

1 (2)(a) Upon every person engaging within this state in any business
2 activity other than or in addition to an activity taxed explicitly
3 under another section in this chapter or subsection (1) or (3) of this
4 section; as to such persons the amount of tax on account of such
5 activities shall be equal to the gross income of the business
6 multiplied by the rate of 1.5 percent.

7 (b) This subsection (2) includes, among others, and without
8 limiting the scope hereof (whether or not title to materials used in
9 the performance of such business passes to another by accession,
10 confusion or other than by outright sale), persons engaged in the
11 business of rendering any type of service which does not constitute a
12 "sale at retail" or a "sale at wholesale." The value of advertising,
13 demonstration, and promotional supplies and materials furnished to an
14 agent by his principal or supplier to be used for informational,
15 educational and promotional purposes shall not be considered a part of
16 the agent's remuneration or commission and shall not be subject to
17 taxation under this section.

18 (3)(a) Until July 1, 2024, upon every person engaging within this
19 state in the business of performing aerospace product development for
20 others, as to such persons, the amount of tax with respect to such
21 business shall be equal to the gross income of the business multiplied
22 by a rate of 0.9 percent.

23 (b) "Aerospace product development" has the meaning as provided in
24 RCW 82.04.4461.

25 **Sec. 102.** RCW 82.04.645 and 2010 1st sp.s. c 23 s 110 are each
26 amended to read as follows:

27 (1) This chapter does not apply to amounts received by a financial
28 institution from an affiliated person if the amounts are received from
29 transactions that are required to be at arm's length under sections 23A
30 or 23B of the federal reserve act as existing on June 1, 2010, or such
31 subsequent date as may be provided by the department by rule,
32 consistent with the purposes of this section. For purposes of this
33 subsection, "financial institution" has the same meaning as in RCW
34 82.04.080.

35 (2) As used in this section, "affiliated" means under common
36 control. "~~(Common)~~ Control" means the possession, directly or

1 indirectly, of more than fifty percent of the power to direct or cause
2 the direction of the management and policies of a person, whether
3 through the ownership of voting shares, by contract, or otherwise.

4 **Sec. 103.** RCW 82.08.0297 and 1998 c 79 s 18 are each amended to
5 read as follows:

6 (1) The tax levied by RCW 82.08.020 (~~shall~~) does not apply to
7 sales of eligible foods (~~which~~) that are purchased with (~~coupons~~
8 ~~issued under the food stamp act of 1977 or food stamp or coupon~~
9 ~~benefits transferred electronically~~) benefits under the supplemental
10 nutrition assistance program or successor program, notwithstanding
11 anything to the contrary in RCW 82.08.0293.

12 (2) When a purchase of eligible foods is made with a combination of
13 (~~coupons issued under the food stamp act of 1977 or food stamp or~~
14 ~~coupon benefits transferred electronically~~) benefits under the
15 supplemental nutrition assistance program or successor program and
16 cash, check, or similar payment, the cash, check, or similar payment
17 (~~shall~~) must be applied first to food products exempt from tax under
18 RCW 82.08.0293 whenever possible.

19 (3) As used in this section(~~τ~~):

20 (a) "Eligible foods" (~~shall have the same meaning as that~~
21 ~~established under federal law for purposes of the food stamp act of~~
22 ~~1977~~) means foods that are eligible for purchase with benefits under
23 the supplemental nutrition assistance program or successor program.

24 (b) "Supplemental nutrition assistance program" refers to a food
25 assistance program that is administered, at the federal level, by the
26 United States department of agriculture, and was formerly known as the
27 food stamp program.

28 **Sec. 104.** RCW 82.12.0297 and 1998 c 79 s 19 are each amended to
29 read as follows:

30 (1) The provisions of this chapter (~~shall~~) do not apply with
31 respect to the use of eligible foods (~~which~~) that are purchased with
32 (~~coupons issued under the food stamp act of 1977 or food stamp or~~
33 ~~coupon benefits transferred electronically~~) benefits under the
34 supplemental nutrition assistance program or successor program,
35 notwithstanding anything to the contrary in RCW 82.12.0293.

1 (~~As used in this section, "eligible foods" shall have the same~~
2 ~~meaning as that established under federal law for purposes of the food~~
3 ~~stamp act of 1977.~~) (2) The definitions in RCW 82.08.0297 apply to
4 this section.

5 **Sec. 105.** RCW 84.36.381 and 2010 c 106 s 306 are each amended to
6 read as follows:

7 A person is exempt from any legal obligation to pay all or a
8 portion of the amount of excess and regular real property taxes due and
9 payable in the year following the year in which a claim is filed, and
10 thereafter, in accordance with the following:

11 (1) The property taxes must have been imposed upon a residence
12 which was occupied by the person claiming the exemption as a principal
13 place of residence as of the time of filing. However, any person who
14 sells, transfers, or is displaced from his or her residence may
15 transfer his or her exemption status to a replacement residence, but no
16 claimant may receive an exemption on more than one residence in any
17 year. Moreover, confinement of the person to a hospital, nursing home,
18 boarding home, or adult family home does not disqualify the claim of
19 exemption if:

20 (a) The residence is temporarily unoccupied;

21 (b) The residence is occupied by a spouse or a domestic partner
22 and/or a person financially dependent on the claimant for support; or

23 (c) The residence is rented for the purpose of paying nursing home,
24 hospital, boarding home, or adult family home costs;

25 (2) The person claiming the exemption must have owned, at the time
26 of filing, in fee, as a life estate, or by contract purchase, the
27 residence on which the property taxes have been imposed or if the
28 person claiming the exemption lives in a cooperative housing
29 association, corporation, or partnership, such person must own a share
30 therein representing the unit or portion of the structure in which he
31 or she resides. For purposes of this subsection, a residence owned by
32 a marital community or state registered domestic partnership or owned
33 by cotenants is deemed to be owned by each spouse or each domestic
34 partner or each cotenant, and any lease for life is deemed a life
35 estate;

36 (3)(a) The person claiming the exemption must be ~~((a))~~:

1 (i) Sixty-one years of age or older on December 31st of the year in
2 which the exemption claim is filed, or must have been, at the time of
3 filing, retired from regular gainful employment by reason of
4 disability((τ)); or

5 ~~((b))~~ (ii) A veteran of the armed forces of the United States
6 ~~((with one hundred percent service-connected disability as provided in~~
7 ~~42 U.S.C. Sec. 423 (d)(1)(A) as amended prior to January 1, 2005, or~~
8 ~~such subsequent date as the department may provide by rule consistent~~
9 ~~with the purpose of this section))~~ entitled to and receiving
10 compensation from the United States department of veterans affairs at
11 a total disability rating for a service-connected disability.

12 (b) However, any surviving spouse or surviving domestic partner of
13 a person who was receiving an exemption at the time of the person's
14 death will qualify if the surviving spouse or surviving domestic
15 partner is fifty-seven years of age or older and otherwise meets the
16 requirements of this section;

17 (4) The amount that the person is exempt from an obligation to pay
18 is calculated on the basis of combined disposable income, as defined in
19 RCW 84.36.383. If the person claiming the exemption was retired for
20 two months or more of the assessment year, the combined disposable
21 income of such person must be calculated by multiplying the average
22 monthly combined disposable income of such person during the months
23 such person was retired by twelve. If the income of the person
24 claiming exemption is reduced for two or more months of the assessment
25 year by reason of the death of the person's spouse or the person's
26 domestic partner, or when other substantial changes occur in disposable
27 income that are likely to continue for an indefinite period of time,
28 the combined disposable income of such person must be calculated by
29 multiplying the average monthly combined disposable income of such
30 person after such occurrences by twelve. If it is necessary to
31 estimate income to comply with this subsection, the assessor may
32 require confirming documentation of such income prior to May 31 of the
33 year following application;

34 (5)(a) A person who otherwise qualifies under this section and has
35 a combined disposable income of thirty-five thousand dollars or less is
36 exempt from all excess property taxes; and

37 (b)(i) A person who otherwise qualifies under this section and has
38 a combined disposable income of thirty thousand dollars or less but

1 greater than twenty-five thousand dollars is exempt from all regular
2 property taxes on the greater of fifty thousand dollars or thirty-five
3 percent of the valuation of his or her residence, but not to exceed
4 seventy thousand dollars of the valuation of his or her residence; or

5 (ii) A person who otherwise qualifies under this section and has a
6 combined disposable income of twenty-five thousand dollars or less is
7 exempt from all regular property taxes on the greater of sixty thousand
8 dollars or sixty percent of the valuation of his or her residence;

9 (6)(a) For a person who otherwise qualifies under this section and
10 has a combined disposable income of thirty-five thousand dollars or
11 less, the valuation of the residence is the assessed value of the
12 residence on the later of January 1, 1995, or January 1st of the
13 assessment year the person first qualifies under this section. If the
14 person subsequently fails to qualify under this section only for one
15 year because of high income, this same valuation must be used upon
16 requalification. If the person fails to qualify for more than one year
17 in succession because of high income or fails to qualify for any other
18 reason, the valuation upon requalification is the assessed value on
19 January 1st of the assessment year in which the person requalifies. If
20 the person transfers the exemption under this section to a different
21 residence, the valuation of the different residence is the assessed
22 value of the different residence on January 1st of the assessment year
23 in which the person transfers the exemption.

24 (b) In no event may the valuation under this subsection be greater
25 than the true and fair value of the residence on January 1st of the
26 assessment year.

27 (c) This subsection does not apply to subsequent improvements to
28 the property in the year in which the improvements are made.
29 Subsequent improvements to the property must be added to the value
30 otherwise determined under this subsection at their true and fair value
31 in the year in which they are made.

32 **Sec. 106.** RCW 84.36.385 and 2010 c 106 s 308 are each amended to
33 read as follows:

34 (1) A claim for exemption under RCW 84.36.381 as now or hereafter
35 amended, may be made and filed at any time during the year for
36 exemption from taxes payable the following year and thereafter and
37 solely upon forms as prescribed and furnished by the department of

1 revenue. However, an exemption from tax under RCW 84.36.381 continues
2 for no more than six years unless a renewal application is filed as
3 provided in subsection (3) of this section. (~~The county assessor may~~
4 ~~also require, by written notice, a renewal application following an~~
5 ~~amendment of the income requirements set forth in RCW 84.36.381.~~
6 ~~Renewal applications must be on forms prescribed and furnished by the~~
7 ~~department of revenue.~~)

8 (2) A person granted an exemption under RCW 84.36.381 must inform
9 the county assessor of any change in status affecting the person's
10 entitlement to the exemption on forms prescribed and furnished by the
11 department of revenue.

12 (3) Each person exempt from taxes under RCW 84.36.381 in 1993 and
13 thereafter, must file with the county assessor a renewal application
14 not later than December 31 of the year the assessor notifies such
15 person of the requirement to file the renewal application. Renewal
16 applications must be on forms prescribed and furnished by the
17 department of revenue.

18 (4) (~~Beginning in 1992 and in each of the three succeeding~~
19 ~~years,~~) At least once every six years, the county assessor must notify
20 (~~approximately one fourth of~~) those persons (~~exempt~~) receiving an
21 exemption from taxes under RCW 84.36.381 (~~in the current year who have~~
22 ~~not filed a renewal application within the previous four years,~~) of
23 the requirement to file a renewal application. The county assessor may
24 also require a renewal application following an amendment of the income
25 requirements set forth in RCW 84.36.381.

26 (5) If the assessor finds that the applicant does not meet the
27 qualifications as set forth in RCW 84.36.381, as now or hereafter
28 amended, the claim or exemption must be denied but such denial is
29 subject to appeal under the provisions of RCW 84.48.010 and in
30 accordance with the provisions of RCW 84.40.038. If the applicant had
31 received exemption in prior years based on erroneous information, the
32 taxes must be collected subject to penalties as provided in RCW
33 84.40.130 for a period of not to exceed five years.

34 (6) The department and each local assessor is hereby directed to
35 publicize the qualifications and manner of making claims under RCW
36 84.36.381 through 84.36.389, through communications media, including
37 such paid advertisements or notices as it deems appropriate. Notice of
38 the qualifications, method of making applications, the penalties for

1 not reporting a change in status, and availability of further
2 information must be included on or with property tax statements and
3 revaluation notices for all residential property including mobile
4 homes, except rental properties.

5 **PART II**

6 **UPDATING STATUTORY REFERENCES**

7 **Sec. 201.** RCW 35.102.150 and 2010 1st sp.s. c 23 s 519 are each
8 amended to read as follows:

9 Notwithstanding RCW 35.102.130, a city that imposes a business and
10 occupation tax must allocate a person's gross income from the
11 activities of printing, and of publishing newspapers, periodicals, or
12 magazines, to the principal place in this state from which the
13 taxpayer's business is directed or managed. As used in this section,
14 the activities of printing, and of publishing newspapers, periodicals,
15 or magazines are those activities to which the tax rates in RCW
16 82.04.260(13) and 82.04.280(1)(a) apply.

17 **Sec. 202.** RCW 82.04.050 and 2010 c 112 s 14, 2010 c 111 s 201, and
18 2010 c 106 s 202 are each reenacted and amended to read as follows:

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

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

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

1 (iii) Purchases for the purpose of consuming the property purchased
2 in producing for sale as 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 (iv) 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 (v) 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; or

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

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

25 (c) The term also means every sale of tangible personal property to
26 persons engaged in any business that is taxable under RCW 82.04.280
27 (1)(~~(, (2), and (7))~~) (a), (b), and (g), 82.04.290, and 82.04.2908.

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

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

1 (b) The constructing, repairing, decorating, or improving of new or
2 existing buildings or other structures under, upon, or above real
3 property of or for consumers, including the installing or attaching of
4 any article of tangible personal property therein or thereto, whether
5 or not such personal property becomes a part of the realty by virtue of
6 installation, and also includes the sale of services or charges made
7 for the clearing of land and the moving of earth excepting the mere
8 leveling of land used in commercial farming or agriculture;

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

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

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

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

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

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

4 (6)(a) The term also includes the sale of prewritten computer
5 software to a consumer, regardless of the method of delivery to the end
6 user. For purposes of this subsection (6)(a), the sale of prewritten
7 computer software includes the sale of or charge made for a key or an
8 enabling or activation code, where the key or code is required to
9 activate prewritten computer software and put the software into use.
10 There is no separate sale of the key or code from the prewritten
11 computer software, regardless of how the sale may be characterized by
12 the vendor or by the purchaser.

13 The term "retail sale" does not include the sale of or charge made
14 for:

15 (i) Custom software; or

16 (ii) The customization of prewritten computer software.

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

22 (ii)(A) The service described in (b)(i) of this subsection (6)
23 includes the right to access and use prewritten computer software to
24 perform data processing.

25 (B) For purposes of this subsection (6)(b)(ii), "data processing"
26 means the systematic performance of operations on data to extract the
27 required information in an appropriate form or to convert the data to
28 usable information. Data processing includes check processing, image
29 processing, form processing, survey processing, payroll processing,
30 claim processing, and similar activities.

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

1 agreement, otherwise meeting the definition of extended warranty in
2 this subsection, if no separate charge is made for the agreement and
3 the value of the agreement is included in the sales price of the
4 tangible personal property covered by the agreement. For purposes of
5 this subsection, "sales price" has the same meaning as in RCW
6 82.08.010.

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

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

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

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

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

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

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

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

34 (10) The term does not include the sale of or charge made for labor
35 and services rendered in respect to the building, repairing, or
36 improving of any street, place, road, highway, easement, right-of-way,
37 mass public transportation terminal or parking facility, bridge,
38 tunnel, or trestle which is owned by a municipal corporation or

1 political subdivision of the state or by the United States and which is
2 used or to be used primarily for foot or vehicular traffic including
3 mass transportation vehicles of any kind.

4 (11) The term also does not include sales of chemical sprays or
5 washes to persons for the purpose of postharvest treatment of fruit for
6 the prevention of scald, fungus, mold, or decay, nor does it include
7 sales of feed, seed, seedlings, fertilizer, agents for enhanced
8 pollination including insects such as bees, and spray materials to:

9 (a) Persons who participate in the federal conservation reserve
10 program, the environmental quality incentives program, the wetlands
11 reserve program, and the wildlife habitat incentives program, or their
12 successors administered by the United States department of agriculture;

13 (b) farmers for the purpose of producing for sale any agricultural
14 product; and (c) farmers acting under cooperative habitat development
15 or access contracts with an organization exempt from federal income tax
16 under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code or
17 the Washington state department of fish and wildlife to produce or
18 improve wildlife habitat on land that the farmer owns or leases.

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

35 (13) The term does not include the sale of or charge made for
36 labor, services, or tangible personal property pursuant to agreements
37 providing maintenance services for bus, rail, or rail fixed guideway

1 equipment when a regional transit authority is the recipient of the
2 labor, services, or tangible personal property, and a transit agency,
3 as defined in RCW 81.104.015, performs the labor or services.

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

7 **Sec. 203.** RCW 82.04.460 and 2010 1st sp.s. c 23 s 108 are each
8 amended to read as follows:

9 (1) Except as otherwise provided in this section, any person
10 earning apportionable income taxable under this chapter and also
11 taxable in another state((~~7~~)) must, for the purpose of computing tax
12 liability under this chapter, apportion to this state, in accordance
13 with RCW 82.04.462, that portion of the person's apportionable income
14 derived from business activities performed within this state.

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

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

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

30 (3) The department may by rule provide a method or methods of
31 apportioning or allocating gross income derived from sales of
32 telecommunications service and competitive telephone service taxed
33 under this chapter, if the gross proceeds of sales subject to tax under
34 this chapter do not fairly represent the extent of the taxpayer's
35 income attributable to this state. The rule must provide for an
36 equitable and constitutionally permissible division of the tax base.

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

3 (a) "Apportionable income" means gross income of the business
4 generated from engaging in apportionable activities, including income
5 received from apportionable activities performed outside this state if
6 the income would be taxable under this chapter if received from
7 activities in this state, less the exemptions and deductions allowable
8 under this chapter. For purposes of this subsection, "apportionable
9 activities" means only those activities taxed under:

10 (i) RCW 82.04.255;

11 (ii) RCW 82.04.260 (3), (4), (5), (6), (7), (8), (9), and (12);

12 (iii) RCW 82.04.280(~~(+5)~~) (1)(e);

13 (iv) RCW 82.04.285;

14 (v) RCW 82.04.286;

15 (vi) RCW 82.04.290;

16 (vii) RCW 82.04.2907;

17 (viii) RCW 82.04.2908;

18 (ix) RCW 82.04.263, but only to the extent of any activity that
19 would be taxable under any of the provisions enumerated under (a)(i)
20 through (viii) of this subsection (4) if the tax classification in RCW
21 82.04.263 did not exist; and

22 (x) RCW 82.04.260(13) and 82.04.280(1)(a), but only with respect to
23 advertising.

24 (b)(i) "Taxable in another state" means that the taxpayer is
25 subject to a business activities tax by another state on its income
26 received from engaging in apportionable activities; or the taxpayer is
27 not subject to a business activities tax by another state on its income
28 received from engaging in apportionable activities, but any other state
29 has jurisdiction to subject the taxpayer to a business activities tax
30 on such income under the substantial nexus standards in RCW
31 82.04.067(1).

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

34 **Sec. 204.** RCW 82.08.806 and 2010 1st sp.s. c 23 s 516 are each
35 amended to read as follows:

36 (1) The tax levied by RCW 82.08.020 does not apply to sales, to a
37 printer or publisher, of computer equipment, including repair parts and

1 replacement parts for such equipment, when the computer equipment is
2 used primarily in the printing or publishing of any printed material,
3 or to sales of or charges made for labor and services rendered in
4 respect to installing, repairing, cleaning, altering, or improving the
5 computer equipment. This exemption applies only to computer equipment
6 not otherwise exempt under RCW 82.08.02565.

7 (2) A person taking the exemption under this section must keep
8 records necessary for the department to verify eligibility under this
9 section. This exemption is available only when the purchaser provides
10 the seller with an exemption certificate in a form and manner
11 prescribed by the department. The seller must retain a copy of the
12 certificate for the seller's files.

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

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

16 (b) "Computer equipment" means a computer and the associated
17 physical components that constitute a computer system, including
18 monitors, keyboards, printers, modems, scanners, pointing devices, and
19 other computer peripheral equipment, cables, servers, and routers.
20 "Computer equipment" also includes digital cameras and computer
21 software.

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

23 (d) "Primarily" means greater than fifty percent as measured by
24 time.

25 (e) "Printer or publisher" means a person, as defined in RCW
26 82.04.030, who is subject to tax under RCW 82.04.260(13) or
27 82.04.280(1)(a).

28 (4) "Computer equipment" does not include computer equipment that
29 is used primarily for administrative purposes including but not limited
30 to payroll processing, accounting, customer service, telemarketing, and
31 collection. If computer equipment is used simultaneously for
32 administrative and nonadministrative purposes, the administrative use
33 must be disregarded during the period of simultaneous use for purposes
34 of determining whether the computer equipment is used primarily for
35 administrative purposes.

36 **Sec. 205.** RCW 82.08.820 and 2006 c 354 s 11 are each amended to
37 read as follows:

1 (1) Wholesalers or third-party warehouse owners who own or operate
2 warehouses or grain elevators and retailers who own or operate
3 distribution centers, and who have paid the tax levied by RCW 82.08.020
4 on:

5 (a) Material-handling and racking equipment, and labor and services
6 rendered in respect to installing, repairing, cleaning, altering, or
7 improving the equipment; or

8 (b) Construction of a warehouse or grain elevator, including
9 materials, and including service and labor costs,
10 are eligible for an exemption in the form of a remittance. The amount
11 of the remittance is computed under subsection (3) of this section and
12 is based on the state share of sales tax.

13 (2) For purposes of this section and RCW 82.12.820:

14 (a) "Agricultural products" has the meaning given in RCW 82.04.213;

15 (b) "Cold storage warehouse" has the meaning provided in RCW
16 82.74.010;

17 (c) "Construction" means the actual construction of a warehouse or
18 grain elevator that did not exist before the construction began.
19 "Construction" includes expansion if the expansion adds at least
20 twenty-five thousand square feet of additional space to an existing
21 cold storage warehouse, at least two hundred thousand square feet of
22 additional space to an existing warehouse other than a cold storage
23 warehouse, or additional storage capacity of at least one million
24 bushels to an existing grain elevator. "Construction" does not include
25 renovation, remodeling, or repair;

26 (d) "Department" means the department of revenue;

27 (e) "Distribution center" means a warehouse that is used
28 exclusively by a retailer solely for the storage and distribution of
29 finished goods to retail outlets of the retailer. "Distribution
30 center" does not include a warehouse at which retail sales occur;

31 (f) "Finished goods" means tangible personal property intended for
32 sale by a retailer or wholesaler. "Finished goods" does not include
33 agricultural products stored by wholesalers, third-party warehouses, or
34 retailers if the storage takes place on the land of the person who
35 produced the agricultural product. "Finished goods" does not include
36 logs, minerals, petroleum, gas, or other extracted products stored as
37 raw materials or in bulk;

1 (g) "Grain elevator" means a structure used for storage and
2 handling of grain in bulk;

3 (h) "Material-handling equipment and racking equipment" means
4 equipment in a warehouse or grain elevator that is primarily used to
5 handle, store, organize, convey, package, or repackage finished goods.
6 The term includes tangible personal property with a useful life of one
7 year or more that becomes an ingredient or component of the equipment,
8 including repair and replacement parts. The term does not include
9 equipment in offices, lunchrooms, restrooms, and other like space,
10 within a warehouse or grain elevator, or equipment used for
11 nonwarehousing purposes. "Material-handling equipment" includes but is
12 not limited to: Conveyers, carousels, lifts, positioners, pick-up-and-
13 place units, cranes, hoists, mechanical arms, and robots; mechanized
14 systems, including containers that are an integral part of the system,
15 whose purpose is to lift or move tangible personal property; and
16 automated handling, storage, and retrieval systems, including computers
17 that control them, whose purpose is to lift or move tangible personal
18 property; and forklifts and other off-the-road vehicles that are used
19 to lift or move tangible personal property and that cannot be operated
20 legally on roads and streets. "Racking equipment" includes, but is not
21 limited to, conveying systems, chutes, shelves, racks, bins, drawers,
22 pallets, and other containers and storage devices that form a necessary
23 part of the storage system;

24 (i) "Person" has the meaning given in RCW 82.04.030;

25 (j) "Retailer" means a person who makes "sales at retail" as
26 defined in chapter 82.04 RCW of tangible personal property;

27 (k) "Square footage" means the product of the two horizontal
28 dimensions of each floor of a specific warehouse. The entire footprint
29 of the warehouse shall be measured in calculating the square footage,
30 including space that juts out from the building profile such as loading
31 docks. "Square footage" does not mean the aggregate of the square
32 footage of more than one warehouse at a location or the aggregate of
33 the square footage of warehouses at more than one location;

34 (l) "Third-party warehouser" means a person taxable under RCW
35 82.04.280(~~(+4)~~) (1)(d);

36 (m) "Warehouse" means an enclosed building or structure in which
37 finished goods are stored. A warehouse building or structure may have
38 more than one storage room and more than one floor. Office space,

1 lunchrooms, restrooms, and other space within the warehouse and
2 necessary for the operation of the warehouse are considered part of the
3 warehouse as are loading docks and other such space attached to the
4 building and used for handling of finished goods. Landscaping and
5 parking lots are not considered part of the warehouse. A storage yard
6 is not a warehouse, nor is a building in which manufacturing takes
7 place; and

8 (n) "Wholesaler" means a person who makes "sales at wholesale" as
9 defined in chapter 82.04 RCW of tangible personal property, but
10 "wholesaler" does not include a person who makes sales exempt under RCW
11 82.04.330.

12 (3)(a) A person claiming an exemption from state tax in the form of
13 a remittance under this section must pay the tax imposed by RCW
14 82.08.020. The buyer may then apply to the department for remittance
15 of all or part of the tax paid under RCW 82.08.020. For grain
16 elevators with bushel capacity of one million but less than two
17 million, the remittance is equal to fifty percent of the amount of tax
18 paid. For warehouses with square footage of two hundred thousand or
19 more, other than cold storage warehouses, and for grain elevators with
20 bushel capacity of two million or more, the remittance is equal to one
21 hundred percent of the amount of tax paid for qualifying construction,
22 materials, service, and labor, and fifty percent of the amount of tax
23 paid for qualifying material-handling equipment and racking equipment,
24 and labor and services rendered in respect to installing, repairing,
25 cleaning, altering, or improving the equipment. For cold storage
26 warehouses with square footage of twenty-five thousand or more, the
27 remittance is equal to one hundred percent of the amount of tax paid
28 for qualifying construction, materials, service, and labor, and one
29 hundred percent of the amount of tax paid for qualifying material-
30 handling equipment and racking equipment, and labor and services
31 rendered in respect to installing, repairing, cleaning, altering, or
32 improving the equipment.

33 (b) The department shall determine eligibility under this section
34 based on information provided by the buyer and through audit and other
35 administrative records. The buyer shall on a quarterly basis submit an
36 information sheet, in a form and manner as required by the department
37 by rule, specifying the amount of exempted tax claimed and the
38 qualifying purchases or acquisitions for which the exemption is

1 claimed. The buyer shall retain, in adequate detail to enable the
2 department to determine whether the equipment or construction meets the
3 criteria under this section: Invoices; proof of tax paid; documents
4 describing the material-handling equipment and racking equipment;
5 location and size of warehouses and grain elevators; and construction
6 invoices and documents.

7 (c) The department shall on a quarterly basis remit exempted
8 amounts to qualifying persons who submitted applications during the
9 previous quarter.

10 (4) Warehouses, grain elevators, and material-handling equipment
11 and racking equipment for which an exemption, credit, or deferral has
12 been or is being received under chapter 82.60, 82.62, or 82.63 RCW or
13 RCW 82.08.02565 or 82.12.02565 are not eligible for any remittance
14 under this section. Warehouses and grain elevators upon which
15 construction was initiated before May 20, 1997, are not eligible for a
16 remittance under this section.

17 (5) The lessor or owner of a warehouse or grain elevator is not
18 eligible for a remittance under this section unless the underlying
19 ownership of the warehouse or grain elevator and the material-handling
20 equipment and racking equipment vests exclusively in the same person,
21 or unless the lessor by written contract agrees to pass the economic
22 benefit of the remittance to the lessee in the form of reduced rent
23 payments.

24 **Sec. 206.** RCW 82.08.820 and 2006 c 354 s 12 are each amended to
25 read as follows:

26 (1) Wholesalers or third-party warehouseurs who own or operate
27 warehouses or grain elevators and retailers who own or operate
28 distribution centers, and who have paid the tax levied by RCW 82.08.020
29 on:

30 (a) Material-handling and racking equipment, and labor and services
31 rendered in respect to installing, repairing, cleaning, altering, or
32 improving the equipment; or

33 (b) Construction of a warehouse or grain elevator, including
34 materials, and including service and labor costs,
35 are eligible for an exemption in the form of a remittance. The amount
36 of the remittance is computed under subsection (3) of this section and
37 is based on the state share of sales tax.

1 (2) For purposes of this section and RCW 82.12.820:

2 (a) "Agricultural products" has the meaning given in RCW 82.04.213;

3 (b) "Construction" means the actual construction of a warehouse or
4 grain elevator that did not exist before the construction began.
5 "Construction" includes expansion if the expansion adds at least two
6 hundred thousand square feet of additional space to an existing
7 warehouse or additional storage capacity of at least one million
8 bushels to an existing grain elevator. "Construction" does not include
9 renovation, remodeling, or repair;

10 (c) "Department" means the department of revenue;

11 (d) "Distribution center" means a warehouse that is used
12 exclusively by a retailer solely for the storage and distribution of
13 finished goods to retail outlets of the retailer. "Distribution
14 center" does not include a warehouse at which retail sales occur;

15 (e) "Finished goods" means tangible personal property intended for
16 sale by a retailer or wholesaler. "Finished goods" does not include
17 agricultural products stored by wholesalers, third-party warehouses, or
18 retailers if the storage takes place on the land of the person who
19 produced the agricultural product. "Finished goods" does not include
20 logs, minerals, petroleum, gas, or other extracted products stored as
21 raw materials or in bulk;

22 (f) "Grain elevator" means a structure used for storage and
23 handling of grain in bulk;

24 (g) "Material-handling equipment and racking equipment" means
25 equipment in a warehouse or grain elevator that is primarily used to
26 handle, store, organize, convey, package, or repackage finished goods.
27 The term includes tangible personal property with a useful life of one
28 year or more that becomes an ingredient or component of the equipment,
29 including repair and replacement parts. The term does not include
30 equipment in offices, lunchrooms, restrooms, and other like space,
31 within a warehouse or grain elevator, or equipment used for
32 nonwarehousing purposes. "Material-handling equipment" includes but is
33 not limited to: Conveyers, carousels, lifts, positioners, pick-up-and-
34 place units, cranes, hoists, mechanical arms, and robots; mechanized
35 systems, including containers that are an integral part of the system,
36 whose purpose is to lift or move tangible personal property; and
37 automated handling, storage, and retrieval systems, including computers
38 that control them, whose purpose is to lift or move tangible personal

1 property; and forklifts and other off-the-road vehicles that are used
2 to lift or move tangible personal property and that cannot be operated
3 legally on roads and streets. "Racking equipment" includes, but is not
4 limited to, conveying systems, chutes, shelves, racks, bins, drawers,
5 pallets, and other containers and storage devices that form a necessary
6 part of the storage system;

7 (h) "Person" has the meaning given in RCW 82.04.030;

8 (i) "Retailer" means a person who makes "sales at retail" as
9 defined in chapter 82.04 RCW of tangible personal property;

10 (j) "Square footage" means the product of the two horizontal
11 dimensions of each floor of a specific warehouse. The entire footprint
12 of the warehouse shall be measured in calculating the square footage,
13 including space that juts out from the building profile such as loading
14 docks. "Square footage" does not mean the aggregate of the square
15 footage of more than one warehouse at a location or the aggregate of
16 the square footage of warehouses at more than one location;

17 (k) "Third-party warehouser" means a person taxable under RCW
18 82.04.280(~~(+4)~~) (1)(d);

19 (l) "Warehouse" means an enclosed building or structure in which
20 finished goods are stored. A warehouse building or structure may have
21 more than one storage room and more than one floor. Office space,
22 lunchrooms, restrooms, and other space within the warehouse and
23 necessary for the operation of the warehouse are considered part of the
24 warehouse as are loading docks and other such space attached to the
25 building and used for handling of finished goods. Landscaping and
26 parking lots are not considered part of the warehouse. A storage yard
27 is not a warehouse, nor is a building in which manufacturing takes
28 place; and

29 (m) "Wholesaler" means a person who makes "sales at wholesale" as
30 defined in chapter 82.04 RCW of tangible personal property, but
31 "wholesaler" does not include a person who makes sales exempt under RCW
32 82.04.330.

33 (3)(a) A person claiming an exemption from state tax in the form of
34 a remittance under this section must pay the tax imposed by RCW
35 82.08.020. The buyer may then apply to the department for remittance
36 of all or part of the tax paid under RCW 82.08.020. For grain
37 elevators with bushel capacity of one million but less than two
38 million, the remittance is equal to fifty percent of the amount of tax

1 paid. For warehouses with square footage of two hundred thousand or
2 more and for grain elevators with bushel capacity of two million or
3 more, the remittance is equal to one hundred percent of the amount of
4 tax paid for qualifying construction, materials, service, and labor,
5 and fifty percent of the amount of tax paid for qualifying material-
6 handling equipment and racking equipment, and labor and services
7 rendered in respect to installing, repairing, cleaning, altering, or
8 improving the equipment.

9 (b) The department shall determine eligibility under this section
10 based on information provided by the buyer and through audit and other
11 administrative records. The buyer shall on a quarterly basis submit an
12 information sheet, in a form and manner as required by the department
13 by rule, specifying the amount of exempted tax claimed and the
14 qualifying purchases or acquisitions for which the exemption is
15 claimed. The buyer shall retain, in adequate detail to enable the
16 department to determine whether the equipment or construction meets the
17 criteria under this section: Invoices; proof of tax paid; documents
18 describing the material-handling equipment and racking equipment;
19 location and size of warehouses and grain elevators; and construction
20 invoices and documents.

21 (c) The department shall on a quarterly basis remit exempted
22 amounts to qualifying persons who submitted applications during the
23 previous quarter.

24 (4) Warehouses, grain elevators, and material-handling equipment
25 and racking equipment for which an exemption, credit, or deferral has
26 been or is being received under chapter 82.60, 82.62, or 82.63 RCW or
27 RCW 82.08.02565 or 82.12.02565 are not eligible for any remittance
28 under this section. Warehouses and grain elevators upon which
29 construction was initiated before May 20, 1997, are not eligible for a
30 remittance under this section.

31 (5) The lessor or owner of a warehouse or grain elevator is not
32 eligible for a remittance under this section unless the underlying
33 ownership of the warehouse or grain elevator and the material-handling
34 equipment and racking equipment vests exclusively in the same person,
35 or unless the lessor by written contract agrees to pass the economic
36 benefit of the remittance to the lessee in the form of reduced rent
37 payments.

1 **Sec. 207.** RCW 82.32.665 and 2010 1st sp.s. c 23 s 204 are each
2 amended to read as follows:

3 There is hereby created a joint tax avoidance review committee
4 which is a bipartisan committee consisting of three members of the
5 senate, two from the majority caucus and one from the minority caucus,
6 and three members of the house of representatives, two from the
7 majority caucus and one from the minority caucus. The senate members
8 of the committee must be appointed by the majority leader of the
9 senate, and the house members of the committee must be appointed by the
10 speaker of the house. The appointing authorities must also appoint one
11 alternate member from each of the two largest caucuses of each
12 legislative chamber.

13 (1)(a) Members and alternates must be appointed as soon as possible
14 after May 1, 2010, and their terms continue until such persons no
15 longer wish to serve on the committee or no longer serve in the
16 legislature, whichever occurs first.

17 (b) A vacancy must be filled by the appointment of a legislator
18 from the same legislative chamber and caucus as the original
19 appointment. The appropriate appointing authority must make the
20 appointment within thirty days of the vacancy occurring. Former
21 committee members and alternates may be reappointed to the committee.

22 (2) The committee must choose its chair and vice-chair from among
23 its membership. The committee meets at the call of the chair. The
24 chair of the committee must cause all meeting notices and committee
25 documents to be sent to the committee members and alternates.

26 (3) Staff support for the committee must be provided by the senate
27 committee services and the house of representatives office of program
28 research.

29 (4) The committee must:

30 (a) Generally monitor the department's implementation of Part II,
31 chapter 23, Laws of 2010 1st sp. sess., providing timely advice to the
32 department in any rule making undertaken pursuant to the authority
33 granted under RCW 82.32.655;

34 (b) Seek input from stakeholders and other legislators as the
35 committee may determine is desirable and useful in the furtherance of
36 its mission herein described;

37 (c) Review other cases, identified by the department, of tax

1 avoidance transactions not described in RCW 82.32.655 that may
2 represent examples of arrangements that circumvent the policies of this
3 state and thus unfairly avoid taxes;

4 (d) Consider the need for an explicit statutory construction
5 standard to provide direction to the courts on the interpretation of
6 Part II, chapter 23, Laws of 2010 1st sp. sess.; and

7 (e) Provide a report to the fiscal committees of the house of
8 representatives and senate by December 31, 2010, which must include:

9 (i) Recommended legislation on any matters that the committee deems
10 advisable, including amendments to RCW 82.32.090, 82.32.655, and
11 82.32.660; and

12 (ii) Recommendations for future legislative oversight of the
13 department's implementation of RCW 82.32.090, 82.32.655, and 82.32.660.

14 (5) For the purposes of this section, the disclosure of otherwise
15 confidential tax information to the members of the committee is deemed
16 to fall within the exception provided by RCW 82.32.330(3)(~~(d)~~) (e).

17 (6) This section expires July 1, 2011.

18 **Sec. 208.** 2010 1st sp.s. c 23 s 101 (uncodified) is amended to
19 read as follows:

20 (1) The legislature finds that out-of-state businesses that do not
21 have a physical presence in Washington earn significant income from
22 Washington residents from providing services or collecting royalties on
23 the use of intangible property in this state. The legislature further
24 finds that these businesses receive significant benefits and
25 opportunities provided by the state, such as: Laws providing
26 protection of business interests or regulating consumer credit; access
27 to courts and judicial process to enforce business rights, including
28 debt collection and intellectual property rights; an orderly and
29 regulated marketplace; and police and fire protection and a
30 transportation system benefiting in-state agents and other
31 representatives of out-of-state businesses. Therefore, the legislature
32 intends to extend the state's business and occupation tax to these
33 companies to ensure that they pay their fair share of the cost of
34 services that this state renders and the infrastructure it provides.

35 (2)(a) The legislature also finds that the current cost
36 apportionment method in RCW 82.04.460(1) for apportioning most service
37 income has been difficult for both taxpayers and the department to

1 apply due in large part (i) to the difficulty in assigning certain
2 costs of doing business inside or outside of this state, and (ii) to
3 its dissimilarity with the apportionment methods used in other states
4 for their business activity taxes.

5 (b) The legislature further finds that there is a trend among
6 states to adopt a single factor apportionment formula based on sales.
7 The legislature recognizes that adoption of a sales factor only
8 apportionment method has the advantages of simplifying apportionment
9 and making Washington a more attractive place for businesses to expand
10 their property and payroll. For these reasons, the legislature adopts
11 single factor sales apportionment for purposes of apportioning royalty
12 income and certain service income for state business and occupation tax
13 purposes.

14 (c) Nothing in this act may be construed, however, to authorize
15 apportionment of the gross income or value of products taxable under
16 the following business and occupation tax classifications: Retailing,
17 wholesaling, manufacturing, processing for hire, extracting, extracting
18 for hire, printing, government contracting, public road construction,
19 the classifications in RCW 82.04.280 (~~((2), (4), (6), and (7))~~) (1)(b),
20 (d), (f), and (g), and any other activity not specifically included in
21 the definition of apportionable activities in RCW 82.04.460.

22 (d) Nothing in this part is intended to modify the nexus and
23 apportionment requirements for local gross receipts business and
24 occupation taxes.

25 PART III

26 MERGING MULTIPLE AMENDMENTS TO STATUTES FROM 2010 LEGISLATION

27 **Sec. 301.** RCW 82.04.2909 and 2010 1st sp.s. c 2 s 1 and 2010 c 114
28 s 108 are each reenacted to read as follows:

29 (1) Upon every person who is an aluminum smelter engaging within
30 this state in the business of manufacturing aluminum; as to such
31 persons the amount of tax with respect to such business is, in the case
32 of manufacturers, equal to the value of the product manufactured, or in
33 the case of processors for hire, equal to the gross income of the
34 business, multiplied by the rate of .2904 percent.

35 (2) Upon every person who is an aluminum smelter engaging within
36 this state in the business of making sales at wholesale of aluminum

1 manufactured by that person, as to such persons the amount of tax with
2 respect to such business is equal to the gross proceeds of sales of the
3 aluminum multiplied by the rate of .2904 percent.

4 (3) A person reporting under the tax rate provided in this section
5 must file a complete annual report with the department under RCW
6 82.32.534.

7 (4) This section expires January 1, 2017.

8 **Sec. 302.** RCW 82.04.4481 and 2010 1st sp.s. c 2 s 2 and 2010 c 114
9 s 118 are each reenacted to read as follows:

10 (1) In computing the tax imposed under this chapter, a credit is
11 allowed for all property taxes paid during the calendar year on
12 property owned by a direct service industrial customer and reasonably
13 necessary for the purposes of an aluminum smelter.

14 (2) A person claiming the credit under this section is subject to
15 all the requirements of chapter 82.32 RCW. A credit earned during one
16 calendar year may be carried over to be credited against taxes incurred
17 in the subsequent calendar year, but may not be carried over a second
18 year. Credits carried over must be applied to tax liability before new
19 credits. No refunds may be granted for credits under this section.

20 (3) Credits may not be claimed under this section for property
21 taxes levied for collection in 2017 and thereafter.

22 (4) A person claiming the credit provided in this section must file
23 a complete annual report with the department under RCW 82.32.534.

24 **Sec. 303.** RCW 82.08.805 and 2010 1st sp.s. c 2 s 3 and 2010 c 114
25 s 122 are each reenacted to read as follows:

26 (1) A person who has paid tax under RCW 82.08.020 for personal
27 property used at an aluminum smelter, tangible personal property that
28 will be incorporated as an ingredient or component of buildings or
29 other structures at an aluminum smelter, or for labor and services
30 rendered with respect to such buildings, structures, or personal
31 property, is eligible for an exemption from the state share of the tax
32 in the form of a credit, as provided in this section. A person
33 claiming an exemption must pay the tax and may then take a credit equal
34 to the state share of retail sales tax paid under RCW 82.08.020. The
35 person must submit information, in a form and manner prescribed by the

1 department, specifying the amount of qualifying purchases or
2 acquisitions for which the exemption is claimed and the amount of
3 exempted tax.

4 (2) For the purposes of this section, "aluminum smelter" has the
5 same meaning as provided in RCW 82.04.217.

6 (3) A person claiming the tax preference provided in this section
7 must file a complete annual report with the department under RCW
8 82.32.534.

9 (4) Credits may not be claimed under this section for taxable
10 events occurring on or after January 1, 2017.

11 **Sec. 304.** RCW 82.12.022 and 2010 1st sp.s. c 2 s 5 and 2010 c 114
12 s 127 are each reenacted to read as follows:

13 (1) A use tax is levied on every person in this state for the
14 privilege of using natural gas or manufactured gas within this state as
15 a consumer.

16 (2) The tax must be levied and collected in an amount equal to the
17 value of the article used by the taxpayer multiplied by the rate in
18 effect for the public utility tax on gas distribution businesses under
19 RCW 82.16.020. The "value of the article used" does not include any
20 amounts that are paid for the hire or use of a gas distribution
21 business as defined in RCW 82.16.010(2) in transporting the gas subject
22 to tax under this subsection if those amounts are subject to tax under
23 that chapter.

24 (3) The tax levied in this section does not apply to the use of
25 natural or manufactured gas delivered to the consumer by other means
26 than through a pipeline.

27 (4) The tax levied in this section does not apply to the use of
28 natural or manufactured gas if the person who sold the gas to the
29 consumer has paid a tax under RCW 82.16.020 with respect to the gas for
30 which exemption is sought under this subsection.

31 (5)(a) The tax levied in this section does not apply to the use of
32 natural or manufactured gas by an aluminum smelter as that term is
33 defined in RCW 82.04.217 before January 1, 2017.

34 (b) A person claiming the exemption provided in this subsection (5)
35 must file a complete annual report with the department under RCW
36 82.32.534.

1 (6) There is a credit against the tax levied under this section in
2 an amount equal to any tax paid by:

3 (a) The person who sold the gas to the consumer when that tax is a
4 gross receipts tax similar to that imposed pursuant to RCW 82.16.020 by
5 another state with respect to the gas for which a credit is sought
6 under this subsection; or

7 (b) The person consuming the gas upon which a use tax similar to
8 the tax imposed by this section was paid to another state with respect
9 to the gas for which a credit is sought under this subsection.

10 (7) The use tax imposed in this section must be paid by the
11 consumer to the department.

12 (8) There is imposed a reporting requirement on the person who
13 delivered the gas to the consumer to make a quarterly report to the
14 department. Such report must contain the volume of gas delivered, name
15 of the consumer to whom delivered, and such other information as the
16 department may require by rule.

17 (9) The department may adopt rules under chapter 34.05 RCW for the
18 administration and enforcement of sections 1 through 6, chapter 384,
19 Laws of 1989.

20 **Sec. 305.** RCW 82.12.805 and 2010 1st sp.s. c 2 s 4 and 2010 c 114
21 s 128 are each reenacted to read as follows:

22 (1) A person who is subject to tax under RCW 82.12.020 for personal
23 property used at an aluminum smelter, or for tangible personal property
24 that will be incorporated as an ingredient or component of buildings or
25 other structures at an aluminum smelter, or for labor and services
26 rendered with respect to such buildings, structures, or personal
27 property, is eligible for an exemption from the state share of the tax
28 in the form of a credit, as provided in this section. The amount of
29 the credit equals the state share of use tax computed to be due under
30 RCW 82.12.020. The person must submit information, in a form and
31 manner prescribed by the department, specifying the amount of
32 qualifying purchases or acquisitions for which the exemption is claimed
33 and the amount of exempted tax.

34 (2) For the purposes of this section, "aluminum smelter" has the
35 same meaning as provided in RCW 82.04.217.

36 (3) A person reporting under the tax rate provided in this section

1 must file a complete annual report with the department under RCW
2 82.32.534.

3 (4) Credits may not be claimed under this section for taxable
4 events occurring on or after January 1, 2017.

5 **Sec. 306.** RCW 82.32.590 and 2010 c 137 s 1 and 2010 c 114 s 135
6 are each reenacted to read as follows:

7 (1) If the department finds that the failure of a taxpayer to file
8 an annual survey under RCW 82.32.585 or annual report under RCW
9 82.32.534 by the due date was the result of circumstances beyond the
10 control of the taxpayer, the department must extend the time for filing
11 the survey or report. The extension is for a period of thirty days
12 from the date the department issues its written notification to the
13 taxpayer that it qualifies for an extension under this section. The
14 department may grant additional extensions as it deems proper.

15 (2) In making a determination whether the failure of a taxpayer to
16 file an annual survey or annual report by the due date was the result
17 of circumstances beyond the control of the taxpayer, the department
18 must be guided by rules adopted by the department for the waiver or
19 cancellation of penalties when the underpayment or untimely payment of
20 any tax was due to circumstances beyond the control of the taxpayer.

21 (3)(a) Subject to the conditions in this subsection (3), a taxpayer
22 who fails to file an annual report or annual survey required under
23 subsection (1) of this section by the due date of the report or survey
24 is entitled to an extension of the due date. A request for an
25 extension under this subsection (3) must be made in writing to the
26 department.

27 (b) To qualify for an extension under this subsection (3), a
28 taxpayer must have filed all annual reports and surveys, if any, due in
29 prior years under subsection (1) of this section by their respective
30 due dates, beginning with annual reports and surveys due in calendar
31 year 2010.

32 (c) An extension under this subsection (3) is for ninety days from
33 the original due date of the annual report or survey.

34 (d) No taxpayer may be granted more than one ninety-day extension
35 under this subsection (3).

PART IV

COMBINING TWO SUBPOENA STATUTES INTO A SINGLE SUBPOENA STATUTE

Sec. 401. RCW 82.32.117 and 2010 c 22 s 4 are each amended to read as follows:

(1) The department or its duly authorized agent may apply for and obtain a superior court order approving and authorizing a subpoena in advance of its issuance. The application may be made in the county where the subpoenaed person resides or is found, or the county where the subpoenaed records or documents are located, or in Thurston county. The application must:

(a) State that an order is sought pursuant to this subsection;

(b) Adequately specify the records, documents, or testimony; and

(c) Declare under oath that an investigation is being conducted for a lawfully authorized purpose related to an investigation within the department's authority and that the subpoenaed documents or testimony are reasonably related to an investigation within the department's authority.

(2) Where the application under this subsection is made to the satisfaction of the court, the court must issue an order approving the subpoena. An order under this subsection constitutes authority of law for the agency to subpoena the records or testimony.

(3) The department or its duly authorized agent may seek approval and a court may issue an order under this subsection without prior notice to any person, including the person to whom the subpoena is directed and the person who is the subject of an investigation.

(4) This section does not preclude the use of other legally authorized means of obtaining records, nor preclude the assertion of any legally recognized privileges.

(5) The department may not disclose any return or tax information, as defined in RCW 82.32.330, obtained in response to a subpoena issued under this section, except as authorized in RCW 82.32.330.

(6) A third party may not be held civilly liable for any harm resulting from that person's compliance with a subpoena issued under the authority of this section.

(7) The entire court file of any proceeding instituted under this section must be sealed and is not open to public inspection by any person except upon order of the court as authorized by law.

1 NEW SECTION. **Sec. 402.** RCW 82.32.115 (Records in possession of a
2 third party--Subpoenas) and 2009 c 309 s 1 are each repealed.

3 NEW SECTION. **Sec. 403.** The repeal in section 402 of this act does
4 not affect any existing right acquired or liability or obligation
5 incurred under the statute repealed or under any rule or order adopted
6 under that statute nor does it affect any proceedings instituted under
7 it.

8 **Sec. 404.** RCW 82.32.330 and 2010 c 112 s 13 and 2010 c 106 s 104
9 are each reenacted and amended to read as follows:

10 (1) For purposes of this section:

11 (a) "Disclose" means to make known to any person in any manner
12 whatever a return or tax information;

13 (b) "Return" means a tax or information return or claim for refund
14 required by, or provided for or permitted under, the laws of this state
15 which is filed with the department of revenue by, on behalf of, or with
16 respect to a person, and any amendment or supplement thereto, including
17 supporting schedules, attachments, or lists that are supplemental to,
18 or part of, the return so filed;

19 (c) "Tax information" means (i) a taxpayer's identity, (ii) the
20 nature, source, or amount of the taxpayer's income, payments, receipts,
21 deductions, exemptions, credits, assets, liabilities, net worth, tax
22 liability deficiencies, overassessments, or tax payments, whether taken
23 from the taxpayer's books and records or any other source, (iii)
24 whether the taxpayer's return was, is being, or will be examined or
25 subject to other investigation or processing, (iv) a part of a written
26 determination that is not designated as a precedent and disclosed
27 pursuant to RCW 82.32.410, or a background file document relating to a
28 written determination, and (v) other data received by, recorded by,
29 prepared by, furnished to, or collected by the department of revenue
30 with respect to the determination of the existence, or possible
31 existence, of liability, or the amount thereof, of a person under the
32 laws of this state for a tax, penalty, interest, fine, forfeiture, or
33 other imposition, or offense. However, data, material, or documents
34 that do not disclose information related to a specific or identifiable
35 taxpayer do not constitute tax information under this section. Except
36 as provided by RCW 82.32.410, nothing in this chapter requires any

1 person possessing data, material, or documents made confidential and
2 privileged by this section to delete information from such data,
3 material, or documents so as to permit its disclosure;

4 (d) "State agency" means every Washington state office, department,
5 division, bureau, board, commission, or other state agency;

6 (e) "Taxpayer identity" means the taxpayer's name, address,
7 telephone number, registration number, or any combination thereof, or
8 any other information disclosing the identity of the taxpayer; and

9 (f) "Department" means the department of revenue or its officer,
10 agent, employee, or representative.

11 (2) Returns and tax information are confidential and privileged,
12 and except as authorized by this section, neither the department of
13 revenue nor any other person may disclose any return or tax
14 information.

15 (3) This section does not prohibit the department of revenue from:

16 (a) Disclosing such return or tax information in a civil or
17 criminal judicial proceeding or an administrative proceeding:

18 (i) In respect of any tax imposed under the laws of this state if
19 the taxpayer or its officer or other person liable under this title or
20 chapter 83.100 RCW is a party in the proceeding;

21 (ii) In which the taxpayer about whom such return or tax
22 information is sought and another state agency are adverse parties in
23 the proceeding; or

24 (iii) Brought by the department under RCW 18.27.040 or 19.28.071;

25 (b) Disclosing, subject to such requirements and conditions as the
26 director prescribes by rules adopted pursuant to chapter 34.05 RCW,
27 such return or tax information regarding a taxpayer to such taxpayer or
28 to such person or persons as that taxpayer may designate in a request
29 for, or consent to, such disclosure, or to any other person, at the
30 taxpayer's request, to the extent necessary to comply with a request
31 for information or assistance made by the taxpayer to such other
32 person. However, tax information not received from the taxpayer must
33 not be so disclosed if the director determines that such disclosure
34 would compromise any investigation or litigation by any federal, state,
35 or local government agency in connection with the civil or criminal
36 liability of the taxpayer or another person, or that such disclosure
37 would identify a confidential informant, or that such disclosure is
38 contrary to any agreement entered into by the department that provides

1 for the reciprocal exchange of information with other government
2 agencies which agreement requires confidentiality with respect to such
3 information unless such information is required to be disclosed to the
4 taxpayer by the order of any court;

5 (c) Disclosing the name of a taxpayer against whom a warrant under
6 RCW 82.32.210 has been either issued or filed and remains outstanding
7 for a period of at least ten working days. The department is not
8 required to disclose any information under this subsection if a
9 taxpayer has entered a deferred payment arrangement with the department
10 for the payment of a warrant that has not been filed and is making
11 payments upon such deficiency that will fully satisfy the indebtedness
12 within twelve months;

13 (d) Publishing statistics so classified as to prevent the
14 identification of particular returns or reports or items thereof;

15 (e) Disclosing such return or tax information, for official
16 purposes only, to the governor or attorney general, or to any state
17 agency, or to any committee or subcommittee of the legislature dealing
18 with matters of taxation, revenue, trade, commerce, the control of
19 industry or the professions;

20 (f) Permitting the department of revenue's records to be audited
21 and examined by the proper state officer, his or her agents and
22 employees;

23 (g) Disclosing any such return or tax information to a peace
24 officer as defined in RCW 9A.04.110 or county prosecuting attorney, for
25 official purposes. The disclosure may be made only in response to a
26 search warrant, subpoena, or other court order, unless the disclosure
27 is for the purpose of criminal tax enforcement. A peace officer or
28 county prosecuting attorney who receives the return or tax information
29 may disclose that return or tax information only for use in the
30 investigation and a related court proceeding, or in the court
31 proceeding for which the return or tax information originally was
32 sought;

33 (h) Disclosing any such return or tax information to the proper
34 officer of the internal revenue service of the United States, the
35 Canadian government or provincial governments of Canada, or to the
36 proper officer of the tax department of any state or city or town or
37 county, for official purposes, but only if the statutes of the United

1 States, Canada or its provincial governments, or of such other state or
2 city or town or county, as the case may be, grants substantially
3 similar privileges to the proper officers of this state;

4 (i) Disclosing any such return or tax information to the United
5 States department of justice, including the bureau of alcohol, tobacco,
6 firearms and explosives, the department of defense, the immigration and
7 customs enforcement and the customs and border protection agencies of
8 the United States department of homeland security, the United States
9 coast guard, the alcohol and tobacco tax and trade bureau of the United
10 States department of treasury, and the United States department of
11 transportation, or any authorized representative of these federal
12 agencies, for official purposes;

13 (j) Publishing or otherwise disclosing the text of a written
14 determination designated by the director as a precedent pursuant to RCW
15 82.32.410;

16 (k) Disclosing, in a manner that is not associated with other tax
17 information, the taxpayer name, entity type, business address, mailing
18 address, revenue tax registration numbers, reseller permit numbers and
19 the expiration date and status of such permits, North American industry
20 classification system or standard industrial classification code of a
21 taxpayer, and the dates of opening and closing of business. This
22 subsection may not be construed as giving authority to the department
23 to give, sell, or provide access to any list of taxpayers for any
24 commercial purpose;

25 (l) Disclosing such return or tax information that is also
26 maintained by another Washington state or local governmental agency as
27 a public record available for inspection and copying under the
28 provisions of chapter 42.56 RCW or is a document maintained by a court
29 of record and is not otherwise prohibited from disclosure;

30 (m) Disclosing such return or tax information to the United States
31 department of agriculture for the limited purpose of investigating food
32 stamp fraud by retailers;

33 (n) Disclosing to a financial institution, escrow company, or title
34 company, in connection with specific real property that is the subject
35 of a real estate transaction, current amounts due the department for a
36 filed tax warrant, judgment, or lien against the real property;

37 (o) Disclosing to a person against whom the department has asserted

1 liability as a successor under RCW 82.32.140 return or tax information
2 pertaining to the specific business of the taxpayer to which the person
3 has succeeded;

4 (p) Disclosing real estate excise tax affidavit forms filed under
5 RCW 82.45.150 in the possession of the department, including real
6 estate excise tax affidavit forms for transactions exempt or otherwise
7 not subject to tax;

8 (q) Disclosing to local taxing jurisdictions the identity of
9 sellers granted relief under RCW 82.32.430(5)(b)(i) and the period for
10 which relief is granted;

11 (r) Disclosing such return or tax information to the court in
12 respect to the department's application for a subpoena under RCW
13 (~~82.32.115~~) 82.32.117;

14 (s) Disclosing to a person against whom the department has asserted
15 liability under RCW 83.100.120 return or tax information pertaining to
16 that person's liability for tax under chapter 83.100 RCW;

17 (t) Disclosing such return or tax information to the streamlined
18 sales tax governing board, member states of the streamlined sales tax
19 governing board, or authorized representatives of such board or states,
20 for the limited purposes of:

21 (i) Conducting on behalf of member states sales and use tax audits
22 of taxpayers; or

23 (ii) Auditing certified service providers or certified automated
24 systems providers; or

25 (u) Disclosing any such return or tax information when the
26 disclosure is specifically authorized under any other section of the
27 Revised Code of Washington.

28 (4)(a) The department may disclose return or taxpayer information
29 to a person under investigation or during any court or administrative
30 proceeding against a person under investigation as provided in this
31 subsection (4). The disclosure must be in connection with the
32 department's official duties relating to an audit, collection activity,
33 or a civil or criminal investigation. The disclosure may occur only
34 when the person under investigation and the person in possession of
35 data, materials, or documents are parties to the return or tax
36 information to be disclosed. The department may disclose return or tax
37 information such as invoices, contracts, bills, statements, resale or
38 exemption certificates, or checks. However, the department may not

1 disclose general ledgers, sales or cash receipt journals, check
2 registers, accounts receivable/payable ledgers, general journals,
3 financial statements, expert's workpapers, income tax returns, state
4 tax returns, tax return workpapers, or other similar data, materials,
5 or documents.

6 (b) Before disclosure of any tax return or tax information under
7 this subsection (4), the department must, through written
8 correspondence, inform the person in possession of the data, materials,
9 or documents to be disclosed. The correspondence must clearly identify
10 the data, materials, or documents to be disclosed. The department may
11 not disclose any tax return or tax information under this subsection
12 (4) until the time period allowed in (c) of this subsection has expired
13 or until the court has ruled on any challenge brought under (c) of this
14 subsection.

15 (c) The person in possession of the data, materials, or documents
16 to be disclosed by the department has twenty days from the receipt of
17 the written request required under (b) of this subsection to petition
18 the superior court of the county in which the petitioner resides for
19 injunctive relief. The court must limit or deny the request of the
20 department if the court determines that:

21 (i) The data, materials, or documents sought for disclosure are
22 cumulative or duplicative, or are obtainable from some other source
23 that is more convenient, less burdensome, or less expensive;

24 (ii) The production of the data, materials, or documents sought
25 would be unduly burdensome or expensive, taking into account the needs
26 of the department, the amount in controversy, limitations on the
27 petitioner's resources, and the importance of the issues at stake; or

28 (iii) The data, materials, or documents sought for disclosure
29 contain trade secret information that, if disclosed, could harm the
30 petitioner.

31 (d) The department must reimburse reasonable expenses for the
32 production of data, materials, or documents incurred by the person in
33 possession of the data, materials, or documents to be disclosed.

34 (e) Requesting information under (b) of this subsection that may
35 indicate that a taxpayer is under investigation does not constitute a
36 disclosure of tax return or tax information under this section.

37 (5) Service of a subpoena issued under RCW (~~82.32.115~~) 82.32.117
38 does not constitute a disclosure of return or tax information under

1 this section. Notwithstanding anything else to the contrary in this
2 section, a person served with a subpoena under RCW ((82.32.115))
3 82.32.117 may disclose the existence or content of the subpoena to that
4 person's legal counsel.

5 (6) Any person acquiring knowledge of any return or tax information
6 in the course of his or her employment with the department of revenue
7 and any person acquiring knowledge of any return or tax information as
8 provided under subsection (3) (e), (f), (g), (h), (i), or (m) of this
9 section, who discloses any such return or tax information to another
10 person not entitled to knowledge of such return or tax information
11 under the provisions of this section, is guilty of a misdemeanor. If
12 the person guilty of such violation is an officer or employee of the
13 state, such person must forfeit such office or employment and is
14 incapable of holding any public office or employment in this state for
15 a period of two years thereafter.

16 **PART V**
17 **MISCELLANEOUS**

18 NEW SECTION. **Sec. 501.** Section 206 of this act takes effect July
19 1, 2012.

20 NEW SECTION. **Sec. 502.** Section 205 of this act expires July 1,
21 2012.

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