

2ESSB 6143 - H AMD 1720

By Representative Hunter

ADOPTED AND ENGROSSED 3/20/10

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 for state business and occupation tax
13 purposes.

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

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

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

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

33 (2) A person who has a substantial nexus with this state in any tax
34 year will be deemed to have a substantial nexus with this state for the
35 following tax year.

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

3 "Engaging within this state" and "engaging within the state," when
4 used in connection with any apportionable activity as defined in RCW
5 82.04.460, means that a person generates gross income of the business
6 from sources within this state, such as customers or intangible
7 property located in this state, regardless of whether the person is
8 physically present in this state.

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

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

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

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

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

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

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

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

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

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

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

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

5 (c) The average value of property must be determined by averaging
6 the values at the beginning and ending of the tax year; but the
7 department may require the averaging of monthly values during the tax
8 year if reasonably required to properly reflect the average value of
9 the taxpayer's property.

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

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

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

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

30 (ii)(A) Except as otherwise provided in (d)(ii)(B) of this
31 subsection (2), the definitions in the multistate tax commission's
32 recommended formula for the apportionment and allocation of net income
33 of financial institutions as existing on the effective date of this
34 section or such subsequent date as may be provided by the department by
35 rule, consistent with the purposes of this section, apply to this
36 section.

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

1 (e) Notwithstanding anything else to the contrary in this
2 subsection, property counting toward the thresholds in subsection
3 (1)(c)(i) and (iv) of this section does not include a person's
4 ownership of, or rights in, computer software as defined in RCW
5 82.04.215, including computer software used in providing a digital
6 automated service; master copies of software; and digital goods and
7 digital codes residing on servers located in this state.

8 (3)(a) Payroll counting toward the thresholds in subsection
9 (1)(c)(ii) and (iv) of this section is the total amount paid by the
10 taxpayer for compensation in this state during the tax year plus
11 nonemployee compensation paid to representative third parties in this
12 state. Nonemployee compensation paid to representative third parties
13 includes the gross amount paid to nonemployees who represent the
14 taxpayer in interactions with the taxpayer's clients and includes sales
15 commissions.

16 (b) Employee compensation is paid in this state if the compensation
17 is properly reportable to this state for unemployment compensation tax
18 purposes, regardless of whether the compensation was actually reported
19 to this state.

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

23 (d) For purposes of this subsection, "compensation" means wages,
24 salaries, commissions, and any other form of remuneration paid to
25 employees or nonemployees and defined as gross income under 26 U.S.C.
26 Sec. 61 of the federal internal revenue code of 1986, as existing on
27 the effective date of this section.

28 (4) Receipts counting toward the thresholds in subsection
29 (1)(c)(iii) and (iv) of this section are those amounts included in the
30 numerator of the receipts factor under section 105 of this act and, for
31 financial institutions, those amounts included in the numerator of the
32 receipts factor under the rule adopted by the department as authorized
33 in RCW 82.04.460(2).

34 (5)(a) Each December, the department must review the cumulative
35 percentage change in the consumer price index. The department must
36 adjust the thresholds in subsection (1)(c)(i) through (iii) of this
37 section if the consumer price index has changed by five percent or more
38 since the later of the effective date of this section, or the date that

1 the thresholds were last adjusted under this subsection. For purposes
2 of determining the cumulative percentage change in the consumer price
3 index, the department must compare the consumer price index available
4 as of December 1st of the current year with the consumer price index as
5 of the later of the effective date of this section, or the date that
6 the thresholds were last adjusted under this subsection. The
7 thresholds must be adjusted to reflect that cumulative percentage
8 change in the consumer price index. The adjusted thresholds must be
9 rounded to the nearest one thousand dollars. Any adjustment will apply
10 to tax periods that begin after the adjustment is made.

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

14 (6) Subsections (1) through (5) of this section only apply with
15 respect to the taxes imposed under this chapter on apportionable
16 activities as defined in RCW 82.04.460. For purposes of the taxes
17 imposed under this chapter on any activity not included in the
18 definition of apportionable activities in RCW 82.04.460, a person is
19 deemed to have a substantial nexus with this state if the person has a
20 physical presence in this state, which need only be demonstrably more
21 than a slightest presence. For purposes of this subsection, a person
22 is physically present in this state if the person has property or
23 employees in this state. A person is also physically present in this
24 state if the person, either directly or through an agent or other
25 representative, engages in activities in this state that are
26 significantly associated with the person's ability to establish or
27 maintain a market for its products in this state.

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

30 (1) The apportionable income of a person within the scope of RCW
31 82.04.460(1) is apportioned to Washington by multiplying its
32 apportionable income by the receipts factor. Persons who are subject
33 to tax under more than one of the tax classifications enumerated in RCW
34 82.04.460(4)(a) (i) through (ix) must calculate a separate receipts
35 factor for each tax classification that the person is taxable under.

36 (2) For purposes of subsection (1) of this section, the receipts
37 factor is a fraction and is calculated as provided in subsections (3)

1 and (4) of this section and, for financial institutions, as provided in
2 the rule adopted by the department under the authority of RCW
3 82.04.460(2).

4 (3)(a) The numerator of the receipts factor is the total gross
5 income of the business of the taxpayer attributable to this state
6 during the tax year from engaging in an apportionable activity. The
7 denominator of the receipts factor is the total gross income of the
8 business of the taxpayer from engaging in an apportionable activity
9 everywhere in the world during the tax year.

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

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

16 (ii) If the customer received the benefit of the service or used
17 the intangible property in more than one state, gross income of the
18 business must be attributed to the state in which the benefit of the
19 service was primarily received or in which the intangible property was
20 primarily used.

21 (iii) If the taxpayer is unable to attribute gross income of the
22 business under the provisions of (b)(i) or (ii) of this subsection (3),
23 gross income of the business must be attributed to the state from which
24 the customer ordered the service or, in the case of royalties, the
25 office of the customer from which the royalty agreement with the
26 taxpayer was negotiated.

27 (iv) If the taxpayer is unable to attribute gross income of the
28 business under the provisions of (b)(i), (ii), or (iii) of this
29 subsection (3), gross income of the business must be attributed to the
30 state to which the billing statements or invoices are sent to the
31 customer by the taxpayer.

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

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

1 the state where the customer is located as indicated by the customer's
2 address: (A) Shown in the taxpayer's business records maintained in
3 the regular course of business; or (B) obtained during consummation of
4 the sale or the negotiation of the contract for services or for the use
5 of the taxpayer's intangible property, including any address of a
6 customer's payment instrument when readily available to the taxpayer
7 and no other address is available.

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

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

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

36 (d) This subsection (3) does not apply to financial institutions
37 with respect to apportionable income taxable under RCW 82.04.290.
38 Financial institutions must calculate the receipts factor as provided

1 in subsection (4) of this section and the rule adopted by the
2 department under the authority of RCW 82.04.460(2) with respect to
3 apportionable income taxable under RCW 82.04.290. Financial
4 institutions that are subject to tax under any other tax classification
5 enumerated in RCW 82.04.460(4)(a) (i) through (v) and (vii) through (x)
6 must calculate a separate receipts factor, as provided in this section,
7 for each of the other tax classifications that the financial
8 institution is taxable under.

9 (4) A taxpayer may calculate the receipts factor for the current
10 tax year based on the most recent calendar year for which information
11 is available for the full calendar year. If a taxpayer does not
12 calculate the receipts factor for the current tax year based on
13 previous calendar year information as authorized in this subsection,
14 the business must use current year information to calculate the
15 receipts factor for the current tax year. In either case, a taxpayer
16 must correct the reporting for the current tax year when complete
17 information is available to calculate the receipts factor for that
18 year, but not later than October 31st of the following tax year.
19 Interest will apply to any additional tax due on a corrected tax
20 return. Interest must be assessed at the rate provided for delinquent
21 excise taxes under chapter 82.32 RCW, retroactively to the date the
22 original return was due, and will accrue until the additional taxes are
23 paid. Penalties as provided in RCW 82.32.090 will apply to any such
24 additional tax due only if the current tax year reporting is not
25 corrected and the additional tax is not paid by October 31st of the
26 following tax year. Interest as provided in RCW 82.32.060 will apply
27 to any tax paid in excess of that properly due on a return as a result
28 of a taxpayer using previous calendar year data or incomplete current-
29 year data to calculate the receipts factor.

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

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

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

1 **Sec. 106.** RCW 82.04.2907 and 2009 c 535 s 407 are each amended to
2 read as follows:

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

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

21 **Sec. 107.** RCW 82.04.2907 and 2010 c . . . (SHB 2620) s 302 are
22 each amended to read as follows:

23 (1) Upon every person engaging within this state in the business of
24 receiving income from royalties (~~(or charges in the nature of royalties~~
25 ~~for the granting of intangible rights, such as copyrights, licenses,~~
26 ~~patents, or franchise fees)), the amount of tax with respect to the~~
27 ~~business is equal to the gross income from royalties (~~(or charges in~~~~
28 ~~the nature of royalties from the business)) multiplied by the rate of~~
29 0.484 percent.

30 (2) For the purposes of this section, "gross income from royalties"
31 means compensation for the use of intangible property, (~~(such as))~~
32 including charges in the nature of royalties, regardless of where the
33 intangible property will be used. For purposes of this subsection,
34 "intangible __ property" __ includes copyrights, patents, licenses,
35 franchises, trademarks, trade names, and similar items. (~~(It))~~ "Gross
36 income from royalties" does not include compensation for any natural

1 resource, the licensing of prewritten computer software to the end
2 user, or the licensing of digital goods, digital codes, or digital
3 automated services to the end user as defined in RCW 82.04.190(11).

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

6 (1) Except as otherwise provided in this section, any person
7 ((rendering services)) earning apportionable income taxable under ((RCW
8 82.04.290 or 82.04.2908)) this chapter and ((maintaining places of
9 business both within and without this state which contribute to the
10 rendition of such services shall)) also taxable in another state, must,
11 for the purpose of computing tax liability under ((RCW 82.04.290 or
12 82.04.2908)) this chapter, apportion to this state, in accordance with
13 section 105 of this act, that portion of the person's ((gross))
14 apportionable income ((which is)) derived from ((services rendered))
15 business activities performed within this state. ((Where such
16 apportionment cannot be accurately made by separate accounting methods,
17 the taxpayer shall apportion to this state that proportion of the
18 taxpayer's total income which the cost of doing business within the
19 state bears to the total cost of doing business both within and without
20 the state.))

21 (2) ((Notwithstanding the provision of subsection (1) of this
22 section, persons doing business both within and without the state who
23 receive gross income from service charges, as defined in RCW 63.14.010
24 (relating to amounts charged for granting the right or privilege to
25 make deferred or installment payments) or who receive gross income from
26 engaging in business as financial institutions within the scope of
27 chapter 82.14A RCW (relating to city taxes on financial institutions)
28 shall apportion or allocate gross income taxable under RCW 82.04.290 to
29 this state pursuant to rules promulgated by the department consistent
30 with uniform rules for apportionment or allocation developed by the
31 states.)) The department must by rule provide a method of apportioning
32 the apportionable income of financial institutions, where such
33 apportionable income is taxable under RCW 82.04.290. The rule adopted
34 by the department must, to the extent feasible, be consistent with the
35 multistate tax commission's recommended formula for the apportionment
36 and allocation of net income of financial institutions as existing on

1 the effective date of this section or such subsequent date as may be
2 provided by the department by rule, consistent with the purposes of
3 this section, except that:

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

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

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 (4) 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;

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

5 (x) RCW 82.04.260(13) and 82.04.280(1), but only with respect to
6 advertising.

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

15 (ii) For purposes of this subsection (4)(b), "business activities
16 tax" and "state" have the same meaning as in section 105 of this act.

17 **Sec. 109.** RCW 82.04.080 and 1961 c 15 s 82.04.080 are each amended
18 to read as follows:

19 (1) "Gross income of the business" means the value proceeding or
20 accruing by reason of the transaction of the business engaged in and
21 includes gross proceeds of sales, compensation for the rendition of
22 services, gains realized from trading in stocks, bonds, or other
23 evidences of indebtedness, interest, discount, rents, royalties, fees,
24 commissions, dividends, and other emoluments however designated, all
25 without any deduction on account of the cost of tangible property sold,
26 the cost of materials used, labor costs, interest, discount, delivery
27 costs, taxes, or any other expense whatsoever paid or accrued and
28 without any deduction on account of losses.

29 (2) Financial institutions must determine gains realized from
30 trading in stocks, bonds, and other evidences of indebtedness on a net
31 annualized basis. For purposes of this subsection, a financial
32 institution means a person within the scope of the rule adopted by the
33 department under the authority of RCW 82.04.460(2).

34 NEW SECTION. **Sec. 110.** A new section is added to chapter 82.04
35 RCW to read as follows:

36 (1) This chapter does not apply to amounts received by a financial

1 institution from an affiliated person if the amounts are received from
2 transactions that are required to be at arm's length under sections 23A
3 or 23B of the federal reserve act as existing on the effective date of
4 this section or such subsequent date as may be provided by the
5 department by rule, consistent with the purposes of this section. For
6 purposes of this subsection, "financial institution" has the same
7 meaning as in RCW 82.04.080.

8 (2) As used in this section, "affiliated" means under common
9 control. "Common control" means the possession, directly or
10 indirectly, of more than fifty percent of the power to direct or cause
11 the direction of the management and policies of a person, whether
12 through the ownership of voting shares, by contract, or otherwise.

13 NEW SECTION. **Sec. 111.** A new section is added to chapter 82.04
14 RCW to read as follows:

15 (1) This chapter does not apply to amounts received by investment
16 conduits or securitization entities from cash and securities.

17 (2) For purposes of this section, the following definitions apply:

18 (a) "Investment conduit" means an entity formed by a financial
19 institution as defined in RCW 82.04.080 for the express purpose of
20 holding or owning cash or securities if the entity formed:

- 21 (i) Has no employees;
- 22 (ii) Has no direct profit-making motive;
- 23 (iii) Owns no tangible assets, other than cash or securities;
- 24 (iv) Holds or owns cash or securities solely as a conduit,
25 allocating its income to holders of its ownership interests; and
- 26 (v) Has, within twelve months of its organization or initial
27 capitalization date, issued ownership interests to other than
28 affiliated persons, equal to or greater than twenty-five percent of its
29 total issued ownership interests.

30 (b) "Securities" has the same meaning as in section 2 of the
31 securities act of 1933 and includes eligible assets as defined by Rule
32 3a-7 of the investment company act, as the law and rule exist on the
33 effective date of this section or such subsequent date as may be
34 provided by the department by rule, consistent with the purposes of
35 this section.

36 (c) "Securitization entity" means an entity created by a bank
37 holding company if the entity created:

- 1 (i) Has no employees;
- 2 (ii) Has no direct profit-making motive;
- 3 (iii) Owns no tangible assets, other than cash, fixed or revolving
- 4 discrete pools of credit or charge card receivables originated by a
- 5 financial institution, or securities;
- 6 (iv) Acts solely as a conduit, allocating its income to holders of
- 7 its ownership interests; and
- 8 (v) Has as its sole business activities the:
- 9 (A) Acquisition of such discrete pools of credit or charge card
- 10 receivables; and
- 11 (B) Issuance or causing the issuance of securities primarily to
- 12 persons not affiliated with the entity.
- 13 (d) "Bank holding company" has the same meaning as provided in the
- 14 bank holding company act of 1956, as existing on the effective date of
- 15 this section or such subsequent date as may be provided by the
- 16 department by rule, consistent with the purposes of this section.
- 17 (e) "No direct profit-making motive" means that all of an entity's
- 18 income, less a reasonable servicing fee, is paid to holders of its
- 19 ownership interests.
- 20 (f) "Ownership interest" means interests categorized as debt or
- 21 equity for purposes of federal tax or generally accepted accounting
- 22 principles.
- 23 (g) "Affiliated" has the same meaning as in section 110 of this
- 24 act.

25 **PART II**

26 **Tax Avoidance Transactions**

27 NEW SECTION. **Sec. 201.** (1) The legislature finds that this

28 state's tax policy with respect to the taxation of transactions between

29 affiliated entities and the income derived from such transactions

30 (intercompany transactions) has motivated some taxpayers to engage in

31 transactions designed solely or primarily to minimize the tax effects

32 of intercompany transactions. The legislature further finds that some

33 intercompany transactions result from taxpayers that are required to

34 establish affiliated entities to comply with regulatory mandates and

35 that transactions between such affiliates effectively increases the tax

36 burden in this state on the affiliated group of entities.

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

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

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

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

21 **Sec. 202.** RCW 82.12.020 and 2009 c 535 s 305 are each amended to
22 read as follows:

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

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

36 (b) Prewritten computer software, regardless of the method of

1 delivery, but excluding prewritten computer software that is either
2 provided free of charge or is provided for temporary use in viewing
3 information, or both;

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

7 (d) Extended warranty; or

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

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

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

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

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

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

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

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

36 (3)(a) Except as provided in this section, payment of the tax
37 imposed by this chapter or chapter 82.08 RCW by one purchaser or user
38 of tangible personal property, extended warranty, digital good, digital

1 code, digital automated service, or other service does not have the
2 effect of exempting any other purchaser or user of the same property,
3 extended warranty, digital good, digital code, digital automated
4 service, or other service from the taxes imposed by such chapters.

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

6 (i) If the sale to, or the use by, the present user or his or her
7 bailor or donor has already been subjected to the tax under chapter
8 82.08 RCW or this chapter and the tax has been paid by the present user
9 or by his or her bailor or donor;

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

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

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

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

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

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

1 **Sec. 203.** RCW 82.45.010 and 2008 c 116 s 3 and 2008 c 6 s 701 are
2 each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (j) A conveyance to the federal housing administration or veterans
37 administration by an authorized mortgagee made pursuant to a contract

1 of insurance or guaranty with the federal housing administration or
2 veterans administration.

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

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

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

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

13 (o) A transfer of real property, however effected, if it consists
14 of a mere change in identity or form of ownership of an entity where
15 there is no change in the beneficial ownership. These include
16 transfers to a corporation or partnership which is wholly owned by the
17 transferor and/or the transferor's spouse or domestic partner or
18 children of the transferor or the transferor's spouse or domestic
19 partner(~~(+1)~~ ~~PROVIDED, That~~). However, if thereafter such transferee
20 corporation or partnership voluntarily transfers such real property, or
21 such transferor, spouse or domestic partner, or children of the
22 transferor or the transferor's spouse or domestic partner voluntarily
23 transfer stock in the transferee corporation or interest in the
24 transferee partnership capital, as the case may be, to other than
25 (~~(+1)~~) (i) the transferor and/or the transferor's spouse or domestic
26 partner or children of the transferor or the transferor's spouse or
27 domestic partner, (~~(+2)~~) (ii) a trust having the transferor and/or the
28 transferor's spouse or domestic partner or children of the transferor
29 or the transferor's spouse or domestic partner as the only
30 beneficiaries at the time of the transfer to the trust, or (~~(+3)~~)
31 (iii) a corporation or partnership wholly owned by the original
32 transferor and/or the transferor's spouse or domestic partner or
33 children of the transferor or the transferor's spouse or domestic
34 partner, within three years of the original transfer to which this
35 exemption applies, and the tax on the subsequent transfer has not been
36 paid within sixty days of becoming due, excise taxes (~~shall~~) become
37 due and payable on the original transfer as 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
5 (~~section~~) 26 U.S.C. Sec. 332, 337, 351, 368(a)(1), 721, or 731 of the
6 internal 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. 204.** RCW 82.45.033 and 1993 sp.s. c 25 s 505 are each amended
28 to read as follows:

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

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

35 (~~(2)~~) (b) In the case of a partnership, association, trust, or
36 other entity, fifty percent or more of the capital, profits, or

1 beneficial interest in such partnership, association, trust, or other
2 entity.

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

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

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

18 **Sec. 205.** RCW 82.45.070 and 1969 ex.s. c 223 s 28A.45.070 are each
19 amended to read as follows:

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

27 **Sec. 206.** 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.

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

6 **Sec. 207.** RCW 82.45.100 and 2007 c 111 s 112 are each amended to
7 read as follows:

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

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

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

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

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

1 ~~(a))~~ an instrument evidencing the sale is recorded in the official
2 real property records of the county in which the property conveyed is
3 located(~~(; or~~

4 ~~(b) Either the transferor or transferee notifies the department of~~
5 ~~revenue in writing of the occurrence of the sale within thirty days~~
6 ~~following the date of the sale)).~~

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

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

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

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

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

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

28 **Sec. 208.** RCW 82.45.220 and 2005 c 326 s 3 are each amended to
29 read as follows:

30 (1) An organization that fails to report a transfer of the
31 controlling interest in the organization under RCW 43.07.390 to the
32 secretary of state and is later determined to be subject to real estate
33 excise taxes due to the transfer, (~~(shall-be)~~) is subject to the
34 provisions of RCW 82.45.100 as well as the evasion penalty in RCW
35 82.32.090(6).

36 (2) Subsection (1) of this section also applies to the failure to

1 report to the secretary of state the granting of an option to acquire
2 an interest in the organization if the exercise of the option would
3 result in a sale as defined in RCW 82.45.010(2).

4 **Sec. 209.** RCW 43.07.390 and 2005 c 326 s 2 are each amended to
5 read as follows:

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

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

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

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

23 **PART III**

24 **Modifying and Placing a Cap on the First Mortgage Deduction**

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

1 servicing loans and mortgage-backed securities was not within the
2 legislative intent when the deduction provided in 82.04.4292 was
3 adopted in 1980. Therefore, by this act, the legislature declares that
4 the deduction provided by RCW 82.04.4292 does not apply to fees that
5 are received in exchange for services, regardless of whether the source
6 of the fees is or may have been interest when paid by a borrower.

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

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

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

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

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

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

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

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

1 (i) Service release premiums, which are amounts received when
2 servicing rights are sold; and
3 (ii) Gains on the sale of loans.
4 (4) The total amount a person may deduct under this section for any
5 calendar year may not exceed one hundred twenty million dollars.

6 **PART IV**

7 **Repealing the Nonresident Sales Tax Exemption**

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

14 NEW SECTION. Sec. 402. RCW 82.08.0273 (Exemptions--Sales to
15 nonresidents of tangible personal property, digital goods, and digital
16 codes for use outside the state--Proof of nonresident status--
17 Penalties) and 2010 c . . . (E2SHB 1597) s 215, 2009 c 535 s 512, 2007
18 c 135 s 2, 2003 c 53 s 399, 1993 c 444 s 1, 1988 c 96 s 1, 1982 1st
19 ex.s. c 5 s 1, & 1980 c 37 s 39 are each repealed.

20 **PART V**

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

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

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

1 products; and (b) whose consumer products were ultimately sold at
2 retail in permanent retail establishments.

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

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

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

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

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

35 (2) For purposes of this section, the term "direct seller's
36 representative" means a person who buys only consumer products on a
37 buy-sell basis or a deposit-commission basis for resale, by the buyer

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

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

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

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

19 **PART VI**

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

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

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

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

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

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

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

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

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

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

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

1 (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 82.04.4266 and 2010 c . . . (SHB 3066) s 111 are
13 each amended to read as follows:

14 (1) This chapter does not apply to the value of products or the
15 gross proceeds of sales derived from:

16 (a) Manufacturing fruit(~~s~~) or vegetable(~~s~~) products by canning,
17 preserving, freezing, processing, or dehydrating fresh fruits or
18 vegetables; or

19 (b) Selling at wholesale fruit(~~s~~) or vegetable(~~s~~) products
20 manufactured by the seller by canning, preserving, freezing,
21 processing, or dehydrating fresh fruits or vegetables and sold to
22 purchasers who transport in the ordinary course of business the goods
23 out of this state. A person taking an exemption under this subsection
24 (1)(b) must keep and preserve records for the period required by RCW
25 82.32.070 establishing that the goods were transported by the purchaser
26 in the ordinary course of business out of this state.

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

28 (i) Products comprised exclusively of fruits, vegetables, or both;
29 and

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

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

1 (3) A person claiming the exemption provided in this section must
2 file a complete annual survey with the department under RCW 82.32.---
3 (section 102, chapter . . . (SHB 3066), Laws of 2010).

4 (~~(3)~~) (4) This section expires July 1, 2012.

5 **Sec. 605.** RCW 82.04.260 and 2009 c 479 s 64, 2009 c 461 s 1, and
6 2009 c 162 s 34 are each reenacted and amended to read as follows:

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

9 (a) Wheat into flour, barley into pearl barley, soybeans into
10 soybean oil, canola into canola oil, canola meal, or canola by-
11 products, or sunflower seeds into sunflower oil; as to such persons the
12 amount of tax with respect to such business (~~(shall be)~~) is equal to
13 the value of the flour, pearl barley, oil, canola meal, or canola by-
14 product manufactured, multiplied by the rate of 0.138 percent;

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

27 (c) Beginning July 1, 2012, dairy products that as of September 20,
28 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135,
29 including by-products from the manufacturing of the dairy products such
30 as whey and casein; or selling the same to purchasers who transport in
31 the ordinary course of business the goods out of state; as to such
32 persons the tax imposed (~~(shall be)~~) is equal to the value of the
33 products manufactured or the gross proceeds derived from such sales
34 multiplied by the rate of 0.138 percent. Sellers must keep and
35 preserve records for the period required by RCW 82.32.070 establishing
36 that the goods were transported by the purchaser in the ordinary course
37 of business out of this state;

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

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

16 (A) Products comprised exclusively of fruits, vegetables, or both;
17 or

18 (B) Products comprised of fruits, vegetables, or both, and which
19 may also contain water, sugar, salt, seasonings, preservatives,
20 binders, stabilizers, flavorings, yeast, and similar substances.
21 However, the amount of all ingredients contained in the product, other
22 than fruits, vegetables, and water, may not exceed the amount of fruits
23 and vegetables contained in the product measured by weight or volume;

24 (iii) "Fruit and vegetable products" includes only products that
25 are intended for human consumption as food or animal consumption as
26 feed;

27 (e) Until July 1, 2009, alcohol fuel, biodiesel fuel, or biodiesel
28 feedstock, as those terms are defined in RCW 82.29A.135; as to such
29 persons the amount of tax with respect to the business ((shall-be)) is
30 equal to the value of alcohol fuel, biodiesel fuel, or biodiesel
31 feedstock manufactured, multiplied by the rate of 0.138 percent; and

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

36 (2) Upon every person engaging within this state in the business of
37 splitting or processing dried peas; as to such persons the amount of

1 tax with respect to such business (~~shall be~~) is equal to the value of
2 the peas split or processed, multiplied by the rate of 0.138 percent.

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

8 (~~4~~) (~~Upon every person engaging within this state in the business~~
9 ~~of slaughtering, breaking and/or processing perishable meat products~~
10 ~~and/or selling the same at wholesale only and not at retail; as to such~~
11 ~~persons the tax imposed shall be equal to the gross proceeds derived~~
12 ~~from such sales multiplied by the rate of 0.138 percent.~~

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

18 ~~((6))~~ (5) Upon every person engaging within this state in
19 business as an international steamship agent, international customs
20 house broker, international freight forwarder, vessel and/or cargo
21 charter broker in foreign commerce, and/or international air cargo
22 agent; as to such persons the amount of the tax with respect to only
23 international activities (~~shall be~~) is equal to the gross income
24 derived from such activities multiplied by the rate of 0.275 percent.

25 ~~((7))~~ (6) Upon every person engaging within this state in the
26 business of stevedoring and associated activities pertinent to the
27 movement of goods and commodities in waterborne interstate or foreign
28 commerce; as to such persons the amount of tax with respect to such
29 business (~~shall be~~) is equal to the gross proceeds derived from such
30 activities multiplied by the rate of 0.275 percent. Persons subject to
31 taxation under this subsection (~~shall be~~) are exempt from payment of
32 taxes imposed by chapter 82.16 RCW for that portion of their business
33 subject to taxation under this subsection. Stevedoring and associated
34 activities pertinent to the conduct of goods and commodities in
35 waterborne interstate or foreign commerce are defined as all activities
36 of a labor, service or transportation nature whereby cargo may be
37 loaded or unloaded to or from vessels or barges, passing over, onto or
38 under a wharf, pier, or similar structure; cargo may be moved to a

1 warehouse or similar holding or storage yard or area to await further
2 movement in import or export or may move to a consolidation freight
3 station and be stuffed, unstuffed, containerized, separated or
4 otherwise segregated or aggregated for delivery or loaded on any mode
5 of transportation for delivery to its consignee. Specific activities
6 included in this definition are: Wharfage, handling, loading,
7 unloading, moving of cargo to a convenient place of delivery to the
8 consignee or a convenient place for further movement to export mode;
9 documentation services in connection with the receipt, delivery,
10 checking, care, custody and control of cargo required in the transfer
11 of cargo; imported automobile handling prior to delivery to consignee;
12 terminal stevedoring and incidental vessel services, including but not
13 limited to plugging and unplugging refrigerator service to containers,
14 trailers, and other refrigerated cargo receptacles, and securing ship
15 hatch covers.

16 ~~((+8))~~ (7)(a) Upon every person engaging within this state in the
17 business of disposing of low-level waste, as defined in RCW 43.145.010;
18 as to such persons the amount of the tax with respect to such business
19 ~~((shall be))~~ is equal to the gross income of the business, excluding
20 any fees imposed under chapter 43.200 RCW, multiplied by the rate of
21 3.3 percent.

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

26 ~~((+9))~~ (8) Upon every person engaging within this state as an
27 insurance producer or title insurance agent licensed under chapter
28 48.17 RCW or a surplus line broker licensed under chapter 48.15 RCW; as
29 to such persons, the amount of the tax with respect to such licensed
30 activities ~~((shall be))~~ is equal to the gross income of such business
31 multiplied by the rate of 0.484 percent.

32 ~~((+10))~~ (9) Upon every person engaging within this state in
33 business as a hospital, as defined in chapter 70.41 RCW, that is
34 operated as a nonprofit corporation or by the state or any of its
35 political subdivisions, as to such persons, the amount of tax with
36 respect to such activities ~~((shall be))~~ is equal to the gross income of
37 the business multiplied by the rate of 0.75 percent through June 30,
38 1995, and 1.5 percent thereafter.

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

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

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

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

26 (c) For the purposes of this subsection (~~(11)~~) (10), "commercial
27 airplane" and "component" have the same meanings as provided in RCW
28 82.32.550.

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

32 (e) This subsection (~~(11)~~) (10) does not apply on and after July
33 1, 2024.

34 (~~(12)~~) (11)(a) Until July 1, 2024, upon every person engaging
35 within this state in the business of extracting timber or extracting
36 for hire timber; as to such persons the amount of tax with respect to
37 the business (~~shall~~), in the case of extractors, (~~be~~) is equal to
38 the value of products, including by-products, extracted, or in the case

1 of extractors for hire, (~~be~~) is equal to the gross income of the
2 business, multiplied by the rate of 0.4235 percent from July 1, 2006,
3 through June 30, 2007, and 0.2904 percent from July 1, 2007, through
4 June 30, 2024.

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

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

25 (d) Until July 1, 2024, upon every person engaging within this
26 state in the business of selling standing timber; as to such persons
27 the amount of the tax with respect to the business (~~shall-be~~) is
28 equal to the gross income of the business multiplied by the rate of
29 0.2904 percent. For purposes of this subsection (~~(+12)~~) (11)(d),
30 "selling standing timber" means the sale of timber apart from the land,
31 where the buyer is required to sever the timber within thirty months
32 from the date of the original contract, regardless of the method of
33 payment for the timber and whether title to the timber transfers
34 before, upon, or after severance.

35 (e) For purposes of this subsection, the following definitions
36 apply:

37 (i) "Biocomposite surface products" means surface material products

1 containing, by weight or volume, more than fifty percent recycled paper
2 and that also use nonpetroleum-based phenolic resin as a bonding agent.

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

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

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

25 (v) "Timber products" means:

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

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

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

33 (vi) "Wood products" means paper and paper products; dimensional
34 lumber; engineered wood products such as particleboard, oriented strand
35 board, medium density fiberboard, and plywood; wood doors; wood
36 windows; and biocomposite surface products.

37 (~~((+13+))~~) (12) Upon every person engaging within this state in
38 inspecting, testing, labeling, and storing canned salmon owned by

1 another person, as to such persons, the amount of tax with respect to
2 such activities (~~(shall be)~~) is equal to the gross income derived from
3 such activities multiplied by the rate of 0.484 percent.

4 ~~((14))~~ (13) Upon every person engaging within this state in the
5 business of printing a newspaper, publishing a newspaper, or both, the
6 amount of tax on such business is equal to the gross income of the
7 business multiplied by the rate of 0.2904 percent.

8 **Sec. 606.** RCW 82.04.260 and 2010 c . . . (SHB 3066) s 107 are each
9 amended to read as follows:

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

12 (a) Wheat into flour, barley into pearl barley, soybeans into
13 soybean oil, canola into canola oil, canola meal, or canola by-
14 products, or sunflower seeds into sunflower oil; as to such persons the
15 amount of tax with respect to such business is equal to the value of
16 the flour, pearl barley, oil, canola meal, or canola by-product
17 manufactured, multiplied by the rate of 0.138 percent;

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

30 (c) Beginning July 1, 2012, dairy products that as of September 20,
31 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135,
32 including by-products from the manufacturing of the dairy products such
33 as whey and casein; or selling the same to purchasers who transport in
34 the ordinary course of business the goods out of state; as to such
35 persons the tax imposed is equal to the value of the products
36 manufactured or the gross proceeds derived from such sales multiplied
37 by the rate of 0.138 percent. Sellers must keep and preserve records

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

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

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

19 (A) Products comprised exclusively of fruits, vegetables, or both;
20 or

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

27 (iii) "Fruit and vegetable products" includes only products that
28 are intended for human consumption as food or animal consumption as
29 feed;

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

35 (f) Wood biomass fuel as defined in RCW 82.29A.135; as to such
36 persons the amount of tax with respect to the business is equal to the
37 value of wood biomass fuel manufactured, multiplied by the rate of
38 0.138 percent.

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

5 (3) Upon every nonprofit corporation and nonprofit association
6 engaging within this state in research and development, as to such
7 corporations and associations, the amount of tax with respect to such
8 activities is equal to the gross income derived from such activities
9 multiplied by the rate of 0.484 percent.

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

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

20 ~~((6))~~ (5) Upon every person engaging within this state in
21 business as an international steamship agent, international customs
22 house broker, international freight forwarder, vessel and/or cargo
23 charter broker in foreign commerce, and/or international air cargo
24 agent; as to such persons the amount of the tax with respect to only
25 international activities is equal to the gross income derived from such
26 activities multiplied by the rate of 0.275 percent.

27 ~~((7))~~ (6) Upon every person engaging within this state in the
28 business of stevedoring and associated activities pertinent to the
29 movement of goods and commodities in waterborne interstate or foreign
30 commerce; as to such persons the amount of tax with respect to such
31 business is equal to the gross proceeds derived from such activities
32 multiplied by the rate of 0.275 percent. Persons subject to taxation
33 under this subsection are exempt from payment of taxes imposed by
34 chapter 82.16 RCW for that portion of their business subject to
35 taxation under this subsection. Stevedoring and associated activities
36 pertinent to the conduct of goods and commodities in waterborne
37 interstate or foreign commerce are defined as all activities of a
38 labor, service or transportation nature whereby cargo may be loaded or

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

18 ~~((+8))~~ (7)(a) Upon every person engaging within this state in the
19 business of disposing of low-level waste, as defined in RCW 43.145.010;
20 as to such persons the amount of the tax with respect to such business
21 is equal to the gross income of the business, excluding any fees
22 imposed under chapter 43.200 RCW, multiplied by the rate of 3.3
23 percent.

24 (b) If the gross income of the taxpayer is attributable to
25 activities both within and without this state, the gross income
26 attributable to this state must be determined in accordance with the
27 methods of apportionment required under RCW 82.04.460.

28 ~~((+9))~~ (8) Upon every person engaging within this state as an
29 insurance producer or title insurance agent licensed under chapter
30 48.17 RCW or a surplus line broker licensed under chapter 48.15 RCW; as
31 to such persons, the amount of the tax with respect to such licensed
32 activities is equal to the gross income of such business multiplied by
33 the rate of 0.484 percent.

34 ~~((+10))~~ (9) Upon every person engaging within this state in
35 business as a hospital, as defined in chapter 70.41 RCW, that is
36 operated as a nonprofit corporation or by the state or any of its
37 political subdivisions, as to such persons, the amount of tax with

1 respect to such activities is equal to the gross income of the business
2 multiplied by the rate of 0.75 percent through June 30, 1995, and 1.5
3 percent thereafter.

4 ~~((11))~~ (10)(a) Beginning October 1, 2005, upon every person
5 engaging within this state in the business of manufacturing commercial
6 airplanes, or components of such airplanes, or making sales, at retail
7 or wholesale, of commercial airplanes or components of such airplanes,
8 manufactured by the seller, as to such persons the amount of tax with
9 respect to such business is, in the case of manufacturers, equal to the
10 value of the product manufactured and the gross proceeds of sales of
11 the product manufactured, or in the case of processors for hire, equal
12 to the gross income of the business, multiplied by the rate of:

- 13 (i) 0.4235 percent from October 1, 2005, through June 30, 2007; and
- 14 (ii) 0.2904 percent beginning July 1, 2007.

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

26 (c) For the purposes of this subsection ~~((11))~~ (10), "commercial
27 airplane" and "component" have the same meanings as provided in RCW
28 82.32.550.

29 (d) In addition to all other requirements under this title, a
30 person reporting under the tax rate provided in this subsection
31 ~~((11))~~ (10) must file a complete annual report with the department
32 under RCW 82.32.--- (section 103, chapter . . . (SHB 3066), Laws of
33 2010).

34 (e) This subsection ~~((11))~~ (10) does not apply on and after July
35 1, 2024.

36 ~~((12))~~ (11)(a) Until July 1, 2024, upon every person engaging
37 within this state in the business of extracting timber or extracting
38 for hire timber; as to such persons the amount of tax with respect to

1 the business is, in the case of extractors, equal to the value of
2 products, including by-products, extracted, or in the case of
3 extractors for hire, equal to the gross income of the business,
4 multiplied by the rate of 0.4235 percent from July 1, 2006, through
5 June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30,
6 2024.

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

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

27 (d) Until July 1, 2024, upon every person engaging within this
28 state in the business of selling standing timber; as to such persons
29 the amount of the tax with respect to the business is equal to the
30 gross income of the business multiplied by the rate of 0.2904 percent.
31 For purposes of this subsection (~~((+12))~~) (11)(d), "selling standing
32 timber" means the sale of timber apart from the land, where the buyer
33 is required to sever the timber within thirty months from the date of
34 the original contract, regardless of the method of payment for the
35 timber and whether title to the timber transfers before, upon, or after
36 severance.

37 (e) For purposes of this subsection, the following definitions
38 apply:

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

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

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

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

26 (v) "Timber products" means:

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

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

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

34 (vi) "Wood products" means paper and paper products; dimensional
35 lumber; engineered wood products such as particleboard, oriented strand
36 board, medium density fiberboard, and plywood; wood doors; wood
37 windows; and biocomposite surface products.

1 (f) Except for small harvesters as defined in RCW 84.33.035, a
2 person reporting under the tax rate provided in this subsection
3 (~~((12))~~) (11) must file a complete annual survey with the department
4 under RCW 82.32.--- (section 102, chapter . . . (SHB 3066), Laws of
5 2010).

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

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

15 (b) A person reporting under the tax rate provided in this
16 subsection (~~((14))~~) (13) must file a complete annual report with the
17 department under RCW 82.32.--- (section 103, chapter . . . (SHB 3066),
18 Laws of 2010).

19 **Sec. 607.** RCW 82.04.250 and 2008 c 81 s 5 are each amended to read
20 as follows:

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

26 (2) Upon every person engaging within this state in the business of
27 making sales at retail that are exempt from the tax imposed under
28 chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or
29 82.08.0263, except persons taxable under RCW 82.04.260(~~((11))~~) (10) or
30 subsection (3) of this section, as to such persons, the amount of tax
31 with respect to such business (~~((shall be))~~) is equal to the gross
32 proceeds of sales of the business, multiplied by the rate of 0.484
33 percent.

34 (3) Upon every person classified by the federal aviation
35 administration as a federal aviation regulation part 145 certificated
36 repair station and that is engaging within this state in the business
37 of making sales at retail that are exempt from the tax imposed under

1 chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or
2 82.08.0263, as to such persons, the amount of tax with respect to such
3 business (~~shall be~~) is equal to the gross proceeds of sales of the
4 business, multiplied by the rate of .2904 percent.

5 **Sec. 608.** RCW 82.04.250 and 2007 c 54 s 5 are each amended to read
6 as follows:

7 (1) Upon every person engaging within this state in the business of
8 making sales at retail, except persons taxable as retailers under other
9 provisions of this chapter, 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 0.471 percent.

12 (2) Upon every person engaging within this state in the business of
13 making sales at retail that are exempt from the tax imposed under
14 chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or
15 82.08.0263, except persons taxable under RCW 82.04.260(~~(+11)~~) (10), as
16 to such persons, the amount of tax with respect to such business
17 (~~shall be~~) is equal to the gross proceeds of sales of the business,
18 multiplied by the rate of 0.484 percent.

19 **Sec. 609.** RCW 82.04.261 and 2007 c 54 s 7 and 2007 c 48 s 4 are
20 each reenacted and amended to read as follows:

21 (1) In addition to the taxes imposed under RCW 82.04.260(~~(+12)~~)
22 (11), a surcharge is imposed on those persons who are subject to any of
23 the taxes imposed under RCW 82.04.260(~~(+12)~~) (11). Except as
24 otherwise provided in this section, the surcharge is equal to 0.052
25 percent. The surcharge is added to the rates provided in RCW
26 82.04.260(~~(+12)~~) (11) (a), (b), (c), and (d). The surcharge and this
27 section expire July 1, 2024.

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

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

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

35 (ii) The office of financial management certifies to the department
36 that the federal government has appropriated at least two million

1 dollars for participation in forest and fish report-related activities
2 by federally recognized Indian tribes located within the geographical
3 boundaries of the state of Washington for any federal fiscal year.

4 (b)(i) The suspension of the surcharge under (a)(i) of this
5 subsection (3) (~~shall~~) takes effect on the first day of the calendar
6 month that is at least thirty days after the end of the month during
7 which the department determines that receipts from the surcharge total
8 at least eight million dollars during the fiscal biennium. The
9 surcharge (~~shall-be~~) is imposed again at the beginning of the
10 following fiscal biennium.

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

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

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

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

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

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

13 (f) The department (~~shall~~) must provide timely notice to affected
14 taxpayers of the suspension of the surcharge or an adjustment of the
15 surcharge.

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

20 **Sec. 610.** RCW 82.04.298 and 2008 c 49 s 1 are each amended to read
21 as follows:

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

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

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

3 (a) "Grocery distribution cooperative" means an entity that sells
4 groceries and related items to customer-owners of the grocery
5 distribution cooperative and has customer-owners, in the aggregate, who
6 own a majority of the outstanding ownership interests of the grocery
7 distribution cooperative or of the entity controlling the grocery
8 distribution cooperative. "Grocery distribution cooperative" includes
9 an entity that controls a grocery distribution cooperative.

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

11 (i) A grocery distribution cooperative that has been determined by
12 a court of record of the state of Washington to be not engaged in
13 wholesaling or making sales at wholesale, within the meaning of RCW
14 82.04.270 or any similar provision of a municipal ordinance that
15 imposes a tax on gross receipts, gross proceeds of sales, or gross
16 income, with respect to purchases made by customer-owners, and
17 subsequently changes its form of doing business to make sales at
18 wholesale of groceries or related items to its customer-owners; or

19 (ii) A grocery distribution cooperative that has acquired
20 substantially all of the assets of a grocery distribution cooperative
21 described in (b)(i) of this subsection.

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

25 (d) "Controlling" means holding fifty percent or more of the voting
26 interests of an entity and having at least equal power to direct or
27 cause the direction of the management and policies of the entity,
28 whether through the ownership of voting securities, by contract, or
29 otherwise.

30 **Sec. 611.** RCW 82.04.334 and 2007 c 48 s 3 are each amended to read
31 as follows:

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

35 **Sec. 612.** RCW 82.04.440 and 2006 c 300 s 8 and 2006 c 84 s 6 are
36 each reenacted and amended to read as follows:

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

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

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

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

- 1 (5) For the purpose of this section:
- 2 (a) "Gross receipts tax" means a tax:
- 3 (i) Which is imposed on or measured by the gross volume of
- 4 business, in terms of gross receipts or in other terms, and in the
- 5 determination of which the deductions allowed would not constitute the
- 6 tax an income tax or value added tax; and
- 7 (ii) Which is also not, pursuant to law or custom, separately
- 8 stated from the sales price.
- 9 (b) "State" means (i) the state of Washington, (ii) a state of the
- 10 United States other than Washington, or any political subdivision of
- 11 such other state, (iii) the District of Columbia, and (iv) any foreign
- 12 country or political subdivision thereof.
- 13 (c) "Manufacturing tax" means a gross receipts tax imposed on the
- 14 act or privilege of engaging in business as a manufacturer, and
- 15 includes (i) the taxes imposed in RCW 82.04.240, 82.04.2404,
- 16 82.04.2909(1), 82.04.260 (1), (2), (~~((4))~~) (10), and (11), (~~and~~
- 17 ~~(12)~~) section 602(1) of this act, and 82.04.294(1); (ii) the tax
- 18 imposed under RCW 82.04.261 on persons who are engaged in business as
- 19 a manufacturer; and (iii) similar gross receipts taxes paid to other
- 20 states.
- 21 (d) "Extracting tax" means a gross receipts tax imposed on the act
- 22 or privilege of engaging in business as an extractor, and includes (i)
- 23 the tax imposed on extractors in RCW 82.04.230 and 82.04.260(~~((12))~~)
- 24 (11); (ii) the tax imposed under RCW 82.04.261 on persons who are
- 25 engaged in business as an extractor; and (iii) similar gross receipts
- 26 taxes paid to other states.
- 27 (e) "Business", "manufacturer", "extractor", and other terms used
- 28 in this section have the meanings given in RCW 82.04.020 through
- 29 82.04.212, notwithstanding the use of those terms in the context of
- 30 describing taxes imposed by other states.

31 **Sec. 613.** RCW 82.04.4463 and 2008 c 81 s 8 are each amended to

32 read as follows:

33 (1) In computing the tax imposed under this chapter, a credit is

34 allowed for property taxes and leasehold excise taxes paid during the

35 calendar year.

36 (2) The credit is equal to:

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

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

9 (C) Property taxes or leasehold excise taxes paid on, or with
10 respect to, buildings constructed after June 30, 2008, the land upon
11 which the buildings are located, or both, and used exclusively for
12 aerospace product development or in providing aerospace services, by
13 persons not within the scope of (a)(i)(A) and (B) of this subsection
14 (2) and are: (I) Engaged in manufacturing tooling specifically
15 designed for use in manufacturing commercial airplanes or their
16 components; or (II) taxable under RCW 82.04.290(3) or 82.04.250(3); or

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

27 (b) An amount equal to:

28 (i)(A) Property taxes paid, by persons taxable under RCW
29 82.04.260(~~(+11)~~) (10)(a), on machinery and equipment exempt under RCW
30 82.08.02565 or 82.12.02565 and acquired after December 1, 2003;

31 (B) Property taxes paid, by persons taxable under RCW
32 82.04.260(~~(+11)~~) (10)(b), on machinery and equipment exempt under RCW
33 82.08.02565 or 82.12.02565 and acquired after June 30, 2008; or

34 (C) Property taxes paid, by persons taxable under RCW
35 (~~(82.04.0250(3) - [82.04.250(3)]~~) 82.04.250(3) or 82.04.290(3), on
36 computer hardware, computer peripherals, and software exempt under RCW
37 82.08.975 or 82.12.975 and acquired after June 30, 2008.

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

4 ~~((I))~~ (A) The numerator of the fraction is the total taxable
5 amount subject to the tax imposed under RCW 82.04.260~~((11))~~ (10) (a)
6 or (b) on the applicable business activities of manufacturing
7 commercial airplanes, components of such airplanes, or tooling
8 specifically designed for use in the manufacturing of commercial
9 airplanes or components of such airplanes.

10 ~~((II))~~ (B) The denominator of the fraction is the total taxable
11 amount subject to the tax imposed under all manufacturing
12 classifications in chapter 82.04 RCW.

13 ~~((III))~~ (C) For purposes of both the numerator and denominator of
14 the fraction, the total taxable amount refers to the total taxable
15 amount required to be reported on the person's returns for the calendar
16 year before the calendar year in which the credit under this section is
17 earned. The department may provide for an alternative method for
18 calculating the numerator in cases where the tax rate provided in RCW
19 82.04.260~~((11))~~ (10) for manufacturing was not in effect during the
20 full calendar year before the calendar year in which the credit under
21 this section is earned.

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

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

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

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

33 (b) "Aerospace services" has the same meaning given in RCW
34 82.08.975.

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

37 (4) A credit earned during one calendar year may be carried over to

1 be credited against taxes incurred in a subsequent calendar year, but
2 may not be carried over a second year. No refunds may be granted for
3 credits under this section.

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

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

8 **Sec. 614.** RCW 82.04.4463 and 2010 c . . . (SHB 3066) s 116 are
9 each amended to read as follows:

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

13 (2) The credit is equal to:

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

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

22 (C) Property taxes or leasehold excise taxes paid on, or with
23 respect to, buildings constructed after June 30, 2008, the land upon
24 which the buildings are located, or both, and used exclusively for
25 aerospace product development, manufacturing tooling specifically
26 designed for use in manufacturing commercial airplanes or their
27 components, or in providing aerospace services, by persons not within
28 the scope of (a)(i)(A) and (B) of this subsection (2) and are taxable
29 under RCW 82.04.290(3), 82.04.260(~~(+11)~~) (10)(b), or 82.04.250(3); or

30 (ii) Property taxes attributable to an increase in assessed value
31 due to the renovation or expansion, after: (A) December 1, 2003, of a
32 building used exclusively in manufacturing commercial airplanes or
33 components of such airplanes; and (B) June 30, 2008, of buildings used
34 exclusively for aerospace product development, manufacturing tooling
35 specifically designed for use in manufacturing commercial airplanes or
36 their components, or in providing aerospace services, by persons not

1 within the scope of (a)(ii)(A) of this subsection (2) and are taxable
2 under RCW 82.04.290(3), 82.04.260(~~((+11))~~) (10)(b), or 82.04.250(3); and
3 (b) An amount equal to:
4 (i)(A) Property taxes paid, by persons taxable under RCW
5 82.04.260(~~((+11))~~) (10)(a), on machinery and equipment exempt under RCW
6 82.08.02565 or 82.12.02565 and acquired after December 1, 2003;
7 (B) Property taxes paid, by persons taxable under RCW
8 82.04.260(~~((+11))~~) (10)(b), on machinery and equipment exempt under RCW
9 82.08.02565 or 82.12.02565 and acquired after June 30, 2008; or
10 (C) Property taxes paid, by persons taxable under RCW 82.04.250(3)
11 or 82.04.290(3), on computer hardware, computer peripherals, and
12 software exempt under RCW 82.08.975 or 82.12.975 and acquired after
13 June 30, 2008.
14 (ii) For purposes of determining the amount eligible for credit
15 under (i)(A) and (B) of this subsection (2)(b), the amount of property
16 taxes paid is multiplied by a fraction.
17 (A) The numerator of the fraction is the total taxable amount
18 subject to the tax imposed under RCW 82.04.260(~~((+11))~~) (10) (a) or (b)
19 on the applicable business activities of manufacturing commercial
20 airplanes, components of such airplanes, or tooling specifically
21 designed for use in the manufacturing of commercial airplanes or
22 components of such airplanes.
23 (B) The denominator of the fraction is the total taxable amount
24 subject to the tax imposed under all manufacturing classifications in
25 chapter 82.04 RCW.
26 (C) For purposes of both the numerator and denominator of the
27 fraction, the total taxable amount refers to the total taxable amount
28 required to be reported on the person's returns for the calendar year
29 before the calendar year in which the credit under this section is
30 earned. The department may provide for an alternative method for
31 calculating the numerator in cases where the tax rate provided in RCW
32 82.04.260(~~((+11))~~) (10) for manufacturing was not in effect during the
33 full calendar year before the calendar year in which the credit under
34 this section is earned.
35 (D) No credit is available under (b)(i)(A) or (B) of this
36 subsection (2) if either the numerator or the denominator of the
37 fraction is zero. If the fraction is greater than or equal to nine-
38 tenths, then the fraction is rounded to one.

1 (E) As used in (b)(ii)(C) of this subsection (2)(~~(b)(ii)~~),
2 "returns" means the tax returns for which the tax imposed under this
3 chapter is reported to the department.

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

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

8 (b) "Aerospace services" has the same meaning given in RCW
9 82.08.975.

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

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

16 (5) In addition to all other requirements under this title, a
17 person claiming the credit under this section must file a complete
18 annual report with the department under RCW 82.32.--- (section 103,
19 chapter . . . (SHB 3066), Laws of 2010).

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

21 **Sec. 615.** RCW 82.08.806 and 2009 c 461 s 5 are each amended to
22 read as follows:

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

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

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

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

4 (b) "Computer equipment" means a computer and the associated
5 physical components that constitute a computer system, including
6 monitors, keyboards, printers, modems, scanners, pointing devices, and
7 other computer peripheral equipment, cables, servers, and routers.
8 "Computer equipment" also includes digital cameras and computer
9 software.

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

11 (d) "Primarily" means greater than fifty percent as measured by
12 time.

13 (e) "Printer or publisher" means a person, as defined in RCW
14 82.04.030, who is subject to tax under RCW 82.04.260(~~((+14))~~) (13) or
15 82.04.280(1).

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

24 **Sec. 616.** RCW 82.32.550 and 2008 c 81 s 12 are each amended to
25 read as follows:

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

34 (b) ~~Chapter 1, Laws of 2003 2nd sp. sess. is contingent upon the~~
35 ~~siting of a significant commercial airplane final assembly facility in~~
36 ~~the state of Washington. If a memorandum of agreement under subsection~~

1 ~~(1) of this section is not signed by June 30, 2005, chapter 1, Laws of~~
2 ~~2003 2nd sp. sess. is null and void.~~

3 ~~(c)(i) The rate in RCW 82.04.260(11)(a)(ii) takes effect July 1,~~
4 ~~2007.~~

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

9 ~~(2) The definitions in this subsection apply throughout this~~
10 ~~section.~~

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

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

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

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

25 ~~(e) "Siting" means a final decision by a manufacturer to locate a~~
26 ~~significant commercial airplane final assembly facility in Washington~~
27 ~~state.~~

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

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

35 A sale of standing timber is exempt from tax under this chapter if
36 the gross income from such sale is taxable under RCW 82.04.260(~~(12))~~
37 (11)(d).

1 (a) Qualifying livestock nutrient management equipment;

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

5 (c)(i) Labor and services rendered in respect to repairing,
6 cleaning, altering, or improving of qualifying livestock nutrient
7 management facilities, or to tangible personal property that becomes an
8 ingredient or component of qualifying livestock nutrient management
9 facilities in the course of repairing, cleaning, altering, or improving
10 of such facilities.

11 (ii) The exemption provided in this subsection (1)(c) does not
12 apply to the sale of or charge made for: (A) Labor and services
13 rendered in respect to the constructing of new, or replacing previously
14 existing, qualifying livestock nutrient management facilities; or (B)
15 tangible personal property that becomes an ingredient or component of
16 qualifying livestock nutrient management facilities during the course
17 of constructing new, or replacing previously existing, qualifying
18 livestock nutrient management facilities.

19 (2) The exemption provided in subsection (1) of this section
20 applies to sales made after the livestock nutrient management plan is:
21 (a) Certified under chapter 90.64 RCW; (b) approved as part of the
22 permit issued under chapter 90.48 RCW; or (c) approved as required
23 under subsection (4)(c)(iii) of this section.

24 (3)(a) The department of revenue must provide an exemption
25 certificate to an eligible person upon application by that person. The
26 department of agriculture must provide a list of eligible persons, as
27 defined in subsection (4)(c)(i) and (ii) of this section, to the
28 department of revenue. Conservation districts must maintain lists of
29 eligible persons as defined in subsection (4)(c)(iii) of this section
30 to allow the department of revenue to verify eligibility. The
31 application must be in a form and manner prescribed by the department
32 and must contain information regarding the location of the dairy or
33 animal feeding operation and other information the department may
34 require.

35 (b) A person claiming an exemption under this section must keep
36 records necessary for the department to verify eligibility under this
37 section. The exemption is available only when the buyer provides the

1 seller with an exemption certificate in a form and manner prescribed by
2 the department. The seller must retain a copy of the certificate for
3 the seller's files.

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

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

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

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

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

17 (c) "Eligible person" means a person: (i) Licensed to produce milk
18 under chapter 15.36 RCW who has a certified dairy nutrient management
19 plan, as required by chapter 90.64 RCW; (ii) who owns an animal feeding
20 operation and has a permit issued under chapter 90.48 RCW; or (iii) who
21 owns an animal feeding operation and has a nutrient management plan
22 approved by a conservation district as meeting natural resource
23 conservation service field office technical guide standards and who
24 possesses an exemption certificate under RCW 82.08.855.

25 (d) "Handling and treatment of livestock manure" means the
26 activities of collecting, storing, moving, or transporting livestock
27 manure, separating livestock manure solids from liquids, or applying
28 livestock manure to the agricultural lands of an eligible person other
29 than through the use of pivot or linear type traveling irrigation
30 systems.

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

33 (f) "Qualifying livestock nutrient management equipment" means the
34 following tangible personal property for exclusive use in the handling
35 and treatment of livestock manure, including repair and replacement
36 parts for such equipment: (i) Aerators; (ii) agitators; (iii) augers;
37 (iv) conveyers; (v) gutter cleaners; (vi) hard-hose reel traveler
38 irrigation systems; (vii) lagoon and pond liners and floating covers;

1 (viii) loaders; (ix) manure composting devices; (x) manure spreaders;
2 (xi) manure tank wagons; (xii) manure vacuum tanks; (xiii) poultry
3 house cleaners; (xiv) poultry house flame sterilizers; (xv) poultry
4 house washers; (xvi) poultry litter saver machines; (xvii) pipes;
5 (xviii) pumps; (xix) scrapers; (xx) separators; (xxi) slurry injectors
6 and hoses; and (xxii) wheelbarrows, shovels, and pitchforks.

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

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

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

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

19 (a) Qualifying livestock nutrient management equipment;

20 (b) Labor and services rendered in respect to installing,
21 repairing, cleaning, altering, or improving qualifying livestock
22 nutrient management equipment; and

23 (c)(i) Tangible personal property that becomes an ingredient or
24 component of qualifying livestock nutrient management facilities in the
25 course of repairing, cleaning, altering, or improving of such
26 facilities.

27 (ii) The exemption provided in this subsection (1)(c) does not
28 apply to the use of tangible personal property that becomes an
29 ingredient or component of qualifying livestock nutrient management
30 facilities during the course of constructing new, or replacing
31 previously existing, qualifying livestock nutrient management
32 facilities.

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

36 (b) The exemption applies to the use of tangible personal property
37 and labor and services made after the livestock nutrient management

1 plan is: (i) Certified under chapter 90.64 RCW; (ii) approved as part
2 of the permit issued under chapter 90.48 RCW; or (iii) approved as
3 required under RCW 82.08.890(4)(c)(iii).

4 (3) The exemption certificate and recordkeeping requirements of RCW
5 82.08.890 apply to this section. The definitions in RCW 82.08.890
6 apply to this section.

7 (4) The exemption under this section does not apply to the use of
8 tangible personal property and services if first use of the property or
9 services occurs in this state from April 1, 2010, through June 30,
10 2013.

11 PART VIII

12 **Ending the Preferential Business and Occupation Tax Treatment Received** 13 **by Directors of Corporations**

14 NEW SECTION. **Sec. 801.** (1) In adopting the state's business and
15 occupation tax, the legislature intended to tax virtually all business
16 activities carried on within the state. See *Simpson Inv. Co. v. Dep't*
17 *of Revenue*, 141 Wn.2d 139, 149 (2000). The legislature recognizes that
18 the business and occupation tax applies to all activities engaged in
19 with the object of gain, benefit, or advantage to the taxpayer or to
20 another person or class, directly or indirectly, unless a specific
21 exemption applies.

22 (2) One of the major business and occupation tax exemptions is
23 provided in RCW 82.04.360 for income earned as an employee or servant
24 as distinguished from income earned as an independent contractor. The
25 legislature's intent in providing this exemption was to exempt employee
26 wages from the business and occupation tax but not to exempt income
27 earned as an independent contractor.

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

34 (4) The legislature also finds that there is a widespread
35 misunderstanding among corporate directors that the business and
36 occupation tax does not apply to the compensation they receive for

1 serving as a director of a corporation. It is the legislature's
2 expectation that the department of revenue will take appropriate
3 measures to ensure that corporate directors understand and comply with
4 their business and occupation tax obligations with respect to their
5 director compensation. However, because of the widespread
6 misunderstanding by corporate directors of their liability for business
7 and occupation tax on director compensation, the legislature finds that
8 it is appropriate in this unique situation to provide limited relief
9 against the retroactive assessment of business and occupation taxes on
10 corporate director compensation.

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

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

17 (1) This chapter (~~shall~~) does not apply to any person in respect
18 to his or her employment in the capacity of an employee or servant as
19 distinguished from that of an independent contractor. For the purposes
20 of this section, the definition of employee (~~shall~~) includes those
21 persons that are defined in section 3121(d)(3)(B) of the federal
22 internal revenue code of 1986, as amended through January 1, 1991.

23 (2) (~~(A booth renter, as defined by RCW 18.16.020, is an~~
24 ~~independent contractor for purposes of this chapter.)~~) Until April 1,
25 2010, this chapter does not apply to amounts received by an individual
26 from a corporation as compensation for serving as a member of that
27 corporation's board of directors. Beginning April 1, 2010, such
28 amounts are taxable under RCW 82.04.290(2).

29 **Sec. 803.** RCW 82.04.360 and 2010 c . . . (E2SHB 1597) s 207 are
30 each amended to read as follows:

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

1 (b) Except as otherwise provided in this subsection, aircraft with
2 a date of manufacture after December 31, 1970:

<u>Type of aircraft</u>	<u>Tax</u>
<u>Single engine fixed wing</u>	<u>\$ 338</u>
<u>Small multi-engine fixed wing</u>	<u>439</u>
<u>Large multi-engine fixed wing</u>	<u>540</u>
<u>Turboprop multi-engine fixed wing</u>	<u>6,750</u>
<u>Helicopter</u>	<u>338</u>
<u>Sailplane</u>	<u>135</u>
<u>Lighter than air</u>	<u>135</u>
<u>Home built</u>	<u>135</u>

12 (c) Turbojet multi-engine fixed wing aircraft:

<u>Maximum Certificated Takeoff</u>	<u>Tax</u>
<u>Weight</u>	
<u>Up to 19,999 pounds</u>	<u>\$ 13,500</u>
<u>20,000 to 24,999 pounds</u>	<u>18,000</u>
<u>25,000 to 44,999 pounds</u>	<u>22,500</u>
<u>45,000 to 84,999 pounds</u>	<u>33,750</u>
<u>85,000 and over</u>	<u>45,000</u>

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

28 (3) An aircraft (~~shall be~~) is deemed registered for the first

1 time in this state when such aircraft was not previously registered by
2 this state for the year immediately preceding the year in which
3 application for registration is made.

4 (4) For the purposes of this section, "maximum certificated takeoff
5 weight" means the maximum takeoff weight authorized by the terms of the
6 aircraft airworthiness certificate.

7 **Sec. 902.** RCW 82.48.080 and 1995 c 170 s 2 are each amended to
8 read as follows:

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

15 **PART X**

16 **Tax Debts**

17 **Sec. 1001.** RCW 82.32.145 and 1995 c 318 s 2 are each amended to
18 read as follows:

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

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

34 ~~(2) The officer, member or manager, or other person shall be liable~~
35 ~~only for taxes collected which) Whenever the department has issued a~~

1 warrant under RCW 82.32.210 for the collection of unpaid retail sales
2 tax funds collected and held in trust under RCW 82.08.050 from a
3 limited liability business entity and that business entity has been
4 terminated, dissolved, or abandoned, or is insolvent, the department
5 may pursue collection of the entity's unpaid sales taxes, including
6 penalties and interest on those taxes, against any or all of the
7 responsible individuals. For purposes of this subsection, "insolvent"
8 means the condition that results when the sum of the entity's debts
9 exceeds the fair market value of its assets. The department may
10 presume that an entity is insolvent if the entity refuses to disclose
11 to the department the nature of its assets and liabilities.

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

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

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

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

36 (b) All other responsible individuals are liable under this section
37 only for sales tax liability that became due during the period he or

1 she had the ~~((control, supervision,))~~ responsibility~~((7))~~ or duty to
2 ~~((act for the corporation described in subsection (1) of this section,~~
3 ~~plus interest and penalties on those taxes.~~

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

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

11 ~~((4))~~ (6) Any person having been issued a notice of assessment
12 under this section is entitled to the appeal procedures under RCW
13 82.32.160, 82.32.170, 82.32.180, 82.32.190, and 82.32.200.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 **PART XI**

36 **Repealing the Sales and Use Tax Exemptions**
37 **for Bottled Water**

1 NEW SECTION. **Sec. 1101.** In order to preserve funding to protect
2 Washington state's natural resources, it is the legislature's intent to
3 use revenue generated from assessing a sales tax on bottled water on
4 natural resource and environmental protection activities.

5 **Sec. 1102.** RCW 82.08.0293 and 2009 c 483 s 2 are each amended to
6 read as follows:

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

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

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

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

21 (a) "Prepared food" means:

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

23 (ii) Food sold with eating utensils provided by the seller,
24 including plates, knives, forks, spoons, glasses, cups, napkins, or
25 straws. A plate does not include a container or packaging used to
26 transport the food; or

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

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

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

36 (b) "Prepared food" does not include the following food or food

1 ingredients, if the food or food ingredients are sold without eating
2 utensils provided by the seller:

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

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

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

12 (c) "Soft drinks" means nonalcoholic beverages that contain natural
13 or artificial sweeteners. Soft drinks do not include beverages that
14 contain: Milk or milk products; soy, rice, or similar milk
15 substitutes; or greater than fifty percent of vegetable or fruit juice
16 by volume.

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

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

20 (A) A vitamin;

21 (B) A mineral;

22 (C) An herb or other botanical;

23 (D) An amino acid;

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

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

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

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

36 (e) "Bottled water" means water that is placed in a sealed
37 container or package for human consumption or other consumer uses.
38 Bottled water is calorie free and does not contain sweeteners or other

1 additives except that it may contain: (i) Antimicrobial agents; (ii)
2 fluoride; (iii) carbonation; (iv) vitamins, minerals, and electrolytes;
3 (v) oxygen; (vi) preservatives; and (vii) only those flavors, extracts,
4 or essences derived from a spice or fruit. "Bottled water" includes
5 water that is delivered to the buyer in a reusable container that is
6 not sold with the water.

7 (3) Notwithstanding anything in this section to the contrary, the
8 exemption of "food and food ingredients" provided in this section
9 (~~shall apply~~) applies to food and food ingredients that are
10 furnished, prepared, or served as meals:

11 (a) Under a state administered nutrition program for the aged as
12 provided for in the older Americans act (P.L. 95-478 Title III) and RCW
13 74.38.040(6);

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

17 (c) That are provided to residents, sixty-two years of age or
18 older, of a qualified low-income senior housing facility by the lessor
19 or operator of the facility. The sale of a meal that is billed to both
20 spouses of a marital community or both domestic partners of a domestic
21 partnership meets the age requirement in this subsection (3)(c) if at
22 least one of the spouses or domestic partners is at least sixty-two
23 years of age. For purposes of this subsection, "qualified low-income
24 senior housing facility" means a facility:

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

28 (ii) That has been partially funded under (~~Title~~) 42 U.S.C. Sec.
29 1485 (~~of the federal internal revenue code~~); and

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

33 (4)(a) Subsection (1) of this section notwithstanding, the retail
34 sale of food and food ingredients is subject to sales tax under RCW
35 82.08.020 if the food and food ingredients are sold through a vending
36 machine, and in this case the selling price for purposes of RCW
37 82.08.020 is fifty-seven percent of the gross receipts.

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

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

7 **Sec. 1103.** RCW 82.08.0293 and 2010 c . . . (E2SHB 1597) s 216 are
8 each amended to read as follows:

9 (1) The tax levied by RCW 82.08.020 does not apply to sales of food
10 and food ingredients. "Food and food ingredients" means substances,
11 whether in liquid, concentrated, solid, frozen, dried, or dehydrated
12 form, that are sold for ingestion or chewing by humans and are consumed
13 for their taste or nutritional value. "Food and food ingredients" does
14 not include:

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

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

20 (2) The exemption of "food and food ingredients" provided for in
21 subsection (1) of this section does not apply to prepared food, soft
22 drinks, bottled water, or dietary supplements. For purposes of this
23 subsection, the following definitions apply:

24 (a) "Dietary supplement" means any product, other than tobacco,
25 intended to supplement the diet that:

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

27 (A) A vitamin;

28 (B) A mineral;

29 (C) An herb or other botanical;

30 (D) An amino acid;

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

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

35 (ii) Is intended for ingestion in tablet, capsule, powder, softgel,
36 gelcap, or liquid form, or if not intended for ingestion in such form,

1 is not represented as conventional food and is not represented for use
2 as a sole item of a meal or of the diet; and

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

7 (b)(i) "Prepared food" means:

8 (A) Food sold in a heated state or heated by the seller;

9 (B) Food sold with eating utensils provided by the seller,
10 including plates, knives, forks, spoons, glasses, cups, napkins, or
11 straws. A plate does not include a container or packaging used to
12 transport the food; or

13 (C) Two or more food ingredients mixed or combined by the seller
14 for sale as a single item, except:

15 (I) Food that is only cut, repackaged, or pasteurized by the
16 seller; or

17 (II) Raw eggs, fish, meat, poultry, and foods containing these raw
18 animal foods requiring cooking by the consumer as recommended by the
19 federal food and drug administration in chapter 3, part 401.11 of The
20 Food Code, published by the food and drug administration, as amended or
21 renumbered as of January 1, 2003, so as to prevent foodborne illness.

22 (ii) "Prepared food" does not include the following food or food
23 ingredients, if the food or food ingredients are sold without eating
24 utensils provided by the seller:

25 (A) Food sold by a seller whose proper primary North American
26 industry classification system (NAICS) classification is manufacturing
27 in sector 311, except subsector 3118 (bakeries), as provided in the
28 "North American industry classification system--United States, 2002";

29 (B) Food sold in an unheated state by weight or volume as a single
30 item; or

31 (C) Bakery items. The term "bakery items" includes bread, rolls,
32 buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes,
33 tortes, pies, tarts, muffins, bars, cookies, or tortillas.

34 (c) "Soft drinks" means nonalcoholic beverages that contain natural
35 or artificial sweeteners. Soft drinks do not include beverages that
36 contain: Milk or milk products; soy, rice, or similar milk
37 substitutes; or greater than fifty percent of vegetable or fruit juice
38 by volume.

1 (d) "Bottled water" means water that is placed in a sealed
2 container or package for human consumption or other consumer uses.
3 Bottled water is calorie free and does not contain sweeteners or other
4 additives except that it may contain: (i) Antimicrobial agents; (ii)
5 fluoride; (iii) carbonation; (iv) vitamins, minerals, and electrolytes;
6 (v) oxygen; (vi) preservatives; and (vii) only those flavors, extracts,
7 or essences derived from a spice or fruit. "Bottled water" includes
8 water that is delivered to the buyer in a reusable container that is
9 not sold with the water.

10 (3) Notwithstanding anything in this section to the contrary, the
11 exemption of "food and food ingredients" provided in this section
12 applies to food and food ingredients that are furnished, prepared, or
13 served as meals:

14 (a) Under a state administered nutrition program for the aged as
15 provided for in the older Americans act (P.L. 95-478 Title III) and RCW
16 74.38.040(6);

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

20 (c) That are provided to residents, sixty-two years of age or
21 older, of a qualified low-income senior housing facility by the lessor
22 or operator of the facility. The sale of a meal that is billed to both
23 spouses of a marital community or both domestic partners of a domestic
24 partnership meets the age requirement in this subsection (3)(c) if at
25 least one of the spouses or domestic partners is at least sixty-two
26 years of age. For purposes of this subsection, "qualified low-income
27 senior housing facility" means a facility:

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

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

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

36 (4)(a) Subsection (1) of this section notwithstanding, the retail
37 sale of food and food ingredients is subject to sales tax under RCW
38 82.08.020 if the food and food ingredients are sold through a vending

1 machine. Except as provided in (b) of this subsection, the selling
2 price of food and food ingredients sold through a vending machine for
3 purposes of RCW 82.08.020 is fifty-seven percent of the gross receipts.

4 (b) For soft drinks and hot prepared food and food ingredients,
5 other than food and food ingredients which are heated after they have
6 been dispensed from the vending machine, the selling price is the total
7 gross receipts of such sales divided by the sum of one plus the sales
8 tax rate expressed as a decimal.

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

12 **Sec. 1104.** RCW 82.12.0293 and 2009 c 483 s 4 are each amended to
13 read as follows:

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

17 (2) The exemption of "food and food ingredients" provided for in
18 subsection (1) of this section (~~shall~~) does not apply to prepared
19 food, soft drinks, bottled water, or dietary supplements. "Prepared
20 food," "soft drinks," (~~and~~) "dietary supplements," and "bottled
21 water" have the same meanings as in RCW 82.08.0293.

22 (3) Notwithstanding anything in this section to the contrary, the
23 exemption of "food and food ingredients" provided in this section
24 (~~shall~~) apply to food and food ingredients which are furnished,
25 prepared, or served as meals:

26 (a) Under a state administered nutrition program for the aged as
27 provided for in the older Americans act (P.L. 95-478 Title III) and RCW
28 74.38.040(6);

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

32 (c) That are provided to residents, sixty-two years of age or
33 older, of a qualified low-income senior housing facility by the lessor
34 or operator of the facility. The sale of a meal that is billed to both
35 spouses of a marital community or both domestic partners of a domestic
36 partnership meets the age requirement in this subsection (3)(c) if at

1 least one of the spouses or domestic partners is at least sixty-two
2 years of age. For purposes of this subsection, "qualified low-income
3 senior housing facility" has the same meaning as in RCW 82.08.0293.

4 NEW SECTION. **Sec. 1105.** A new section is added to chapter 82.08
5 RCW to read as follows:

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

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

11 (a) "Bottled water" has the same meaning as provided in RCW
12 82.08.0293.

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

17 NEW SECTION. **Sec. 1106.** A new section is added to chapter 82.12
18 RCW to read as follows:

19 The provisions of this chapter do not apply in respect to the use
20 of bottled water for human use dispensed or to be dispensed to
21 patients, pursuant to a prescription for use in the cure, mitigation,
22 treatment, or prevention of disease or medical condition. The
23 definitions in section 1105 of this act apply to this section.

24 NEW SECTION. **Sec. 1107.** A new section is added to chapter 82.08
25 RCW to read as follows:

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

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

1 is a chemical used in processing, when the primary purpose of such
2 chemical is to create a chemical reaction directly through contact with
3 an ingredient of a new article being produced for sale; or

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

9 (e) Purchases for the purpose of providing the property to
10 consumers as part of competitive telephone service, as defined in RCW
11 82.04.065. The term (~~shall~~) includes every sale of tangible personal
12 property which is used or consumed or to be used or consumed in the
13 performance of any activity classified as a "sale at retail" or "retail
14 sale" even though such property is resold or utilized as provided in
15 (a), (b), (c), (d), or (e) of this subsection following such use. The
16 term also means every sale of tangible personal property to persons
17 engaged in any business which is taxable under RCW 82.04.280 (2) and
18 (7), 82.04.290, and 82.04.2908; or

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

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

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

34 (b) The constructing, repairing, decorating, or improving of new or
35 existing buildings or other structures under, upon, or above real
36 property of or for consumers, including the installing or attaching of
37 any article of tangible personal property therein or thereto, whether
38 or not such personal property becomes a part of the realty by virtue of

1 installation, and (~~shall~~) also includes the sale of services or
2 charges made for the clearing of land and the moving of earth excepting
3 the mere leveling of land used in commercial farming or agriculture;

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

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

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

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

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

37 (h) Persons taxable under (a)(~~, (b), (c), (d), (e), (f), and~~)
38 through (g) of this subsection when such sales or charges are for

1 property, labor and services which are used or consumed in whole or in
2 part by such persons in the performance of any activity defined as a
3 "sale at retail" or "retail sale" even though such property, labor and
4 services may be resold after such use or consumption. Nothing
5 contained in this subsection (~~shall~~) may be construed to modify
6 subsection (1) of this section and nothing contained in subsection (1)
7 of this section may be construed to modify this subsection.

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

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

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

17 (c) Credit bureau services;

18 (d) Automobile parking and storage garage services;

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

24 (f) Service charges associated with tickets to professional
25 sporting events; and

26 (g) The following personal services: Physical fitness services,
27 tanning salon services, tattoo parlor services, steam bath services,
28 turkish bath services, escort services, and dating services.

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

30 (i) The renting or leasing of tangible personal property to
31 consumers; and

32 (ii) Providing tangible personal property along with an operator
33 for a fixed or indeterminate period of time. A consideration of this
34 is that the operator is necessary for the tangible personal property to
35 perform as designed. For the purpose of this subsection (4)(a)(ii), an
36 operator must do more than maintain, inspect, or set up the tangible
37 personal property.

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

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

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

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

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

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

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

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

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

34 (8) The term also includes the sale of or charge made for an
35 extended warranty to a consumer. For purposes of this subsection,
36 "extended warranty" means an agreement for a specified duration to
37 perform the replacement or repair of tangible personal property at no
38 additional charge or a reduced charge for tangible personal property,

1 labor, or both, or to provide indemnification for the replacement or
2 repair of tangible personal property, based on the occurrence of
3 specified events. The term "extended warranty" does not include an
4 agreement, otherwise meeting the definition of extended warranty in
5 this subsection, if no separate charge is made for the agreement and
6 the value of the agreement is included in the sales price of the
7 tangible personal property covered by the agreement. For purposes of
8 this subsection, "sales price" has the same meaning as in RCW
9 82.08.010.

10 ~~((+8))~~ (9)(a) The term also includes the following sales to
11 consumers of digital goods, digital codes, and digital automated
12 services:

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

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

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

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

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

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

32 ~~((+9))~~ (10) The term does not include the sale of or charge made
33 for labor and services rendered in respect to the building, repairing,
34 or improving of any street, place, road, highway, easement, right-of-
35 way, mass public transportation terminal or parking facility, bridge,
36 tunnel, or trestle which is owned by a municipal corporation or
37 political subdivision of the state or by the United States and which is

1 used or to be used primarily for foot or vehicular traffic including
2 mass transportation vehicles of any kind.

3 ~~((+10+))~~ (11) The term also does not include sales of chemical
4 sprays or washes to persons for the purpose of postharvest treatment of
5 fruit for the prevention of scald, fungus, mold, or decay, nor does it
6 include sales of feed, seed, seedlings, fertilizer, agents for enhanced
7 pollination including insects such as bees, and spray materials to:
8 (a) Persons who participate in the federal conservation reserve
9 program, the environmental quality incentives program, the wetlands
10 reserve program, and the wildlife habitat incentives program, or their
11 successors administered by the United States department of agriculture;
12 (b) farmers for the purpose of producing for sale any agricultural
13 product; and (c) farmers acting under cooperative habitat development
14 or access contracts with an organization exempt from federal income tax
15 under ~~((Title))~~ 26 U.S.C. Sec. 501(c)(3) of the federal internal
16 revenue code or the Washington state department of fish and wildlife to
17 produce or improve wildlife habitat on land that the farmer owns or
18 leases.

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

35 ~~((+12+))~~ (13) The term does not include the sale of or charge made
36 for labor, services, or tangible personal property pursuant to
37 agreements providing maintenance services for bus, rail, or rail fixed

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

4 **Sec. 1203.** RCW 82.04.050 and 2010 c . . . (SHB 2758) s 14 are each
5 amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (a) Amusement and recreation services including but not limited to

1 golf, pool, billiards, skating, bowling, ski lifts and tows, day trips
2 for sightseeing purposes, and others, when provided to consumers;
3 (b) Abstract, title insurance, and escrow services;
4 (c) Credit bureau services;
5 (d) Automobile parking and storage garage services;
6 (e) Landscape maintenance and horticultural services but excluding
7 (i) horticultural services provided to farmers and (ii) pruning,
8 trimming, repairing, removing, and clearing of trees and brush near
9 electric transmission or distribution lines or equipment, if performed
10 by or at the direction of an electric utility;
11 (f) Service charges associated with tickets to professional
12 sporting events; and
13 (g) The following personal services: Physical fitness services,
14 tanning salon services, tattoo parlor services, steam bath services,
15 turkish bath services, escort services, and dating services.
16 (4)(a) The term also includes:
17 (i) The renting or leasing of tangible personal property to
18 consumers; and
19 (ii) Providing tangible personal property along with an operator
20 for a fixed or indeterminate period of time. A consideration of this
21 is that the operator is necessary for the tangible personal property to
22 perform as designed. For the purpose of this subsection (4)(a)(ii), an
23 operator must do more than maintain, inspect, or set up the tangible
24 personal property.
25 (b) The term does not include the renting or leasing of tangible
26 personal property where the lease or rental is for the purpose of
27 sublease or subrent.
28 (5) The term also includes the providing of "competitive telephone
29 service," "telecommunications service," or "ancillary services," as
30 those terms are defined in RCW 82.04.065, to consumers.
31 (6)(a) The term also includes the sale of prewritten computer
32 software to a consumer, regardless of the method of delivery to the end
33 user. For purposes of this subsection (6)(a), the sale of prewritten
34 computer software includes the sale of or charge made for a key or an
35 enabling or activation code, where the key or code is required to
36 activate prewritten computer software and put the software into use.
37 There is no separate sale of the key or code from the prewritten

1 computer software, regardless of how the sale may be characterized by
2 the vendor or by the purchaser.

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

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

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

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

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

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

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

33 ~~((+8))~~ (9)(a) The term also includes the following sales to
34 consumers of digital goods, digital codes, and digital automated
35 services:

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

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

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

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

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

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

18 (~~((+9))~~) (10) The term does not include the sale of or charge made
19 for labor and services rendered in respect to the building, repairing,
20 or improving of any street, place, road, highway, easement, right-of-
21 way, mass public transportation terminal or parking facility, bridge,
22 tunnel, or trestle which is owned by a municipal corporation or
23 political subdivision of the state or by the United States and which is
24 used or to be used primarily for foot or vehicular traffic including
25 mass transportation vehicles of any kind.

26 (~~((+10))~~) (11) The term also does not include sales of chemical
27 sprays or washes to persons for the purpose of postharvest treatment of
28 fruit for the prevention of scald, fungus, mold, or decay, nor does it
29 include sales of feed, seed, seedlings, fertilizer, agents for enhanced
30 pollination including insects such as bees, and spray materials to:

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

35 (b) farmers for the purpose of producing for sale any agricultural
36 product; and (c) farmers acting under cooperative habitat development
37 or access contracts with an organization exempt from federal income tax
38 under (~~(Title)~~) 26 U.S.C. Sec. 501(c)(3) of the federal internal

1 revenue code or the Washington state department of fish and wildlife to
2 produce or improve wildlife habitat on land that the farmer owns or
3 leases.

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

20 ~~((12))~~ (13) The term does not include the sale of or charge made
21 for labor, services, or tangible personal property pursuant to
22 agreements providing maintenance services for bus, rail, or rail fixed
23 guideway equipment when a regional transit authority is the recipient
24 of the labor, services, or tangible personal property, and a transit
25 agency, as defined in RCW 81.104.015, performs the labor or services.

26 **Sec. 1204.** RCW 82.04.050 and 2010 c . . . (SHB 2620) s 201 and
27 2010 c . . . (E2SHB 1597) s 202 are each reenacted and amended to read
28 as follows:

29 (1)(a) "Sale at retail" or "retail sale" means every sale of
30 tangible personal property (including articles produced, fabricated, or
31 imprinted) to all persons irrespective of the nature of their business
32 and including, among others, without limiting the scope hereof, persons
33 who install, repair, clean, alter, improve, construct, or decorate real
34 or personal property of or for consumers other than a sale to a person
35 who:

36 (i) Purchases for the purpose of resale as tangible personal

1 property in the regular course of business without intervening use by
2 such person, but a purchase for the purpose of resale by a regional
3 transit authority under RCW 81.112.300 is not a sale for resale; or

4 (ii) Installs, repairs, cleans, alters, imprints, improves,
5 constructs, or decorates real or personal property of or for consumers,
6 if such tangible personal property becomes an ingredient or component
7 of such real or personal property without intervening use by such
8 person; or

9 (iii) Purchases for the purpose of consuming the property purchased
10 in producing for sale a new article of tangible personal property or
11 substance, of which such property becomes an ingredient or component or
12 is a chemical used in processing, when the primary purpose of such
13 chemical is to create a chemical reaction directly through contact with
14 an ingredient of a new article being produced for sale; or

15 (iv) Purchases for the purpose of consuming the property purchased
16 in producing ferrosilicon which is subsequently used in producing
17 magnesium for sale, if the primary purpose of such property is to
18 create a chemical reaction directly through contact with an ingredient
19 of ferrosilicon; or

20 (v) Purchases for the purpose of providing the property to
21 consumers as part of competitive telephone service, as defined in RCW
22 82.04.065; or

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

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

33 (c) The term also means every sale of tangible personal property to
34 persons engaged in any business that is taxable under RCW 82.04.280
35 (1), (2), and (7), 82.04.290, and 82.04.2908.

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

1 (a) The installing, repairing, cleaning, altering, imprinting, or
2 improving of tangible personal property of or for consumers, including
3 charges made for the mere use of facilities in respect thereto, but
4 excluding charges made for the use of self-service laundry facilities,
5 and also excluding sales of laundry service to nonprofit health care
6 facilities, and excluding services rendered in respect to live animals,
7 birds and insects;

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

16 (c) The constructing, repairing, or improving of any structure
17 upon, above, or under any real property owned by an owner who conveys
18 the property by title, possession, or any other means to the person
19 performing such construction, repair, or improvement for the purpose of
20 performing such construction, repair, or improvement and the property
21 is then reconveyed by title, possession, or any other means to the
22 original owner;

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

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

36 (f) The furnishing of lodging and all other services by a hotel,
37 rooming house, tourist court, motel, trailer camp, and the granting of
38 any similar license to use real property, as distinguished from the

1 renting or leasing of real property, and it is presumed that the
2 occupancy of real property for a continuous period of one month or more
3 constitutes a rental or lease of real property and not a mere license
4 to use or enjoy the same. For the purposes of this subsection, it is
5 presumed that the sale of and charge made for the furnishing of lodging
6 for a continuous period of one month or more to a person is a rental or
7 lease of real property and not a mere license to enjoy the same;

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

10 (h) Persons taxable under (a) (~~(b), (c), (d), (e), (f), and~~)
11 through (g) of this subsection when such sales or charges are for
12 property, labor and services which are used or consumed in whole or in
13 part by such persons in the performance of any activity defined as a
14 "sale at retail" or "retail sale" even though such property, labor and
15 services may be resold after such use or consumption. Nothing
16 contained in this subsection may be construed to modify subsection (1)
17 of this section and nothing contained in subsection (1) of this section
18 may be construed to modify this subsection.

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

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

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

28 (c) Credit bureau services;

29 (d) Automobile parking and storage garage services;

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

35 (f) Service charges associated with tickets to professional
36 sporting events; and

37 (g) The following personal services: Physical fitness services,

1 tanning salon services, tattoo parlor services, steam bath services,
2 turkish bath services, escort services, and dating services.

3 (4)(a) The term also includes the renting or leasing of tangible
4 personal property to consumers.

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

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

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

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

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

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

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

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

32 (B) For purposes of this subsection (6)(b)(ii), "data processing"
33 means the systematic performance of operations on data to extract the
34 required information in an appropriate form or to convert the data to
35 usable information. Data processing includes check processing, image
36 processing, form processing, survey processing, payroll processing,
37 claim processing, and similar activities.

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

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

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

22 (~~(8)~~) (9)(a) The term also includes the following sales to
23 consumers of digital goods, digital codes, and digital automated
24 services:

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

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

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

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

33 (b) A retail sale of digital goods, digital codes, or digital
34 automated services under this subsection (~~(8)~~) (9) includes any
35 services provided by the seller exclusively in connection with the
36 digital goods, digital codes, or digital automated services, whether or
37 not a separate charge is made for such services.

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

7 ~~((+9+))~~ (10) The term also includes the charge made for providing
8 tangible personal property along with an operator for a fixed or
9 indeterminate period of time. A consideration of this is that the
10 operator is necessary for the tangible personal property to perform as
11 designed. For the purpose of this subsection ~~((+9+))~~ (10), an operator
12 must do more than maintain, inspect, or set up the tangible personal
13 property.

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

22 ~~((+10+))~~ (12) The term also does not include sales of chemical
23 sprays or washes to persons for the purpose of postharvest treatment of
24 fruit for the prevention of scald, fungus, mold, or decay, nor does it
25 include sales of feed, seed, seedlings, fertilizer, agents for enhanced
26 pollination including insects such as bees, and spray materials to:
27 (a) Persons who participate in the federal conservation reserve
28 program, the environmental quality incentives program, the wetlands
29 reserve program, and the wildlife habitat incentives program, or their
30 successors administered by the United States department of agriculture;
31 (b) farmers for the purpose of producing for sale any agricultural
32 product; and (c) farmers acting under cooperative habitat development
33 or access contracts with an organization exempt from federal income tax
34 under Title 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue
35 code or the Washington state department of fish and wildlife to produce
36 or improve wildlife habitat on land that the farmer owns or leases.

37 ~~((+11+))~~ (13) The term does not include the sale of or charge made
38 for labor and services rendered in respect to the constructing,

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

15 ((+12)) (14) The term does not include the sale of or charge made
16 for labor, services, or tangible personal property pursuant to
17 agreements providing maintenance services for bus, rail, or rail fixed
18 guideway equipment when a regional transit authority is the recipient
19 of the labor, services, or tangible personal property, and a transit
20 agency, as defined in RCW 81.104.015, performs the labor or services.

21 (15) The term does not include the sale for resale of any service
22 described in this section if the sale would otherwise constitute a
23 "sale at retail" and "retail sale" under this section.

24 **Sec. 1205.** RCW 82.04.060 and 2009 c 535 s 403 are each amended to
25 read as follows:

26 "Sale at wholesale" or "wholesale sale" means:

27 (1) Any sale, which is not a sale at retail, of:

28 (a) Tangible personal property;

29 (b) Services defined as a retail sale in RCW 82.04.050(2) (a) or
30 (g);

31 (c) Amusement or recreation services as defined in RCW
32 82.04.050(3)(a);

33 (d) Prewritten computer software;

34 (e) Services described in RCW 82.04.050 (6)(b) or (7);

35 (f) Extended warranties as defined in RCW 82.04.050(7);

36 (g) Competitive telephone service, ancillary services, or

1 telecommunications service as those terms are defined in RCW 82.04.065;
2 or

3 (h) Digital goods, digital codes, or digital automated services;
4 and

5 (2) Any charge made for labor and services rendered for persons who
6 are not consumers, in respect to real or personal property, if such
7 charge is expressly defined as a retail sale by RCW 82.04.050 when
8 rendered to or for consumers. For the purposes of this subsection (2),
9 "real or personal property" does not include any natural products named
10 in RCW 82.04.100.

11 **Sec. 1206.** RCW 82.04.060 and 2010 c . . . (E2SHB 1597) s 203 are
12 each amended to read as follows:

13 "Sale at wholesale" or "wholesale sale" means:

14 (1) Any sale, which is not a sale at retail, of:

15 (a) Tangible personal property;

16 (b) Services defined as a retail sale in RCW 82.04.050(2) (a) or
17 (g);

18 (c) Amusement or recreation services as defined in RCW
19 82.04.050(3)(a);

20 (d) Prewritten computer software;

21 (e) Services described in RCW 82.04.050 (6)(b) or (7);

22 (f) Extended warranties as defined in RCW 82.04.050(7);

23 (g) Competitive telephone service, ancillary services, or
24 telecommunications service as those terms are defined in RCW 82.04.065;
25 or

26 (h) Digital goods, digital codes, or digital automated services;

27 (2) Any charge made for labor and services rendered for persons who
28 are not consumers, in respect to real or personal property, if such
29 charge is expressly defined as a retail sale by RCW 82.04.050 when
30 rendered to or for consumers. For the purposes of this subsection (2),
31 "real or personal property" does not include any natural products named
32 in RCW 82.04.100; and

33 (3) The sale of any service for resale, if the sale is excluded
34 from the definition of "sale at retail" and "retail sale" in RCW
35 82.04.050(14).

1 **Sec. 1207.** RCW 82.04.190 and 2009 c 535 s 302 are each amended to
2 read as follows:

3 "Consumer" means the following:

4 (1) Any person who purchases, acquires, owns, holds, or uses any
5 article of tangible personal property irrespective of the nature of the
6 person's business and including, among others, without limiting the
7 scope hereof, persons who install, repair, clean, alter, improve,
8 construct, or decorate real or personal property of or for consumers
9 other than for the purpose (a) of resale as tangible personal property
10 in the regular course of business or (b) of incorporating such property
11 as an ingredient or component of real or personal property when
12 installing, repairing, cleaning, altering, imprinting, improving,
13 constructing, or decorating such real or personal property of or for
14 consumers or (c) of consuming such property in producing for sale a new
15 article of tangible personal property or a new substance, of which such
16 property becomes an ingredient or component or as a chemical used in
17 processing, when the primary purpose of such chemical is to create a
18 chemical reaction directly through contact with an ingredient of a new
19 article being produced for sale or (d) of consuming the property
20 purchased in producing ferrosilicon which is subsequently used in
21 producing magnesium for sale, if the primary purpose of such property
22 is to create a chemical reaction directly through contact with an
23 ingredient of ferrosilicon or (e) of satisfying the person's
24 obligations under an extended warranty as defined in RCW 82.04.050(7),
25 if such tangible personal property replaces or becomes an ingredient or
26 component of property covered by the extended warranty without
27 intervening use by such person;

28 (2)(a) Any person engaged in any business activity taxable under
29 RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or
30 uses any competitive telephone service, ancillary services, or
31 telecommunications service as those terms are defined in RCW 82.04.065,
32 other than for resale in the regular course of business; (c) any person
33 who purchases, acquires, or uses any service defined in RCW
34 82.04.050(2) (a) or (g), other than for resale in the regular course of
35 business or for the purpose of satisfying the person's obligations
36 under an extended warranty as defined in RCW 82.04.050(7); (d) any
37 person who purchases, acquires, or uses any amusement and recreation
38 service defined in RCW 82.04.050(3)(a), other than for resale in the

1 regular course of business; (e) any person who purchases or acquires an
2 extended warranty as defined in RCW 82.04.050(7) other than for resale
3 in the regular course of business; and (f) any person who is an end
4 user of software. For purposes of this subsection (2)(f) and RCW
5 82.04.050(6), a person who purchases or otherwise acquires prewritten
6 computer software, who provides services described in RCW
7 82.04.050(6)(b) and who will charge consumers for the right to access
8 and use the prewritten computer software, is not an end user of the
9 prewritten computer software;

10 (3) Any person engaged in the business of contracting for the
11 building, repairing or improving of any street, place, road, highway,
12 easement, right-of-way, mass public transportation terminal or parking
13 facility, bridge, tunnel, or trestle which is owned by a municipal
14 corporation or political subdivision of the state of Washington or by
15 the United States and which is used or to be used primarily for foot or
16 vehicular traffic including mass transportation vehicles of any kind as
17 defined in RCW 82.04.280, in respect to tangible personal property when
18 such person incorporates such property as an ingredient or component of
19 such publicly owned street, place, road, highway, easement,
20 right-of-way, mass public transportation terminal or parking facility,
21 bridge, tunnel, or trestle by installing, placing or spreading the
22 property in or upon the right-of-way of such street, place, road,
23 highway, easement, bridge, tunnel, or trestle or in or upon the site of
24 such mass public transportation terminal or parking facility;

25 (4) Any person who is an owner, lessee or has the right of
26 possession to or an easement in real property which is being
27 constructed, repaired, decorated, improved, or otherwise altered by a
28 person engaged in business, excluding only (a) municipal corporations
29 or political subdivisions of the state in respect to labor and services
30 rendered to their real property which is used or held for public road
31 purposes, and (b) the United States, instrumentalities thereof, and
32 county and city housing authorities created pursuant to chapter 35.82
33 RCW in respect to labor and services rendered to their real property.
34 Nothing contained in this or any other subsection of this definition
35 shall be construed to modify any other definition of "consumer";

36 (5) Any person who is an owner, lessee, or has the right of
37 possession to personal property which is being constructed, repaired,

1 improved, cleaned, imprinted, or otherwise altered by a person engaged
2 in business;

3 (6) Any person engaged in the business of constructing, repairing,
4 decorating, or improving new or existing buildings or other structures
5 under, upon, or above real property of or for the United States, any
6 instrumentality thereof, or a county or city housing authority created
7 pursuant to chapter 35.82 RCW, including the installing or attaching of
8 any article of tangible personal property therein or thereto, whether
9 or not such personal property becomes a part of the realty by virtue of
10 installation; also, any person engaged in the business of clearing land
11 and moving earth of or for the United States, any instrumentality
12 thereof, or a county or city housing authority created pursuant to
13 chapter 35.82 RCW. Any such person (~~shall be~~) is a consumer within
14 the meaning of this subsection in respect to tangible personal property
15 incorporated into, installed in, or attached to such building or other
16 structure by such person, except that consumer does not include any
17 person engaged in the business of constructing, repairing, decorating,
18 or improving new or existing buildings or other structures under, upon,
19 or above real property of or for the United States, or any
20 instrumentality thereof, if the investment project would qualify for
21 sales and use tax deferral under chapter 82.63 RCW if undertaken by a
22 private entity;

23 (7) Any person who is a lessor of machinery and equipment, the
24 rental of which is exempt from the tax imposed by RCW 82.08.020 under
25 RCW 82.08.02565, with respect to the sale of or charge made for
26 tangible personal property consumed in respect to repairing the
27 machinery and equipment, if the tangible personal property has a useful
28 life of less than one year. Nothing contained in this or any other
29 subsection of this section (~~shall~~) may be construed to modify any
30 other definition of "consumer";

31 (8) Any person engaged in the business of cleaning up for the
32 United States, or its instrumentalities, radioactive waste and other
33 by-products of weapons production and nuclear research and development;

34 (9) Any person who is an owner, lessee, or has the right of
35 possession of tangible personal property that, under the terms of an
36 extended warranty as defined in RCW 82.04.050(7), has been repaired or
37 is replacement property, but only with respect to the sale of or charge

1 made for the repairing of the tangible personal property or the
2 replacement property;

3 (10) Any person who purchases, acquires, or uses services described
4 in RCW 82.04.050 (6)(b) or (7) other than for resale in the regular
5 course of business; and

6 (11)(a) Any end user of a digital product or digital code.

7 (b)(i) For purposes of this subsection, "end user" means any
8 taxpayer as defined in RCW 82.12.010 other than a taxpayer who receives
9 by contract a digital product for further commercial broadcast,
10 rebroadcast, transmission, retransmission, licensing, relicensing,
11 distribution, redistribution or exhibition of the product, in whole or
12 in part, to others. A person that purchases digital products or
13 digital codes for the purpose of giving away such products or codes
14 will not be considered to have engaged in the distribution or
15 redistribution of such products or codes and will be treated as an end
16 user;

17 (ii) If a purchaser of a digital code does not receive the
18 contractual right to further redistribute, after the digital code is
19 redeemed, the underlying digital product to which the digital code
20 relates, then the purchaser of the digital code is an end user. If the
21 purchaser of the digital code receives the contractual right to further
22 redistribute, after the digital code is redeemed, the underlying
23 digital product to which the digital code relates, then the purchaser
24 of the digital code is not an end user. A purchaser of a digital code
25 who has the contractual right to further redistribute the digital code
26 is an end user if that purchaser does not have the right to further
27 redistribute, after the digital code is redeemed, the underlying
28 digital product to which the digital code relates.

29 **Sec. 1208.** RCW 82.04.190 and 2010 c . . . (E2SHB 1597) s 204 are
30 each amended to read as follows:

31 "Consumer" means the following:

32 (1) Any person who purchases, acquires, owns, holds, or uses any
33 article of tangible personal property irrespective of the nature of the
34 person's business and including, among others, without limiting the
35 scope hereof, persons who install, repair, clean, alter, improve,
36 construct, or decorate real or personal property of or for consumers
37 other than for the purpose of:

1 (a) Resale as tangible personal property in the regular course of
2 business;

3 (b) Incorporating such property as an ingredient or component of
4 real or personal property when installing, repairing, cleaning,
5 altering, imprinting, improving, constructing, or decorating such real
6 or personal property of or for consumers;

7 (c) Consuming such property in producing for sale as a new article
8 of tangible personal property or a new substance, of which such
9 property becomes an ingredient or component or as a chemical used in
10 processing, when the primary purpose of such chemical is to create a
11 chemical reaction directly through contact with an ingredient of a new
12 article being produced for sale;

13 (d) Consuming the property purchased in producing ferrosilicon
14 which is subsequently used in producing magnesium for sale, if the
15 primary purpose of such property is to create a chemical reaction
16 directly through contact with an ingredient of ferrosilicon; or

17 (e) Satisfying the person's obligations under an extended warranty
18 as defined in RCW 82.04.050(7), if such tangible personal property
19 replaces or becomes an ingredient or component of property covered by
20 the extended warranty without intervening use by such person;

21 (2)(a) Any person engaged in any business activity taxable under
22 RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or
23 uses any competitive telephone service, ancillary services, or
24 telecommunications service as those terms are defined in RCW 82.04.065,
25 other than for resale in the regular course of business; (c) any person
26 who purchases, acquires, or uses any service defined in RCW
27 82.04.050(2) (a) or (g), other than for resale in the regular course of
28 business or for the purpose of satisfying the person's obligations
29 under an extended warranty as defined in RCW 82.04.050(7); (d) any
30 person who purchases, acquires, or uses any amusement and recreation
31 service defined in RCW 82.04.050(3)(a), other than for resale in the
32 regular course of business; (e) any person who purchases or acquires an
33 extended warranty as defined in RCW 82.04.050(7) other than for resale
34 in the regular course of business; and (f) any person who is an end
35 user of software. For purposes of this subsection (2)(f) and RCW
36 82.04.050(6), a person who purchases or otherwise acquires prewritten
37 computer software, who provides services described in RCW

1 82.04.050(6)(b) and who will charge consumers for the right to access
2 and use the prewritten computer software, is not an end user of the
3 prewritten computer software;

4 (3) Any person engaged in the business of contracting for the
5 building, repairing or improving of any street, place, road, highway,
6 easement, right-of-way, mass public transportation terminal or parking
7 facility, bridge, tunnel, or trestle which is owned by a municipal
8 corporation or political subdivision of the state of Washington or by
9 the United States and which is used or to be used primarily for foot or
10 vehicular traffic including mass transportation vehicles of any kind as
11 defined in RCW 82.04.280, in respect to tangible personal property when
12 such person incorporates such property as an ingredient or component of
13 such publicly owned street, place, road, highway, easement,
14 right-of-way, mass public transportation terminal or parking facility,
15 bridge, tunnel, or trestle by installing, placing or spreading the
16 property in or upon the right-of-way of such street, place, road,
17 highway, easement, bridge, tunnel, or trestle or in or upon the site of
18 such mass public transportation terminal or parking facility;

19 (4) Any person who is an owner, lessee or has the right of
20 possession to or an easement in real property which is being
21 constructed, repaired, decorated, improved, or otherwise altered by a
22 person engaged in business, excluding only (a) municipal corporations
23 or political subdivisions of the state in respect to labor and services
24 rendered to their real property which is used or held for public road
25 purposes, and (b) the United States, instrumentalities thereof, and
26 county and city housing authorities created pursuant to chapter 35.82
27 RCW in respect to labor and services rendered to their real property.
28 Nothing contained in this or any other subsection of this definition
29 shall be construed to modify any other definition of "consumer";

30 (5) Any person who is an owner, lessee, or has the right of
31 possession to personal property which is being constructed, repaired,
32 improved, cleaned, imprinted, or otherwise altered by a person engaged
33 in business;

34 (6) Any person engaged in the business of constructing, repairing,
35 decorating, or improving new or existing buildings or other structures
36 under, upon, or above real property of or for the United States, any
37 instrumentality thereof, or a county or city housing authority created
38 pursuant to chapter 35.82 RCW, including the installing or attaching of

1 any article of tangible personal property therein or thereto, whether
2 or not such personal property becomes a part of the realty by virtue of
3 installation; also, any person engaged in the business of clearing land
4 and moving earth of or for the United States, any instrumentality
5 thereof, or a county or city housing authority created pursuant to
6 chapter 35.82 RCW. Any such person is a consumer within the meaning of
7 this subsection in respect to tangible personal property incorporated
8 into, installed in, or attached to such building or other structure by
9 such person, except that consumer does not include any person engaged
10 in the business of constructing, repairing, decorating, or improving
11 new or existing buildings or other structures under, upon, or above
12 real property of or for the United States, or any instrumentality
13 thereof, if the investment project would qualify for sales and use tax
14 deferral under chapter 82.63 RCW if undertaken by a private entity;

15 (7) Any person who is a lessor of machinery and equipment, the
16 rental of which is exempt from the tax imposed by RCW 82.08.020 under
17 RCW 82.08.02565, with respect to the sale of or charge made for
18 tangible personal property consumed in respect to repairing the
19 machinery and equipment, if the tangible personal property has a useful
20 life of less than one year. Nothing contained in this or any other
21 subsection of this section may be construed to modify any other
22 definition of "consumer";

23 (8) Any person engaged in the business of cleaning up for the
24 United States, or its instrumentalities, radioactive waste and other
25 by-products of weapons production and nuclear research and development;

26 (9) Any person who is an owner, lessee, or has the right of
27 possession of tangible personal property that, under the terms of an
28 extended warranty as defined in RCW 82.04.050(7), has been repaired or
29 is replacement property, but only with respect to the sale of or charge
30 made for the repairing of the tangible personal property or the
31 replacement property;

32 (10) Any person who purchases, acquires, or uses services described
33 in RCW 82.04.050 (6)(b) or (7) other than for resale in the regular
34 course of business;

35 (11)(a) Any end user of a digital product or digital code.

36 (b)(i) For purposes of this subsection, "end user" means any
37 taxpayer as defined in RCW 82.12.010 other than a taxpayer who receives
38 by contract a digital product for further commercial broadcast,

1 rebroadcast, transmission, retransmission, licensing, relicensing,
2 distribution, redistribution or exhibition of the product, in whole or
3 in part, to others. A person that purchases digital products or
4 digital codes for the purpose of giving away such products or codes
5 will not be considered to have engaged in the distribution or
6 redistribution of such products or codes and will be treated as an end
7 user;

8 (ii) If a purchaser of a digital code does not receive the
9 contractual right to further redistribute, after the digital code is
10 redeemed, the underlying digital product to which the digital code
11 relates, then the purchaser of the digital code is an end user. If the
12 purchaser of the digital code receives the contractual right to further
13 redistribute, after the digital code is redeemed, the underlying
14 digital product to which the digital code relates, then the purchaser
15 of the digital code is not an end user. A purchaser of a digital code
16 who has the contractual right to further redistribute the digital code
17 is an end user if that purchaser does not have the right to further
18 redistribute, after the digital code is redeemed, the underlying
19 digital product to which the digital code relates; and

20 (12) Any person who provides services described in RCW
21 82.04.050(9). Any such person is a consumer with respect to the
22 purchase, acquisition, or use of the tangible personal property that
23 the person provides along with an operator in rendering services
24 defined as a retail sale in RCW 82.04.050(9). Any such person may also
25 be a consumer under other provisions of this section.

26 **Sec. 1209.** RCW 82.04.215 and 2003 c 168 s 601 are each amended to
27 read as follows:

28 (1) "Computer" means an electronic device that accepts information
29 in digital or similar form and manipulates it for a result based on a
30 sequence of instructions.

31 (2) "Computer software" means a set of coded instructions designed
32 to cause a computer or automatic data processing equipment to perform
33 a task. All software is classified as either prewritten or custom.
34 Consistent with this definition "computer software" includes only those
35 sets of coded instructions intended for use by an end user and
36 specifically excludes retained rights in software and master copies of
37 software.

1 (3) "Custom software" means computer software created for a single
2 person.

3 (4) "Customization of prewritten computer software" means any
4 alteration, modification, or development of applications using or
5 incorporating prewritten computer software for a specific person.
6 "Customization of prewritten computer software" includes individualized
7 configuration of software to work with other software and computer
8 hardware but does not include routine installation. Customization of
9 prewritten computer software does not change the underlying character
10 or taxability of the original prewritten computer software.

11 (5) "Master copies" of software means copies of software from which
12 a software developer, author, inventor, publisher, licensor,
13 sublicensor, or distributor makes copies for sale or license.

14 (6) "Prewritten computer software" means computer software,
15 including prewritten upgrades, that is not designed and developed by
16 the author or other creator to the specifications of a specific
17 purchaser. The combining of two or more prewritten computer software
18 programs or prewritten portions thereof does not cause the combination
19 to be other than prewritten computer software. Prewritten computer
20 software includes software designed and developed by the author or
21 other creator to the specifications of a specific purchaser when it is
22 sold to a person other than such purchaser. Where a person modifies or
23 enhances computer software of which such person is not the author or
24 creator, the person (~~shall be~~) is deemed to be the author or creator
25 only of the person's modifications or enhancements. Prewritten
26 computer software or a prewritten portion thereof that is modified or
27 enhanced to any degree, where such modification or enhancement is
28 designed and developed to the specifications of a specific purchaser,
29 remains prewritten computer software; however where there is a
30 reasonable, separately stated charge or an invoice or other statement
31 of the price given to the purchaser for the modification or
32 enhancement, the modification or enhancement (~~shall~~) does not
33 constitute prewritten computer software.

34 (7) "Retained rights" means any and all rights, including
35 intellectual property rights such as those rights arising from
36 copyrights, patents, and trade secret laws, that are owned or are held
37 under contract or license by a software developer, author, inventor,
38 publisher, licensor, sublicensor, or distributor.

1 state if employees or other agents of the buyer may use the digital
2 goods or digital automated services to be obtained by the code
3 simultaneously at one or more locations within this state and one or
4 more locations outside this state.

5 **Sec. 1212.** RCW 82.12.010 and 2009 c 535 s 304 are each amended to
6 read as follows:

7 For the purposes of this chapter:

8 (1) "Purchase price" means the same as sales price as defined in
9 RCW 82.08.010;

10 (2)(a) "Value of the article used" (~~shall be~~) is the purchase
11 price for the article of tangible personal property, the use of which
12 is taxable under this chapter. The term also includes, in addition to
13 the purchase price, the amount of any tariff or duty paid with respect
14 to the importation of the article used. In case the article used is
15 acquired by lease or by gift or is extracted, produced, or manufactured
16 by the person using the same or is sold under conditions wherein the
17 purchase price does not represent the true value thereof, the value of
18 the article used (~~shall~~) must be determined as nearly as possible
19 according to the retail selling price at place of use of similar
20 products of like quality and character under such rules as the
21 department may prescribe.

22 (b) In case the articles used are acquired by bailment, the value
23 of the use of the articles so used (~~shall~~) must be in an amount
24 representing a reasonable rental for the use of the articles so bailed,
25 determined as nearly as possible according to the value of such use at
26 the places of use of similar products of like quality and character
27 under such rules as the department of revenue may prescribe. In case
28 any such articles of tangible personal property are used in respect to
29 the construction, repairing, decorating, or improving of, and which
30 become or are to become an ingredient or component of, new or existing
31 buildings or other structures under, upon, or above real property of or
32 for the United States, any instrumentality thereof, or a county or city
33 housing authority created pursuant to chapter 35.82 RCW, including the
34 installing or attaching of any such articles therein or thereto,
35 whether or not such personal property becomes a part of the realty by
36 virtue of installation, then the value of the use of such articles so
37 used (~~shall~~) must be determined according to the retail selling price

1 of such articles, or in the absence of such a selling price, as nearly
2 as possible according to the retail selling price at place of use of
3 similar products of like quality and character or, in the absence of
4 either of these selling price measures, such value may be determined
5 upon a cost basis, in any event under such rules as the department of
6 revenue may prescribe.

7 (c) In the case of articles owned by a user engaged in business
8 outside the state which are brought into the state for no more than one
9 hundred eighty days in any period of three hundred sixty-five
10 consecutive days and which are temporarily used for business purposes
11 by the person in this state, the value of the article used (~~shall~~)
12 must be an amount representing a reasonable rental for the use of the
13 articles, unless the person has paid tax under this chapter or chapter
14 82.08 RCW upon the full value of the article used, as defined in (a) of
15 this subsection.

16 (d) In the case of articles manufactured or produced by the user
17 and used in the manufacture or production of products sold or to be
18 sold to the department of defense of the United States, the value of
19 the articles used (~~shall~~) must be determined according to the value
20 of the ingredients of such articles.

21 (e) In the case of an article manufactured or produced for purposes
22 of serving as a prototype for the development of a new or improved
23 product, the value of the article used (~~shall~~) must be determined by:
24 (i) The retail selling price of such new or improved product when first
25 offered for sale; or (ii) the value of materials incorporated into the
26 prototype in cases in which the new or improved product is not offered
27 for sale.

28 (f) In the case of an article purchased with a direct pay permit
29 under RCW 82.32.087, the value of the article used (~~shall-be~~) is
30 determined by the purchase price of such article if, but for the use of
31 the direct pay permit, the transaction would have been subject to sales
32 tax;

33 (3) "Value of the service used" means the purchase price for the
34 digital automated service or other service, the use of which is taxable
35 under this chapter. If the service is received by gift or under
36 conditions wherein the purchase price does not represent the true value
37 thereof, the value of the service used (~~shall~~) must be determined as

1 nearly as possible according to the retail selling price at place of
2 use of similar services of like quality and character under rules the
3 department may prescribe;

4 (4) "Value of the extended warranty used" means the purchase price
5 for the extended warranty, the use of which is taxable under this
6 chapter. If the extended warranty is received by gift or under
7 conditions wherein the purchase price does not represent the true value
8 of the extended warranty, the value of the extended warranty used
9 (~~shall~~) must be determined as nearly as possible according to the
10 retail selling price at place of use of similar extended warranties of
11 like quality and character under rules the department may prescribe;

12 (5) "Value of the digital good or digital code used" means the
13 purchase price for the digital good or digital code, the use of which
14 is taxable under this chapter. If the digital good or digital code is
15 acquired other than by purchase, the value of the digital good or
16 digital code must be determined as nearly as possible according to the
17 retail selling price at place of use of similar digital goods or
18 digital codes of like quality and character under rules the department
19 may prescribe;

20 (6) "Use," "used," "using," or "put to use" have their ordinary
21 meaning, and mean:

22 (a) With respect to tangible personal property, the first act
23 within this state by which the taxpayer takes or assumes dominion or
24 control over the article of tangible personal property (as a consumer),
25 and include installation, storage, withdrawal from storage,
26 distribution, or any other act preparatory to subsequent actual use or
27 consumption within this state;

28 (b) With respect to a service defined in RCW 82.04.050(2)(a), the
29 first act within this state after the service has been performed by
30 which the taxpayer takes or assumes dominion or control over the
31 article of tangible personal property upon which the service was
32 performed (as a consumer), and includes installation, storage,
33 withdrawal from storage, distribution, or any other act preparatory to
34 subsequent actual use or consumption of the article within this state;

35 (c) With respect to an extended warranty, the first act within this
36 state after the extended warranty has been acquired by which the
37 taxpayer takes or assumes dominion or control over the article of
38 tangible personal property to which the extended warranty applies, and

1 includes installation, storage, withdrawal from storage, distribution,
2 or any other act preparatory to subsequent actual use or consumption of
3 the article within this state;

4 (d) With respect to a digital good or digital code, the first act
5 within this state by which the taxpayer, as a consumer, views,
6 accesses, downloads, possesses, stores, opens, manipulates, or
7 otherwise uses or enjoys the digital good or digital code;

8 (e) With respect to a digital automated service, the first act
9 within this state by which the taxpayer, as a consumer, uses, enjoys,
10 or otherwise receives the benefit of the service;

11 (f) With respect to a service defined as a retail sale in RCW
12 82.04.050 (6)(b) or (7), the first act within this state by which the
13 taxpayer, as a consumer, accesses the (~~prewritten~~) computer software;
14 and

15 (g) With respect to a service defined as a retail sale in RCW
16 82.04.050(2)(g), the first act within this state after the service has
17 been performed by which the taxpayer, as a consumer, views, accesses,
18 downloads, possesses, stores, opens, manipulates, or otherwise uses or
19 enjoys the digital good upon which the service was performed;

20 (7) "Taxpayer" and "purchaser" include all persons included within
21 the meaning of the word "buyer" and the word "consumer" as defined in
22 chapters 82.04 and 82.08 RCW;

23 (8)(a)(i) Except as provided in (a)(ii) of this subsection (8),
24 "retailer" means every seller as defined in RCW 82.08.010 and every
25 person engaged in the business of selling tangible personal property at
26 retail and every person required to collect from purchasers the tax
27 imposed under this chapter.

28 (ii) "Retailer" does not include a professional employer
29 organization when a covered employee coemployed with the client under
30 the terms of a professional employer agreement engages in activities
31 that constitute a sale of tangible personal property, extended
32 warranty, digital good, digital code, or a sale of any digital
33 automated service or service defined as a retail sale in RCW 82.04.050
34 (2)(a) or (g), (3)(a), (~~or~~) (6)(b), or (7) that is subject to the tax
35 imposed by this chapter. In such cases, the client, and not the
36 professional employer organization, is deemed to be the retailer and is
37 responsible for collecting and remitting the tax imposed by this
38 chapter.

1 (b) For the purposes of (a) of this subsection, the terms "client,"
2 "covered employee," "professional employer agreement," and
3 "professional employer organization" have the same meanings as in RCW
4 82.04.540;

5 (9) "Extended warranty" has the same meaning as in RCW
6 82.04.050(7);

7 (10) The meaning ascribed to words and phrases in chapters 82.04
8 and 82.08 RCW, insofar as applicable, (~~shall have~~) has full force and
9 effect with respect to taxes imposed under the provisions of this
10 chapter. "Consumer," in addition to the meaning ascribed to it in
11 chapters 82.04 and 82.08 RCW insofar as applicable, (~~shall~~) also
12 means any person who distributes or displays, or causes to be
13 distributed or displayed, any article of tangible personal property,
14 except newspapers, the primary purpose of which is to promote the sale
15 of products or services. With respect to property distributed to
16 persons within this state by a consumer as defined in this subsection
17 (10), the use of the property (~~shall be~~) is deemed to be by such
18 consumer.

19 **Sec. 1213.** RCW 82.12.020 and 2009 c 535 s 305 are each amended to
20 read as follows:

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

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

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

1 (c) Services defined as a retail sale in RCW 82.04.050 (2)(a) or
2 (g), (3)(a), (~~(6)~~) (6)(b), or (7), excluding services defined as a
3 retail sale in RCW 82.04.050(6)(b) that are provided free of charge;

4 (d) Extended warranty; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 **PART XIII**

34 **PUD Privilege Tax Clarification**

35 **Sec. 1301.** RCW 54.28.011 and 1957 c 278 s 12 are each amended to
36 read as follows:

1 "Gross revenue" (~~shall~~) means the amount received from the sale
2 of electric energy, which also includes any regularly recurring charge
3 billed to consumers as a condition of receiving electric energy, and
4 excluding any tax levied by a municipal corporation upon the district
5 pursuant to RCW 54.28.070.

6 **PART XIV**

7 **Temporarily Increasing the Business and Occupation Tax on Service**
8 **Businesses while Increasing the Small Business Credit for the Same**
9 **Businesses**

10 NEW SECTION. **Sec. 1401.** A new section is added to chapter 82.04
11 RCW to read as follows:

12 (1) Beginning May 1, 2010, through June 30, 2013, an additional
13 rate of tax of .25 percent is added to the rate provided for in RCW
14 82.04.285 and 82.04.290(2)(a).

15 (2)(a) The additional rate in subsection (1) of this section does
16 not apply to persons engaged in the business of scientific research and
17 development services including but not limited to research and
18 development in the physical, engineering, and life sciences (such as
19 agriculture, bacteriological, biotechnology, chemical, life sciences,
20 and physical science research and development laboratories or services)
21 and research and development in the social sciences and humanities
22 (such as archaeological, behavioral, cognitive, economic, language, and
23 learning research or development services).

24 (b) The additional rate in subsection (1) of this section does not
25 apply to persons engaging within this state in business as a hospital,
26 as defined in RCW 70.41.020.

27 **Sec. 1402.** RCW 82.04.4451 and 1997 c 238 s 2 are each amended to
28 read as follows:

29 (1) In computing the tax imposed under this chapter, a credit is
30 allowed against the amount of tax otherwise due under this chapter, as
31 provided in this section. The maximum credit for a taxpayer, except
32 for taxpayers subject to tax under RCW 82.04.290(2)(a) and 82.04.285,
33 for a reporting period is thirty-five dollars multiplied by the number
34 of months in the reporting period, as determined under RCW 82.32.045.
35 The maximum credit for a taxpayer, which reports at least fifty percent

1 of its taxable income under RCW 82.04.290(2)(a) and 82.04.285, for a
2 reporting period is seventy dollars multiplied by the number of months
3 in the reporting period, as determined under RCW 82.32.045.

4 (2) When the amount of tax otherwise due under this chapter is
5 equal to or less than the maximum credit, a credit is allowed equal to
6 the amount of tax otherwise due under this chapter.

7 (3) When the amount of tax otherwise due under this chapter exceeds
8 the maximum credit, a reduced credit is allowed equal to twice the
9 maximum credit, minus the tax otherwise due under this chapter, but not
10 less than zero.

11 (4) The department may prepare a tax credit table consisting of tax
12 ranges using increments of no more than five dollars and a
13 corresponding tax credit to be applied to those tax ranges. The table
14 shall be prepared in such a manner that no taxpayer will owe a greater
15 amount of tax by using the table than would be owed by performing the
16 calculation under subsections (1) through (3) of this section. A table
17 prepared by the department under this subsection (~~shall~~) must be used
18 by all taxpayers in taking the credit provided in this section.

19 **Sec. 1403.** RCW 82.32.045 and 2006 c 256 s 1 are each amended to
20 read as follows:

21 (1) Except as otherwise provided in this chapter, payments of the
22 taxes imposed under chapters 82.04, 82.08, 82.12, 82.14, and 82.16 RCW,
23 along with reports and returns on forms prescribed by the department,
24 are due monthly within twenty-five days after the end of the month in
25 which the taxable activities occur.

26 (2) The department of revenue may relieve any taxpayer or class of
27 taxpayers from the obligation of remitting monthly and may require the
28 return to cover other longer reporting periods, but in no event may
29 returns be filed for a period greater than one year. For these
30 taxpayers, tax payments are due on or before the last day of the month
31 next succeeding the end of the period covered by the return.

32 (3) The department of revenue may also require verified annual
33 returns from any taxpayer, setting forth such additional information as
34 it may deem necessary to correctly determine tax liability.

35 (4) Notwithstanding subsections (1) and (2) of this section, the
36 department may relieve any person of the requirement to file returns if
37 the following conditions are met:

1 (a) The person's value of products, gross proceeds of sales, or
2 gross income of the business, from all business activities taxable
3 under chapter 82.04 RCW, is less than twenty-eight thousand dollars per
4 year, except for businesses paying at least fifty percent of their tax
5 under RCW 82.04.290(2)(a) and 82.04.285, the amount of business
6 activities taxable under chapter 82.04 RCW is less than fifty-six
7 thousand dollars per year;

8 (b) The person's gross income of the business from all activities
9 taxable under chapter 82.16 RCW is less than twenty-four thousand
10 dollars per year; and

11 (c) The person is not required to collect or pay to the department
12 of revenue any other tax or fee which the department is authorized to
13 collect.

14 **PART XV**

15 **Property Management Salaries**

16 NEW SECTION. **Sec. 1501.** RCW 82.04.394 (Exemptions--Amounts
17 received by property management company for on-site personnel) and 1998
18 c 338 s 2 are each repealed.

19 **PART XVI**

20 **Convention Center Taxes**

21 **Sec. 1601.** RCW 67.40.140 and 1995 c 386 s 2 are each amended to
22 read as follows:

23 When remitting sales tax receipts to the state under RCW 82.14.050,
24 the city treasurer, or its designee, (~~shall~~) must at the same time
25 remit the sales taxes collected under RCW 67.40.130 for the
26 municipality. (~~The sum so collected and paid over on behalf of the~~
27 ~~municipality shall be credited against the amount of the tax otherwise~~
28 ~~due to the state from those same taxpayers under RCW 82.08.020(1).))~~

29 **Sec. 1602.** RCW 67.40.190 and 1995 c 386 s 7 are each amended to
30 read as follows:

31 (1) Moneys received from any tax imposed under RCW 67.40.130 shall
32 be used for the purpose of providing funds to the corporation for the
33 costs associated with paying all or any part of the cost associated

1 with: The financing, design, acquisition, construction, equipping,
2 operating, maintaining, and reequipping of convention center
3 facilities; the acquisition, construction, and relocation costs of
4 replacement housing; and repayment of loans and advances from the
5 state, including loans authorized previously under this chapter, or to
6 pay or secure the payment of all or part of the principal of or
7 interest on any state bonds issued for purposes authorized under this
8 chapter.

9 (2) If any of the revenue from any local sales tax authorized under
10 RCW 67.40.130 (~~shall have~~) has been encumbered or pledged by the
11 state to secure the payment of any state bonds as authorized under RCW
12 67.40.030, then as long as that agreement or pledge (~~shall be~~) is in
13 effect, the legislature shall not withdraw from the municipality the
14 authority to levy and collect the tax (~~or the tax credit~~) authorized
15 under RCW 67.40.130 (~~and 67.40.140~~).

16 **Sec. 1603.** RCW 82.14.410 and 2001 c 6 s 1 are each amended to read
17 as follows:

18 (1) A local sales and use tax change adopted after December 1,
19 2000, must provide an exemption for those sales of lodging for which,
20 but for the exemption, the total sales tax rate imposed on sales of
21 lodging would exceed the greater of:

- 22 (a) Twelve percent; or
- 23 (b) The total sales tax rate that would have applied to the sale of
24 lodging if the sale were made on December 1, 2000.

25 (2) For the purposes of this section:

26 (a) "Local sales and use tax change" is defined as provided in RCW
27 82.14.055.

28 (b) "Sale of lodging" means the sale of or charge made for the
29 furnishing of lodging and all other services by a hotel, rooming house,
30 tourist court, motel, trailer camp, and the granting of any similar
31 license to use real property.

32 (c) "Total sales tax rate" means the combined rates of all state
33 and local taxes imposed under this chapter and chapters 36.100, 67.28,
34 67.40, and 82.08 RCW, and any other tax authorized after March 29,
35 2001, if the tax is in the nature of a sales tax collected from the
36 buyer, but excluding taxes imposed under RCW 81.104.170 before December
37 1, 2000, and taxes imposed under RCW 67.40.130.

1 **Sec. 1604.** RCW 67.28.181 and 2004 c 79 s 8 are each amended to
2 read as follows:

3 (1) The legislative body of any municipality may impose an excise
4 tax on the sale of or charge made for the furnishing of lodging that is
5 subject to tax under chapter 82.08 RCW. The rate of tax (~~shall~~) may
6 not exceed the lesser of two percent or a rate that, when combined with
7 all other taxes imposed upon sales of lodging within the municipality
8 under this chapter and chapters 36.100, 67.40, 82.08, and 82.14 RCW,
9 equals twelve percent. A tax under this chapter (~~shall~~) may not be
10 imposed in increments smaller than tenths of a percent.

11 (2) Notwithstanding subsection (1) of this section:

12 (a) If a municipality was authorized to impose taxes under this
13 chapter or RCW 67.40.100 or both with a total rate exceeding four
14 percent before July 27, 1997, such total authorization (~~shall~~) must
15 continue through January 31, 1999, and thereafter the municipality may
16 impose a tax under this section at a rate not exceeding the rate
17 actually imposed by the municipality on January 31, 1999.

18 (b) If a city or town, other than a municipality imposing a tax
19 under (a) of this subsection, is located in a county that imposed taxes
20 under this chapter with a total rate of four percent or more on January
21 1, 1997, the city or town may not impose a tax under this section.

22 (c) If a city has a population of four hundred thousand or more and
23 is located in a county with a population of one million or more, the
24 rate of tax imposed under this chapter by the city (~~shall~~) may not
25 exceed the lesser of four percent or a rate that, when combined with
26 all other taxes imposed upon sales of lodging in the municipality under
27 this chapter and chapters 36.100, 67.40, 82.08, and 82.14 RCW, equals
28 (~~fifteen~~) seventeen and two-tenths percent.

29 (d) If a municipality was authorized to impose taxes under this
30 chapter or RCW 67.40.100, or both, at a rate equal to six percent
31 before January 1, 1998, the municipality may impose a tax under this
32 section at a rate not exceeding the rate actually imposed by the
33 municipality on January 1, 1998.

34 (3) Any county ordinance or resolution adopted under this section
35 (~~shall~~) must contain a provision allowing a credit against the county
36 tax for the full amount of any city or town tax imposed under this
37 section upon the same taxable event.

1 **PART XVII**

2 **Miscellaneous Provisions**

3 NEW SECTION. **Sec. 1701.** (1) Except as provided in subsection (2)
4 of this section, if any provision of Part I of this act or its
5 application to any person or circumstance is held invalid, the
6 remainder of Part I of this act or the application of the provision to
7 other persons or circumstances is not affected.

8 (2) If a court of competent jurisdiction, in a final judgment not
9 subject to appeal, adjudges any provision of section 104(1)(c) of this
10 act unconstitutional or otherwise invalid, Part I of this act is null
11 and void in its entirety.

12 NEW SECTION. **Sec. 1702.** Part I of this act applies with respect
13 to gross income of the business, as defined in RCW 82.04.080, including
14 gross income from royalties as defined in RCW 82.04.2907, generated on
15 and after July 1, 2010. For purposes of calculating the thresholds in
16 section 104(1)(c) of this act for the 2010 tax year, property, payroll,
17 and receipts are based on the entire 2010 tax year.

18 NEW SECTION. **Sec. 1703.** Part II of this act must be construed
19 liberally to effectuate the legislature's intent to ensure that all
20 businesses and individuals pay their fair share of taxes.

21 NEW SECTION. **Sec. 1704.** Sections 502, 802, and 803 of this act
22 apply both retroactively and prospectively.

23 NEW SECTION. **Sec. 1705.** In accordance with Article VIII, section
24 5 of the state Constitution, sections 802, 803, and 1704 of this act do
25 not authorize refunds of business and occupation tax validly collected
26 before April 1, 2010, on amounts received by an individual from a
27 corporation as compensation for serving as a member of that
28 corporation's board of directors.

29 NEW SECTION. **Sec. 1706.** Section 502 of this act does not affect
30 any final judgments, not subject to appeal, entered by a court of
31 competent jurisdiction before the effective date of this section.

1 NEW__SECTION. **Sec. 1717.** Section 1301 of this act applies
2 prospectively only."

3 Correct the title.

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