad debt or, as provided in subsection
19 (5) of this section, a certified service provider, is entitled to claim
20 a credit or refund under this section. If the original seller in the
21 transaction that generated the bad debt has sold or assigned the debt
22 instrument to a third party with recourse, the original seller may
23 claim a credit or refund under this section only after the debt
24 instrument is reassigned by the third party to the original seller.

25 **PART XVIII**
26 **Brokered Natural Gas**

27 **Sec. 1801.** RCW 82.12.010 and 2009 c 535 s 304 are each amended to
28 read as follows:

29 For the purposes of this chapter:

30 (1) "Purchase price" means the same as sales price as defined in
31 RCW 82.08.010;

32 (2)(a) "Value of the article used" shall be the purchase price for
33 the article of tangible personal property, the use of which is taxable
34 under this chapter. The term also includes, in addition to the
35 purchase price, the amount of any tariff or duty paid with respect to
36 the importation of the article used. In case the article used is

1 acquired by lease or by gift or is extracted, produced, or manufactured
2 by the person using the same or is sold under conditions wherein the
3 purchase price does not represent the true value thereof, the value of
4 the article used (~~((shall be))~~) is determined as nearly as possible
5 according to the retail selling price at place of use of similar
6 products of like quality and character under such rules as the
7 department may prescribe.

8 (b) In case the articles used are acquired by bailment, the value
9 of the use of the articles so used (~~((shall))~~) must be in an amount
10 representing a reasonable rental for the use of the articles so bailed,
11 determined as nearly as possible according to the value of such use at
12 the places of use of similar products of like quality and character
13 under such rules as the department of revenue may prescribe. In case
14 any such articles of tangible personal property are used in respect to
15 the construction, repairing, decorating, or improving of, and which
16 become or are to become an ingredient or component of, new or existing
17 buildings or other structures under, upon, or above real property of or
18 for the United States, any instrumentality thereof, or a county or city
19 housing authority created pursuant to chapter 35.82 RCW, including the
20 installing or attaching of any such articles therein or thereto,
21 whether or not such personal property becomes a part of the realty by
22 virtue of installation, then the value of the use of such articles so
23 used (~~((shall be))~~) is determined according to the retail selling price
24 of such articles, or in the absence of such a selling price, as nearly
25 as possible according to the retail selling price at place of use of
26 similar products of like quality and character or, in the absence of
27 either of these selling price measures, such value may be determined
28 upon a cost basis, in any event under such rules as the department of
29 revenue may prescribe.

30 (c) In the case of articles owned by a user engaged in business
31 outside the state which are brought into the state for no more than one
32 hundred eighty days in any period of three hundred sixty-five
33 consecutive days and which are temporarily used for business purposes
34 by the person in this state, the value of the article used (~~((shall))~~)
35 must be an amount representing a reasonable rental for the use of the
36 articles, unless the person has paid tax under this chapter or chapter
37 82.08 RCW upon the full value of the article used, as defined in (a) of
38 this subsection.

1 (d) In the case of articles manufactured or produced by the user
2 and used in the manufacture or production of products sold or to be
3 sold to the department of defense of the United States, the value of
4 the articles used (~~(shall be)~~) is determined according to the value of
5 the ingredients of such articles.

6 (e) In the case of an article manufactured or produced for purposes
7 of serving as a prototype for the development of a new or improved
8 product, the value of the article used (~~(shall be)~~) is determined by:

9 (i) The retail selling price of such new or improved product when first
10 offered for sale; or (ii) the value of materials incorporated into the
11 prototype in cases in which the new or improved product is not offered
12 for sale.

13 (f) In the case of an article purchased with a direct pay permit
14 under RCW 82.32.087, the value of the article used (~~(shall be)~~) is
15 determined by the purchase price of such article if, but for the use of
16 the direct pay permit, the transaction would have been subject to sales
17 tax;

18 (3) "Value of the service used" means the purchase price for the
19 digital automated service or other service, the use of which is taxable
20 under this chapter. If the service is received by gift or under
21 conditions wherein the purchase price does not represent the true value
22 thereof, the value of the service used (~~(shall)~~) must be determined as
23 nearly as possible according to the retail selling price at place of
24 use of similar services of like quality and character under rules the
25 department may prescribe;

26 (4) "Value of the extended warranty used" means the purchase price
27 for the extended warranty, the use of which is taxable under this
28 chapter. If the extended warranty is received by gift or under
29 conditions wherein the purchase price does not represent the true value
30 of the extended warranty, the value of the extended warranty used
31 (~~(shall)~~) must be determined as nearly as possible according to the
32 retail selling price at place of use of similar extended warranties of
33 like quality and character under rules the department may prescribe;

34 (5) "Value of the digital good or digital code used" means the
35 purchase price for the digital good or digital code, the use of which
36 is taxable under this chapter. If the digital good or digital code is
37 acquired other than by purchase, the value of the digital good or
38 digital code must be determined as nearly as possible according to the

1 retail selling price at place of use of similar digital goods or
2 digital codes of like quality and character under rules the department
3 may prescribe;

4 (6) "Use," "used," "using," or "put to use" have their ordinary
5 meaning, and mean:

6 (a) With respect to tangible personal property, except for natural
7 gas and manufactured gas, the first act within this state by which the
8 taxpayer takes or assumes dominion or control over the article of
9 tangible personal property (as a consumer), and include installation,
10 storage, withdrawal from storage, distribution, or any other act
11 preparatory to subsequent actual use or consumption within this state;

12 (b) With respect to a service defined in RCW 82.04.050(2)(a), the
13 first act within this state after the service has been performed by
14 which the taxpayer takes or assumes dominion or control over the
15 article of tangible personal property upon which the service was
16 performed (as a consumer), and includes installation, storage,
17 withdrawal from storage, distribution, or any other act preparatory to
18 subsequent actual use or consumption of the article within this state;

19 (c) With respect to an extended warranty, the first act within this
20 state after the extended warranty has been acquired by which the
21 taxpayer takes or assumes dominion or control over the article of
22 tangible personal property to which the extended warranty applies, and
23 includes installation, storage, withdrawal from storage, distribution,
24 or any other act preparatory to subsequent actual use or consumption of
25 the article within this state;

26 (d) With respect to a digital good or digital code, the first act
27 within this state by which the taxpayer, as a consumer, views,
28 accesses, downloads, possesses, stores, opens, manipulates, or
29 otherwise uses or enjoys the digital good or digital code;

30 (e) With respect to a digital automated service, the first act
31 within this state by which the taxpayer, as a consumer, uses, enjoys,
32 or otherwise receives the benefit of the service;

33 (f) With respect to a service defined as a retail sale in RCW
34 82.04.050(6)(b), the first act within this state by which the taxpayer,
35 as a consumer, accesses the prewritten computer software; (~~and~~)

36 (g) With respect to a service defined as a retail sale in RCW
37 82.04.050(2)(g), the first act within this state after the service has

1 been performed by which the taxpayer, as a consumer, views, accesses,
2 downloads, possesses, stores, opens, manipulates, or otherwise uses or
3 enjoys the digital good upon which the service was performed; and

4 (h) With respect to natural gas or manufactured gas, the use of
5 which is taxable under RCW 82.12.022, including gas that is also
6 taxable under the authority of RCW 82.14.230, the first act within this
7 state by which the taxpayer consumes the gas by burning the gas or
8 storing the gas in the taxpayer's own facilities for later consumption
9 by the taxpayer;

10 (7) "Taxpayer" and "purchaser" include all persons included within
11 the meaning of the word "buyer" and the word "consumer" as defined in
12 chapters 82.04 and 82.08 RCW;

13 (8)(a)(i) Except as provided in (a)(ii) of this subsection (8),
14 "retailer" means every seller as defined in RCW 82.08.010 and every
15 person engaged in the business of selling tangible personal property at
16 retail and every person required to collect from purchasers the tax
17 imposed under this chapter.

18 (ii) "Retailer" does not include a professional employer
19 organization when a covered employee coemployed with the client under
20 the terms of a professional employer agreement engages in activities
21 that constitute a sale of tangible personal property, extended
22 warranty, digital good, digital code, or a sale of any digital
23 automated service or service defined as a retail sale in RCW 82.04.050
24 (2)(a) or (g), (3)(a), or (6)(b) that is subject to the tax imposed by
25 this chapter. In such cases, the client, and not the professional
26 employer organization, is deemed to be the retailer and is responsible
27 for collecting and remitting the tax imposed by this chapter.

28 (b) For the purposes of (a) of this subsection, the terms "client,"
29 "covered employee," "professional employer agreement," and
30 "professional employer organization" have the same meanings as in RCW
31 82.04.540;

32 (9) "Extended warranty" has the same meaning as in RCW
33 82.04.050(7);

34 (10) The meaning ascribed to words and phrases in chapters 82.04
35 and 82.08 RCW, insofar as applicable, shall have full force and effect
36 with respect to taxes imposed under the provisions of this chapter.

37 "Consumer," in addition to the meaning ascribed to it in chapters 82.04
38 and 82.08 RCW insofar as applicable, shall also mean any person who

1 distributes or displays, or causes to be distributed or displayed, any
2 article of tangible personal property, except newspapers, the primary
3 purpose of which is to promote the sale of products or services. With
4 respect to property distributed to persons within this state by a
5 consumer as defined in this subsection (10), the use of the property
6 shall be deemed to be by such consumer.

7 **Sec. 1802.** RCW 82.14.230 and 1989 c 384 s 2 are each amended to
8 read as follows:

9 (1) The governing body of any city, while not required by
10 legislative mandate to do so, may, by resolution or ordinance for the
11 purposes authorized by this chapter, fix and impose on every person a
12 use tax for the privilege of using natural gas or manufactured gas in
13 the city as a consumer.

14 (2) The tax (~~((shall be))~~) is imposed in an amount equal to the value
15 of the article used by the taxpayer multiplied by the rate in effect
16 for the tax on natural gas businesses under RCW 35.21.870 in the city
17 in which the article is used. The "value of the article used," does
18 not include any amounts that are paid for the hire or use of a natural
19 gas business in transporting the gas subject to tax under this
20 subsection if those amounts are subject to tax under RCW 35.21.870.

21 (3) The tax imposed under this section (~~((shall))~~) does not apply to
22 the use of natural or manufactured gas if the person who sold the gas
23 to the consumer has paid a tax under RCW 35.21.870 with respect to the
24 gas for which exemption is sought under this subsection.

25 (4) There (~~((shall be))~~) is a credit against the tax levied under
26 this section in an amount equal to any tax paid by:

27 (a) The person who sold the gas to the consumer when that tax is a
28 gross receipts tax similar to that imposed pursuant to RCW 35.21.870 by
29 another (~~((state))~~) municipality or other unit of local government with
30 respect to the gas for which a credit is sought under this subsection;
31 or

32 (b) The person consuming the gas upon which a use tax similar to
33 the tax imposed by this section was paid to another (~~((state))~~)
34 municipality or other unit of local government with respect to the gas
35 for which a credit is sought under this subsection.

36 (5) The use tax (~~((hereby))~~) imposed (~~((shall))~~) must be paid by the

1 consumer. The administration and collection of the tax ((hereby))
2 imposed ((shall be)) is pursuant to RCW 82.14.050.

3 **PART XIX**

4 **Limiting Community Solar Incentives**

5 **Sec. 1901.** RCW 82.16.110 and 2009 c 469 s 504 are each amended to
6 read as follows:

7 The definitions in this section apply throughout this chapter
8 unless the context clearly requires otherwise.

9 (1)(a) "Community solar project" means:

10 (i) A solar energy system that produces a maximum instantaneous
11 power output of one hundred kilowatts of electricity and is owned by
12 local individuals, households, nonprofit organizations, or nonutility
13 businesses that is placed on the property owned by a cooperating local
14 governmental entity that is not in the light and power business or in
15 the gas distribution business; or

16 (ii) A utility-owned solar energy system that produces a maximum
17 instantaneous power output of one hundred kilowatts of electricity and
18 that is voluntarily funded by the utility's ratepayers where, in
19 exchange for their financial support, the utility gives contributors a
20 payment or credit on their utility bill for the value of the
21 electricity produced by the project.

22 (b) For the purposes of "community solar project" as defined in (a)
23 of this subsection:

24 (i) "Nonprofit organization" means an organization exempt from
25 taxation under Title 26 U.S.C. Sec. 501(c)(3) of the federal internal
26 revenue code of 1986, as amended, as of January 1, 2009; and

27 (ii) "Utility" means a light and power business, an electric
28 cooperative, or a mutual corporation that provides electricity service.

29 (2) "Customer-generated electricity" means a community solar
30 project or the alternating current electricity that is generated from
31 a renewable energy system located in Washington and installed on an
32 individual's, businesses', or local government's real property that is
33 also provided electricity generated by a light and power business.
34 Except for community solar projects, a system located on a leasehold
35 interest does not qualify under this definition. Except for utility-
36 owned community solar projects, "customer-generated electricity" does

1 not include electricity generated by a light and power business with
2 greater than one thousand megawatt hours of annual sales or a gas
3 distribution business.

4 (3) "Economic development kilowatt-hour" means the actual kilowatt-
5 hour measurement of customer-generated electricity multiplied by the
6 appropriate economic development factor.

7 (4) "Local governmental entity" means any unit of local government
8 of this state including, but not limited to, counties, cities, towns,
9 municipal corporations, quasi-municipal corporations, special purpose
10 districts, and school districts.

11 (5) "Photovoltaic cell" means a device that converts light directly
12 into electricity without moving parts.

13 (6) "Renewable energy system" means a solar energy system, an
14 anaerobic digester as defined in RCW 82.08.900, or a wind generator
15 used for producing electricity.

16 (7) "Solar energy system" means any device or combination of
17 devices or elements that rely upon direct sunlight as an energy source
18 for use in the generation of electricity.

19 (8) "Solar inverter" means the device used to convert direct
20 current to alternating current in a photovoltaic cell system.

21 (9) "Solar module" means the smallest nondivisible self-contained
22 physical structure housing interconnected photovoltaic cells and
23 providing a single direct current electrical output.

24 **PART XX**

25 **Livestock Nutrients**

26 **Sec. 2001.** RCW 82.08.890 and 2009 c 469 s 601 are each amended to
27 read as follows:

28 (1) Except for sales made between July 1, 2010, and June 30, 2013,
29 the tax levied by RCW 82.08.020 does not apply to sales to eligible
30 persons of:

- 31 (a) Qualifying livestock nutrient management equipment;
- 32 (b) Labor and services rendered in respect to installing,
33 repairing, cleaning, altering, or improving qualifying livestock
34 nutrient management equipment; and

35 (c)(i) Labor and services rendered in respect to repairing,
36 cleaning, altering, or improving of qualifying livestock nutrient

1 management facilities, or to tangible personal property that becomes an
2 ingredient or component of qualifying livestock nutrient management
3 facilities in the course of repairing, cleaning, altering, or improving
4 of such facilities.

5 (ii) The exemption provided in this subsection (1)(c) does not
6 apply to the sale of or charge made for: (A) Labor and services
7 rendered in respect to the constructing of new, or replacing previously
8 existing, qualifying livestock nutrient management facilities; or (B)
9 tangible personal property that becomes an ingredient or component of
10 qualifying livestock nutrient management facilities during the course
11 of constructing new, or replacing previously existing, qualifying
12 livestock nutrient management facilities.

13 (2) The exemption provided in subsection (1) of this section
14 applies to sales made after the livestock nutrient management plan is:
15 (a) Certified under chapter 90.64 RCW; (b) approved as part of the
16 permit issued under chapter 90.48 RCW; or (c) approved as required
17 under subsection (4)(c)(iii) of this section.

18 (3)(a) The department of revenue must provide an exemption
19 certificate to an eligible person upon application by that person. The
20 department of agriculture must provide a list of eligible persons, as
21 defined in subsection (4)(c)(i) and (ii) of this section, to the
22 department of revenue. Conservation districts must maintain lists of
23 eligible persons as defined in subsection (4)(c)(iii) of this section
24 to allow the department of revenue to verify eligibility. The
25 application must be in a form and manner prescribed by the department
26 and must contain information regarding the location of the dairy or
27 animal feeding operation and other information the department may
28 require.

29 (b) A person claiming an exemption under this section must keep
30 records necessary for the department to verify eligibility under this
31 section. The exemption is available only when the buyer provides the
32 seller with an exemption certificate in a form and manner prescribed by
33 the department. The seller must retain a copy of the certificate for
34 the seller's files.

35 (4) The definitions in this subsection apply to this section and
36 RCW 82.12.890 unless the context clearly requires otherwise:

37 (a) "Animal feeding operation" means a lot or facility, other than

1 an aquatic animal production facility, where the following conditions
2 are met:

3 (i) Animals, other than aquatic animals, have been, are, or will be
4 stabled or confined and fed or maintained for a total of forty-five
5 days or more in any twelve-month period; and

6 (ii) Crops, vegetation, forage growth, or postharvest residues are
7 not sustained in the normal growing season over any portion of the lot
8 or facility.

9 (b) "Conservation district" means a subdivision of state government
10 organized under chapter 89.08 RCW.

11 (c) "Eligible person" means a person: (i) Licensed to produce milk
12 under chapter 15.36 RCW who has a certified dairy nutrient management
13 plan, as required by chapter 90.64 RCW; (ii) who owns an animal feeding
14 operation and has a permit issued under chapter 90.48 RCW; or (iii) who
15 owns an animal feeding operation and has a nutrient management plan
16 approved by a conservation district as meeting natural resource
17 conservation service field office technical guide standards and who
18 possesses an exemption certificate under RCW 82.08.855.

19 (d) "Handling and treatment of livestock manure" means the
20 activities of collecting, storing, moving, or transporting livestock
21 manure, separating livestock manure solids from liquids, or applying
22 livestock manure to the agricultural lands of an eligible person other
23 than through the use of pivot or linear type traveling irrigation
24 systems.

25 (e) "Permit" means either a state waste discharge permit or a
26 national pollutant discharge elimination system permit, or both.

27 (f) "Qualifying livestock nutrient management equipment" means the
28 following tangible personal property for exclusive use in the handling
29 and treatment of livestock manure, including repair and replacement
30 parts for such equipment: (i) Aerators; (ii) agitators; (iii) augers;
31 (iv) conveyers; (v) gutter cleaners; (vi) hard-hose reel traveler
32 irrigation systems; (vii) lagoon and pond liners and floating covers;
33 (viii) loaders; (ix) manure composting devices; (x) manure spreaders;
34 (xi) manure tank wagons; (xii) manure vacuum tanks; (xiii) poultry
35 house cleaners; (xiv) poultry house flame sterilizers; (xv) poultry
36 house washers; (xvi) poultry litter saver machines; (xvii) pipes;
37 (xviii) pumps; (xix) scrapers; (xx) separators; (xxi) slurry injectors
38 and hoses; and (xxii) wheelbarrows, shovels, and pitchforks.

1 (g) "Qualifying livestock nutrient management facilities" means the
2 following structures and facilities for exclusive use in the handling
3 and treatment of livestock manure: (i) Flush systems; (ii) lagoons;
4 (iii) liquid livestock manure storage structures, such as concrete
5 tanks or glass-lined steel tanks; and (iv) structures used solely for
6 the dry storage of manure, including roofed stacking facilities.

7 **Sec. 2002.** RCW 82.12.890 and 2009 c 469 s 602 are each amended to
8 read as follows:

9 (1) The provisions of this chapter do not apply with respect to the
10 use by an eligible person of:

11 (a) Qualifying livestock nutrient management equipment;

12 (b) Labor and services rendered in respect to installing,
13 repairing, cleaning, altering, or improving qualifying livestock
14 nutrient management equipment; and

15 (c)(i) Tangible personal property that becomes an ingredient or
16 component of qualifying livestock nutrient management facilities in the
17 course of repairing, cleaning, altering, or improving of such
18 facilities.

19 (ii) The exemption provided in this subsection (1)(c) does not
20 apply to the use of tangible personal property that becomes an
21 ingredient or component of qualifying livestock nutrient management
22 facilities during the course of constructing new, or replacing
23 previously existing, qualifying livestock nutrient management
24 facilities.

25 (2)(a) To be eligible, the equipment and facilities must be used
26 exclusively for activities necessary to maintain a livestock nutrient
27 management plan.

28 (b) The exemption applies to the use of tangible personal property
29 and labor and services made after the livestock nutrient management
30 plan is: (i) Certified under chapter 90.64 RCW; (ii) approved as part
31 of the permit issued under chapter 90.48 RCW; or (iii) approved as
32 required under RCW 82.08.890(4)(c)(iii).

33 (3) The exemption certificate and recordkeeping requirements of RCW
34 82.08.890 apply to this section. The definitions in RCW 82.08.890
35 apply to this section.

36 (4) The exemption provided in this section does not apply to the

1 use of tangible personal property and services described in subsection
2 (1)(a), (b), and (c)(i) of this section if first use of the property or
3 services occurs in this state between July 1, 2010, and June 30, 2013.

4 **PART XXI**

5 **Bullion**

6 NEW SECTION. Sec. 2101. RCW 82.04.062 ("Sale at wholesale," "sale
7 at retail" excludes sale of precious metal bullion and monetized
8 bullion--Computation of tax) and 1985 c 471 s 5 are each repealed.

9 NEW SECTION. Sec. 2102. The repeal in section 2101 of this act
10 does not affect any existing right acquired or liability or obligation
11 incurred under the statute repealed or under any rule or order adopted
12 under that statute nor does it affect any proceeding instituted under
13 the repealed statute.

14 NEW SECTION. Sec. 2103. A new section is added to chapter 82.08
15 RCW to read as follows:

16 (1) The tax levied by RCW 82.08.020 does not apply to the sale of
17 precious metal bullion or monetized bullion.

18 (2) The definitions in this subsection apply to this section.

19 (a) "Precious metal bullion" means any precious metal that has been
20 put through a process of smelting or refining, including, but not
21 limited to, gold, silver, platinum, rhodium, and palladium, and which
22 is in such state or condition that its value depends upon its contents
23 and not upon its form.

24 (b) "Monetized bullion" means coins or other forms of money
25 manufactured from gold, silver, or other metals and used as a medium of
26 exchange under the laws of this state, the United States, or any
27 foreign nation, but does not include coins or money sold to be
28 manufactured into jewelry or works of art.

29 NEW SECTION. Sec. 2104. A new section is added to chapter 82.12
30 RCW to read as follows:

31 (1) The provisions of this chapter do not apply with respect to the
32 use of precious metal bullion or monetized bullion.

1 (2) The definitions in section 2303 of this act apply to this
2 section.

3 **PART XXII**

4 **PUD Privilege Tax Clarification**

5 **Sec. 2201.** RCW 54.28.011 and 1957 c 278 s 12 are each amended to
6 read as follows:

7 "Gross revenue" (~~shall~~) means the amount received from the sale
8 of electric energy, which also includes any regularly recurring charge
9 billed to consumers as a condition of receiving electric energy, and
10 excluding any tax levied by a municipal corporation upon the district
11 pursuant to RCW 54.28.070.

12 **PART XXIII**

13 **Repealing the Sales Tax Exemption for Coal Used at Coal-Fired Thermal**
14 **Electric Generation Facilities**

15 NEW SECTION. **Sec. 2301.** The following acts or parts of acts are
16 each repealed:

17 (1) RCW 82.08.811 (Exemptions--Coal used at coal-fired thermal
18 electric generation facility--Application--Demonstration of progress in
19 air pollution control--Notice of emissions violations--Reapplication--
20 Payments on cessation of operation) and 1997 c 368 s 4; and

21 (2) RCW 82.12.811 (Exemptions--Coal used at coal-fired thermal
22 electric generation facility--Application--Demonstration of progress in
23 air pollution control--Notice of emissions violations--Reapplication--
24 Payments on cessation of operation) and 1997 c 368 s 6.

25 **PART XXIV**

26 **Eliminating the Trade-In Allowance**

27 **Sec. 2401.** RCW 82.08.010 and 2009 c 535 s 303 are each amended to
28 read as follows:

29 (1) For the purposes of this chapter:

30 (~~(1)(a)~~) (a)(i) "Selling price" includes "sales price." "Sales
31 price" means the total amount of consideration, (~~except separately~~
32 ~~stated trade-in property of like kind,~~) including cash, credit,

1 property, and services, for which tangible personal property, extended
2 warranties, digital goods, digital codes, digital automated services,
3 or other services defined as a "retail sale" under RCW 82.04.050 are
4 sold, leased, or rented, valued in money, whether received in money or
5 otherwise. No deduction from the total amount of consideration is
6 allowed for the following: ~~((+i))~~ (A) The seller's cost of the
7 property sold; ~~((+ii))~~ (B) the cost of materials used, labor or
8 service cost, interest, losses, all costs of transportation to the
9 seller, all taxes imposed on the seller, and any other expense of the
10 seller; ~~((+iii))~~ (C) charges by the seller for any services necessary
11 to complete the sale, other than delivery and installation charges;
12 ~~((+iv))~~ (D) delivery charges; and ~~((+v))~~ (E) installation charges.

13 (ii) When tangible personal property is rented or leased under
14 circumstances that the consideration paid does not represent a
15 reasonable rental for the use of the articles so rented or leased, the
16 "selling price" shall be determined as nearly as possible according to
17 the value of such use at the places of use of similar products of like
18 quality and character under such rules as the department may prescribe;

19 ~~((+b))~~ (iii) "Selling price" or "sales price" does not include:
20 Discounts, including cash, term, or coupons that are not reimbursed by
21 a third party that are allowed by a seller and taken by a purchaser on
22 a sale; interest, financing, and carrying charges from credit extended
23 on the sale of tangible personal property, extended warranties, digital
24 goods, digital codes, digital automated services, or other services, if
25 the amount is separately stated on the invoice, bill of sale, or
26 similar document given to the purchaser; and any taxes legally imposed
27 directly on the consumer that are separately stated on the invoice,
28 bill of sale, or similar document given to the purchaser;

29 ~~((+e))~~ (iv) "Selling price" or "sales price" includes
30 consideration received by the seller from a third party if:

31 ~~((+i))~~ (A) The seller actually receives consideration from a party
32 other than the purchaser, and the consideration is directly related to
33 a price reduction or discount on the sale;

34 ~~((+ii))~~ (B) The seller has an obligation to pass the price
35 reduction or discount through to the purchaser;

36 ~~((+iii))~~ (C) The amount of the consideration attributable to the
37 sale is fixed and determinable by the seller at the time of the sale of
38 the item to the purchaser; and

1 ~~((iv))~~ (D) One of the criteria in this subsection ~~(1)~~~~((e))~~
2 (a)(iv)(D) is met:

3 ~~((A))~~ (I) The purchaser presents a coupon, certificate, or other
4 documentation to the seller to claim a price reduction or discount
5 where the coupon, certificate, or documentation is authorized,
6 distributed, or granted by a third party with the understanding that
7 the third party will reimburse any seller to whom the coupon,
8 certificate, or documentation is presented;

9 ~~((B))~~ (II) The purchaser identifies himself or herself to the
10 seller as a member of a group or organization entitled to a price
11 reduction or discount, however a "preferred customer" card that is
12 available to any patron does not constitute membership in such a group;
13 or

14 ~~((C))~~ (III) The price reduction or discount is identified as a
15 third party price reduction or discount on the invoice received by the
16 purchaser or on a coupon, certificate, or other documentation presented
17 by the purchaser;

18 ~~((2)(a))~~ (b)(i) "Seller" means every person, including the state
19 and its departments and institutions, making sales at retail or retail
20 sales to a buyer, purchaser, or consumer, whether as agent, broker, or
21 principal, except "seller" does not mean:

22 ~~((i))~~ (A) The state and its departments and institutions when
23 making sales to the state and its departments and institutions; or

24 ~~((ii))~~ (B) A professional employer organization when a covered
25 employee coemployed with the client under the terms of a professional
26 employer agreement engages in activities that constitute a sale at
27 retail that is subject to the tax imposed by this chapter. In such
28 cases, the client, and not the professional employer organization, is
29 deemed to be the seller and is responsible for collecting and remitting
30 the tax imposed by this chapter.

31 ~~((b))~~ (ii) For the purposes of (a)(i) of this subsection, the
32 terms "client," "covered employee," "professional employer agreement,"
33 and "professional employer organization" have the same meanings as in
34 RCW 82.04.540;

35 ~~((3))~~ (c) "Buyer," "purchaser," and "consumer" include, without
36 limiting the scope hereof, every individual, receiver, assignee,
37 trustee in bankruptcy, trust, estate, firm, copartnership, joint
38 venture, club, company, joint stock company, business trust,

1 corporation, association, society, or any group of individuals acting
2 as a unit, whether mutual, cooperative, fraternal, nonprofit, or
3 otherwise, municipal corporation, quasi municipal corporation, and also
4 the state, its departments and institutions and all political
5 subdivisions thereof, irrespective of the nature of the activities
6 engaged in or functions performed, and also the United States or any
7 instrumentality thereof;

8 ((+4)) (d) "Delivery charges" means charges by the seller of
9 personal property or services for preparation and delivery to a
10 location designated by the purchaser of personal property or services
11 including, but not limited to, transportation, shipping, postage,
12 handling, crating, and packing;

13 ((+5)) (e) "Direct mail" means printed material delivered or
14 distributed by United States mail or other delivery service to a mass
15 audience or to addressees on a mailing list provided by the purchaser
16 or at the direction of the purchaser when the cost of the items are not
17 billed directly to the recipients. "Direct mail" includes tangible
18 personal property supplied directly or indirectly by the purchaser to
19 the direct mail seller for inclusion in the package containing the
20 printed material. "Direct mail" does not include multiple items of
21 printed material delivered to a single address;

22 ((+6)) (f) The meaning attributed in chapter 82.04 RCW to the
23 terms "tax year," "taxable year," "person," "company," "sale," "sale at
24 retail," "retail sale," "sale at wholesale," "wholesale," "business,"
25 "engaging in business," "cash discount," "successor," "consumer," "in
26 this state" and "within this state" (~~shall~~) apply equally to the
27 provisions of this chapter;

28 ((+7)) (g) For the purposes of the taxes imposed under this
29 chapter and under chapter 82.12 RCW, "tangible personal property" means
30 personal property that can be seen, weighed, measured, felt, or
31 touched, or that is in any other manner perceptible to the senses.
32 Tangible personal property includes electricity, water, gas, steam, and
33 prewritten computer software; and

34 ((+8)) (h) "Extended warranty" has the same meaning as in RCW
35 82.04.050(7)((+)).

36 ((+9)) (2) The definitions in RCW 82.04.192 apply to this
37 chapter(~~and~~).

1 30, 2011, the tax levied by RCW 82.08.020 does not apply to the sale to
2 a local electric utility, or to a person contracting with a local
3 electric utility for the sale of electric power generated by a facility
4 containing such machinery and equipment, of machinery and equipment
5 described in (a) of this subsection that are used directly in
6 generating electricity or to sales of or charges made for labor and
7 services rendered in respect to installing such machinery and
8 equipment.

9 (ii) Any project using wind to generate electricity, which begins
10 construction by December 31, 2010, may receive the exemption from sales
11 tax under this section.

12 (d) Except for energy generated by wind, beginning on July 1, 2011,
13 through June 30, 2013, the amount of the exemption under this
14 subsection (1) is equal to seventy-five percent of the state and local
15 sales tax paid. The purchaser is eligible for an exemption under this
16 subsection (1)(d) in the form of a remittance.

17 (e)(i) For energy generated by wind, except as provided otherwise
18 in (ii) of this subsection (e), beginning on July 1, 2011, through June
19 30, 2013, the amount of the exemption under this subsection (1) is
20 equal to seventy-five percent of the state and local sales tax paid by
21 a local electric utility for such machinery and equipment, or to a
22 person contracting with a local electric utility for the sale of
23 electric power generated by a facility containing such machinery and
24 equipment. The purchaser is eligible for an exemption under this
25 subsection (1)((+e)) (e) in the form of a remittance.

26 (ii) Any project using wind to generate electricity, which begins
27 construction by December 31, 2010, may receive the exemption from sales
28 tax under this section.

29 (2) For purposes of this section and RCW 82.12.962, the following
30 definitions apply:

31 (a) "Biomass energy" includes: (i) By-products of pulping and wood
32 manufacturing process; (ii) animal waste; (iii) solid organic fuels
33 from wood; (iv) forest or field residues; (v) wooden demolition or
34 construction debris; (vi) food waste; (vii) liquors derived from algae
35 and other sources; (viii) dedicated energy crops; (ix) biosolids; and
36 (x) yard waste. "Biomass energy" does not include wood pieces that
37 have been treated with chemical preservatives such as creosote,

1 pentachlorophenol, or copper-chrome-arsenic; wood from old growth
2 forests; or municipal solid waste.

3 (b) "Fuel cell" means an electrochemical reaction that generates
4 electricity by combining atoms of hydrogen and oxygen in the presence
5 of a catalyst.

6 (c) "Landfill gas" means biomass fuel, of the type qualified for
7 federal tax credits under Title 26 U.S.C. Sec. 29 of the federal
8 internal revenue code, collected from a "landfill" as defined under RCW
9 70.95.030.

10 (d)(i) "Machinery and equipment" means fixtures, devices, and
11 support facilities that are integral and necessary to the generation of
12 electricity using fuel cells, wind, sun, biomass energy, tidal or wave
13 energy, geothermal resources, anaerobic digestion, technology that
14 converts otherwise lost energy from exhaust, or landfill gas as the
15 principal source of power.

16 (ii) "Machinery and equipment" does not include: (A) Hand-powered
17 tools; (B) property with a useful life of less than one year; (C)
18 repair parts required to restore machinery and equipment to normal
19 working order; (D) replacement parts that do not increase productivity,
20 improve efficiency, or extend the useful life of machinery and
21 equipment; (E) buildings; or (F) building fixtures that are not
22 integral and necessary to the generation of electricity that are
23 permanently affixed to and become a physical part of a building.

24 (e) "Local electric utility" means an electrical company whose
25 rates are regulated by the Washington utilities and transportation
26 commission under chapter 80.28 RCW; a municipal electric utility formed
27 under Title 35 RCW, a public utility district formed under Title 54
28 RCW, an irrigation district formed under chapter 87.03 RCW, a
29 cooperative formed under chapter 23.86 RCW, or a mutual corporation or
30 association formed under chapter 24.06 RCW, that is engaged in the
31 business of distributing electricity to more than one retail electric
32 customer in the state; and a joint operating agency formed under
33 chapter 43.52 RCW.

34 (f) "Person" means the same as defined under RCW 82.04.030.

35 (3)(a) Machinery and equipment is "used directly" in generating
36 electricity by wind energy, solar energy, biomass energy, tidal or wave
37 energy, geothermal resources, anaerobic digestion, technology that
38 converts otherwise lost energy from exhaust, or landfill gas power if

1 it provides any part of the process that captures the energy of the
2 wind, sun, biomass energy, tidal or wave energy, geothermal resources,
3 anaerobic digestion, technology that converts otherwise lost energy
4 from exhaust, or landfill gas, converts that energy to electricity, and
5 stores, transforms, or transmits that electricity for entry into or
6 operation in parallel with electric transmission and distribution
7 systems.

8 (b) Machinery and equipment is "used directly" in generating
9 electricity by fuel cells if it provides any part of the process that
10 captures the energy of the fuel, converts that energy to electricity,
11 and stores, transforms, or transmits that electricity for entry into or
12 operation in parallel with electric transmission and distribution
13 systems.

14 (4)(a) A purchaser claiming an exemption in the form of a
15 remittance under subsection (1)(~~(c)~~) (d) of this section must pay the
16 tax imposed by RCW 82.08.020 and all applicable local sales taxes
17 imposed under the authority of chapters 82.14 and 81.104 RCW. The
18 purchaser may then apply to the department for remittance in a form and
19 manner prescribed by the department. A purchaser may not apply for a
20 remittance under this section more frequently than once per quarter.
21 The purchaser must specify the amount of exempted tax claimed and the
22 qualifying purchases for which the exemption is claimed. The purchaser
23 must retain, in adequate detail, records to enable the department to
24 determine whether the purchaser is entitled to an exemption under this
25 section, including: Invoices; proof of tax paid; and documents
26 describing the machinery and equipment.

27 (b) The department must determine eligibility under this section
28 based on the information provided by the purchaser, which is subject to
29 audit verification by the department. The department must on a
30 quarterly basis remit exempted amounts to qualifying purchasers who
31 submitted applications during the previous quarter.

32 (5) This section expires July 1, 2013.

33 **Sec. 2502.** RCW 82.12.962 and 2009 c 469 s 102 are each amended to
34 read as follows:

35 (1)(a) Except as provided in RCW 82.12.963, consumers who have paid
36 the tax imposed by RCW 82.12.020 on machinery and equipment used
37 directly in generating electricity using fuel cells, wind, sun, biomass

1 energy, tidal or wave energy, geothermal resources, anaerobic
2 digestion, technology that converts otherwise lost energy from exhaust,
3 or landfill gas as the principal source of power, or to sales of or
4 charges made for labor and services rendered in respect to installing
5 such machinery and equipment, are eligible for an exemption as provided
6 in this section, but only if the purchaser develops with such
7 machinery, equipment, and labor a facility capable of generating not
8 less than one thousand watts of electricity.

9 (b) Except for energy generated by wind, beginning on July 1, 2009,
10 through June 30, ((2011)) 2010, the provisions of this chapter do not
11 apply in respect to the use of machinery and equipment described in (a)
12 of this subsection that are used directly in generating electricity or
13 to sales of or charges made for labor and services rendered in respect
14 to installing such machinery and equipment.

15 (c)(i) For energy generated by wind, except as provided otherwise
16 in (ii) of this subsection (c), beginning on July 1, 2010, through June
17 30, 2011, the provisions of this chapter do not apply in respect to the
18 use by a local electric utility, or by a person contracting with a
19 local electric utility for the sale of electric power generated by a
20 facility containing such machinery and equipment, of machinery and
21 equipment described in (a) of this subsection that are used directly in
22 generating electricity or to sales of or charges made for labor and
23 services rendered in respect to installing such machinery and
24 equipment.

25 (ii) Any project using wind to generate electricity, which begins
26 construction by December 31, 2010, may receive the exemption from use
27 tax under this section.

28 (d) Except for energy generated by wind, beginning on July 1, 2011,
29 through June 30, 2013, the amount of the exemption under this
30 subsection (1) is equal to seventy-five percent of the state and local
31 sales tax paid. The purchaser is eligible for an exemption under this
32 subsection (1)(d) in the form of a remittance.

33 (e)(i) For energy generated by wind, except as provided otherwise
34 in (ii) of this subsection (e), beginning on July 1, 2011, through June
35 30, 2013, the amount of the exemption under this subsection (1) is
36 equal to seventy-five percent of the state and local sales tax paid by
37 a local electric utility for such machinery and equipment, or to a
38 person contracting with a local electric utility for the sale of

1 electric power generated by a facility containing such machinery and
2 equipment. The consumer is eligible for an exemption under this
3 subsection (1)((+e)) (e) in the form of a remittance.

4 (ii) Any project using wind to generate electricity, which begins
5 construction by December 31, 2010, may receive the exemption from use
6 tax under this section.

7 (2)(a) A person claiming an exemption in the form of a remittance
8 under subsection (1)((+e)) (e) of this section must pay the tax
9 imposed by RCW 82.12.020 and all applicable local use taxes imposed
10 under the authority of chapters 82.14 and 81.104 RCW. The consumer may
11 then apply to the department for remittance in a form and manner
12 prescribed by the department. A consumer may not apply for a
13 remittance under this section more frequently than once per quarter.
14 The consumer must specify the amount of exempted tax claimed and the
15 qualifying purchases or acquisitions for which the exemption is
16 claimed. The consumer must retain, in adequate detail, records to
17 enable the department to determine whether the consumer is entitled to
18 an exemption under this section, including: Invoices; proof of tax
19 paid; and documents describing the machinery and equipment.

20 (b) The department must determine eligibility under this section
21 based on the information provided by the consumer, which is subject to
22 audit verification by the department. The department must on a
23 quarterly basis remit exempted amounts to qualifying consumers who
24 submitted applications during the previous quarter.

25 (3) Purchases exempt under RCW 82.08.962 are also exempt from the
26 tax imposed under RCW 82.12.020.

27 (4) The definitions in RCW 82.08.962 apply to this section.

28 (5) This section expires June 30, 2013.

29 **PART XXVI**

30 **Property Management Salaries**

31 NEW SECTION. **Sec. 2601.** RCW 82.04.394 (Exemptions--Amounts
32 received by property management company for on-site personnel) and 1998
33 c 338 s 2 are each repealed.

34 **PART XXVII**

1 **Miscellaneous Provisions**

2 NEW SECTION. **Sec. 2701.** (1) Except as provided in subsection (2)
3 of this section, if any provision of sections 101 through 108 of this
4 act or its application to any person or circumstance is held invalid,
5 the remainder of sections 101 through 108 of this act or the
6 application of the provision to other persons or circumstances is not
7 affected.

8 (2) If a court of competent jurisdiction, in a final judgment not
9 subject to appeal, adjudges any provision of section 104(1)(c) of this
10 act unconstitutional or otherwise invalid, sections 101 through 108 of
11 this act are null and void in their entirety.

12 NEW SECTION. **Sec. 2702.** Sections 101 through 108 of this act
13 apply with respect to gross income of the business, as defined in RCW
14 82.04.080, including gross income from royalties as defined in RCW
15 82.04.2907, generated on and after July 1, 2010. For purposes of
16 calculating the thresholds in section 104(1)(c) of this act for the
17 2010 tax year, property, payroll, and receipts are based on the entire
18 2010 tax year.

19 NEW SECTION. **Sec. 2703.** Sections 201 through 212 of this act must
20 be construed liberally to effectuate the legislature's intent to ensure
21 that all businesses and individuals pay their fair share of taxes.

22 NEW SECTION. **Sec. 2704.** (1) Except as provided in subsection (2)
23 of this section, section 201 of this act applies to tax periods
24 beginning January 1, 2006.

25 (2) Section 201 of this act does not apply to any tax periods
26 ending before July 1, 2010, that were included in a completed field
27 audit conducted by the department.

28 NEW SECTION. **Sec. 2705.** Sections 502 and 702 of this act apply
29 both retroactively and prospectively.

30 NEW SECTION. **Sec. 2706.** Section 502 of this act does not affect
31 any final judgments, not subject to appeal, entered by a court of
32 competent jurisdiction before the effective date of this section.

1 NEW SECTION. **Sec. 2707.** Sections 901 and 902 of this act apply to
2 transfers or conveyances as described in RCW 82.45.010(3)(i) occurring
3 on and after April 1, 2010.

4 NEW SECTION. **Sec. 2708.** Sections 501, 502, and 2705 of this act
5 are necessary for the immediate preservation of the public peace,
6 health, or safety, or support of the state government and its existing
7 public institutions, and take effect immediately.

8 NEW SECTION. **Sec. 2709.** Except for sections 501, 502, 606, and
9 2705 of this act, this act is necessary for the immediate preservation
10 of the public peace, health, or safety, or support of the state
11 government and its existing public institutions, and takes effect April
12 1, 2010.

13 NEW SECTION. **Sec. 2710.** Section 605 of this act expires July 1,
14 2011.

15 NEW SECTION. **Sec. 2711.** Section 606 of this act takes effect July
16 1, 2011.

17 NEW SECTION. **Sec. 2712.** Section 1401 of this act expires June 30,
18 2013.

19 NEW SECTION. **Sec. 2713.** Section 1402 of this act takes effect
20 June 30, 2013.

21 NEW SECTION. **Sec. 2714.** Sections 1702 and 1703 of this act apply
22 to claims for credit or refund filed with the department of revenue
23 after June 30, 2010.

24 NEW SECTION. **Sec. 2715.** Sections 1502 and 1504 of this act take
25 effect July 1, 2010, if chapter . . . ([House Bill No. 2460] [Senate
26 Bill No. 6228]), Laws of 2010 is not enacted as of July 1, 2010.

27 NEW SECTION. **Sec. 2716.** Sections 1501 and 1503 of this act take
28 effect July 1, 2010, if chapter . . . ([House Bill No. 2460] [Senate
29 Bill No. 6228]), Laws of 2010 is enacted as of July 1, 2010.

1 NEW SECTION. **Sec. 2717.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

--- END ---