
HOUSE BILL 1510

State of Washington 60th Legislature 2007 Regular Session

By Representatives Hasegawa, Chase, Conway, Williams, Roberts, Hudgins, Wood, Moeller, Ormsby, Santos and Morrell

Read first time 01/22/2007. Referred to Committee on Technology, Energy & Communications.

1 AN ACT Relating to community reinvestment of oil windfall profits;
2 amending RCW 15.110.020, 15.110.050, 70.94.017, 82.04.230, 82.04.240,
3 82.04.240, 82.04.250, 82.04.250, 82.04.255, 82.04.270, 82.04.280,
4 82.04.280, 82.04.290, 39.35C.020, 39.35C.100, 82.03.130, and 82.03.140;
5 amending 2006 c 300 s 12 (uncodified); adding a new title to the
6 Revised Code of Washington to be codified as Title 82A RCW; adding a
7 new section to chapter 82.04 RCW; adding a new section to chapter
8 39.35C RCW; adding a new section to chapter 43.21F RCW; creating a new
9 section; prescribing penalties; providing effective dates; providing a
10 contingent effective date; providing expiration dates; and providing
11 contingent expiration dates.

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

13 **PRIVILEGE TAX ON PETROLEUM BUSINESSES**

14 NEW SECTION. **Sec. 1.** FINDINGS AND INTENT. The legislature finds
15 that Washington citizens and businesses are paying historically high
16 prices for gasoline while the major oil companies are reaping windfall
17 profits. As a result, tens of millions of dollars are being taken from
18 the budgets of families and businesses. The legislature intends to

1 reverse this economic injustice by developing a state windfall profits
2 tax. This tax will create an incentive for major oil companies to keep
3 retail gasoline prices at historically reasonable levels and a
4 disincentive to increase prices to gain windfall profits. If the major
5 oil companies are unresponsive to this incentive, the tax will generate
6 substantial revenue which can be used to partially offset the adverse
7 effects of high gasoline prices by providing additional funding for
8 public goods and services that are linked to the current costs of
9 energy and/or the development of renewable in-state energy resources.

10 NEW SECTION. **Sec. 2.** DEFINITIONS. Unless the context clearly
11 requires otherwise, the definitions in this section apply throughout
12 this title. Except as provided in this section, any term used in this
13 title has the same meaning as when used in a comparable context in the
14 internal revenue code.

15 (1) "Affiliated corporation" means a corporation that is a member
16 of a group of two or more corporations with a common owner or owners,
17 either corporate or noncorporate, when more than fifty percent of the
18 voting stock of each member corporation is directly or indirectly owned
19 by the common owner or owners or by one or more of the member
20 corporations.

21 (2) "Business activity" means any activity engaged in with the
22 object of gain, benefit, or advantage to the taxpayer or to another
23 person or class, directly or indirectly.

24 (3) "Corporation" means any corporation as defined by the laws of
25 this state or organization of any kind treated as a corporation for tax
26 purposes under the laws of this state, wherever located, which if it
27 were doing business in this state would be a taxpayer. The business
28 conducted by a partnership which is directly or indirectly held by a
29 corporation is considered the business of the corporation to the extent
30 of the corporation's distributive share of the partnership income,
31 inclusive of guaranteed payments to the extent prescribed by rule.

32 (4) "Combined group" means the group of all persons whose income
33 and apportionment factors are required to be taken into account under
34 section 9 (1) or (2) of this act in determining the taxpayer's share of
35 the net business income or loss apportionable to this state.

36 (5) "Department" means the department of revenue.

1 (6) "Gasoline price" means the average of the retail gasoline
2 prices published during the taxable year for the west coast less
3 California, as published by the federal energy information
4 administration or its successor agency.

5 (7) "Internal revenue code" means Title 26 of the United States
6 Code of 1986, and amendments thereto, as existing on January 1, 2006.

7 (8) "Person" means any individual, firm, partnership, general
8 partner of a partnership, limited liability company, registered limited
9 liability partnership, foreign limited liability partnership,
10 association, corporation (whether or not the corporation is, or would
11 be if doing business in this state, subject to tax under this title),
12 company, syndicate, estate, trust, business trust, trustee, trustee in
13 bankruptcy, receiver, executor, administrator, assignee, or
14 organization of any kind.

15 (9) "Partnership" means a general or limited partnership, or
16 organization of any kind treated as a partnership for business purposes
17 under the laws of this state.

18 (10) "Petroleum business" means a corporation engaged in any of the
19 following activities: Exploration, production, refining,
20 manufacturing, processing, transportation, and marketing of oil and gas
21 or any commodity, product, or feedstock derived from oil or gas,
22 including petrochemicals.

23 (11) "Petroleum refining" means refining crude petroleum into
24 refined petroleum by fractionation, straight distillation of crude oil,
25 cracking, or similar methods.

26 (12) "Tax haven" means a jurisdiction that, during the tax year in
27 question:

28 (a) Is identified by the organization for economic cooperation and
29 development (OECD) as a tax haven or as having a harmful preferential
30 tax regime; or

31 (b) Exhibits the following characteristics established by the OECD
32 in its 1998 report entitled harmful tax competition: An emerging
33 global issue as indicative of a tax haven or as a jurisdiction having
34 a harmful preferential tax regime, regardless of whether it is listed
35 by the OECD as an uncooperative tax haven:

36 (i) Has no or nominal effective tax on the relevant income; and

37 (ii)(A) Has laws or practices that prevent effective exchange of

1 information for tax purposes with other governments on taxpayers
2 benefiting from the tax regime;

3 (B) Has tax regime which lacks transparency. A tax regime lacks
4 transparency if the details of legislative, legal, or administrative
5 provisions are not open and apparent or are not consistently applied
6 among similarly situated taxpayers, or if the information needed by tax
7 authorities to determine a taxpayer's correct tax liability, such as
8 accounting records and underlying documentation, is not adequately
9 available;

10 (C) Facilitates the establishment of foreign-owned entities without
11 the need for a local substantive presence or prohibits these entities
12 from having any commercial impact on the local economy;

13 (D) Explicitly or implicitly excludes the jurisdiction's resident
14 taxpayers from taking advantage of the tax regime's benefits or
15 prohibits enterprises that benefit from the regime from operating in
16 the jurisdiction's domestic market; or

17 (E) Has created a tax regime which is favorable for tax avoidance,
18 based upon an overall assessment of relevant factors, including whether
19 the jurisdiction has a significant untaxed offshore financial/other
20 services sector relative to its overall economy.

21 (13) "Taxable income" means federal taxable income after making the
22 additions, subtractions, apportionments, and allocations provided under
23 this title.

24 (14) "Taxable year" means the taxpayer's taxable year as defined
25 under the internal revenue code.

26 (15) "Taxpayer" means a corporation receiving income subject to tax
27 under this title.

28 (16) "Unitary business" means a single economic enterprise that is
29 made up either of separate parts of a single business entity or of a
30 commonly controlled group of business entities that are sufficiently
31 interdependent, integrated, and interrelated through their activities
32 so as to provide a synergy and mutual benefit that produces a sharing
33 or exchange of value among them and a significant flow of value to the
34 separate parts. Any business conducted by a partnership shall be
35 treated as conducted by its partners, whether directly held or
36 indirectly held through a series of partnerships, to the extent of the
37 partner's distributive share of the partnership's income, regardless of
38 the percentage of the partner's ownership interest or its distributive

1 or any other share of partnership income. A business conducted
2 directly or indirectly by one corporation is unitary with that portion
3 of a business conducted by another corporation through its direct or
4 indirect interest in a partnership if the conditions under this
5 subsection are satisfied.

6 (17) "United States" means the fifty states of the United States,
7 the District of Columbia, and United States' territories and
8 possessions.

9 NEW SECTION. **Sec. 3.** PRIVILEGE TAX IMPOSED. A tax is imposed for
10 each taxable year on the taxable income of each petroleum business for
11 the privilege of engaging in any business activity within this state.
12 The tax is equal to the taxable income multiplied by the rate according
13 to the following table.

14 If the gasoline price is:	The tax rate is:
15 Less than \$1.75	zero
16 Equal to or greater than \$1.75, but less than \$1.85	10%
17 Equal to or greater than \$1.85, but less than \$1.95	12%
18 Equal to or greater than \$1.95, but less than \$2.05	14%
19 Equal to or greater than \$2.05, but less than \$2.15	16%
20 Equal to or greater than \$2.15, but less than \$2.25	18%
21 Equal to or greater than \$2.25, but less than \$2.35	20%
22 Equal to or greater than \$2.35, but less than \$2.45	22%
23 Equal to or greater than \$2.45, but less than \$2.55	24%
24 Equal to or greater than \$2.55, but less than \$2.65	26%
25 Equal to or greater than \$2.65, but less than \$2.75	28%
26 Equal to or greater than \$2.75	30%

27 NEW SECTION. **Sec. 4.** EXEMPTION. The tax imposed under this title
28 does not apply to a corporation if neither the corporation nor any
29 affiliated corporation engages in any petroleum refining within or
30 outside this state during the taxable year or the five preceding years.

31 NEW SECTION. **Sec. 5.** TAXABLE INCOME MODIFICATIONS. In computing
32 taxable income, modifications shall be made to the taxpayer's federal
33 taxable income as required under this section, unless the modification
34 has the effect of duplicating an item of income or deduction.

1 (1) Add amounts that have been deducted in computing federal
2 taxable income to the extent the amounts have been carried over from
3 taxable years ending before the effective date of this section.

4 (2) Add amounts that have been deducted in computing federal
5 taxable income to the extent the amounts have been carried back from
6 future taxable years.

7 (3) Add taxes on or measured by net income that have been deducted
8 under the internal revenue code in computing federal taxable income.

9 (4) Add gross income that has been excluded under section 103 of
10 the internal revenue code in computing federal taxable income, except
11 gross income derived from obligations of the state of Washington or
12 political subdivisions of the state of Washington. However, the amount
13 added under this subsection shall be reduced by any expenses incurred
14 in the production of amounts added under this subsection, to the extent
15 the expenses have not been deducted in computing federal taxable
16 income.

17 (5) Deduct gross income that the state is prohibited from taxing
18 under the Constitution or laws of the United States, to the extent the
19 gross income was included in computing federal taxable income.
20 However, the amount deducted under this subsection shall be reduced by
21 any expenses incurred in the production of amounts subtracted under
22 this subsection, to the extent the expenses have been deducted in
23 computing federal taxable income.

24 (6) Deduct income attributable to activities subject to tax under
25 chapter 82.04 RCW for periods prior to the effective date of this
26 section, to the extent the gross income was included in computing
27 federal taxable income. However, the amount deducted under this
28 subsection shall be reduced by any expenses incurred in the production
29 of such income, to the extent the expenses have been deducted in
30 computing federal taxable income.

31 (7) Deduct income attributable to activities subject to tax under
32 chapter 82.16 RCW, to the extent the gross income was included in
33 computing federal taxable income. However, the amount deducted under
34 this subsection shall be reduced by any expenses incurred in the
35 production of such income to the extent the expenses have been deducted
36 in calculating federal taxable income.

37 (8) Deduct income attributable to insurance business upon which a
38 tax based on gross premiums is paid to the state. However, the amount

1 deducted under this subsection shall be reduced by any expense incurred
2 in the production of such income to the extent the expense has been
3 deducted in calculating federal taxable income.

4 (9) Add amounts upon which an S corporation is subject to tax under
5 subchapter S, chapter 1, subtitle A of the internal revenue code.

6 (10) Add amounts that have been deducted as intangible drilling and
7 development expenses under 26 U.S.C. Sec. 263(c) (internal revenue
8 code) in excess of amounts that would have been deducted had the
9 expenses been capitalized and depreciated.

10 (11) Add amounts deducted on the percentage depletion basis under
11 26 U.S.C. Sec. 613 (internal revenue code) in excess of the amounts
12 that would have been deducted had the expenses been determined using
13 the cost depletion basis under 26 U.S.C. Sec. 612 (internal revenue
14 code).

15 (12) Add amounts deducted as depreciation in excess of the amounts
16 allowable under 26 U.S.C. Sec. 167 (internal revenue code) as that
17 section read on June 30, 1981.

18 NEW SECTION. **Sec. 6.** TAX RETURNS FOR FRACTIONAL YEAR. If the
19 first taxable year of any taxpayer with respect to which a tax is
20 imposed by this title ends before December 31st of the calendar year in
21 which this title becomes effective, referred to in this section as a
22 fractional taxable year, the taxable income for the fractional taxable
23 year shall be the taxpayer's taxable income for the entire taxable
24 year, adjusted by one of the following methods, at the taxpayer's
25 election:

26 (1) The taxable income shall be multiplied by a fraction. The
27 numerator of the fraction is the number of days in the fractional
28 taxable year. The denominator of the fraction is the number of days in
29 the entire taxable year.

30 (2) The taxable income shall be adjusted, in accordance with rules
31 of the department, so as to include only such income and be reduced
32 only by such deductions as can be clearly determined from the permanent
33 records of the taxpayer to be attributable to the fractional taxable
34 year.

35 NEW SECTION. **Sec. 7.** ESTIMATION AGREEMENTS. The department may
36 reasonably estimate the items of business or nonbusiness income of a

1 taxpayer having an office within the state and one or more other states
2 or foreign countries that may be apportioned or allocated to the state
3 and may enter into estimation agreements with such taxpayers for the
4 determination of their liability for the tax imposed by this title.

5 NEW SECTION. **Sec. 8.** APPORTIONMENT AND ALLOCATION OF INCOME. All
6 income shall be apportioned and allocated to this state except income
7 that is apportioned or allocated to another state under RCW 82.56.010.

8 NEW SECTION. **Sec. 9.** COMBINED REPORTING. (1) A taxpayer engaged
9 in a unitary business with one or more other corporations shall file a
10 combined report which includes the income, determined under section 10
11 of this act, and apportionment factors, determined under RCW 82.56.010,
12 of all corporations that are members of the unitary business, and such
13 other information as required by the department.

14 (2) The department may, by rule, require the combined report to
15 include the income and associated apportionment factors of any persons
16 that are not included under subsection (1) of this section, but that
17 are members of a unitary business, in order to reflect proper
18 apportionment of income of entire unitary businesses. Authority to
19 require combination by rule under this subsection includes authority to
20 require combination of persons that are not, or would not be if doing
21 business in this state, subject to tax under this chapter.

22 (a) In addition, if the department determines that the reported
23 income or loss of a taxpayer engaged in a unitary business with any
24 person not included under subsection (1) of this section represents an
25 avoidance or evasion of tax by such taxpayer, the department may, on a
26 case-by-case basis, require all or any part of the income and
27 associated apportionment factors of such person to be included in the
28 taxpayer's combined report.

29 (b) With respect to inclusion of associated apportionment factors
30 under this subsection, the department may require the exclusion of any
31 one or more of the factors, the inclusion of one or more additional
32 factors which will fairly represent the taxpayer's business activity in
33 this state, or the employment of any other method to effectuate a
34 proper reflection of the total amount of income subject to
35 apportionment and an equitable allocation and apportionment of the
36 taxpayer's income.

1 NEW SECTION. **Sec. 10.** DETERMINATION OF TAXABLE INCOME OR LOSS

2 USING COMBINED REPORT. The use of a combined report does not disregard
3 the separate identities of the taxpayer members of the combined group.
4 Each taxpayer member is responsible for tax based on its taxable income
5 or loss apportioned or allocated to this state, which includes, in
6 addition to other types of income, the taxpayer member's apportioned
7 share of business income of the combined group, where business income
8 of the combined group is calculated as a summation of the individual
9 net business incomes of all members of the combined group. A member's
10 net business income is determined by removing all but business income,
11 expense, and loss from that member's total income of the combined
12 group, as provided in this section.

13 (1)(a) Each taxpayer member is responsible for tax based on its
14 taxable income or loss apportioned or allocated to this state, which
15 includes:

16 (i) Its share of any business income apportionable to this state of
17 each of the combined groups of which it is a member, determined under
18 subsection (2) of this section;

19 (ii) Its share of any business income apportionable to this state
20 of a distinct business activity conducted within and without the state
21 wholly by the taxpayer member, determined under RCW 82.56.010;

22 (iii) Its income from a business conducted wholly by the taxpayer
23 member entirely within the state;

24 (iv) Its income sourced to this state from the sale or exchange of
25 capital or assets, and from involuntary conversions, as determined
26 under subsection (3)(a)(vii) of this section, below;

27 (v) Its nonbusiness income or loss allocable to this state,
28 determined under RCW 82.56.010;

29 (vi) Its income or loss allocated or apportioned in an earlier
30 year, required to be taken into account as state source income during
31 the income year, other than a net operating loss; and

32 (vii) Its net operating loss carryover or carryback. If the
33 taxable income computed under this section results in a loss for a
34 taxpayer member of the combined group, that taxpayer member has a state
35 net operating loss. Such net operating loss is applied as a deduction
36 in a prior or subsequent year only if that taxpayer has state source
37 positive net income, whether or not the taxpayer is or was a member of
38 a combined reporting group in the prior or subsequent year.

1 (b) Except where otherwise provided, no tax credit or
2 post-apportionment deduction earned by one member of the group, but not
3 fully used by or allowed to that member, may be used in whole or in
4 part by another member of the group or applied in whole or in part
5 against the total income of the combined group; and a
6 post-apportionment deduction carried over into a subsequent year as to
7 the member that incurred it, and available as a deduction to that
8 member in a subsequent year, will be considered in the computation of
9 the income of that member in the subsequent year, regardless of the
10 composition of that income as apportioned, allocated, or wholly within
11 this state.

12 (2) The taxpayer's share of the business income apportionable to
13 this state of each combined group of which it is a member is the
14 product of:

15 (a) The business income of the combined group, determined under
16 subsection (3) of this section; and

17 (b) The taxpayer member's apportionment percentage, determined
18 under RCW 82.56.010, including in the property, payroll, and sales
19 factor numerators the taxpayer's property, payroll, and sales,
20 respectively, associated with the combined group's unitary business in
21 this state, and including in the denominator the property, payroll, and
22 sales of all members of the combined group, including the taxpayer,
23 which property, payroll, and sales are associated with the combined
24 group's unitary business wherever located. The property, payroll, and
25 sales of a partnership must be included in the determination of the
26 partner's apportionment percentage in proportion to a ratio the
27 numerator of which is the amount of the partner's distributive share of
28 partnership's unitary income included in the income of the combined
29 group in accordance with subsection (3)(b)(iii) of this section and the
30 denominator of which is the amount of the partnership's total unitary
31 income.

32 (3) The business income of a combined group is determined as
33 follows:

34 (a) From the total income of the combined group, determined under
35 (b) of this subsection, subtract any income, and add any expense or
36 loss, other than the business income, expense, or loss of the combined
37 group.

1 (b) Except as otherwise provided, the total income of the combined
2 group is the sum of the incomes, separately determined, of each member
3 of the combined group. The income of each member of the combined group
4 must be determined as follows:

5 (i) For any member incorporated in the United States, or included
6 in a consolidated federal corporate income tax return, the income to be
7 included in the total income of the combined group is the taxable
8 income for the corporation after making appropriate adjustments under
9 section 5 of this act.

10 (ii)(A) For any member not included in (a) of this subsection, the
11 income to be included in the total income of the combined group shall
12 be determined as follows:

13 (I) A profit and loss statement shall be prepared for each foreign
14 branch or corporation in the currency in which the books of account of
15 the branch or corporation are regularly maintained.

16 (II) Adjustments shall be made to the profit and loss statement to
17 conform it to the accounting principles generally accepted in the
18 United States for the preparation of such statements except as modified
19 under this title.

20 (III) Adjustments shall be made to the profit and loss statement to
21 conform it to the tax accounting standards required by the department
22 by rule.

23 (IV) Except as otherwise provided by rule, the profit and loss
24 statement of each member of the combined group, and the apportionment
25 factors related thereto, whether United States or foreign, shall be
26 translated into the currency in which the parent company maintains its
27 books and records.

28 (V) Income apportioned to this state shall be expressed in United
29 States dollars.

30 (B) In lieu of the procedures set forth in (b)(ii)(A) of this
31 subsection, and subject to the determination of the department that it
32 reasonably approximates income, any member not included in (b)(i) of
33 this subsection may determine its income on the basis of the
34 consolidated profit and loss statement which includes the member and
35 which is prepared for filing with the securities and exchange
36 commission by related corporations. If the member is not required to
37 file with the securities and exchange commission, the department may
38 allow the use of the consolidated profit and loss statement prepared

1 for reporting to shareholders and subject to review by an independent
2 auditor. If above statements do not reasonably approximate income as
3 determined by the department, the department may accept those
4 statements with appropriate adjustments to approximate that income.

5 (iii) If a unitary business includes income from a partnership, the
6 income to be included in the total income of the combined group shall
7 be the member of the combined group's direct and indirect distributive
8 share of the partnership's unitary business income.

9 (iv) All dividends paid by one to another of the members of the
10 combined group shall, to the extent those dividends are paid out of the
11 earnings and profits of the unitary business included in the combined
12 report, in the current or an earlier year, be eliminated from the
13 income of the recipient. This provision shall not apply to dividends
14 received from members of the unitary business which are not a part of
15 the combined group.

16 (v) Except as otherwise provided by rule, business income from an
17 intercompany transaction between members of the same combined group
18 shall be deferred in a manner similar to 26 C.F.R. 1.1502-13. Upon the
19 occurrence of any of the following events, deferred business income
20 resulting from an intercompany transaction between members of a
21 combined group shall be restored to the income of the seller, and shall
22 be apportioned as business income earned immediately before the event:

23 (A) The object of a deferred intercompany transaction is:

24 (I) Resold by the buyer to an entity that is not a member of the
25 combined group;

26 (II) Resold by the buyer to an entity that is a member of the
27 combined group for use outside the unitary business in which the buyer
28 and seller are engaged; or

29 (III) Converted by the buyer to a use outside the unitary business
30 in which the buyer and seller are engaged; or

31 (B) The buyer and seller are no longer members of the same combined
32 group, regardless of whether the members remain unitary.

33 (vi) A charitable expense incurred by a member of a combined group
34 shall, to the extent allowable as a deduction under internal revenue
35 code section 170, be subtracted first from the business income of the
36 combined group (subject to the income limitations of that section
37 applied to the entire business income of the group), and any remaining
38 amount shall then be treated as a nonbusiness expense allocable to the

1 member that incurred the expense (subject to the income limitations of
2 that section applied to the nonbusiness income of that specific
3 member). Any charitable deduction disallowed under the foregoing rule,
4 but allowed as a carryover deduction in a subsequent year, shall be
5 treated as originally incurred in the subsequent year by the same
6 member, and the rules of this section shall apply in the subsequent
7 year in determining the allowable deduction in that year.

8 (vii) Gain or loss from the sale or exchange of capital assets,
9 property described by internal revenue code section 1231(a)(3), and
10 property subject to an involuntary conversion, shall be removed from
11 the total separate net income of each member of a combined group and
12 shall be apportioned and allocated as follows:

13 (A) For each class of gain or loss (short-term capital, long-term
14 capital, internal revenue code section 1231, and involuntary
15 conversions) all members' business gain and loss for the class shall be
16 combined (without netting between such classes), and each class of net
17 business gain or loss separately apportioned to each member using the
18 member's apportionment percentage determined under subsection (2) of
19 this section.

20 (B) Each taxpayer member shall then net its apportioned business
21 gain or loss for all classes, including any such apportioned business
22 gain and loss from other combined groups, against the taxpayer member's
23 nonbusiness gain and loss for all classes allocated to this state,
24 using the rules of internal revenue code sections 1231 and 1222,
25 without regard to any of the taxpayer member's gains or losses from the
26 sale or exchange of capital assets, internal revenue code section 1231
27 property, and involuntary conversions which are nonbusiness items
28 allocated to another state.

29 (C) Any resulting state source income (or loss, if the loss is not
30 subject to the limitations of internal revenue code section 1211) of a
31 taxpayer member produced by the application of this section shall then
32 be applied to all other state source income or loss of that member.

33 (D) Any resulting state source loss of a member that is subject to
34 the limitations of internal revenue code section 1211 shall be carried
35 forward by that member, and shall be treated as state source short-term
36 capital loss incurred by that member for the year for which the
37 carryover applies.

1 (viii) Any expense of one member of the unitary group which is
2 directly or indirectly attributable to the nonbusiness or exempt income
3 of another member of the unitary group shall be allocated to that other
4 member as corresponding nonbusiness or exempt expense, as appropriate.

5 NEW SECTION. **Sec. 11.** DESIGNATION OF SURETY. As a filing
6 convenience, and without changing the respective liability of the group
7 members, members of a combined reporting group may annually elect to
8 designate one taxpayer member of the combined group to file a single
9 return in the form and manner prescribed by the department, in lieu of
10 filing their own respective returns, provided that the taxpayer
11 designated to file the single return consents to act as surety with
12 respect to the tax liability of all other taxpayers properly included
13 in the combined report, and agrees to act as agent on behalf of those
14 taxpayers for the year of the election for tax matters relating to the
15 combined report for that year. If for any reason the surety is
16 unwilling or unable to perform its responsibilities, tax liability may
17 be assessed against the taxpayer members.

18 NEW SECTION. **Sec. 12.** WATER'S-EDGE ELECTION; INITIATION AND
19 WITHDRAWAL. (1) Taxpayer members of a unitary group that meet the
20 requirements of subsection (2) of this section may elect to determine
21 each of their apportioned shares of the net business income or loss of
22 the combined group under a water's-edge election. Under this election,
23 taxpayer members shall take into account all or a portion of the income
24 and apportionment factors of only the following members otherwise
25 included in the combined group under section 9 of this act, as follows:

26 (a) The entire income and apportionment factors of any member
27 incorporated in the United States or formed under the laws of any
28 state, the District of Columbia, or any territory or possession of the
29 United States;

30 (b) The entire income and apportionment factors of any member,
31 regardless of the place incorporated or formed, if the average of its
32 property, payroll, and sales factors within the United States is twenty
33 percent or more;

34 (c) The entire income and apportionment factors of any member which
35 is a domestic international sales corporation as described in internal
36 revenue code sections 991 to 994, inclusive; a foreign sales

1 corporation as described in internal revenue code sections 921 to 927,
2 inclusive; or any member which is an export trade corporation, as
3 described in internal revenue code sections 970 to 971, inclusive;

4 (d) Any member not described in (a) through (c) of this subsection,
5 inclusive, shall include the portion of its income derived from or
6 attributable to sources within the United States, as determined under
7 the internal revenue code without regard to federal treaties, and its
8 apportionment factors related thereto;

9 (e) Any member that is a "controlled foreign corporation," as
10 defined in internal revenue code section 957, to the extent of the
11 income of that member that is defined in section 952 of subpart F of
12 the internal revenue code ("subpart F income") not excluding lower-tier
13 subsidiaries' distributions of such income which were previously taxed,
14 determined without regard to federal treaties, and the apportionment
15 factors related to that income; any item of income received by a
16 controlled foreign corporation shall be excluded if such income was
17 subject to an effective rate of income tax imposed by a foreign country
18 greater than ninety percent of the maximum rate of tax specified in
19 internal revenue code section 11;

20 (f) Any member that earns more than twenty percent of its income,
21 directly or indirectly, from intangible property or service related
22 activities that are deductible against the business income of other
23 members of the combined group, to the extent of that income and the
24 apportionment factors related thereto; and

25 (g) The entire income and apportionment factors of any member that
26 is doing business in a tax haven, where "doing business in a tax haven"
27 is defined as being engaged in activity sufficient for that tax haven
28 jurisdiction to impose a tax under United States constitutional
29 standards. If the member's business activity within a tax haven is
30 entirely outside the scope of the laws, provisions, and practices that
31 cause the jurisdiction to meet the criteria established in section
32 2(12) of this act, the activity of the member must be treated as not
33 having been conducted in a tax haven.

34 (2)(a) A water's-edge election is effective only if made on a
35 timely filed, original return for a taxable year by every member of the
36 unitary business subject to tax under this title. The department shall
37 develop rules, and rules governing the impact if any, on the scope or
38 application of a water's-edge election, including termination or deemed

1 election, resulting from a change in the composition of the unitary
2 group, the combined group, the taxpayer members, and any other similar
3 change.

4 (b) Such election shall constitute consent to the reasonable
5 production of documents and taking of depositions.

6 (c) In the discretion of the department, a water's-edge election
7 may be disregarded in part or in whole, and the income and
8 apportionment factors of any member of the taxpayer's unitary group may
9 be included in the combined report without regard to the provisions of
10 this section, if any member of the unitary group fails to comply with
11 any provision of this title or if a person otherwise not included in
12 the water's-edge combined group was availed of with a substantial
13 objective of avoiding state income tax.

14 (d) A water's-edge election is binding for and applicable to the
15 tax year it is made and all taxable years thereafter. It may be
16 withdrawn or reinstated after withdrawal, only upon written request
17 for reasonable cause based on extraordinary hardship due to unforeseen
18 changes in state tax statutes, law, or policy, and only with the
19 written permission of the department. If the department grants a
20 withdrawal of election, he or she shall impose reasonable conditions as
21 necessary to prevent the evasion of tax or to clearly reflect income
22 for the election period prior to or after the withdrawal.

23 NEW SECTION. **Sec. 13.** ESTIMATED TAX IMPOSED--DUE DATE OF
24 ESTIMATED TAXES--AMOUNT OF ESTIMATED TAX--UNDERPAYMENT PENALTY. (1)
25 Each taxpayer who is required by the internal revenue code to make
26 payment of estimated taxes shall pay to the department on forms
27 prescribed by the department the estimated taxes due under this title.

28 (2) The provisions of the internal revenue code relating to the
29 determination of reporting periods and due dates of payments of
30 estimated tax apply to the estimated tax payments due under this
31 section.

32 (3) The amount of the estimated tax shall be the annualized tax
33 divided by the number of months in the reporting period. No estimated
34 tax shall be due if the annualized tax is less than five hundred
35 dollars. The provisions of RCW 82.32.050 and 82.32.090 shall apply to
36 underpayments of estimated tax but shall not apply to underpayments if

1 the tax remitted to the department under this title is either ninety
2 percent of the tax shown on the return or one hundred percent of the
3 tax shown on the previous year's tax return.

4 (4) For purposes of this section, the annualized tax is the
5 taxpayer's projected tax liability for the taxable year as computed
6 under section 6654 of the internal revenue code and the regulations
7 thereunder.

8 NEW SECTION. **Sec. 14.** METHOD OF ACCOUNTING. (1) A taxpayer's
9 method of accounting for purposes of the tax imposed under this title
10 shall be the same as the taxpayer's method of accounting for federal
11 income tax purposes. If no method of accounting has been regularly
12 used by a taxpayer for federal income tax purposes or if the method
13 used does not clearly reflect income, tax due under this title shall be
14 computed by a method of accounting that in the opinion of the
15 department fairly reflects income.

16 (2) If a corporation's method of accounting is changed for federal
17 income tax purposes, it shall be similarly changed for purposes of this
18 title.

19 NEW SECTION. **Sec. 15.** CORPORATIONS REQUIRED TO FILE RETURNS. (1)
20 All taxpayers shall file with the department, on forms prescribed by
21 the department, an income tax return for each taxable year. A
22 corporation owing no tax for a taxable year is not required to file a
23 return for that year. Each corporation required to file a return under
24 this title shall, without assessment, notice, or demand, pay any tax
25 due thereon to the department on or before the date fixed for the
26 filing of the return.

27 (2) The department may by rule require that certain taxpayers file,
28 on forms prescribed by the department, informational returns for any
29 period.

30 (3) If an adjustment to a taxpayer's federal return is made by the
31 taxpayer or the internal revenue service, the taxpayer shall, within
32 ninety days of the final determination of the adjustment by the
33 internal revenue service or within thirty days of the filing of a
34 federal return adjusted by the taxpayer, file with the department on
35 forms prescribed by the department, a corrected return reflecting the
36 adjustments as finally determined. The taxpayer shall pay any

1 additional tax due resulting from the finally determined internal
2 revenue service adjustment or a taxpayer adjustment without notice and
3 assessment. The period of limitation for the collection of the
4 additional tax, interest, and penalty due as a result of an adjustment
5 by the taxpayer or a finally determined internal revenue service
6 adjustment shall begin at the later of thirty days following the final
7 determination of the adjustment or the date of the filing of the
8 corrected return.

9 NEW SECTION. **Sec. 16.** DUE DATE FOR FILING A RETURN--EXTENSIONS--
10 INTEREST AND PENALTIES. The due date of a return required to be filed
11 with the department shall be the due date of the federal income tax
12 return or informational return for federal income tax purposes. The
13 department has the authority to grant extensions of times by which
14 returns required to be filed by this title may be submitted. The
15 department also has the authority to grant extensions of time to pay
16 tax with regard to taxes imposed by this title. Interest at the rate
17 as specified in RCW 82.32.050 shall accrue during any extension period
18 and the interest and penalty provisions of chapter 82.32 RCW shall
19 apply to late payments and deficiencies. Notwithstanding the
20 limitation of RCW 82.32.090, in the case of the late filing of an
21 informational return, there shall be imposed a penalty the amount of
22 which shall be established by the department by rule. The penalty
23 shall not exceed fifty dollars per month for a maximum of ten months.
24 RCW 82.32.105 shall apply to this section.

25 NEW SECTION. **Sec. 17.** RECORDS--RETURNS. (1) Every taxpayer
26 required to deduct and withhold the tax imposed under this title shall
27 keep records, render statements, make returns, file reports, and
28 perform other acts as the department requires by rule. Each return
29 shall be made under penalty of perjury and on forms prescribed by the
30 department. The department may require other statements and reports be
31 made under penalty of perjury and on forms prescribed by the
32 department. The department may require any taxpayer required to deduct
33 and withhold the tax imposed under this title to furnish to the
34 department a correct copy of any return or document that the taxpayer
35 has filed with the internal revenue service or received from the
36 internal revenue service.

1 (2) All books and records and other papers and documents required
2 to be kept under this title are subject to inspection by the department
3 at all times during business hours of the day.

4 NEW SECTION. **Sec. 18.** PROVISIONS OF INTERNAL REVENUE CODE
5 CONTROL. (1) To the extent possible without being inconsistent with
6 this title, all of the provisions of the internal revenue code relating
7 to the following subjects apply to the taxes imposed under this title:

- 8 (a) Liability of transferees;
- 9 (b) Time and manner of making returns, extensions of time for
10 filing returns, verification of returns, and the time when a return is
11 deemed filed.

12 (2) The department by rule may provide modifications and exceptions
13 to the provisions in subsection (1) of this section, if reasonably
14 necessary to facilitate the prompt, efficient, and equitable collection
15 of tax under this title.

16 NEW SECTION. **Sec. 19.** ADMINISTRATIVE PROVISIONS. Chapter 82.32
17 RCW applies to the taxes imposed in this chapter.

18 NEW SECTION. **Sec. 20.** RULES. The department may adopt rules
19 under chapter 34.05 RCW for the administration and enforcement of this
20 title. The rules, to the extent possible without being inconsistent
21 with this title, shall follow the internal revenue code and the
22 regulations and rulings of the United States department of the treasury
23 with respect to the federal income tax. The department may adopt as a
24 part of these rules any portions of the internal revenue code and
25 treasury department regulations and rulings, in whole or in part.

26 NEW SECTION. **Sec. 21.** CRIMES. (1) Any person who knowingly
27 attempts to evade the tax imposed under this title or payment thereof
28 is guilty of a class C felony as provided in chapter 9A.20 RCW.

29 (2) Any person required to collect tax imposed under this title who
30 knowingly fails to collect, truthfully account for, or pay over the tax
31 is guilty of a class C felony as provided in chapter 9A.20 RCW.

32 (3) Any person who knowingly fails to pay tax, pay estimated tax,
33 make returns, keep records, or supply information, as required under

1 this title, is guilty of a gross misdemeanor as provided in chapter
2 9A.20 RCW.

3 NEW SECTION. **Sec. 22.** CREATION OF RESERVE ACCOUNT. (1) The
4 energy and transportation reserve account is created in the state
5 treasury. All receipts from the tax imposed in this chapter must be
6 deposited into the account. Money in the account may be spent only
7 after appropriation. Expenditures from the account must be used only
8 for the purposes specified in subsection (3) of this section.

9 (2) Beginning January 1, 2009, and every six months thereafter, tax
10 proceeds in an amount determined under this subsection (2) shall be
11 distributed in the manner provided in subsection (3) of this section.
12 The amount of proceeds to be distributed equals the sum of: (a) The
13 lesser of the amount in the account on the day prior to the date of
14 distribution or two hundred fifty million dollars; and (b) the amount
15 by which the balance in the account on the day prior to the date of
16 distribution, reduced by the amount determined under (a) of this
17 subsection, exceeds five hundred million dollars. The percentage
18 amounts in subsection (3) of this section shall be adjusted ratably as
19 the distributions expire in subsection (3)(a) and (b) of this section.

20 (3) The amount of proceeds subject to distribution, as determined
21 under subsection (2) of this section, shall be distributed as follows:

22 (a) Until July 1, 2016, eighteen percent shall be deposited into
23 the energy freedom account created in RCW 15.110.050;

24 (b) Until July 1, 2020, one and four-fifths percent shall be
25 deposited into the segregated subaccount of the air pollution control
26 account specified in RCW 70.94.017;

27 (c) Three and three-fifths percent shall be deposited into the
28 general fund for distribution to state agencies, as provided by
29 legislative appropriation, to pay for agency heating and transportation
30 costs;

31 (d) Three and three-fifths percent shall be deposited into the
32 general fund for distribution to school districts, as provided by
33 legislative appropriation, to pay for heating and pupil transportation
34 costs;

35 (e) One and four-fifths percent shall be deposited into the energy
36 efficiency construction account created in RCW 39.35C.100 for the
37 construction of energy conservation projects;

1 (f) Forty-five percent shall be distributed to a regional transit
2 authority under chapter 81.112 RCW, as provided by legislative
3 appropriation. The authority must use the money for a commuter rail
4 system or rail fixed guideway system that provides service to all
5 counties that comprise the regional transit authority;

6 (g) Thirteen and one-half percent shall be distributed to the
7 department of community, trade, and economic development for the
8 purposes specified in section 40 of this act; and

9 (h) Twelve and seven-tenths percent shall be deposited into the
10 general fund.

11 **DISTRIBUTION: ENERGY FREEDOM PROGRAM**

12 **Sec. 23.** RCW 15.110.020 and 2006 c 171 s 3 are each amended to
13 read as follows:

14 (1) The energy freedom program is established within the
15 department. The director may establish policies and procedures
16 necessary for processing, reviewing, and approving applications made
17 under this chapter.

18 (2) When reviewing applications submitted under this program, the
19 director shall consult with those agencies having expertise and
20 knowledge to assess the technical and business feasibility of the
21 project and probability of success. These agencies may include, but
22 are not limited to, Washington State University, the University of
23 Washington, the department of ecology, the department of community,
24 trade, and economic development, and the Washington state conservation
25 commission.

26 (3) The director, in cooperation with the department of community,
27 trade, and economic development, may approve an application only if the
28 director finds:

29 (a) The project will convert farm products or wastes directly into
30 electricity or into gaseous or liquid fuels or other coproducts
31 associated with such conversion;

32 (b) The project demonstrates technical feasibility and directly
33 assists in moving a commercially viable project into the marketplace
34 for use by Washington state citizens;

35 (c) The facility will produce long-term economic benefits to the
36 state, a region of the state, or a particular community in the state;

1 (d) The project does not require continuing state support;

2 (e) The assistance will result in new jobs, job retention, or
3 higher incomes for citizens of the state;

4 (f) The state is provided an option under the assistance agreement
5 to purchase a portion of the fuel or feedstock to be produced by the
6 project, exercisable by the department of general administration;

7 (g) The project will increase energy independence or diversity for
8 the state;

9 (h) The project will use feedstocks produced in the state, if
10 feasible, except this criterion does not apply to the construction of
11 facilities used to distribute and store fuels that are produced from
12 farm products or wastes;

13 (i) Any product produced by the project will be suitable for its
14 intended use, will meet accepted national or state standards, and will
15 be stored and distributed in a safe and environmentally sound manner;

16 (j) The application provides for adequate reporting or disclosure
17 of financial and employment data to the director, and permits the
18 director to require an annual or other periodic audit of the project
19 books; and

20 (k) For research and development projects, the application has been
21 independently reviewed by a peer review committee as defined in RCW
22 15.110.010 and the findings delivered to the director.

23 (4) The director may approve an application for assistance up to
24 (~~five~~) fifteen million dollars. In no circumstances shall this
25 assistance constitute more than fifty percent of the total project
26 cost.

27 (5) The director shall enter into agreements with approved
28 applicants to fix the terms and rates of the assistance to minimize the
29 costs to the applicants, and to encourage establishment of a viable
30 bioenergy industry. The agreement shall include provisions to protect
31 the state's investment, including a requirement that a successful
32 applicant enter into contracts with any partners that may be involved
33 in the use of any assistance provided under this program, including
34 services, facilities, infrastructure, or equipment. Contracts with any
35 partners shall become part of the application record.

36 (6) The director may defer any payments for up to twenty-four
37 months or until the project starts to receive revenue from operations,
38 whichever is sooner.

1 **Sec. 24.** RCW 15.110.050 and 2006 c 371 s 223 are each amended to
2 read as follows:

3 The energy freedom account is created in the state treasury. All
4 receipts from appropriations made to the account, distributions to the
5 account under section 22 of this act, and any loan payments of
6 principal and interest derived from loans made under this chapter must
7 be deposited into the account. Moneys in the account may be spent only
8 after appropriation. Expenditures from the account may be used only
9 for assistance for projects consistent with this chapter or otherwise
10 authorized by the legislature. Administrative costs of the department
11 may not exceed three percent of the total funds available for this
12 program.

13 **DISTRIBUTION: RETROFIT OF SCHOOL BUSES**
14 **AND LOCAL GOVERNMENT FLEETS**

15 **Sec. 25.** RCW 70.94.017 and 2005 c 295 s 5 are each amended to read
16 as follows:

17 (1) Money deposited in the segregated subaccount of the air
18 pollution control account under RCW 46.68.020(2) shall be distributed
19 as follows:

20 (a) Eighty-five percent shall be distributed to air pollution
21 control authorities created under this chapter. The money must be
22 distributed in direct proportion with the amount of fees imposed under
23 RCW 46.12.080, 46.12.170, and 46.12.181 that are collected within the
24 boundaries of each authority. However, an amount in direct proportion
25 with those fees collected in counties for which no air pollution
26 control authority exists must be distributed to the department.

27 (b) The remaining fifteen percent shall be distributed to the
28 department.

29 (2) Money distributed to air pollution control authorities and the
30 department under subsection (1) of this section must be used as
31 follows:

32 (a) Eighty-five percent of the money received by an air pollution
33 control authority or the department is available on a priority basis to
34 retrofit school buses with exhaust emission control devices or to
35 provide funding for fueling infrastructure necessary to allow school
36 bus fleets to use alternative, cleaner fuels. In addition, the

1 director of ecology or the air pollution control officer may direct
2 funding under this section for other publicly owned diesel equipment if
3 the director of ecology or the air pollution control officer finds that
4 funding for other publicly owned diesel equipment will provide public
5 health benefits and further the purposes of this chapter.

6 (b) The remaining fifteen percent may be used by the air pollution
7 control authority or department to reduce transportation-related air
8 contaminant emissions and clean up air pollution, or reduce and monitor
9 toxic air contaminants.

10 (3) One-half of the money deposited in the segregated subaccount of
11 the air pollution control account under section 22 of this act shall be
12 distributed to air pollution control authorities and the remainder
13 shall be distributed to the department. Air pollution control
14 authorities and the department must use the money to retrofit school
15 buses with exhaust emission control devices or to provide funding for
16 fueling infrastructure necessary to allow school bus fleets to use
17 alternative, cleaner fuels. In addition, the director of ecology or an
18 air pollution control officer may direct funding under this section for
19 other publicly owned diesel equipment if the director or an officer
20 finds that funding for other publicly owned diesel equipment will
21 provide public health benefits and further the purposes of this
22 chapter.

23 (4) Money in the air pollution control account may be spent by the
24 department only after appropriation.

25 ((+4)) (5) This section expires July 1, 2020.

26 **DISTRIBUTION: REDUCTION OF BUSINESS AND OCCUPATION TAX**

27 **Sec. 26.** RCW 82.04.230 and 2006 c 300 s 5 are each amended to read
28 as follows:

29 Upon every person engaging within this state in business as an
30 extractor, except persons taxable as an extractor under any other
31 provision in this chapter; as to such persons, the amount of the tax
32 with respect to such business shall be equal to the value of the
33 products, including byproducts, extracted for sale or for commercial or
34 industrial use, multiplied by the rate of ((0.484)) 0.4719 percent.

35 The measure of the tax is the value of the products, including

1 byproducts, so extracted, regardless of the place of sale or the fact
2 that deliveries may be made to points outside the state.

3 **Sec. 27.** RCW 82.04.240 and 2004 c 24 s 4 are each amended to read
4 as follows:

5 Upon every person engaging within this state in business as a
6 manufacturer, except persons taxable as manufacturers under other
7 provisions of this chapter; as to such persons, the amount of the tax
8 with respect to such business shall be equal to the value of the
9 products, including byproducts, manufactured, multiplied by the rate of
10 (~~(0.484)~~) 0.4719 percent.

11 The measure of the tax is the value of the products, including
12 byproducts, so manufactured regardless of the place of sale or the fact
13 that deliveries may be made to points outside the state.

14 **Sec. 28.** RCW 82.04.240 and 2003 c 149 s 3 are each amended to read
15 as follows:

16 (1) Upon every person engaging within this state in business as a
17 manufacturer, except persons taxable as manufacturers under other
18 provisions of this chapter; as to such persons, the amount of the tax
19 with respect to such business shall be equal to the value of the
20 products, including byproducts, manufactured, multiplied by the rate of
21 (~~(0.484)~~) 0.4719 percent.

22 (2) Upon every person engaging within this state in the business of
23 manufacturing semiconductor materials, as to such persons, the amount
24 of tax with respect to such business shall, in the case of
25 manufacturers, be equal to the value of the product manufactured, or,
26 in the case of processors for hire, be equal to the gross income of the
27 business, multiplied by the rate of 0.275 percent. For the purposes of
28 this subsection "semiconductor materials" means silicon crystals,
29 silicon ingots, raw polished semiconductor wafers, compound
30 semiconductors, integrated circuits, and microchips. This subsection
31 (2) expires twelve years after the effective date of this act.

32 (3) The measure of the tax is the value of the products, including
33 byproducts, so manufactured regardless of the place of sale or the fact
34 that deliveries may be made to points outside the state.

1 **Sec. 29.** RCW 82.04.250 and 2006 c 177 s 5 are each amended to read
2 as follows:

3 (1) Upon every person engaging within this state in the business of
4 making sales at retail, except persons taxable as retailers under other
5 provisions of this chapter, as to such persons, the amount of tax with
6 respect to such business shall be equal to the gross proceeds of sales
7 of the business, multiplied by the rate of (~~(0.471)~~) 0.4592 percent.

8 (2) Upon every person engaging within this state in the business of
9 making sales at retail that are exempt from the tax imposed under
10 chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or
11 82.08.0263, except persons taxable under RCW 82.04.260(11) or
12 subsection (3) of this section, as to such persons, the amount of tax
13 with respect to such business shall be equal to the gross proceeds of
14 sales of the business, multiplied by the rate of 0.484 percent.

15 (3) Upon every person engaging within this state in the business of
16 making sales at retail that are exempt from the tax imposed under
17 chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or
18 82.08.0263, that is classified by the federal aviation administration
19 as a FAR part 145 certificated repair station with airframe and
20 instrument ratings and limited ratings for nondestructive testing,
21 radio, Class 3 Accessory, and specialized services, as to such persons,
22 the amount of tax with respect to such business shall be equal to the
23 gross proceeds of sales of the business, multiplied by the rate of
24 .2904 percent.

25 **Sec. 30.** RCW 82.04.250 and 2003 2nd sp.s. c 1 s 2 are each amended
26 to read as follows:

27 (1) Upon every person except persons taxable under RCW 82.04.260
28 (~~((5) or (13))~~) (11), 82.04.272, or subsection (2) of this section
29 engaging within this state in the business of making sales at retail,
30 as to such persons, the amount of tax with respect to such business
31 shall be equal to the gross proceeds of sales of the business,
32 multiplied by the rate of (~~(0.471)~~) 0.4592 percent.

33 (2) Upon every person engaging within this state in the business of
34 making sales at retail that are exempt from the tax imposed under
35 chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or
36 82.08.0263, except persons taxable under RCW 82.04.260(~~((13))~~) (11), as

1 to such persons, the amount of tax with respect to such business shall
2 be equal to the gross proceeds of sales of the business, multiplied by
3 the rate of 0.484 percent.

4 **Sec. 31.** RCW 82.04.255 and 1997 c 7 s 1 are each amended to read
5 as follows:

6 Upon every person engaging within the state as a real estate
7 broker; as to such persons, the amount of the tax with respect to such
8 business shall be equal to the gross income of the business, multiplied
9 by the rate of (~~(1.5)~~) 1.4625 percent.

10 The measure of the tax on real estate commissions earned by the
11 real estate broker shall be the gross commission earned by the
12 particular real estate brokerage office including that portion of the
13 commission paid to salesmen or associate brokers in the same office on
14 a particular transaction: PROVIDED, HOWEVER, That where a real estate
15 commission is divided between an originating brokerage office and a
16 cooperating brokerage office on a particular transaction, each
17 brokerage office shall pay the tax only upon their respective shares of
18 said commission: AND PROVIDED FURTHER, That where the brokerage office
19 has paid the tax as provided herein, salesmen or associate brokers
20 within the same brokerage office shall not be required to pay a similar
21 tax upon the same transaction.

22 **Sec. 32.** RCW 82.04.270 and 2004 c 24 s 5 are each amended to read
23 as follows:

24 Upon every person engaging within this state in the business of
25 making sales at wholesale, except persons taxable as wholesalers under
26 other provisions of this chapter; as to such persons, the amount of tax
27 with respect to such business shall be equal to the gross proceeds of
28 sales of such business multiplied by the rate of (~~(0.484)~~) 0.4719
29 percent.

30 **Sec. 33.** RCW 82.04.280 and 2006 c 300 s 6 are each amended to read
31 as follows:

32 Upon every person engaging within this state in the business of:
33 (1) Printing, and of publishing newspapers, periodicals, or magazines;
34 (2) building, repairing or improving any street, place, road, highway,
35 easement, right of way, mass public transportation terminal or parking

1 facility, bridge, tunnel, or trestle which is owned by a municipal
2 corporation or political subdivision of the state or by the United
3 States and which is used or to be used, primarily for foot or vehicular
4 traffic including mass transportation vehicles of any kind and
5 including any readjustment, reconstruction or relocation of the
6 facilities of any public, private or cooperatively owned utility or
7 railroad in the course of such building, repairing or improving, the
8 cost of which readjustment, reconstruction, or relocation, is the
9 responsibility of the public authority whose street, place, road,
10 highway, easement, right of way, mass public transportation terminal or
11 parking facility, bridge, tunnel, or trestle is being built, repaired
12 or improved; (3) (~~extracting for hire or processing for hire, except~~
13 ~~persons taxable as extractors for hire or processors for hire under~~
14 ~~another section of this chapter; (4)~~) operating a cold storage
15 warehouse or storage warehouse, but not including the rental of cold
16 storage lockers; ((+5)) (4) representing and performing services for
17 fire or casualty insurance companies as an independent resident
18 managing general agent licensed under the provisions of RCW 48.05.310;
19 ((+6)) (5) radio and television broadcasting, excluding network,
20 national and regional advertising computed as a standard deduction
21 based on the national average thereof as annually reported by the
22 Federal Communications Commission, or in lieu thereof by itemization by
23 the individual broadcasting station, and excluding that portion of
24 revenue represented by the out-of-state audience computed as a ratio to
25 the station's total audience as measured by the 100 micro-volt signal
26 strength and delivery by wire, if any; ((+7)) (6) engaging in
27 activities which bring a person within the definition of consumer
28 contained in RCW 82.04.190(6); as to such persons, the amount of tax on
29 such business shall be equal to the gross income of the business
30 multiplied by the rate of 0.484 percent.

31 As used in this section, "cold storage warehouse" means a storage
32 warehouse used to store fresh and/or frozen perishable fruits or
33 vegetables, meat, seafood, dairy products, or fowl, or any combination
34 thereof, at a desired temperature to maintain the quality of the
35 product for orderly marketing.

36 As used in this section, "storage warehouse" means a building or
37 structure, or any part thereof, in which goods, wares, or merchandise
38 are received for storage for compensation, except field warehouses,

1 fruit warehouses, fruit packing plants, warehouses licensed under
2 chapter 22.09 RCW, public garages storing automobiles, railroad freight
3 sheds, docks and wharves, and "self-storage" or "mini storage"
4 facilities whereby customers have direct access to individual storage
5 areas by separate entrance. "Storage warehouse" does not include a
6 building or structure, or that part of such building or structure, in
7 which an activity taxable under RCW 82.04.272 is conducted.

8 As used in this section, "periodical or magazine" means a printed
9 publication, other than a newspaper, issued regularly at stated
10 intervals at least once every three months, including any supplement or
11 special edition of the publication.

12 **Sec. 34.** RCW 82.04.280 and 2006 c 300 s 7 are each amended to read
13 as follows:

14 Upon every person engaging within this state in the business of:
15 (1) Printing, and of publishing newspapers, periodicals, or magazines;
16 (2) building, repairing or improving any street, place, road, highway,
17 easement, right of way, mass public transportation terminal or parking
18 facility, bridge, tunnel, or trestle which is owned by a municipal
19 corporation or political subdivision of the state or by the United
20 States and which is used or to be used, primarily for foot or vehicular
21 traffic including mass transportation vehicles of any kind and
22 including any readjustment, reconstruction or relocation of the
23 facilities of any public, private or cooperatively owned utility or
24 railroad in the course of such building, repairing or improving, the
25 cost of which readjustment, reconstruction, or relocation, is the
26 responsibility of the public authority whose street, place, road,
27 highway, easement, right of way, mass public transportation terminal or
28 parking facility, bridge, tunnel, or trestle is being built, repaired
29 or improved; (3) ~~((extracting for hire or processing for hire, except~~
30 ~~persons taxable as extractors for hire or processors for hire under~~
31 ~~another section of this chapter; (4))~~) operating a cold storage
32 warehouse or storage warehouse, but not including the rental of cold
33 storage lockers; ~~((+5))~~ (4) representing and performing services for
34 fire or casualty insurance companies as an independent resident
35 managing general agent licensed under the provisions of RCW 48.05.310;
36 ~~((+6))~~ (5) radio and television broadcasting, excluding network,
37 national and regional advertising computed as a standard deduction

1 based on the national average thereof as annually reported by the
2 Federal Communications Commission, or in lieu thereof by itemization by
3 the individual broadcasting station, and excluding that portion of
4 revenue represented by the out-of-state audience computed as a ratio to
5 the station's total audience as measured by the 100 micro-volt signal
6 strength and delivery by wire, if any; ~~((+7))~~ (6) engaging in
7 activities which bring a person within the definition of consumer
8 contained in RCW 82.04.190(6); as to such persons, the amount of tax on
9 such business shall be equal to the gross income of the business
10 multiplied by the rate of 0.484 percent.

11 As used in this section, "cold storage warehouse" means a storage
12 warehouse used to store fresh and/or frozen perishable fruits or
13 vegetables, meat, seafood, dairy products, or fowl, or any combination
14 thereof, at a desired temperature to maintain the quality of the
15 product for orderly marketing.

16 As used in this section, "storage warehouse" means a building or
17 structure, or any part thereof, in which goods, wares, or merchandise
18 are received for storage for compensation, except field warehouses,
19 fruit warehouses, fruit packing plants, warehouses licensed under
20 chapter 22.09 RCW, public garages storing automobiles, railroad freight
21 sheds, docks and wharves, and "self-storage" or "mini storage"
22 facilities whereby customers have direct access to individual storage
23 areas by separate entrance. "Storage warehouse" does not include a
24 building or structure, or that part of such building or structure, in
25 which an activity taxable under RCW 82.04.272 is conducted.

26 As used in this section, "periodical or magazine" means a printed
27 publication, other than a newspaper, issued regularly at stated
28 intervals at least once every three months, including any supplement or
29 special edition of the publication.

30 **Sec. 35.** RCW 82.04.290 and 2005 c 369 s 8 are each amended to read
31 as follows:

32 (1) Upon every person engaging within this state in the business of
33 providing international investment management services, as to such
34 persons, the amount of tax with respect to such business shall be equal
35 to the gross income or gross proceeds of sales of the business
36 multiplied by a rate of 0.275 percent.

1 (2) 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) 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)~~) 1.4625 percent.

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

18 NEW SECTION. **Sec. 36.** A new section is added to chapter 82.04 RCW
19 to read as follows:

20 Upon every person engaging within this state in the business of
21 extracting for hire or processing for hire, except persons taxable as
22 extractors for hire or processors for hire under another section of
23 this chapter; as to such persons, the amount of tax on such business
24 shall be equal to the gross income of the business multiplied by the
25 rate of 0.4719 percent.

26 **DISTRIBUTION: ENERGY EFFICIENCY FOR GOVERNMENT**

27 **Sec. 37.** RCW 39.35C.020 and 2001 c 214 s 21 are each amended to
28 read as follows:

29 (1) Each state agency and school district shall implement cost-
30 effective conservation improvements and maintain efficient operation of
31 its facilities in order to minimize energy consumption and related
32 environmental impacts and reduce operating costs. Each state agency
33 shall undertake an energy audit and implement cost-effective
34 conservation measures pursuant to the time schedules and requirements
35 set forth in chapter 43.19 RCW, except that any state agency that,

1 after December 31, 1997, has completed energy audits and implemented
2 cost-effective conservation measures, or has contracted with an energy
3 service company for energy audits and conservation measures, is deemed
4 to have met the requirements of this subsection for those facilities
5 included in the audits and conservation measures. Each school district
6 shall undertake an energy audit and implement cost-effective
7 conservation measures pursuant to the time schedules and requirements
8 set forth in RCW 39.35C.025. Performance-based contracting shall be
9 the preferred method for completing energy audits and implementing
10 cost-effective conservation measures.

11 (2) The department shall assist state agencies and school districts
12 in identifying, evaluating, financing, and implementing cost-effective
13 conservation projects at their facilities. The assistance shall
14 include the following:

15 (a) Notifying state agencies and school districts of their
16 responsibilities under this chapter;

17 (b) Apprising state agencies and school districts of opportunities
18 to develop and finance such projects;

19 (c) Providing technical and analytical support, including
20 procurement of performance-based contracting services;

21 (d) Reviewing verification procedures for energy savings; and

22 (e) Assisting in the structuring and arranging of financing for
23 cost-effective conservation projects.

24 (3) Conservation projects implemented under this chapter shall have
25 appropriate levels of monitoring to verify the performance and measure
26 the energy savings over the life of the project. The department shall
27 solicit involvement in program planning and implementation from
28 utilities and other energy conservation suppliers, especially those
29 that have demonstrated experience in performance-based energy programs.

30 (4) The department shall comply with the requirements of chapter
31 39.80 RCW when contracting for architectural or engineering services.

32 (5) The department shall recover any costs and expenses it incurs
33 in providing assistance pursuant to this section, including
34 reimbursement from third parties participating in conservation
35 projects. The department shall enter into a written agreement with the
36 public agency for the recovery of costs.

1 NEW SECTION. **Sec. 38.** A new section is added to chapter 39.35C
2 RCW to read as follows:

3 (1) Subject to available funding, the department shall administer
4 a grant program for state agencies and school districts. The purpose
5 of this grant program is to provide funds to state agencies and schools
6 for the construction of energy conservation projects. A state agency
7 or school district shall file an application with the department. The
8 department shall rule on the application within sixty days. The
9 application must be in a form and manner prescribed by the department,
10 but must contain the following:

- 11 (a) A general description of the energy conservation project;
- 12 (b) The expected cost of the energy conservation project;
- 13 (c) The expected savings from the energy conservation project; and
- 14 (d) Documentation verifying the estimates in (b) and (c) of this
15 subsection.

16 (2) A state agency or school district may not receive more than
17 five percent of the money distributed on an annual basis to the energy
18 efficiency construction account created in RCW 39.35C.100 for an energy
19 conservation project.

20 **Sec. 39.** RCW 39.35C.100 and 1996 c 186 s 414 are each amended to
21 read as follows:

22 (1) The energy efficiency construction account is hereby created in
23 the state treasury. Moneys in the account may be spent only after
24 appropriation and only for the following purposes:

25 (a) Construction of energy efficiency projects, including project
26 evaluation and verification of benefits, project design, project
27 development, project construction, and project administration. Moneys
28 from distributions under section 22 of this act must be used only for
29 energy efficiency projects that constitute energy conservation
30 projects.

31 (b) Payment of principal and interest and other costs required
32 under bond covenant on bonds issued for the purpose of (a) of this
33 subsection.

34 (2) Sources for this account may include:

- 35 (a) Distributions under section 22 of this act;
- 36 (b) General obligation and revenue bond proceeds appropriated by
37 the legislature;

1 ~~((b))~~ (c) Loan repayments under RCW 39.35C.060 sufficient to pay
2 principal and interest obligations; and
3 ~~((e))~~ (d) Funding from federal, state, and local agencies.

4 **DISTRIBUTION: ENERGY SELF SUFFICIENCY FOR BUSINESS**

5 NEW SECTION. **Sec. 40.** A new section is added to chapter 43.21F
6 RCW to read as follows:

7 (1) The department, in consultation with the joint committee on
8 energy supply and energy conservation, shall administer a business
9 renewable energy grant program. The purpose of this grant program is
10 to allocate funds to Washington businesses that invest in renewable
11 energy sources.

12 (2) To receive a grant under this section, a person shall submit an
13 application to the department for approval of the facility, system, or
14 vehicle that uses, or will use, a renewable energy source. The
15 application must include:

16 (a) The name and address of the applicant and location of the
17 proposed renewable energy system;

18 (b) The applicant's tax registration number;

19 (c) A description of the proposed facility or system that will use
20 a renewable energy source or, in the case of a vehicle that uses
21 biofuel, a description of the vehicle;

22 (d) A copy of the electrical permit from the applicable local
23 jurisdiction, if the renewable energy source will be used within a
24 facility or system; and

25 (e) Any other information the department requires.

26 (3) Within sixty days of receiving an application for a renewable
27 energy source grant, the department shall notify the applicant as to
28 whether the department has approved the application.

29 (4) Upon approval by the department and subject to available
30 funding, the department shall distribute to the qualifying applicant an
31 amount not to exceed five percent of the qualifying applicant's taxes
32 due and payable for the prior calendar year under chapter 82.04 RCW.

33 (5) For the purposes of this section, "renewable energy source"
34 means biofuel, a wind generator, or any device or combination of
35 devices or elements that rely upon direct sunlight as an energy source
36 for use in the generation of electricity.

MISCELLANEOUS

Sec. 41. RCW 82.03.130 and 2005 c 253 s 7 are each amended to read as follows:

(1) The board shall have jurisdiction to decide the following types of appeals:

(a) Appeals taken pursuant to RCW 82.03.190.

(b) Appeals from a county board of equalization pursuant to RCW 84.08.130.

(c) Appeals by an assessor or landowner from an order of the director of revenue made pursuant to RCW 84.08.010 and 84.08.060, if filed with the board of tax appeals within thirty days after the mailing of the order, the right to such an appeal being hereby established.

(d) Appeals by an assessor or owner of an intercounty public utility or private car company from determinations by the director of revenue of equalized assessed valuation of property and the apportionment thereof to a county made pursuant to chapter 84.12 and 84.16 RCW, if filed with the board of tax appeals within thirty days after mailing of the determination, the right to such appeal being hereby established.

(e) Appeals by an assessor, landowner, or owner of an intercounty public utility or private car company from a determination of any county indicated ratio for such county compiled by the department of revenue pursuant to RCW 84.48.075: PROVIDED, That

(i) Said appeal be filed after review of the ratio under RCW 84.48.075(3) and not later than fifteen days after the mailing of the certification; and

(ii) The hearing before the board shall be expeditiously held in accordance with rules prescribed by the board and shall take precedence over all matters of the same character.

(f) Appeals from the decisions of sale price of second_class shorelands on navigable lakes by the department of natural resources pursuant to RCW ((79.94.210)) 79.125.450.

(g) Appeals from urban redevelopment property tax apportionment district proposals established by governmental ordinances pursuant to RCW 39.88.060.

(h) Appeals from interest rates as determined by the department of

1 revenue for use in valuing farmland under current use assessment
2 pursuant to RCW 84.34.065.

3 (i) Appeals from revisions to stumpage value tables used to
4 determine value by the department of revenue pursuant to RCW 84.33.091.

5 (j) Appeals from denial of tax exemption application by the
6 department of revenue pursuant to RCW 84.36.850.

7 (k) Appeals pursuant to RCW 84.40.038(3).

8 (l) Appeals pursuant to RCW 84.39.020.

9 (m) Appeals relating to tax deficiencies and refunds, including
10 penalties and interest under Title 82A RCW.

11 (2) Except as otherwise specifically provided by law hereafter, the
12 provisions of RCW 1.12.070 shall apply to all notices of appeal filed
13 with the board of tax appeals.

14 **Sec. 42.** RCW 82.03.140 and 2000 c 103 s 1 are each amended to read
15 as follows:

16 In all appeals over which the board has jurisdiction under RCW
17 82.03.130, a party taking an appeal may elect either a formal or an
18 informal hearing, such election to be made according to rules of
19 practice and procedure to be promulgated by the board: PROVIDED, That
20 nothing shall prevent the assessor or taxpayer, as a party to an appeal
21 pursuant to RCW 84.08.130, within twenty days from the date of the
22 receipt of the notice of appeal, from filing with the clerk of the
23 board notice of intention that the hearing be a formal one: PROVIDED,
24 HOWEVER, That nothing herein shall be construed to modify the
25 provisions of RCW 82.03.190: AND PROVIDED FURTHER, That upon an appeal
26 under RCW 82.03.130(1) (e) or (l), the director of revenue may, within
27 ten days from the date of its receipt of the notice of appeal, file
28 with the clerk of the board notice of its (~~intention that the hearing~~
29 ~~be held pursuant to chapter 34.05 RCW~~) election of a formal hearing.
30 In the event that appeals are taken from the same decision, order, or
31 determination, as the case may be, by different parties and only one of
32 such parties elects a formal hearing, a formal hearing shall be
33 granted.

34 **Sec. 43.** 2006 c 300 s 12 (uncodified) is amended to read as
35 follows:

36 (1)(a) This act (~~and~~), section 7, chapter 300, Laws of 2006,

1 section 28, chapter . . ., Laws of 2007 (section 28 of this act), and
2 section 34, chapter . . ., Laws of 2007 (section 34 of this act) are
3 contingent upon the siting and commercial operation of a significant
4 semiconductor microchip fabrication facility in the state of
5 Washington.

6 (b) For the purposes of this section:

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

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

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

14 (2) This act takes effect the first day of the month in which a
15 contract for the construction of a significant semiconductor
16 fabrication facility is signed, as determined by the director of the
17 department of revenue.

18 (3)(a) The department of revenue shall provide notice of the
19 effective date of this act to affected taxpayers, the legislature, and
20 others as deemed appropriate by the department.

21 (b) If, after making a determination that a contract has been
22 signed and this act is effective, the department discovers that
23 commencement of commercial production did not take place within three
24 years of the date the contract was signed, the department shall make a
25 determination that this act is no longer effective, and all taxes that
26 would have been otherwise due shall be deemed deferred taxes and are
27 immediately assessed and payable from any person reporting tax under
28 RCW 82.04.240(2) or claiming an exemption or credit under section 2 or
29 5 through 10 of this act. The department is not authorized to make a
30 second determination regarding the effective date of this act.

31 NEW SECTION. Sec. 44. CAPTIONS AND SUBHEADINGS. Captions and
32 subheadings used in this act constitute no part of the law.

33 NEW SECTION. Sec. 45. CODIFICATION. Sections 1 through 22 of
34 this act constitute a new title, to be codified as Title 82A RCW.

1 NEW SECTION. **Sec. 46.** SEVERABILITY CLAUSE. If any provision of
2 this act or its application to any person or circumstance is held
3 invalid, the remainder of the act or the application of the provision
4 to other persons or circumstances is not affected.

5 NEW SECTION. **Sec. 47.** EFFECTIVE DATE. Unless expressly provided
6 otherwise, this act takes effect January 1, 2008.

7 NEW SECTION. **Sec. 48.** Sections 23 and 24 of this act expire June
8 30, 2016.

9 NEW SECTION. **Sec. 49.** Sections 26, 27, 29, 31 through 33, 35, and
10 36 of this act take effect January 1, 2009.

11 NEW SECTION. **Sec. 50.** Section 27 of this act expires on the date
12 that section 28 of this act takes effect.

13 NEW SECTION. **Sec. 51.** Sections 28 and 34 of this act take effect
14 on the later of: January 1, 2009, or the date the contingency in
15 section 43 of this act occurs.

16 NEW SECTION. **Sec. 52.** Section 29 of this act expires July 1,
17 2011.

18 NEW SECTION. **Sec. 53.** Section 30 of this act takes effect July 1,
19 2011.

20 NEW SECTION. **Sec. 54.** Section 33 of this act expires on the date
21 that section 34 of this act takes effect.

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