
SECOND SUBSTITUTE HOUSE BILL 1597

State of Washington

61st Legislature

2010 Regular Session

By House Finance (originally sponsored by Representatives Springer and Hunter; by request of Department of Revenue)

READ FIRST TIME 02/02/10.

1 AN ACT Relating to improving the administration of state and local
2 tax programs without impacting tax collections by providing greater
3 consistency in numerous tax incentive programs, revising provisions
4 relating to the confidentiality and disclosure of tax information, and
5 amending statutes to improve clarity and consistency, eliminate
6 obsolete provisions, and simplify administration; amending RCW
7 42.56.230, 82.16.120, 82.32.480, 82.60.100, 82.62.080, 82.63.070,
8 82.74.070, 82.75.060, 83.100.210, 39.100.050, 82.04.060, 82.04.190,
9 82.04.280, 82.04.280, 82.04.3651, 82.04.394, 82.08.010, 82.08.020,
10 82.08.020, 82.08.0256, 82.08.02573, 82.08.0273, 82.08.0293, 82.08.865,
11 82.08.700, 82.12.0257, 82.12.040, 82.12.865, 82.14.020, 82.16.110,
12 82.32.080, 82.32.440, 82.36.440, 82.38.280, 82.62.010, 82.80.120,
13 83.100.040, 83.100.046, 83.100.046, 29A.36.210, 36.68.525, 36.69.145,
14 82.03.140, 84.36.040, 84.36.381, 84.36.385, 84.37.030, 84.37.902,
15 84.48.050, 84.52.030, 84.52.070, and 84.52.080; amending 2009 c 461 s
16 9 (uncodified); reenacting and amending RCW 82.32.330, 82.04.050,
17 82.04.360, 82.08.050, 82.16.010, 82.32.520, 82.32.730, 84.34.020, and
18 84.36.383; adding a new section to chapter 35.102 RCW; adding a new
19 section to chapter 82.32 RCW; creating new sections; repealing RCW
20 84.55.080; providing effective dates; providing expiration dates; and

1 providing a contingent expiration date.

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

3 **PART I**

4 **CONFIDENTIALITY**

5 NEW SECTION. **Sec. 101.** A new section is added to chapter 35.102
6 RCW to read as follows:

7 A city that imposes a business and occupation tax may by ordinance
8 provide that return or tax information is confidential, privileged, and
9 subject to disclosure in the manner provided by RCW 82.32.330.

10 **Sec. 102.** RCW 42.56.230 and 2009 c 510 s 8 are each amended to
11 read as follows:

12 The following personal information is exempt from public inspection
13 and copying under this chapter:

14 (1) Personal information in any files maintained for students in
15 public schools, patients or clients of public institutions or public
16 health agencies, or welfare recipients;

17 (2) Personal information in files maintained for employees,
18 appointees, or elected officials of any public agency to the extent
19 that disclosure would violate their right to privacy;

20 (3) Information required of any taxpayer in connection with the
21 assessment or collection of any tax if the disclosure of the
22 information to other persons would: (a) Be prohibited to such persons
23 by RCW 84.08.210, 82.32.330, 84.40.020, (~~or~~) 84.40.340, or any
24 ordinance authorized under section 101 of this act; or (b) violate the
25 taxpayer's right to privacy or result in unfair competitive
26 disadvantage to the taxpayer;

27 (4) Credit card numbers, debit card numbers, electronic check
28 numbers, card expiration dates, or bank or other financial account
29 numbers, except when disclosure is expressly required by or governed by
30 other law;

31 (5) Personal and financial information related to a small loan or
32 any system of authorizing a small loan in RCW 31.45.093; and

33 (6) Documents and related materials and scanned images of documents

1 and related materials used to prove identity, age, residential address,
2 social security number, or other personal information required to apply
3 for a driver's license or identicard.

4 **Sec. 103.** RCW 82.16.120 and 2009 c 469 s 505 are each amended to
5 read as follows:

6 (1) Any individual, business, local governmental entity, not in the
7 light and power business or in the gas distribution business, or a
8 participant in a community solar project may apply to the light and
9 power business serving the situs of the system, each fiscal year
10 beginning on July 1, 2005, for an investment cost recovery incentive
11 for each kilowatt-hour from a customer-generated electricity renewable
12 energy system. No incentive may be paid for kilowatt-hours generated
13 before July 1, 2005, or after June 30, 2020.

14 (2)(a) Before submitting for the first time the application for the
15 incentive allowed under subsection (4) of this section, the applicant
16 must submit to the department of revenue and to the climate and rural
17 energy development center at the Washington State University,
18 established under RCW 28B.30.642, a certification in a form and manner
19 prescribed by the department that includes, but is not limited to, the
20 following information:

21 (i) The name and address of the applicant and location of the
22 renewable energy system;

23 (ii) The applicant's tax registration number;

24 (iii) That the electricity produced by the applicant meets the
25 definition of "customer-generated electricity" and that the renewable
26 energy system produces electricity with:

27 (A) Any solar inverters and solar modules manufactured in
28 Washington state;

29 (B) A wind generator powered by blades manufactured in Washington
30 state;

31 (C) A solar inverter manufactured in Washington state;

32 (D) A solar module manufactured in Washington state; or

33 (E) Solar or wind equipment manufactured outside of Washington
34 state;

35 (iv) That the electricity can be transformed or transmitted for
36 entry into or operation in parallel with electricity transmission and
37 distribution systems;

1 (v) The date that the renewable energy system received its final
2 electrical permit from the applicable local jurisdiction.

3 (b) Within thirty days of receipt of the certification the
4 department of revenue must notify the applicant by mail, or
5 electronically as provided in RCW 82.32.135, whether the renewable
6 energy system qualifies for an incentive under this section. The
7 department may consult with the climate and rural energy development
8 center to determine eligibility for the incentive. System
9 certifications and the information contained therein are subject to
10 disclosure under RCW 82.32.330(3)((~~m~~)) (1).

11 (3)(a) By August 1st of each year application for the incentive
12 (~~shall~~) must be made to the light and power business serving the
13 situs of the system by certification in a form and manner prescribed by
14 the department that includes, but is not limited to, the following
15 information:

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

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

19 (iii) The date of the notification from the department of revenue
20 stating that the renewable energy system is eligible for the incentives
21 under this section;

22 (iv) A statement of the amount of kilowatt-hours generated by the
23 renewable energy system in the prior fiscal year.

24 (b) Within sixty days of receipt of the incentive certification the
25 light and power business serving the situs of the system (~~shall~~) must
26 notify the applicant in writing whether the incentive payment will be
27 authorized or denied. The business may consult with the climate and
28 rural energy development center to determine eligibility for the
29 incentive payment. Incentive certifications and the information
30 contained therein are subject to disclosure under RCW
31 82.32.330(3)((~~m~~)) (1).

32 (c)(i) Persons receiving incentive payments (~~shall~~) must keep and
33 preserve, for a period of five years, suitable records as may be
34 necessary to determine the amount of incentive applied for and
35 received. Such records (~~shall~~) must be open for examination at any
36 time upon notice by the light and power business that made the payment
37 or by the department. If upon examination of any records or from other
38 information obtained by the business or department it appears that an

1 incentive has been paid in an amount that exceeds the correct amount of
2 incentive payable, the business may assess against the person for the
3 amount found to have been paid in excess of the correct amount of
4 incentive payable and (~~shall~~) must add thereto interest on the
5 amount. Interest (~~shall be~~) is assessed in the manner that the
6 department assesses interest upon delinquent tax under RCW 82.32.050.

7 (ii) If it appears that the amount of incentive paid is less than
8 the correct amount of incentive payable the business may authorize
9 additional payment.

10 (4) Except for community solar projects, the investment cost
11 recovery incentive may be paid fifteen cents per economic development
12 kilowatt-hour unless requests exceed the amount authorized for credit
13 to the participating light and power business. For community solar
14 projects, the investment cost recovery incentive may be paid thirty
15 cents per economic development kilowatt-hour unless requests exceed the
16 amount authorized for credit to the participating light and power
17 business. For the purposes of this section, the rate paid for the
18 investment cost recovery incentive may be multiplied by the following
19 factors:

20 (a) For customer-generated electricity produced using solar modules
21 manufactured in Washington state, two and four-tenths;

22 (b) For customer-generated electricity produced using a solar or a
23 wind generator equipped with an inverter manufactured in Washington
24 state, one and two-tenths;

25 (c) For customer-generated electricity produced using an anaerobic
26 digester, or by other solar equipment or using a wind generator
27 equipped with blades manufactured in Washington state, one; and

28 (d) For all other customer-generated electricity produced by wind,
29 eight-tenths.

30 (5) No individual, household, business, or local governmental
31 entity is eligible for incentives provided under subsection (4) of this
32 section for more than five thousand dollars per year. Each applicant
33 in a community solar project is eligible for up to five thousand
34 dollars per year.

35 (6) If requests for the investment cost recovery incentive exceed
36 the amount of funds available for credit to the participating light and
37 power business, the incentive payments (~~shall~~) must be reduced
38 proportionately.

1 (7) The climate and rural energy development center at Washington
2 State University energy program may establish guidelines and standards
3 for technologies that are identified as Washington manufactured and
4 therefore most beneficial to the state's environment.

5 (8) The environmental attributes of the renewable energy system
6 belong to the applicant, and do not transfer to the state or the light
7 and power business upon receipt of the investment cost recovery
8 incentive.

9 **Sec. 104.** RCW 82.32.330 and 2009 c 563 s 213 and 2009 c 309 s 2
10 are each reenacted and amended to read as follows:

11 (1) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

18 (i) In respect of any tax imposed under the laws of this state if
19 the taxpayer or its officer or other person liable under this title
20 (~~82 RCW~~) or chapter 83.100 RCW is a party in the proceeding;

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

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

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

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

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

16 (d) ~~((Disclosing the name of a taxpayer with a deficiency greater~~
17 ~~than five thousand dollars and against whom a warrant under RCW~~
18 ~~82.32.210 has been filed with a court of record and remains~~
19 ~~outstanding;~~

20 ~~(e))~~ Publishing statistics so classified as to prevent the
21 identification of particular returns or reports or items thereof;

22 ~~((f))~~ (e) Disclosing such return or tax information, for official
23 purposes only, to the governor or attorney general, or to any state
24 agency, or to any committee or subcommittee of the legislature dealing
25 with matters of taxation, revenue, trade, commerce, the control of
26 industry or the professions;

27 ~~((g))~~ (f) Permitting the department of revenue's records to be
28 audited and examined by the proper state officer, his or her agents and
29 employees;

30 ~~((h))~~ (g) Disclosing any such return or tax information to a
31 peace officer as defined in RCW 9A.04.110 or county prosecuting
32 attorney, for official purposes. The disclosure may be made only in
33 response to a search warrant, subpoena, or other court order, unless
34 the disclosure is for the purpose of criminal tax enforcement. A peace
35 officer or county prosecuting attorney who receives the return or tax
36 information may disclose that return or tax information only for use in
37 the investigation and a related court proceeding, or in the court

1 proceeding for which the return or tax information originally was
2 sought;

3 ~~((+i))~~ (h) Disclosing any such return or tax information to the
4 proper officer of the internal revenue service of the United States,
5 the Canadian government or provincial governments of Canada, or to the
6 proper officer of the tax department of any state or city or town or
7 county, for official purposes, but only if the statutes of the United
8 States, Canada or its provincial governments, or of such other state or
9 city or town or county, as the case may be, grants substantially
10 similar privileges to the proper officers of this state;

11 ~~((+j))~~ (i) Disclosing any such return or tax information to the
12 United States Department of Justice, including the Bureau of Alcohol,
13 Tobacco, Firearms and Explosives, the Department of Defense, the
14 Immigration and Customs Enforcement and the Customs and Border
15 Protection agencies of the United States Department of Homeland
16 Security, the United States Coast Guard, the Alcohol and Tobacco Tax
17 and Trade Bureau of the United States Department of Treasury, and the
18 United States Department of Transportation, or any authorized
19 representative of these federal agencies, for official purposes;

20 ~~((+k))~~ (j) Publishing or otherwise disclosing the text of a
21 written determination designated by the director as a precedent
22 pursuant to RCW 82.32.410;

23 ~~((+l))~~ (k) Disclosing, in a manner that is not associated with
24 other tax information, the taxpayer name, entity type, business
25 address, mailing address, revenue tax registration numbers, seller's
26 permit numbers and the status of such permits, North American industry
27 classification system or standard industrial classification code of a
28 taxpayer, and the dates of opening and closing of business. This
29 subsection ~~((must))~~ may not be construed as giving authority to the
30 department to give, sell, or provide access to any list of taxpayers
31 for any commercial purpose;

32 ~~((+m))~~ (l) Disclosing such return or tax information that is also
33 maintained by another Washington state or local governmental agency as
34 a public record available for inspection and copying under the
35 provisions of chapter 42.56 RCW or is a document maintained by a court
36 of record and is not otherwise prohibited from disclosure;

37 ~~((+n))~~ (m) Disclosing such return or tax information to the United

1 States department of agriculture for the limited purpose of
2 investigating food stamp fraud by retailers;

3 ~~((+o))~~ (n) Disclosing to a financial institution, escrow company,
4 or title company, in connection with specific real property that is the
5 subject of a real estate transaction, current amounts due the
6 department for a filed tax warrant, judgment, or lien against the real
7 property;

8 ~~((+p))~~ (o) Disclosing to a person against whom the department has
9 asserted liability as a successor under RCW 82.32.140 return or tax
10 information pertaining to the specific business of the taxpayer to
11 which the person has succeeded;

12 ~~((+q))~~ (p) Disclosing ~~((such return or tax information))~~ real
13 estate excise tax affidavit forms filed under RCW 82.45.150 in the
14 possession of the department ~~((relating to the administration or~~
15 ~~enforcement of the real estate excise tax imposed under chapter 82.45~~
16 ~~RCW)),~~ including ~~((information regarding))~~ real estate excise tax
17 affidavit forms for transactions exempt or otherwise not subject to
18 tax;

19 ~~((+r))~~ (q) Disclosing to local taxing jurisdictions the identity
20 of sellers granted relief under RCW 82.32.430(5)(b)(i) and the period
21 for which relief is granted; ~~((or~~

22 ~~+s))~~ (r) Disclosing such return or tax information to the court in
23 respect to the department's application for a subpoena under RCW
24 82.32.115;

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

28 (t) Disclosing such return or tax information to the streamlined
29 sales tax governing board, member states of the streamlined sales tax
30 governing board, or authorized representatives of such board or states,
31 for the limited purposes of:

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

34 (ii) Auditing certified service providers or certified automated
35 systems providers; or

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

1 (4)(a) The department may disclose return or taxpayer information
2 to a person under investigation or during any court or administrative
3 proceeding against a person under investigation as provided in this
4 subsection (4). The disclosure must be in connection with the
5 department's official duties relating to an audit, collection activity,
6 or a civil or criminal investigation. The disclosure may occur only
7 when the person under investigation and the person in possession of
8 data, materials, or documents are parties to the return or tax
9 information to be disclosed. The department may disclose return or tax
10 information such as invoices, contracts, bills, statements, resale or
11 exemption certificates, or checks. However, the department may not
12 disclose general ledgers, sales or cash receipt journals, check
13 registers, accounts receivable/payable ledgers, general journals,
14 financial statements, expert's workpapers, income tax returns, state
15 tax returns, tax return workpapers, or other similar data, materials,
16 or documents.

17 (b) Before disclosure of any tax return or tax information under
18 this subsection (4), the department must, through written
19 correspondence, inform the person in possession of the data, materials,
20 or documents to be disclosed. The correspondence must clearly identify
21 the data, materials, or documents to be disclosed. The department may
22 not disclose any tax return or tax information under this subsection
23 (4) until the time period allowed in (c) of this subsection has expired
24 or until the court has ruled on any challenge brought under (c) of this
25 subsection.

26 (c) The person in possession of the data, materials, or documents
27 to be disclosed by the department has twenty days from the receipt of
28 the written request required under (b) of this subsection to petition
29 the superior court of the county in which the petitioner resides for
30 injunctive relief. The court (~~shall~~) must limit or deny the request
31 of the department if the court determines that:

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

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

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

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

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

10 (5) Service of a subpoena issued under RCW 82.32.115 does not
11 constitute a disclosure of return or tax information under this
12 section. Notwithstanding anything else to the contrary in this
13 section, a person served with a subpoena under RCW 82.32.115 may
14 disclose the existence or content of the subpoena to that person's
15 legal counsel.

16 (6) Any person acquiring knowledge of any return or tax information
17 in the course of his or her employment with the department of revenue
18 and any person acquiring knowledge of any return or tax information as
19 provided under subsection (3)((~~f~~), (~~g~~), (~~h~~), (~~i~~), (~~j~~), or (~~n~~)) (e),
20 (f), (g), (h), (i), or (m) of this section, who discloses any such
21 return or tax information to another person not entitled to knowledge
22 of such return or tax information under the provisions of this section,
23 is guilty of a misdemeanor. If the person guilty of such violation is
24 an officer or employee of the state, such person must forfeit such
25 office or employment and is incapable of holding any public office or
26 employment in this state for a period of two years thereafter.

27 **Sec. 105.** RCW 82.32.480 and 2001 c 314 s 20 are each amended to
28 read as follows:

29 The forest products commission, created pursuant to chapter 15.100
30 RCW, constitutes a state agency for purposes of applying the exemption
31 contained in RCW 82.32.330(3)((~~f~~)) (e) for the disclosure of taxpayer
32 information by the department. Disclosure of return or tax information
33 may be made only to employees of the commission and not to commission
34 members. Employees are authorized to use this information in
35 accordance with RCW 15.100.100(4). Employees are subject to all civil
36 and criminal penalties provided under RCW 82.32.330 for disclosures

1 made to another person not entitled under the provisions of this
2 section or RCW 15.100.100 to knowledge of such information.

3 **Sec. 106.** RCW 82.60.100 and 1987 c 49 s 1 are each amended to read
4 as follows:

5 Applications, reports, and any other information received by the
6 department under this chapter (~~shall~~), except applications not
7 approved by the department, are not (~~be~~) confidential and (~~shall~~
8 ~~be~~) are subject to disclosure.

9 **Sec. 107.** RCW 82.62.080 and 1987 c 49 s 3 are each amended to read
10 as follows:

11 Applications, reports, and any other information received by the
12 department under this chapter (~~shall~~), except applications not
13 approved by the department, are not (~~be~~) confidential and (~~shall~~
14 ~~be~~) are subject to disclosure.

15 **Sec. 108.** RCW 82.63.070 and 2004 c 2 s 7 are each amended to read
16 as follows:

17 Applications (~~received~~) approved by the department under this
18 chapter are not confidential and are subject to disclosure.

19 **Sec. 109.** RCW 82.74.070 and 2005 c 513 s 10 are each amended to
20 read as follows:

21 Applications (~~received~~) approved by the department under this
22 chapter are not confidential and are subject to disclosure.

23 **Sec. 110.** RCW 82.75.060 and 2006 c 178 s 7 are each amended to
24 read as follows:

25 Applications (~~received~~) approved by the department under this
26 chapter are not confidential and are subject to disclosure.

27 **Sec. 111.** RCW 83.100.210 and 2005 c 516 s 15 are each amended to
28 read as follows:

29 (1) The following provisions of chapter 82.32 RCW have full force
30 and application with respect to the taxes imposed under this chapter
31 unless the context clearly requires otherwise: RCW 82.32.110,
32 82.32.120, 82.32.130, 82.32.320, 82.32.330, and 82.32.340. The

1 definitions in this chapter have full force and application with
2 respect to the application of chapter 82.32 RCW to this chapter unless
3 the context clearly requires otherwise.

4 (2) The department may enter into closing agreements as provided in
5 RCW 82.32.350 and 82.32.360.

6 **PART II**
7 **CLARIFICATIONS AND TECHNICAL CORRECTIONS**

8 **Sec. 201.** RCW 39.100.050 and 2007 c 266 s 6 are each amended to
9 read as follows:

10 (1) A local government that creates a benefit zone and has received
11 approval from the department under RCW 82.32.700 to impose the local
12 option sales and use tax authorized in RCW 82.14.465 may use annually
13 any excess local excise taxes received by it from taxable activity
14 within the benefit zone to finance public improvement costs associated
15 with the public improvements financed in whole or in part by hospital
16 benefit zone financing. The use of excess local excise taxes must
17 cease when tax allocation revenues are no longer necessary or obligated
18 to pay the costs of the public improvements. Any participating taxing
19 authority is authorized to allocate excess local excise taxes to the
20 local government as long as the local government has received approval
21 from the department under RCW 82.32.700 to impose the local option
22 sales and use tax authorized in RCW 82.14.465. The legislature
23 declares that it is a proper purpose of a local government or
24 participating taxing authority to allocate excess local excise taxes
25 for purposes of financing public improvements under this chapter.

26 (2) A local government (~~shall~~) must provide the department
27 accurate information describing the geographical boundaries of the
28 benefit zone at least seventy-five days before the effective date of
29 the ordinance creating the benefit zone. The local government
30 (~~shall~~) must ensure that the boundary information provided to the
31 department is kept current.

32 (3) The department (~~shall~~) must provide the necessary information
33 to calculate excess local excise taxes to each local government that
34 has provided boundary information to the department as provided in this
35 section and that has received approval from the department under RCW

1 82.32.700 to impose the local option sales and use tax authorized in
2 RCW 82.14.465.

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

5 (a) "Base year" means the calendar year immediately following the
6 creation of a benefit zone.

7 (b) "Excess local excise taxes" means the amount of local excise
8 taxes received by the local government during the measurement year from
9 taxable activity within the benefit zone over and above the amount of
10 local excise taxes received by the local government during the base
11 year from taxable activity within the benefit zone. However, if a
12 local government creates the benefit zone and reasonably determines
13 that no activity subject to tax under chapters 82.08 and 82.12 RCW
14 occurred in the twelve months immediately preceding the creation of the
15 benefit zone within the boundaries of the area that became the benefit
16 zone, "excess local excise taxes" means the entire amount of local
17 excise taxes received by the local government during a calendar year
18 period beginning with the calendar year immediately following the
19 creation of the benefit zone and continuing with each measurement year
20 thereafter.

21 (c) "Local excise taxes" means local revenues derived from the
22 imposition of sales and use taxes authorized in RCW 82.14.030 at the
23 tax rate that was in effect at the time the hospital benefit zone is
24 approved by the department, except that if a local government reduces
25 the rate of such tax after the (~~revenue development area~~) hospital
26 benefit zone was approved, "local excise taxes" means the local
27 revenues derived from the imposition of the sales and use taxes
28 authorized in RCW 82.14.030 at the lower tax rate.

29 (d) "Measurement year" means a calendar year, beginning with the
30 calendar year following the base year and each calendar year
31 thereafter, that is used annually to measure the amount of excess state
32 excise taxes and excess local excise taxes required to be used to
33 finance public improvement costs associated with public improvements
34 financed in whole or in part by hospital benefit zone financing.

35 **Sec. 202.** RCW 82.04.050 and 2009 c 563 s 301 and 2009 c 535 s 301
36 are each reenacted and amended to read as follows:

37 (1)(a) "Sale at retail" or "retail sale" means every sale of

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

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

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

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

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

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

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

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

11 (c) The term also means every sale of tangible personal property to
12 persons engaged in any business that is taxable under RCW 82.04.280
13 (1), (2), and (7), 82.04.290, and 82.04.2908.

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

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

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

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

1 (d) The cleaning, fumigating, razing, or moving of existing
2 buildings or structures, but (~~may~~) does not include the charge made
3 for janitorial services; and for purposes of this section the term
4 "janitorial services" (~~shall~~) means those cleaning and caretaking
5 services ordinarily performed by commercial janitor service businesses
6 including, but not limited to, wall and window washing, floor cleaning
7 and waxing, and the cleaning in place of rugs, drapes and upholstery.
8 The term "janitorial services" does not include painting, papering,
9 repairing, furnace or septic tank cleaning, snow removal or
10 sandblasting;

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

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

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

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

36 (3) The term "sale at retail" or "retail sale" includes the sale of
37 or charge made for personal, business, or professional services

1 including amounts designated as interest, rents, fees, admission, and
2 other service emoluments however designated, received by persons
3 engaging in the following business activities:

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

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

8 (c) Credit bureau services;

9 (d) Automobile parking and storage garage services;

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

15 (f) Service charges associated with tickets to professional
16 sporting events; and

17 (g) The following personal services: Physical fitness services,
18 tanning salon services, tattoo parlor services, steam bath services,
19 turkish bath services, escort services, and dating services.

20 (4)(a) The term also includes(~~(+~~
21 ~~(+)~~) the renting or leasing of tangible personal property to
22 consumers(~~(+and~~

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

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

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

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

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

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

10 (i) Custom software; or

11 (ii) The customization of prewritten computer software.

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (b) farmers for the purpose of producing for sale any agricultural
38 product; and (c) farmers acting under cooperative habitat development

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

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

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

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

31 **Sec. 203.** RCW 82.04.060 and 2009 c 535 s 403 are each amended to
32 read as follows:

- 33 "Sale at wholesale" or "wholesale sale" means:
34 (1) Any sale, which is not a sale at retail, of:
35 (a) Tangible personal property;
36 (b) Services defined as a retail sale in RCW 82.04.050(2) (a) or
37 (g);

1 (c) Amusement or recreation services as defined in RCW
2 82.04.050(3)(a);

3 (d) Prewritten computer software;

4 (e) Services described in RCW 82.04.050(6)(b);

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

6 (g) Competitive telephone service, ancillary services, or
7 telecommunications service as those terms are defined in RCW 82.04.065;
8 or

9 (h) Digital goods, digital codes, or digital automated services;
10 (~~and~~)

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

17 (3) The sale of any service for resale, if the sale is excluded
18 from the definition of "sale at retail" and "retail sale" in RCW
19 82.04.050(14).

20 **Sec. 204.** RCW 82.04.190 and 2009 c 535 s 302 are each amended to
21 read as follows:

22 "Consumer" means the following:

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

29 (a) (~~of~~) Resale as tangible personal property in the regular
30 course of business (~~of~~);

31 (b) (~~of~~) Incorporating such property as an ingredient or
32 component of real or personal property when installing, repairing,
33 cleaning, altering, imprinting, improving, constructing, or decorating
34 such real or personal property of or for consumers (~~of~~);

35 (c) (~~of~~) Consuming such property in producing for sale as a new
36 article of tangible personal property or a new substance, of which such
37 property becomes an ingredient or component or as a chemical used in

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

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

9 (e) (~~(e)~~) Satisfying the person's obligations under an extended
10 warranty as defined in RCW 82.04.050(7), if such tangible personal
11 property replaces or becomes an ingredient or component of property
12 covered by the extended warranty without intervening use by such
13 person;

14 (2)(a) Any person engaged in any business activity taxable under
15 RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or
16 uses any competitive telephone service, ancillary services, or
17 telecommunications service as those terms are defined in RCW 82.04.065,
18 other than for resale in the regular course of business; (c) any person
19 who purchases, acquires, or uses any service defined in RCW
20 82.04.050(2) (a) or (g), other than for resale in the regular course of
21 business or for the purpose of satisfying the person's obligations
22 under an extended warranty as defined in RCW 82.04.050(7); (d) any
23 person who purchases, acquires, or uses any amusement and recreation
24 service defined in RCW 82.04.050(3)(a), other than for resale in the
25 regular course of business; (e) any person who purchases or acquires an
26 extended warranty as defined in RCW 82.04.050(7) other than for resale
27 in the regular course of business; and (f) any person who is an end
28 user of software. For purposes of this subsection (2)(f) and RCW
29 82.04.050(6), a person who purchases or otherwise acquires prewritten
30 computer software, who provides services described in RCW
31 82.04.050(6)(b) and who will charge consumers for the right to access
32 and use the prewritten computer software, is not an end user of the
33 prewritten computer software;

34 (3) Any person engaged in the business of contracting for the
35 building, repairing or improving of any street, place, road, highway,
36 easement, right-of-way, mass public transportation terminal or parking
37 facility, bridge, tunnel, or trestle which is owned by a municipal
38 corporation or political subdivision of the state of Washington or by

1 the United States and which is used or to be used primarily for foot or
2 vehicular traffic including mass transportation vehicles of any kind as
3 defined in RCW 82.04.280, in respect to tangible personal property when
4 such person incorporates such property as an ingredient or component of
5 such publicly owned street, place, road, highway, easement,
6 right-of-way, mass public transportation terminal or parking facility,
7 bridge, tunnel, or trestle by installing, placing or spreading the
8 property in or upon the right-of-way of such street, place, road,
9 highway, easement, bridge, tunnel, or trestle or in or upon the site of
10 such mass public transportation terminal or parking facility;

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

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

26 (6) Any person engaged in the business of constructing, repairing,
27 decorating, or improving new or existing buildings or other structures
28 under, upon, or above real property of or for the United States, any
29 instrumentality thereof, or a county or city housing authority created
30 pursuant to chapter 35.82 RCW, including the installing or attaching of
31 any article of tangible personal property therein or thereto, whether
32 or not such personal property becomes a part of the realty by virtue of
33 installation; also, any person engaged in the business of clearing land
34 and moving earth of or for the United States, any instrumentality
35 thereof, or a county or city housing authority created pursuant to
36 chapter 35.82 RCW. Any such person (~~shall be~~) is a consumer within
37 the meaning of this subsection in respect to tangible personal property
38 incorporated into, installed in, or attached to such building or other

1 structure by such person, except that consumer does not include any
2 person engaged in the business of constructing, repairing, decorating,
3 or improving new or existing buildings or other structures under, upon,
4 or above real property of or for the United States, or any
5 instrumentality thereof, if the investment project would qualify for
6 sales and use tax deferral under chapter 82.63 RCW if undertaken by a
7 private entity;

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

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

19 (9) Any person who is an owner, lessee, or has the right of
20 possession of tangible personal property that, under the terms of an
21 extended warranty as defined in RCW 82.04.050(7), has been repaired or
22 is replacement property, but only with respect to the sale of or charge
23 made for the repairing of the tangible personal property or the
24 replacement property;

25 (10) Any person who purchases, acquires, or uses services described
26 in RCW 82.04.050(6)(b) other than for resale in the regular course of
27 business; (~~and~~)

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

29 (b)(i) For purposes of this subsection, "end user" means any
30 taxpayer as defined in RCW 82.12.010 other than a taxpayer who receives
31 by contract a digital product for further commercial broadcast,
32 rebroadcast, transmission, retransmission, licensing, relicensing,
33 distribution, redistribution or exhibition of the product, in whole or
34 in part, to others. A person that purchases digital products or
35 digital codes for the purpose of giving away such products or codes
36 will not be considered to have engaged in the distribution or
37 redistribution of such products or codes and will be treated as an end
38 user;

1 (ii) If a purchaser of a digital code does not receive the
2 contractual right to further redistribute, after the digital code is
3 redeemed, the underlying digital product to which the digital code
4 relates, then the purchaser of the digital code is an end user. If the
5 purchaser of the digital code receives the contractual right to further
6 redistribute, after the digital code is redeemed, the underlying
7 digital product to which the digital code relates, then the purchaser
8 of the digital code is not an end user. A purchaser of a digital code
9 who has the contractual right to further redistribute the digital code
10 is an end user if that purchaser does not have the right to further
11 redistribute, after the digital code is redeemed, the underlying
12 digital product to which the digital code relates; and

13 (12) Any person who provides services described in RCW
14 82.04.050(9). Any such person is a consumer with respect to the
15 purchase, acquisition, or use of the tangible personal property that
16 the person provides along with an operator in rendering services
17 defined as a retail sale in RCW 82.04.050(9). Any such person may also
18 be a consumer under other provisions of this section.

19 **Sec. 205.** RCW 82.04.280 and 2009 c 461 s 2 are each amended to
20 read as follows:

21 (1) Upon every person engaging within this state in the business
22 of: ~~((1))~~ (a) Printing materials other than newspapers, and of
23 publishing periodicals or magazines; ~~((2))~~ (b) building, repairing or
24 improving any street, place, road, highway, easement, right-of-way,
25 mass public transportation terminal or parking facility, bridge,
26 tunnel, or trestle which is owned by a municipal corporation or
27 political subdivision of the state or by the United States and which is
28 used or to be used, primarily for foot or vehicular traffic including
29 mass transportation vehicles of any kind and including any
30 readjustment, reconstruction or relocation of the facilities of any
31 public, private or cooperatively owned utility or railroad in the
32 course of such building, repairing or improving, the cost of which
33 readjustment, reconstruction, or relocation, is the responsibility of
34 the public authority whose street, place, road, highway, easement,
35 right-of-way, mass public transportation terminal or parking facility,
36 bridge, tunnel, or trestle is being built, repaired or improved;
37 ~~((3))~~ (c) extracting for hire or processing for hire, except persons

1 taxable as extractors for hire or processors for hire under another
2 section of this chapter; ~~((+4))~~ (d) operating a cold storage warehouse
3 or storage warehouse, but not including the rental of cold storage
4 lockers; ~~((+5))~~ (e) representing and performing services for fire or
5 casualty insurance companies as an independent resident managing
6 general agent licensed under the provisions of chapter 48.17 RCW
7 ~~((48.05.310))~~; ~~((+6))~~ (f) radio and television broadcasting, excluding
8 network, national and regional advertising computed as a standard
9 deduction based on the national average thereof as annually reported by
10 the federal communications commission, or in lieu thereof by
11 itemization by the individual broadcasting station, and excluding that
12 portion of revenue represented by the out-of-state audience computed as
13 a ratio to the station's total audience as measured by the 100 micro-
14 volt signal strength and delivery by wire, if any; ~~((+7))~~ (g) engaging
15 in activities which bring a person within the definition of consumer
16 contained in RCW 82.04.190(6); as to such persons, the amount of tax on
17 such business is equal to the gross income of the business multiplied
18 by the rate of 0.484 percent.

19 ~~((As used in))~~ (2) For the purposes of this section, the following
20 definitions apply unless the context clearly requires otherwise.

21 (a) "Cold storage warehouse" means a storage warehouse used to
22 store fresh and/or frozen perishable fruits or vegetables, meat,
23 seafood, dairy products, or fowl, or any combination thereof, at a
24 desired temperature to maintain the quality of the product for orderly
25 marketing.

26 ~~((As used in this section,))~~ (b) "Storage warehouse" means a
27 building or structure, or any part thereof, in which goods, wares, or
28 merchandise are received for storage for compensation, except field
29 warehouses, fruit warehouses, fruit packing plants, warehouses licensed
30 under chapter 22.09 RCW, public garages storing automobiles, railroad
31 freight sheds, docks and wharves, and "self-storage" or "mini storage"
32 facilities whereby customers have direct access to individual storage
33 areas by separate entrance. "Storage warehouse" does not include a
34 building or structure, or that part of such building or structure, in
35 which an activity taxable under RCW 82.04.272 is conducted.

36 ~~((As used in this section,))~~ (c) "Periodical or magazine" means a
37 printed publication, other than a newspaper, issued regularly at stated

1 intervals at least once every three months, including any supplement or
2 special edition of the publication.

3 **Sec. 206.** RCW 82.04.280 and 2009 c 461 s 3 are each amended to
4 read as follows:

5 (1) Upon every person engaging within this state in the business
6 of: ~~((+1))~~ (a) Printing materials other than newspapers, and of
7 publishing periodicals or magazines; ~~((+2))~~ (b) building, repairing or
8 improving any street, place, road, highway, easement, right-of-way,
9 mass public transportation terminal or parking facility, bridge,
10 tunnel, or trestle which is owned by a municipal corporation or
11 political subdivision of the state or by the United States and which is
12 used or to be used, primarily for foot or vehicular traffic including
13 mass transportation vehicles of any kind and including any
14 readjustment, reconstruction or relocation of the facilities of any
15 public, private or cooperatively owned utility or railroad in the
16 course of such building, repairing or improving, the cost of which
17 readjustment, reconstruction, or relocation, is the responsibility of
18 the public authority whose street, place, road, highway, easement,
19 right-of-way, mass public transportation terminal or parking facility,
20 bridge, tunnel, or trestle is being built, repaired or improved;
21 ~~((+3))~~ (c) extracting for hire or processing for hire, except persons
22 taxable as extractors for hire or processors for hire under another
23 section of this chapter; ~~((+4))~~ (d) operating a cold storage warehouse
24 or storage warehouse, but not including the rental of cold storage
25 lockers; ~~((+5))~~ (e) representing and performing services for fire or
26 casualty insurance companies as an independent resident managing
27 general agent licensed under the provisions of chapter 48.17 RCW
28 ~~((48.05.310))~~; ~~((+6))~~ (f) radio and television broadcasting, excluding
29 network, national and regional advertising computed as a standard
30 deduction based on the national average thereof as annually reported by
31 the Federal Communications Commission, or in lieu thereof by
32 itemization by the individual broadcasting station, and excluding that
33 portion of revenue represented by the out-of-state audience computed as
34 a ratio to the station's total audience as measured by the 100 micro-
35 volt signal strength and delivery by wire, if any; ~~((+7))~~ (g) engaging
36 in activities which bring a person within the definition of consumer

1 contained in RCW 82.04.190(6); as to such persons, the amount of tax on
2 such business is equal to the gross income of the business multiplied
3 by the rate of 0.484 percent.

4 ~~((As used in))~~ (2) For the purposes of this section, the following
5 definitions apply unless the context clearly requires otherwise.

6 (a) "Cold storage warehouse" means a storage warehouse used to
7 store fresh and/or frozen perishable fruits or vegetables, meat,
8 seafood, dairy products, or fowl, or any combination thereof, at a
9 desired temperature to maintain the quality of the product for orderly
10 marketing.

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

21 ~~((As used in this section,))~~ (c) "Periodical or magazine" means a
22 printed publication, other than a newspaper, issued regularly at stated
23 intervals at least once every three months, including any supplement or
24 special edition of the publication.

25 **Sec. 207.** RCW 82.04.360 and 1991 c 324 s 19 and 1991 c 275 s 2 are
26 each reenacted and amended to read as follows:

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

33 (2) A booth renter~~((, as defined by RCW 18.16.020,))~~ is an
34 independent contractor for purposes of this chapter. For purposes of
35 this subsection, "booth renter" means any person who:

36 (a) Performs cosmetology, barbering, esthetics, or manicuring
37 services for which a license is required under chapter 18.16 RCW; and

1 (b) Pays a fee for the use of salon or shop facilities and receives
2 no compensation or other consideration from the owner of the salon or
3 shop for the services performed.

4 **Sec. 208.** RCW 82.04.3651 and 1999 c 358 s 3 are each amended to
5 read as follows:

6 (1) This chapter does not apply to amounts received from fund-
7 raising activities by nonprofit organizations, as defined in subsection
8 (2) of this section, (~~for fund-raising activities~~) and libraries as
9 defined in RCW 27.12.010.

10 (2) As used in this section, a "nonprofit organization" means:

11 (a) An organization exempt from tax under section 501(c) (3), (4),
12 or (10) of the federal internal revenue code (26 U.S.C. Sec. 501(c)
13 (3), (4), or (10));

14 (b) A nonprofit organization that would qualify under (a) of this
15 subsection except that it is not organized as a nonprofit corporation;
16 or

17 (c) A nonprofit organization that meets all of the following
18 criteria:

19 (i) The members, stockholders, officers, directors, or trustees of
20 the organization do not receive any part of the organization's gross
21 income, except as payment for services rendered;

22 (ii) The compensation received by any person for services rendered
23 to the organization does not exceed an amount reasonable under the
24 circumstances; and

25 (iii) The activities of the organization do not include a
26 substantial amount of political activity, including but not limited to
27 influencing legislation and participation in any campaign on behalf of
28 any candidate for political office.

29 (3) As used in this section, the term "fund-raising activity" means
30 soliciting or accepting contributions of money or other property or
31 activities involving the anticipated exchange of goods or services for
32 money between the soliciting organization and the organization or
33 person solicited, for the purpose of furthering the goals of the
34 nonprofit organization. "Fund-raising activity" does not include the
35 operation of a regular place of business in which sales are made during
36 regular hours such as a bookstore, thrift shop, restaurant, or similar
37 business or the operation of a regular place of business from which

1 services are provided or performed during regular hours such as the
2 provision of retail, personal, or professional services. The sale of
3 used books, used videos, used sound recordings, or similar used
4 information products in a library, as defined in RCW 27.12.010, is not
5 the operation of a regular place of business for the purposes of this
6 section, if the proceeds of the sales are used to support the library.

7 **Sec. 209.** RCW 82.04.394 and 1998 c 338 s 2 are each amended to
8 read as follows:

9 (1) This chapter does not apply to amounts received by a property
10 management company from the owner of a property for gross wages and
11 benefits paid directly to or on behalf of on-site personnel from
12 property management trust accounts that are required to be maintained
13 under RCW (~~(18.85.310)~~) 18.85.285.

14 (2) As used in this section, "on-site personnel" means a person who
15 meets all of the following conditions: (a) The person works primarily
16 at the owner's property; (b) the person's duties include leasing
17 property units, maintaining the property, collecting rents, or similar
18 activities; and (c) under a written property management agreement: (i)
19 The person's compensation is the ultimate obligation of the property
20 owner and not the property manager; (ii) the property manager is liable
21 for payment only as agent of the owner; and (iii) the property manager
22 is the agent of the owner with respect to the on-site personnel and
23 that all actions, including, but not limited to, hiring, firing,
24 compensation, and conditions of employment, taken by the property
25 manager with respect to the on-site personnel are subject to the
26 approval of the property owner.

27 **Sec. 210.** RCW 82.08.010 and 2009 c 535 s 303 are each amended to
28 read as follows:

29 For the purposes of this chapter:

30 (1)(a) "Selling price" includes "sales price." "Sales price" means
31 the total amount of consideration, except separately stated trade-in
32 property of like kind, including cash, credit, property, and services,
33 for which tangible personal property, extended warranties, digital
34 goods, digital codes, digital automated services, or other services or
35 anything else defined as a "retail sale" under RCW 82.04.050 are sold,
36 leased, or rented, valued in money, whether received in money or

1 otherwise. No deduction from the total amount of consideration is
2 allowed for the following: (i) The seller's cost of the property sold;
3 (ii) the cost of materials used, labor or service cost, interest,
4 losses, all costs of transportation to the seller, all taxes imposed on
5 the seller, and any other expense of the seller; (iii) charges by the
6 seller for any services necessary to complete the sale, other than
7 delivery and installation charges; (iv) delivery charges; and (v)
8 installation charges.

9 When tangible personal property is rented or leased under
10 circumstances that the consideration paid does not represent a
11 reasonable rental for the use of the articles so rented or leased, the
12 "selling price" shall be determined as nearly as possible according to
13 the value of such use at the places of use of similar products of like
14 quality and character under such rules as the department may prescribe;

15 (b) "Selling price" or "sales price" does not include: Discounts,
16 including cash, term, or coupons that are not reimbursed by a third
17 party that are allowed by a seller and taken by a purchaser on a sale;
18 interest, financing, and carrying charges from credit extended on the
19 sale of tangible personal property, extended warranties, digital goods,
20 digital codes, digital automated services, or other services or
21 anything else defined as a retail sale in RCW 82.04.050, if the amount
22 is separately stated on the invoice, bill of sale, or similar document
23 given to the purchaser; and any taxes legally imposed directly on the
24 consumer that are separately stated on the invoice, bill of sale, or
25 similar document given to the purchaser;

26 (c) "Selling price" or "sales price" includes consideration
27 received by the seller from a third party if:

28 (i) The seller actually receives consideration from a party other
29 than the purchaser, and the consideration is directly related to a
30 price reduction or discount on the sale;

31 (ii) The seller has an obligation to pass the price reduction or
32 discount through to the purchaser;

33 (iii) The amount of the consideration attributable to the sale is
34 fixed and determinable by the seller at the time of the sale of the
35 item to the purchaser; and

36 (iv) One of the criteria in this subsection (1)(c)(iv) is met:

37 (A) The purchaser presents a coupon, certificate, or other
38 documentation to the seller to claim a price reduction or discount

1 where the coupon, certificate, or documentation is authorized,
2 distributed, or granted by a third party with the understanding that
3 the third party will reimburse any seller to whom the coupon,
4 certificate, or documentation is presented;

5 (B) The purchaser identifies himself or herself to the seller as a
6 member of a group or organization entitled to a price reduction or
7 discount, however a "preferred customer" card that is available to any
8 patron does not constitute membership in such a group; or

9 (C) The price reduction or discount is identified as a third party
10 price reduction or discount on the invoice received by the purchaser or
11 on a coupon, certificate, or other documentation presented by the
12 purchaser;

13 (2)(a) "Seller" means every person, including the state and its
14 departments and institutions, making sales at retail or retail sales to
15 a buyer, purchaser, or consumer, whether as agent, broker, or
16 principal, except "seller" does not mean:

17 (i) The state and its departments and institutions when making
18 sales to the state and its departments and institutions; or

19 (ii) A professional employer organization when a covered employee
20 coemployed with the client under the terms of a professional employer
21 agreement engages in activities that constitute a sale at retail that
22 is subject to the tax imposed by this chapter. In such cases, the
23 client, and not the professional employer organization, is deemed to be
24 the seller and is responsible for collecting and remitting the tax
25 imposed by this chapter.

26 (b) For the purposes of (a) of this subsection, the terms "client,"
27 "covered employee," "professional employer agreement," and
28 "professional employer organization" have the same meanings as in RCW
29 82.04.540;

30 (3) "Buyer," "purchaser," and "consumer" include, without limiting
31 the scope hereof, every individual, receiver, assignee, trustee in
32 bankruptcy, trust, estate, firm, copartnership, joint venture, club,
33 company, joint stock company, business trust, corporation, association,
34 society, or any group of individuals acting as a unit, whether mutual,
35 cooperative, fraternal, nonprofit, or otherwise, municipal corporation,
36 quasi municipal corporation, and also the state, its departments and
37 institutions and all political subdivisions thereof, irrespective of

1 the nature of the activities engaged in or functions performed, and
2 also the United States or any instrumentality thereof;

3 (4) "Delivery charges" means charges by the seller of personal
4 property or services for preparation and delivery to a location
5 designated by the purchaser of personal property or services including,
6 but not limited to, transportation, shipping, postage, handling,
7 crating, and packing;

8 (5) "Direct mail" means printed material delivered or distributed
9 by United States mail or other delivery service to a mass audience or
10 to addressees on a mailing list provided by the purchaser or at the
11 direction of the purchaser when the cost of the items are not billed
12 directly to the recipients. "Direct mail" includes tangible personal
13 property supplied directly or indirectly by the purchaser to the direct
14 mail seller for inclusion in the package containing the printed
15 material. "Direct mail" does not include multiple items of printed
16 material delivered to a single address;

17 (6) The meaning attributed in chapter 82.04 RCW to the terms "tax
18 year," "taxable year," "person," "company," "sale," (~~("sale at retail,"~~
19 ~~"retail sale,")~~) "sale at wholesale," "wholesale," "business,"
20 "engaging in business," "cash discount," "successor," "consumer," "in
21 this state" and "within this state" (~~(shall apply)~~) applies equally to
22 the provisions of this chapter;

23 (7) For the purposes of the taxes imposed under this chapter and
24 under chapter 82.12 RCW, "tangible personal property" means personal
25 property that can be seen, weighed, measured, felt, or touched, or that
26 is in any other manner perceptible to the senses. Tangible personal
27 property includes electricity, water, gas, steam, and prewritten
28 computer software;

29 (8) "Extended warranty" has the same meaning as in RCW
30 82.04.050(7);

31 (9) The definitions in RCW 82.04.192 apply to this chapter; (~~and~~)

32 (10) For the purposes of the taxes imposed under this chapter and
33 chapter 82.12 RCW, whenever the terms "property" or "personal property"
34 are used, those terms must be construed to include digital goods and
35 digital codes unless:

36 (a) It is clear from the context that the term "personal property"
37 is intended only to refer to tangible personal property;

1 (b) It is clear from the context that the term "property" is
2 intended only to refer to tangible personal property, real property, or
3 both; or

4 (c) To construe the term "property" or "personal property" as
5 including digital goods and digital codes would yield unlikely, absurd,
6 or strained consequences; and

7 (11) "Retail sale" or "sale at retail" means any sale, lease, or
8 rental for any purpose other than for resale, sublease, or subrent.

9 **Sec. 211.** RCW 82.08.020 and 2009 c 469 s 802 are each amended to
10 read as follows:

11 (1) There is levied and (~~there shall be~~) collected a tax (~~on~~
12 ~~each retail sale in this state~~) equal to six and five-tenths percent
13 of the selling price on each retail sale in this state of:

14 (a) Tangible personal property, unless the sale is specifically
15 excluded from the RCW 82.04.050 definition of retail sale;

16 (b) Digital goods, digital codes, and digital automated services,
17 if the sale is included within the RCW 82.04.050 definition of retail
18 sale;

19 (c) Services, other than digital automated services, included
20 within the RCW 82.04.050 definition of retail sale;

21 (d) Extended warranties to consumers; and

22 (e) Anything else, the sale of which is included within the RCW
23 82.04.050 definition of retail sale.

24 (2) There is levied and (~~there shall be~~) collected an additional
25 tax on each retail car rental, regardless of whether the vehicle is
26 licensed in this state, equal to five and nine-tenths percent of the
27 selling price. The revenue collected under this subsection (~~shall~~)
28 must be deposited in the multimodal transportation account created in
29 RCW 47.66.070.

30 (3) Beginning July 1, 2003, there is levied and collected an
31 additional tax of three-tenths of one percent of the selling price on
32 each retail sale of a motor vehicle in this state, other than retail
33 car rentals taxed under subsection (2) of this section. The revenue
34 collected under this subsection (~~shall~~) must be deposited in the
35 multimodal transportation account created in RCW 47.66.070.

36 (4) For purposes of subsection (3) of this section, "motor vehicle"
37 has the meaning provided in RCW 46.04.320, but does not include farm

1 tractors or farm vehicles as defined in RCW 46.04.180 and 46.04.181,
2 off-road and nonhighway vehicles as defined in RCW 46.09.020, and
3 snowmobiles as defined in RCW 46.10.010.

4 (5) Beginning on December 8, 2005, 0.16 percent of the taxes
5 collected under subsection (1) of this section (~~shall~~) must be
6 dedicated to funding comprehensive performance audits required under
7 RCW 43.09.470. The revenue identified in this subsection (~~shall~~)
8 must be deposited in the performance audits of government account
9 created in RCW 43.09.475.

10 (6) The taxes imposed under this chapter (~~shall~~) apply to
11 successive retail sales of the same property.

12 (7)(a) Until January 1, 2011, the tax imposed in subsection (3) of
13 this section and the dedication of revenue provided for in subsection
14 (5) of this section (~~shall~~) do not apply with respect to the sales of new
15 passenger cars, light duty trucks, and medium duty passenger vehicles,
16 which utilize hybrid technology and have a United States environmental
17 protection agency estimated highway gasoline mileage rating of at least
18 forty miles per gallon.

19 (b) As used in this subsection, "hybrid technology" means
20 propulsion units powered by both electricity and gasoline.

21 (8) The rates provided in this section apply to taxes imposed under
22 chapter 82.12 RCW as provided in RCW 82.12.020.

23 **Sec. 212.** RCW 82.08.020 and 2006 c 1 s 3 are each amended to read
24 as follows:

25 (1) There is levied and (~~there shall be~~) collected a tax (~~on~~
26 ~~each retail sale in this state~~) equal to six and five-tenths percent
27 of the selling price on each retail sale in this state of:

28 (a) Tangible personal property, unless the sale is specifically
29 excluded from the RCW 82.04.050 definition of retail sale;

30 (b) Digital goods, digital codes, and digital automated services,
31 if the sale is included within the RCW 82.04.050 definition of retail
32 sale;

33 (c) Services, other than digital automated services, included
34 within the RCW 82.04.050 definition of retail sale;

35 (d) Extended warranties to consumers; and

36 (e) Anything else, the sale of which is included within the RCW
37 82.04.050 definition of retail sale.

1 (2) There is levied and (~~there shall be~~) collected an additional
2 tax on each retail car rental, regardless of whether the vehicle is
3 licensed in this state, equal to five and nine-tenths percent of the
4 selling price. The revenue collected under this subsection (~~shall~~)
5 must be deposited in the multimodal transportation account created in
6 RCW 47.66.070.

7 (3) Beginning July 1, 2003, there is levied and collected an
8 additional tax of three-tenths of one percent of the selling price on
9 each retail sale of a motor vehicle in this state, other than retail
10 car rentals taxed under subsection (2) of this section. The revenue
11 collected under this subsection (~~shall~~) must be deposited in the
12 multimodal transportation account created in RCW 47.66.070.

13 (4) For purposes of subsection (3) of this section, "motor vehicle"
14 has the meaning provided in RCW 46.04.320, but does not include farm
15 tractors or farm vehicles as defined in RCW 46.04.180 and 46.04.181,
16 off-road and nonhighway vehicles as defined in RCW 46.09.020, and
17 snowmobiles as defined in RCW 46.10.010.

18 (5) Beginning on December 8, 2005, 0.16 percent of the taxes
19 collected under subsection (1) of this section (~~shall~~) must be
20 dedicated to funding comprehensive performance audits required under
21 RCW 43.09.470. The revenue identified in this subsection (~~shall~~)
22 must be deposited in the performance audits of government account
23 created in RCW 43.09.475.

24 (6) The taxes imposed under this chapter (~~shall~~) apply to
25 successive retail sales of the same property.

26 (7) The rates provided in this section apply to taxes imposed under
27 chapter 82.12 RCW as provided in RCW 82.12.020.

28 **Sec. 213.** RCW 82.08.0256 and 2009 c 535 s 509 are each amended to
29 read as follows:

30 The tax levied by RCW 82.08.020 does not apply to sales (including
31 transfers of title through decree of appropriation) heretofore or
32 hereafter made of the entire operating property of a publicly or
33 privately owned public utility, or of a complete operating integral
34 section thereof, to the state or a political subdivision thereof for
35 use in conducting any public service business as defined in RCW
36 82.16.010 (~~((1), (2), (3), (4), (5), (6), (7), (8), (9), (10) or~~

1 ~~(11)~~). For purposes of this section, "operating property" includes
2 digital goods and digital codes.

3 **Sec. 214.** RCW 82.08.02573 and 1998 c 336 s 3 are each amended to
4 read as follows:

5 The tax levied by RCW 82.08.020 does not apply to a sale made by a
6 nonprofit organization or a library, if the gross income from the sale
7 is exempt under RCW 82.04.3651.

8 **Sec. 215.** RCW 82.08.0273 and 2009 c 535 s 512 are each amended to
9 read as follows:

10 (1) The tax levied by RCW 82.08.020 does not apply to sales to
11 nonresidents of this state of tangible personal property, digital
12 goods, and digital codes, when such property is for use outside this
13 state, and the purchaser (a) is a bona fide resident of a state or
14 possession or Province of Canada other than the state of Washington and
15 such state, possession, or Province of Canada does not impose a retail
16 sales tax or use tax of three percent or more or, if imposing such a
17 tax, permits Washington residents exemption from otherwise taxable
18 sales by reason of their residence, and (b) agrees, when requested, to
19 grant the department of revenue access to such records and other forms
20 of verification at his or her place of residence to assure that such
21 purchases are not first used substantially in the state of Washington.

22 (2) Notwithstanding anything to the contrary in this chapter, if
23 parts or other tangible personal property are installed by the seller
24 during the course of repairing, cleaning, altering, or improving motor
25 vehicles, trailers, or campers and the seller makes a separate charge
26 for the tangible personal property, the tax levied by RCW 82.08.020
27 does not apply to the separately stated charge to a nonresident
28 purchaser for the tangible personal property but only if the separately
29 stated charge does not exceed either the seller's current publicly
30 stated retail price for the tangible personal property or, if no
31 publicly stated retail price is available, the seller's cost for the
32 tangible personal property. However, the exemption provided by this
33 section does not apply if tangible personal property is installed by
34 the seller during the course of repairing, cleaning, altering, or
35 improving motor vehicles, trailers, or campers and the seller makes a

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

4 (3)(a) Any person claiming exemption from retail sales tax under
5 the provisions of this section must display proof of his or her current
6 nonresident status as provided in this section.

7 (b) Acceptable proof of a nonresident person's status includes one
8 piece of identification such as a valid driver's license from the
9 jurisdiction in which the out-of-state residency is claimed or a valid
10 identification card which has a photograph of the holder and is issued
11 by the out-of-state jurisdiction. Identification under this subsection
12 (3)(b) must show the holder's residential address and have as one of
13 its legal purposes the establishment of residency in that out-of-state
14 jurisdiction.

15 (c) In lieu of furnishing proof of a person's nonresident status
16 under (b) of this subsection (3), a person claiming exemption from
17 retail sales tax under the provisions of this section may provide the
18 seller with an exemption certificate in compliance with subsection
19 (4)(b) of this section.

20 (4)(a) Nothing in this section requires the vendor to make tax
21 exempt retail sales to nonresidents. A vendor may choose to make sales
22 to nonresidents, collect the sales tax, and remit the amount of sales
23 tax collected to the state as otherwise provided by law. If the vendor
24 chooses to make a sale to a nonresident without collecting the sales
25 tax, the vendor (~~(shall, in good faith,)~~) must examine the purchaser's
26 proof of nonresidence, determine whether the proof is acceptable under
27 subsection (3)(b) of this section, and maintain records for each
28 nontaxable sale which shall show the type of proof accepted, including
29 any identification numbers where appropriate, and the expiration date,
30 if any.

31 (b) In lieu of using the method provided in (a) of this subsection
32 to document an exempt sale to a nonresident, a seller may accept from
33 the purchaser a properly completed uniform exemption certificate
34 approved by the streamlined sales and use tax agreement governing board
35 or any other exemption certificate as may be authorized by the
36 department and properly completed by the purchaser. A nonresident
37 purchaser who uses an exemption certificate authorized in this

1 subsection (4)(b) must include the purchaser's driver's license number
2 or other state-issued identification number and the state of issuance.

3 (c) In lieu of using the methods provided in (a) and (b) of this
4 subsection to document an exempt sale to a nonresident, a seller may
5 capture the relevant data elements as allowed under the streamlined
6 sales and use tax agreement.

7 (5)(a) Any person making fraudulent statements, which includes the
8 offer of fraudulent identification or fraudulently procured
9 identification to a vendor, in order to purchase goods without paying
10 retail sales tax is guilty of perjury under chapter 9A.72 RCW.

11 (b) Any person making tax exempt purchases under this section by
12 displaying proof of identification not his or her own, or counterfeit
13 identification, with intent to violate the provisions of this section,
14 is guilty of a misdemeanor and, in addition, is liable for the tax and
15 subject to a penalty equal to the greater of one hundred dollars or the
16 tax due on such purchases.

17 (6)(a) Any vendor who makes sales without collecting the tax (~~to~~
18 ~~a person who does not hold valid identification establishing out-of-~~
19 ~~state residency, and any vendor)) and who fails to maintain records of
20 sales to nonresidents as provided in this section(~~(7)~~) is personally
21 liable for the amount of tax due.~~

22 (b) Any vendor who makes sales without collecting the retail sales
23 tax under this section and who has actual knowledge that the
24 purchaser's proof of identification establishing out-of-state residency
25 is fraudulent is guilty of a misdemeanor and, in addition, is liable
26 for the tax and subject to a penalty equal to the greater of one
27 thousand dollars or the tax due on such sales. In addition, both the
28 purchaser and the vendor are liable for any penalties and interest
29 assessable under chapter 82.32 RCW.

30 **Sec. 216.** RCW 82.08.0293 and 2009 c 483 s 2 are each amended to
31 read as follows:

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

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

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

6 (2) The exemption of "food and food ingredients" provided for in
7 subsection (1) of this section (~~shall~~) does not apply to prepared
8 food, soft drinks, or dietary supplements. For purposes of this
9 subsection, the following definitions apply:

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

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

13 (A) A vitamin;

14 (B) A mineral;

15 (C) An herb or other botanical;

16 (D) An amino acid;

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

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

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

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

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

30 ~~((+i))~~ (A) Food sold in a heated state or heated by the seller;

31 ~~((+ii))~~ (B) Food sold with eating utensils provided by the seller,
32 including plates, knives, forks, spoons, glasses, cups, napkins, or
33 straws. A plate does not include a container or packaging used to
34 transport the food; or

35 ~~((+iii))~~ (C) Two or more food ingredients mixed or combined by the
36 seller for sale as a single item, except:

37 ~~((+A))~~ (I) Food that is only cut, repackaged, or pasteurized by
38 the seller; or

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

7 ((+b+)) (ii) "Prepared food" does not include the following food or
8 food ingredients, if the food or food ingredients are sold without
9 eating utensils provided by the seller:

10 ((+i+)) (A) Food sold by a seller whose proper primary North
11 American industry classification system (NAICS) classification is
12 manufacturing in sector 311, except subsector 3118 (bakeries), as
13 provided in the "North American industry classification system--United
14 States, 2002";

15 ((+ii+)) (B) Food sold in an unheated state by weight or volume as
16 a single item; or

17 ((+iii+)) (C) Bakery items. The term "bakery items" includes
18 bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts,
19 Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, or
20 tortillas.

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

26 ~~((+d) "Dietary supplement" means any product, other than tobacco,~~
27 ~~intended to supplement the diet that:~~

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

29 ~~(A) A vitamin;~~

30 ~~(B) A mineral;~~

31 ~~(C) An herb or other botanical;~~

32 ~~(D) An amino acid;~~

33 ~~(E) A dietary substance for use by humans to supplement the diet by~~
34 ~~increasing the total dietary intake; or~~

35 ~~(F) A concentrate, metabolite, constituent, extract, or combination~~
36 ~~of any ingredient described in this subsection;~~

37 ~~(ii) Is intended for ingestion in tablet, capsule, powder, softgel,~~

1 ~~gelcap, or liquid form, or if not intended for ingestion in such form,~~
2 ~~is not represented as conventional food and is not represented for use~~
3 ~~as a sole item of a meal or of the diet; and~~

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

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

12 (a) Under a state administered nutrition program for the aged as
13 provided for in the Older Americans Act (P.L. 95-478 Title III) and RCW
14 74.38.040(6);

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

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

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

29 (ii) That has been partially funded under ~~((Title))~~ 42 U.S.C. Sec.
30 1485 of the federal internal revenue code; and

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

34 (4)(a) Subsection (1) of this section notwithstanding, the retail
35 sale of food and food ingredients is subject to sales tax under RCW
36 82.08.020 if the food and food ingredients are sold through a vending
37 machine(~~, and in this case~~). Except as provided in (b) of this

1 subsection, the selling price of food and food ingredients sold through
2 a vending machine for purposes of RCW 82.08.020 is fifty-seven percent
3 of the gross receipts.

4 (b) (~~This subsection (4) does not apply to~~) For soft drinks and
5 hot prepared food and food ingredients, other than food and food
6 ingredients which are heated after they have been dispensed from the
7 vending machine, the selling price is the total gross receipts of such
8 sales divided by the sum of one plus the sales tax rate expressed as a
9 decimal.

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

13 **Sec. 217.** RCW 82.08.050 and 2009 c 563 s 206 and 2009 c 289 s 2
14 are each reenacted and amended to read as follows:

15 (1) The tax (~~hereby~~) imposed (~~shall~~) in this chapter must be
16 paid by the buyer to the seller (~~, and~~). Each seller (shall) must
17 collect from the buyer the full amount of the tax payable in respect to
18 each taxable sale in accordance with the schedule of collections
19 adopted by the department (~~pursuant to~~) under the provisions of RCW
20 82.08.060.

21 (2) The tax required by this chapter, to be collected by the
22 seller, (~~shall be~~) is deemed to be held in trust by the seller until
23 paid to the department (~~, and~~). Any seller who appropriates or
24 converts the tax collected to (his or her) the seller's own use or to
25 any use other than the payment of the tax to the extent that the money
26 required to be collected is not available for payment on the due date
27 as prescribed in this chapter is guilty of a gross misdemeanor.

28 (3) (~~In case~~) Except as otherwise provided in this section, if
29 any seller fails to collect the tax (herein) imposed in this chapter
30 or, having collected the tax, fails to pay it to the department in the
31 manner prescribed by this chapter, whether such failure is the result
32 of (his or her) the seller's own acts or the result of acts or
33 conditions beyond (his or her) the seller's control, (he or she
34 shall) the seller is, nevertheless, (be) personally liable to the
35 state for the amount of the tax (, unless the seller has taken from the
36 buyer a seller's permit or uniform exemption certificate authorized
37 under RCW 82.04.470, a copy of a direct pay permit issued under RCW

1 ~~82.32.087, a direct mail form as provided in RCW 82.32.730(5), an~~
2 ~~exemption certificate claiming direct mail as provided in RCW~~
3 ~~82.32.730(6), or other information required under the streamlined sales~~
4 ~~and use tax agreement, or information required under rules adopted by~~
5 ~~the department)).~~

6 (4) Sellers (~~shall~~) are not (~~be~~) relieved from personal
7 liability for the amount of the tax unless they maintain proper records
8 of exempt or nontaxable transactions and provide them to the department
9 when requested.

10 (5) Sellers are not relieved from personal liability for the amount
11 of tax if they fraudulently fail to collect the tax or if they solicit
12 purchasers to participate in an unlawful claim of exemption.

13 (6) Sellers are not relieved from personal liability for the amount
14 of tax if they accept an exemption certificate from a purchaser
15 claiming an entity-based exemption if:

16 (a) The subject of the transaction sought to be covered by the
17 exemption certificate is actually received by the purchaser at a
18 location operated by the seller in Washington; and

19 (b) Washington provides an exemption certificate that clearly and
20 affirmatively indicates that the claimed exemption is not available in
21 Washington. Graying out exemption reason types on a uniform form and
22 posting it on the department's web site is a clear and affirmative
23 indication that the grayed out exemptions are not available.

24 (7)(a) Sellers are relieved from personal liability for the amount
25 of tax if they obtain a fully completed exemption certificate or
26 capture the relevant data elements required under the streamlined sales
27 and use tax agreement within ninety days, or a longer period as may be
28 provided by rule by the department, subsequent to the date of sale.

29 (b) If the seller has not obtained an exemption certificate or all
30 relevant data elements required under the streamlined sales and use tax
31 agreement within the period allowed subsequent to the date of sale, the
32 seller may, within one hundred twenty days, or a longer period as may
33 be provided by rule by the department, subsequent to a request for
34 substantiation by the department, either prove that the transaction was
35 not subject to tax by other means or obtain a fully completed exemption
36 certificate from the purchaser, taken in good faith.

37 (c) Sellers are relieved from personal liability for the amount of
38 tax if they obtain a blanket exemption certificate for a purchaser with

1 which the seller has a recurring business relationship. The department
2 may not request from a seller renewal of blanket exemption certificates
3 or updates of exemption certificate information or data elements if
4 there is a recurring business relationship between the buyer and
5 seller. For purposes of this subsection (7)(c), a "recurring business
6 relationship" means at least one sale transaction within a period of
7 twelve consecutive months.

8 (d) Sellers are relieved from personal liability for the amount of
9 tax if they obtain a copy of a direct pay permit issued under RCW
10 82.32.087.

11 (8) The amount of tax, until paid by the buyer to the seller or to
12 the department, (~~shall~~) constitutes a debt from the buyer to the
13 seller (~~and~~). Any seller who fails or refuses to collect the tax as
14 required with intent to violate the provisions of this chapter or to
15 gain some advantage or benefit, either direct or indirect, and any
16 buyer who refuses to pay any tax due under this chapter is guilty of a
17 misdemeanor.

18 (9) Except as otherwise provided in this subsection, the tax
19 required by this chapter to be collected by the seller (~~shall~~) must
20 be stated separately from the selling price in any sales invoice or
21 other instrument of sale. On all retail sales through vending
22 machines, the tax need not be stated separately from the selling price
23 or collected separately from the buyer. Except as otherwise provided
24 in this subsection, for purposes of determining the tax due from the
25 buyer to the seller and from the seller to the department it (~~shall~~)
26 must be conclusively presumed that the selling price quoted in any
27 price list, sales document, contract or other agreement between the
28 parties does not include the tax imposed by this chapter(~~7~~). But if
29 the seller advertises the price as including the tax or that the seller
30 is paying the tax, the advertised price (~~shall~~) may not be considered
31 the selling price.

32 (10) Where a buyer has failed to pay to the seller the tax imposed
33 by this chapter and the seller has not paid the amount of the tax to
34 the department, the department may, in its discretion, proceed directly
35 against the buyer for collection of the tax(~~7 in which case~~). If the
36 department proceeds directly against the buyer for collection of the
37 tax as authorized in this subsection, the department may add a penalty
38 of ten percent (~~may be added~~) of the unpaid tax to the amount of the

1 tax due for failure of the buyer to pay the (~~same~~) tax to the seller,
2 regardless of when the tax may be collected by the department(~~and~~).
3 In addition to the penalty authorized in this subsection, all of the
4 provisions of chapter 82.32 RCW, including those relative to interest
5 and penalties, (~~shall~~) apply (~~in addition; and,~~). For the sole
6 purpose of applying the various provisions of chapter 82.32 RCW, the
7 twenty-fifth day of the month following the tax period in which the
8 purchase was made (~~shall~~) will be considered as the due date of the
9 tax.

10 (11) Notwithstanding subsections (1) through (10) of this section,
11 any person making sales is not obligated to collect the tax imposed by
12 this chapter if:

13 (a) The person's activities in this state, whether conducted
14 directly or through another person, are limited to:

- 15 (i) The storage, dissemination, or display of advertising;
- 16 (ii) The taking of orders; or
- 17 (iii) The processing of payments; and

18 (b) The activities are conducted electronically via a web site on
19 a server or other computer equipment located in Washington that is not
20 owned or operated by the person making sales into this state nor owned
21 or operated by an affiliated person. "Affiliated persons" has the same
22 meaning as provided in RCW 82.04.424.

23 (12) Subsection (11) of this section expires when: (a) The United
24 States congress grants individual states the authority to impose sales
25 and use tax collection duties on remote sellers; or (b) it is
26 determined by a court of competent jurisdiction, in a judgment not
27 subject to review, that a state can impose sales and use tax collection
28 duties on remote sellers.

29 (13) For purposes of this section(~~7~~):

30 (a) "Exemption certificate" means documentation furnished by a
31 buyer to a seller to claim an exemption from sales tax. An exemption
32 certificate includes a reseller permit or other documentation
33 authorized in RCW 82.04.470 furnished by a buyer to a seller to
34 substantiate a wholesale sale; and

35 (b) "Seller" includes a certified service provider, as defined in
36 RCW 82.32.020, acting as agent for the seller.

1 **Sec. 218.** RCW 82.08.865 and 2007 c 443 s 1 are each amended to
2 read as follows:

3 (1) The tax levied by RCW 82.08.020 does not apply to sales of
4 diesel fuel, biodiesel fuel, or aircraft fuel, to a farm fuel user for
5 ~~((nonhighway use))~~ agricultural purposes. This exemption applies to a
6 fuel blend if all of the component fuels of the blend would otherwise
7 be exempt under this subsection if the component fuels were sold as
8 separate products. This exemption is available only if the buyer
9 provides the seller with an exemption certificate in a form and manner
10 prescribed by the department. ~~((Fuel used for space or water heating
11 for human habitation is not exempt under this section.))~~

12 (2) The definitions in RCW 82.04.213 and this subsection apply to
13 this section.

14 (a)(i) "Agricultural purposes" means the performance of activities
15 directly related to the growing, raising, or producing of agricultural
16 products.

17 (ii) "Agricultural purposes" does not include: (A) Heating space
18 for human habitation or water for human consumption; or (B)
19 Transporting on public roads individuals, agricultural products, farm
20 machinery or equipment, or other tangible personal property, except
21 when the transportation is incidental to transportation on private
22 property and the fuel used for such transportation is not subject to
23 tax under chapter 82.38 RCW.

24 (b) "Aircraft fuel" is defined as provided in RCW 82.42.010.

25 ~~((b))~~ (c) "Biodiesel fuel" is defined as provided in RCW
26 19.112.010.

27 ~~((c))~~ (d) "Diesel fuel" is defined as provided in 26 U.S.C. 4083,
28 as amended or renumbered as of January 1, 2006.

29 ~~((d))~~ (e) "Farm fuel user" means: (i) A farmer; or (ii) a person
30 who provides horticultural services for farmers, such as soil
31 preparation services, crop cultivation services, and crop harvesting
32 services.

33 **Sec. 219.** RCW 82.08.700 and 2007 c 22 s 1 are each amended to read
34 as follows:

35 (1) The tax levied by RCW 82.08.020 does not apply to sales to
36 nonresident individuals of vessels thirty feet or longer if an

1 individual purchasing a vessel purchases and displays a valid use
2 permit.

3 (2)(a) An individual claiming exemption from retail sales tax under
4 this section must display proof of his or her current nonresident
5 status at the time of purchase.

6 (b) Acceptable proof of a nonresident individual's status includes
7 one piece of identification such as a valid driver's license from the
8 jurisdiction in which the out-of-state residency is claimed or a valid
9 identification card that has a photograph of the holder and is issued
10 by the out-of-state jurisdiction. Identification under this subsection
11 (2)(b) must show the holder's residential address and have as one of
12 its legal purposes the establishment of residency in that out-of-state
13 jurisdiction.

14 (3) Nothing in this section requires the vessel dealer to make tax
15 exempt retail sales to nonresidents. A dealer may choose to make sales
16 to nonresidents, collect the sales tax, and remit the amount of sales
17 tax collected to the state as otherwise provided by law. If the dealer
18 chooses to make a sale to a nonresident without collecting the sales
19 tax, the vendor (~~((shall, in good faith,))~~) must examine the proof of
20 nonresidence, determine whether the proof is acceptable under
21 subsection (2)(b) of this section, and maintain records for each
22 nontaxable sale that shows the type of proof accepted, including any
23 identification numbers where appropriate, and the expiration date, if
24 any.

25 (4) A vessel dealer shall issue a use permit to a buyer if the
26 dealer is satisfied that the buyer is a nonresident. The use permit
27 (~~((shall))~~) must be in a form and manner required by the department and
28 (~~((shall))~~) must include an affidavit, signed by the purchaser, declaring
29 that the vessel will be used in a manner consistent with this section.
30 The fee for the issuance of a use permit is five hundred dollars for
31 vessels fifty feet in length or less and eight hundred dollars for
32 vessels greater than fifty feet in length. Funds collected under this
33 section and RCW 82.12.700 (~~((shall))~~) must be reported on the dealer's
34 excise tax return and remitted to the department in accordance with RCW
35 82.32.045. The department (~~((shall))~~) must transmit the fees to the
36 state treasurer to be deposited in the state general fund. The use
37 permit must be displayed on the vessel and is valid for twelve
38 consecutive months from the date of issuance. A use permit is not

1 renewable. A purchaser at the time of purchase must make an
2 irrevocable election to take the exemption authorized in this section
3 or the exemption in either RCW 82.08.0266 or 82.08.02665. A vessel
4 dealer must maintain a copy of the use permit for the dealer's records.
5 Vessel dealers must provide copies of use permits issued by the dealer
6 under this section and RCW 82.12.700 to the department on a quarterly
7 basis.

8 (5) A nonresident who claims an exemption under this section and
9 who uses a vessel in this state after his or her use permit for that
10 vessel has expired is liable for the tax imposed under RCW 82.08.020 on
11 the original selling price of the vessel and (~~shall~~) must pay the tax
12 directly to the department. Interest at the rate provided in RCW
13 82.32.050 applies to amounts due under this subsection, retroactively
14 to the date the vessel was purchased, and accrues until the full amount
15 of tax due is paid to the department.

16 (6) Any vessel dealer who makes sales without collecting the tax to
17 a person who does not hold valid identification establishing
18 out-of-state residency, and any dealer who fails to maintain records of
19 sales to nonresidents as provided in this section, is personally liable
20 for the amount of tax due.

21 (7) Chapter 82.32 RCW applies to the administration of the fee
22 imposed in this section and RCW 82.12.700.

23 (8) A vessel dealer that issues use permits under this section and
24 RCW 82.12.700 must file with the department all returns in an
25 electronic format as provided or approved by the department. As used
26 in this subsection, "returns" has the same meaning as "return" in RCW
27 82.32.050.

28 (a) Any return required to be filed in an electronic format under
29 this subsection is not filed until received by the department in an
30 electronic format provided or approved by the department.

31 (b) The electronic filing requirement in this subsection ends when
32 a vessel dealer no longer issues use permits, and the dealer has
33 electronically filed all of its returns reporting the fees collected
34 under this section and RCW 82.12.700.

35 (c) The department may waive the electronic filing requirement in
36 this subsection for good cause shown.

1 **Sec. 220.** RCW 82.12.0257 and 2009 c 535 s 611 are each amended to
2 read as follows:

3 The provisions of this chapter do not apply in respect to the use
4 of any article of personal property included within the transfer of the
5 title to the entire operating property of a publicly or privately owned
6 public utility, or of a complete operating integral section thereof, by
7 the state or a political subdivision thereof in conducting any public
8 service business as defined in RCW 82.16.010 (~~((1), (2), (3), (4), (5),~~
9 ~~(6), (7), (8), (9), (10), or (11))~~). For the purposes of this section,
10 "operating property" includes digital goods and digital codes.

11 **Sec. 221.** RCW 82.12.040 and 2009 c 535 s 1108 are each amended to
12 read as follows:

13 (1) Every person who maintains in this state a place of business or
14 a stock of goods, or engages in business activities within this state,
15 shall obtain from the department a certificate of registration, and
16 shall, at the time of making sales of tangible personal property,
17 digital goods, digital codes, digital automated services, extended
18 warranties, or sales of any service defined as a retail sale in RCW
19 82.04.050 (2) (a) or (g), (3)(a), or (6)(b), or making transfers of
20 either possession or title, or both, of tangible personal property for
21 use in this state, collect from the purchasers or transferees the tax
22 imposed under this chapter. The tax to be collected under this section
23 must be in an amount equal to the purchase price multiplied by the rate
24 in effect for the retail sales tax under RCW 82.08.020. For the
25 purposes of this chapter, the phrase "maintains in this state a place
26 of business" shall include the solicitation of sales and/or taking of
27 orders by sales agents or traveling representatives. For the purposes
28 of this chapter, "engages in business activity within this state"
29 includes every activity which is sufficient under the Constitution of
30 the United States for this state to require collection of tax under
31 this chapter. The department must in rules specify activities which
32 constitute engaging in business activity within this state, and must
33 keep the rules current with future court interpretations of the
34 Constitution of the United States.

35 (2) Every person who engages in this state in the business of
36 acting as an independent selling agent for persons who do not hold a
37 valid certificate of registration, and who receives compensation by

1 reason of sales of tangible personal property, digital goods, digital
2 codes, digital automated services, extended warranties, or sales of any
3 service defined as a retail sale in RCW 82.04.050 (2) (a) or (g),
4 (3)(a), or (6)(b), of his or her principals for use in this state,
5 must, at the time such sales are made, collect from the purchasers the
6 tax imposed on the purchase price under this chapter, and for that
7 purpose (~~shall be~~) is deemed a retailer as defined in this chapter.

8 (3) The tax required to be collected by this chapter is deemed to
9 be held in trust by the retailer until paid to the department, and any
10 retailer who appropriates or converts the tax collected to the
11 retailer's own use or to any use other than the payment of the tax
12 provided herein to the extent that the money required to be collected
13 is not available for payment on the due date as prescribed is guilty of
14 a misdemeanor. In case any seller fails to collect the tax herein
15 imposed or having collected the tax, fails to pay the same to the
16 department in the manner prescribed, whether such failure is the result
17 of the seller's own acts or the result of acts or conditions beyond the
18 seller's control, the seller is nevertheless personally liable to the
19 state for the amount of such tax, unless the seller has taken from the
20 buyer (~~in good faith~~) a copy of a direct pay permit issued under RCW
21 82.32.087.

22 (4) Any retailer who refunds, remits, or rebates to a purchaser, or
23 transferee, either directly or indirectly, and by whatever means, all
24 or any part of the tax levied by this chapter is guilty of a
25 misdemeanor.

26 (5) Notwithstanding subsections (1) through (4) of this section,
27 any person making sales is not obligated to collect the tax imposed by
28 this chapter if:

29 (a) The person's activities in this state, whether conducted
30 directly or through another person, are limited to:

- 31 (i) The storage, dissemination, or display of advertising;
- 32 (ii) The taking of orders; or
- 33 (iii) The processing of payments; and

34 (b) The activities are conducted electronically via a web site on
35 a server or other computer equipment located in Washington that is not
36 owned or operated by the person making sales into this state nor owned
37 or operated by an affiliated person. "Affiliated persons" has the same
38 meaning as provided in RCW 82.04.424.

1 (6) Subsection (5) of this section expires when: (a) The United
2 States congress grants individual states the authority to impose sales
3 and use tax collection duties on remote sellers; or (b) it is
4 determined by a court of competent jurisdiction, in a judgment not
5 subject to review, that a state can impose sales and use tax collection
6 duties on remote sellers.

7 (7) Notwithstanding subsections (1) through (4) of this section,
8 any person making sales is not obligated to collect the tax imposed by
9 this chapter if the person would have been obligated to collect retail
10 sales tax on the sale absent a specific exemption provided in chapter
11 82.08 RCW, and there is no corresponding use tax exemption in this
12 chapter. Nothing in this subsection (7) may be construed as relieving
13 purchasers from liability for reporting and remitting the tax due under
14 this chapter directly to the department.

15 **Sec. 222.** RCW 82.12.865 and 2007 c 443 s 2 are each amended to
16 read as follows:

17 (1) The provisions of this chapter do not apply with respect to the
18 ((nonhighway)) use of diesel fuel, biodiesel fuel, or aircraft fuel, by
19 a farm fuel user for agricultural purposes. This exemption applies to
20 a fuel blend if all of the component fuels of the blend would otherwise
21 be exempt under this subsection if the component fuels were acquired as
22 separate products. ((Fuel used for space or water heating for human
23 habitation is not exempt under this section.))

24 (2) The definitions in RCW 82.08.865 apply to this section.

25 **Sec. 223.** RCW 82.14.020 and 2007 c 6 s 502 are each amended to
26 read as follows:

27 For purposes of this chapter:

28 (1) "City" means a city or town;

29 (2) The meaning ascribed to words and phrases in chapters 82.04,
30 82.08 and 82.12 RCW, as now or hereafter amended, insofar as
31 applicable, ((shall have)) has full force and effect with respect to
32 taxes imposed under authority of this chapter. However, the terms
33 "retail sale" and "sale at retail" have only the meaning provided in
34 RCW 82.08.010 for the purposes of this chapter, unless the context
35 clearly requires that a different definition apply;

1 (3) "Taxable event" (~~shall~~) means any retail sale, or any use,
2 upon which a state tax is imposed pursuant to chapter 82.08 or 82.12
3 RCW, as they now exist or may hereafter be amended(~~PROVIDED,~~
4 ~~HOWEVER, That~~). However, the term (~~shall~~) does not include a retail
5 sale taxable pursuant to RCW 82.08.150, as now or hereafter amended;
6 and

7 (4) "Treasurer or other legal depository" (~~shall~~) means the
8 treasurer or legal depository of a county or city.

9 **Sec. 224.** RCW 82.16.010 and 2009 c 535 s 1110 and 2009 c 469 s 701
10 are each reenacted and amended to read as follows:

11 For the purposes of this chapter, unless otherwise required by the
12 context:

13 (1) "Express business" means the business of carrying property for
14 public hire on the line of any common carrier operated in this state,
15 when such common carrier is not owned or leased by the person engaging
16 in such business.

17 (2) "Gas distribution business" means the business of operating a
18 plant or system for the production or distribution for hire or sale of
19 gas, whether manufactured or natural.

20 (3) "Gross income" means the value proceeding or accruing from the
21 performance of the particular public service or transportation business
22 involved, including operations incidental thereto, but without any
23 deduction on account of the cost of the commodity furnished or sold,
24 the cost of materials used, labor costs, interest, discount, delivery
25 costs, taxes, or any other expense whatsoever paid or accrued and
26 without any deduction on account of losses.

27 (4) "Light and power business" means the business of operating a
28 plant or system for the generation, production or distribution of
29 electrical energy for hire or sale and/or for the wheeling of
30 electricity for others.

31 (5) "Log transportation business" means the business of
32 transporting logs by truck, (~~other than~~) except when such
33 transportation meets the definition of urban transportation business or
34 occurs exclusively upon private roads.

35 (6) "Motor transportation business" means the business (except
36 urban transportation business) of operating any motor propelled vehicle
37 by which persons or property of others are conveyed for hire, and

1 includes, but is not limited to, the operation of any motor propelled
2 vehicle as an auto transportation company (except urban transportation
3 business), common carrier, or contract carrier as defined by RCW
4 81.68.010 and 81.80.010. However, "motor transportation business" does
5 not mean or include: (a) A log transportation business; or (b) the
6 transportation of logs or other forest products exclusively upon
7 private roads or private highways.

8 (7)(a) "Public service business" means any of the businesses
9 defined in subsections (1), (2), (4), (6), (8), (9), (10), (12), and
10 (13) of this section or any business subject to control by the state,
11 or having the powers of eminent domain and the duties incident thereto,
12 or any business hereafter declared by the legislature to be of a public
13 service nature, except telephone business and low-level radioactive
14 waste site operating companies as redefined in RCW 81.04.010. It
15 includes, among others, without limiting the scope hereof: Airplane
16 transportation, boom, dock, ferry, pipe line, toll bridge, toll logging
17 road, water transportation and wharf businesses.

18 (b) The definitions in this subsection (7)(b) apply throughout this
19 subsection (7).

20 (i) "Competitive telephone service" has the same meaning as in RCW
21 82.04.065.

22 (ii) "Network telephone service" means the providing by any person
23 of access to a telephone network, telephone network switching service,
24 toll service, or coin telephone services, or the providing of
25 telephonic, video, data, or similar communication or transmission for
26 hire, via a telephone network, toll line or channel, cable, microwave,
27 or similar communication or transmission system. "Network telephone
28 service" includes the provision of transmission to and from the site of
29 an internet provider via a telephone network, toll line or channel,
30 cable, microwave, or similar communication or transmission system.
31 "Network telephone service" does not include the providing of
32 competitive telephone service, the providing of cable television
33 service, the providing of broadcast services by radio or television
34 stations, nor the provision of internet access as defined in RCW
35 82.04.297, including the reception of dial-in connection, provided at
36 the site of the internet service provider.

37 (iii) "Telephone business" means the business of providing network

1 telephone service. It includes cooperative or farmer line telephone
2 companies or associations operating an exchange.

3 (iv) "Telephone service" means competitive telephone service or
4 network telephone service, or both, as defined in (b)(i) and (ii) of
5 this subsection.

6 (8) "Railroad business" means the business of operating any
7 railroad, by whatever power operated, for public use in the conveyance
8 of persons or property for hire. It shall not, however, include any
9 business herein defined as an urban transportation business.

10 (9) "Railroad car business" means the business of operating stock
11 cars, furniture cars, refrigerator cars, fruit cars, poultry cars, tank
12 cars, sleeping cars, parlor cars, buffet cars, tourist cars, or any
13 other kinds of cars used for transportation of property or persons upon
14 the line of any railroad operated in this state when such railroad is
15 not owned or leased by the person engaging in such business.

16 (10) "Telegraph business" means the business of affording
17 telegraphic communication for hire.

18 (11) "Tugboat business" means the business of operating tugboats,
19 towboats, wharf boats or similar vessels in the towing or pushing of
20 vessels, barges or rafts for hire.

21 (12) "Urban transportation business" means the business of
22 operating any vehicle for public use in the conveyance of persons or
23 property for hire, insofar as (a) operating entirely within the
24 corporate limits of any city or town, or within five miles of the
25 corporate limits thereof, or (b) operating entirely within and between
26 cities and towns whose corporate limits are not more than five miles
27 apart or within five miles of the corporate limits of either thereof.
28 Included herein, but without limiting the scope hereof, is the business
29 of operating passenger vehicles of every type and also the business of
30 operating cartage, pickup, or delivery services, including in such
31 services the collection and distribution of property arriving from or
32 destined to a point within or without the state, whether or not such
33 collection or distribution be made by the person performing a local or
34 interstate line-haul of such property.

35 (13) "Water distribution business" means the business of operating
36 a plant or system for the distribution of water for hire or sale.

37 (14) The meaning attributed, in chapter 82.04 RCW, to the term "tax
38 year," "person," "value proceeding or accruing," "business," "engaging

1 in business," "in this state," "within this state," "cash discount" and
2 "successor" (~~shall apply~~) applies equally in the provisions of this
3 chapter.

4 **Sec. 225.** RCW 82.16.110 and 2009 c 469 s 504 are each amended to
5 read as follows:

6 The definitions in this section apply throughout this chapter
7 unless the context clearly requires otherwise.

8 (1)(a) "Community solar project" means:

9 (i) A solar energy system owned by local individuals, households,
10 nonprofit organizations, or nonutility businesses that is placed on the
11 property owned by a cooperating local governmental entity that is not
12 in the light and power business or in the gas distribution business; or

13 (ii) A utility-owned solar energy system that is voluntarily funded
14 by the utility's ratepayers where, in exchange for their financial
15 support, the utility gives contributors a payment or credit on their
16 utility bill for the value of the electricity produced by the project.

17 (b) For the purposes of "community solar project" as defined in (a)
18 of this subsection:

19 (i) "Nonprofit organization" means an organization exempt from
20 taxation under Title 26 U.S.C. Sec. 501(c)(3) of the federal internal
21 revenue code of 1986, as amended, as of January 1, 2009; and

22 (ii) "Utility" means a light and power business, an electric
23 cooperative, or a mutual corporation that provides electricity service.

24 (2) "Customer-generated electricity" means a community solar
25 project or the alternating current electricity that is generated from
26 a renewable energy system located on an individual's, businesses', or
27 local government's real property that is also provided electricity
28 generated by a light and power business. Except for community solar
29 projects, a system located on a leasehold interest does not qualify
30 under this definition. Except for utility-owned community solar
31 projects, "customer-generated electricity" does not include electricity
32 generated by a light and power business with greater than one thousand
33 megawatt hours of annual sales or a gas distribution business.

34 (3) "Economic development kilowatt-hour" means the actual kilowatt-
35 hour measurement of customer-generated electricity multiplied by the
36 appropriate economic development factor.

1 (4) "Local governmental entity" means any unit of local government
2 of this state including, but not limited to, counties, cities, towns,
3 municipal corporations, quasi-municipal corporations, special purpose
4 districts, and school districts.

5 (5) "Photovoltaic cell" means a device that converts light directly
6 into electricity without moving parts.

7 (6) "Renewable energy system" means a solar energy system, an
8 anaerobic digester as defined in RCW 82.08.900, or a wind generator
9 used for producing electricity.

10 (7) "Solar energy system" means any device or combination of
11 devices or elements that rely upon direct sunlight as an energy source
12 for use in the generation of electricity.

13 (8) "Solar inverter" means the device used to convert direct
14 current to alternating current in a photovoltaic cell system.

15 (9) "Solar module" means the smallest nondivisible self-contained
16 physical structure housing interconnected photovoltaic cells and
17 providing a single direct current electrical output.

18 **Sec. 226.** RCW 82.32.080 and 2009 c 176 s 2 are each amended to
19 read as follows:

20 (1) When authorized by the department, payment of the tax may be
21 made by uncertified check under such rules as the department
22 prescribes, but, if a check so received is not paid by the bank on
23 which it is drawn, the taxpayer, by whom such check is tendered, will
24 remain liable for payment of the tax and for all legal penalties, the
25 same as if such check had not been tendered.

26 (2)(a) Except as otherwise provided in this subsection, payment of
27 the tax must be made by electronic funds transfer, as defined in RCW
28 82.32.085, if the taxpayer is required to file and remit its taxes on
29 a monthly basis. As an alternative to electronic funds transfer, the
30 department may authorize other forms of electronic payment, such as
31 credit card and e-check. All taxes administered by this chapter are
32 subject to this requirement except the taxes authorized by chapters
33 82.14A, 82.14B, 82.24, (~~82.27~~) 82.29A, and 84.33 RCW. It is the
34 intent of this subsection to require electronic payment for those taxes
35 reported on the department's combined excise tax return or any
36 successor return. The mandatory electronic payment requirement in this
37 subsection also applies to taxpayers who meet the threshold for filing

1 and remitting taxes on a monthly basis as established by rule of the
2 department but for whom the department has authorized a less frequent
3 reporting frequency, when such authorization became effective on or
4 after July 26, 2009.

5 (b) The department, for good cause, may waive the electronic
6 payment requirement in this subsection for any taxpayer. In the
7 discretion of the department, a waiver under this subsection may be
8 made temporary or permanent, and may be made on the department's own
9 motion.

10 (c) The department is authorized to accept payment of taxes by
11 electronic funds transfer or other acceptable forms of electronic
12 payment from taxpayers that are not subject to the mandatory electronic
13 payment requirements in this subsection.

14 (3)(a) Except as otherwise provided in this subsection, returns
15 must be filed electronically using the department's online tax filing
16 service, if the taxpayer is required to file and remit its taxes on a
17 monthly basis. The mandatory electronic filing requirement in this
18 subsection also applies to taxpayers who meet the threshold for filing
19 and remitting taxes on a monthly basis as established by rule of the
20 department but for whom the department has authorized a less frequent
21 reporting frequency, when such authorization became effective on or
22 after July 26, 2009.

23 (b) The department, for good cause, may waive the electronic filing
24 requirement in this subsection for any taxpayer. In the discretion of
25 the department, a waiver under this subsection may be made temporary or
26 permanent, and may be made on the department's own motion.

27 (c) The department is authorized to (~~accept payment of taxes by~~
28 ~~electronic funds transfer or other acceptable forms of electronic~~
29 ~~payment~~) allow electronic filing of returns from taxpayers that are
30 not subject to the mandatory electronic (~~payment~~) filing requirements
31 in this subsection.

32 (4)(a)(i) The department, for good cause shown, may extend the time
33 for making and filing any return, and may grant such reasonable
34 additional time within which to make and file returns as it may deem
35 proper, but any permanent extension granting the taxpayer a reporting
36 date without penalty more than ten days beyond the due date, and any
37 extension in excess of thirty days must be conditional on deposit with
38 the department of an amount to be determined by the department which

1 shall be approximately equal to the estimated tax liability for the
2 reporting period or periods for which the extension is granted. In the
3 case of a permanent extension or a temporary extension of more than
4 thirty days the deposit must be deposited within the state treasury
5 with other tax funds and a credit recorded to the taxpayer's account
6 which may be applied to taxpayer's liability upon cancellation of the
7 permanent extension or upon reporting of the tax liability where an
8 extension of more than thirty days has been granted.

9 (ii) The department must review the requirement for deposit at
10 least annually and may require a change in the amount of the deposit
11 required when it believes that such amount does not approximate the tax
12 liability for the reporting period or periods for which the extension
13 is granted.

14 (b) During a state of emergency declared under RCW 43.06.010(12),
15 the department, on its own motion or at the request of any taxpayer
16 affected by the emergency, may extend the time for making or filing any
17 return as the department deems proper. The department may not require
18 any deposit as a condition for granting an extension under this
19 subsection (4)(b).

20 (5) The department must keep full and accurate records of all funds
21 received and disbursed by it. Subject to the provisions of RCW
22 82.32.105 and 82.32.350, the department must apply the payment of the
23 taxpayer first against penalties and interest, and then upon the tax,
24 without regard to any direction of the taxpayer.

25 (6) The department may refuse to accept any return that is not
26 accompanied by a remittance of the tax shown to be due thereon or that
27 is not filed electronically as required in this section. When such
28 return is not accepted, the taxpayer is deemed to have failed or
29 refused to file a return and is subject to the procedures provided in
30 RCW 82.32.100 and to the penalties provided in RCW 82.32.090. The
31 above authority to refuse to accept a return may not apply when a
32 return is timely filed electronically and a timely payment has been
33 made by electronic funds transfer or other form of electronic payment
34 as authorized by the department.

35 (7) Except for returns and remittances required to be transmitted
36 to the department electronically under this section and except as
37 otherwise provided in this chapter, a return or remittance that is
38 transmitted to the department by United States mail is deemed filed or

1 received on the date shown by the post office cancellation mark stamped
2 upon the envelope containing it. A return or remittance that is
3 transmitted to the department electronically is deemed filed or
4 received according to procedures set forth by the department.

5 (8)(a) For purposes of subsections (2) and (3) of this section,
6 "good cause" means the inability of a taxpayer to comply with the
7 requirements of subsection (2) or (3) of this section because:

8 (i) The taxpayer does not have the equipment or software necessary
9 to enable the taxpayer to comply with subsection (2) or (3) of this
10 section;

11 (ii) The equipment or software necessary to enable the taxpayer to
12 comply with subsection (2) or (3) of this section is not functioning
13 properly;

14 (iii) The taxpayer does not have access to the internet using the
15 taxpayer's own equipment;

16 (iv) The taxpayer does not have a bank account or a credit card;

17 (v) The taxpayer's bank is unable to send or receive electronic
18 funds transfer transactions; or

19 (vi) Some other circumstance or condition exists that, in the
20 department's judgment, prevents the taxpayer from complying with the
21 requirements of subsection (2) or (3) of this section.

22 (b) "Good cause" also includes any circumstance that, in the
23 department's judgment, supports the efficient or effective
24 administration of the tax laws of this state, including providing
25 relief from the requirements of subsection (2) or (3) of this section
26 to any taxpayer that is voluntarily collecting and remitting this
27 state's sales or use taxes on sales to Washington customers but has no
28 legal requirement to be registered with the department.

29 **Sec. 227.** RCW 82.32.440 and 2001 c 116 s 2 are each amended to
30 read as follows:

31 (1) The department is authorized to enter into agreements with
32 sellers who meet the criteria in this section for a project on sales
33 and use tax exemption requirements. This project will allow the use of
34 electronic data collection in lieu of paper certificates otherwise
35 required by law, including the use of electronic signatures.

36 (2) The object of the project is to determine whether using an

1 electronic system and reviewing the data regarding the exempt
2 transactions provides the same level of reliability as the current
3 system while lessening the burden on the seller.

4 (3) A business making both sales taxable and exempt under chapter
5 82.08 or 82.12 RCW, that has electronic data-collecting capabilities,
6 and that wishes to participate in the project may make application to
7 the department in such form and manner as the department may require.
8 To be eligible for such participation, a seller must demonstrate its
9 capability to take part in the project and to provide data to the
10 department in a form in which the data can be used by the department.
11 The department is not required to accept all applicants in this project
12 and is not required to provide any reason for not selecting a
13 participant. A seller selected as a participant may be relieved of
14 other sales and use tax exemption documentation requirements provided
15 by law as covered by the project(~~(, and will be relieved of the good~~
16 ~~faith requirement under RCW 82.08.050 to the extent that it has made~~
17 ~~available to the department the data required by the project)).~~

18 **Sec. 228.** RCW 82.32.520 and 2007 c 54 s 18 and 2007 c 6 s 1001 are
19 each reenacted and amended to read as follows:

20 (1) Except for the defined telecommunications services listed in
21 subsection (3) of this section, the sale of telecommunications service
22 as defined in RCW 82.04.065 sold on a call-by-call basis (~~(shall be))~~
23 is sourced to (a) each level of taxing jurisdiction where the call
24 originates and terminates in that jurisdiction or (b) each level of
25 taxing jurisdiction where the call either originates or terminates and
26 in which the service address is also located.

27 (2) Except for the defined telecommunications services listed in
28 subsection (3) of this section, a sale of telecommunications service as
29 defined in RCW 82.04.065 sold on a basis other than a call-by-call
30 basis, is sourced to the customer's place of primary use.

31 (3) The sales of telecommunications service as defined in RCW
32 82.04.065 that are listed in subsection (3) of this section (~~(shall~~
33 ~~be)) is sourced to each level of taxing jurisdiction as follows:~~

34 (a) A sale of mobile telecommunications services, other than air-
35 ground radiotelephone service and prepaid calling service, is sourced
36 to the customer's place of primary use as required by RCW 82.08.066.

1 (b) A sale of postpaid calling service is sourced to the
2 origination point of the telecommunications signal as first identified
3 by either (i) the seller's telecommunications system, or (ii)
4 information received by the seller from its service provider, where the
5 system used to transport such signals is not that of the seller.

6 (c) A sale of prepaid calling service or a sale of a prepaid
7 wireless calling service is sourced as follows:

8 (i) When a prepaid calling service or a prepaid wireless calling
9 service is received by the purchaser at a business location of the
10 seller, the sale is sourced to that business location;

11 (ii) When a prepaid calling service or a prepaid wireless calling
12 service is not received by the purchaser at a business location of the
13 seller, the sale is sourced to the location where receipt by the
14 purchaser or the purchaser's donee, designated as such by the
15 purchaser, occurs, including the location indicated by instructions for
16 delivery to the purchaser or donee, known to the seller;

17 (iii) When (c)(i) and (ii) of this subsection do not apply, the
18 sale is sourced to the location indicated by an address for the
19 purchaser that is available from the business records of the seller
20 that are maintained in the ordinary course of the seller's business
21 when use of this address does not constitute bad faith;

22 (iv) When (c)(i), (ii), and (iii) of this subsection do not apply,
23 the sale is sourced to the location indicated by an address for the
24 purchaser obtained during the consummation of the sale, including the
25 address of a purchaser's payment instrument, if no other address is
26 available, when use of this address does not constitute bad faith;

27 (v) When (c)(i), (ii), (iii), and (iv) of this subsection do not
28 apply, including the circumstance where the seller is without
29 sufficient information to apply those provisions, ~~((then))~~ the
30 ~~((location shall be determined by the address from which tangible~~
31 ~~personal property was shipped, from which the digital good or the~~
32 ~~computer software delivered electronically was first available for~~
33 ~~transmission by the seller, or from which the service defined as a~~
34 ~~retail sale under RCW 82.04.050 was provided, disregarding for these~~
35 ~~purposes any location that merely provided the digital transfer of the~~
36 ~~product sold)) sale is sourced as provided in RCW 82.32.730(1)(e);~~

37 (vi) In the case of a sale of prepaid wireless calling service,

1 (c)(v) of this subsection (~~shall~~) includes as an option the location
2 associated with the mobile telephone number.

3 (d) A sale of a private communication service is sourced as
4 follows:

5 (i) Service for a separate charge related to a customer channel
6 termination point is sourced to each level of jurisdiction in which
7 such customer channel termination point is located.

8 (ii) Service where all customer termination points are located
9 entirely within one jurisdiction or levels of jurisdiction is sourced
10 in such jurisdiction in which the customer channel termination points
11 are located.

12 (iii) Service for segments of a channel between two customer
13 channel termination points located in different jurisdictions and which
14 segment of channel are separately charged is sourced fifty percent in
15 each level of jurisdiction in which the customer channel termination
16 points are located.

17 (iv) Service for segments of a channel located in more than one
18 jurisdiction or levels of jurisdiction and which segments are not
19 separately billed is sourced in each jurisdiction based on the
20 percentage determined by dividing the number of customer channel
21 termination points in the jurisdiction by the total number of customer
22 channel termination points.

23 (4) The definitions in this subsection apply throughout this
24 chapter.

25 (a) "Air-ground radiotelephone service" means air-ground radio
26 service, as defined in 47 C.F.R. Sec. 22.99, as amended or renumbered
27 as of January 1, 2003, in which common carriers are authorized to offer
28 and provide radio telecommunications service for hire to subscribers in
29 aircraft.

30 (b) "Call-by-call basis" means any method of charging for
31 telecommunications services where the price is measured by individual
32 calls.

33 (c) "Communications channel" means a physical or virtual path of
34 communications over which signals are transmitted between or among
35 customer channel termination points.

36 (d) "Customer" means the person or entity that contracts with the
37 seller of telecommunications services. If the end user of
38 telecommunications services is not the contracting party, the end user

1 of the telecommunications service is the customer of the
2 telecommunications service. "Customer" does not include a reseller of
3 telecommunications service or for mobile telecommunications service of
4 a serving carrier under an agreement to serve the customer outside the
5 home service provider's licensed service area.

6 (e) "Customer channel termination point" means the location where
7 the customer either inputs or receives the communications.

8 (f) "End user" means the person who uses the telecommunications
9 service. In the case of an entity, the term end user means the
10 individual who uses the service on behalf of the entity.

11 (g) "Home service provider" means the same as that term is defined
12 in RCW 82.04.065.

13 (h) "Mobile telecommunications service" means the same as that term
14 is defined in RCW 82.04.065.

15 (i) "Place of primary use" means the street address representative
16 of where the customer's use of the telecommunications service primarily
17 occurs, which must be the residential street address or the primary
18 business street address of the customer. In the case of mobile
19 telecommunications services, "place of primary use" must be within the
20 licensed service area of the home service provider.

21 (j) "Postpaid calling service" means the telecommunications service
22 obtained by making a payment on a call-by-call basis either through the
23 use of a credit card or payment mechanism such as a bank card, travel
24 card, credit card, or debit card, or by charge made to a telephone
25 number that is not associated with the origination or termination of
26 the telecommunications service. A postpaid calling service includes a
27 telecommunications service, except a prepaid wireless calling service,
28 that would be a prepaid calling service except it is not exclusively a
29 telecommunications service.

30 (k) "Prepaid calling service" means the right to access exclusively
31 telecommunications services, which must be paid for in advance and
32 which enables the origination of calls using an access number and/or
33 authorization code, whether manually or electronically dialed, and that
34 is sold in predetermined units or dollars of which the number declines
35 with use in a known amount.

36 (l) "Prepaid wireless calling service" means a telecommunications
37 service that provides the right to use mobile wireless service as well
38 as other nontelecommunications services, including the download of

1 digital products delivered electronically, content, and ancillary
2 services, which must be paid for in advance that is sold in
3 predetermined units or dollars of which the number declines with use in
4 a known amount.

5 (m) "Private communication service" means a telecommunications
6 service that entitles the customer to exclusive or priority use of a
7 communications channel or group of channels between or among
8 termination points, regardless of the manner in which such channel or
9 channels are connected, and includes switching capacity, extension
10 lines, stations, and any other associated services that are provided in
11 connection with the use of such channel or channels.

12 (n) "Service address" means:

13 (i) The location of the telecommunications equipment to which a
14 customer's call is charged and from which the call originates or
15 terminates, regardless of where the call is billed or paid;

16 (ii) If the location in (n)(i) of this subsection is not known, the
17 origination point of the signal of the telecommunications services
18 first identified by either the seller's telecommunications system or in
19 information received by the seller from its service provider, where the
20 system used to transport such signals is not that of the seller;

21 (iii) If the locations in (n)(i) and (ii) of this subsection are
22 not known, the location of the customer's place of primary use.

23 **Sec. 229.** RCW 82.32.730 and 2009 c 535 s 704 and 2009 c 289 s 1
24 are each reenacted and amended to read as follows:

25 (1) Except as provided in subsections (5) through (8) of this
26 section, for purposes of collecting or paying sales or use taxes to the
27 appropriate jurisdictions, all sales at retail shall be sourced in
28 accordance with this subsection and subsections (2) through (4) of this
29 section.

30 (a) When tangible personal property, an extended warranty, a
31 digital good, digital code, digital automated service, or other service
32 defined as a retail sale under RCW 82.04.050 is received by the
33 purchaser at a business location of the seller, the sale is sourced to
34 that business location.

35 (b) When the tangible personal property, extended warranty, digital
36 good, digital code, digital automated service, or other service defined
37 as a retail sale under RCW 82.04.050 is not received by the purchaser

1 at a business location of the seller, the sale is sourced to the
2 location where receipt by the purchaser or the purchaser's donee,
3 designated as such by the purchaser, occurs, including the location
4 indicated by instructions for delivery to the purchaser or donee, known
5 to the seller.

6 (c) When (a) and (b) of this subsection do not apply, the sale is
7 sourced to the location indicated by an address for the purchaser that
8 is available from the business records of the seller that are
9 maintained in the ordinary course of the seller's business when use of
10 this address does not constitute bad faith.

11 (d) When (a), (b), and (c) of this subsection do not apply, the
12 sale is sourced to the location indicated by an address for the
13 purchaser obtained during the consummation of the sale, including the
14 address of a purchaser's payment instrument, if no other address is
15 available, when use of this address does not constitute bad faith.

16 (e) When (a), (b), (c), or (d) of this subsection do not apply,
17 including the circumstance where the seller is without sufficient
18 information to apply those provisions, then the location shall be
19 determined by the address from which tangible personal property was
20 shipped, from which the digital good or digital code or the computer
21 software delivered electronically was first available for transmission
22 by the seller, or from which the extended warranty or digital automated
23 service or other service defined as a retail sale under RCW 82.04.050
24 was provided, disregarding for these purposes any location that merely
25 provided the digital transfer of the product sold.

26 (2) The lease or rental of tangible personal property, other than
27 property identified in subsection (3) or (4) of this section, shall be
28 sourced as provided in this subsection.

29 (a) For a lease or rental that requires recurring periodic
30 payments, the first periodic payment is sourced the same as a retail
31 sale in accordance with subsection (1) of this section. Periodic
32 payments made subsequent to the first payment are sourced to the
33 primary property location for each period covered by the payment. The
34 primary property location shall be as indicated by an address for the
35 property provided by the lessee that is available to the lessor from
36 its records maintained in the ordinary course of business, when use of
37 this address does not constitute bad faith. The property location is

1 not altered by intermittent use at different locations, such as use of
2 business property that accompanies employees on business trips and
3 service calls.

4 (b) For a lease or rental that does not require recurring periodic
5 payments, the payment is sourced the same as a retail sale in
6 accordance with subsection (1) of this section.

7 (c) This subsection (2) does not affect the imposition or
8 computation of sales or use tax on leases or rentals based on a lump
9 sum or accelerated basis, or on the acquisition of property for lease.

10 (3) The lease or rental of motor vehicles, trailers, semitrailers,
11 or aircraft that do not qualify as transportation equipment shall be
12 sourced as provided in this subsection.

13 (a) For a lease or rental that requires recurring periodic
14 payments, each periodic payment is sourced to the primary property
15 location. The primary property location is as indicated by an address
16 for the property provided by the lessee that is available to the lessor
17 from its records maintained in the ordinary course of business, when
18 use of this address does not constitute bad faith. This location is
19 not altered by intermittent use at different locations.

20 (b) For a lease or rental that does not require recurring periodic
21 payments, the payment is sourced the same as a retail sale in
22 accordance with subsection (1) of this section.

23 (c) This subsection does not affect the imposition or computation
24 of sales or use tax on leases or rentals based on a lump sum or
25 accelerated basis, or on the acquisition of property for lease.

26 (4) The retail sale, including lease or rental, of transportation
27 equipment shall be sourced the same as a retail sale in accordance with
28 subsection (1) of this section.

29 (5)~~((a))~~ This subsection applies to direct mail transactions not
30 governed by subsection (6) of this section. ~~((A purchaser of direct
31 mail that is not a holder of a direct pay permit shall provide to the
32 seller in conjunction with the purchase either a direct mail form or
33 information that shows the jurisdictions to which the direct mail is
34 delivered to recipients.~~

35 ~~(i) Upon receipt of the direct mail form, the seller is relieved of
36 all obligations to collect, pay, or remit the applicable tax and the
37 purchaser is obligated to pay or remit the applicable tax on a direct~~

1 pay basis. A direct mail form shall remain in effect for all future
2 sales of direct mail by the seller to the purchaser until it is revoked
3 in writing.

4 (ii) Upon receipt of information from the purchaser showing the
5 jurisdictions to which the direct mail is delivered to recipients, the
6 seller shall collect the tax according to the delivery information
7 provided by the purchaser. In the absence of bad faith, the seller is
8 relieved of any further obligation to collect tax on any transaction
9 where the seller has collected tax pursuant to the delivery information
10 provided by the purchaser.

11 (b) If the purchaser of direct mail does not have a direct pay
12 permit and does not provide the seller with either a direct mail form
13 or delivery information as required by (a) of this subsection, the
14 seller shall collect the tax according to subsection (1)(e) of this
15 section. This subsection does not limit a purchaser's obligation for
16 sales or use tax to any state to which the direct mail is delivered.

17 (c) If a purchaser of direct mail provides the seller with
18 documentation of direct pay authority, the purchaser is not required to
19 provide a direct mail form or delivery information to the seller.)

20 (a) This subsection (5)(a) applies to sales of advertising and
21 promotional direct mail.

22 (i) A purchaser of advertising and promotional direct mail may
23 provide the seller with either:

24 (A) A direct pay permit;

25 (B) A streamlined sales and use tax agreement certificate of
26 exemption claiming direct mail (or other written statement approved,
27 authorized, or accepted by the department); or

28 (C) Information showing the jurisdictions to which the advertising
29 and promotional direct mail is to be delivered to recipients.

30 (ii) If the purchaser provides the permit, certificate, or
31 statement referred to in (a)(i)(A) or (B) of this subsection (5), the
32 seller, in the absence of bad faith, is relieved of all obligations to
33 collect, pay, or remit any tax on any transaction involving advertising
34 and promotional direct mail to which the permit, certificate, or
35 statement applies. The purchaser must source the sale to the
36 jurisdictions to which the advertising and promotional direct mail is
37 to be delivered to the recipients and must report and pay any
38 applicable tax due.

1 (iii) If the purchaser provides the seller information showing the
2 jurisdictions to which the advertising and promotional direct mail is
3 to be delivered to recipients, the seller must source the sale to the
4 jurisdictions to which the advertising and promotional direct mail is
5 to be delivered and must collect and remit the applicable tax. In the
6 absence of bad faith, the seller is relieved of any further obligation
7 to collect any additional tax on the sale of advertising and
8 promotional direct mail where the seller has sourced the sale according
9 to the delivery information provided by the purchaser.

10 (iv) If the purchaser does not provide the seller with any of the
11 items listed in (a)(i)(A), (B), or (C) of this subsection (5), the sale
12 must be sourced according to subsection (1)(e) of this section.

13 (b) This subsection (5)(b) applies to sales of other direct mail.

14 (i) Except as otherwise provided in this subsection (5)(b), sales
15 of other direct mail are sourced in accordance with subsection (1)(c)
16 of this section.

17 (ii) A purchaser of other direct mail may provide the seller with
18 either:

19 (A) A direct pay permit; or

20 (B) A streamlined sales and use tax agreement certificate of
21 exemption claiming direct mail (or other written statement approved,
22 authorized, or accepted by the department).

23 (iii) If the purchaser provides the permit, certificate, or
24 statement referred to in (b)(ii)(A) or (B) of this subsection (5), the
25 seller, in the absence of bad faith, is relieved of all obligations to
26 collect, pay, or remit any tax on any transaction involving other
27 direct mail to which the permit, certificate, or statement applies.
28 Notwithstanding (b)(i) of this subsection (5), the sale must be sourced
29 to the jurisdictions to which the other direct mail is to be delivered
30 to the recipients, and the purchaser must report and pay any applicable
31 tax due.

32 (6)(a) This subsection applies only with respect to transactions in
33 which direct mail is delivered or distributed from a location within
34 this state to a location within this state.

35 (b) If the purchaser of direct mail provides the seller with a
36 direct pay permit or ((~~an exemption certificate claiming direct mail~~))
37 a streamlined sales and use tax agreement certificate of exemption
38 claiming direct mail (or other written statement approved, authorized,

1 or accepted by the department), the seller, in the absence of bad
2 faith, is relieved of all obligations to collect, pay, or remit the
3 applicable tax ((and)) on any transaction involving direct mail to
4 which the permit, certificate, or statement applies. The purchaser
5 ((is obligated to pay or remit the)) must report and pay any applicable
6 tax ((on a direct pay basis. An exemption certificate)) due. A
7 streamlined sales and use tax agreement certificate of exemption
8 claiming direct mail will remain in effect for all future sales of
9 direct mail by the seller to the purchaser until it is revoked in
10 writing.

11 ~~((b))~~ (c)(i) Except as provided in (b)~~((ii))~~, (c)(ii), and
12 (c)(iii) of this subsection (6), ~~((if the purchaser of direct mail does~~
13 ~~not provide the seller with a direct pay permit or an exemption~~
14 ~~certificate claiming direct mail,))~~ the seller must collect the tax
15 according to subsection (1)(e) of this section.

16 (ii) To the extent the seller knows that a portion of the sale of
17 direct mail will be delivered or distributed to locations in another
18 state, the seller must collect the tax on that portion according to
19 subsection (5) of this section.

20 (iii) Notwithstanding (c)(i) and (ii) of this subsection (6), a
21 seller may elect to use the provisions of subsection (5) of this
22 section to source all sales of advertising and promotional direct mail.

23 (7) The following are sourced to the location at or from which
24 delivery is made to the consumer:

25 (a) A retail sale of watercraft;

26 (b) A retail sale of a modular home, manufactured home, or mobile
27 home;

28 (c) A retail sale, excluding the lease and rental, of a motor
29 vehicle, trailer, semitrailer, or aircraft, that do not qualify as
30 transportation equipment; and

31 (d) Florist sales. In the case of a sale in which one florist
32 takes an order from a customer and then communicates that order to
33 another florist who delivers the items purchased to the place
34 designated by the customer, the location at or from which the delivery
35 is made to the consumer is deemed to be the location of the florist
36 originally taking the order.

37 (8)(a) A retail sale of the providing of telecommunications

1 services, as that term is defined in RCW 82.04.065, is sourced in
2 accordance with RCW 82.32.520.

3 (b) A retail sale of the providing of ancillary services, as that
4 term is defined in RCW 82.04.065, is sourced to the customer's place of
5 primary use of the telecommunications services in respect to which the
6 ancillary services are associated with or incidental to. The
7 definitions of "customer" and "place of primary use" in RCW 82.32.520
8 apply to this subsection (8)(b).

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

11 (a) "Advertising and promotional direct mail" means printed
12 material that meets the definition of direct mail, the primary purpose
13 of which is to attract public attention to a product, person, business,
14 or organization, or to attempt to sell, popularize, or secure financial
15 support for a product, person, business, or organization. As used in
16 this subsection (9)(a), the word "product" means tangible personal
17 property, a product transferred electronically, or a service.

18 (b) "Delivered electronically" means delivered to the purchaser by
19 means other than tangible storage media.

20 ((+b)) (c) "Direct mail" means printed material delivered or
21 distributed by United States mail or other delivery service to a mass
22 audience or to addressees on a mailing list provided by the purchaser
23 or at the direction of the purchaser when the cost of the items are not
24 billed directly to the recipients. "Direct mail" includes tangible
25 personal property supplied directly or indirectly by the purchaser to
26 the direct mail seller for inclusion in the package containing the
27 printed material. "Direct mail" does not include multiple items of
28 printed material delivered to a single address.

29 ((+e)) (d)(i) "Other direct mail" means any direct mail that is
30 not advertising and promotional direct mail, regardless of whether
31 advertising and promotional direct mail is included in the same
32 mailing. The term includes, but is not limited to:

33 (A) Transactional direct mail that contains personal information
34 specific to the addressee including, but not limited to, invoices,
35 bills, statements of account, and payroll advices;

36 (B) Any legally required mailings including, but not limited to,
37 privacy notices, tax reports, and stockholder reports; and

1 (C) Other nonpromotional direct mail delivered to existing or
2 former shareholders, customers, employees, or agents including, but not
3 limited to, newsletters and informational pieces.

4 (ii) Other direct mail does not include the development of billing
5 information or the provision of any data processing service that is
6 more than incidental.

7 (e) "Florist sales" means the retail sale of tangible personal
8 property by a florist. For purposes of this subsection (9)~~((e))~~ (e),
9 "florist" means a person whose primary business activity is the retail
10 sale of fresh cut flowers, potted ornamental plants, floral
11 arrangements, floral bouquets, wreaths, or any similar products, used
12 for decorative and not landscaping purposes.

13 ~~((d))~~ (f) "Receive" and "receipt" mean taking possession of
14 tangible personal property, making first use of digital automated
15 services or other services, or taking possession or making first use of
16 digital goods or digital codes, whichever comes first. "Receive" and
17 "receipt" do not include possession by a shipping company on behalf of
18 the purchaser.

19 ~~((e))~~ (g) "Transportation equipment" means:

20 (i) Locomotives and railcars that are used for the carriage of
21 persons or property in interstate commerce;

22 (ii) Trucks and truck tractors with a gross vehicle weight rating
23 of ten thousand one pounds or greater, trailers, semitrailers, or
24 passenger buses that are:

25 (A) Registered through the international registration plan; and

26 (B) Operated under authority of a carrier authorized and
27 certificated by the United States department of transportation or
28 another federal authority to engage in the carriage of persons or
29 property in interstate commerce;

30 (iii) Aircraft that are operated by air carriers authorized and
31 certificated by the United States department of transportation or
32 another federal or foreign authority to engage in the carriage of
33 persons or property in interstate or foreign commerce; or

34 (iv) Containers designed for use on and component parts attached or
35 secured on the items described in ~~((e))~~ (g)(i) through (iii) of this
36 subsection.

37 (10) In those instances where there is no obligation on the part of
38 a seller to collect or remit this state's sales or use tax, the use of

1 tangible personal property, digital good, digital code, or of a digital
2 automated service or other service, subject to use tax, is sourced to
3 the place of first use in this state. The definition of use in RCW
4 82.12.010 applies to this subsection.

5 **Sec. 230.** RCW 82.36.440 and 2003 c 350 s 5 are each amended to
6 read as follows:

7 (1) The tax levied in this chapter is in lieu of any excise,
8 privilege, or occupational tax upon the business of manufacturing,
9 selling, or distributing motor vehicle fuel, and no city, town, county,
10 township or other subdivision or municipal corporation of the state
11 (~~shall~~) may levy or collect any excise tax upon or measured by the
12 sale, receipt, distribution, or use of motor vehicle fuel, except as
13 provided in chapter 82.80 RCW and RCW 82.47.020.

14 (2) This section does not apply to any tax imposed by the state.

15 **Sec. 231.** RCW 82.38.280 and 2003 c 350 s 6 are each amended to
16 read as follows:

17 (1) The tax levied in this chapter is in lieu of any excise,
18 privilege, or occupational tax upon the business of manufacturing,
19 selling, or distributing special fuel, and no city, town, county,
20 township or other subdivision or municipal corporation of the state
21 (~~shall~~) may levy or collect any excise tax upon or measured by the
22 sale, receipt, distribution, or use of special fuel, except as provided
23 in chapter 82.80 RCW and RCW 82.47.020.

24 (2) This section does not apply to any tax imposed by the state.

25 **Sec. 232.** RCW 82.62.010 and 2007 c 485 s 1 are each amended to
26 read as follows:

27 Unless the context clearly requires otherwise, the definitions in
28 this section apply throughout this chapter.

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

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

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

33 (4)(a) "Eligible business project" means manufacturing or research
34 and development activities which are conducted by an applicant in an
35 eligible area at a specific facility, provided the applicant's average

1 qualified employment positions at the specific facility will be at
2 least fifteen percent greater in the four consecutive full calendar
3 quarters after the calendar quarter during which the first qualified
4 employment position is filled than the applicant's average qualified
5 employment positions at the same facility in the four consecutive full
6 calendar quarters immediately preceding the calendar quarter during
7 which the first qualified employment position is filled.

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

12 (5) "First qualified employment position" means the first qualified
13 employment position filled for which a credit under this chapter is
14 sought.

15 (6) "Manufacturing" means the same as defined in RCW 82.04.120.
16 "Manufacturing" also includes computer programming, the production of
17 computer software, and other computer-related services, and the
18 activities performed by research and development laboratories and
19 commercial testing laboratories.

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

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

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

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

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

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

34 (ii) During a vacancy, the employer is training or actively
35 recruiting a replacement permanent, full-time employee for the
36 position.

37 (9) "Recipient" means a person receiving tax credits under this
38 chapter.

1 (10) "Research and development" means the development, refinement,
2 testing, marketing, and commercialization of a product, service, or
3 process before commercial sales have begun. As used in this
4 subsection, "commercial sales" excludes sales of prototypes or sales
5 for market testing if the total gross receipts from such sales of the
6 product, service, or process do not exceed one million dollars.

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

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

13 **Sec. 233.** RCW 82.80.120 and 2006 c 311 s 18 are each amended to
14 read as follows:

15 (1) For purposes of this section:

16 (a) "Distributor" means every person who imports, refines,
17 manufactures, produces, or compounds motor vehicle fuel and special
18 fuel as defined in RCW 82.36.010 and 82.38.020, respectively, and sells
19 or distributes the fuel into a county;

20 (b) "Person" has the same meaning as in RCW 82.04.030;

21 (c) "District" means a regional transportation investment district
22 under chapter 36.120 RCW.

23 (2) A regional transportation investment district under chapter
24 36.120 RCW, subject to the conditions of this section, may levy
25 additional excise taxes equal to ten percent of the statewide motor
26 vehicle fuel tax rate under RCW 82.36.025 on each gallon of motor
27 vehicle fuel as defined in RCW 82.36.010 and on each gallon of special
28 fuel as defined in RCW 82.38.020 sold within the boundaries of the
29 district. The additional excise tax is subject to the approval of a
30 majority of the voters within the district boundaries. Vehicles paying
31 an annual license fee under RCW 82.38.075 are exempt from the
32 district's fuel excise tax. The additional excise taxes are subject to
33 the same exceptions and rights of refund as applicable to other motor
34 vehicle fuel and special fuel excise taxes levied under chapters 82.36
35 and 82.38 RCW. The proposed tax may not be levied less than one month
36 from the date the election results are certified. The commencement

1 date for the levy of any tax under this section will be the first day
2 of January, April, July, or October.

3 (3) The local option motor vehicle fuel tax on each gallon of motor
4 vehicle fuel and on each gallon of special fuel is imposed upon the
5 distributor of the fuel.

6 (4) A taxable event for the purposes of this section occurs upon
7 the first distribution of the fuel within the boundaries of the
8 district to a retail outlet, bulk fuel user, or ultimate user of the
9 fuel.

10 (5) All administrative provisions in chapters 82.01, 82.03, and
11 82.32 RCW, insofar as they are applicable, apply to local option fuel
12 taxes imposed under this section.

13 (6) Before the effective date of the imposition of the fuel taxes
14 under this section, a district (~~shall~~) must contract with the
15 department of (~~licensing~~) revenue for the administration and
16 collection of the taxes. The contract must provide that a percentage
17 amount, not to exceed one percent of the taxes imposed under this
18 section, will be deposited into the local tax administration account
19 created in the custody of the state treasurer. The department of
20 (~~licensing~~) revenue may spend money from this account, upon
21 appropriation, for the administration of the local taxes imposed under
22 this section.

23 (7) The state treasurer (~~shall~~) must distribute monthly to the
24 district levying the tax as part of the regional transportation
25 investment district plan, after the deductions for payments and
26 expenditures as provided in RCW 46.68.090(1) (a) and (b).

27 (8) The proceeds of the additional taxes levied by a district in
28 this section, to be used as a part of a regional transportation
29 investment district plan, must be used in accordance with chapter
30 36.120 RCW, but only for those areas that are considered "highway
31 purposes" as that term is construed in Article II, section 40 of the
32 state Constitution.

33 (9) A district may only levy the tax under this section if the
34 district is comprised of boundaries identical to the boundaries of a
35 county or counties. A district may not levy the tax in this section if
36 a member county is levying the tax in RCW 82.80.010 or 82.80.110.

1 **Sec. 234.** RCW 83.100.040 and 2005 c 516 s 3 are each amended to
2 read as follows:

3 (1) A tax in an amount computed as provided in this section is
4 imposed on every transfer of property located in Washington. For the
5 purposes of this section, any intangible property owned by a resident
6 is located in Washington.

7 (2)(a) Except as provided in (b) of this subsection, the amount of
8 tax is the amount provided in the following table:

9

If Washington Taxable		The amount of Tax Equals		Of Washington
Estate is at least	But Less Than	Initial Tax Amount	Plus Tax Rate %	Taxable Estate Value
\$0	\$1,000,000	\$0	10.00%	\$0
\$1,000,000	\$2,000,000	\$100,000	14.00%	\$1,000,000
\$2,000,000	\$3,000,000	\$240,000	15.00%	\$2,000,000
\$3,000,000	\$4,000,000	\$390,000	16.00%	\$3,000,000
\$4,000,000	\$6,000,000	\$550,000	17.00%	\$4,000,000
\$6,000,000	\$7,000,000	\$890,000	18.00%	\$6,000,000
\$7,000,000	\$9,000,000	\$1,070,000	18.50%	\$7,000,000
((Above))		\$1,440,000	19.00%	((Above))
\$9,000,000				\$9,000,000

22 (b) If any property in the decedent's estate is located outside of
23 Washington, the amount of tax is the amount determined in (a) of this
24 subsection multiplied by a fraction. The numerator of the fraction is
25 the value of the property located in Washington. The denominator of
26 the fraction is the value of the decedent's gross estate. Property
27 qualifying for a deduction under RCW 83.100.046 (~~shall~~) must be
28 excluded from the numerator and denominator of the fraction.

29 (3) The tax imposed under this section is a stand-alone estate tax
30 that incorporates only those provisions of the internal revenue code as
31 amended or renumbered as of January 1, 2005, that do not conflict with
32 the provisions of this chapter. The tax imposed under this chapter is
33 independent of any federal estate tax obligation and is not affected by
34 termination of the federal estate tax.

1 **Sec. 235.** RCW 83.100.046 and 2005 c 514 s 1201 are each amended to
2 read as follows:

3 (1) For the purposes of determining the Washington taxable estate,
4 a deduction is allowed from the federal taxable estate for:

5 (a) The value of qualified real property reduced by any amounts
6 allowable as a deduction in respect of the qualified real property and
7 tangible personal property under ~~((section))~~ 26 U.S.C. Sec. 2053(a)(4)
8 of the federal internal revenue code, if the decedent was at the time
9 of his or her death a citizen or resident of the United States.

10 (b) The value of any tangible personal property used by the
11 decedent or a member of the decedent's family for a qualified use on
12 the date of the decedent's death, reduced by any amounts allowable as
13 a deduction in respect of the tangible personal property under
14 ~~((section))~~ 26 U.S.C. Sec. 2053(a)(4) of the federal internal revenue
15 code, if all of the requirements of subsection (10)(f)(i)(A) of this
16 section are met and the decedent was at the time of his or her death a
17 citizen or resident of the United States.

18 (c) The value of real property that is not deductible under (a) of
19 this subsection solely by reason of subsection (10)(f)(i)(B) of this
20 section, reduced by any amounts allowable as a deduction in respect of
21 the ~~((qualified))~~ real property ~~((and tangible personal property))~~
22 under ~~((section))~~ 26 U.S.C. Sec. 2053(a)(4) of the federal internal
23 revenue code, if the requirements of subsection (10)(f)(i)(C) of this
24 section are met with respect to the property and the decedent was at
25 the time of his or her death a citizen or resident of the United
26 States.

27 (2) Property ~~((shall))~~ will be considered to have been acquired
28 from or to have passed from the decedent if:

29 (a) The property is so considered under ~~((section))~~ 26 U.S.C. Sec.
30 1014(b) of the federal internal revenue code;

31 (b) The property is acquired by any person from the estate; or

32 (c) The property is acquired by any person from a trust, to the
33 extent the property is includible in the gross estate of the decedent.

34 (3) If the decedent and the decedent's surviving spouse at any time
35 held qualified real property as community property, the interest of the
36 surviving spouse in the property ~~((shall))~~ must be taken into account
37 under this section to the extent necessary to provide a result under

1 this section with respect to the property which is consistent with the
2 result which would have obtained under this section if the property had
3 not been community property.

4 (4) In the case of any qualified woodland, the value of trees
5 growing on the woodland may be deducted if otherwise qualified under
6 this section.

7 (5) If property is qualified real property with respect to a
8 decedent, hereinafter in this subsection referred to as the "first
9 decedent," and the property was acquired from or passed from the first
10 decedent to the surviving spouse of the first decedent, active
11 management of the farm by the surviving spouse (~~shall~~) must be
12 treated as material participation by the surviving spouse in the
13 operation of the farm.

14 (6) Property owned indirectly by the decedent may qualify for a
15 deduction under this section if owned through an interest in a
16 corporation, partnership, or trust as the terms corporation,
17 partnership, or trust are used in (~~section~~) 26 U.S.C. Sec. 2032A(g)
18 of the federal internal revenue code. In order to qualify for a
19 deduction under this subsection, the interest, in addition to meeting
20 the other tests for qualification under this section, must qualify
21 under (~~section~~) 26 U.S.C. Sec. 6166(b)(1) of the federal internal
22 revenue code as an interest in a closely held business on the date of
23 the decedent's death and for sufficient other time, combined with
24 periods of direct ownership, to equal at least five years of the eight-
25 year period preceding the death.

26 (7)(a) If, on the date of the decedent's death, the requirements of
27 subsection (10)(f)(i)(C)(II) of this section with respect to the
28 decedent for any property are not met, and the decedent (i) was
29 receiving old age benefits under Title II of the social security act
30 for a continuous period ending on such date, or (ii) was disabled for
31 a continuous period ending on this date, then subsection
32 (10)(f)(i)(C)(II) of this section (~~shall~~) must be applied with
33 respect to the property by substituting "the date on which the longer
34 of such continuous periods began" for "the date of the decedent's
35 death" in subsection (10)(f)(i)(C) of this section.

36 (b) For the purposes of (a) of this subsection, an individual
37 (~~shall be~~) is disabled if the individual has a mental or physical

1 impairment which renders that individual unable to materially
2 participate in the operation of the farm.

3 (8) Property may be deducted under this section whether or not
4 special valuation is elected under (~~section~~) 26 U.S.C. Sec. 2032A of
5 the federal internal revenue code on the federal return. For the
6 purposes of determining the deduction under this section, the value of
7 property is its value as used to determine the value of the gross
8 estate.

9 (9)(a) In the case of any qualified replacement property, any
10 period during which there was ownership, qualified use, or material
11 participation with respect to the replaced property by the decedent or
12 any member of the decedent's family (~~shall~~) must be treated as a
13 period during which there was ownership, use, or material
14 participation, as the case may be, with respect to the qualified
15 replacement property.

16 (b) Subsection (9)(a) of this section (~~shall~~) does not apply to
17 the extent that the fair market value of the qualified replacement
18 property, as of the date of its acquisition, exceeds the fair market
19 value of the replaced property, as of the date of its disposition.

20 (c) For the purposes of this subsection (9), the following
21 definitions apply:

22 (i)(A) "Qualified replacement property" means any real property:
23 (~~(+A)~~) (I) Which is acquired in an exchange which qualifies under
24 (~~section~~) 26 U.S.C. Sec. 1031 of the federal internal revenue code;
25 or

26 (~~(+B)~~) (II) The acquisition of which results in the nonrecognition
27 of gain under (~~section~~) 26 U.S.C. Sec. 1033 of the federal internal
28 revenue code.

29 (B) The term "qualified replacement property" only includes
30 property which is used for the same qualified use as the replaced
31 property was being used before the exchange.

32 (ii) "Replaced property" means the property was:

33 (A) Transferred in the exchange which qualifies under (~~section~~)
34 26 U.S.C. Sec. 1031 of the federal internal revenue code; or

35 (B) Compulsorily or involuntarily converted within the meaning of
36 section 1033 of the Internal Revenue Code.

37 (10) For the purposes of this section, the following definitions
38 apply:

1 (a) "Active management" means the making of the management
2 decisions of a farm, other than the daily operating decisions.

3 (b) "Farm" includes stock, dairy, poultry, fruit, furbearing
4 animal, and truck farms; plantations; ranches; nurseries; ranges;
5 greenhouses or other similar structures used primarily for the raising
6 of agricultural or horticultural commodities; and orchards and
7 woodlands.

8 (c) "Farming purposes" means:

9 (i) Cultivating the soil or raising or harvesting any agricultural
10 or horticultural commodity, including the raising, shearing, feeding,
11 caring for, training, and management of animals on a farm;

12 (ii) Handling, drying, packing, grading, or storing on a farm any
13 agricultural or horticultural commodity in its unmanufactured state,
14 but only if the owner, tenant, or operator of the farm regularly
15 produces more than one-half of the commodity so treated; and

16 (iii)(A) The planting, cultivating, caring for, or cutting of
17 trees; or

18 (B) The preparation, other than milling, of trees for market.

19 (d)(i) "Member of the family" means, with respect to any
20 individual, only:

21 ((+i+)) (A) An ancestor of the individual;

22 ((+ii+)) (B) The spouse of the individual;

23 ((+iii+)) (C) A lineal descendant of the individual, of the
24 individual's spouse, or of a parent of the individual; or

25 ((+iv+)) (D) The spouse of any lineal descendant described in
26 (d)((+iii+)) (I)(C) of this subsection.

27 (ii) For the purposes of this subsection (10)(d), a legally adopted
28 child of an individual ((shall)) must be treated as the child of such
29 individual by blood.

30 (e) "Qualified heir" means, with respect to any property, a member
31 of the decedent's family who acquired property, or to whom property
32 passed, from the decedent.

33 (f)(i) "Qualified real property" means real property which was
34 acquired from or passed from the decedent to a qualified heir of the
35 decedent and which, on the date of the decedent's death, was being used
36 for a qualified use by the decedent or a member of the decedent's
37 family, but only if:

1 (A) Fifty percent or more of the adjusted value of the gross estate
2 consists of the adjusted value of real or personal property which:

3 (I) On the date of the decedent's death, was being used for a
4 qualified use by the decedent or a member of the decedent's family; and

5 (II) Was acquired from or passed from the decedent to a qualified
6 heir of the decedent;

7 (B) Twenty-five percent or more of the adjusted value of the gross
8 estate consists of the adjusted value of real property which meets the
9 requirements of (f)(i)(A)(II) and (f)(i)(C) of this subsection; and

10 (C) During the eight-year period ending on the date of the
11 decedent's death there have been periods aggregating five years or more
12 during which:

13 (I) The real property was owned by the decedent or a member of the
14 decedent's family and used for a qualified use by the decedent or a
15 member of the decedent's family; and

16 (II) There was material participation by the decedent or a member
17 of the decedent's family in the operation of the farm. For the
18 purposes of this subsection (f)(i)(C)(II), material participation
19 (~~shall~~) must be determined in a manner similar to the manner used for
20 purposes of (~~section~~) 26 U.S.C. Sec. 1402(a)(1) of the federal
21 internal revenue code.

22 (ii) For the purposes of this subsection, the term "adjusted value"
23 means:

24 (A) In the case of the gross estate, the value of the gross estate,
25 determined without regard to any special valuation under (~~section~~) 26
26 U.S.C. Sec. 2032A of the federal internal revenue code, reduced by any
27 amounts allowable as a deduction under (~~section~~) 26 U.S.C. Sec.
28 2053(a)(4) of the federal internal revenue code; or

29 (B) In the case of any real or personal property, the value of the
30 property for purposes of chapter 11 of the federal internal revenue
31 code, determined without regard to any special valuation under
32 (~~section~~) 26 U.S.C. Sec. 2032A of the federal internal revenue code,
33 reduced by any amounts allowable as a deduction in respect of such
34 property under (~~section~~) 26 U.S.C. Sec. 2053(a)(4) of the federal
35 internal revenue code.

36 (g) "Qualified use" means the property is used as a farm for
37 farming purposes. In the case of real property which meets the
38 requirements of (f)(i)(C) of this subsection, residential buildings and

1 related improvements on the real property occupied on a regular basis
2 by the owner or lessee of the real property or by persons employed by
3 the owner or lessee for the purpose of operating or maintaining the
4 real property, and roads, buildings, and other structures and
5 improvements functionally related to the qualified use (~~(shall)~~) must
6 be treated as real property devoted to the qualified use. For tangible
7 personal property eligible for a deduction under subsection (1)(b) of
8 this section, "qualified use" means the property is used primarily for
9 farming purposes on a farm.

10 (h) "Qualified woodland" means any real property which:

11 (i) Is used in timber operations; and

12 (ii) Is an identifiable area of land such as an acre or other area
13 for which records are normally maintained in conducting timber
14 operations.

15 (i) "Timber operations" means:

16 (i) The planting, cultivating, caring for, or cutting of trees; or

17 (ii) The preparation, other than milling, of trees for market.

18 **Sec. 236.** RCW 83.100.046 and 2009 c 521 s 191 are each amended to
19 read as follows:

20 (1) For the purposes of determining the Washington taxable estate,
21 a deduction is allowed from the federal taxable estate for:

22 (a) The value of qualified real property reduced by any amounts
23 allowable as a deduction in respect of the qualified real property
24 (~~(and tangible personal property)~~) under (~~(section)~~) 26 U.S.C. Sec.
25 2053(a)(4) of the federal internal revenue code, if the decedent was at
26 the time of his or her death a citizen or resident of the United
27 States.

28 (b) The value of any tangible personal property used by the
29 decedent or a member of the decedent's family for a qualified use on
30 the date of the decedent's death, reduced by any amounts allowable as
31 a deduction in respect of the tangible personal property under
32 (~~(section)~~) 26 U.S.C. Sec. 2053(a)(4) of the federal internal revenue
33 code, if all of the requirements of subsection (10)(f)(i)(A) of this
34 section are met and the decedent was at the time of his or her death a
35 citizen or resident of the United States.

36 (c) The value of real property that is not deductible under (a) of
37 this subsection solely by reason of subsection (10)(f)(i)(B) of this

1 section, reduced by any amounts allowable as a deduction in respect of
2 the (~~qualified~~) real property (~~and tangible personal property~~)
3 under (~~section~~) 26 U.S.C. Sec. 2053(a)(4) of the federal internal
4 revenue code, if the requirements of subsection (10)(f)(i)(C) of this
5 section are met with respect to the property and the decedent was at
6 the time of his or her death a citizen or resident of the United
7 States.

8 (2) Property (~~shall~~) will be considered to have been acquired
9 from or to have passed from the decedent if:

10 (a) The property is so considered under (~~section~~) 26 U.S.C. Sec.
11 1014(b) of the federal internal revenue code;

12 (b) The property is acquired by any person from the estate; or

13 (c) The property is acquired by any person from a trust, to the
14 extent the property is includible in the gross estate of the decedent.

15 (3) If the decedent and the decedent's surviving spouse at any time
16 held qualified real property as community property, the interest of the
17 surviving spouse in the property (~~shall~~) must be taken into account
18 under this section to the extent necessary to provide a result under
19 this section with respect to the property which is consistent with the
20 result which would have obtained under this section if the property had
21 not been community property.

22 (4) In the case of any qualified woodland, the value of trees
23 growing on the woodland may be deducted if otherwise qualified under
24 this section.

25 (5) If property is qualified real property with respect to a
26 decedent, hereinafter in this subsection referred to as the "first
27 decedent," and the property was acquired from or passed from the first
28 decedent to the surviving spouse of the first decedent, active
29 management of the farm by the surviving spouse (~~shall~~) must be
30 treated as material participation by the surviving spouse in the
31 operation of the farm.

32 (6) Property owned indirectly by the decedent may qualify for a
33 deduction under this section if owned through an interest in a
34 corporation, partnership, or trust as the terms corporation,
35 partnership, or trust are used in (~~section~~) 26 U.S.C. Sec. 2032A(g)
36 of the federal internal revenue code. In order to qualify for a
37 deduction under this subsection, the interest, in addition to meeting
38 the other tests for qualification under this section, must qualify

1 under (~~section~~) 26 U.S.C. Sec. 6166(b)(1) of the federal internal
2 revenue code as an interest in a closely held business on the date of
3 the decedent's death and for sufficient other time, combined with
4 periods of direct ownership, to equal at least five years of the eight-
5 year period preceding the death.

6 (7)(a) If, on the date of the decedent's death, the requirements of
7 subsection (10)(f)(i)(C)(II) of this section with respect to the
8 decedent for any property are not met, and the decedent (i) was
9 receiving old age benefits under Title II of the social security act
10 for a continuous period ending on such date, or (ii) was disabled for
11 a continuous period ending on this date, then subsection
12 (10)(f)(i)(C)(II) of this section (~~shall~~) must be applied with
13 respect to the property by substituting "the date on which the longer
14 of such continuous periods began" for "the date of the decedent's
15 death" in subsection (10)(f)(i)(C) of this section.

16 (b) For the purposes of (a) of this subsection, an individual
17 (~~shall be~~) is disabled if the individual has a mental or physical
18 impairment which renders that individual unable to materially
19 participate in the operation of the farm.

20 (8) Property may be deducted under this section whether or not
21 special valuation is elected under (~~section~~) 26 U.S.C. Sec. 2032A of
22 the federal internal revenue code on the federal return. For the
23 purposes of determining the deduction under this section, the value of
24 property is its value as used to determine the value of the gross
25 estate.

26 (9)(a) In the case of any qualified replacement property, any
27 period during which there was ownership, qualified use, or material
28 participation with respect to the replaced property by the decedent or
29 any member of the decedent's family (~~shall~~) must be treated as a
30 period during which there was ownership, use, or material
31 participation, as the case may be, with respect to the qualified
32 replacement property.

33 (b) Subsection (9)(a) of this section (~~shall~~) does not apply to
34 the extent that the fair market value of the qualified replacement
35 property, as of the date of its acquisition, exceeds the fair market
36 value of the replaced property, as of the date of its disposition.

37 (c) For the purposes of this subsection (9), the following
38 definitions apply:

1 (i)(A) "Qualified replacement property" means any real property:
2 ((+A)) (I) Which is acquired in an exchange which qualifies under
3 ((section)) 26 U.S.C. Sec. 1031 of the federal internal revenue code;
4 or
5 ((+B)) (II) The acquisition of which results in the nonrecognition
6 of gain under ((section)) 26 U.S.C. Sec. 1033 of the federal internal
7 revenue code.
8 (B) The term "qualified replacement property" only includes
9 property which is used for the same qualified use as the replaced
10 property was being used before the exchange.
11 (ii) "Replaced property" means the property was:
12 (A) Transferred in the exchange which qualifies under ((section))
13 26 U.S.C. Sec. 1031 of the federal internal revenue code; or
14 (B) Compulsorily or involuntarily converted within the meaning of
15 ((section)) 26 U.S.C. Sec. 1033 of the federal internal revenue code.
16 (10) For the purposes of this section, the following definitions
17 apply:
18 (a) "Active management" means the making of the management
19 decisions of a farm, other than the daily operating decisions.
20 (b) "Farm" includes stock, dairy, poultry, fruit, furbearing
21 animal, and truck farms; plantations; ranches; nurseries; ranges;
22 greenhouses or other similar structures used primarily for the raising
23 of agricultural or horticultural commodities; and orchards and
24 woodlands.
25 (c) "Farming purposes" means:
26 (i) Cultivating the soil or raising or harvesting any agricultural
27 or horticultural commodity, including the raising, shearing, feeding,
28 caring for, training, and management of animals on a farm;
29 (ii) Handling, drying, packing, grading, or storing on a farm any
30 agricultural or horticultural commodity in its unmanufactured state,
31 but only if the owner, tenant, or operator of the farm regularly
32 produces more than one-half of the commodity so treated; and
33 (iii)(A) The planting, cultivating, caring for, or cutting of
34 trees; or
35 (B) The preparation, other than milling, of trees for market.
36 (d)(i) "Member of the family" means, with respect to any
37 individual, only:
38 ((+i)) (A) An ancestor of the individual;

1 (~~(ii)~~) (B) The spouse or state registered domestic partner of the
2 individual;

3 (~~(iii)~~) (C) A lineal descendant of the individual, of the
4 individual's spouse or state registered domestic partner, or of a
5 parent of the individual; or

6 (~~(iv)~~) (D) The spouse or state registered domestic partner of any
7 lineal descendant described in (d)(~~(iii)~~) (1)(C) of this subsection.

8 (ii) For the purposes of this subsection (10)(d), a legally adopted
9 child of an individual (~~shall~~) must be treated as the child of such
10 individual by blood.

11 (e) "Qualified heir" means, with respect to any property, a member
12 of the decedent's family who acquired property, or to whom property
13 passed, from the decedent.

14 (f)(i) "Qualified real property" means real property which was
15 acquired from or passed from the decedent to a qualified heir of the
16 decedent and which, on the date of the decedent's death, was being used
17 for a qualified use by the decedent or a member of the decedent's
18 family, but only if:

19 (A) Fifty percent or more of the adjusted value of the gross estate
20 consists of the adjusted value of real or personal property which:

21 (I) On the date of the decedent's death, was being used for a
22 qualified use by the decedent or a member of the decedent's family; and
23 (II) Was acquired from or passed from the decedent to a qualified
24 heir of the decedent;

25 (B) Twenty-five percent or more of the adjusted value of the gross
26 estate consists of the adjusted value of real property which meets the
27 requirements of (f)(i)(A)(II) and (f)(i)(C) of this subsection; and

28 (C) During the eight-year period ending on the date of the
29 decedent's death there have been periods aggregating five years or more
30 during which:

31 (I) The real property was owned by the decedent or a member of the
32 decedent's family and used for a qualified use by the decedent or a
33 member of the decedent's family; and

34 (II) There was material participation by the decedent or a member
35 of the decedent's family in the operation of the farm. For the
36 purposes of this subsection (f)(i)(C)(II), material participation
37 (~~shall~~) must be determined in a manner similar to the manner used for

1 purposes of (~~section~~) 26 U.S.C. Sec. 1402(a)(1) of the federal
2 internal revenue code.

3 (ii) For the purposes of this subsection, the term "adjusted value"
4 means:

5 (A) In the case of the gross estate, the value of the gross estate,
6 determined without regard to any special valuation under (~~section~~) 26
7 U.S.C. Sec. 2032A of the federal internal revenue code, reduced by any
8 amounts allowable as a deduction under (~~section~~) 26 U.S.C. Sec.
9 2053(a)(4) of the federal internal revenue code; or

10 (B) In the case of any real or personal property, the value of the
11 property for purposes of chapter 11 of the federal internal revenue
12 code, determined without regard to any special valuation under
13 (~~section~~) 26 U.S.C. Sec. 2032A of the federal internal revenue code,
14 reduced by any amounts allowable as a deduction in respect of such
15 property under (~~section~~) 26 U.S.C. Sec. 2053(a)(4) of the federal
16 internal revenue code.

17 (g) "Qualified use" means the property is used as a farm for
18 farming purposes. In the case of real property which meets the
19 requirements of (f)(i)(C) of this subsection, residential buildings and
20 related improvements on the real property occupied on a regular basis
21 by the owner or lessee of the real property or by persons employed by
22 the owner or lessee for the purpose of operating or maintaining the
23 real property, and roads, buildings, and other structures and
24 improvements functionally related to the qualified use (~~shall~~) must
25 be treated as real property devoted to the qualified use. For tangible
26 personal property eligible for a deduction under subsection (1)(b) of
27 this section, "qualified use" means the property is used primarily for
28 farming purposes on a farm.

29 (h) "Qualified woodland" means any real property which:
30 (i) Is used in timber operations; and
31 (ii) Is an identifiable area of land such as an acre or other area
32 for which records are normally maintained in conducting timber
33 operations.

34 (i) "Timber operations" means:
35 (i) The planting, cultivating, caring for, or cutting of trees; or
36 (ii) The preparation, other than milling, of trees for market.

PART III
PROPERTY TAX

Sec. 301. RCW 29A.36.210 and 2004 c 80 s 2 are each amended to read as follows:

(1) The ballot proposition authorizing a taxing district to impose the regular property tax levies authorized in RCW 36.68.525, 36.69.145, 67.38.130, 84.52.069, or 84.52.135 (~~shall~~) must contain in substance the following:

"(~~Shall~~) Will the (insert the name of the taxing district) be authorized to impose regular property tax levies of (insert the maximum rate) or less per thousand dollars of assessed valuation for each of (insert the maximum number of years allowable) consecutive years?

Yes

No

Each voter (~~shall~~) may indicate either "Yes" or "No" on his or her ballot in accordance with the procedures established under this title.

(2) The ballot proposition authorizing a taxing district to impose a permanent regular tax levy under RCW 84.52.069 (~~shall~~) must contain in substance the following:

"(~~Shall~~) Will the (insert the name of the taxing district) be authorized to impose a PERMANENT regular property levy of (insert the maximum rate) or less per thousand dollars of assessed valuation?

Yes

No

Sec. 302. RCW 36.68.525 and 1994 c 156 s 5 are each amended to read as follows:

A park and recreation service area may impose regular property tax levies in an amount equal to sixty cents or less per thousand dollars of assessed value of property in the service area in each year for six consecutive years when specifically authorized so to do by a majority of at least three-fifths of the voters thereof approving a proposition authorizing the levies submitted not more than twelve months prior to the date on which the proposed initial levy is to be made and not

1 oftener than twice in such twelve month period, either at a special
2 election or at the regular election of the service area, at which
3 election the number of voters voting "yes" on the proposition (~~shall~~)
4 must constitute three-fifths of a number equal to forty percent of the
5 number of voters voting in the service area at the last preceding
6 general election when the number of voters voting on the proposition
7 does not exceed forty percent of the number of voters voting in such
8 taxing district in the last preceding general election; or by a
9 majority of at least three-fifths of the voters thereof voting on the
10 proposition if the number of voters voting on the proposition exceeds
11 forty per centum of the number of voters voting in such taxing district
12 in the last preceding general election. A proposition authorizing such
13 tax levies (~~shall~~) may not be submitted by a park and recreation
14 service area more than twice in any twelve-month period. Ballot
15 propositions (~~shall~~) must conform with RCW (~~29.30.111~~) 29A.36.210.
16 If a park and recreation service area is levying property taxes, which
17 in combination with property taxes levied by other taxing districts
18 result in taxes in excess of the (~~nine-dollar-and-fifteen-cents-per~~
19 ~~thousand-dollars-of-assessed-valuation~~) limitation provided for in RCW
20 84.52.043(2), the park and recreation service area property tax levy
21 (~~shall~~) must be reduced or eliminated (~~before-the-property-tax~~
22 ~~levies-of-other-taxing-districts-are-reduced~~) as provided in RCW
23 84.52.010.

24 **Sec. 303.** RCW 36.69.145 and 1994 c 156 s 3 are each amended to
25 read as follows:

26 (1) A park and recreation district may impose regular property tax
27 levies in an amount equal to sixty cents or less per thousand dollars
28 of assessed value of property in the district in each year for six
29 consecutive years when specifically authorized so to do by a majority
30 of at least three-fifths of the voters thereof approving a proposition
31 authorizing the levies submitted at a special election or at the
32 regular election of the district, at which election the number of
33 voters voting "yes" on the proposition (~~shall~~) must constitute three-
34 fifths of a number equal to forty per centum of the number of voters
35 voting in such district at the last preceding general election when the
36 number of voters voting on the proposition does not exceed forty per
37 centum of the number of voters voting in such taxing district in the

1 last preceding general election; or by a majority of at least three-
2 fifths of the voters thereof voting on the proposition if the number of
3 voters voting on the proposition exceeds forty per centum of the number
4 of voters voting in such taxing district in the last preceding general
5 election. A proposition authorizing the tax levies (~~((shall))~~) may not
6 be submitted by a park and recreation district more than twice in any
7 twelve-month period. Ballot propositions (~~((shall))~~) must conform with
8 RCW (~~((29.30.111))~~) 29A.36.210. In the event a park and recreation
9 district is levying property taxes, which in combination with property
10 taxes levied by other taxing districts subject to the one percent
11 limitation provided for in Article 7, section 2, of our state
12 Constitution result in taxes in excess of the limitation provided for
13 in RCW 84.52.043(2), the park and recreation district property tax levy
14 (~~((shall))~~) must be reduced or eliminated (~~((before the property tax~~
15 ~~levies of other taxing districts are reduced))~~) as provided in RCW
16 84.52.010.

17 (2) The limitation in RCW 84.55.010 (~~((shall))~~) does not apply to the
18 first levy imposed under this section following the approval of the
19 levies by the voters under subsection (1) of this section.

20 **Sec. 304.** RCW 82.03.140 and 2000 c 103 s 1 are each amended to
21 read as follows:

22 (1) In all appeals over which the board has jurisdiction under RCW
23 82.03.130, a party (~~((taking))~~) filing an appeal may elect either a
24 formal or an informal hearing(~~((, such election to be made))~~). The
25 election must be made according to rules of practice and procedure to
26 be promulgated by the board(~~((: PROVIDED, That))~~).

27 (2)(a) Nothing (~~((shall))~~) in subsection (1) of this section prevents
28 the county assessor or taxpayer, as a party to an appeal (~~((pursuant~~
29 ~~to))~~) under RCW 84.08.130(~~((, within twenty days from the date of the~~
30 ~~receipt of the notice of appeal))~~), from filing with the clerk of the
31 board notice of intention that the hearing be a formal one(~~((: PROVIDED, HOWEVER, That nothing herein shall be construed to modify the~~
32 ~~provisions of RCW 82.03.190: AND PROVIDED FURTHER, That upon an))~~).

33 The notice under this subsection must be filed within twenty days from
34 the date that the party received the notice of appeal.

35 (b) For appeals under RCW 82.03.130(1)(~~((e))~~) in which the
36 department of revenue is a party, other than appeals governed by RCW
37

1 82.03.190, the (~~director~~) department of revenue may, within (~~ten~~)
2 twenty days from the date of its receipt of the notice of appeal, file
3 with the clerk of the board notice of its intention that the hearing be
4 held pursuant to chapter 34.05 RCW.

5 (3) In the event that appeals (~~are taken from~~) of the same
6 decision, order, or determination, as the case may be, are filed by
7 different parties and only one of (~~such~~) the parties elects a formal
8 hearing, the board must grant a formal hearing (~~shall be granted~~).

9 (4) Nothing in this section may be construed as modifying the
10 provisions of RCW 82.03.190.

11 **Sec. 305.** RCW 84.34.020 and 2009 c 513 s 1 and 2009 c 255 s 1 are
12 each reenacted and amended to read as follows:

13 As used in this chapter, unless a different meaning is required by
14 the context:

15 (1) "Open space land" means (a) any land area so designated by an
16 official comprehensive land use plan adopted by any city or county and
17 zoned accordingly, or (b) any land area, the preservation of which in
18 its present use would (i) conserve and enhance natural or scenic
19 resources, or (ii) protect streams or water supply, or (iii) promote
20 conservation of soils, wetlands, beaches or tidal marshes, or (iv)
21 enhance the value to the public of abutting or neighboring parks,
22 forests, wildlife preserves, nature reservations or sanctuaries or
23 other open space, or (v) enhance recreation opportunities, or (vi)
24 preserve historic sites, or (vii) preserve visual quality along
25 highway, road, and street corridors or scenic vistas, or (viii) retain
26 in its natural state tracts of land not less than one acre situated in
27 an urban area and open to public use on such conditions as may be
28 reasonably required by the legislative body granting the open space
29 classification, or (c) any land meeting the definition of farm and
30 agricultural conservation land under subsection (8) of this section.
31 As a condition of granting open space classification, the legislative
32 body may not require public access on land classified under (b)(iii) of
33 this subsection for the purpose of promoting conservation of wetlands.

34 (2) "Farm and agricultural land" means:

35 (a) Any parcel of land that is twenty or more acres or multiple
36 parcels of land that are contiguous and total twenty or more acres:

1 (i) Devoted primarily to the production of livestock or
2 agricultural commodities for commercial purposes;

3 (ii) Enrolled in the federal conservation reserve program or its
4 successor administered by the United States department of agriculture;
5 or

6 (iii) Other similar commercial activities as may be established by
7 rule;

8 (b)(i) Any parcel of land that is five acres or more but less than
9 twenty acres devoted primarily to agricultural uses, which has produced
10 a gross income from agricultural uses equivalent to, as of January 1,
11 1993:

12 (A) One hundred dollars or more per acre per year for three of the
13 five calendar years preceding the date of application for
14 classification under this chapter for all parcels of land that are
15 classified under this subsection or all parcels of land for which an
16 application for classification under this subsection is made with the
17 granting authority prior to January 1, 1993; and

18 (B) On or after January 1, 1993, two hundred dollars or more per
19 acre per year for three of the five calendar years preceding the date
20 of application for classification under this chapter;

21 (ii) For the purposes of (b)(i) of this subsection, "gross income
22 from agricultural uses" includes, but is not limited to, the wholesale
23 value of agricultural products donated to nonprofit food banks or
24 feeding programs;

25 (c) Any parcel of land of less than five acres devoted primarily to
26 agricultural uses which has produced a gross income as of January 1,
27 1993, of:

28 (i) One thousand dollars or more per year for three of the five
29 calendar years preceding the date of application for classification
30 under this chapter for all parcels of land that are classified under
31 this subsection or all parcels of land for which an application for
32 classification under this subsection is made with the granting
33 authority prior to January 1, 1993; and

34 (ii) On or after January 1, 1993, fifteen hundred dollars or more
35 per year for three of the five calendar years preceding the date of
36 application for classification under this chapter. Parcels of land
37 described in (b)(i)(A) and (c)(i) of this subsection (~~shall~~) will,

1 upon any transfer of the property excluding a transfer to a surviving
2 spouse or surviving state registered domestic partner, be subject to
3 the limits of (b)(i)(B) and (c)(ii) of this subsection;

4 (d) Any parcel of land that is five acres or more but less than
5 twenty acres devoted primarily to agricultural uses, which meet one of
6 the following criteria:

7 (i) Has produced a gross income from agricultural uses equivalent
8 to two hundred dollars or more per acre per year for three of the five
9 calendar years preceding the date of application for classification
10 under this chapter;

11 (ii) Has standing crops with an expectation of harvest within seven
12 years, except as provided in (d)(iii) of this subsection, and a
13 demonstrable investment in the production of those crops equivalent to
14 one hundred dollars or more per acre in the current or previous
15 calendar year. For the purposes of this subsection (2)(d)(ii),
16 "standing crop" means Christmas trees, vineyards, fruit trees, or other
17 perennial crops that: (A) Are planted using agricultural methods
18 normally used in the commercial production of that particular crop; and
19 (B) typically do not produce harvestable quantities in the initial
20 years after planting; or

21 (iii) Has a standing crop of short rotation hardwoods with an
22 expectation of harvest within fifteen years and a demonstrable
23 investment in the production of those crops equivalent to one hundred
24 dollars or more per acre in the current or previous calendar year;

25 (e) Any lands including incidental uses as are compatible with
26 agricultural purposes, including wetlands preservation, provided such
27 incidental use does not exceed twenty percent of the classified land
28 and the land on which appurtenances necessary to the production,
29 preparation, or sale of the agricultural products exist in conjunction
30 with the lands producing such products. Agricultural lands shall also
31 include any parcel of land of one to five acres, which is not
32 contiguous, but which otherwise constitutes an integral part of farming
33 operations being conducted on land qualifying under this section as
34 "farm and agricultural lands";

35 (f) The land on which housing for employees and the principal place
36 of residence of the farm operator or owner of land classified pursuant
37 to (a) of this subsection is sited if: The housing or residence is on

1 or contiguous to the classified parcel; and the use of the housing or
2 the residence is integral to the use of the classified land for
3 agricultural purposes; or

4 (g) Any land that is used primarily for equestrian related
5 activities for which a charge is made, including, but not limited to,
6 stabling, training, riding, clinics, schooling, shows, or grazing for
7 feed and that otherwise meet the requirements of (a), (b), or (c) of
8 this subsection.

9 (3) "Timber land" means any parcel of land that is five or more
10 acres or multiple parcels of land that are contiguous and total five or
11 more acres which is or are devoted primarily to the growth and harvest
12 of timber for commercial purposes. Timber land means the land only and
13 does not include a residential homesite. The term includes land used
14 for incidental uses that are compatible with the growing and harvesting
15 of timber but no more than ten percent of the land may be used for such
16 incidental uses. It also includes the land on which appurtenances
17 necessary for the production, preparation, or sale of the timber
18 products exist in conjunction with land producing these products.

19 (4) "Current" or "currently" means as of the date on which property
20 is to be listed and valued by the assessor.

21 (5) "Owner" means the party or parties having the fee interest in
22 land, except that where land is subject to real estate contract "owner"
23 (~~shall~~) means the contract vendee.

24 (6) "Contiguous" means land adjoining and touching other property
25 held by the same ownership. Land divided by a public road, but
26 otherwise an integral part of a farming operation, (~~shall be~~) is
27 considered contiguous.

28 (7) "Granting authority" means the appropriate agency or official
29 who acts on an application for classification of land pursuant to this
30 chapter.

31 (8) "Farm and agricultural conservation land" means either:

32 (a) Land that was previously classified under subsection (2) of
33 this section, that no longer meets the criteria of subsection (2) of
34 this section, and that is reclassified under subsection (1) of this
35 section; or

36 (b) Land that is traditional farmland that is not classified under
37 chapter 84.33 or 84.34 RCW, that has not been irrevocably devoted to a

1 use inconsistent with agricultural uses, and that has a high potential
2 for returning to commercial agriculture.

3 **Sec. 306.** RCW 84.36.040 and 2001 c 126 s 1 are each amended to
4 read as follows:

5 (1) The real and personal property used by ((nonprofit)), and for
6 the purposes of, the following nonprofit organizations is exempt from
7 property taxation:

8 (a) Child day care centers as defined ((pursuant to RCW 74.15.020))
9 in subsection (4) of this section;

10 (b) Free public libraries;

11 (c) Orphanages and orphan asylums;

12 (d) Homes for the sick or infirm;

13 (e) Hospitals for the sick; and

14 (f) Outpatient dialysis facilities((, which are used for the
15 purposes of such organizations shall be exempt from taxation:
16 PROVIDED, That the benefit of the exemption inures to the user)).

17 (2) The real and personal property leased to and used by a
18 hospital((,)) for hospital purposes is exempt from property taxation if
19 the hospital is established under chapter 36.62 RCW or is owned and
20 operated by a public hospital district established under chapter 70.44
21 RCW((, for hospital purposes is exempt from taxation. The benefit of
22 the exemption must inure to the user)).

23 (3) To be exempt under this section, the property must be used
24 exclusively for the purposes for which exemption is granted, except as
25 provided in RCW 84.36.805, and the benefit of the exemption must inure
26 to the user.

27 (4) For purposes of subsection (1) of this section, "child day care
28 center" means a nonprofit organization that regularly provides child
29 day care and early learning services for a group of children for
30 periods of less than twenty-four hours.

31 **Sec. 307.** RCW 84.36.381 and 2008 c 6 s 706 are each amended to
32 read as follows:

33 A person ((shall be)) is exempt from any legal obligation to pay
34 all or a portion of the amount of excess and regular real property
35 taxes due and payable in the year following the year in which a claim
36 is filed, and thereafter, in accordance with the following:

1 (1) The property taxes must have been imposed upon a residence
2 which was occupied by the person claiming the exemption as a principal
3 place of residence as of the time of filing(~~(:—PROVIDED, That)~~).
4 However, any person who sells, transfers, or is displaced from his or
5 her residence may transfer his or her exemption status to a replacement
6 residence, but no claimant (~~(shall)~~) may receive an exemption on more
7 than one residence in any year(~~(:—PROVIDED FURTHER, That)~~). Moreover,
8 confinement of the person to a hospital, nursing home, boarding home,
9 or adult family home (~~(shall)~~) does not disqualify the claim of
10 exemption if:

- 11 (a) The residence is temporarily unoccupied;
- 12 (b) The residence is occupied by a spouse or a domestic partner
13 and/or a person financially dependent on the claimant for support; or
- 14 (c) The residence is rented for the purpose of paying nursing home,
15 hospital, boarding home, or adult family home costs;

16 (2) The person claiming the exemption must have owned, at the time
17 of filing, in fee, as a life estate, or by contract purchase, the
18 residence on which the property taxes have been imposed or if the
19 person claiming the exemption lives in a cooperative housing
20 association, corporation, or partnership, such person must own a share
21 therein representing the unit or portion of the structure in which he
22 or she resides. For purposes of this subsection, a residence owned by
23 a marital community or state registered domestic partnership or owned
24 by cotenants (~~(shall be)~~) is deemed to be owned by each spouse or each
25 domestic partner or each cotenant, and any lease for life (~~(shall be)~~)
26 is deemed a life estate;

27 (3) The person claiming the exemption must be (a) sixty-one years
28 of age or older on December 31st of the year in which the exemption
29 claim is filed, or must have been, at the time of filing, retired from
30 regular gainful employment by reason of disability, or (b) a veteran of
31 the armed forces of the United States with one hundred percent service-
32 connected disability as provided in 42 U.S.C. Sec. 423 (d)(1)(A) as
33 amended prior to January 1, 2005, or such subsequent date as the
34 department may provide by rule consistent with the purpose of this
35 section. However, any surviving spouse or surviving domestic partner
36 of a person who was receiving an exemption at the time of the person's
37 death (~~(shall)~~) will qualify if the surviving spouse or surviving

1 domestic partner is fifty-seven years of age or older and otherwise
2 meets the requirements of this section;

3 (4) The amount that the person (~~shall be~~) is exempt from an
4 obligation to pay (~~shall be~~) is calculated on the basis of combined
5 disposable income, as defined in RCW 84.36.383. If the person claiming
6 the exemption was retired for two months or more of the assessment
7 year, the combined disposable income of such person (~~shall~~) must be
8 calculated by multiplying the average monthly combined disposable
9 income of such person during the months such person was retired by
10 twelve. If the income of the person claiming exemption is reduced for
11 two or more months of the assessment year by reason of the death of the
12 person's spouse or the person's domestic partner, or when other
13 substantial changes occur in disposable income that are likely to
14 continue for an indefinite period of time, the combined disposable
15 income of such person (~~shall~~) must be calculated by multiplying the
16 average monthly combined disposable income of such person after such
17 occurrences by twelve. If it is necessary to estimate income to comply
18 with this subsection, the assessor may require confirming documentation
19 of such income prior to May 31 of the year following application;

20 (5)(a) A person who otherwise qualifies under this section and has
21 a combined disposable income of thirty-five thousand dollars or less
22 (~~shall be~~) is exempt from all excess property taxes; and

23 (b)(i) A person who otherwise qualifies under this section and has
24 a combined disposable income of thirty thousand dollars or less but
25 greater than twenty-five thousand dollars (~~shall be~~) is exempt from
26 all regular property taxes on the greater of fifty thousand dollars or
27 thirty-five percent of the valuation of his or her residence, but not
28 to exceed seventy thousand dollars of the valuation of his or her
29 residence; or

30 (ii) A person who otherwise qualifies under this section and has a
31 combined disposable income of twenty-five thousand dollars or less
32 (~~shall be~~) is exempt from all regular property taxes on the greater
33 of sixty thousand dollars or sixty percent of the valuation of his or
34 her residence;

35 (6)(a) For a person who otherwise qualifies under this section and
36 has a combined disposable income of thirty-five thousand dollars or
37 less, the valuation of the residence (~~shall be~~) is the assessed value
38 of the residence on the later of January 1, 1995, or January 1st of the

1 assessment year the person first qualifies under this section. If the
2 person subsequently fails to qualify under this section only for one
3 year because of high income, this same valuation (~~shall~~) must be used
4 upon requalification. If the person fails to qualify for more than one
5 year in succession because of high income or fails to qualify for any
6 other reason, the valuation upon requalification (~~shall be~~) is the
7 assessed value on January 1st of the assessment year in which the
8 person requalifies. If the person transfers the exemption under this
9 section to a different residence, the valuation of the different
10 residence (~~shall be~~) is the assessed value of the different residence
11 on January 1st of the assessment year in which the person transfers the
12 exemption.

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

16 (c) This subsection does not apply to subsequent improvements to
17 the property in the year in which the improvements are made.
18 Subsequent improvements to the property (~~shall~~) must be added to the
19 value otherwise determined under this subsection at their true and fair
20 value in the year in which they are made.

21 **Sec. 308.** RCW 84.36.383 and 2008 c 182 s 1 and 2008 c 6 s 709 are
22 each reenacted and amended to read as follows:

23 As used in RCW 84.36.381 through 84.36.389, except where the
24 context clearly indicates a different meaning:

25 (1) The term "residence" means a single family dwelling unit
26 whether such unit be separate or part of a multiunit dwelling,
27 including the land on which such dwelling stands not to exceed one
28 acre, except that a residence includes any additional property up to a
29 total of five acres that comprises the residential parcel if this
30 larger parcel size is required under land use regulations. The term
31 (~~shall~~) also includes a share ownership in a cooperative housing
32 association, corporation, or partnership if the person claiming
33 exemption can establish that his or her share represents the specific
34 unit or portion of such structure in which he or she resides. The term
35 (~~shall~~) also includes a single family dwelling situated upon lands
36 the fee of which is vested in the United States or any instrumentality

1 thereof including an Indian tribe or in the state of Washington, and
2 notwithstanding the provisions of RCW 84.04.080 and 84.04.090, such a
3 residence (~~(shall be)~~) is deemed real property.

4 (2) The term "real property" (~~(shall)~~) also includes a mobile home
5 which has substantially lost its identity as a mobile unit by virtue of
6 its being fixed in location upon land owned or leased by the owner of
7 the mobile home and placed on a foundation (posts or blocks) with fixed
8 pipe, connections with sewer, water, or other utilities. A mobile home
9 located on land leased by the owner of the mobile home is subject, for
10 tax billing, payment, and collection purposes, only to the personal
11 property provisions of chapter 84.56 RCW and RCW 84.60.040.

12 (3) "Department" means the state department of revenue.

13 (4) "Combined disposable income" means the disposable income of the
14 person claiming the exemption, plus the disposable income of his or her
15 spouse or domestic partner, and the disposable income of each cotenant
16 occupying the residence for the assessment year, less amounts paid by
17 the person claiming the exemption or his or her spouse or domestic
18 partner during the assessment year for:

19 (a) Drugs supplied by prescription of a medical practitioner
20 authorized by the laws of this state or another jurisdiction to issue
21 prescriptions;

22 (b) The treatment or care of either person received in the home or
23 in a nursing home, boarding home, or adult family home; and

24 (c) Health care insurance premiums for medicare under Title XVIII
25 of the social security act.

26 (5) "Disposable income" means adjusted gross income as defined in
27 the federal internal revenue code, as amended prior to January 1, 1989,
28 or such subsequent date as the director may provide by rule consistent
29 with the purpose of this section, plus all of the following items to
30 the extent they are not included in or have been deducted from adjusted
31 gross income:

32 (a) Capital gains, other than gain excluded from income under
33 section 121 of the federal internal revenue code to the extent it is
34 reinvested in a new principal residence;

35 (b) Amounts deducted for loss;

36 (c) Amounts deducted for depreciation;

37 (d) Pension and annuity receipts;

1 (e) Military pay and benefits other than attendant-care and
2 medical-aid payments;

3 (f) Veterans benefits, other than:

4 (i) Attendant-care payments;

5 (ii) Medical-aid payments;

6 (iii) Disability compensation, as defined in Title 38, part 3,
7 section 3.4 of the code of federal regulations, as of January 1, 2008;
8 and

9 (iv) Dependency and indemnity compensation, as defined in Title 38,
10 part 3, section 3.5 of the code of federal regulations, as of January
11 1, 2008;

12 (g) Federal social security act and railroad retirement benefits;

13 (h) Dividend receipts; and

14 (i) Interest received on state and municipal bonds.

15 (6) "Cotenant" means a person who resides with the person claiming
16 the exemption and who has an ownership interest in the residence.

17 (7) "Disability" has the same meaning as provided in 42 U.S.C. Sec.
18 423(d)(1)(A) as amended prior to January 1, (~~2004~~) 2005, or such
19 subsequent date as the (~~director~~) department may provide by rule
20 consistent with the purpose of this section.

21 **Sec. 309.** RCW 84.36.385 and 2001 c 185 s 8 are each amended to
22 read as follows:

23 (1) A claim for exemption under RCW 84.36.381 as now or hereafter
24 amended, (~~shall~~) may be made and filed at any time during the year
25 for exemption from taxes payable the following year and thereafter and
26 solely upon forms as prescribed and furnished by the department of
27 revenue. However, an exemption from tax under RCW 84.36.381 (~~shall~~)
28 continues for no more than (~~four~~) six years unless a renewal
29 application is filed as provided in subsection (3) of this section.
30 The county assessor may also require, by written notice, a renewal
31 application following an amendment of the income requirements set forth
32 in RCW 84.36.381. Renewal applications (~~shall~~) must be on forms
33 prescribed and furnished by the department of revenue.

34 (2) A person granted an exemption under RCW 84.36.381 (~~shall~~)
35 must inform the county assessor of any change in status affecting the
36 person's entitlement to the exemption on forms prescribed and furnished
37 by the department of revenue.

1 (3) Each person exempt from taxes under RCW 84.36.381 in 1993 and
2 thereafter, (~~shall~~) must file with the county assessor a renewal
3 application not later than December 31 of the year the assessor
4 notifies such person of the requirement to file the renewal
5 application.

6 (4) Beginning in 1992 and in each of the three succeeding years,
7 the county assessor (~~shall~~) must notify approximately one-fourth of
8 those persons exempt from taxes under RCW 84.36.381 in the current year
9 who have not filed a renewal application within the previous four
10 years, of the requirement to file a renewal application.

11 (5) If the assessor finds that the applicant does not meet the
12 qualifications as set forth in RCW 84.36.381, as now or hereafter
13 amended, the claim or exemption (~~shall~~) must be denied but such
14 denial (~~shall be~~) is subject to appeal under the provisions of RCW
15 84.48.010(~~(+5)~~) and in accordance with the provisions of RCW
16 84.40.038. If the applicant had received exemption in prior years
17 based on erroneous information, the taxes (~~shall~~) must be collected
18 subject to penalties as provided in RCW 84.40.130 for a period of not
19 to exceed (~~three~~) five years.

20 (6) The department and each local assessor is hereby directed to
21 publicize the qualifications and manner of making claims under RCW
22 84.36.381 through 84.36.389, through communications media, including
23 such paid advertisements or notices as it deems appropriate. Notice of
24 the qualifications, method of making applications, the penalties for
25 not reporting a change in status, and availability of further
26 information (~~shall~~) must be included on or with property tax
27 statements and revaluation notices for all residential property
28 including mobile homes, except rental properties.

29 **Sec. 310.** RCW 84.37.030 and 2007 sp.s. c 2 s 2 are each amended to
30 read as follows:

31 A claimant may defer payment of fifty percent of special
32 assessments or real property taxes, or both, listed on the annual tax
33 statement in any year in which all of the following conditions are met:

34 (1) The special assessments or property taxes must be imposed upon
35 a residence that was occupied by the claimant as a principal place of
36 residence as of January 1st of the year in which the assessments and

1 taxes are due, subject to the exceptions allowed under RCW
2 84.36.381(1);

3 (2) The claimant must have combined disposable income, as defined
4 in RCW 84.36.383, of fifty-seven thousand dollars or less in the
5 calendar year preceding the filing of the declaration;

6 (3) The claimant must have paid one-half of the total amount of
7 special assessments and property taxes listed on the annual tax
8 statement for the year in which the deferral claim is made;

9 (4) A deferral is not allowed for special assessments ~~((or))~~,
10 property taxes, or both, levied for collection in the first five
11 calendar years in which the person owns the residence;

12 (5) The claimant who defers payment of special assessments or real
13 property taxes, or both, listed on the annual tax statement under this
14 section must also meet the conditions of RCW 84.38.030 (4) and (5);

15 (6) The total amount deferred by a claimant under this chapter must
16 not exceed forty percent of the amount of the claimant's equity value
17 in the claimant's residence; and

18 (7) The claimant may not defer taxes under both this chapter and
19 chapter 84.38 RCW ~~((and~~

20 ~~((8) In the case of deferred special assessments, the claimant must
21 have opted for payment of the assessments on the installment method if
22 this method was available))~~ in the same tax year.

23 **Sec. 311.** RCW 84.37.902 and 2007 sp.s. c 2 s 13 are each amended
24 to read as follows:

25 (1) ~~((During calendar year 2011, the joint legislative audit and
26 review committee shall review the property tax deferral program under
27 chapter 84.37 RCW.))~~ Pursuant to chapter 43.136 RCW, the citizen
28 commission for performance measurement of tax preferences must schedule
29 the property tax deferral program under this chapter for a tax
30 preference review by the joint legislative audit and review committee
31 in 2011. The department of revenue and county assessors ~~((shall))~~ must
32 provide the committee with any data within its purview that the
33 committee considers necessary to conduct the review. ~~((By December 1,~~
34 ~~2011, the joint legislative audit and review committee shall report to~~
35 ~~the legislature the results of its review.))~~

36 (2) ~~((As part of its review under subsection (1) of this section))~~

1 In addition to the factors in RCW 43.136.055(1), the committee
2 ~~((shall))~~ must also study and report on:

3 (a) The effectiveness of the property tax deferral program in
4 assisting families in economic distress in remaining in their homes;

5 (b) The effectiveness of the property tax deferral program in
6 decreasing the default rate on residential mortgages for the statewide
7 population within the income threshold of the program;

8 (c) The number of potential participants per thousand population by
9 geographic region;

10 (d) The ratio of actual deferral program participants to potential
11 deferral program participants by geographic region;

12 (e) The ratio of average annual household property taxes for
13 deferral program participants and average annual income of deferral
14 program participants by geographic region;

15 (f) Economic conditions in the housing and lending markets for the
16 prior three years and the forecasted economic conditions for the
17 current biennium and the next succeeding biennium;

18 (g) Annual costs specific to the administration of the deferral
19 program; and

20 (h) Total annual costs of the deferral program(~~(+~~

21 ~~-i) Recommended changes to the deferral program that would increase~~
22 ~~program participation;~~

23 ~~(j) Any other recommendations the committee may have to improve the~~
24 ~~deferral program; and~~

25 ~~(k) Any other factors that the committee considers necessary to~~
26 ~~properly evaluate the deferral program)).~~

27 (3) This section expires January 1, 2012.

28 **Sec. 312.** RCW 84.48.050 and 1995 c 134 s 15 are each amended to
29 read as follows:

30 (1) The county assessor ~~((shall))~~ must, on or before the fifteenth
31 day of January in each year, ~~((make out and transmit to the state~~
32 ~~auditor, in such form as may be prescribed,))~~ prepare a complete
33 abstract of the tax rolls of the county, showing the number of acres
34 that have been assessed and the total value of the real property,
35 including the structures on the real property; the total value of all
36 taxable personal property in the county; the aggregate amount of all

1 taxable property in the county; the total amount as equalized and the
2 total amount of taxes levied in the county for state, county, city, and
3 other taxing district purposes, for that year. (~~Should the~~)

4 (2) If an assessor of any county fails to transmit to the
5 department of revenue the abstract provided for in RCW 84.48.010, and
6 if(~~, by reason of such failure to transmit such abstract, any~~) a
7 county (~~shall~~) fails to collect and pay to the state its due
8 proportion of the state tax for any year because of that failure, the
9 department of revenue (~~shall~~) must ascertain what amount of state tax
10 (~~said~~) the county (~~has~~) failed to collect(~~, and~~). The department
11 must certify (~~the same~~) to the (~~state~~) county auditor(~~, who shall~~
12 ~~charge the amount to the proper county and notify the auditor of said~~
13 ~~county of the amount of said charge; said~~) the amount of state tax the
14 county failed to collect. This sum (~~shall be~~) is due and payable
15 immediately by warrant in favor of the state on the current expense
16 fund of (~~said~~) the county.

17 **Sec. 313.** RCW 84.52.030 and 1994 c 124 s 38 are each amended to
18 read as follows:

19 For the purpose of raising revenue for state, county, and other
20 taxing district purposes, the county legislative authority of each
21 county (~~at its October session~~), and all other officials or boards
22 authorized by law to levy taxes for taxing district purposes, (~~shall~~)
23 must levy taxes on all the taxable property in the county or district,
24 as the case may be, sufficient for such purposes, and within the
25 limitations permitted by law.

26 **Sec. 314.** RCW 84.52.070 and 1994 c 81 s 86 are each amended to
27 read as follows:

28 (1) It (~~shall be~~) is the duty of the county legislative authority
29 of each county, on or before the thirtieth day of November in each
30 year, to certify to the county assessor (~~of the county~~) the amount of
31 taxes levied upon the property in the county for county purposes, and
32 the respective amounts of taxes levied by the board for each taxing
33 district, within or coextensive with the county, for district
34 purposes(~~, and~~).

35 (2) It (~~shall be~~) is the duty of the council of each city having
36 a population of three hundred thousand or more, and of the council of

1 each town, and of all officials or boards of taxing districts within or
2 coextensive with the county, authorized by law to levy taxes directly
3 and not through the county legislative authority, on or before the
4 thirtieth day of November in each year, to certify to the county
5 assessor (~~(of the county)~~) the amount of taxes levied upon the property
6 within the city, town, or district for city, town, or district
7 purposes.

8 (3) If a levy amount is (~~not~~) certified to the county assessor
9 (~~by~~) after the thirtieth day of November, the county assessor
10 (~~shall~~) may use no more than the certified levy amount for the
11 previous year for the taxing district(~~(+—PROVIDED, That)~~). This
12 (~~shall~~) subsection (3) does not apply to the state levy or when the
13 assessor has not certified assessed values as required by RCW 84.48.130
14 at least twelve working days (~~prior to~~) before November 30th.

15 **Sec. 315.** RCW 84.52.080 and 1989 c 378 s 16 are each amended to
16 read as follows:

17 (1) The county assessor (~~shall~~) must extend the taxes upon the
18 tax rolls in the form (~~herein~~) prescribed in this section. The rate
19 percent necessary to raise the amounts of taxes levied for state and
20 county purposes, and for purposes of taxing districts coextensive with
21 the county, (~~shall~~) must be computed upon the assessed value of the
22 property of the county(~~(+)~~). The rate percent necessary to raise the
23 amount of taxes levied for any taxing district within the county
24 (~~shall~~) must be computed upon the assessed value of the property of
25 the district(~~(+)~~). All taxes assessed against any property (~~shall~~)
26 must be added together and extended on the rolls in a column headed
27 consolidated or total tax. In extending any tax, whenever (~~it~~) the
28 tax amounts to a fractional part of a cent greater than (~~five mills~~)
29 one-half of a cent it (~~shall~~) must be (~~made~~) rounded up to one
30 cent, and whenever it amounts to (~~five mills~~) one-half of a cent or
31 less (~~than five mills~~) it (~~shall~~) must be dropped. The amount of
32 all taxes (~~shall~~) must be entered in the proper columns, as shown by
33 entering the rate percent necessary to raise the consolidated or total
34 tax and the total tax assessed against the property.

35 (2) For the purpose of computing the rate necessary to raise the
36 amount of any excess levy in a taxing district (~~which has classified~~
37 ~~or designated forest land under chapter 84.33 RCW~~) entitled to a

1 distribution under RCW 84.33.081, other than the state, the county
2 assessor (~~shall~~) must add the district's timber assessed value, as
3 defined in RCW 84.33.035, to the assessed value of the property(~~+~~
4 ~~PROVIDED, That~~). However, for school districts maintenance and
5 operations levies, only one-half of the district's timber assessed
6 value or eighty percent of the timber roll of (~~such~~) the district in
7 calendar year 1983 as determined under chapter 84.33 RCW, whichever is
8 greater, (~~shall~~) must be added to the assessed value of the property.

9 (3) Upon the completion of such tax extension, it (~~shall be~~) is
10 the duty of the county assessor to make in each assessment book, tax
11 roll or list a certificate in the following form:

12 I,....., assessor of..... county, state of
13 Washington, do hereby certify that the foregoing is a
14 correct list of taxes levied on the real and personal property
15 in the county of..... for the year (~~one~~) two thousand
16 (~~nine hundred and~~).....
17 Witness my hand this.... day of....., (~~19~~) 20...
18, County Assessor

19 (4) The county assessor (~~shall~~) must deliver (~~said~~) the tax
20 rolls to the county treasurer, on or before the fifteenth day of
21 January, taking a receipt (~~therefor, and~~) from the treasurer. At the
22 same time, the county assessor (~~shall~~) must provide the county
23 auditor with an abstract of the tax rolls showing the total amount of
24 taxes collectible in each of the taxing districts.

25 NEW SECTION. **Sec. 316.** RCW 84.55.080 (Adjustment to tax
26 limitation) and 2006 c 184 s 5 & 1982 1st ex.s. c 42 s 12 are each
27 repealed.

28 **PART IV**
29 **MISCELLANEOUS**

30 **Sec. 401.** 2009 c 461 s 9 (uncodified) is amended to read as
31 follows:

32 (1)(a) Section 206, chapter . . . , Laws of 2010 (section 206 of
33 this act), section 3, chapter 461, Laws of 2009, section 7, chapter

1 300, Laws of 2006, and section 4, chapter 149, Laws of 2003 are
2 contingent upon the siting and commercial operation of a significant
3 semiconductor microchip fabrication facility in the state of
4 Washington.

5 (b) For the purposes of this section:

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

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

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

13 (2) Chapter 149, Laws of 2003 takes effect the first day of the
14 month in which a contract for the construction of a significant
15 semiconductor fabrication facility is signed, as determined by the
16 director of the department of revenue.

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

20 (b) If, after making a determination that a contract has been
21 signed and chapter 149, Laws of 2003 is effective, the department
22 discovers that commencement of commercial production did not take place
23 within three years of the date the contract was signed, the department
24 must make a determination that chapter 149, Laws of 2003 is no longer
25 effective, and all taxes that would have been otherwise due are deemed
26 deferred taxes and are immediately assessed and payable from any person
27 reporting tax under RCW 82.04.240(2) or claiming an exemption or credit
28 under section 2 or 5 through 10 , chapter 149, Laws of 2003. The
29 department is not authorized to make a second determination regarding
30 the effective date of chapter 149, Laws of 2003.

31 NEW SECTION. **Sec. 402.** If any provision of this act or its
32 application to any person or circumstance is held invalid, the
33 remainder of the act or the application of the provision to other
34 persons or circumstances is not affected.

35 NEW SECTION. **Sec. 403.** Sections 104(3) (a)(i) and (s) and 111 of

1 this act apply to return or tax information in respect to the tax
2 imposed under chapter 83.100 RCW in the possession of the department of
3 revenue on or after the effective date of this section.

4 NEW SECTION. **Sec. 404.** Sections 234 and 235 of this act apply
5 both retroactively and prospectively to estates of decedents dying on
6 or after May 17, 2005.

7 NEW SECTION. **Sec. 405.** Section 306(2) of this act applies both
8 prospectively and retroactively beginning with taxes levied for
9 collection in 2002 and thereafter.

10 NEW SECTION. **Sec. 406.** 2010 c . . . s 401 (section 401 of this
11 act), 2009 c 461 s 9, 2006 c 300 s 12, and 2003 c 149 s 12 (uncodified)
12 are codified as a section within chapter 82.32 RCW.

13 NEW SECTION. **Sec. 407.** Except as otherwise provided in sections
14 401, 409, and 412 of this act, this act takes effect July 1, 2010.

15 NEW SECTION. **Sec. 408.** Section 211 of this act expires January 1,
16 2011.

17 NEW SECTION. **Sec. 409.** Section 212 of this act takes effect
18 January 1, 2011.

19 NEW SECTION. **Sec. 410.** Section 224 of this act expires June 30,
20 2013.

21 NEW SECTION. **Sec. 411.** Section 235 of this act expires January 1,
22 2014.

23 NEW SECTION. **Sec. 412.** Section 236 of this act takes effect
24 January 1, 2014.

25 NEW SECTION. **Sec. 413.** If section 206 of this act takes effect,
26 section 205 of this act expires on the date section 206 of this act

1 takes effect.

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