

ESSB 6143 - H AMD

By Representative Hunter

ADOPTED AS AMENDED 03/08/2010

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** In order to preserve funding for education,
4 public safety, health care, environmental protection, and safety net
5 services for children, elderly, disabled, and vulnerable people, it is
6 the intent of the legislature to close obsolete tax preferences,
7 clarify the legislature's intent regarding existing tax policy, and to
8 ensure balanced tax policy while bolstering emerging industries.

9 **PART I**

10 **Minimum Nexus Standards**

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

26 (2)(a) The legislature also finds that the current cost
27 apportionment method in RCW 82.04.460(1) for apportioning most service
28 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.

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

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

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

29 (2) A person who has substantial nexus with this state in any tax
30 year will be deemed to have substantial nexus with this state for the
31 following four tax years.

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

34 "Engaging within this state" and "engaging within the state," when
35 used in connection with any apportionable activity as defined in RCW
36 82.04.460, means that a person generates gross income of the business

1 from sources within this state, such as customers or intangible
2 property located in this state, regardless of whether the person is
3 physically present in this state.

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

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

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

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

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

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

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

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

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

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

24 (b)(i) Property owned by the taxpayer, other than loans and credit
25 card receivables owned by the taxpayer, is valued at its original cost
26 basis. Loans and credit card receivables owned by the taxpayer are
27 valued at their outstanding principal balance, without regard to any
28 reserve for bad debts. However, if a loan or credit card receivable is
29 charged off in whole or in part for federal income tax purposes, the
30 portion of the loan or credit card receivable charged off is deducted
31 from the outstanding principal balance.

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

36 (c) The average value of property must be determined by averaging
37 the values at the beginning and ending of the tax year; but the

1 department may require the averaging of monthly values during the tax
2 year if reasonably required to properly reflect the average value of
3 the taxpayer's property.

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

6 (A) Loans secured by real property, personal property, or both real
7 and personal property, are deemed owned and used in the state if the
8 real property or personal property securing the loan is located within
9 this state. If the property securing the loan is located both within
10 this state and one or more other states, the loan is deemed owned and
11 used in this state if more than fifty percent of the fair market value
12 of the real or personal property is located within this state. If more
13 than fifty percent of the fair market value of the real or personal
14 property is not located within any one state, then the loan is deemed
15 owned and used in this state if the borrower is located in this state.
16 The determination of whether the real or personal property securing a
17 loan is located within this state must be made, as of the time the
18 original agreement was made, and any and all subsequent substitutions
19 of collateral must be disregarded.

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

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

24 (ii) The definitions in section 106 of this act apply to this
25 subsection.

26 (e) Notwithstanding anything else to the contrary in this
27 subsection, property counting toward the thresholds in subsection
28 (1)(c)(i) and (iv) of this section does not include a person's
29 ownership of, or rights in, computer software as defined in RCW
30 82.04.215, including computer software used in providing a digital
31 automated service; master copies of software; and digital goods and
32 digital codes residing on servers located in this state.

33 (3)(a) Payroll counting toward the thresholds in subsection
34 (1)(c)(ii) and (iv) of this section is the total amount paid by the
35 taxpayer for compensation in this state during the tax year plus
36 nonemployee compensation paid to representative third parties in this
37 state. Nonemployee compensation paid to representative third parties

1 includes the gross amount paid to nonemployees who represent the
2 taxpayer in interactions with the taxpayer's clients and includes sales
3 commissions.

4 (b) Compensation is paid in this state if the compensation is
5 properly reportable to this state for unemployment compensation tax
6 purposes, regardless of whether the compensation was actually reported
7 to this state.

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

11 (d) For purposes of this subsection, "compensation" means wages,
12 salaries, commissions, and any other form of remuneration paid to
13 employees or nonemployees and defined as gross income under 26 U.S.C.
14 Sec. 61 of the federal internal revenue code of 1986, as existing on
15 April 1, 2010.

16 (4) Receipts counting toward the thresholds in subsection
17 (1)(c)(iii) and (iv) of this section are those amounts included in the
18 numerator of the receipts factor under sections 105 and 106 of this
19 act.

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

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

1 (6) Subsections (1) through (5) of this section only apply with
2 respect to the taxes imposed under this chapter on apportionable
3 activities as defined in RCW 82.04.460. For purposes of the taxes
4 imposed under this chapter on any activity not included in the
5 definition of apportionable activities in RCW 82.04.460, a person is
6 deemed to have substantial nexus with this state if the person has a
7 physical presence in this state, which need only be demonstrably more
8 than a slightest presence. For purposes of this subsection, a person
9 is physically present in this state if the person has property or
10 employees in this state. A person is also physically present in this
11 state if the person, either directly or through an agent or other
12 representative, engages in activities in this state that are
13 significantly associated with the person's ability to establish or
14 maintain a market for its products in this state.

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

17 (1) The apportionable income of a person within the scope of RCW
18 82.04.460(1) is apportioned to Washington by multiplying its
19 apportionable income by the receipts factor. Persons who are subject
20 to tax under more than one of the tax classifications enumerated in RCW
21 82.04.460(3)(a) (i) through (ix) must calculate a separate receipts
22 factor for each tax classification that the person is taxable under.

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

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

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

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

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

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

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

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

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

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

35 (viii) For purposes of this subsection (3)(b), "customer" means a
36 person or entity to whom the taxpayer makes a sale or renders services
37 or from whom the taxpayer otherwise receives gross income of the

1 business. "Customer" includes anyone who pays royalties or charges in
2 the nature of royalties for the use of the taxpayer's intangible
3 property.

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

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

29 (4) A taxpayer may calculate the receipts factor for the current
30 tax year based on the most recent calendar year for which information
31 is available for the full calendar year. If a taxpayer does not
32 calculate the receipts factor for the current tax year based on
33 previous calendar year information as authorized in this subsection,
34 the business must use current year information to calculate the
35 receipts factor for the current tax year. In either case, a taxpayer
36 must correct the reporting for the current tax year when complete
37 information is available to calculate the receipts factor for that
38 year, but not later than October 31st of the following tax year.

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

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

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

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

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

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

28 (2)(a)(i) The numerator of the receipts factor includes gross
29 income from interest, fees, and penalties on loans secured by real
30 property, personal property, or both real and personal property, if the
31 real or personal property is located within this state. If the
32 property securing the loan is located both within this state and one or
33 more other states, the income described in this subsection (2)(a)(i) is
34 included in the numerator of the receipts factor if more than fifty
35 percent of the fair market value of the real or personal property is
36 located within this state. If more than fifty percent of the fair
37 market value of the real or personal property is not located within any

1 one state, then the income described in this subsection (2)(a)(i) is
2 included in the numerator of the receipts factor if the borrower is
3 located in this state.

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

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

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

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

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

31 (ii) The amount of net gains, which may not be less than zero, from
32 the sale of loans not secured by real or personal property included in
33 the numerator of the receipts factor is determined by multiplying such
34 net gains by a fraction. The numerator of the fraction is the amount
35 included in the numerator of the receipts factor under (b) of this
36 subsection (2). The denominator of the fraction is the amount included
37 in the denominator of the receipts factor under (b) of this subsection
38 (2).

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

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

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

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

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

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

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

31 (e)(i) Interest, dividends, net gains (which may not be less than
32 zero), and other income from investment assets and activities and from
33 trading assets and activities, as provided in this subsection (2)(e),
34 are included in the receipts factor. Investment assets and activities
35 and trading assets and activities include but are not limited to:
36 Investment securities; trading account assets; federal funds;
37 securities purchased and sold under agreements to resell or repurchase;

1 options; futures contracts; forward contracts; notional principal
2 contracts such as swaps; equities; and foreign currency transactions.

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

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

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

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

34 (C)(I) The amount of interest, dividends, gains and other income
35 from trading assets and activities, including but not limited to assets
36 and activities in the matched book, in the arbitrage book, and foreign
37 currency transactions, but excluding amounts described in (e)(ii)(A) or
38 (B) of this subsection (2), attributable to this state and included in

1 the numerator of the receipts factor is determined by multiplying the
2 amount described in (e)(ii)(C)(II) of this subsection (2) by a
3 fraction. The numerator of the fraction is the average value of such
4 trading assets that are properly assigned to a regular place of
5 business of the financial institution within this state. The
6 denominator of the fraction is the average value of all such assets.

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

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

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

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

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

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

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

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

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

36 (f) The numerator of the receipts factor includes gross income from
37 interest, fees, and penalties on credit card receivables, and gross
38 income from fees charged to cardholders, such as annual fees, if the

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

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

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

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

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

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

31 (j) Apportionable income that would be attributable under this
32 subsection (2) to a state in which the financial institution is not
33 taxable must be excluded from the denominator of the receipts factor if
34 at least some of the activity that generated the income is performed in
35 this state, and the gross income is attributable under this subsection
36 (2) to a state in which the taxpayer is not taxable. For purposes of
37 this subsection (2)(j), "not taxable" has the same meaning as in
38 section 105 of this act.

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

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

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

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

23 (a) "Apportionable income" has the same meaning as in RCW
24 82.04.460.

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

27 (c) "Financial institution" has the same meaning as in WAC 458-20-
28 14601. However, the department may not make any substantive changes to
29 the definition of "financial institution" in WAC 458-20-14601 unless
30 the changes implement a legislative amendment to this definition of
31 financial institution.

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

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

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

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

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

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

36 (2) (~~((Notwithstanding the provision of subsection (1) of this~~
37 ~~section, persons doing business both within and without the state who~~

1 ~~receive gross income from service charges, as defined in RCW 63.14.010~~
2 ~~(relating to amounts charged for granting the right or privilege to~~
3 ~~make deferred or installment payments) or who receive gross income from~~
4 ~~engaging in business as financial institutions within the scope of~~
5 ~~chapter 82.14A RCW (relating to city taxes on financial institutions)~~
6 ~~shall apportion or allocate gross income taxable under RCW 82.04.290 to~~
7 ~~this state pursuant to rules promulgated by the department consistent~~
8 ~~with uniform rules for apportionment or allocation developed by the~~
9 ~~states.~~

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

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

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

31 (i) RCW 82.04.255;

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

33 (iii) RCW 82.04.280(5);

34 (iv) RCW 82.04.285;

35 (v) RCW 82.04.286;

36 (vi) RCW 82.04.290;

37 (vii) RCW 82.04.2907;

38 (viii) RCW 82.04.2908; and

1 (ix) RCW 82.04.260(13), 82.04.263, and 82.04.280(1), but only to
2 the extent of any activity that would be taxable under any of the
3 provisions enumerated under (a)(i) through (viii) of this subsection
4 (3) if the tax classifications in RCW 82.04.260(13), 82.04.263, and
5 82.04.280(1) did not exist.

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

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

15 (A) "Business activities tax" has the same meaning as in section
16 105 of this act; and

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

18 **PART II**

19 **Tax Avoidance Transactions**

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

22 (1)(a) Unless otherwise specifically provided in statute, the
23 department must respect the form of a transaction, except where the
24 form of the transaction or a related series of transactions is adopted
25 for the purpose of:

26 (i) Disguising income received, or otherwise avoiding tax on
27 income, from a person that is not affiliated with the taxpayer;

28 (ii) Disguising the purchase or sale of property or services from
29 or to a person that is not affiliated with the taxpayer; or

30 (iii) Avoiding the tax imposed in RCW 82.12.020 on the use of
31 property in this state that is owned by an entity organized outside of
32 Washington.

33 (b) For purposes of this subsection, "affiliated" means under
34 common control. "Control" means the possession, directly or
35 indirectly, of more than fifty percent of the power to direct or cause

1 the direction of the management and policies of a person, whether
2 through the ownership of voting shares, by contract, or otherwise.

3 (2)(a) The department must, as resources allow, adopt rules to
4 assist in determining when to disregard the form of a transaction or a
5 related series of transactions adopted for the purposes described in
6 subsection (1)(a)(i) through (iii) of this section. In adopting rules,
7 the department may consider the following judicial doctrines, except to
8 the extent such doctrines are inconsistent with express provisions
9 contained in Washington state statutes:

- 10 (i) The sham transaction doctrine;
- 11 (ii) The economic substance doctrine;
- 12 (iii) The business purpose doctrine;
- 13 (iv) The substance over form doctrine;
- 14 (v) The step transaction doctrine; and
- 15 (vi) The assignment of income doctrine.

16 (b) The adoption of a rule as required under this subsection is not
17 a condition precedent for the department to use the authority provided
18 in this section. Any rules adopted under this section must include
19 examples of transactions that the department will disregard for tax
20 purposes.

21 (3) The provisions of this section are cumulative and nonexclusive
22 and do not affect any other remedies provided to the department under
23 statutory or common law.

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

26 (1)(a) The department may not use section 201 of this act to
27 disregard any transaction, plan, or arrangement initiated before April
28 1, 2010, if, in respect to such transaction, plan, or arrangement, the
29 taxpayer had reported its tax liability in conformance with either
30 specific written instructions provided by the department to the
31 taxpayer, a determination published under the authority of RCW
32 82.32.410, or other document published by the department.

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

1 (2) For purposes of this section, "specific written instructions"
2 means tax reporting instructions provided to a taxpayer and which
3 specifically identifies the taxpayer to whom the instructions apply.
4 Specific written instructions may be provided as part of an audit, tax
5 assessment, determination, closing agreement, or in response to a
6 binding ruling request.

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

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

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

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

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

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

1 (6) If the department finds that all or any part of a deficiency
2 resulted from engaging in a disregarded transaction, as described in
3 section 201(1)(a) (i), (ii), or (iii) of this act, the department must
4 assess a penalty of thirty-five percent of the additional tax found to
5 be due as a result of engaging in a transaction disregarded by the
6 department under section 201(1)(a) (i), (ii), or (iii) of this act.
7 The penalty provided in this subsection may be assessed together with
8 any other applicable penalties provided in this section on the same tax
9 found to be due, except for the evasion penalty provided in subsection
10 (7) of this section. The department may not assess the penalty under
11 this subsection if, before the department discovers the taxpayer's use
12 of a transaction described under section 201(1)(a) (i), (ii), or (iii)
13 of this act, the taxpayer discloses its participation in the
14 transaction to the department.

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

19 (~~(+7)~~) (8) The penalties imposed under subsections (1) through (4)
20 of this section can each be imposed on the same tax found to be due.
21 This subsection does not prohibit or restrict the application of other
22 penalties authorized by law.

23 (~~(+8)~~) (9) The department (~~of revenue~~) may not impose both the
24 evasion penalty and the penalty for disregarding specific written
25 instructions or the penalty provided in subsection (6) of this section
26 on the same tax found to be due.

27 (~~(+9)~~) (10) For the purposes of this section, "return" means any
28 document a person is required by the state of Washington to file to
29 satisfy or establish a tax or fee obligation that is administered or
30 collected by the department (~~of revenue~~), and that has a statutorily
31 defined due date.

32 NEW SECTION. Sec. 204. (1) The legislature finds that this
33 state's tax policy with respect to the taxation of transactions between
34 affiliated entities and the income derived from such transactions
35 (intercompany transactions) has motivated some taxpayers to engage in
36 transactions designed solely or primarily to minimize the tax effects
37 of intercompany transactions. The legislature further finds that some

1 intercompany transactions result from taxpayers that are required to
2 establish affiliated entities to comply with regulatory mandates and
3 that transactions between such affiliates effectively increases the tax
4 burden in this state on the affiliated group of entities.

5 (2) Therefore, as existing resources allow, the department of
6 revenue is directed to conduct a review of the state's tax policy with
7 respect to the taxation of intercompany transactions. The review must
8 include the impacts of such transactions under the state's business and
9 occupation tax and state and local sales and use taxes. The department
10 may include other taxes in the review as it deems appropriate.

11 (3) In conducting the review, the department must examine how this
12 state's tax policy compares to the tax policy of other states with
13 respect to the taxation of intercompany transactions. The department's
14 review must include an analysis of potential alternatives to the
15 current policy of taxing intercompany transactions, including their
16 estimated revenue impacts if practicable.

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

19 (5) The department must report its findings to the fiscal
20 committees of the house of representatives and senate by December 1,
21 2010. However, if the department has not completed its review by
22 December 1, 2010, the department must provide the fiscal committees of
23 the legislature with a brief status report by December 1, 2010, and the
24 final report by December 1, 2011.

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

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

30 (a) Article of tangible personal property ~~((purchased at retail,~~
31 ~~or))~~ acquired by ~~((lease, gift, repossession, or bailment, or extracted~~
32 ~~or produced or manufactured by the person so using the same, or~~
33 ~~otherwise furnished to a person engaged in any business taxable under~~
34 ~~RCW 82.04.280 (2) or (7))~~ the user in any manner, including tangible
35 personal property acquired at a casual or isolated sale, and including
36 by-products used by the manufacturer thereof, except as otherwise

1 provided in this chapter, irrespective of whether the article or
2 similar articles are manufactured or are available for purchase within
3 this state;

4 (b) Prewritten computer software, regardless of the method of
5 delivery, but excluding prewritten computer software that is either
6 provided free of charge or is provided for temporary use in viewing
7 information, or both;

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

11 (d) Extended warranty; or

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

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

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

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

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

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

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

32 (2) The provisions of this chapter do not apply in respect to the
33 use of any article of tangible personal property, extended warranty,
34 digital good, digital code, digital automated service, or service
35 taxable under RCW 82.04.050 (2)(a) or (g), (3)(a), or (6)(b), if the
36 sale to, or the use by, the present user or the present user's bailor
37 or donor has already been subjected to the tax under chapter 82.08 RCW

1 or this chapter and the tax has been paid by the present user or by the
2 present user's bailor or donor.

3 (3)(a) Except as provided in this section, payment of the tax
4 imposed by this chapter or chapter 82.08 RCW by one purchaser or user
5 of tangible personal property, extended warranty, digital good, digital
6 code, digital automated service, or other service does not have the
7 effect of exempting any other purchaser or user of the same property,
8 extended warranty, digital good, digital code, digital automated
9 service, or other service from the taxes imposed by such chapters.

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

11 (i) If the sale to, or the use by, the present user or his or her
12 bailor or donor has already been subjected to the tax under chapter
13 82.08 RCW or this chapter and the tax has been paid by the present user
14 or by his or her bailor or donor;

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

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

24 (iv) To the use of digital goods or digital automated services,
25 which were obtained through the use of a digital code, if the sale of
26 the digital code to, or the use of the digital code by, the present
27 user or the present user's bailor or donor has already been subjected
28 to the tax under chapter 82.08 RCW or this chapter and the tax has been
29 paid by the present user or by the present user's bailor or donor.

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

36 (b) In the case of a seller required to collect use tax from the
37 purchaser, the tax must be collected in an amount equal to the purchase

1 price multiplied by the applicable rate in effect for the retail sales
2 tax under RCW 82.08.020.

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

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

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

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

25 (b) For the sole purpose of determining whether, pursuant to the
26 exercise of an option, a controlling interest was transferred or
27 acquired within a twelve-month period, the date that the option
28 agreement was executed is the date on which the transfer or acquisition
29 of the controlling interest is deemed to occur. For all other purposes
30 under this chapter, the date upon which the option is exercised is the
31 date of the transfer or acquisition of the controlling interest.

32 (c) For purposes of this subsection, all acquisitions of persons
33 acting in concert (~~(shall)~~) must be aggregated for purposes of
34 determining whether a transfer or acquisition of a controlling interest
35 has taken place. The department (~~(of revenue shall)~~) must adopt
36 standards by rule to determine when persons are acting in concert. In

1 adopting a rule for this purpose, the department (~~shall~~) must
2 consider the following:

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

7 (~~(b)~~) (ii) When persons are not commonly owned or controlled,
8 they (~~shall~~) must be treated as acting in concert only when the unity
9 with which the purchasers have negotiated and will consummate the
10 transfer of ownership interests supports a finding that they are acting
11 as a single entity. If the acquisitions are completely independent,
12 with each purchaser buying without regard to the identity of the other
13 purchasers, then the acquisitions (~~shall be~~) are considered separate
14 acquisitions.

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

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

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

19 (c) A cancellation or forfeiture of a vendee's interest in a
20 contract for the sale of real property, whether or not such contract
21 contains a forfeiture clause, or deed in lieu of foreclosure of a
22 mortgage.

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

25 (e) The assignment of property or interest in property from one
26 spouse or one domestic partner to the other spouse or other domestic
27 partner in accordance with the terms of a decree of dissolution of
28 marriage or state registered domestic partnership or in fulfillment of
29 a property settlement agreement.

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

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

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

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

5 (j) A conveyance to the federal housing administration or veterans
6 administration by an authorized mortgagee made pursuant to a contract
7 of insurance or guaranty with the federal housing administration or
8 veterans administration.

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

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

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

16 (n) A sale to a regional transit authority or public corporation
17 under RCW 81.112.320 under a sale/leaseback agreement under RCW
18 81.112.300.

19 (o) A transfer of real property, however effected, if it consists
20 of a mere change in identity or form of ownership of an entity where
21 there is no change in the beneficial ownership. These include
22 transfers to a corporation or partnership which is wholly owned by the
23 transferor and/or the transferor's spouse or domestic partner or
24 children of the transferor or the transferor's spouse or domestic
25 partner(~~(+1)~~ ~~PROVIDED, That~~). However, if thereafter such transferee
26 corporation or partnership voluntarily transfers such real property, or
27 such transferor, spouse or domestic partner, or children of the
28 transferor or the transferor's spouse or domestic partner voluntarily
29 transfer stock in the transferee corporation or interest in the
30 transferee partnership capital, as the case may be, to other than
31 ~~((+1))~~ (i) the transferor and/or the transferor's spouse or domestic
32 partner or children of the transferor or the transferor's spouse or
33 domestic partner, ~~((+2))~~ (ii) a trust having the transferor and/or the
34 transferor's spouse or domestic partner or children of the transferor
35 or the transferor's spouse or domestic partner as the only
36 beneficiaries at the time of the transfer to the trust, or ~~((+3))~~
37 (iii) a corporation or partnership wholly owned by the original
38 transferor and/or the transferor's spouse or domestic partner or

1 children of the transferor or the transferor's spouse or domestic
2 partner, within three years of the original transfer to which this
3 exemption applies, and the tax on the subsequent transfer has not been
4 paid within sixty days of becoming due, excise taxes (~~shall~~) become
5 due and payable on the original transfer as otherwise provided by law.

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

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

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

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

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

36 (~~(1)~~) (a) In the case of a corporation, either fifty percent or

1 more of the total combined voting power of all classes of stock of the
2 corporation entitled to vote, or fifty percent of the capital, profits,
3 or beneficial interest in the voting stock of the corporation; and

4 ~~((+2))~~ (b) In the case of a partnership, association, trust, or
5 other entity, fifty percent or more of the capital, profits, or
6 beneficial interest in such partnership, association, trust, or other
7 entity.

8 (2) The department may, at the department's option, enforce the
9 obligation of the seller under this chapter as provided in this
10 subsection (2):

11 (a) In the transfer or acquisition of a controlling interest as
12 defined in subsection (1)(a) of this section, either against the
13 corporation in which a controlling interest is transferred or acquired,
14 against the person or persons who acquired the controlling interest in
15 the corporation or, when the corporation is not a publicly traded
16 company, against the person or persons who transferred the controlling
17 interest in the corporation; and

18 (b) In the transfer or acquisition of a controlling interest as
19 defined in subsection (1)(b) of this section, either against the entity
20 in which a controlling interest is transferred or acquired or against
21 the person or persons who transferred or acquired the controlling
22 interest in the entity.

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

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

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

34 (1) The tax levied under this chapter ~~((shall be))~~ is the
35 obligation of the seller and the department ~~((of revenue))~~ may, at the
36 department's option, enforce the obligation through an action of debt

1 against the seller or the department may proceed in the manner
2 prescribed for the foreclosure of mortgages (~~and resort to~~). The
3 department's use of one course of enforcement (~~shall~~) is not (~~be~~)
4 an election not to pursue the other.

5 (2) For purposes of this section and notwithstanding any other
6 provisions of law, the seller is the parent corporation of a wholly
7 owned subsidiary, when such subsidiary is the transferor to a third-
8 party transferee and the subsidiary is dissolved before paying the tax
9 imposed under this chapter.

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

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

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

18 (b) Interest imposed after December 31, 1998, (~~shall-be~~) is
19 computed on a monthly basis at the rate as computed under RCW
20 82.32.050(2). The rate so computed (~~shall~~) must be adjusted on the
21 first day of January of each year for use in computing interest for
22 that calendar year. The department (~~of revenue shall~~) must provide
23 written notification to the county treasurers of the variable rate on
24 or before December 1st of the year preceding the calendar year in which
25 the rate applies.

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

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

5 ~~(a))~~ an instrument evidencing the sale is recorded in the official
6 real property records of the county in which the property conveyed is
7 located(~~(+ or~~

8 ~~(b) Either the transferor or transferee notifies the department of~~
9 ~~revenue in writing of the occurrence of the sale within thirty days~~
10 ~~following the date of the sale)).~~

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

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

23 (a) Fraud or misrepresentation of a material fact by the taxpayer;

24 (b) A failure by the taxpayer to record documentation of a sale or
25 otherwise report the sale to the county treasurer; or

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

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

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

34 (1) An organization that fails to report a transfer of the
35 controlling interest in the organization under RCW 43.07.390 to the
36 secretary of state and is later determined to be subject to real estate

1 excise taxes due to the transfer, (~~shall be~~) is subject to the
2 provisions of RCW 82.45.100 as well as the evasion penalty in RCW
3 82.32.090(~~(+6)~~) (7).

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

8 **Sec. 212.** RCW 43.07.390 and 2005 c 326 s 2 are each amended to
9 read as follows:

10 (1)(a) The secretary of state (~~shall~~) must adopt rules requiring
11 any entity that is required to file an annual report with the secretary
12 of state, including entities under Titles 23, 23B, 24, and 25 RCW, to
13 disclose: (i) Any transfer (~~in~~) of the controlling interest (~~of~~)
14 in the entity (~~and any interest in real property~~); and (ii) the
15 granting of any option to acquire an interest in the entity if the
16 exercise of the option would result in a sale as defined in RCW
17 82.45.010(2).

18 (b) The disclosure requirement in this subsection only applies to
19 entities owning an interest in real property located in this state.

20 (2) This information (~~shall~~) must be made available to the
21 department of revenue upon request for the purposes of tracking the
22 transfer of the controlling interest in entities owning real property
23 and to determine when the real estate excise tax is applicable in such
24 cases.

25 (3) For the purposes of this section, "controlling interest" has
26 the same meaning as provided in RCW 82.45.033.

27 PART III

28 Modifying and Placing a Cap on the First Mortgage Deduction

29 NEW SECTION. **Sec. 301.** In 1980, the legislature adopted a
30 business and occupation tax deduction to financial businesses for
31 amounts derived from interest received on investments or loans
32 primarily secured by first mortgages or trust deeds on nontransient
33 residential properties which was codified in RCW 82.04.4292. However,
34 the Washington state supreme court in *Homestreet, Inc. v. Dep't of*
35 *Revenue*, 166 Wn.2d 444 (2009) held that a mortgage lender was entitled

1 to a business and occupation tax deduction under RCW 82.04.4292 for the
2 portion of interest it retained for servicing loans and mortgage-backed
3 securities that it sold on a service-retained basis on the secondary
4 market. The legislature finds that inclusion of interest retained for
5 servicing loans and mortgage-backed securities was not within the
6 legislative intent when the deduction provided in 82.04.4292 was
7 adopted in 1980. Therefore, by this act, the legislature declares that
8 the deduction provided by RCW 82.04.4292 does not apply to fees that
9 are received in exchange for services, regardless of whether the source
10 of the fees is or may have been interest when paid by a borrower.

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

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

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

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

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

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

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

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

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

8 (ii) Gains on the sale of loans.

9 (4) The total amount a person may deduct under this section for any
10 calendar year may not exceed one hundred million dollars.

11 **PART IV**

12 **Repealing the Nonresident Sales Tax Exemption**

13 NEW SECTION. Sec. 401. RCW 82.08.0273 (Exemptions--Sales to
14 nonresidents of tangible personal property, digital goods, and digital
15 codes for use outside the state--Proof of nonresident status--
16 Penalties) and 2009 c 535 s 512, 2007 c 135 s 2, 2003 c 53 s 399, 1993
17 c 444 s 1, 1988 c 96 s 1, 1982 1st ex.s. c 5 s 1, & 1980 c 37 s 39 are
18 each repealed.

19 **PART V**

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

21 NEW SECTION. Sec. 501. (1) A business and occupation tax
22 exemption is provided in RCW 82.04.423 for certain out-of-state sellers
23 that sell consumer products exclusively to or through a direct seller's
24 representative. The intent of the legislature in enacting this
25 exemption was to provide a narrow exemption for out-of-state businesses
26 engaged in direct sales of consumer products, typically accomplished
27 through in-home parties or door-to-door selling.

28 (2) In *Dot Foods, Inc. v. Dep't of Revenue*, Docket No. 81022-2
29 (September 10, 2009), the Washington supreme court held that the
30 exemption in RCW 82.04.423 applied to a taxpayer: (a) That sold
31 nonconsumer products through its representative in addition to consumer
32 products; and (b) whose consumer products were ultimately sold at
33 retail in permanent retail establishments.

1 (3) The legislature finds that most out-of-state businesses selling
2 consumer products in this state will either be eligible for the
3 exemption under RCW 82.04.423 or could easily restructure their
4 business operations to qualify for the exemption. As a result, the
5 legislature expects that the broadened interpretation of the direct
6 sellers' exemption will lead to large and devastating revenue losses.
7 This comes at a time when the state's existing budget is facing a two
8 billion six hundred million dollar shortfall, which could grow, while
9 at the same time the demand for state and state-funded services is also
10 growing. Moreover, the legislature further finds that RCW 82.04.423
11 provides preferential tax treatment for out-of-state businesses over
12 their in-state competitors and now creates a strong incentive for in-
13 state businesses to move their operations outside Washington.

14 (4) Therefore, the legislature finds that it is necessary to
15 reaffirm the legislature's intent in establishing the direct sellers'
16 exemption and prevent the loss of revenues resulting from the expanded
17 interpretation of the exemption by amending RCW 82.04.423 retroactively
18 to conform the exemption to the original intent of the legislature and
19 by prospectively ending the direct sellers' exemption as of the
20 effective date of this section.

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

23 (1) Prior to April 1, 2010, this chapter ((shall)) does not apply
24 to any person in respect to gross income derived from the business of
25 making sales at wholesale or retail if such person:

- 26 (a) Does not own or lease real property within this state; and
27 (b) Does not regularly maintain a stock of tangible personal
28 property in this state for sale in the ordinary course of business; and
29 (c) Is not a corporation incorporated under the laws of this state;
30 and
31 (d) Makes sales in this state exclusively to or through a direct
32 seller's representative.

33 (2) For purposes of this section, the term "direct seller's
34 representative" means a person who buys only consumer products on a
35 buy-sell basis or a deposit-commission basis for resale, by the buyer
36 or any other person, in the home or otherwise than in a permanent

1 retail establishment, or who sells at retail, or solicits the sale at
2 retail of, only consumer products in the home or otherwise than in a
3 permanent retail establishment; and

4 (a) Substantially all of the remuneration paid to such person,
5 whether or not paid in cash, for the performance of services described
6 in this subsection is directly related to sales or other output,
7 including the performance of services, rather than the number of hours
8 worked; and

9 (b) The services performed by the person are performed pursuant to
10 a written contract between such person and the person for whom the
11 services are performed and such contract provides that the person will
12 not be treated as an employee with respect to such purposes for federal
13 tax purposes.

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

18 **PART VI**

19 **Business and Occupation Tax Preferences for Manufacturers of Products**
20 **Derived from Certain Agricultural Products**

21 NEW SECTION. **Sec. 601.** (1)(a) In 1967, the legislature amended
22 RCW 82.04.260 in chapter 149, Laws of 1967 ex. sess. to authorize a
23 preferential business and occupation tax rate for slaughtering,
24 breaking, and/or processing perishable meat products and/or selling the
25 same at wholesale. The legislature finds that RCW 82.04.260(4) was
26 interpreted by the state supreme court on January 13, 2005, in *Agrilink*
27 *Foods, Inc. v. Department of Revenue*, 153 Wn.2d 392 (2005). The
28 supreme court held that the preferential business and occupation tax
29 rate on the slaughtering, breaking, and/or processing of perishable
30 meat products applied to the processing of perishable meat products
31 into nonperishable finished products, such as canned food.

32 (b) The legislature intends to narrow the exemption provided for
33 slaughtering, breaking, and/or processing perishable meat products
34 and/or selling such products at wholesale by requiring that the end
35 product be a perishable meat product; a nonperishable meat product that

1 is comprised primarily of animal carcass by weight or volume, other
2 than a canned meat product; or a meat by-product.

3 (2)(a) A business and occupation tax exemption is provided for (i)
4 manufacturing by canning, preserving, freezing, processing, or
5 dehydrating fresh fruits or vegetables, and (ii) selling such products
6 at wholesale by the manufacturer to purchasers who transport the goods
7 out of state in the ordinary course of business. This exemption
8 expires July 1, 2012, and is replaced by a preferential business and
9 occupation tax rate.

10 (b) The legislature finds that the rationale of the *Agrilink*
11 decision, if applied to these tax preferences, could result in
12 preferential tax treatment for any processed food product that
13 contained any fresh fruit or vegetable as an ingredient, however small
14 the amount.

15 (c) The legislature intends to narrow the tax preference provided
16 to fruit and vegetable manufacturers by requiring that the end product
17 be comprised either (i) exclusively of fruits and/or vegetables, or
18 (ii) of any combination of fruits, vegetables, and certain other
19 substances that, cumulatively, may not exceed the amount of fruits and
20 vegetables contained in the product measured by weight or volume.

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

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

25 (a) Perishable meat products, by slaughtering, breaking, or
26 processing, if the finished product is a perishable meat product; as to
27 such persons the tax imposed is equal to the value of the perishable
28 meat products manufactured, or, in the case of a processor for hire,
29 the gross income of the business, multiplied by the rate of 0.138
30 percent;

31 (b) Meat products, by dehydration, curing, smoking, or any
32 combination of these activities, if the finished meat products are not
33 canned; as to such persons the tax imposed is equal to the value of the
34 meat products manufactured, or, in the case of a processor for hire,
35 the gross income of the business, multiplied by the rate of 0.138
36 percent;

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

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

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

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

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

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

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

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

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

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

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

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

32 (B) Products, such as jerky, sausage, and other cured meat
33 products, that are comprised primarily of animal carcass by weight or
34 volume and may also contain water; nitrates; nitrites; acids; binders
35 and extenders; natural or synthetic casings; colorings; flavorings such
36 as soy sauce, liquid smoke, seasonings, citric acid, sugar, molasses,
37 corn syrup, and vinegar; and similar substances.

1 (ii) Except as provided in (e)(i) of this subsection (3), "meat
2 products" does not include products containing any cereal grains or
3 cereal-grain products, dairy products, legumes and legume products,
4 fruit or vegetable products as defined in RCW 82.04.260, and similar
5 ingredients, unless the ingredient is used as a flavoring. For
6 purposes of this subsection, "flavoring" means a substance that
7 contains the flavoring constituents derived from a spice, fruit or
8 fruit juice, vegetable or vegetable juice, edible yeast, herb, bark,
9 bud, root, leaf, or any other edible substance of plant origin, whose
10 primary function in food is flavoring or seasoning rather than
11 nutritional, and which may legally appear as "natural flavor,"
12 "flavor," or "flavorings" in the ingredient statement on the label of
13 the meat product.

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

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

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

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

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

26 (a) Manufacturing fruit(~~s~~) or vegetable(~~s~~) products by canning,
27 preserving, freezing, processing, or dehydrating fresh fruits or
28 vegetables; or

29 (b) Selling at wholesale fruit(~~s~~) or vegetable(~~s~~) products
30 manufactured by the seller by canning, preserving, freezing,
31 processing, or dehydrating fresh fruits or vegetables and sold to
32 purchasers who transport in the ordinary course of business the goods
33 out of this state. A person taking an exemption under this subsection
34 (1)(b) must keep and preserve records for the period required by RCW
35 82.32.070 establishing that the goods were transported by the purchaser
36 in the ordinary course of business out of this state.

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

1 (i) Products comprised exclusively of fruits, vegetables, or both;
2 and

3 (ii) Products comprised of fruits, vegetables, or both, and which
4 may also contain water, sugar, salt, seasonings, preservatives,
5 binders, stabilizers, flavorings, yeast, and similar substances.
6 However, the amount of all ingredients contained in the product, other
7 than fruits, vegetables, and water, may not exceed the amount of fruits
8 and vegetables contained in the product measured by weight or volume.

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

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

12 **Sec. 604.** RCW 82.04.260 and 2009 c 479 s 64, 2009 c 461 s 1, and
13 2009 c 162 s 34 are each reenacted and amended to read as follows:

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

16 (a) Wheat into flour, barley into pearl barley, soybeans into
17 soybean oil, canola into canola oil, canola meal, or canola by-
18 products, or sunflower seeds into sunflower oil; as to such persons the
19 amount of tax with respect to such business (~~shall be~~) is equal to
20 the value of the flour, pearl barley, oil, canola meal, or canola by-
21 product manufactured, multiplied by the rate of 0.138 percent;

22 (b) Beginning July 1, 2012, seafood products that remain in a raw,
23 raw frozen, or raw salted state at the completion of the manufacturing
24 by that person; or selling manufactured seafood products that remain in
25 a raw, raw frozen, or raw salted state at the completion of the
26 manufacturing, to purchasers who transport in the ordinary course of
27 business the goods out of this state; as to such persons the amount of
28 tax with respect to such business (~~shall be~~) is equal to the value of
29 the products manufactured or the gross proceeds derived from such
30 sales, multiplied by the rate of 0.138 percent. Sellers must keep and
31 preserve records for the period required by RCW 82.32.070 establishing
32 that the goods were transported by the purchaser in the ordinary course
33 of business out of this state;

34 (c) Beginning July 1, 2012, dairy products that as of September 20,
35 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135,
36 including by-products from the manufacturing of the dairy products such
37 as whey and casein; or selling the same to purchasers who transport in

1 the ordinary course of business the goods out of state; as to such
2 persons the tax imposed (~~shall be~~) is equal to the value of the
3 products manufactured or the gross proceeds derived from such sales
4 multiplied by the rate of 0.138 percent. Sellers must keep and
5 preserve records for the period required by RCW 82.32.070 establishing
6 that the goods were transported by the purchaser in the ordinary course
7 of business out of this state;

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

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

23 (A) Products comprised exclusively of fruits, vegetables, or both;
24 or

25 (B) Products comprised of fruits, vegetables, or both, and which
26 may also contain water, sugar, salt, seasonings, preservatives,
27 binders, stabilizers, flavorings, yeast, and similar substances.
28 However, the amount of all ingredients contained in the product, other
29 than fruits, vegetables, and water, may not exceed the amount of fruits
30 and vegetables contained in the product measured by weight or volume;

31 (iii) "Fruit and vegetable products" includes only products that
32 are intended for human consumption as food or animal consumption as
33 feed;

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

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

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

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

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

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

24 ~~((6))~~ (5) Upon every person engaging within this state in
25 business as an international steamship agent, international customs
26 house broker, international freight forwarder, vessel and/or cargo
27 charter broker in foreign commerce, and/or international air cargo
28 agent; as to such persons the amount of the tax with respect to only
29 international activities (~~(shall be)~~) is equal to the gross income
30 derived from such activities multiplied by the rate of 0.275 percent.

31 ~~((7))~~ (6) Upon every person engaging within this state in the
32 business of stevedoring and associated activities pertinent to the
33 movement of goods and commodities in waterborne interstate or foreign
34 commerce; as to such persons the amount of tax with respect to such
35 business (~~(shall be)~~) is equal to the gross proceeds derived from such
36 activities multiplied by the rate of 0.275 percent. Persons subject to
37 taxation under this subsection (~~(shall be)~~) are exempt from payment of
38 taxes imposed by chapter 82.16 RCW for that portion of their business

1 subject to taxation under this subsection. Stevedoring and associated
2 activities pertinent to the conduct of goods and commodities in
3 waterborne interstate or foreign commerce are defined as all activities
4 of a labor, service or transportation nature whereby cargo may be
5 loaded or unloaded to or from vessels or barges, passing over, onto or
6 under a wharf, pier, or similar structure; cargo may be moved to a
7 warehouse or similar holding or storage yard or area to await further
8 movement in import or export or may move to a consolidation freight
9 station and be stuffed, unstuffed, containerized, separated or
10 otherwise segregated or aggregated for delivery or loaded on any mode
11 of transportation for delivery to its consignee. Specific activities
12 included in this definition are: Wharfage, handling, loading,
13 unloading, moving of cargo to a convenient place of delivery to the
14 consignee or a convenient place for further movement to export mode;
15 documentation services in connection with the receipt, delivery,
16 checking, care, custody and control of cargo required in the transfer
17 of cargo; imported automobile handling prior to delivery to consignee;
18 terminal stevedoring and incidental vessel services, including but not
19 limited to plugging and unplugging refrigerator service to containers,
20 trailers, and other refrigerated cargo receptacles, and securing ship
21 hatch covers.

22 ~~((+8))~~ (7)(a) Upon every person engaging within this state in the
23 business of disposing of low-level waste, as defined in RCW 43.145.010;
24 as to such persons the amount of the tax with respect to such business
25 ~~((shall be))~~ is equal to the gross income of the business, excluding
26 any fees imposed under chapter 43.200 RCW, multiplied by the rate of
27 3.3 percent.

28 (b) If the gross income of the taxpayer is attributable to
29 activities both within and without this state, the gross income
30 attributable to this state ~~((shall))~~ must be determined in accordance
31 with the methods of apportionment required under RCW 82.04.460.

32 ~~((+9))~~ (8) Upon every person engaging within this state as an
33 insurance producer or title insurance agent licensed under chapter
34 48.17 RCW or a surplus line broker licensed under chapter 48.15 RCW; as
35 to such persons, the amount of the tax with respect to such licensed
36 activities ~~((shall be))~~ is equal to the gross income of such business
37 multiplied by the rate of 0.484 percent.

1 (~~(+10+)~~) (9) Upon every person engaging within this state in
2 business as a hospital, as defined in chapter 70.41 RCW, that is
3 operated as a nonprofit corporation or by the state or any of its
4 political subdivisions, as to such persons, the amount of tax with
5 respect to such activities (~~(shall be)~~) is equal to the gross income of
6 the business multiplied by the rate of 0.75 percent through June 30,
7 1995, and 1.5 percent thereafter.

8 (~~(+11+)~~) (10)(a) Beginning October 1, 2005, upon every person
9 engaging within this state in the business of manufacturing commercial
10 airplanes, or components of such airplanes, or making sales, at retail
11 or wholesale, of commercial airplanes or components of such airplanes,
12 manufactured by the seller, as to such persons the amount of tax with
13 respect to such business (~~(shall)~~), in the case of manufacturers,
14 (~~(be)~~) is equal to the value of the product manufactured and the gross
15 proceeds of sales of the product manufactured, or in the case of
16 processors for hire, (~~(be)~~) is equal to the gross income of the
17 business, multiplied by the rate of:

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

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

21 (b) Beginning July 1, 2008, upon every person who is not eligible
22 to report under the provisions of (a) of this subsection (~~(+11+)~~) (10)
23 and is engaging within this state in the business of manufacturing
24 tooling specifically designed for use in manufacturing commercial
25 airplanes or components of such airplanes, or making sales, at retail
26 or wholesale, of such tooling manufactured by the seller, as to such
27 persons the amount of tax with respect to such business (~~(shall)~~), in
28 the case of manufacturers, (~~(be)~~) is equal to the value of the product
29 manufactured and the gross proceeds of sales of the product
30 manufactured, or in the case of processors for hire, (~~(be)~~) is equal to
31 the gross income of the business, multiplied by the rate of 0.2904
32 percent.

33 (c) For the purposes of this subsection (~~(+11+)~~) (10), "commercial
34 airplane" and "component" have the same meanings as provided in RCW
35 82.32.550.

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

1 (e) This subsection (~~((+11))~~) (10) does not apply on and after July
2 1, 2024.

3 (~~((+12))~~) (11)(a) Until July 1, 2024, upon every person engaging
4 within this state in the business of extracting timber or extracting
5 for hire timber; as to such persons the amount of tax with respect to
6 the business (~~(shall)~~), in the case of extractors, (~~(be)~~) is equal to
7 the value of products, including by-products, extracted, or in the case
8 of extractors for hire, (~~(be)~~) is equal to the gross income of the
9 business, multiplied by the rate of 0.4235 percent from July 1, 2006,
10 through June 30, 2007, and 0.2904 percent from July 1, 2007, through
11 June 30, 2024.

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

22 (c) Until July 1, 2024, upon every person engaging within this
23 state in the business of selling at wholesale: (i) Timber extracted by
24 that person; (ii) timber products manufactured by that person from
25 timber or other timber products; or (iii) wood products manufactured by
26 that person from timber or timber products; as to such persons the
27 amount of the tax with respect to the business (~~(shall-be)~~) is equal to
28 the gross proceeds of sales of the timber, timber products, or wood
29 products multiplied by the rate of 0.4235 percent from July 1, 2006,
30 through June 30, 2007, and 0.2904 percent from July 1, 2007, through
31 June 30, 2024.

32 (d) Until July 1, 2024, upon every person engaging within this
33 state in the business of selling standing timber; as to such persons
34 the amount of the tax with respect to the business (~~(shall-be)~~) is
35 equal to the gross income of the business multiplied by the rate of
36 0.2904 percent. For purposes of this subsection (~~((+12))~~) (11)(d),
37 "selling standing timber" means the sale of timber apart from the land,
38 where the buyer is required to sever the timber within thirty months

1 from the date of the original contract, regardless of the method of
2 payment for the timber and whether title to the timber transfers
3 before, upon, or after severance.

4 (e) For purposes of this subsection, the following definitions
5 apply:

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

9 (ii) "Paper and paper products" means products made of interwoven
10 cellulosic fibers held together largely by hydrogen bonding. "Paper
11 and paper products" includes newsprint; office, printing, fine, and
12 pressure-sensitive papers; paper napkins, towels, and toilet tissue;
13 kraft bag, construction, and other kraft industrial papers; paperboard,
14 liquid packaging containers, containerboard, corrugated, and solid-
15 fiber containers including linerboard and corrugated medium; and
16 related types of cellulosic products containing primarily, by weight or
17 volume, cellulosic materials. "Paper and paper products" does not
18 include books, newspapers, magazines, periodicals, and other printed
19 publications, advertising materials, calendars, and similar types of
20 printed materials.

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

27 (iv) "Timber" means forest trees, standing or down, on privately or
28 publicly owned land. "Timber" does not include Christmas trees that
29 are cultivated by agricultural methods or short-rotation hardwoods as
30 defined in RCW 84.33.035.

31 (v) "Timber products" means:

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

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

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

1 (vi) "Wood products" means paper and paper products; dimensional
2 lumber; engineered wood products such as particleboard, oriented strand
3 board, medium density fiberboard, and plywood; wood doors; wood
4 windows; and biocomposite surface products.

5 (~~(13)~~) (12) Upon every person engaging within this state in
6 inspecting, testing, labeling, and storing canned salmon owned by
7 another person, as to such persons, the amount of tax with respect to
8 such activities (~~(shall be)~~) is equal to the gross income derived from
9 such activities multiplied by the rate of 0.484 percent.

10 (~~(14)~~) (13) Upon every person engaging within this state in the
11 business of printing a newspaper, publishing a newspaper, or both, the
12 amount of tax on such business is equal to the gross income of the
13 business multiplied by the rate of 0.2904 percent.

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

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

21 (2) Upon every person engaging within this state in the business of
22 making sales at retail that are exempt from the tax imposed under
23 chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or
24 82.08.0263, except persons taxable under RCW 82.04.260(~~(11)~~) (10) or
25 subsection (3) of this section, as to such persons, the amount of tax
26 with respect to such business (~~(shall be)~~) is equal to the gross
27 proceeds of sales of the business, multiplied by the rate of 0.484
28 percent.

29 (3) Upon every person classified by the federal aviation
30 administration as a federal aviation regulation part 145 certificated
31 repair station and that is engaging within this state in the business
32 of making sales at retail that are exempt from the tax imposed under
33 chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or
34 82.08.0263, as to such persons, the amount of tax with respect to such
35 business (~~(shall be)~~) is equal to the gross proceeds of sales of the
36 business, multiplied by the rate of .2904 percent.

1 **Sec. 606.** RCW 82.04.250 and 2007 c 54 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)~~) is equal to the gross proceeds of
7 sales of the business, multiplied by the rate of 0.471 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)~~) (10), as
12 to such persons, the amount of tax with respect to such business
13 (~~(shall be)~~) is equal to the gross proceeds of sales of the business,
14 multiplied by the rate of 0.484 percent.

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

17 (1) In addition to the taxes imposed under RCW 82.04.260(~~(+12)~~)
18 (11), a surcharge is imposed on those persons who are subject to any of
19 the taxes imposed under RCW 82.04.260(~~(+12)~~) (11). Except as
20 otherwise provided in this section, the surcharge is equal to 0.052
21 percent. The surcharge is added to the rates provided in RCW
22 82.04.260(~~(+12)~~) (11) (a), (b), (c), and (d). The surcharge and this
23 section expire July 1, 2024.

24 (2) All receipts from the surcharge imposed under this section
25 (~~(shall)~~) must be deposited into the forest and fish support account
26 created in RCW 76.09.405.

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

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

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

36 (b)(i) The suspension of the surcharge under (a)(i) of this
37 subsection (3) (~~(shall)~~) takes effect on the first day of the calendar

1 month that is at least thirty days after the end of the month during
2 which the department determines that receipts from the surcharge total
3 at least eight million dollars during the fiscal biennium. The
4 surcharge (~~shall be~~) is imposed again at the beginning of the
5 following fiscal biennium.

6 (ii) The suspension of the surcharge under (a)(ii) of this
7 subsection (3) (~~shall~~) takes effect on the later of the first day of
8 October of any federal fiscal year for which the federal government
9 appropriates at least two million dollars for participation in forest
10 and fish report-related activities by federally recognized Indian
11 tribes located within the geographical boundaries of the state of
12 Washington, or the first day of a calendar month that is at least
13 thirty days following the date that the office of financial management
14 makes a certification to the department under subsection (5) of this
15 section. The surcharge (~~shall be~~) is imposed again on the first day
16 of the following July.

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

25 (b) The department (~~shall~~) must adjust the surcharge by an amount
26 that the department estimates will cause the amount of funds deposited
27 into the forest and fish support account for the state fiscal year that
28 begins July 1st and that includes the beginning of the federal fiscal
29 year for which the federal appropriation is made, to be reduced by
30 twice the amount of the federal appropriation for participation in
31 forest and fish report-related activities by federally recognized
32 Indian tribes located within the geographical boundaries of the state
33 of Washington.

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

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

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

9 (f) The department (~~(shall)~~) must provide timely notice to affected
10 taxpayers of the suspension of the surcharge or an adjustment of the
11 surcharge.

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

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

18 (1) The amount of tax with respect to a qualified grocery
19 distribution cooperative's sales of groceries or related goods for
20 resale, excluding items subject to tax under (~~(RCW 82.04.260(4))~~)
21 section 602 of this act, to customer-owners of the grocery distribution
22 cooperative is equal to the gross proceeds of sales of the grocery
23 distribution cooperative multiplied by the rate of one and one-half
24 percent.

25 (2) A qualified grocery distribution cooperative is allowed a
26 deduction from the gross proceeds of sales of groceries or related
27 goods for resale, excluding items subject to tax under (~~(RCW~~
28 ~~82.04.260(4))~~) section 602 of this act, to customer-owners of the
29 grocery distribution cooperative that is equal to the portion of the
30 gross proceeds of sales for resale that represents the actual cost of
31 the merchandise sold by the grocery distribution cooperative to
32 customer-owners.

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

35 (a) "Grocery distribution cooperative" means an entity that sells
36 groceries and related items to customer-owners of the grocery
37 distribution cooperative and has customer-owners, in the aggregate, who

1 own a majority of the outstanding ownership interests of the grocery
2 distribution cooperative or of the entity controlling the grocery
3 distribution cooperative. "Grocery distribution cooperative" includes
4 an entity that controls a grocery distribution cooperative.

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

6 (i) A grocery distribution cooperative that has been determined by
7 a court of record of the state of Washington to be not engaged in
8 wholesaling or making sales at wholesale, within the meaning of RCW
9 82.04.270 or any similar provision of a municipal ordinance that
10 imposes a tax on gross receipts, gross proceeds of sales, or gross
11 income, with respect to purchases made by customer-owners, and
12 subsequently changes its form of doing business to make sales at
13 wholesale of groceries or related items to its customer-owners; or

14 (ii) A grocery distribution cooperative that has acquired
15 substantially all of the assets of a grocery distribution cooperative
16 described in (b)(i) of this subsection.

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

20 (d) "Controlling" means holding fifty percent or more of the voting
21 interests of an entity and having at least equal power to direct or
22 cause the direction of the management and policies of the entity,
23 whether through the ownership of voting securities, by contract, or
24 otherwise.

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

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

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

32 (1) Every person engaged in activities that are subject to tax
33 under two or more provisions of RCW 82.04.230 through 82.04.298,
34 inclusive, (~~shall be~~) is taxable under each provision applicable to
35 those activities.

1 (2) Persons taxable under RCW 82.04.2909(2), 82.04.250, 82.04.270,
2 82.04.294(2), or 82.04.260 (1)(~~b~~), (c), (~~(+4)~~) or (d), (10), or (11),
3 or (~~(+12)~~) section 602(2) of this act with respect to selling products
4 in this state, including those persons who are also taxable under RCW
5 82.04.261, (~~shall be~~) are allowed a credit against those taxes for
6 any (a) manufacturing taxes paid with respect to the manufacturing of
7 products so sold in this state, and/or (b) extracting taxes paid with
8 respect to the extracting of products so sold in this state or
9 ingredients of products so sold in this state. Extracting taxes taken
10 as credit under subsection (3) of this section may also be taken under
11 this subsection, if otherwise allowable under this subsection. The
12 amount of the credit (~~shall~~) may not exceed the tax liability arising
13 under this chapter with respect to the sale of those products.

14 (3) Persons taxable as manufacturers under RCW 82.04.240 or
15 82.04.260 (1)(~~b~~) or (~~(+12)~~) (11), including those persons who are also
16 taxable under RCW 82.04.261, (~~shall be~~) are allowed a credit against
17 those taxes for any extracting taxes paid with respect to extracting
18 the ingredients of the products so manufactured in this state. The
19 amount of the credit (~~shall~~) may not exceed the tax liability arising
20 under this chapter with respect to the manufacturing of those products.

21 (4) Persons taxable under RCW 82.04.230, 82.04.240, 82.04.2909(1),
22 82.04.294(1), 82.04.2404, or 82.04.260 (1), (2), (~~(+4)~~) (10), or
23 (11), or (~~(+12)~~) section 602(1) of this act, including those persons
24 who are also taxable under RCW 82.04.261, with respect to extracting or
25 manufacturing products in this state (~~shall be~~) are allowed a credit
26 against those taxes for any (i) gross receipts taxes paid to another
27 state with respect to the sales of the products so extracted or
28 manufactured in this state, (ii) manufacturing taxes paid with respect
29 to the manufacturing of products using ingredients so extracted in this
30 state, or (iii) manufacturing taxes paid with respect to manufacturing
31 activities completed in another state for products so manufactured in
32 this state. The amount of the credit (~~shall~~) may not exceed the tax
33 liability arising under this chapter with respect to the extraction or
34 manufacturing of those products.

- 35 (5) For the purpose of this section:
36 (a) "Gross receipts tax" means a tax:
37 (i) Which is imposed on or measured by the gross volume of

1 business, in terms of gross receipts or in other terms, and in the
2 determination of which the deductions allowed would not constitute the
3 tax an income tax or value added tax; and

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

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

10 (c) "Manufacturing tax" means a gross receipts tax imposed on the
11 act or privilege of engaging in business as a manufacturer, and
12 includes (i) the taxes imposed in RCW 82.04.240, 82.04.2404,
13 82.04.2909(1), 82.04.260 (1), (2), (~~((4))~~) (10), and (11), (~~and~~
14 ~~(12)~~) section 602(1) of this act, and 82.04.294(1); (ii) the tax
15 imposed under RCW 82.04.261 on persons who are engaged in business as
16 a manufacturer; and (iii) similar gross receipts taxes paid to other
17 states.

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

24 (e) "Business", "manufacturer", "extractor", and other terms used
25 in this section have the meanings given in RCW 82.04.020 through
26 82.04.212, notwithstanding the use of those terms in the context of
27 describing taxes imposed by other states.

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

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

33 (2) The credit is equal to:

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

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

5 (C) Property taxes or leasehold excise taxes paid on, or with
6 respect to, buildings constructed after June 30, 2008, the land upon
7 which the buildings are located, or both, and used exclusively for
8 aerospace product development or in providing aerospace services, by
9 persons not within the scope of (a)(i)(A) and (B) of this subsection
10 (2) and are:

11 (I) Engaged in manufacturing tooling specifically
12 designed for use in manufacturing commercial airplanes or their
13 components; or (II) taxable under RCW 82.04.290(3) or 82.04.250(3); or

14 (ii) Property taxes attributable to an increase in assessed value
15 due to the renovation or expansion, after: (A) December 1, 2003, of a
16 building used exclusively in manufacturing commercial airplanes or
17 components of such airplanes; and (B) June 30, 2008, of buildings used
18 exclusively for aerospace product development or in providing aerospace
19 services, by persons not within the scope of (a)(ii)(A) of this
20 subsection (2) and are:

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

25 (b) An amount equal to:

26 (i)(A) Property taxes paid, by persons taxable under RCW
27 82.04.260(~~((+11))~~) (10)(a), on machinery and equipment exempt under RCW
28 82.08.02565 or 82.12.02565 and acquired after December 1, 2003;

29 (B) Property taxes paid, by persons taxable under RCW
30 82.04.260(~~((+11))~~) (10)(b), on machinery and equipment exempt under RCW
31 82.08.02565 or 82.12.02565 and acquired after June 30, 2008; or

32 (C) Property taxes paid, by persons taxable under RCW
33 (~~((82.04.0250(3) — [82.04.250(3)]))~~) 82.04.250(3) or 82.04.290(3), on
34 computer hardware, computer peripherals, and software exempt under RCW
35 82.08.975 or 82.12.975 and acquired after June 30, 2008.

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

39 (~~((+1))~~) (A) The numerator of the fraction is the total taxable
40 amount subject to the tax imposed under RCW 82.04.260(~~((+11))~~) (10) (a)

1 or (b) on the applicable business activities of manufacturing
2 commercial airplanes, components of such airplanes, or tooling
3 specifically designed for use in the manufacturing of commercial
4 airplanes or components of such airplanes.

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

8 ~~((+III+))~~ (C) For purposes of both the numerator and denominator of
9 the fraction, the total taxable amount refers to the total taxable
10 amount required to be reported on the person's returns for the calendar
11 year before the calendar year in which the credit under this section is
12 earned. The department may provide for an alternative method for
13 calculating the numerator in cases where the tax rate provided in RCW
14 82.04.260~~((+II+))~~ (10) for manufacturing was not in effect during the
15 full calendar year before the calendar year in which the credit under
16 this section is earned.

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

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

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

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

28 (b) "Aerospace services" has the same meaning given in RCW
29 82.08.975.

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

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

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

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

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

4 (1) The tax levied by RCW 82.08.020 does not apply to sales, to a
5 printer or publisher, of computer equipment, including repair parts and
6 replacement parts for such equipment, when the computer equipment is
7 used primarily in the printing or publishing of any printed material,
8 or to sales of or charges made for labor and services rendered in
9 respect to installing, repairing, cleaning, altering, or improving the
10 computer equipment. This exemption applies only to computer equipment
11 not otherwise exempt under RCW 82.08.02565.

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

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

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

21 (b) "Computer equipment" means a computer and the associated
22 physical components that constitute a computer system, including
23 monitors, keyboards, printers, modems, scanners, pointing devices, and
24 other computer peripheral equipment, cables, servers, and routers.
25 "Computer equipment" also includes digital cameras and computer
26 software.

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

28 (d) "Primarily" means greater than fifty percent as measured by
29 time.

30 (e) "Printer or publisher" means a person, as defined in RCW
31 82.04.030, who is subject to tax under RCW 82.04.260(~~(+14)~~) (13) or
32 82.04.280(1).

33 (4) "Computer equipment" does not include computer equipment that
34 is used primarily for administrative purposes including but not limited
35 to payroll processing, accounting, customer service, telemarketing, and
36 collection. If computer equipment is used simultaneously for
37 administrative and nonadministrative purposes, the administrative use

1 ((shall)) must be disregarded during the period of simultaneous use for
2 purposes of determining whether the computer equipment is used
3 primarily for administrative purposes.

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

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

10 (2)(a) A person who reports taxes under RCW 82.04.260(~~((+11))~~) (10),
11 82.04.250(3), or 82.04.290(3), or who claims an exemption or credit
12 under RCW 82.04.4461, 82.08.980, 82.12.980, 82.29A.137, 84.36.655, and
13 82.04.4463 ((shall)) must make an annual report to the department
14 detailing employment, wages, and employer-provided health and
15 retirement benefits for employment positions in Washington. However,
16 persons engaged in manufacturing commercial airplanes or components of
17 such airplanes may report employment, wage, and benefit information per
18 job at the manufacturing site. The report ((shall)) may not include
19 names of employees. The report ((shall)) must also detail employment
20 by the total number of full-time, part-time, and temporary positions.
21 The first report filed under this subsection ((shall)) must include
22 employment, wage, and benefit information for the twelve-month period
23 immediately before first use of a preferential tax rate under RCW
24 82.04.260(~~((+11))~~) (10), 82.04.250(3), or 82.04.290(3), or tax exemption
25 or credit under RCW 82.04.4461, 82.08.980, 82.12.980, 82.29A.137,
26 84.36.655, and 82.04.4463, unless a survey covering this twelve-month
27 period was filed as required by a statute repealed by chapter 81, Laws
28 of 2008. The report is due by March 31st following any year in which
29 a preferential tax rate under RCW 82.04.260(~~((+11))~~) (10), 82.04.250(3),
30 or 82.04.290(3), is used, or tax exemption or credit under RCW
31 82.04.4461, 82.08.980, 82.12.980, 82.29A.137, 84.36.655, and 82.04.4463
32 is taken. This information is not subject to the confidentiality
33 provisions of RCW 82.32.330 and may be disclosed to the public upon
34 request.

35 (b) If a person fails to submit an annual report under (a) of this
36 subsection by the due date of the report, the department ((shall)) must
37 declare the amount of taxes exempted or credited, or reduced in the

1 case of the preferential business and occupation tax rate, for that
2 year to be immediately due and payable. Excise taxes payable under
3 this subsection are subject to interest but not penalties, as provided
4 under this chapter. This information is not subject to the
5 confidentiality provisions of RCW 82.32.330 and may be disclosed to the
6 public upon request.

7 (3) By November 1, 2010, and by November 1, 2023, the fiscal
8 committees of the house of representatives and the senate, in
9 consultation with the department, ~~((shall))~~ must report to the
10 legislature on the effectiveness of chapter 1, Laws of 2003 2nd sp.
11 sess., chapter 177, Laws of 2006, and chapter 81, Laws of 2008 in
12 regard to keeping Washington competitive. The report ~~((shall))~~ must
13 measure the effect of these laws on job retention, net jobs created for
14 Washington residents, company growth, diversification of the state's
15 economy, cluster dynamics, and other factors as the committees select.
16 The reports ~~((shall))~~ must include a discussion of principles to apply
17 in evaluating whether the legislature should reenact any or all of the
18 tax preferences in chapter 1, Laws of 2003 2nd sp. sess., chapter 177,
19 Laws of 2006, and chapter 81, Laws of 2008.

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

22 ~~(1)((a) Chapter 1, Laws of 2003 2nd sp. sess. takes effect on the~~
23 ~~first day of the month in which the governor and a manufacturer of~~
24 ~~commercial airplanes sign a memorandum of agreement regarding an~~
25 ~~affirmative final decision to site a significant commercial airplane~~
26 ~~final assembly facility in Washington state. The department shall~~
27 ~~provide notice of the effective date of chapter 1, Laws of 2003 2nd sp.~~
28 ~~sess. to affected taxpayers, the legislature, and others as deemed~~
29 ~~appropriate by the department.~~

30 ~~(b) Chapter 1, Laws of 2003 2nd sp. sess. is contingent upon the~~
31 ~~siting of a significant commercial airplane final assembly facility in~~
32 ~~the state of Washington. If a memorandum of agreement under subsection~~
33 ~~(1) of this section is not signed by June 30, 2005, chapter 1, Laws of~~
34 ~~2003 2nd sp. sess. is null and void.~~

35 ~~(c)(i) The rate in RCW 82.04.260(11)(a)(ii) takes effect July 1,~~
36 ~~2007.~~

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

5 ~~(2) The definitions in this subsection apply throughout this~~
6 ~~section.~~

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

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

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

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

21 ~~(e) "Siting" means a final decision by a manufacturer to locate a~~
22 ~~significant commercial airplane final assembly facility in Washington~~
23 ~~state.~~

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

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

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

35 (2)(a) A person who reports taxes under RCW 82.04.260(~~(12) shall~~)
36 (11) must file a complete annual survey with the department. The
37 survey is due by March 31st following any year in which a person

1 reports taxes under RCW 82.04.260(~~(+12+)~~) (11). The department may
2 extend the due date for timely filing of annual surveys under this
3 section as provided in RCW 82.32.590. The survey (~~shall~~) must
4 include the amount of tax reduced under the preferential rate in RCW
5 82.04.260(~~(+12+)~~) (11). The survey (~~shall~~) must also include the
6 following information for employment positions in Washington:

7 (i) The number of total employment positions;

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

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

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

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

21 (c) As part of the annual survey, the department may request
22 additional information, including the amount of investment in equipment
23 used in the activities taxable under the preferential rate in RCW
24 82.04.260(~~(+12+)~~) (11), necessary to measure the results of, or
25 determine eligibility for, the preferential tax rate in RCW
26 82.04.260(~~(+12+)~~) (11).

27 (d) All information collected under this section, except the amount
28 of the tax reduced under the preferential rate in RCW 82.04.260(~~(+12+)~~)
29 (11), is deemed taxpayer information under RCW 82.32.330. Information
30 on the amount of tax reduced is not subject to the confidentiality
31 provisions of RCW 82.32.330 and may be disclosed to the public upon
32 request, except as provided in (e) of this subsection. If the amount
33 of the tax reduced as reported on the survey is different than the
34 amount actually reduced based on the taxpayer's excise tax returns or
35 otherwise allowed by the department, the amount actually reduced may be
36 disclosed.

37 (e) Persons for whom the actual amount of the tax reduction is less

1 than ten thousand dollars during the period covered by the survey may
2 request the department to treat the amount of the tax reduction as
3 confidential under RCW 82.32.330.

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

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

16 (4) The department (~~shall~~) must use the information from the
17 annual survey required under subsection (2) of this section to prepare
18 summary descriptive statistics by category. The department (~~shall~~)
19 must report these statistics to the legislature each year by September
20 1st. The requirement to prepare and report summary descriptive
21 statistics (~~shall~~) ceases after September 1, 2025.

22 (5) By November 1, 2011, and November 1, 2023, the fiscal
23 committees of the house of representatives and the senate, in
24 consultation with the department, (~~shall~~) must report to the
25 legislature on the effectiveness of the preferential tax rate provided
26 in RCW 82.04.260(~~(+12+)~~) (11). The report shall measure the effect of
27 the preferential tax rate provided in RCW 82.04.260(~~(+12+)~~) (11) on job
28 retention, net jobs created for Washington residents, company growth,
29 and other factors as the committees select. The report (~~shall~~) must
30 include a discussion of principles to apply in evaluating whether the
31 legislature should continue the preferential tax rate provided in RCW
32 82.04.260(~~(+12+)~~) (11).

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

35 (1)(a) Every person claiming the preferential rate provided in RCW
36 82.04.260(~~(+14+)~~) (13) must file a complete annual report with the
37 department. The report is due by March 31st of the year following any

1 calendar year in which a person is eligible to claim the preferential
2 rate provided in RCW 82.04.260(~~(+14)~~) (13). The department may extend
3 the due date for timely filing of annual reports under this section as
4 provided in RCW 82.32.590.

5 (b) The report must include information detailing employment,
6 wages, and employer-provided health and retirement benefits for
7 employment positions in Washington for the year that the preferential
8 rate was claimed. The report must not include names of employees. The
9 report must also detail employment by the total number of full-time,
10 part-time, and temporary positions for the year that the tax preference
11 was claimed.

12 (c) If a person filing a report under this section did not file a
13 report with the department in the previous calendar year, the report
14 filed under this section must also include employment, wage, and
15 benefit information for the calendar year immediately preceding the
16 calendar year for which the preferential rate provided in RCW
17 82.04.260(~~(+14)~~) (13) was claimed.

18 (2) As part of the annual report, the department may request
19 additional information necessary to measure the results of, or
20 determine eligibility for, the preferential rate provided in RCW
21 82.04.260(~~(+14)~~) (13).

22 (3) Other than information requested under subsection (2) of this
23 section, the information contained in an annual report filed under this
24 section is not subject to the confidentiality provisions of RCW
25 82.32.330 and may be disclosed to the public upon request.

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

1 (5) By November 1, 2014, and November 1, 2016, the fiscal
2 committees of the house of representatives and the senate, in
3 consultation with the department, must report to the legislature on the
4 effectiveness of the preferential rate provided in RCW
5 82.04.260(~~(+14)~~) (13). The report must measure the effect of the
6 preferential rate provided in RCW 82.04.260(~~(+14)~~) (13) on job
7 retention, net jobs created for Washington residents, industry growth,
8 and other factors as the committees select. The report must include a
9 discussion of principles to apply in evaluating whether the legislature
10 should continue the preferential rate provided in RCW 82.04.260(~~(+14)~~)
11 (13).

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

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

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

19 Notwithstanding RCW 35.102.130, a city that imposes a business and
20 occupation tax must allocate a person's gross income from the
21 activities of printing, and of publishing newspapers, periodicals, or
22 magazines, to the principal place in this state from which the
23 taxpayer's business is directed or managed. As used in this section,
24 the activities of printing, and of publishing newspapers, periodicals,
25 or magazines are those activities to which the tax rates in RCW
26 82.04.260(~~(+14)~~) (13) and 82.04.280(1) apply.

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

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

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

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

34 (b) Excise taxes on the sale, purchase, use, or possession of (i)
35 real property; (ii) tangible personal property; (iii) extended

1 warranties; (iv) services, including digital automated services as
2 defined in RCW 82.04.192; and (v) digital goods and digital codes as
3 those terms are defined in RCW 82.04.192; and

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

6 (3) For the purposes of this section, the term "taxes" includes
7 taxes imposed by the state or any county, city, town, municipal
8 corporation, quasi-municipal corporation, or other political
9 subdivision.

10 **PART VII**
11 **Suspending the Sales and Use Tax Exemption for Livestock Nutrient**
12 **Equipment and Facilities**

13 **Sec. 701.** RCW 82.08.890 and 2009 c 469 s 601 are each amended to
14 read as follows:

15 (1) The tax levied by RCW 82.08.020 does not apply to sales to
16 eligible persons of:

- 17 (a) Qualifying livestock nutrient management equipment;
- 18 (b) Labor and services rendered in respect to installing,
19 repairing, cleaning, altering, or improving qualifying livestock
20 nutrient management equipment; and

21 (c)(i) Labor and services rendered in respect to repairing,
22 cleaning, altering, or improving of qualifying livestock nutrient
23 management facilities, or to tangible personal property that becomes an
24 ingredient or component of qualifying livestock nutrient management
25 facilities in the course of repairing, cleaning, altering, or improving
26 of such facilities.

27 (ii) The exemption provided in this subsection (1)(c) does not
28 apply to the sale of or charge made for: (A) Labor and services
29 rendered in respect to the constructing of new, or replacing previously
30 existing, qualifying livestock nutrient management facilities; or (B)
31 tangible personal property that becomes an ingredient or component of
32 qualifying livestock nutrient management facilities during the course
33 of constructing new, or replacing previously existing, qualifying
34 livestock nutrient management facilities.

35 (2) The exemption provided in subsection (1) of this section
36 applies to sales made after the livestock nutrient management plan is:

1 (a) Certified under chapter 90.64 RCW; (b) approved as part of the
2 permit issued under chapter 90.48 RCW; or (c) approved as required
3 under subsection (4)(c)(iii) of this section.

4 (3)(a) The department of revenue must provide an exemption
5 certificate to an eligible person upon application by that person. The
6 department of agriculture must provide a list of eligible persons, as
7 defined in subsection (4)(c)(i) and (ii) of this section, to the
8 department of revenue. Conservation districts must maintain lists of
9 eligible persons as defined in subsection (4)(c)(iii) of this section
10 to allow the department of revenue to verify eligibility. The
11 application must be in a form and manner prescribed by the department
12 and must contain information regarding the location of the dairy or
13 animal feeding operation and other information the department may
14 require.

15 (b) A person claiming an exemption under this section must keep
16 records necessary for the department to verify eligibility under this
17 section. The exemption is available only when the buyer provides the
18 seller with an exemption certificate in a form and manner prescribed by
19 the department. The seller must retain a copy of the certificate for
20 the seller's files.

21 (4) The definitions in this subsection apply to this section and
22 RCW 82.12.890 unless the context clearly requires otherwise:

23 (a) "Animal feeding operation" means a lot or facility, other than
24 an aquatic animal production facility, where the following conditions
25 are met:

26 (i) Animals, other than aquatic animals, have been, are, or will be
27 stabled or confined and fed or maintained for a total of forty-five
28 days or more in any twelve-month period; and

29 (ii) Crops, vegetation, forage growth, or postharvest residues are
30 not sustained in the normal growing season over any portion of the lot
31 or facility.

32 (b) "Conservation district" means a subdivision of state government
33 organized under chapter 89.08 RCW.

34 (c) "Eligible person" means a person: (i) Licensed to produce milk
35 under chapter 15.36 RCW who has a certified dairy nutrient management
36 plan, as required by chapter 90.64 RCW; (ii) who owns an animal feeding
37 operation and has a permit issued under chapter 90.48 RCW; or (iii) who
38 owns an animal feeding operation and has a nutrient management plan

1 approved by a conservation district as meeting natural resource
2 conservation service field office technical guide standards and who
3 possesses an exemption certificate under RCW 82.08.855.

4 (d) "Handling and treatment of livestock manure" means the
5 activities of collecting, storing, moving, or transporting livestock
6 manure, separating livestock manure solids from liquids, or applying
7 livestock manure to the agricultural lands of an eligible person other
8 than through the use of pivot or linear type traveling irrigation
9 systems.

10 (e) "Permit" means either a state waste discharge permit or a
11 national pollutant discharge elimination system permit, or both.

12 (f) "Qualifying livestock nutrient management equipment" means the
13 following tangible personal property for exclusive use in the handling
14 and treatment of livestock manure, including repair and replacement
15 parts for such equipment: (i) Aerators; (ii) agitators; (iii) augers;
16 (iv) conveyers; (v) gutter cleaners; (vi) hard-hose reel traveler
17 irrigation systems; (vii) lagoon and pond liners and floating covers;
18 (viii) loaders; (ix) manure composting devices; (x) manure spreaders;
19 (xi) manure tank wagons; (xii) manure vacuum tanks; (xiii) poultry
20 house cleaners; (xiv) poultry house flame sterilizers; (xv) poultry
21 house washers; (xvi) poultry litter saver machines; (xvii) pipes;
22 (xviii) pumps; (xix) scrapers; (xx) separators; (xxi) slurry injectors
23 and hoses; and (xxii) wheelbarrows, shovels, and pitchforks.

24 (g) "Qualifying livestock nutrient management facilities" means the
25 following structures and facilities for exclusive use in the handling
26 and treatment of livestock manure: (i) Flush systems; (ii) lagoons;
27 (iii) liquid livestock manure storage structures, such as concrete
28 tanks or glass-lined steel tanks; and (iv) structures used solely for
29 the dry storage of manure, including roofed stacking facilities.

30 (5) The exemption under this section does not apply to sales made
31 from April 1, 2010, through June 30, 2013.

32 (6) This section expires July 1, 2020.

33 **Sec. 702.** RCW 82.12.890 and 2009 c 469 s 602 are each amended to
34 read as follows:

35 (1) The provisions of this chapter do not apply with respect to the
36 use by an eligible person of:

37 (a) Qualifying livestock nutrient management equipment;

1 (b) Labor and services rendered in respect to installing,
2 repairing, cleaning, altering, or improving qualifying livestock
3 nutrient management equipment; and

4 (c)(i) Tangible personal property that becomes an ingredient or
5 component of qualifying livestock nutrient management facilities in the
6 course of repairing, cleaning, altering, or improving of such
7 facilities.

8 (ii) The exemption provided in this subsection (1)(c) does not
9 apply to the use of tangible personal property that becomes an
10 ingredient or component of qualifying livestock nutrient management
11 facilities during the course of constructing new, or replacing
12 previously existing, qualifying livestock nutrient management
13 facilities.

14 (2)(a) To be eligible, the equipment and facilities must be used
15 exclusively for activities necessary to maintain a livestock nutrient
16 management plan.

17 (b) The exemption applies to the use of tangible personal property
18 and labor and services made after the livestock nutrient management
19 plan is: (i) Certified under chapter 90.64 RCW; (ii) approved as part
20 of the permit issued under chapter 90.48 RCW; or (iii) approved as
21 required under RCW 82.08.890(4)(c)(iii).

22 (3) The exemption certificate and recordkeeping requirements of RCW
23 82.08.890 apply to this section. The definitions in RCW 82.08.890
24 apply to this section.

25 (4) The exemption under this section does not apply to the use of
26 tangible personal property and services if first use of the property or
27 services occurs in this state from April 1, 2010, through June 30,
28 2013.

29 (5) This section expires July 1, 2020.

30 **PART VIII**

31 **Ending the Preferential Business and Occupation Tax Treatment Received**
32 **by Directors of Corporations**

33 NEW SECTION. **Sec. 801.** (1) In adopting the state's business and
34 occupation tax, the legislature intended to tax virtually all business
35 activities carried on within the state. See *Simpson Inv. Co. v. Dep't*
36 *of Revenue*, 141 Wn.2d 139, 149 (2000). The legislature recognizes that

1 the business and occupation tax applies to all activities engaged in
2 with the object of gain, benefit, or advantage to the taxpayer or to
3 another person or class, directly or indirectly, unless a specific
4 exemption applies.

5 (2) One of the major business and occupation tax exemptions is
6 provided in RCW 82.04.360 for income earned as an employee or servant
7 as distinguished from income earned as an independent contractor. The
8 legislature's intent in providing this exemption was to exempt employee
9 wages from the business and occupation tax but not to exempt income
10 earned as an independent contractor.

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

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

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

34 **Sec. 802.** RCW 82.04.360 and 1991 c 324 s 19 and 1991 c 275 s 2 are
35 each reenacted and amended to read as follows:

36 (1) This chapter (~~shall~~) does not apply to any person in respect
37 to his or her employment in the capacity of an employee or servant as

1 distinguished from that of an independent contractor. For the purposes
2 of this section, the definition of employee (~~shall~~) includes those
3 persons that are defined in section 3121(d)(3)(B) of the federal
4 internal revenue code of 1986, as amended through January 1, 1991.

5 (2) (~~(A booth renter, as defined by RCW 18.16.020, is an~~
6 ~~independent contractor for purposes of this chapter.)~~) Until April 1,
7 2010, this chapter does not apply to amounts received by an individual
8 from a corporation as compensation for serving as a member of that
9 corporation's board of directors. Beginning April 1, 2010, such
10 amounts are taxable under RCW 82.04.290(2).

11 NEW SECTION. Sec. 803. The sole reason for deleting the language
12 in RCW 82.04.360(2) is because RCW 18.16.020 no longer defines the term
13 "booth renter." This should not be construed as a substantive change
14 in the law.

15 **PART IX**
16 **Airplane Excise Tax**

17 **Sec. 901.** RCW 82.48.010 and 1995 c 318 s 4 are each amended to
18 read as follows:

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

21 (1) "Department" means the department of licensing.

22 (2) "Aircraft" means any weight-carrying device or structure for
23 navigation of the air which is designed to be supported by the air;

24 (~~(2) "Secretary" means the secretary of transportation;~~)

25 (3) "Person" includes a firm, partnership, limited liability
26 company, or corporation(;

27 (4) ~~"Small multi-engine fixed wing" means any piston-driven multi-~~
28 ~~engine fixed wing aircraft with a maximum gross weight as listed by the~~
29 ~~manufacturer of less than seventy-five hundred pounds; and~~

30 (5) ~~"Large multi-engine fixed wing" means any piston-driven multi-~~
31 ~~engine fixed wing aircraft with a maximum gross weight as listed by the~~
32 ~~manufacturer of seventy-five hundred pounds or more).~~

33 **Sec. 902.** RCW 82.48.020 and 2000 c 229 s 4 are each amended to
34 read as follows:

1 (1) An annual excise tax is hereby imposed for the privilege of
2 using any aircraft in the state. A current certificate of air
3 worthiness with a current inspection date from the appropriate federal
4 agency and/or the purchase of aviation fuel (~~((shall))~~) constitutes the
5 necessary evidence of aircraft use or intended use. (~~((The tax shall))~~)
6 The amount of the tax is five-tenths of one percent of the taxable
7 value of the aircraft, as determined under section 903 of this act.

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

16 ~~((+2))~~ (3) Persons who are required to register aircraft under
17 chapter 47.68 RCW and who register aircraft in another state or foreign
18 country and avoid the (~~((Washington))~~) aircraft excise tax imposed under
19 this section are liable for (~~((such))~~) the unpaid excise tax. A
20 violation of this subsection is a gross misdemeanor.

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

25 ~~((+3))~~ (5) Except as provided under subsection(~~((s (1) and (2))~~)
26 (3) of this section, a violation of this chapter is a misdemeanor
27 punishable as provided in chapter 9A.20 RCW.

28 NEW SECTION. Sec. 903. A new section is added to chapter 82.48
29 RCW to read as follows:

30 (1)(a) Except as otherwise provided in this section, taxable value
31 is based on the most recent purchase price of the aircraft, depreciated
32 according to the year of the most recent purchase of the aircraft. For
33 purposes of this subsection, "purchase price" means the consideration,
34 whether money, credit, rights, or other property expressed in terms of
35 money paid or given or contracted to be paid or given by the purchaser
36 to the seller for the aircraft.

1 (b) For aircraft for which the most recent purchase price was not
2 indicative of the fair market value of the aircraft at the time of
3 purchase, the department may appraise the aircraft. If the department
4 appraises the aircraft, the taxable value is based on the department's
5 appraisal of fair market value of the aircraft at the time of the most
6 recent purchase, depreciated according to the year of the most recent
7 purchase of the aircraft.

8 (c) For aircraft acquired other than by purchase, including
9 aircraft manufactured, constructed, or assembled by the owner, the
10 department must appraise the aircraft before registration. In such
11 cases, the taxable value is the fair market value at the time of the
12 department's appraisal. For subsequent years, taxable value is based
13 on the department's appraisal of fair market value of the aircraft,
14 depreciated according to the year that the owner acquired the aircraft
15 or, in the case of aircraft manufactured, constructed, or assembled by
16 the owner, the year that the aircraft became operational.

17 (2)(a) An appraisal conducted by the department:

18 (i) Need not include a physical inspection of the aircraft; and

19 (ii) May be based on any guidebook, report, or compendium of
20 recognized standing in the aviation industry and information provided
21 to the department by the owner of the aircraft.

22 (b) Any aircraft owner disputing the department's appraised value
23 under this section may petition for a conference with the department as
24 provided under RCW 82.32.160 or for reduction of the tax due as
25 provided under RCW 82.32.170.

26 (3)(a) The department must prepare a depreciation schedule for use
27 in the determination of the taxable value for the purposes of this
28 chapter. The schedule must be based upon information available to the
29 department pertaining to the current fair market value of aircraft.

30 (b) The department must recommend a depreciation schedule to the
31 fiscal committees of the senate and house of representatives by
32 December 31, 2010, for enactment in law during the 2011 legislative
33 session for use in the determination of taxable value for taxes due
34 under this chapter during calendar year 2012 and subsequent calendar
35 years.

36 (4) The department may adopt any rules necessary to implement this
37 section, including any rules necessary to provide a reasonable method
38 or methods to determine the fair market value of an aircraft.

1 (5) For purposes of this section, "department" means the department
2 of revenue.

3 **Sec. 904.** RCW 82.48.030 and 1983 2nd ex.s. c 3 s 22 are each
4 amended to read as follows:

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

Type of aircraft	Registration fee
Single engine fixed wing	\$ 50
Small multi-engine fixed wing	65
Large multi-engine fixed wing	80
Turboprop multi-engine fixed wing	100
Turbojet multi-engine fixed wing	125
Helicopter	75
Sailplane	20
Lighter than air	20
Home built	20

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

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

31 **Sec. 905.** RCW 82.48.070 and 1987 c 220 s 7 are each amended to
32 read as follows:

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

1 **Sec. 906.** RCW 82.48.080 and 1995 c 170 s 2 are each amended to
2 read as follows:

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

9 **Sec. 907.** RCW 82.48.110 and 1967 ex.s. c 9 s 6 are each amended to
10 read as follows:

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

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

31 **Sec. 908.** RCW 47.68.230 and 2005 c 341 s 1 are each amended to
32 read as follows:

33 (1) It (~~shall be~~) is unlawful for any person to operate or cause
34 or authorize to be operated any civil aircraft within this state unless
35 such aircraft has an appropriate effective certificate, permit, or
36 license issued by the United States, if such certificate, permit, or

1 license is required by the United States, and a current registration
2 certificate issued by the (~~secretary of transportation~~) department of
3 licensing, if registration of the aircraft with the department of
4 (~~transportation~~) licensing is required by this chapter. It (~~shall~~
5 ~~be~~) is unlawful for any person to engage in aeronautics as an airman
6 or airwoman in the state unless the person has an appropriate effective
7 airman or airwoman certificate, permit, rating, or license issued by
8 the United States authorizing him or her to engage in the particular
9 class of aeronautics in which he or she is engaged, if such
10 certificate, permit, rating, or license is required by the United
11 States.

12 (2) Where a certificate, permit, rating, or license is required for
13 an airman or airwoman by the United States, it (~~shall~~) must be kept
14 in his or her personal possession when he or she is operating within
15 the state. Where a certificate, permit, or license is required by the
16 United States or by this chapter for an aircraft, it (~~shall~~) must be
17 carried in the aircraft at all times while the aircraft is operating in
18 the state and (~~shall~~) must be conspicuously posted in the aircraft
19 where it may be readily seen by passengers or inspectors. Such
20 certificates (~~shall~~) must be presented for inspection upon the demand
21 of any peace officer, or any other officer of the state or of a
22 municipality or member, official, or employee of the department of
23 transportation authorized pursuant to this chapter to enforce the
24 aeronautics laws, or any official, manager, or person in charge of any
25 airport, or upon the reasonable request of any person.

26 **Sec. 909.** RCW 82.48.090 and 1992 c 154 s 2 are each amended to
27 read as follows:

28 In case a claim is made by any person that the person has paid an
29 erroneously excessive amount of excise tax under this chapter, the
30 person may apply to the department of (~~transportation~~) licensing for
31 a refund of the claimed excessive amount together with interest at the
32 rate specified in RCW 82.32.060. The department of (~~transportation~~
33 ~~shall~~) licensing must review such application, and if it determines
34 that an excess amount of tax has actually been paid by the taxpayer,
35 such excess amount and interest at the rate specified in RCW 82.32.060
36 (~~shall~~) must be refunded to the taxpayer by means of a voucher
37 approved by the department of (~~transportation~~) licensing and by the

1 issuance of a state warrant drawn upon and payable from such funds as
2 the legislature may provide for that purpose. No refund (~~shall~~) may
3 be allowed, however, unless application for the refund is filed with
4 the department of (~~transportation~~) licensing within ninety days after
5 the claimed excessive excise tax was paid and the amount of the
6 overpayment exceeds five dollars.

7 **PART X**

8 **Use Tax on Motor Vehicles and Trailers Used in Interstate Commerce**

9 **Sec. 1001.** RCW 82.12.0254 and 2009 c 503 s 2 are each amended to
10 read as follows:

11 (1) The provisions of this chapter do not apply in respect to the
12 use of:

13 (a) Any airplane used primarily in (i) conducting interstate or
14 foreign commerce or (ii) providing intrastate air transportation by a
15 commuter air carrier as defined in RCW 82.08.0262;

16 (b) Any locomotive, railroad car, or watercraft used primarily in
17 conducting interstate or foreign commerce by transporting therein or
18 therewith property and persons for hire or used primarily in commercial
19 deep sea fishing operations outside the territorial waters of the
20 state;

21 (c) Tangible personal property that becomes a component part of any
22 such airplane, locomotive, railroad car, or watercraft in the course of
23 repairing, cleaning, altering, or improving the same; and

24 (d) Labor and services rendered in respect to such repairing,
25 cleaning, altering, or improving.

26 (2) The provisions of this chapter do not apply in respect to the
27 use by a nonresident of this state of any motor vehicle or trailer used
28 exclusively in transporting persons or property across the boundaries
29 of this state and in intrastate operations incidental thereto when such
30 motor vehicle or trailer is registered and licensed in a foreign state
31 and in respect to the use by a nonresident of this state of any motor
32 vehicle or trailer so registered and licensed and used within this
33 state for a period not exceeding fifteen consecutive days under such
34 rules as the department must adopt. However, under circumstances
35 determined to be justifiable by the department a second fifteen day
36 period may be authorized consecutive with the first fifteen day period;

1 and for the purposes of this exemption the term "nonresident" as used
2 herein includes a user who has one or more places of business in this
3 state as well as in one or more other states, but the exemption for
4 nonresidents applies only to those vehicles which are most frequently
5 dispatched, garaged, serviced, maintained, and operated from the user's
6 place of business in another state.

7 (3) The provisions of this chapter do not apply in respect to the
8 use of:

9 (a) Any motor vehicle or trailer, owned by the holder of a carrier
10 permit issued by the interstate commerce commission or its successor
11 agency (~~((of any motor vehicle or trailer whether owned by))~~) or leased
12 with or without driver to the permit holder and used (~~((in substantial
13 part))~~) in the normal and ordinary course of the user's business
14 primarily for transporting therein persons or property for hire across
15 the boundaries of this state; (~~((and in respect to the use of))~~)

16 (b) Any motor vehicle or trailer while being operated under the
17 authority of a one-transit permit issued by the director of licensing
18 pursuant to RCW 46.16.160 and moving upon the highways from the point
19 of delivery in this state to a point outside this state; (~~((and in
20 respect to the use of))~~)

21 (c) Tangible personal property ((which)) that becomes a component
22 part of any motor vehicle or trailer (~~((used by the holder of a carrier
23 permit issued by the interstate commerce commission or its successor
24 agency authorizing transportation by motor vehicle across the
25 boundaries of this state whether such motor vehicle or trailer is owned
26 by or leased with or without driver to the permit holder))~~) that is
27 exempt under (a) of this subsection, in the course of repairing,
28 cleaning, altering, or improving the same; (~~((also the use of))~~) and

29 (d) Labor and services rendered in respect to such repairing,
30 cleaning, altering, or improving any motor vehicle or trailer that is
31 exempt under (a) of this subsection.

32 **PART XI**

33 **Foreclosure Exemption**

34 **Sec. 1101.** RCW 82.45.010 and 2010 c ... s 206 (section 206 of this
35 act) are each amended to read as follows:

36 (1) As used in this chapter, the term "sale" has its ordinary

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

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

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

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

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

33 (ii) When persons are not commonly owned or controlled, they must
34 be treated as acting in concert only when the unity with which the
35 purchasers have negotiated and will consummate the transfer of
36 ownership interests supports a finding that they are acting as a single
37 entity. If the acquisitions are completely independent, with each

1 purchaser buying without regard to the identity of the other
2 purchasers, then the acquisitions are considered separate acquisitions.

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

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

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

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

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

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

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

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

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

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

37 (j) A conveyance to the federal housing administration or veterans

1 administration by an authorized mortgagee made pursuant to a contract
2 of insurance or guaranty with the federal housing administration or
3 veterans administration.

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

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

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

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

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

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

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

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

27 **Sec. 1102.** RCW 82.45.080 and 1980 c 154 s 3 are each amended to
28 read as follows:

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

36 (2) For purposes of this section and notwithstanding any other

1 provisions of law, in a sale involving a judicial or nonjudicial
2 foreclosure or enforcement of a judgment, the seller is the:

3 (a) Beneficiary of a deed of trust in any transfer or conveyance to
4 any party other than such beneficiary pursuant to a trustee's sale in
5 the nonjudicial foreclosure of the deed of trust;

6 (b) Mortgagee, beneficiary of a deed of trust, or lienholder in any
7 transfer or conveyance to any party other than such mortgagee,
8 beneficiary, or lienholder pursuant to an order of sale by the court in
9 the judicial foreclosure of any mortgage, deed of trust, or lien; and

10 (c) Judgment creditor in any transfer or conveyance to any party
11 other than such creditor pursuant to a writ of execution to enforce a
12 judgment.

13 **PART XII**

14 **Tax Debts**

15 **Sec. 1201.** RCW 82.32.145 and 1995 c 318 s 2 are each amended to
16 read as follows:

17 ~~(1) ((Upon termination, dissolution, or abandonment of a corporate~~
18 ~~or limited liability company business, any officer, member, manager, or~~
19 ~~other person having control or supervision of retail sales tax funds~~
20 ~~collected and held in trust under RCW 82.08.050, or who is charged with~~
21 ~~the responsibility for the filing of returns or the payment of retail~~
22 ~~sales tax funds collected and held in trust under RCW 82.08.050, shall~~
23 ~~be personally liable for any unpaid taxes and interest and penalties on~~
24 ~~those taxes, if such officer or other person wilfully fails to pay or~~
25 ~~to cause to be paid any taxes due from the corporation pursuant to~~
26 ~~chapter 82.08 RCW. For the purposes of this section, any retail sales~~
27 ~~taxes that have been paid but not collected shall be deductible from~~
28 ~~the retail sales taxes collected but not paid.~~

29 ~~For purposes of this subsection "wilfully fails to pay or to cause~~
30 ~~to be paid" means that the failure was the result of an intentional,~~
31 ~~conscious, and voluntary course of action.~~

32 ~~(2) The officer, member or manager, or other person shall be liable~~
33 ~~only for taxes collected which)) Whenever the department has issued a~~
34 warrant under RCW 82.32.210 for the collection of unpaid retail sales
35 tax funds collected and held in trust under RCW 82.08.050 from a
36 limited liability business entity and that business entity has been

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

9 (2) Personal liability under this section may be imposed for state
10 and local sales taxes.

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

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

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

33 (b) All other responsible individuals are liable under this section
34 only for sales tax liability that became due during the period he or
35 she had the ((control, supervision,)) responsibility((,)) or duty to
36 ((act for the corporation described in subsection (1) of this section,
37 plus interest and penalties on those taxes.

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

3 ~~(5)~~ Persons (~~(liable under)~~) described in subsection (~~((1))~~) (3)(b)
4 of this section are exempt from liability under this section in
5 situations where nonpayment of the (~~(retail sales tax funds held in~~
6 ~~trust~~) limited liability business entity's sales taxes is due to
7 reasons beyond their control as determined by the department by rule.

8 ~~((4))~~ (6) Any person having been issued a notice of assessment
9 under this section is entitled to the appeal procedures under RCW
10 82.32.160, 82.32.170, 82.32.180, 82.32.190, and 82.32.200.

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

14 ~~(6))~~ (7) This section does not relieve the (~~(corporation or)~~)
15 limited liability (~~(company)~~) business entity of (~~(other tax~~
16 ~~liabilities~~) its sales tax liability or otherwise impair other tax
17 collection remedies afforded by law.

18 ~~((7))~~ (8) Collection authority and procedures prescribed in this
19 chapter apply to collections under this section.

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

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

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

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

1 liability partnerships, trusts, general partnerships and joint ventures
2 in which one or more of the partners or parties are also limited
3 liability business entities, and limited partnerships in which one or
4 more of the general partners are also limited liability business
5 entities.

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

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

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

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

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

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

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

32 **PART XIII**

33 **Repealing the Business and Occupation Tax Credit for New Employment for**
34 **International Service Activities**

35 NEW SECTION. Sec. 1301. RCW 82.04.44525 (Credit--New employment
36 for international service activities in eligible areas--Designation of

1 census tracts for eligibility--Records--Tax due upon ineligibility--
2 Interest assessment--Information from employment security department)
3 and 2009 c 535 s 1104, 2008 c 81 s 9, & 1998 c 313 s 2 are each
4 repealed.

5 **PART XIV**

6 **Repealing the Sales and Use Tax Exemptions**
7 **for Candy and Bottled Water**

8 NEW SECTION. **Sec. 1401.** (1) In order to preserve funding to
9 protect Washington state's natural resources, it is the legislature's
10 intent to use revenue generated from assessing a sales tax on bottled
11 water on natural resource and environmental protection activities.

12 (2) It is the legislature's intent to use revenue generated from
13 assessing a sales tax on candy and gum to support public health
14 services including children's dental services.

15 **Sec. 1402.** RCW 82.08.0293 and 2009 c 483 s 2 are each amended to
16 read as follows:

17 (1) The tax levied by RCW 82.08.020 (~~shall~~) does not apply to
18 sales of food and food ingredients. "Food and food ingredients" means
19 substances, whether in liquid, concentrated, solid, frozen, dried, or
20 dehydrated form, that are sold for ingestion or chewing by humans and
21 are consumed for their taste or nutritional value. "Food and food
22 ingredients" does not include:

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

26 (b) "Tobacco," which means cigarettes, cigars, chewing or pipe
27 tobacco, or any other item that contains tobacco.

28 (2) The exemption of "food and food ingredients" provided for in
29 subsection (1) of this section (~~shall~~) does not apply to prepared
30 food, soft drinks, candy, bottled water, or dietary supplements.

31 (a) "Prepared food" means:

32 (i) Food sold in a heated state or heated by the seller;

33 (ii) Food sold with eating utensils provided by the seller,
34 including plates, knives, forks, spoons, glasses, cups, napkins, or

1 straws. A plate does not include a container or packaging used to
2 transport the food; or

3 (iii) Two or more food ingredients mixed or combined by the seller
4 for sale as a single item, except:

5 (A) Food that is only cut, repackaged, or pasteurized by the
6 seller; or

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

12 (b) "Prepared food" does not include the following food or food
13 ingredients, if the food or food ingredients are sold without eating
14 utensils provided by the seller:

15 (i) Food sold by a seller whose proper primary North American
16 industry classification system (NAICS) classification is manufacturing
17 in sector 311, except subsector 3118 (bakeries), as provided in the
18 "North American industry classification system--United States, 2002";

19 (ii) Food sold in an unheated state by weight or volume as a single
20 item; or

21 (iii) Bakery items. The term "bakery items" includes bread, rolls,
22 buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes,
23 tortes, pies, tarts, muffins, bars, cookies, or tortillas.

24 (c) "Soft drinks" means nonalcoholic beverages that contain natural
25 or artificial sweeteners. Soft drinks do not include beverages that
26 contain: Milk or milk products; soy, rice, or similar milk
27 substitutes; or greater than fifty percent of vegetable or fruit juice
28 by volume.

29 (d) "Dietary supplement" means any product, other than tobacco,
30 intended to supplement the diet that:

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

32 (A) A vitamin;

33 (B) A mineral;

34 (C) An herb or other botanical;

35 (D) An amino acid;

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

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

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

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

11 (e) "Candy" means a preparation of sugar, honey, or other natural
12 or artificial sweeteners in combination with chocolate, fruits, nuts,
13 or other ingredients or flavorings in the form of bars, drops, or
14 pieces. "Candy" does not include any preparation containing flour and
15 does not require refrigeration.

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

25 (3) Notwithstanding anything in this section to the contrary, the
26 exemption of "food and food ingredients" provided in this section shall
27 apply to food and food ingredients that are furnished, prepared, or
28 served as meals:

29 (a) Under a state administered nutrition program for the aged as
30 provided for in the older Americans act (P.L. 95-478 Title III) and RCW
31 74.38.040(6);

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

35 (c) That are provided to residents, sixty-two years of age or
36 older, of a qualified low-income senior housing facility by the lessor
37 or operator of the facility. The sale of a meal that is billed to both
38 spouses of a marital community or both domestic partners of a domestic

1 partnership meets the age requirement in this subsection (3)(c) if at
2 least one of the spouses or domestic partners is at least sixty-two
3 years of age. For purposes of this subsection, "qualified low-income
4 senior housing facility" means a facility:

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

8 (ii) That has been partially funded under (~~Title~~) 42 U.S.C. Sec.
9 1485 (~~of the federal internal revenue code~~); and

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

13 (4)(a) Subsection (1) of this section notwithstanding, the retail
14 sale of food and food ingredients is subject to sales tax under RCW
15 82.08.020 if the food and food ingredients are sold through a vending
16 machine, and in this case the selling price for purposes of RCW
17 82.08.020 is fifty-seven percent of the gross receipts.

18 (b) This subsection (4) does not apply to hot prepared food and
19 food ingredients, other than food and food ingredients which are heated
20 after they have been dispensed from the vending machine.

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

24 **Sec. 1403.** RCW 82.12.0293 and 2009 c 483 s 4 are each amended to
25 read as follows:

26 (1) The provisions of this chapter (~~shall~~) do not apply in
27 respect to the use of food and food ingredients for human consumption.
28 "Food and food ingredients" has the same meaning as in RCW 82.08.0293.

29 (2) The exemption of "food and food ingredients" provided for in
30 subsection (1) of this section (~~shall~~) does not apply to prepared
31 food, soft drinks, candy, bottled water, or dietary supplements.
32 "Prepared food," "soft drinks," (~~and~~) "dietary supplements," "candy,"
33 and "bottled water" have the same meanings as in RCW 82.08.0293.

34 (3) Notwithstanding anything in this section to the contrary, the
35 exemption of "food and food ingredients" provided in this section
36 (~~shall~~) apply to food and food ingredients which are furnished,
37 prepared, or served as meals:

1 (a) Under a state administered nutrition program for the aged as
2 provided for in the older Americans act (P.L. 95-478 Title III) and RCW
3 74.38.040(6);

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

7 (c) That are provided to residents, sixty-two years of age or
8 older, of a qualified low-income senior housing facility by the lessor
9 or operator of the facility. The sale of a meal that is billed to both
10 spouses of a marital community or both domestic partners of a domestic
11 partnership meets the age requirement in this subsection (3)(c) if at
12 least one of the spouses or domestic partners is at least sixty-two
13 years of age. For purposes of this subsection, "qualified low-income
14 senior housing facility" has the same meaning as in RCW 82.08.0293.

15 NEW SECTION. **Sec. 1404.** A new section is added to chapter 82.08
16 RCW to read as follows:

17 (1) The tax levied by RCW 82.08.020 does not apply to sales of
18 bottled water for human use dispensed or to be dispensed to patients,
19 pursuant to a prescription for use in the cure, mitigation, treatment,
20 or prevention of disease or medical condition.

21 (2) The definitions in this subsection apply to this section.

22 (a) "Bottled water" has the same meaning as provided in RCW
23 82.08.0293.

24 (b) "Prescription" means an order, formula, or recipe issued in any
25 form of oral, written, electronic, or other means of transmission by a
26 duly licensed practitioner authorized by the laws of this state to
27 prescribe.

28 NEW SECTION. **Sec. 1405.** A new section is added to chapter 82.12
29 RCW to read as follows:

30 The provisions of this chapter do not apply in respect to the use
31 of bottled water for human use dispensed or to be dispensed to
32 patients, pursuant to a prescription for use in the cure, mitigation,
33 treatment, or prevention of disease or medical condition. The
34 definitions in section 1404 of this act apply to this section.

1 NEW SECTION. **Sec. 1406.** A new section is added to chapter 82.08
2 RCW to read as follows:

3 (1) The tax levied by RCW 82.08.020 does not apply to sales of
4 bottled water for human use to persons who do not otherwise have a
5 readily available source of potable water and who provide the seller
6 with an exemption certificate in a form and manner prescribed by the
7 department. The seller must retain a copy of the certificate for the
8 seller's files.

9 (2) The department may waive the requirement for an exemption
10 certificate in the event of disaster or similar circumstance.

11 NEW SECTION. **Sec. 1407.** A new section is added to chapter 82.12
12 RCW to read as follows:

13 The provisions of this chapter do not apply in respect to the use
14 of bottled water for human use by persons who do not otherwise have a
15 readily available source of potable water.

16 **PART XV**
17 **Imposing Sales and Use Tax on Cosmetic**
18 **Surgery, Custom Software, and Janitorial Services**

19 NEW SECTION. **Sec. 1501.** (1) In order to preserve funding for
20 health care services for people with disabilities, it is the
21 legislature's intent to use revenue generated from assessing a sales
22 tax on elective cosmetic surgery to support basic health care programs
23 and assistance for people with disabilities.

24 (2) In order to preserve funding for higher education, it is the
25 legislature's intent to use revenue generated from assessing a sales
26 and use tax on custom software to support the state's institutions of
27 higher education and financial aid programs including the state need
28 grant.

29 (3) In order to preserve education funding, it is the legislature's
30 intent to use revenue generated from assessing a sales and use tax on
31 janitorial services to support basic education including levy
32 equalization and dropout prevention programs.

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

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

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

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

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

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

29 (e) Purchases for the purpose of providing the property to
30 consumers as part of competitive telephone service, as defined in RCW
31 82.04.065. The term (~~shall~~) includes every sale of tangible personal
32 property which is used or consumed or to be used or consumed in the
33 performance of any activity classified as a "sale at retail" or "retail
34 sale" even though such property is resold or utilized as provided in
35 (a), (b), (c), (d), or (e) of this subsection following such use. The
36 term also means every sale of tangible personal property to persons
37 engaged in any business which is taxable under RCW 82.04.280 (2) and
38 (7), 82.04.290, and 82.04.2908; or

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

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

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

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

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

31 (d) The cleaning, fumigating, razing, or moving of existing
32 buildings or structures(~~(, but may not include the charge made for~~
33 ~~janitorial services; and for purposes of this section the term~~
34 ~~"janitorial services" shall mean those cleaning and caretaking services~~
35 ~~ordinarily performed by commercial janitor service businesses~~
36 ~~including, but not limited to, wall and window washing, floor cleaning~~
37 ~~and waxing, and the cleaning in place of rugs, drapes and upholstery.~~

1 ~~The term "janitorial services" does not include painting, papering,~~
2 ~~repairing, furnace or septic tank cleaning, snow removal or~~
3 ~~sandblasting));~~

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

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

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

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

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

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

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

38 (c) Credit bureau services;

1 (d) Automobile parking and storage garage services;

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

7 (f) Service charges associated with tickets to professional
8 sporting events; (~~and~~)

9 (g) The following personal services: Physical fitness services,
10 tanning salon services, tattoo parlor services, steam bath services,
11 turkish bath services, escort services, and dating services;

12 (h) Cosmetic medical services; and

13 (i) Janitorial services. The term "janitorial services" means
14 those cleaning and caretaking services ordinarily performed by
15 commercial janitor service businesses including, but not limited to,
16 wall and window washing, floor cleaning and waxing, and the cleaning in
17 place of rugs, drapes, and upholstery. The term "janitorial services"
18 does not include painting, papering, repairing, furnace or septic tank
19 cleaning, snow removal, or sandblasting.

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

21 (i) The renting or leasing of tangible personal property to
22 consumers; and

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

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

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

35 (6)(a) The term also includes the sale of prewritten computer
36 software other than a sale to a person who presents a seller's permit
37 or uniform exemption certificate in conformity with RCW 82.04.470,
38 regardless of the method of delivery to the end user. For purposes of

1 this subsection (6)(a), the sale of prewritten computer software
2 includes the sale of or charge made for a key or an enabling or
3 activation code, where the key or code is required to activate
4 prewritten computer software and put the software into use. There is
5 no separate sale of the key or code from the prewritten computer
6 software, regardless of how the sale may be characterized by the vendor
7 or by the purchaser.

8 ~~((The term "retail sale" does not include the sale of or charge
9 made for:~~

10 ~~(i) Custom software; or~~

11 ~~(ii) The customization of prewritten computer software.))~~

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

17 (7)(a) The term also includes the sale of or charge made for
18 custom software and the customization of prewritten computer software
19 to a consumer, regardless of the method of delivery to the consumer.

20 (b) The term also includes the charge made to consumers for the
21 right to access and use custom software and customized prewritten
22 computer software, where possession of the software is maintained by
23 the seller or a third party.

24 (8) The term also includes the sale of or charge made for an
25 extended warranty to a consumer. For purposes of this subsection,
26 "extended warranty" means an agreement for a specified duration to
27 perform the replacement or repair of tangible personal property at no
28 additional charge or a reduced charge for tangible personal property,
29 labor, or both, or to provide indemnification for the replacement or
30 repair of tangible personal property, based on the occurrence of
31 specified events. The term "extended warranty" does not include an
32 agreement, otherwise meeting the definition of extended warranty in
33 this subsection, if no separate charge is made for the agreement and
34 the value of the agreement is included in the sales price of the
35 tangible personal property covered by the agreement. For purposes of
36 this subsection, "sales price" has the same meaning as in RCW
37 82.08.010.

1 (~~(+8)~~) (9)(a) The term also includes the following sales to
2 consumers of digital goods, digital codes, and digital automated
3 services:

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

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

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

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

12 (b) A retail sale of digital goods, digital codes, or digital
13 automated services under this subsection (~~(+8)~~) (9) includes any
14 services provided by the seller exclusively in connection with the
15 digital goods, digital codes, or digital automated services, whether or
16 not a separate charge is made for such services.

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

23 (~~(+9)~~) (10) The term does not include the sale of or charge made
24 for labor and services rendered in respect to the building, repairing,
25 or improving of any street, place, road, highway, easement, right-of-
26 way, mass public transportation terminal or parking facility, bridge,
27 tunnel, or trestle which is owned by a municipal corporation or
28 political subdivision of the state or by the United States and which is
29 used or to be used primarily for foot or vehicular traffic including
30 mass transportation vehicles of any kind.

31 (~~(+10)~~) (11) The term also does not include sales of chemical
32 sprays or washes to persons for the purpose of postharvest treatment of
33 fruit for the prevention of scald, fungus, mold, or decay, nor does it
34 include sales of feed, seed, seedlings, fertilizer, agents for enhanced
35 pollination including insects such as bees, and spray materials to:

36 (a) Persons who participate in the federal conservation reserve
37 program, the environmental quality incentives program, the wetlands
38 reserve program, and the wildlife habitat incentives program, or their

1 successors administered by the United States department of agriculture;
2 (b) farmers for the purpose of producing for sale any agricultural
3 product; and (c) farmers acting under cooperative habitat development
4 or access contracts with an organization exempt from federal income tax
5 under ((Title)) 26 U.S.C. Sec. 501(c)(3) of the federal internal
6 revenue code or the Washington state department of fish and wildlife to
7 produce or improve wildlife habitat on land that the farmer owns or
8 leases.

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

25 ((+12)) (13) The term does not include the sale of or charge made
26 for labor, services, or tangible personal property pursuant to
27 agreements providing maintenance services for bus, rail, or rail fixed
28 guideway equipment when a regional transit authority is the recipient
29 of the labor, services, or tangible personal property, and a transit
30 agency, as defined in RCW 81.104.015, performs the labor or services.

31 NEW SECTION. Sec. 1503. A new section is added to chapter 82.04
32 RCW to read as follows:

33 (1) "Cosmetic medical service" means any medical procedure
34 performed on an individual by a person licensed or regulated in a
35 health profession as described in RCW 18.120.020, and any services
36 directly related to the performance of the medical procedure, that is
37 directed at improving the individual's appearance and that is not

1 medically necessary to promote the proper function of the body or
2 prevent or treat physical illness or disease. "Cosmetic medical
3 service" includes, but is not limited to, cosmetic surgery, hair
4 transplants, cosmetic injections, cosmetic soft tissue fillers,
5 dermabrasion and chemical peel, laser hair removal, laser skin
6 resurfacing, laser treatment of leg veins, sclerotherapy, and cosmetic
7 dentistry. Any medical procedure performed on abnormal structures
8 caused by or related to congenital defects, developmental
9 abnormalities, trauma, infection, tumors, or disease, including
10 procedures to improve function or give a more normal appearance, is
11 medically necessary. Services covered by the individual's medical or
12 dental insurance or that are deductible by the individual as medical
13 expenses for purposes of federal income tax are presumed to be
14 medically necessary services.

15 (2) "Cosmetic surgery" means the surgical reshaping of normal
16 structures on the body to improve the body image, self-esteem, or
17 appearance of an individual.

18 (3) "Services directly related to the performance of the medical
19 procedure" include occupancy at medical facilities and services
20 provided by an anesthesiologist, surgeon, or other licensed or
21 regulated health professional described in RCW 18.120.020. Services
22 required for or directly related to cosmetic medical services do not
23 include evaluation and referral by a primary care physician or
24 consultation or treatment by a counselor, psychologist, or
25 psychiatrist.

26 (4) An individual claiming that a medical procedure, otherwise
27 meeting the definition of cosmetic medical service in this section, is
28 not a cosmetic medical service must complete and provide to the seller
29 an affidavit in a form and manner prescribed by the department
30 documenting that the procedure is medically necessary to promote the
31 proper function of the body or prevent or treat physical illness or
32 disease. The seller must retain a copy of the affidavit for the
33 seller's files.

34 **Sec. 1504.** RCW 82.12.020 and 2009 c 535 s 305 are each amended to
35 read as follows:

36 (1) There is ~~((hereby))~~ levied and ~~((there shall be))~~ collected

1 from every person in this state a tax or excise for the privilege of
2 using within this state as a consumer any:

3 (a) Article of tangible personal property purchased at retail, or
4 acquired by lease, gift, repossession, or bailment, or extracted or
5 produced or manufactured by the person so using the same, or otherwise
6 furnished to a person engaged in any business taxable under RCW
7 82.04.280 (2) or (7), including tangible personal property acquired at
8 a casual or isolated sale, and including by-products used by the
9 manufacturer thereof, except as otherwise provided in this chapter,
10 irrespective of whether the article or similar articles are
11 manufactured or are available for purchase within this state;

12 (b) Prewritten computer software, regardless of the method of
13 delivery, but excluding prewritten computer software that is either
14 provided free of charge or is provided for temporary use in viewing
15 information, or both;

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

19 (d) Extended warranty; or

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

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

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

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

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

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

35 (iii) With respect to digital goods, digital automated services,
36 and digital codes acquired other than by purchase, the tax imposed in
37 this subsection (1)(e) applies regardless of whether or not the

1 consumer has a right of permanent use or is obligated to make continued
2 payment as a condition of use.

3 (2) The provisions of this chapter do not apply in respect to the
4 use of any article of tangible personal property, extended warranty,
5 digital good, digital code, digital automated service, or service
6 taxable under RCW 82.04.050 (2)(a) or (g), (3)(a) or (h), or (6)(b), if
7 the sale to, or the use by, the present user or the present user's
8 bailor or donor has already been subjected to the tax under chapter
9 82.08 RCW or this chapter and the tax has been paid by the present user
10 or by the present user's bailor or donor.

11 (3)(a) Except as provided in this section, payment of the tax
12 imposed by this chapter or chapter 82.08 RCW by one purchaser or user
13 of tangible personal property, extended warranty, digital good, digital
14 code, digital automated service, or other service does not have the
15 effect of exempting any other purchaser or user of the same property,
16 extended warranty, digital good, digital code, digital automated
17 service, or other service from the taxes imposed by such chapters.

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

19 (i) If the sale to, or the use by, the present user or his or her
20 bailor or donor has already been subjected to the tax under chapter
21 82.08 RCW or this chapter and the tax has been paid by the present user
22 or by his or her bailor or donor;

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

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

32 (iv) To the use of digital goods or digital automated services,
33 which were obtained through the use of a digital code, if the sale of
34 the digital code to, or the use of the digital code by, the present
35 user or the present user's bailor or donor has already been subjected
36 to the tax under chapter 82.08 RCW or this chapter and the tax has been
37 paid by the present user or by the present user's bailor or donor.

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

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

11 **Sec. 1505.** RCW 82.12.010 and 2009 c 535 s 304 are each amended to
12 read as follows:

13 For the purposes of this chapter:

14 (1) "Purchase price" means the same as sales price as defined in
15 RCW 82.08.010;

16 (2)(a) "Value of the article used" (~~shall be~~) is the purchase
17 price for the article of tangible personal property, the use of which
18 is taxable under this chapter. The term also includes, in addition to
19 the purchase price, the amount of any tariff or duty paid with respect
20 to the importation of the article used. In case the article used is
21 acquired by lease or by gift or is extracted, produced, or manufactured
22 by the person using the same or is sold under conditions wherein the
23 purchase price does not represent the true value thereof, the value of
24 the article used (~~shall~~) must be determined as nearly as possible
25 according to the retail selling price at place of use of similar
26 products of like quality and character under such rules as the
27 department may prescribe.

28 (b) In case the articles used are acquired by bailment, the value
29 of the use of the articles so used (~~shall~~) must be in an amount
30 representing a reasonable rental for the use of the articles so bailed,
31 determined as nearly as possible according to the value of such use at
32 the places of use of similar products of like quality and character
33 under such rules as the department of revenue may prescribe. In case
34 any such articles of tangible personal property are used in respect to
35 the construction, repairing, decorating, or improving of, and which
36 become or are to become an ingredient or component of, new or existing
37 buildings or other structures under, upon, or above real property of or

1 for the United States, any instrumentality thereof, or a county or city
2 housing authority created pursuant to chapter 35.82 RCW, including the
3 installing or attaching of any such articles therein or thereto,
4 whether or not such personal property becomes a part of the realty by
5 virtue of installation, then the value of the use of such articles so
6 used (~~shall~~) must be determined according to the retail selling price
7 of such articles, or in the absence of such a selling price, as nearly
8 as possible according to the retail selling price at place of use of
9 similar products of like quality and character or, in the absence of
10 either of these selling price measures, such value may be determined
11 upon a cost basis, in any event under such rules as the department of
12 revenue may prescribe.

13 (c) In the case of articles owned by a user engaged in business
14 outside the state which are brought into the state for no more than one
15 hundred eighty days in any period of three hundred sixty-five
16 consecutive days and which are temporarily used for business purposes
17 by the person in this state, the value of the article used (~~shall~~)
18 must be an amount representing a reasonable rental for the use of the
19 articles, unless the person has paid tax under this chapter or chapter
20 82.08 RCW upon the full value of the article used, as defined in (a) of
21 this subsection.

22 (d) In the case of articles manufactured or produced by the user
23 and used in the manufacture or production of products sold or to be
24 sold to the department of defense of the United States, the value of
25 the articles used (~~shall~~) must be determined according to the value
26 of the ingredients of such articles.

27 (e) In the case of an article manufactured or produced for purposes
28 of serving as a prototype for the development of a new or improved
29 product, the value of the article used (~~shall~~) must be determined by:
30 (i) The retail selling price of such new or improved product when first
31 offered for sale; or (ii) the value of materials incorporated into the
32 prototype in cases in which the new or improved product is not offered
33 for sale.

34 (f) In the case of an article purchased with a direct pay permit
35 under RCW 82.32.087, the value of the article used (~~shall~~) must be
36 determined by the purchase price of such article if, but for the use of
37 the direct pay permit, the transaction would have been subject to sales
38 tax;

1 (3) "Value of the service used" means the purchase price for the
2 digital automated service or other service, the use of which is taxable
3 under this chapter. If the service is received by gift or under
4 conditions wherein the purchase price does not represent the true value
5 thereof, the value of the service used (~~shall~~) must be determined as
6 nearly as possible according to the retail selling price at place of
7 use of similar services of like quality and character under rules the
8 department may prescribe;

9 (4) "Value of the extended warranty used" means the purchase price
10 for the extended warranty, the use of which is taxable under this
11 chapter. If the extended warranty is received by gift or under
12 conditions wherein the purchase price does not represent the true value
13 of the extended warranty, the value of the extended warranty used
14 (~~shall~~) must be determined as nearly as possible according to the
15 retail selling price at place of use of similar extended warranties of
16 like quality and character under rules the department may prescribe;

17 (5) "Value of the digital good or digital code used" means the
18 purchase price for the digital good or digital code, the use of which
19 is taxable under this chapter. If the digital good or digital code is
20 acquired other than by purchase, the value of the digital good or
21 digital code must be determined as nearly as possible according to the
22 retail selling price at place of use of similar digital goods or
23 digital codes of like quality and character under rules the department
24 may prescribe;

25 (6) "Use," "used," "using," or "put to use" have their ordinary
26 meaning, and mean:

27 (a) With respect to tangible personal property, the first act
28 within this state by which the taxpayer takes or assumes dominion or
29 control over the article of tangible personal property (as a consumer),
30 and include installation, storage, withdrawal from storage,
31 distribution, or any other act preparatory to subsequent actual use or
32 consumption within this state;

33 (b) With respect to a service defined in RCW 82.04.050(2)(a), the
34 first act within this state after the service has been performed by
35 which the taxpayer takes or assumes dominion or control over the
36 article of tangible personal property upon which the service was
37 performed (as a consumer), and includes installation, storage,

1 withdrawal from storage, distribution, or any other act preparatory to
2 subsequent actual use or consumption of the article within this state;

3 (c) With respect to an extended warranty, the first act within this
4 state after the extended warranty has been acquired by which the
5 taxpayer takes or assumes dominion or control over the article of
6 tangible personal property to which the extended warranty applies, and
7 includes installation, storage, withdrawal from storage, distribution,
8 or any other act preparatory to subsequent actual use or consumption of
9 the article within this state;

10 (d) With respect to a digital good or digital code, the first act
11 within this state by which the taxpayer, as a consumer, views,
12 accesses, downloads, possesses, stores, opens, manipulates, or
13 otherwise uses or enjoys the digital good or digital code;

14 (e) With respect to a digital automated service, the first act
15 within this state by which the taxpayer, as a consumer, uses, enjoys,
16 or otherwise receives the benefit of the service;

17 (f) With respect to a service defined as a retail sale in RCW
18 82.04.050(6)(b), the first act within this state by which the taxpayer,
19 as a consumer, accesses the prewritten computer software; (~~and~~)

20 (g) With respect to a service defined as a retail sale in RCW
21 82.04.050(2)(g), the first act within this state after the service has
22 been performed by which the taxpayer, as a consumer, views, accesses,
23 downloads, possesses, stores, opens, manipulates, or otherwise uses or
24 enjoys the digital good upon which the service was performed; and

25 (h) With respect to a service described in RCW 82.04.050(3)(h), the
26 first presence within this state by the taxpayer after the service has
27 been performed upon that taxpayer;

28 (7) "Taxpayer" and "purchaser" include all persons included within
29 the meaning of the word "buyer" and the word "consumer" as defined in
30 chapters 82.04 and 82.08 RCW;

31 (8)(a)(i) Except as provided in (a)(ii) of this subsection (8),
32 "retailer" means every seller as defined in RCW 82.08.010 and every
33 person engaged in the business of selling tangible personal property at
34 retail and every person required to collect from purchasers the tax
35 imposed under this chapter.

36 (ii) "Retailer" does not include a professional employer
37 organization when a covered employee coemployed with the client under
38 the terms of a professional employer agreement engages in activities

1 that constitute a sale of tangible personal property, extended
2 warranty, digital good, digital code, or a sale of any digital
3 automated service or service defined as a retail sale in RCW 82.04.050
4 (2)(a) or (g), (3)(a), or (6)(b) that is subject to the tax imposed by
5 this chapter. In such cases, the client, and not the professional
6 employer organization, is deemed to be the retailer and is responsible
7 for collecting and remitting the tax imposed by this chapter.

8 (b) For the purposes of (a) of this subsection, the terms "client,"
9 "covered employee," "professional employer agreement," and
10 "professional employer organization" have the same meanings as in RCW
11 82.04.540;

12 (9) "Extended warranty" has the same meaning as in RCW
13 82.04.050(7);

14 (10) The meaning ascribed to words and phrases in chapters 82.04
15 and 82.08 RCW, insofar as applicable, (~~shall have~~) has full force and
16 effect with respect to taxes imposed under the provisions of this
17 chapter. "Consumer," in addition to the meaning ascribed to it in
18 chapters 82.04 and 82.08 RCW insofar as applicable, (~~shall~~) also
19 means any person who distributes or displays, or causes to be
20 distributed or displayed, any article of tangible personal property,
21 except newspapers, the primary purpose of which is to promote the sale
22 of products or services. With respect to property distributed to
23 persons within this state by a consumer as defined in this subsection
24 (10), the use of the property (~~shall be~~) is deemed to be by such
25 consumer.

26 **Sec. 1506.** RCW 82.12.035 and 2009 c 535 s 1107 are each amended to
27 read as follows:

28 A credit is allowed against the taxes imposed by this chapter upon
29 the use in this state of tangible personal property, extended warranty,
30 digital good, digital code, digital automated service, or services
31 defined as a retail sale in RCW 82.04.050 (2)(a) or (g), (3)(a) or (h),
32 or (6)(b), in the amount that the present user thereof or his or her
33 bailor or donor has paid a legally imposed retail sales or use tax with
34 respect to such property, extended warranty, digital good, digital
35 code, digital automated service, or service defined as a retail sale in
36 RCW 82.04.050 (2)(a) or (g), (3)(a), or (6)(b) to any other state,

1 possession, territory, or commonwealth of the United States, any
2 political subdivision thereof, the District of Columbia, and any
3 foreign country or political subdivision thereof.

4 **Sec. 1507.** RCW 82.04.060 and 2009 c 535 s 403 are each amended to
5 read as follows:

6 "Sale at wholesale" or "wholesale sale" means:

7 (1) Any sale, which is not a sale at retail, of:

8 (a) Tangible personal property;

9 (b) Services defined as a retail sale in RCW 82.04.050(2) (a) or
10 (g);

11 (c) Amusement or recreation services as defined in RCW
12 82.04.050(3)(a);

13 (d) Prewritten computer software;

14 (e) Services described in RCW 82.04.050 (6)(b) or (7);

15 (f) Extended warranties as defined in RCW 82.04.050(7);

16 (g) Competitive telephone service, ancillary services, or
17 telecommunications service as those terms are defined in RCW 82.04.065;
18 or

19 (h) Digital goods, digital codes, or digital automated services;
20 and

21 (2) Any charge made for labor and services rendered for persons who
22 are not consumers, in respect to real or personal property, if such
23 charge is expressly defined as a retail sale by RCW 82.04.050 when
24 rendered to or for consumers. For the purposes of this subsection (2),
25 "real or personal property" does not include any natural products named
26 in RCW 82.04.100.

27 **Sec. 1508.** RCW 82.04.190 and 2009 c 535 s 302 are each amended to
28 read as follows:

29 "Consumer" means the following:

30 (1) Any person who purchases, acquires, owns, holds, or uses any
31 article of tangible personal property irrespective of the nature of the
32 person's business and including, among others, without limiting the
33 scope hereof, persons who install, repair, clean, alter, improve,
34 construct, or decorate real or personal property of or for consumers
35 other than for the purpose (a) of resale as tangible personal property
36 in the regular course of business or (b) of incorporating such property

1 as an ingredient or component of real or personal property when
2 installing, repairing, cleaning, altering, imprinting, improving,
3 constructing, or decorating such real or personal property of or for
4 consumers or (c) of consuming such property in producing for sale a new
5 article of tangible personal property or a new substance, of which such
6 property becomes an ingredient or component or as a chemical used in
7 processing, when the primary purpose of such chemical is to create a
8 chemical reaction directly through contact with an ingredient of a new
9 article being produced for sale or (d) of consuming the property
10 purchased in producing ferrosilicon which is subsequently used in
11 producing magnesium for sale, if the primary purpose of such property
12 is to create a chemical reaction directly through contact with an
13 ingredient of ferrosilicon or (e) of satisfying the person's
14 obligations under an extended warranty as defined in RCW 82.04.050(7),
15 if such tangible personal property replaces or becomes an ingredient or
16 component of property covered by the extended warranty without
17 intervening use by such person;

18 (2)(a) Any person engaged in any business activity taxable under
19 RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or
20 uses any competitive telephone service, ancillary services, or
21 telecommunications service as those terms are defined in RCW 82.04.065,
22 other than for resale in the regular course of business; (c) any person
23 who purchases, acquires, or uses any service defined in RCW
24 82.04.050(2) (a) or (g), other than for resale in the regular course of
25 business or for the purpose of satisfying the person's obligations
26 under an extended warranty as defined in RCW 82.04.050(7); (d) any
27 person who purchases, acquires, or uses any amusement and recreation
28 service defined in RCW 82.04.050(3)(a), other than for resale in the
29 regular course of business; (e) any person who purchases or acquires an
30 extended warranty as defined in RCW 82.04.050(7) other than for resale
31 in the regular course of business; and (f) any person who is an end
32 user of software. For purposes of this subsection (2)(f) and RCW
33 82.04.050(6), a person who purchases or otherwise acquires prewritten
34 computer software, who provides services described in RCW
35 82.04.050(6)(b) and who will charge consumers for the right to access
36 and use the prewritten computer software, is not an end user of the
37 prewritten computer software;

1 (3) Any person engaged in the business of contracting for the
2 building, repairing or improving of any street, place, road, highway,
3 easement, right-of-way, mass public transportation terminal or parking
4 facility, bridge, tunnel, or trestle which is owned by a municipal
5 corporation or political subdivision of the state of Washington or by
6 the United States and which is used or to be used primarily for foot or
7 vehicular traffic including mass transportation vehicles of any kind as
8 defined in RCW 82.04.280, in respect to tangible personal property when
9 such person incorporates such property as an ingredient or component of
10 such publicly owned street, place, road, highway, easement,
11 right-of-way, mass public transportation terminal or parking facility,
12 bridge, tunnel, or trestle by installing, placing or spreading the
13 property in or upon the right-of-way of such street, place, road,
14 highway, easement, bridge, tunnel, or trestle or in or upon the site of
15 such mass public transportation terminal or parking facility;

16 (4) Any person who is an owner, lessee or has the right of
17 possession to or an easement in real property which is being
18 constructed, repaired, decorated, improved, or otherwise altered by a
19 person engaged in business, excluding only (a) municipal corporations
20 or political subdivisions of the state in respect to labor and services
21 rendered to their real property which is used or held for public road
22 purposes, and (b) the United States, instrumentalities thereof, and
23 county and city housing authorities created pursuant to chapter 35.82
24 RCW in respect to labor and services rendered to their real property.
25 Nothing contained in this or any other subsection of this definition
26 shall be construed to modify any other definition of "consumer";

27 (5) Any person who is an owner, lessee, or has the right of
28 possession to personal property which is being constructed, repaired,
29 improved, cleaned, imprinted, or otherwise altered by a person engaged
30 in business;

31 (6) Any person engaged in the business of constructing, repairing,
32 decorating, or improving new or existing buildings or other structures
33 under, upon, or above real property of or for the United States, any
34 instrumentality thereof, or a county or city housing authority created
35 pursuant to chapter 35.82 RCW, including the installing or attaching of
36 any article of tangible personal property therein or thereto, whether
37 or not such personal property becomes a part of the realty by virtue of
38 installation; also, any person engaged in the business of clearing land

1 and moving earth of or for the United States, any instrumentality
2 thereof, or a county or city housing authority created pursuant to
3 chapter 35.82 RCW. Any such person (~~shall be~~) is a consumer within
4 the meaning of this subsection in respect to tangible personal property
5 incorporated into, installed in, or attached to such building or other
6 structure by such person, except that consumer does not include any
7 person engaged in the business of constructing, repairing, decorating,
8 or improving new or existing buildings or other structures under, upon,
9 or above real property of or for the United States, or any
10 instrumentality thereof, if the investment project would qualify for
11 sales and use tax deferral under chapter 82.63 RCW if undertaken by a
12 private entity;

13 (7) Any person who is a lessor of machinery and equipment, the
14 rental of which is exempt from the tax imposed by RCW 82.08.020 under
15 RCW 82.08.02565, with respect to the sale of or charge made for
16 tangible personal property consumed in respect to repairing the
17 machinery and equipment, if the tangible personal property has a useful
18 life of less than one year. Nothing contained in this or any other
19 subsection of this section (~~shall~~) may be construed to modify any
20 other definition of "consumer";

21 (8) Any person engaged in the business of cleaning up for the
22 United States, or its instrumentalities, radioactive waste and other
23 by-products of weapons production and nuclear research and development;

24 (9) Any person who is an owner, lessee, or has the right of
25 possession of tangible personal property that, under the terms of an
26 extended warranty as defined in RCW 82.04.050(7), has been repaired or
27 is replacement property, but only with respect to the sale of or charge
28 made for the repairing of the tangible personal property or the
29 replacement property;

30 (10) Any person who purchases, acquires, or uses services described
31 in RCW 82.04.050 (6)(b) or (7) other than for resale in the regular
32 course of business; and

33 (11)(a) Any end user of a digital product or digital code.

34 (b)(i) For purposes of this subsection, "end user" means any
35 taxpayer as defined in RCW 82.12.010 other than a taxpayer who receives
36 by contract a digital product for further commercial broadcast,
37 rebroadcast, transmission, retransmission, licensing, relicensing,
38 distribution, redistribution or exhibition of the product, in whole or

1 in part, to others. A person that purchases digital products or
2 digital codes for the purpose of giving away such products or codes
3 will not be considered to have engaged in the distribution or
4 redistribution of such products or codes and will be treated as an end
5 user;

6 (ii) If a purchaser of a digital code does not receive the
7 contractual right to further redistribute, after the digital code is
8 redeemed, the underlying digital product to which the digital code
9 relates, then the purchaser of the digital code is an end user. If the
10 purchaser of the digital code receives the contractual right to further
11 redistribute, after the digital code is redeemed, the underlying
12 digital product to which the digital code relates, then the purchaser
13 of the digital code is not an end user. A purchaser of a digital code
14 who has the contractual right to further redistribute the digital code
15 is an end user if that purchaser does not have the right to further
16 redistribute, after the digital code is redeemed, the underlying
17 digital product to which the digital code relates.

18 **Sec. 1509.** RCW 82.04.215 and 2003 c 168 s 601 are each amended to
19 read as follows:

20 (1) "Computer" means an electronic device that accepts information
21 in digital or similar form and manipulates it for a result based on a
22 sequence of instructions.

23 (2) "Computer software" means a set of coded instructions designed
24 to cause a computer or automatic data processing equipment to perform
25 a task. All software is classified as either prewritten or custom.
26 Consistent with this definition "computer software" includes only those
27 sets of coded instructions intended for use by an end user and
28 specifically excludes retained rights in software and master copies of
29 software.

30 (3) "Custom software" means computer software created for a single
31 person.

32 (4) "Customization of prewritten computer software" means any
33 alteration, modification, or development of applications using or
34 incorporating prewritten computer software for a specific person.
35 "Customization of prewritten computer software" includes individualized
36 configuration of software to work with other software and computer

1 hardware but does not include routine installation. Customization of
2 prewritten computer software does not change the underlying character
3 or taxability of the original prewritten computer software.

4 (5) "Master copies" of software means copies of software from which
5 a software developer, author, inventor, publisher, licensor,
6 sublicensor, or distributor makes copies for sale or license.

7 (6) "Prewritten computer software" means computer software,
8 including prewritten upgrades, that is not designed and developed by
9 the author or other creator to the specifications of a specific
10 purchaser. The combining of two or more prewritten computer software
11 programs or prewritten portions thereof does not cause the combination
12 to be other than prewritten computer software. Prewritten computer
13 software includes software designed and developed by the author or
14 other creator to the specifications of a specific purchaser when it is
15 sold to a person other than such purchaser. Where a person modifies or
16 enhances computer software of which such persons is not the author or
17 creator, the person (~~shall be~~) is deemed to be the author or creator
18 only of the person's modifications or enhancements. Prewritten
19 computer software or a prewritten portion thereof that is modified or
20 enhanced to any degree, where such modification or enhancement is
21 designed and developed to the specifications of a specific purchaser,
22 remains prewritten computer software; however where there is a
23 reasonable, separately stated charge or an invoice or other statement
24 of the price given to the purchaser for the modification or
25 enhancement, the modification or enhancement (~~shall~~) does not
26 constitute prewritten computer software.

27 (7) "Retained rights" means any and all rights, including
28 intellectual property rights such as those rights arising from
29 copyrights, patents, and trade secret laws, that are owned or are held
30 under contract or license by a software developer, author, inventor,
31 publisher, licensor, sublicensor, or distributor.

32 NEW SECTION. **Sec. 1510.** RCW 82.04.29001 (Creation and
33 distribution of custom software--Customization of prewritten computer
34 software--Taxable services) and 2003 c 168 s 602 & 1998 c 332 s 4 are
35 each repealed.

1 **Sec. 1511.** RCW 82.08.02088 and 2009 c 535 s 701 are each amended
2 to read as follows:

3 (1) The tax imposed by RCW 82.08.020 does not apply to the sale of
4 digital goods, digital codes, digital automated services, prewritten
5 computer software, or services defined as a retail sale in RCW
6 82.04.050 (6)(b) or (7) to a buyer that provides the seller with an
7 exemption certificate claiming multiple points of use. An exemption
8 certificate claiming multiple points of use must be in a form and
9 contain such information as required by the department.

10 (2) A buyer is entitled to use an exemption certificate claiming
11 multiple points of use only if the buyer is a business or other
12 organization and the digital goods or digital automated services
13 purchased, or the digital goods or digital automated services to be
14 obtained by the digital code purchased, or the prewritten computer
15 software or services defined as a retail sale in RCW 82.04.050 (6)(b)
16 or (7) purchased will be concurrently available for use within and
17 outside this state. A buyer is not entitled to use an exemption
18 certificate claiming multiple points of use for digital goods, digital
19 codes, digital automated services, prewritten computer software, or
20 services defined as a retail sale in RCW 82.04.050(6)(b) purchased for
21 personal use.

22 (3) A buyer claiming an exemption under this section must report
23 and pay the tax imposed in RCW 82.12.020 and any local use taxes
24 imposed under the authority of chapter 82.14 RCW and RCW 81.104.170
25 directly to the department in accordance with RCW 82.12.02088 and
26 82.14.457.

27 (4) For purposes of this section, "concurrently available for use
28 within and outside this state" means that employees or other agents of
29 the buyer may use the digital goods, digital automated services,
30 prewritten computer software, or services defined as a retail sale in
31 RCW 82.04.050 (6)(b) or (7) simultaneously from one or more locations
32 within this state and one or more locations outside this state. A
33 digital code is concurrently available for use within and outside this
34 state if employees or other agents of the buyer may use the digital
35 goods or digital automated services to be obtained by the code
36 simultaneously at one or more locations within this state and one or
37 more locations outside this state.

1 **Sec. 1512.** RCW 82.12.010 and 2009 c 535 s 304 are each amended to
2 read as follows:

3 For the purposes of this chapter:

4 (1) "Purchase price" means the same as sales price as defined in
5 RCW 82.08.010;

6 (2)(a) "Value of the article used" (~~shall be~~) is the purchase
7 price for the article of tangible personal property, the use of which
8 is taxable under this chapter. The term also includes, in addition to
9 the purchase price, the amount of any tariff or duty paid with respect
10 to the importation of the article used. In case the article used is
11 acquired by lease or by gift or is extracted, produced, or manufactured
12 by the person using the same or is sold under conditions wherein the
13 purchase price does not represent the true value thereof, the value of
14 the article used (~~shall~~) must be determined as nearly as possible
15 according to the retail selling price at place of use of similar
16 products of like quality and character under such rules as the
17 department may prescribe.

18 (b) In case the articles used are acquired by bailment, the value
19 of the use of the articles so used (~~shall~~) must be in an amount
20 representing a reasonable rental for the use of the articles so bailed,
21 determined as nearly as possible according to the value of such use at
22 the places of use of similar products of like quality and character
23 under such rules as the department of revenue may prescribe. In case
24 any such articles of tangible personal property are used in respect to
25 the construction, repairing, decorating, or improving of, and which
26 become or are to become an ingredient or component of, new or existing
27 buildings or other structures under, upon, or above real property of or
28 for the United States, any instrumentality thereof, or a county or city
29 housing authority created pursuant to chapter 35.82 RCW, including the
30 installing or attaching of any such articles therein or thereto,
31 whether or not such personal property becomes a part of the realty by
32 virtue of installation, then the value of the use of such articles so
33 used (~~shall~~) must be determined according to the retail selling price
34 of such articles, or in the absence of such a selling price, as nearly
35 as possible according to the retail selling price at place of use of
36 similar products of like quality and character or, in the absence of
37 either of these selling price measures, such value may be determined

1 upon a cost basis, in any event under such rules as the department of
2 revenue may prescribe.

3 (c) In the case of articles owned by a user engaged in business
4 outside the state which are brought into the state for no more than one
5 hundred eighty days in any period of three hundred sixty-five
6 consecutive days and which are temporarily used for business purposes
7 by the person in this state, the value of the article used (~~shall~~)
8 must be an amount representing a reasonable rental for the use of the
9 articles, unless the person has paid tax under this chapter or chapter
10 82.08 RCW upon the full value of the article used, as defined in (a) of
11 this subsection.

12 (d) In the case of articles manufactured or produced by the user
13 and used in the manufacture or production of products sold or to be
14 sold to the department of defense of the United States, the value of
15 the articles used (~~shall~~) must be determined according to the value
16 of the ingredients of such articles.

17 (e) In the case of an article manufactured or produced for purposes
18 of serving as a prototype for the development of a new or improved
19 product, the value of the article used (~~shall~~) must be determined by:
20 (i) The retail selling price of such new or improved product when first
21 offered for sale; or (ii) the value of materials incorporated into the
22 prototype in cases in which the new or improved product is not offered
23 for sale.

24 (f) In the case of an article purchased with a direct pay permit
25 under RCW 82.32.087, the value of the article used (~~shall be~~) is
26 determined by the purchase price of such article if, but for the use of
27 the direct pay permit, the transaction would have been subject to sales
28 tax;

29 (3) "Value of the service used" means the purchase price for the
30 digital automated service or other service, the use of which is taxable
31 under this chapter. If the service is received by gift or under
32 conditions wherein the purchase price does not represent the true value
33 thereof, the value of the service used (~~shall~~) must be determined as
34 nearly as possible according to the retail selling price at place of
35 use of similar services of like quality and character under rules the
36 department may prescribe;

37 (4) "Value of the extended warranty used" means the purchase price
38 for the extended warranty, the use of which is taxable under this

1 chapter. If the extended warranty is received by gift or under
2 conditions wherein the purchase price does not represent the true value
3 of the extended warranty, the value of the extended warranty used
4 (~~shall~~) must be determined as nearly as possible according to the
5 retail selling price at place of use of similar extended warranties of
6 like quality and character under rules the department may prescribe;

7 (5) "Value of the digital good or digital code used" means the
8 purchase price for the digital good or digital code, the use of which
9 is taxable under this chapter. If the digital good or digital code is
10 acquired other than by purchase, the value of the digital good or
11 digital code must be determined as nearly as possible according to the
12 retail selling price at place of use of similar digital goods or
13 digital codes of like quality and character under rules the department
14 may prescribe;

15 (6) "Use," "used," "using," or "put to use" have their ordinary
16 meaning, and mean:

17 (a) With respect to tangible personal property, the first act
18 within this state by which the taxpayer takes or assumes dominion or
19 control over the article of tangible personal property (as a consumer),
20 and include installation, storage, withdrawal from storage,
21 distribution, or any other act preparatory to subsequent actual use or
22 consumption within this state;

23 (b) With respect to a service defined in RCW 82.04.050(2)(a), the
24 first act within this state after the service has been performed by
25 which the taxpayer takes or assumes dominion or control over the
26 article of tangible personal property upon which the service was
27 performed (as a consumer), and includes installation, storage,
28 withdrawal from storage, distribution, or any other act preparatory to
29 subsequent actual use or consumption of the article within this state;

30 (c) With respect to an extended warranty, the first act within this
31 state after the extended warranty has been acquired by which the
32 taxpayer takes or assumes dominion or control over the article of
33 tangible personal property to which the extended warranty applies, and
34 includes installation, storage, withdrawal from storage, distribution,
35 or any other act preparatory to subsequent actual use or consumption of
36 the article within this state;

37 (d) With respect to a digital good or digital code, the first act

1 within this state by which the taxpayer, as a consumer, views,
2 accesses, downloads, possesses, stores, opens, manipulates, or
3 otherwise uses or enjoys the digital good or digital code;

4 (e) With respect to a digital automated service, the first act
5 within this state by which the taxpayer, as a consumer, uses, enjoys,
6 or otherwise receives the benefit of the service;

7 (f) With respect to a service defined as a retail sale in RCW
8 82.04.050 (6)(b) or (7), the first act within this state by which the
9 taxpayer, as a consumer, accesses the (~~prewritten~~) computer software;
10 and

11 (g) With respect to a service defined as a retail sale in RCW
12 82.04.050(2)(g), the first act within this state after the service has
13 been performed by which the taxpayer, as a consumer, views, accesses,
14 downloads, possesses, stores, opens, manipulates, or otherwise uses or
15 enjoys the digital good upon which the service was performed;

16 (7) "Taxpayer" and "purchaser" include all persons included within
17 the meaning of the word "buyer" and the word "consumer" as defined in
18 chapters 82.04 and 82.08 RCW;

19 (8)(a)(i) Except as provided in (a)(ii) of this subsection (8),
20 "retailer" means every seller as defined in RCW 82.08.010 and every
21 person engaged in the business of selling tangible personal property at
22 retail and every person required to collect from purchasers the tax
23 imposed under this chapter.

24 (ii) "Retailer" does not include a professional employer
25 organization when a covered employee coemployed with the client under
26 the terms of a professional employer agreement engages in activities
27 that constitute a sale of tangible personal property, extended
28 warranty, digital good, digital code, or a sale of any digital
29 automated service or service defined as a retail sale in RCW 82.04.050
30 (2)(a) or (g), (3)(a), (~~or~~) (6)(b), or (7) that is subject to the tax
31 imposed by this chapter. In such cases, the client, and not the
32 professional employer organization, is deemed to be the retailer and is
33 responsible for collecting and remitting the tax imposed by this
34 chapter.

35 (b) For the purposes of (a) of this subsection, the terms "client,"
36 "covered employee," "professional employer agreement," and
37 "professional employer organization" have the same meanings as in RCW
38 82.04.540;

1 (9) "Extended warranty" has the same meaning as in RCW
2 82.04.050(7);

3 (10) The meaning ascribed to words and phrases in chapters 82.04
4 and 82.08 RCW, insofar as applicable, (~~shall have~~) has full force and
5 effect with respect to taxes imposed under the provisions of this
6 chapter. "Consumer," in addition to the meaning ascribed to it in
7 chapters 82.04 and 82.08 RCW insofar as applicable, (~~shall~~) also
8 means any person who distributes or displays, or causes to be
9 distributed or displayed, any article of tangible personal property,
10 except newspapers, the primary purpose of which is to promote the sale
11 of products or services. With respect to property distributed to
12 persons within this state by a consumer as defined in this subsection
13 (10), the use of the property (~~shall be~~) is deemed to be by such
14 consumer.

15 **Sec. 1513.** RCW 82.12.020 and 2009 c 535 s 305 are each amended to
16 read as follows:

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

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

29 (b) Prewritten computer software, regardless of the method of
30 delivery, but excluding prewritten computer software that is either
31 provided free of charge or is provided for temporary use in viewing
32 information, or both;

33 (c) Services defined as a retail sale in RCW 82.04.050 (2)(a) or
34 (g), (3)(a), (~~or~~) (6)(b), or (7), excluding services defined as a
35 retail sale in RCW 82.04.050(6)(b) that are provided free of charge;

36 (d) Extended warranty; or

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

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

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

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

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

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

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

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

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

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

37 (i) If the sale to, or the use by, the present user or his or her

1 bailor or donor has already been subjected to the tax under chapter
2 82.08 RCW or this chapter and the tax has been paid by the present user
3 or by his or her bailor or donor;

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

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

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

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

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

29 **PART XVI**

30 **Increasing Tobacco Taxes**

31 NEW SECTION. **Sec. 1601.** It is the intent of the legislature to
32 use revenue raised from taxes levied on the sales of cigarettes and
33 other tobacco products to fund basic health care services.

34 **Sec. 1602.** RCW 82.24.020 and 2009 c 479 s 66 are each amended to
35 read as follows:

1 (1) There is levied and (~~there shall be~~) collected as provided in
2 this chapter, a tax upon the sale, use, consumption, handling,
3 possession, or distribution of all cigarettes, in an amount equal to
4 (~~one and fifteen one hundredths~~) 12.125 cents per cigarette.

5 (~~2~~) (~~An additional tax is imposed upon the sale, use, consumption,~~
6 ~~handling, possession, or distribution of all cigarettes, in an amount~~
7 ~~equal to five hundred twenty five one thousandths of a cent per~~
8 ~~cigarette. All revenues collected during any month from this~~
9 ~~additional tax shall be deposited in the state general fund by the~~
10 ~~twenty fifth day of the following month.~~

11 (~~3~~) ~~An additional tax is imposed upon the sale, use, consumption,~~
12 ~~handling, possession, or distribution of all cigarettes, in an amount~~
13 ~~equal to two and five one hundredths cents per cigarette. All revenues~~
14 ~~collected during any month from this additional tax shall be deposited~~
15 ~~in the state general fund by the twenty fifth day of the following~~
16 ~~month.~~

17 (~~4~~) Wholesalers subject to the payment of this tax may, if they
18 wish, absorb five one-hundredths cents per cigarette of the tax and not
19 pass it on to purchasers without being in violation of this section or
20 any other act relating to the sale or taxation of cigarettes.

21 (~~(+5)~~) (3) For purposes of this chapter, "possession" (~~shall~~)
22 means both (a) physical possession by the purchaser and, (b) when
23 cigarettes are being transported to or held for the purchaser or his or
24 her designee by a person other than the purchaser, constructive
25 possession by the purchaser or his or her designee, which constructive
26 possession (~~shall be~~) is deemed to occur at the location of the
27 cigarettes being so transported or held.

28 (~~(+6)~~) (4) In accordance with federal law and rules prescribed by
29 the department, an enrolled member of a federally recognized Indian
30 tribe may purchase cigarettes from an Indian tribal organization under
31 the jurisdiction of the member's tribe for the member's own use exempt
32 from the applicable taxes imposed by this chapter. Except as provided
33 in subsection (~~(+7)~~) (5) of this section, any person, who purchases
34 cigarettes from an Indian tribal organization and who is not an
35 enrolled member of the federally recognized Indian tribe within whose
36 jurisdiction the sale takes place, is not exempt from the applicable
37 taxes imposed by this chapter.

1 (~~(7)~~) (5) If the state enters into a cigarette tax contract or
2 agreement with a federally recognized Indian tribe under chapter 43.06
3 RCW, the terms of the contract or agreement (~~(shall)~~) take precedence
4 over any conflicting provisions of this chapter while the contract or
5 agreement is in effect.

6 **Sec. 1603.** RCW 82.24.026 and 2009 c 479 s 67 are each amended to
7 read as follows:

8 (1) In addition to the tax imposed upon the sale, use, consumption,
9 handling, possession, or distribution of cigarettes set forth in RCW
10 82.24.020, there is imposed a tax in an amount equal to three cents per
11 cigarette.

12 (2) The revenue collected under this section (~~(shall)~~) must be
13 deposited as follows:

14 (a) (~~(28.5)~~) 14 percent (~~(shall)~~) must be deposited into the
15 general fund.

16 (b) The remainder (~~(shall)~~) must be deposited into the education
17 legacy trust account.

18 **Sec. 1604.** RCW 82.26.010 and 2005 c 180 s 2 are each amended to
19 read as follows:

20 The definitions in this section apply throughout this chapter
21 unless the context clearly requires otherwise.

22 (1) "Tobacco products" means cigars, cheroots, stogies, periques,
23 granulated, plug cut, crimp cut, ready rubbed, and other smoking
24 tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-
25 cut and other chewing tobaccos, shorts, refuse scraps, clippings,
26 cuttings and sweepings of tobacco, and other kinds and forms of
27 tobacco, prepared in such manner as to be suitable for chewing or
28 smoking in a pipe or otherwise, or both for chewing and smoking, and
29 any other product, regardless of form, that contains tobacco and is
30 intended for human consumption or placement in the oral or nasal cavity
31 or absorption into the human body by any other means, but (~~(shall)~~)
32 does not include cigarettes as defined in RCW 82.24.010.

33 (2) "Manufacturer" means a person who manufactures and sells
34 tobacco products.

35 (3) "Distributor" means (a) any person engaged in the business of
36 selling tobacco products in this state who brings, or causes to be

1 brought, into this state from without the state any tobacco products
2 for sale, (b) any person who makes, manufactures, fabricates, or stores
3 tobacco products in this state for sale in this state, (c) any person
4 engaged in the business of selling tobacco products without this state
5 who ships or transports tobacco products to retailers in this state, to
6 be sold by those retailers, (d) any person engaged in the business of
7 selling tobacco products in this state who handles for sale any tobacco
8 products that are within this state but upon which tax has not been
9 imposed.

10 (4) "Retailer" means any person engaged in the business of selling
11 tobacco products to ultimate consumers.

12 (5)(a) "Sale" means any transfer, exchange, or barter, in any
13 manner or by any means whatsoever, for a consideration, and includes
14 and means all sales made by any person.

15 (b) The term "sale" includes a gift by a person engaged in the
16 business of selling tobacco products, for advertising, promoting, or as
17 a means of evading the provisions of this chapter.

18 (6) "Business" means any trade, occupation, activity, or enterprise
19 engaged in for the purpose of selling or distributing tobacco products
20 in this state.

21 (7) "Place of business" means any place where tobacco products are
22 sold or where tobacco products are manufactured, stored, or kept for
23 the purpose of sale, including any vessel, vehicle, airplane, train, or
24 vending machine.

25 (8) "Retail outlet" means each place of business from which tobacco
26 products are sold to consumers.

27 (9) "Department" means the department of revenue.

28 (10) "Person" means any individual, receiver, administrator,
29 executor, assignee, trustee in bankruptcy, trust, estate, firm,
30 copartnership, joint venture, club, company, joint stock company,
31 business trust, municipal corporation, the state and its departments
32 and institutions, political subdivision of the state of Washington,
33 corporation, limited liability company, association, society, any group
34 of individuals acting as a unit, whether mutual, cooperative,
35 fraternal, nonprofit, or otherwise. The term excludes any person
36 immune from state taxation, including the United States or its
37 instrumentalities, and federally recognized Indian tribes and enrolled
38 tribal members, conducting business within Indian country.

1 (11) "Indian country" means the same as defined in chapter 82.24
2 RCW.

3 (12) "Actual price" means the total amount of consideration for
4 which tobacco products are sold, valued in money, whether received in
5 money or otherwise, including any charges by the seller necessary to
6 complete the sale such as charges for delivery, freight,
7 transportation, or handling.

8 (13) "Affiliated" means related in any way by virtue of any form or
9 amount of common ownership, control, operation, or management.

10 (14) "Board" means the liquor control board.

11 (15) "Cigar" means a roll for smoking that is of any size or shape
12 and that is made wholly or in part of tobacco, irrespective of whether
13 the tobacco is pure or flavored, adulterated or mixed with any other
14 ingredient, if the roll has a wrapper made wholly or in greater part of
15 tobacco. "Cigar" does not include a cigarette.

16 (16) "Cigarette" has the same meaning as in RCW 82.24.010.

17 (17) "Manufacturer's representative" means a person hired by a
18 manufacturer to sell or distribute the manufacturer's tobacco products,
19 and includes employees and independent contractors.

20 (18)(a) "Taxable sales price" means:

21 (i) In the case of a taxpayer that is not affiliated with the
22 manufacturer, distributor, or other person from whom the taxpayer
23 purchased tobacco products, the actual price for which the taxpayer
24 purchased the tobacco products;

25 (ii) In the case of a taxpayer that purchases tobacco products from
26 an affiliated manufacturer, affiliated distributor, or other affiliated
27 person, and that sells those tobacco products to unaffiliated
28 distributors, unaffiliated retailers, or ultimate consumers, the actual
29 price for which that taxpayer sells those tobacco products to
30 unaffiliated distributors, unaffiliated retailers, or ultimate
31 consumers;

32 (iii) In the case of a taxpayer that sells tobacco products only to
33 affiliated distributors or affiliated retailers, the price, determined
34 as nearly as possible according to the actual price, that other
35 distributors sell similar tobacco products of like quality and
36 character to unaffiliated distributors, unaffiliated retailers, or
37 ultimate consumers;

1 (iv) In the case of a taxpayer that is a manufacturer selling
2 tobacco products directly to ultimate consumers, the actual price for
3 which the taxpayer sells those tobacco products to ultimate consumers;

4 (v) In the case of a taxpayer that has acquired tobacco products
5 under a sale as defined in subsection (5)(b) of this section, the
6 price, determined as nearly as possible according to the actual price,
7 that the taxpayer or other distributors sell the same tobacco products
8 or similar tobacco products of like quality and character to
9 unaffiliated distributors, unaffiliated retailers, or ultimate
10 consumers; or

11 (vi) In any case where (a)(i) through (v) of this subsection do not
12 apply, the price, determined as nearly as possible according to the
13 actual price, that the taxpayer or other distributors sell the same
14 tobacco products or similar tobacco products of like quality and
15 character to unaffiliated distributors, unaffiliated retailers, or
16 ultimate consumers.

17 (b) For purposes of (a)(i) and (ii) of this subsection only,
18 "person" includes both persons as defined in subsection (10) of this
19 section and any person immune from state taxation, including the United
20 States or its instrumentalities, and federally recognized Indian tribes
21 and enrolled tribal members, conducting business within Indian country.

22 (c) The department may adopt rules regarding the determination of
23 taxable sales price under this subsection.

24 (19) "Taxpayer" means a person liable for the tax imposed by this
25 chapter.

26 (20) "Unaffiliated distributor" means a distributor that is not
27 affiliated with the manufacturer, distributor, or other person from
28 whom the distributor has purchased tobacco products.

29 (21) "Unaffiliated retailer" means a retailer that is not
30 affiliated with the manufacturer, distributor, or other person from
31 whom the retailer has purchased tobacco products.

32 (22) "Moist snuff" means tobacco that is finely cut, ground, or
33 powdered; is not for smoking; and is intended to be placed in the oral,
34 but not the nasal, cavity.

35 (23) "Little cigar" means a cigar that has a cellulose acetate
36 filter.

1 **Sec. 1605.** RCW 82.26.020 and 2009 c 479 s 70 are each amended to
2 read as follows:

3 (1) There is levied and (~~there shall be~~) collected a tax upon the
4 sale, handling, or distribution of all tobacco products in this state
5 at the following rate:

6 (a) (~~Seventy-five~~) For cigars except little cigars, ninety-five
7 percent of the taxable sales price of cigars, not to exceed (~~fifty~~)
8 sixty-five cents per cigar; (~~or~~)

9 (b) (~~Seventy-five~~) For all tobacco products except those covered
10 under separate provisions of this subsection, ninety-five percent of
11 the taxable sales price (~~of all tobacco products that are not~~
12 cigars));

13 (c) For moist snuff, as established in this subsection (1)(c) and
14 computed on the net weight listed by the manufacturer:

15 (i) On each single unit consumer-sized can or package whose net
16 weight is one and two-tenths ounces or less, a rate per single unit
17 that is equal to the greater of 3.025 dollars or the cigarette tax
18 under chapter 82.24 RCW multiplied by twenty; or

19 (ii) On each single unit consumer-sized can or package whose net
20 weight is more than one and two-tenths ounces, a proportionate tax at
21 the rate established in (c)(i) of this subsection (1) on each ounce or
22 fractional part of an ounce; and

23 (d) For little cigars, an amount per cigar equal to the cigarette
24 tax under chapter 82.24 RCW.

25 (2) Taxes under this section (~~shall~~) must be imposed at the time
26 the distributor (a) brings, or causes to be brought, into this state
27 from without the state tobacco products for sale, (b) makes,
28 manufactures, fabricates, or stores tobacco products in this state for
29 sale in this state, (c) ships or transports tobacco products to
30 retailers in this state, to be sold by those retailers, or (d) handles
31 for sale any tobacco products that are within this state but upon which
32 tax has not been imposed.

33 (3) The moneys collected under this section (~~shall~~) must be
34 deposited into the state general fund.

35 NEW SECTION. **Sec. 1606.** A new section is added to chapter 82.26
36 RCW to read as follows:

37 (1)(a) Within one year following the date on which the requirement

1 for a tobacco product code is effective, payment of, or exemption from,
2 the tax imposed in RCW 82.26.020 must be verifiable on each single-unit
3 consumer-sized can or package of moist snuff, as provided in (b) of
4 this subsection.

5 (b) Within thirty days following the date on which notice of
6 proposed rule making to require a tobacco product code is published in
7 the federal register, the department must commence to develop a method
8 for using a tobacco product code to verify payment of, or exemption
9 from, the tax imposed in RCW 82.26.020; to develop and implement a
10 pilot project to test the method; and to develop a plan for adoption of
11 rules to implement the method. The department must report to the
12 legislature on its progress annually by December 1st through the year
13 following the year in which the method is implemented.

14 (2) If notice of proposed rule making to require a tobacco product
15 code is not published in the federal register by July 1, 2011, the
16 department must determine and recommend to the legislature by November
17 1, 2014, a method to verify payment of, or exemption from, the tax
18 imposed in RCW 82.26.020, by means of stamping, use of manufacturers'
19 digitally readable product identifiers, or any other method, and must
20 complete and present to the legislature a study of compliance with the
21 tax imposed in RCW 82.26.020, the effect of noncompliance on state
22 revenue, and the effect of adopting a method to verify payment of, or
23 exemption from, the tax.

24 (3) For purposes of this section, "tobacco product code" means a
25 code that is required on the label of a tobacco product for purposes of
26 tracking or tracing the product through the distribution system under
27 final regulations adopted by the secretary of the United States
28 department of health and human services.

29 **Sec. 1607.** RCW 82.26.030 and 2005 c 180 s 1 are each amended to
30 read as follows:

31 It is the intent and purpose of this chapter to levy a tax on all
32 tobacco products sold, used, consumed, handled, or distributed within
33 this state and to collect the tax from the distributor as defined in
34 RCW 82.26.010. It is the further intent and purpose of this chapter to
35 impose the tax once, and only once, on all tobacco products for sale in
36 this state, but nothing in this chapter (~~shall~~) may be construed to
37 exempt any person taxable under any other law or under any other tax

1 imposed under Title 82 RCW. It is the further intent and purpose of
2 this chapter that the distributor who first possesses the tobacco
3 product in this state (~~(shall be)~~) is the distributor liable for the
4 tax and that (1) for moist snuff the tax will be based on the net
5 weight listed by the manufacturer and (2) in most other instances the
6 tax will be based on the actual price that the distributor paid for the
7 tobacco product, unless the distributor is affiliated with the seller.

8 NEW SECTION. Sec. 1608. The following acts or parts of acts are
9 each repealed:

10 (1) RCW 82.24.027 (Additional tax imposed--Rate--Deposited into the
11 general fund) and 2009 c 479 s 68, 2008 c 86 s 303, 1999 c 309 s 925,
12 & 1986 c 3 s 12; and

13 (2) RCW 82.24.028 (Additional tax imposed--Rate--Deposited into the
14 general fund) and 2009 c 479 s 69, 2008 c 86 s 304, & 2002 c 2 s 3.

15 **PART XVII**

16 **Rural County Tax Incentive Programs**

17 **Sec. 1701.** RCW 82.60.010 and 1985 c 232 s 1 are each amended to
18 read as follows:

19 The legislature finds that there are several areas in the state
20 that are characterized by very high levels of unemployment and poverty.
21 The (~~(legislative--[legislature])~~) legislature further finds that
22 economic stagnation is the primary cause of this high unemployment rate
23 and poverty; that new state policies are necessary in order to promote
24 economic stimulation and new employment opportunities in these
25 distressed areas; and that policies providing incentives for economic
26 growth in these distressed areas are essential. For these reasons, the
27 legislature (~~(hereby)~~) reestablishes a tax deferral program to be
28 effective solely in distressed (~~(areas and under circumstances where~~
29 ~~the deferred tax payments are for investments or costs that result in~~
30 ~~the creation of a specified number of jobs)) counties. The legislature
31 declares that this limited program serves the vital public purpose of
32 creating employment opportunities and reducing poverty in the
33 distressed (~~(areas)~~) counties of the state.~~

1 **Sec. 1702.** RCW 82.60.020 and 2006 c 142 s 1 are each amended to
2 read as follows:

3 Unless the context clearly requires otherwise, the definitions in
4 this section apply throughout this chapter.

5 (1) "Applicant" means a person applying for a tax deferral under
6 this chapter.

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

8 (3) "Distressed county" means a county that has an unemployment
9 rate, as determined by the employment security department, which is at
10 least twenty percent above the state average for the three calendar
11 years immediately preceding the year in which the list of distressed
12 counties is established or updated, as the case may be, as provided in
13 section 1703 of this act.

14 (4) "Eligible area" means:

15 (a) Through June 30, 2010, a rural county as defined in RCW
16 82.14.370; and

17 (b) Beginning July 1, 2010, a distressed county.

18 ~~((+4))~~ (5)(a) "Eligible investment project" means an investment
19 project that is located, as of the date the application required by RCW
20 82.60.030 is received by the department, in an eligible area as defined
21 in subsection ~~((+3))~~ (4) of this section.

22 ~~(b) ((The lessor or owner of a qualified building is not eligible~~
23 ~~for a deferral unless:~~

24 ~~(i) The underlying ownership of the buildings, machinery, and~~
25 ~~equipment vests exclusively in the same person; or~~

26 ~~(ii)(A) The lessor by written contract agrees to pass the economic~~
27 ~~benefit of the deferral to the lessee;~~

28 ~~(B) The lessee that receives the economic benefit of the deferral~~
29 ~~agrees in writing with the department to complete the annual survey~~
30 ~~required under RCW 82.60.070; and~~

31 ~~(C) The economic benefit of the deferral passed to the lessee is no~~
32 ~~less than the amount of tax deferred by the lessor and is evidenced by~~
33 ~~written documentation of any type of payment, credit, or other~~
34 ~~financial arrangement between the lessor or owner of the qualified~~
35 ~~building and the lessee.~~

36 ~~(e))~~ "Eligible investment project" does not include any portion of
37 an investment project undertaken by a light and power business as
38 defined in RCW 82.16.010~~((+5))~~ (4), other than that portion of a

1 cogeneration project that is used to generate power for consumption
2 within the manufacturing site of which the cogeneration project is an
3 integral part, or investment projects (~~(which)~~) that have already
4 received deferrals under this chapter.

5 ~~((+5))~~ (6) "Initiation of construction" has the same meaning as in
6 RCW 82.63.010.

7 (7) "Investment project" means an investment in qualified buildings
8 or qualified machinery and equipment, including labor and services
9 rendered in the planning, installation, and construction of the
10 project.

11 ~~((+6))~~ (8) "Manufacturing" means the same as defined in RCW
12 82.04.120. "Manufacturing" also includes:

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

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

25 ~~((+7))~~ (9) "Person" has the meaning given in RCW 82.04.030.

26 ~~((+8))~~ (10) "Qualified buildings" means construction of new
27 structures, and expansion or renovation of existing structures for the
28 purpose of increasing floor space or production capacity used for
29 manufacturing (~~(and)~~) or research and development activities, including
30 plant offices and warehouses or other facilities for the storage of raw
31 material or finished goods if such facilities are an essential or an
32 integral part of a factory, mill, plant, or laboratory used for
33 manufacturing or research and development. If a building is used
34 partly for manufacturing or research and development and partly for
35 other purposes, the applicable tax deferral (~~(shall)~~) must be
36 determined by apportionment of the costs of construction under rules
37 adopted by the department.

1 The lessor or owner of a qualified building is not eligible for a
2 deferral unless:

3 (1) The underlying ownership of the buildings, machinery, and
4 equipment vests exclusively in the same person; or

5 (2)(a) The lessor by written contract agrees to pass the economic
6 benefit of the deferral to the lessee;

7 (b) The lessee that receives the economic benefit of the deferral
8 agrees in writing with the department to complete the annual survey
9 required under RCW 82.60.070; and

10 (c) The economic benefit of the deferral passed to the lessee is no
11 less than the amount of tax deferred by the lessor and is evidenced by
12 written documentation of any type of payment, credit, or other
13 financial arrangement between the lessor or owner of the qualified
14 building and the lessee.

15 **Sec. 1705.** RCW 82.60.030 and 1994 sp.s. c 1 s 2 are each amended
16 to read as follows:

17 (1) Application for deferral of taxes under this chapter must be
18 made before initiation of the construction of the investment project or
19 acquisition of equipment or machinery. The application (~~(shall)~~) must
20 be made to the department in a form and manner prescribed by the
21 department. The application (~~(shall)~~) must contain information
22 regarding the location of the investment project, the applicant's
23 average employment in the state for the prior year, estimated or actual
24 new employment related to the project, estimated or actual wages of
25 employees related to the project, estimated or actual costs, time
26 schedules for completion and operation, and other information required
27 by the department. The department (~~(shall)~~) must rule on the
28 application within sixty days.

29 (2) This section expires July 1, 2020.

30 **Sec. 1706.** RCW 82.60.040 and 2004 c 25 s 4 are each amended to
31 read as follows:

32 (1) The department (~~(shall)~~) must issue a sales and use tax
33 deferral certificate for state and local sales and use taxes due under
34 chapters 82.08, 82.12, and 82.14 RCW on each eligible investment
35 project (~~(that is located in an eligible area as defined in RCW~~
36 ~~82.60.020)~~).

1 (2) The department (~~shall~~) must keep a running total of all
2 deferrals granted under this chapter during each fiscal biennium.

3 (3) This section expires July 1, (~~2010~~) 2020.

4 **Sec. 1707.** RCW 82.60.049 and 2004 c 25 s 5 are each amended to
5 read as follows:

6 (1) For the purposes of this section:

7 (a) "Eligible area" also means: Through June 30, 2010, a
8 designated community empowerment zone approved under RCW 43.31C.020 or
9 a county containing a community empowerment zone; and beginning July 1,
10 2010, a designated community empowerment zone approved under RCW
11 43.31C.020.

12 (b) "Eligible investment project" also means an investment project
13 in an eligible area as defined in this section.

14 (2) In addition to the provisions of RCW 82.60.040, the department
15 (~~shall~~) must issue a sales and use tax deferral certificate for state
16 and local sales and use taxes due under chapters 82.08, 82.12, and
17 82.14 RCW, on each eligible investment project that is located in an
18 eligible area, if the applicant establishes that at the time the
19 project is operationally complete:

20 (a) The applicant will hire at least one qualified employment
21 position for each seven hundred fifty thousand dollars of investment
22 for which a deferral is requested; and

23 (b) The positions will be filled by persons who at the time of hire
24 are residents of the community empowerment zone. As used in this
25 subsection, "resident" means the person makes his or her home in the
26 community empowerment zone. A mailing address alone is insufficient to
27 establish that a person is a resident for the purposes of this section.
28 The persons must be hired after the date the application is filed with
29 the department.

30 (3) All other provisions and eligibility requirements of this
31 chapter apply to applicants eligible under this section.

32 (4) The qualified employment position must be filled by the end of
33 the calendar year following the year in which the project is certified
34 as operationally complete. If a person does not meet the requirements
35 for qualified employment positions by the end of the second calendar
36 year following the year in which the project is certified as
37 operationally complete, all deferred taxes are immediately due.

1 **Sec. 1708.** RCW 82.60.060 and 2000 c 106 s 5 are each amended to
2 read as follows:

3 (1) The recipient (~~(shall)~~) must begin paying the deferred taxes in
4 the third year after the date certified by the department as the date
5 on which the (~~(construction)~~) investment project has been operationally
6 completed. The first payment will be due on December 31st of the third
7 calendar year after such certified date, with subsequent annual
8 payments due on December 31st of the following four years with amounts
9 of payment scheduled as follows:

Repayment Year	% of Deferred Tax Repaid
1	10%
2	15%
3	20%
4	25%
5	30%

16 (2) The department may authorize an accelerated repayment schedule
17 upon request of the recipient.

18 (3) Interest (~~(shall)~~) may not be charged on any taxes deferred
19 under this chapter for the period of deferral, although all other
20 penalties and interest applicable to delinquent excise taxes may be
21 assessed and imposed for delinquent payments under this chapter. The
22 debt for deferred taxes will not be extinguished by insolvency or other
23 failure of the recipient. Transfer of ownership does not terminate the
24 deferral. The deferral is transferred, subject to the successor
25 meeting the eligibility requirements of this chapter, for the remaining
26 periods of the deferral.

27 **Sec. 1709.** RCW 82.60.070 and 2004 c 25 s 7 are each amended to
28 read as follows:

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

33 (b) Each recipient of a deferral granted under this chapter after
34 June 30, 1994, (~~(shall)~~) must complete an annual survey. If the

1 economic benefits of the deferral are passed to a lessee as provided in
2 ((RCW 82.60.020(4))) section 1704 of this act, the lessee ((~~shall agree~~
3 ~~to~~) must complete the annual survey and the applicant is not required
4 to complete the annual survey. The survey is due by March 31st of the
5 year following the calendar year in which the investment project is
6 certified by the department as having been operationally complete and
7 the seven succeeding calendar years. The survey ((~~shall~~) must include
8 the amount of tax deferred, the number of new products or research
9 projects by general classification, and the number of trademarks,
10 patents, and copyrights associated with activities at the investment
11 project. The survey ((~~shall~~) must also include the following
12 information for employment positions in Washington:

13 (i) The number of total employment positions;

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

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

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

23 (c) As part of the survey, the department may request additional
24 information necessary to measure the results of, or determine
25 eligibility for, the deferral program, to be submitted at the same time
26 as the survey.

27 (d) All information collected under this subsection, except the
28 amount of the tax deferral taken, is deemed taxpayer information under
29 RCW 82.32.330 and is not disclosable. Information on the amount of tax
30 deferral taken is not subject to the confidentiality provisions of RCW
31 82.32.330 and may be disclosed to the public upon request.

32 (e) The department ((~~shall~~) must use the information from this
33 section to prepare summary descriptive statistics by category. No
34 fewer than three taxpayers ((~~shall~~) may be included in any category.
35 The department ((~~shall~~) must report these statistics to the
36 legislature each year by September 1st.

37 (f) The department ((~~shall~~) must also use the information to study
38 the tax deferral program authorized under this chapter. The department

1 ((shall)) must report to the legislature by December 1, ((2009)) 2019.
2 The report ((shall)) must measure the effect of the program on job
3 creation, the number of jobs created for residents of eligible areas,
4 company growth, the introduction of new products, the diversification
5 of the state's economy, growth in research and development investment,
6 the movement of firms or the consolidation of firms' operations into
7 the state, and such other factors as the department selects.

8 (2)(a) If, on the basis of a survey under this section or other
9 information, the department finds that an investment project is not
10 eligible for tax deferral under this chapter, the amount of deferred
11 taxes outstanding for the project ((shall be immediately due)).

12 (b) If a recipient of the deferral fails to complete the annual
13 survey required under subsection (1) of this section by the date due,
14 twelve and one-half percent of the deferred tax ((shall)) will be
15 immediately due. If the economic benefits of the deferral are passed
16 to a lessee as provided in ((RCW 82.60.020(4))) section 1704 of this
17 act, the lessee ((shall be)) is responsible for payment to the extent
18 the lessee has received the economic benefit.

19 (3) Notwithstanding any other subsection of this section, deferred
20 taxes need not be repaid on machinery and equipment for lumber and wood
21 products industries, and sales of or charges made for labor and
22 services, of the type which qualifies for exemption under RCW
23 82.08.02565 or 82.12.02565 to the extent the taxes have not been repaid
24 before July 1, 1995.

25 (4) Notwithstanding any other subsection of this section, deferred
26 taxes on the following need not be repaid:

27 (a) Machinery and equipment, and sales of or charges made for labor
28 and services, which at the time of purchase would have qualified for
29 exemption under RCW 82.08.02565; and

30 (b) Machinery and equipment which at the time of first use would
31 have qualified for exemption under RCW 82.12.02565.

32 **Sec. 1710.** RCW 82.32.600 and 2009 c 461 s 8 are each amended to
33 read as follows:

34 (1) Persons required to file annual surveys or annual reports under
35 RCW 82.04.4452, 82.32.5351, 82.32.545, 82.32.610, 82.32.630, 82.82.020,
36 82.32.632, 82.60.070, or 82.74.040 must electronically file with the
37 department all surveys, reports, returns, and any other forms or

1 information the department requires in an electronic format as provided
2 or approved by the department. As used in this section, "returns" has
3 the same meaning as "return" in RCW 82.32.050.

4 (2) Any survey, report, return, or any other form or information
5 required to be filed in an electronic format under subsection (1) of
6 this section is not filed until received by the department in an
7 electronic format.

8 (3) The department may waive the electronic filing requirement in
9 subsection (1) of this section for good cause shown.

10 **Sec. 1711.** RCW 82.60.100 and 1987 c 49 s 1 are each amended to
11 read as follows:

12 Applications, reports, and any other information received by the
13 department under this chapter (~~shall~~), except applications not
14 approved by the department, are not (~~be~~) confidential and (~~shall~~
15 ~~be~~) are subject to disclosure.

16 **Sec. 1712.** RCW 82.62.010 and 2007 c 485 s 1 are each amended to
17 read as follows:

18 Unless the context clearly requires otherwise, the definitions in
19 this section apply throughout this chapter.

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

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

23 (3) "Eligible area" means (~~an area~~) a "rural county" as defined
24 in RCW (~~82.60.020~~) 82.14.370.

25 (4)(a) "Eligible business project" means manufacturing or research
26 and development activities which are conducted by an applicant in an
27 eligible area at a specific facility, provided the applicant's average
28 qualified employment positions at the specific facility will be at
29 least fifteen percent greater in the four consecutive full calendar
30 quarters after the calendar quarter during which the first qualified
31 employment position is filled than the applicant's average qualified
32 employment positions at the same facility in the four consecutive full
33 calendar quarters immediately preceding the calendar quarter during
34 which the first qualified employment position is filled.

35 (b) "Eligible business project" does not include any portion of a

1 business project undertaken by a light and power business as defined in
2 RCW 82.16.010(~~(+5+)~~) (4) or that portion of a business project creating
3 qualified full-time employment positions outside an eligible area.

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

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

9 (a) Before July 1, 2010: (i) Computer programming, the production
10 of computer software, and other computer-related services, but only
11 when the computer programming, production of computer software, or
12 other computer-related services are performed by a manufacturer as
13 defined in RCW 82.04.110 and contribute to the production of a new,
14 different, or useful substance or article of tangible personal property
15 for sale; and (ii) the activities performed by research and development
16 laboratories and commercial testing laboratories; and

17 (b) Beginning July 1, 2010, the activities performed by research
18 and development laboratories and commercial testing laboratories.

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

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

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

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

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

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

33 (ii) During a vacancy, the employer is training or actively
34 recruiting a replacement permanent, full-time employee for the
35 position.

36 (9) "Recipient" means a person receiving tax credits under this
37 chapter.

1 (10) "Research and development" means the development, refinement,
2 testing, marketing, and commercialization of a product, service, or
3 process before commercial sales have begun, but only when such
4 activities are intended to ultimately result in the production of a
5 new, different, or useful substance or article of tangible personal
6 property for sale. As used in this subsection, "commercial sales"
7 excludes sales of prototypes or sales for market testing if the total
8 gross receipts from such sales of the product, service, or process do
9 not exceed one million dollars.

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

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

16 NEW SECTION. Sec. 1713. RCW 82.60.900 and 82.60.901 are each
17 decodified.

18 NEW SECTION. Sec. 1714. The following acts or parts of acts are
19 each repealed:

20 (1) RCW 82.60.050 (Expiration of RCW 82.60.030 and 82.60.040) and
21 2004 c 25 s 6, 1994 sp.s. c 1 s 7, 1993 sp.s. c 25 s 404, 1988 c 41 s
22 5, & 1985 c 232 s 10; and

23 (2) RCW 82.60.110 (Competing projects--Impact study) and 1998 c 245
24 s 169 & 1994 sp.s. c 1 s 8.

25 NEW SECTION. Sec. 1715. The amendments to the definitions of
26 "manufacturing" and "research and development" in sections 1702 and
27 1712 of this act apply retroactively as well as prospectively.

28 **PART XVIII**

29 **PUD Privilege Tax Clarification**

30 **Sec. 1801.** RCW 54.28.011 and 1957 c 278 s 12 are each amended to
31 read as follows:

32 "Gross revenue" (~~shall~~) means the amount received from the sale
33 of electric energy, which also includes any regularly recurring charge

1 billed to consumers as a condition of receiving electric energy, and
2 excluding any tax levied by a municipal corporation upon the district
3 pursuant to RCW 54.28.070.

4 **PART XIX**

5 **Business and Occupation Surtax on Certain Services**

6 NEW SECTION. **Sec. 1901.** In order to preserve education funding,
7 it is the legislature's intent to use revenue generated from increasing
8 the business and occupation tax on certain business activities to
9 support basic education including levy equalization and dropout
10 prevention programs.

11 NEW SECTION. **Sec. 1902.** A new section is added to chapter 82.04
12 RCW to read as follows:

13 (1) There is levied and collected for the period July 1, 2010,
14 through June 30, 2013, from every person for the act or privilege of
15 engaging in any business activity defined as a selected business
16 service, an additional tax equal to the gross income of the business
17 from such activity multiplied by the rate of 0.5 percent.

18 (2) For the purpose of this section, "selected business service"
19 means:

20 (a) Accounting, auditing, tax preparation, bookkeeping, payroll,
21 and other related services.

22 (b) Agent and management services for artists, athletes,
23 entertainers, and other public figures.

24 (c) Attorney services, paralegal services, arbitration and
25 conciliation services, mediation product services, legal research
26 services, and court reporting services.

27 (d) Business support services including but not limited to:
28 Document preparation services, telephone call telephone answering
29 services, telemarketing services, debt collection services,
30 repossession services, and court reporting and stenotype services.

31 (e) Computer systems design and related services including but not
32 limited to: Computer systems design services, computer facilities
33 management services, other computer facilities management services, and
34 other computer related services (such as computer disaster recovery

1 services and software installation services). Computer systems design
2 and related services does not include custom computer programming
3 services.

4 (f) Data processing, hosting, and related services including but
5 not limited to: Application hosting services, application service
6 provider services, automated data processing services, computer input
7 preparation services, computer time rental services, data entry
8 services, media streaming services, optical scanning services, and web
9 hosting services.

10 (g) Facilities support services.

11 (h) Investment advice services including but not limited to:
12 Financial investment advice services, financial planning services,
13 investment advice consulting services, and investment advisory
14 services.

15 (i) Management, scientific, and technical consulting services
16 including but not limited to: Administrative management and general
17 management services (such as business consulting services, medical
18 office management services, site location consulting services,
19 strategic planning consulting services, and financial management
20 consulting services), human resources consulting services (such as
21 actuarial consulting services, benefit consulting services, employee
22 benefit consulting services, human resource consulting services, labor
23 relations consulting services, and personnel management consulting
24 services), marketing consulting services (such as customer service
25 management consulting services, marketing consulting services, and
26 sales management consulting services), process, physical distribution,
27 and logistics consulting services (such as efficiency management
28 consulting services, freight traffic consulting services, inventory
29 planning and control management consulting services, operations
30 research consulting services, and transportation management consulting
31 services), environmental consulting services (such as sanitation
32 consulting services and site remediation services), and other
33 scientific and technical consulting services (such as agricultural
34 consulting services, chemical consulting services, economic consulting
35 services, energy consulting services, hydrology consulting services,
36 livestock breeding consulting services, and security consulting
37 services).

38 (j) Marketing research and public opinion polling services.

1 (k) Office administrative services including but not limited to:
2 Business management services, executive management services, hotel
3 management services, and office management services.

4 (l) Parking lot management services.

5 (m) Promoting services for performing arts, sporting, and similar
6 events.

7 (n) Public relations services including but not limited to:
8 Lobbying services, political consulting services, and other public
9 relations consulting services.

10 (o) Scientific research and development services including but not
11 limited to research and development in the physical, engineering, and
12 life sciences (such as agriculture, bacteriological, biotechnology,
13 chemical, life sciences, and physical science research and development
14 laboratories or services) and research and development in the social
15 sciences and humanities (such as archaeological, behavioral, cognitive,
16 economic, language, and learning research or development services).

17 (p) Software publishing support services.

18 (q) The following professional, scientific, and technical services
19 not otherwise included within the definition of selected business
20 service: Business brokers except real estate brokers, commodity
21 inspection services, consumer credit counseling services, consumer
22 credit repair services, estate assessment services, handwriting
23 analysis services, handwriting expert services, marine surveyor
24 services, meteorological services, outplacement services, patent broker
25 services, electric transmission or gas line visual inspection services,
26 pipeline inspection services, power line visual inspection services,
27 quantity surveyor services, and weather forecasting services.

28 **PART XX**

29 **Solar Energy Tax Incentives**

30 **Sec. 2001.** RCW 82.04.294 and 2009 c 469 s 501 are each amended to
31 read as follows:

32 ~~(1)((a) Beginning October 1, 2005, upon every person engaging~~
33 ~~within this state in the business of manufacturing solar energy systems~~
34 ~~using photovoltaic modules, or of manufacturing solar grade silicon to~~
35 ~~be used exclusively in components of such systems; as to such persons~~
36 ~~the amount of tax with respect to such business shall, in the case of~~

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

4 ~~(b) Beginning October 1, 2009,) Upon every person engaging within~~
5 ~~this state in the business of manufacturing solar energy systems using~~
6 ~~photovoltaic modules or stirling converters, or of manufacturing solar~~
7 ~~grade silicon, silicon solar wafers, silicon solar cells, thin film~~
8 ~~solar devices, or compound semiconductor solar wafers to be used~~
9 ~~exclusively in components of such systems; as to such persons the~~
10 ~~amount of tax with respect to such business is, in the case of~~
11 ~~manufacturers, equal to the value of the product manufactured, or in~~
12 ~~the case of processors for hire, equal to the gross income of the~~
13 ~~business, multiplied by the rate of 0.275 percent.~~

14 ~~(2)((a) Beginning October 1, 2005, upon every person engaging~~
15 ~~within this state in the business of making sales at wholesale of solar~~
16 ~~energy systems using photovoltaic modules, or of solar grade silicon to~~
17 ~~be used exclusively in components of such systems, manufactured by that~~
18 ~~person; as to such persons the amount of tax with respect to such~~
19 ~~business shall be equal to the gross proceeds of sales of the solar~~
20 ~~energy systems using photovoltaic modules, or of the solar grade~~
21 ~~silicon to be used exclusively in components of such systems,~~
22 ~~multiplied by the rate of 0.2904 percent.~~

23 ~~(b) Beginning October 1, 2009,) Upon every person engaging within~~
24 ~~this state in the business of making sales at wholesale of solar energy~~
25 ~~systems using photovoltaic modules or stirling converters, or of solar~~
26 ~~grade silicon, silicon solar wafers, silicon solar cells, thin film~~
27 ~~solar devices, or compound semiconductor solar wafers to be used~~
28 ~~exclusively in components of such systems, manufactured by that person;~~
29 ~~as to such persons the amount of tax with respect to such business is~~
30 ~~equal to the gross proceeds of sales of the solar energy systems using~~
31 ~~photovoltaic modules or stirling converters, or of the solar grade~~
32 ~~silicon to be used exclusively in components of such systems,~~
33 ~~multiplied by the rate of 0.275 percent.~~

34 ~~(3) ((Beginning October 1, 2009,)) Silicon solar wafers, silicon~~
35 ~~solar cells, thin film solar devices, or compound semiconductor solar~~
36 ~~wafers are "semiconductor materials" for the purposes of RCW 82.08.9651~~
37 ~~and 82.12.9651.~~

1 (4) The definitions in this subsection apply throughout this
2 section.

3 (a) "Compound semiconductor solar wafers" means a semiconductor
4 solar wafer composed of elements from two or more different groups of
5 the periodic table.

6 (b) "Module" means the smallest nondivisible self-contained
7 physical structure housing interconnected photovoltaic cells and
8 providing a single direct current electrical output.

9 (c) "Photovoltaic cell" means a device that converts light directly
10 into electricity without moving parts.

11 (d) "Silicon solar cells" means a photovoltaic cell manufactured
12 from a silicon solar wafer.

13 (e) "Silicon solar wafers" means a silicon wafer manufactured for
14 solar conversion purposes.

15 (f) "Solar energy system" means any device or combination of
16 devices or elements that rely upon direct sunlight as an energy source
17 for use in the generation of electricity.

18 (g) "Solar grade silicon" means high-purity silicon used
19 exclusively in components of solar energy systems using photovoltaic
20 modules to capture direct sunlight. "Solar grade silicon" does not
21 include silicon used in semiconductors.

22 (h) "Stirling converter" means a device that produces electricity
23 by converting heat from a solar source utilizing a stirling engine.

24 (i) "Thin film solar devices" means a nonparticipating substrate on
25 which various semiconducting materials are deposited to produce a
26 photovoltaic cell that is used to generate electricity.

27 (5) This section expires June 30, 2014.

28 **Sec. 2002.** RCW 82.16.110 and 2009 c 469 s 504 are each amended to
29 read as follows:

30 The definitions in this section apply throughout this chapter
31 unless the context clearly requires otherwise.

32 (1)(a) "Community solar project" means:

33 (i) A solar energy system owned by local individuals, households,
34 nonprofit organizations, or nonutility businesses that is placed on the
35 property owned by a cooperating local governmental entity that is not
36 in the light and power business or in the gas distribution business; or

1 (ii) A utility-owned solar energy system that is voluntarily funded
2 by the utility's ratepayers where, in exchange for their financial
3 support, the utility gives contributors a payment or credit on their
4 utility bill for the value of the electricity produced by the project.

5 (b) For the purposes of "community solar project" as defined in (a)
6 of this subsection:

7 (i) "Nonprofit organization" means an organization exempt from
8 taxation under ((Title)) 26 U.S.C. Sec. 501(c)(3) of the federal
9 internal revenue code of 1986, as amended, as of January 1, 2009; and

10 (ii) "Utility" means a light and power business, an electric
11 cooperative, or a mutual corporation that provides electricity service.

12 (2) "Customer-generated electricity" means a community solar
13 project or the alternating current electricity that is generated from
14 a renewable energy system located on an individual's, businesses', or
15 local government's real property that is also provided electricity
16 generated by a light and power business. Except for community solar
17 projects, a system located on a leasehold interest does not qualify
18 under this definition. Except for community solar projects, "customer-
19 generated electricity" does not include electricity generated by a
20 light and power business with greater than one thousand megawatt hours
21 of annual sales or a gas distribution business.

22 (3) "Economic development kilowatt-hour" means the actual kilowatt-
23 hour measurement of customer-generated electricity multiplied by the
24 appropriate economic development factor.

25 (4) "Local governmental entity" means any unit of local government
26 of this state including, but not limited to, counties, cities, towns,
27 municipal corporations, quasi-municipal corporations, special purpose
28 districts, and school districts.

29 (5) "Photovoltaic cell" means a device that converts light directly
30 into electricity without moving parts.

31 (6) "Renewable energy system" means a solar energy system, an
32 anaerobic digester as defined in RCW 82.08.900, or a wind generator
33 used for producing electricity.

34 (7) "Solar energy system" means 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.

37 (8) "Solar inverter" means the device used to convert direct

1 current to alternating current in a (~~photovoltaic cell~~) solar energy
2 system.

3 (9) "Solar module" means the smallest nondivisible self-contained
4 physical structure housing interconnected photovoltaic cells and
5 providing a single direct current electrical output.

6 (10) "Stirling converter" means a device that produces electricity
7 by converting heat from a solar source utilizing a stirling engine.

8 **Sec. 2003.** RCW 82.16.120 and 2009 c 469 s 505 are each amended to
9 read as follows:

10 (1) Any individual, business, local governmental entity, not in the
11 light and power business or in the gas distribution business, or a
12 participant in a community solar project may apply to the light and
13 power business serving the situs of the system, each fiscal year
14 beginning on July 1, 2005, for an investment cost recovery incentive
15 for each kilowatt-hour from a customer-generated electricity renewable
16 energy system. No incentive may be paid for kilowatt-hours generated
17 before July 1, 2005, or after June 30, 2020.

18 (2)(a) Before submitting for the first time the application for the
19 incentive allowed under subsection (4) of this section, the applicant
20 must submit to the department of revenue and to the climate and rural
21 energy development center at the Washington State University,
22 established under RCW 28B.30.642, a certification in a form and manner
23 prescribed by the department that includes, but is not limited to, the
24 following information:

25 (i) The name and address of the applicant and location of the
26 renewable energy system;

27 (ii) The applicant's tax registration number;

28 (iii) That the electricity produced by the applicant meets the
29 definition of "customer-generated electricity" and that the renewable
30 energy system produces electricity with:

31 (A) Any solar inverters and solar modules manufactured in
32 Washington state;

33 (B) A wind generator powered by blades manufactured in Washington
34 state;

35 (C) A solar inverter manufactured in Washington state;

36 (D) A solar module manufactured in Washington state; (~~or~~)

37 (E) A stirling converter manufactured in Washington state; or

1 (F) Solar or wind equipment manufactured outside of Washington
2 state;

3 (iv) That the electricity can be transformed or transmitted for
4 entry into or operation in parallel with electricity transmission and
5 distribution systems;

6 (v) The date that the renewable energy system received its final
7 electrical permit from the applicable local jurisdiction.

8 (b) Within thirty days of receipt of the certification the
9 department of revenue must notify the applicant by mail, or
10 electronically as provided in RCW 82.32.135, whether the renewable
11 energy system qualifies for an incentive under this section. The
12 department may consult with the climate and rural energy development
13 center to determine eligibility for the incentive. System
14 certifications and the information contained therein are subject to
15 disclosure under RCW 82.32.330(3)(m).

16 (3)(a) By August 1st of each year application for the incentive
17 (~~shall~~) must be made to the light and power business serving the
18 situs of the system by certification in a form and manner prescribed by
19 the department that includes, but is not limited to, the following
20 information:

21 (i) The name and address of the applicant and location of the
22 renewable energy system;

23 (ii) The applicant's tax registration number;

24 (iii) The date of the notification from the department of revenue
25 stating that the renewable energy system is eligible for the incentives
26 under this section;

27 (iv) A statement of the amount of kilowatt-hours generated by the
28 renewable energy system in the prior fiscal year.

29 (b) Within sixty days of receipt of the incentive certification the
30 light and power business serving the situs of the system (~~shall~~) must
31 notify the applicant in writing whether the incentive payment will be
32 authorized or denied. The business may consult with the climate and
33 rural energy development center to determine eligibility for the
34 incentive payment. Incentive certifications and the information
35 contained therein are subject to disclosure under RCW 82.32.330(3)(m).

36 (c)(i) Persons receiving incentive payments (~~shall~~) must keep and
37 preserve, for a period of five years, suitable records as may be
38 necessary to determine the amount of incentive applied for and

1 received. Such records (~~shall~~) must be open for examination at any
2 time upon notice by the light and power business that made the payment
3 or by the department. If upon examination of any records or from other
4 information obtained by the business or department it appears that an
5 incentive has been paid in an amount that exceeds the correct amount of
6 incentive payable, the business may assess against the person for the
7 amount found to have been paid in excess of the correct amount of
8 incentive payable and (~~shall~~) must add thereto interest on the
9 amount. Interest (~~shall be~~) is assessed in the manner that the
10 department assesses interest upon delinquent tax under RCW 82.32.050.

11 (ii) If it appears that the amount of incentive paid is less than
12 the correct amount of incentive payable the business may authorize
13 additional payment.

14 (4) Except for community solar projects, the investment cost
15 recovery incentive may be paid fifteen cents per economic development
16 kilowatt-hour unless requests exceed the amount authorized for credit
17 to the participating light and power business. For community solar
18 projects, the investment cost recovery incentive may be paid thirty
19 cents per economic development kilowatt-hour unless requests exceed the
20 amount authorized for credit to the participating light and power
21 business. For the purposes of this section, the rate paid for the
22 investment cost recovery incentive may be multiplied by the following
23 factors:

24 (a) For customer-generated electricity produced using solar modules
25 manufactured in Washington state or a solar stirling converter
26 manufactured in Washington state, two and four-tenths;

27 (b) For customer-generated electricity produced using a solar or a
28 wind generator equipped with an inverter manufactured in Washington
29 state, one and two-tenths;

30 (c) For customer-generated electricity produced using an anaerobic
31 digester, or by other solar equipment or using a wind generator
32 equipped with blades manufactured in Washington state, one; and

33 (d) For all other customer-generated electricity produced by wind,
34 eight-tenths.

35 (5) No individual, household, business, or local governmental
36 entity is eligible for incentives provided under subsection (4) of this
37 section for more than five thousand dollars per year. Each applicant

1 in a community solar project is eligible for up to five thousand
2 dollars per year.

3 (6) If requests for the investment cost recovery incentive exceed
4 the amount of funds available for credit to the participating light and
5 power business, the incentive payments (~~shall~~) must be reduced
6 proportionately.

7 (7) The climate and rural energy development center at Washington
8 State University energy program may establish guidelines and standards
9 for technologies that are identified as Washington manufactured and
10 therefore most beneficial to the state's environment.

11 (8) The environmental attributes of the renewable energy system
12 belong to the applicant, and do not transfer to the state or the light
13 and power business upon receipt of the investment cost recovery
14 incentive.

15 **PART XXI**

16 **Sales and Use Tax Exemption for Investment Castings**

17 NEW SECTION. **Sec. 2101.** A new section is added to chapter 82.08
18 RCW to read as follows:

19 (1) The tax levied by RCW 82.08.020 does not apply to sales of wax
20 and ceramic materials used to create molds consumed during the process
21 of creating ferrous and nonferrous investment castings used in
22 industrial applications. The tax also does not apply to labor or
23 services used to create wax patterns and ceramic shells used as molds
24 and consumed during the process of creating ferrous and nonferrous
25 investment castings used in industrial applications.

26 (2) A person claiming the exemption under this section must claim
27 the exemption in a form and manner prescribed by the department.

28 (3) This section expires July 1, 2020.

29 NEW SECTION. **Sec. 2102.** A new section is added to chapter 82.12
30 RCW to read as follows:

31 (1) The provisions of this chapter do not apply with respect to the
32 use of wax and ceramic materials used to create molds consumed during
33 the process of creating ferrous and nonferrous investment castings used
34 in industrial applications.

35 (2) This section expires July 1, 2020.

1 will be incorporated as an ingredient or component of buildings or
2 other structures at an aluminum smelter, or for labor and services
3 rendered with respect to such buildings, structures, or personal
4 property, is eligible for an exemption from the state share of the tax
5 in the form of a credit, as provided in this section. A person
6 claiming an exemption must pay the tax and may then take a credit equal
7 to the state share of retail sales tax paid under RCW 82.08.020. The
8 person (~~shall~~) must submit information, in a form and manner
9 prescribed by the department, specifying the amount of qualifying
10 purchases or acquisitions for which the exemption is claimed and the
11 amount of exempted tax.

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

14 (3) Credits may not be claimed under this section for taxable
15 events occurring on or after January 1, (~~2012~~) 2017.

16 **Sec. 2204.** RCW 82.12.805 and 2009 c 535 s 620 are each amended to
17 read as follows:

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

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

32 (3) Credits may not be claimed under this section for taxable
33 events occurring on or after January 1, (~~2012~~) 2017.

34 **Sec. 2205.** RCW 82.12.022 and 2006 c 182 s 5 are each amended to
35 read as follows:

1 (1) There is (~~hereby~~) levied and (~~there shall be~~) collected
2 from every person in this state a use tax for the privilege of using
3 natural gas or manufactured gas within this state as a consumer.

4 (2) The tax (~~shall be~~) is levied and collected in an amount equal
5 to the value of the article used by the taxpayer multiplied by the rate
6 in effect for the public utility tax on gas distribution businesses
7 under RCW 82.16.020. The "value of the article used" does not include
8 any amounts that are paid for the hire or use of a gas distribution
9 business as defined in RCW 82.16.010(~~(+7)~~) (2) in transporting the gas
10 subject to tax under this subsection if those amounts are subject to
11 tax under that chapter.

12 (3) The tax levied in this section (~~shall~~) does not apply to the
13 use of natural or manufactured gas delivered to the consumer by other
14 means than through a pipeline.

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

19 (5) The tax levied in this section (~~shall~~) does not apply to the
20 use of natural or manufactured gas by an aluminum smelter as that term
21 is defined in RCW 82.04.217 before January 1, (~~(2012)~~) 2017.

22 (6) There (~~shall be~~) is a credit against the tax levied under
23 this section in an amount equal to any tax paid by:

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

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

31 (7) The use tax hereby imposed (~~shall~~) must be paid by the
32 consumer to the department.

33 (8) There is imposed a reporting requirement on the person who
34 delivered the gas to the consumer to make a quarterly report to the
35 department. Such report (~~shall~~) must contain the volume of gas
36 delivered, name of the consumer to whom delivered, and such other
37 information as the department (~~shall~~) requires by rule.

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

4 **Sec. 2206.** RCW 82.32.570 and 2006 c 182 s 6 are each amended to
5 read as follows:

6 (1) For the purposes of this section, "smelter tax incentive" means
7 the preferential tax rate under RCW 82.04.2909, or an exemption or
8 credit under RCW 82.04.4481, 82.08.805, 82.12.805, or 82.12.022(5).

9 (2) The legislature finds that accountability and effectiveness are
10 important aspects of setting tax policy. In order to make policy
11 choices regarding the best use of limited state resources the
12 legislature needs information to evaluate whether the stated goals of
13 legislation were achieved.

14 (3) The goals of the smelter tax incentives are to retain family-
15 wage jobs in rural areas by:

16 (a) Enabling the aluminum industry to maintain production of
17 aluminum at a level that will preserve at least 75 percent of the jobs
18 that were on the payroll effective January 1, 2004, as adjusted for
19 employment reductions publicly announced before November 30, 2003; and

20 (b) Allowing the aluminum industry to continue producing aluminum
21 in this state through (~~2012~~) 2017 so that the industry will be
22 positioned to preserve and create new jobs when the anticipated
23 reduction of energy costs occurs.

24 (4)(a) An aluminum smelter receiving the benefit of a smelter tax
25 incentive (~~shall~~) must make an annual report to the department
26 detailing employment, wages, and employer-provided health and
27 retirement benefits per job at the manufacturing site. The report is
28 due by March 31st following any year in which a tax incentive is
29 claimed or used. The report (~~shall~~) may not include names of
30 employees. The report (~~shall~~) must detail employment by the total
31 number of full-time, part-time, and temporary positions. The report
32 (~~shall~~) must indicate the quantity of aluminum smelted at the plant
33 during the time period covered by the report. The first report filed
34 under this subsection (~~shall~~) must include employment, wage, and
35 benefit information for the twelve-month period immediately before
36 first use of a tax incentive. Employment reports (~~shall~~) must
37 include data for actual levels of employment and identification of the

1 number of jobs affected by any employment reductions that have been
2 publicly announced at the time of the report. Information in a report
3 under this section is not subject to the confidentiality provisions of
4 RCW 82.32.330 and may be disclosed to the public upon request.

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

14 (~~(5) By December 1, 2007, December 1, 2010, and December 1, 2015,~~
15 ~~the fiscal committees of the house of representatives and the senate,~~
16 ~~in consultation with the department, shall report to the legislature on~~
17 ~~the effectiveness of the smelter tax incentives under RCW 82.04.4482~~
18 ~~and 82.16.0498. The reports shall measure the effect of the tax~~
19 ~~incentives on job retention for Washington residents and any other~~
20 ~~factors the committees may select.))~~

21 **PART XXIII**

22 **Preferential Business and Occupation Tax Rate**
23 **for Certain Aviation Repair Businesses**

24 **Sec. 2301.** RCW 82.04.250 and 2008 c 81 s 5 are each amended to
25 read as follows:

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

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

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

4 (3)(a) Until July 1, 2024, upon every person classified by the
5 federal aviation administration as a federal aviation regulation part
6 145 certificated repair station and that is engaging within this state
7 in the business of making sales at retail that are exempt from the tax
8 imposed under chapter 82.08 RCW by reason of RCW 82.08.0261,
9 82.08.0262, or 82.08.0263, as to such persons, the amount of tax with
10 respect to such business (~~shall be~~) is equal to the gross proceeds of
11 sales of the business, multiplied by the rate of .2904 percent.

12 (b) A person reporting under the tax rate provided in this
13 subsection (3) must file a complete annual report with the department
14 under RCW 82.32.--- (section 103, chapter -- (SHB 3066), Laws of 2010).

15 **PART XXIV**

16 **Excise Taxation of Publicly Owned Facilities Accredited by the**
17 **Association of Zoos and Aquariums**

18 NEW SECTION. Sec. 2401. The legislature finds that publicly owned
19 facilities accredited by the association of zoos and aquariums in
20 Washington serve a public purpose by providing educational and
21 recreational opportunities for Washington citizens and spurring
22 economic development in the state. The legislature also finds that
23 organizations operating accredited zoos and aquariums are similar to
24 other artistic or cultural organizations, which currently receive
25 favorable tax treatment. The legislature intends to provide certain
26 excise tax relief to organizations operating accredited zoo and
27 aquarium facilities in order to further their public purpose and
28 stimulate economic development.

29 NEW SECTION. Sec. 2402. A new section is added to chapter 82.04
30 RCW to read as follows:

31 (1) In computing tax there may be deducted from the measure of tax
32 by persons subject to payment of the tax on manufacturing under RCW
33 82.04.240, the value of the products manufactured to the extent the
34 manufacturing activities are: (a) Undertaken by a nonprofit
35 organization or metropolitan park district operating a zoological

1 facility; and (b) solely for the purpose of manufacturing articles for
2 use by the organization or district in displaying or presenting
3 zoological exhibitions, presentations, performances, or education
4 programs at the zoological facility.

5 (2) In computing tax there may be deducted from the measure of tax
6 those amounts received:

7 (a) By a nonprofit organization or metropolitan park district where
8 the income is derived from business activities conducted by the
9 organization or district with respect to a zoological facility; or

10 (b) By a nonprofit organization or metropolitan park district from
11 the United States or any instrumentality thereof or from the state of
12 Washington or any municipal corporation or subdivision thereof as
13 compensation for, or to support, zoological exhibitions, presentations,
14 performances, or education programs at a zoological facility.

15 (3) For the purposes of this section:

16 (a) "Metropolitan park district" or "district" means a metropolitan
17 park district created under chapter 35.61 RCW.

18 (b) "Nonprofit organization" means a business entity incorporated
19 or authorized to conduct affairs in this state under chapter 24.03 RCW.

20 (c) "Zoological facility" means a publicly owned facility
21 accredited by the association of zoos and aquariums.

22 (4) This section expires July 1, 2020.

23 **PART XXV**
24 **Sales and Use Tax Deferral for Performing Arts Centers**

25 NEW SECTION. **Sec. 2501.** A new section is added to chapter 82.32
26 RCW to read as follows:

27 (1) The governing board of a nonprofit organization, corporation,
28 or association may apply for deferral of taxes on taxable activity
29 related to an eligible facility. Application must be made to the
30 department in a form and manner prescribed by the department. The
31 application must contain information regarding the location of the
32 facility, estimated or actual costs of the facility, time schedules for
33 completion and operation of the facility, and other information
34 required by the department. The department must rule on the
35 application within sixty days. All applications for the tax deferral

1 under this section must be submitted prior to the initiation of
2 construction and no later than December 31, 2012.

3 (2) The department must issue a sales and use tax deferral
4 certificate for state and local sales and use taxes due under chapters
5 82.08, 82.12, and 82.14 RCW for sales or charges made for taxable
6 activity related to an eligible facility.

7 (3) The nonprofit organization, corporation, or association must
8 begin paying the deferred taxes in the fifth year after the date in
9 which the eligible facility is issued an occupancy permit by the local
10 permit issuing authority. The first payment is due by December 31st of
11 the fifth calendar year after such certified date, with subsequent
12 annual payments due by December 31st of the following nine years. Each
13 payment must equal ten percent of the deferred tax.

14 (4) The department may authorize an accelerated repayment schedule
15 upon request of the nonprofit organization, corporation, or
16 association.

17 (5) Except as provided in subsection (6) of this section, interest
18 may not be charged on any taxes deferred under this section for the
19 period of deferral. The debt for deferred taxes is not extinguished by
20 insolvency or other failure of the nonprofit organization, corporation,
21 or association.

22 (6) If the facility is not operationally complete within five
23 calendar years from issuance of the tax deferral certificate or if at
24 any time the department finds that the facility is not eligible for tax
25 deferral under this section, the amount of deferred taxes outstanding
26 for the facility is immediately due and payable. If deferred taxes
27 must be repaid under this subsection, the department must assess
28 interest, but not penalties, on amounts due under this subsection.
29 Interest is assessed at the rate provided for delinquent taxes under
30 this chapter, retroactively to the date of deferral, and accrues until
31 the deferred taxes due are repaid.

32 (7) Applications and any other information received by the
33 department of revenue under this section are not confidential under RCW
34 82.32.330. This chapter applies to the administration of this section.

35 (8) This section applies to taxable activity for an eligible
36 facility that occurs on or after July 1, 2011.

37 (9) The following definitions apply to this section:

1 (a) "Eligible facility" means a facility that is: (i) Owned and
2 operated by a nonprofit organization, corporation, or association; (ii)
3 used primarily as a performing arts center; and (iii) located in a city
4 with an estimated population between one hundred fifteen thousand and
5 one hundred fifty thousand at the time construction of the facility is
6 initiated.

7 (b) "Facility" means a new structure and fixtures that are
8 permanently affixed to and become a physical part of the structure.

9 (c) "Nonprofit organization, corporation, or association" means an
10 organization, corporation, or association exempt from tax under section
11 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code of 1986,
12 as amended as of the effective date of this section.

13 (d) "Performing arts center" means a facility that is used for
14 music, dance, drama, or similar presentations and has a seating
15 capacity of one thousand seven hundred or more.

16 (e) "Site preparation" includes soil testing, site clearing and
17 grading, demolition, or any other related activities that are initiated
18 before construction. Site preparation does not include landscaping
19 services or landscaping materials.

20 (f) "Taxable activity" means construction of new structures, the
21 acquisition and installation of fixtures, and site preparation.

22 **PART XXVI**

23 **Miscellaneous Provisions**

24 NEW SECTION. **Sec. 2601.** (1) Except as provided in subsection (2)
25 of this section, if any provision of sections 101 through 108 of this
26 act or its application to any person or circumstance is held invalid,
27 the remainder of sections 101 through 108 of this act or the
28 application of the provision to other persons or circumstances is not
29 affected.

30 (2) If a court of competent jurisdiction, in a final judgment not
31 subject to appeal, adjudges any provision of section 104(1)(c) of this
32 act unconstitutional or otherwise invalid, sections 101 through 108 of
33 this act are null and void in their entirety.

34 NEW SECTION. **Sec. 2602.** Sections 101 through 108 of this act
35 apply with respect to gross income of the business, as defined in RCW

1 82.04.080, including gross income from royalties as defined in RCW
2 82.04.2907, generated on and after April 1, 2010. For purposes of
3 calculating the thresholds in section 104(1)(c) of this act for the
4 2010 tax year, property, payroll, and receipts are based on the entire
5 2010 tax year.

6 NEW SECTION. **Sec. 2603.** Sections 201 through 213 of this act must
7 be construed liberally to effectuate the legislature's intent to ensure
8 that all businesses and individuals pay their fair share of taxes.

9 NEW SECTION. **Sec. 2604.** (1) Except as provided in subsection (2)
10 of this section, section 201 of this act applies to tax periods
11 beginning January 1, 2006.

12 (2) Section 201 of this act does not apply to any tax periods
13 ending before April 1, 2010, that were included in a completed field
14 audit conducted by the department.

15 NEW SECTION. **Sec. 2605.** Sections 502, 802, 1701, and 1702 of this
16 act apply both retroactively and prospectively.

17 NEW SECTION. **Sec. 2606.** In accordance with Article VIII, section
18 5 of the state Constitution, sections 802 and 2605 of this act do not
19 authorize refunds of business and occupation tax validly collected
20 before April 1, 2010, on amounts received by an individual from a
21 corporation as compensation for serving as a member of that
22 corporation's board of directors.

23 NEW SECTION. **Sec. 2607.** Section 502 of this act does not affect
24 any final judgments, not subject to appeal, entered by a court of
25 competent jurisdiction before the effective date of this section.

26 NEW SECTION. **Sec. 2608.** Sections 1101 and 1102 of this act apply
27 to transfers or conveyances as described in RCW 82.45.010(3)(i)
28 occurring on and after April 1, 2010.

29 NEW SECTION. **Sec. 2609.** Section 1602 of this act applies only
30 with respect to tax liability incurred under chapter 82.24 RCW on or

1 after April 1, 2010, for the sale, use, consumption, handling,
2 possession, or distribution of cigarettes.

3 NEW SECTION. **Sec. 2610.** Section 1605(1) (a), (b), and (d) of this
4 act applies only with respect to tax liability incurred under chapter
5 82.24 RCW on or after April 1, 2010, for the sale, handling, or
6 distribution of cigars, little cigars, and other tobacco products.

7 NEW SECTION. **Sec. 2611.** Section 1605(1)(c), chapter . . ., Laws
8 of 2010 (this act) applies only with respect to tax liability incurred
9 under chapter 82.24 RCW on or after October 1, 2010, for the sale,
10 handling, or distribution of moist snuff.

11 NEW SECTION. **Sec. 2612.** If any provision of this act or its
12 application to any person or circumstance is held invalid, the
13 remainder of the act or the application of the provision to other
14 persons or circumstances is not affected.

15 NEW SECTION. **Sec. 2613.** Except as otherwise provided in this act,
16 this act is necessary for the immediate preservation of the public
17 peace, health, or safety, or support of the state government and its
18 existing public institutions, and takes effect April 1, 2010.

19 NEW SECTION. **Sec. 2614.** Parts II and XVII of this act take effect
20 July 1, 2010.

21 NEW SECTION. **Sec. 2615.** Section 902 of this act takes effect
22 January 1, 2011.

23 NEW SECTION. **Sec. 2616.** Sections 1701, 1702, 1704 through 1708,
24 and 1712 through 1715 of this act take effect July 1, 2010.

25 NEW SECTION. **Sec. 2617.** Sections 1709 and 1710 of this act take
26 effect July 1, 2010, if the legislature does not enact Substitute House
27 Bill No. 1597 by July 1, 2010.

28 NEW SECTION. **Sec. 2618.** Section 605 of this act expires July 1,
29 2011.

1 NEW SECTION. **Sec. 2619.** Section 606 of this act takes effect July
2 1, 2011.

3 NEW SECTION. **Sec. 2620.** Section 1801 of this act applies
4 prospectively only."

5 Correct the title.

--- END ---