

HOUSE BILL 2971

State of Washington 61st Legislature 2010 Regular Session

By Representatives Hunter and Conway; by request of Department of Revenue
Read first time 01/19/10. Referred to Committee on Finance.

1 AN ACT Relating to limiting tax preferences that have been the
2 subject of administrative or judicial appeals; amending RCW 82.04.423,
3 82.04.4292, 82.04.4266, 82.04.250, 82.04.250, 82.04.298, 82.04.334,
4 82.04.4463, 82.08.806, 82.32.545, 82.32.550, 82.32.630, 82.32.632,
5 82.45.195, 35.102.150, and 48.14.080; reenacting and amending RCW
6 82.04.260, 82.04.261, and 82.04.440; adding a new section to chapter
7 82.04 RCW; creating new sections; providing effective dates; providing
8 an expiration date; and declaring an emergency.

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

PART I

DIRECT SELLER B&O TAX EXEMPTION

12 NEW SECTION. **Sec. 101.** (1) A business and occupation tax
13 exemption is provided in RCW 82.04.423 for certain out-of-state sellers
14 that sell consumer products exclusively to or through a direct seller's
15 representative. The intent of the legislature in enacting this
16 exemption was to provide a narrow exemption for out-of-state businesses
17 engaged in direct sales of consumer products, typically accomplished
18 through in-home parties or door-to-door selling.

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

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

20 (4) Therefore, the legislature finds that it is necessary to
21 reaffirm the legislature's intent in establishing the direct sellers'
22 exemption and prevent the loss of revenues resulting from the expanded
23 interpretation of the exemption by amending RCW 82.04.423 retroactively
24 to conform the exemption to the original intent of the legislature and
25 by prospectively ending the direct sellers' exemption effective July 1,
26 2010. The legislature recognizes that the department of revenue has
27 asked the Washington supreme court to reconsider its decision in *Dot*
28 *Foods*. As a result, if the *Dot Foods* decision is not final on the
29 effective date of section 102 of this act, it is the legislature's
30 intent that the amendments in section 102 of this act be considered
31 clarifying in nature.

32 **Sec. 102.** RCW 82.04.423 and 1983 1st ex.s. c 66 s 5 are each
33 amended to read as follows:

34 (1) Prior to July 1, 2010, this chapter (~~shall~~) does not apply to
35 any person in respect to gross income derived from the business of
36 making sales at wholesale or retail if such person:

37 (a) Does not own or lease real property within this state; and

1 (b) Does not regularly maintain a stock of tangible personal
2 property in this state for sale in the ordinary course of business; and

3 (c) Is not a corporation incorporated under the laws of this state;
4 and

5 (d) Makes sales in this state exclusively to or through a direct
6 seller's representative.

7 (2) For purposes of this section, the term "direct seller's
8 representative" means a person who buys only consumer products on a
9 buy-sell basis or a deposit-commission basis for resale, by the buyer
10 or any other person, in the home or otherwise than in a permanent
11 retail establishment, or who sells at retail, or solicits the sale at
12 retail of, only consumer products in the home or otherwise than in a
13 permanent retail establishment; and

14 (a) Substantially all of the remuneration paid to such person,
15 whether or not paid in cash, for the performance of services described
16 in this subsection is directly related to sales or other output,
17 including the performance of services, rather than the number of hours
18 worked; and

19 (b) The services performed by the person are performed pursuant to
20 a written contract between such person and the person for whom the
21 services are performed and such contract provides that the person will
22 not be treated as an employee with respect to such purposes for federal
23 tax purposes.

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

28 PART II

29 FIRST MORTGAGE INTEREST B&O TAX DEDUCTION

30 NEW SECTION. **Sec. 201.** (1) A business and occupation tax
31 deduction is provided in RCW 82.04.4292 to financial businesses for
32 amounts derived from interest received on investments or loans
33 primarily secured by first mortgages or trust deeds on nontransient
34 residential properties.

35 (2) The Washington supreme court in *Homestreet, Inc. v. Dep't of*
36 *Revenue*, 166 Wn.2d 444 (2009) held that a mortgage lender was entitled

1 to a business and occupation tax deduction under RCW 82.04.4292 for the
2 portion of interest it retained for servicing loans and mortgage-backed
3 securities that it sold on a service-retained basis on the secondary
4 market.

5 (3) The legislature never intended the deduction in RCW 82.04.4292
6 to apply to fees received in exchange for services rendered.

7 (4) Therefore, by this act, the legislature intends to restore the
8 RCW 82.04.4292 deduction to ensure that it conforms with the
9 legislature's original intent. To that end, the legislature declares
10 that the deduction provided by RCW 82.04.4292 does not apply to fees
11 that are received in exchange for services, regardless of whether the
12 source of the fees is or may have been interest when paid by a
13 borrower.

14 **Sec. 202.** RCW 82.04.4292 and 1980 c 37 s 12 are each amended to
15 read as follows:

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

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

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

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

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

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

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

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

11 (ii) Gains on the sale of loans.

12 NEW SECTION. Sec. 203. Nothing in this act may be construed as
13 authorizing a deduction under RCW 82.04.4292 before July 1, 2010, for
14 amounts described in RCW 82.04.4292(3).

15 PART III

16 B&O TAX PREFERENCES FOR MANUFACTURERS OF PRODUCTS

17 DERIVED FROM CERTAIN AGRICULTURAL PRODUCTS

18 NEW SECTION. Sec. 301. (1)(a) In 1967, the legislature amended
19 RCW 82.04.260 in chapter 149, Laws of 1967 ex. sess. to authorize a
20 preferential business and occupation tax rate for slaughtering,
21 breaking, and/or processing perishable meat products and/or selling the
22 same at wholesale. The legislature finds that RCW 82.04.260(4) was
23 interpreted by the state supreme court on January 13, 2005, in *Agrilink*
24 *Foods, Inc. v. Department of Revenue*, 153 Wn.2d 392 (2005). The
25 supreme court held that the preferential business and occupation tax
26 rate on the slaughtering, breaking, and/or processing of perishable
27 meat products applied to the processing of perishable meat products
28 into nonperishable finished products, such as canned food.

29 (b) The legislature intends to narrow the exemption provided for
30 slaughtering, breaking, and/or processing perishable meat products
31 and/or selling such products at wholesale by requiring that the end
32 product be a perishable meat product; a nonperishable meat product that
33 is comprised primarily of animal carcass by weight or volume, other
34 than a canned meat product; or a meat by-product.

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

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

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

19 NEW SECTION. **Sec. 302.** A new section is added to chapter 82.04
20 RCW to read as follows:

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

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

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

35 (c) Hides, tallow, meat meal, and other similar meat by-products,
36 if such products are derived in part from animals and manufactured in
37 a rendering plant licensed under chapter 16.68 RCW; as to such persons

1 the tax imposed is equal to the value of the products manufactured, or,
2 in the case of a processor for hire, the gross income of the business,
3 multiplied by the rate of 0.138 percent.

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

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

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

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

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

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

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

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

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

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

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

29 (B) Except as provided in (e)(ii) of this subsection (3), products,
30 such as jerky, sausage, and other cured meat products, that are
31 comprised primarily of animal carcass by weight or volume and may also
32 contain water; nitrates; nitrites; acids; binders and extenders;
33 natural or synthetic casings; colorings; flavorings such as soy sauce,
34 liquid smoke, seasonings, citric acid, sugar, molasses, corn syrup, and
35 vinegar; and similar substances.

36 (ii) "Meat products" does not include products containing any
37 cereal grains or cereal-grain products, dairy products, legumes and
38 legume products, fruit or vegetable products as defined in RCW

1 82.04.260, and similar ingredients, unless the ingredient is used as a
2 flavoring. For purposes of this subsection, "flavoring" means a
3 substance that contains the flavoring constituents derived from a
4 spice, fruit or fruit juice, vegetable or vegetable juice, edible
5 yeast, herb, bark, bud, root, leaf, or any other edible substance of
6 plant origin, whose primary function in food is flavoring or seasoning
7 rather than nutritional, and which may legally appear as "natural
8 flavor," "flavor," or "flavorings" in the ingredient statement on the
9 label of the meat product.

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

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

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

18 **Sec. 303.** RCW 82.04.4266 and 2006 c 354 s 3 are each amended to
19 read as follows:

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

22 (a) Manufacturing fruit(~~(s)~~) or vegetable(~~(s)~~) products by canning,
23 preserving, freezing, processing, or dehydrating fresh fruits or
24 vegetables; or

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

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

34 (i) Products comprised exclusively of fruits, vegetables, or both;
35 and

36 (ii) Products comprised of fruits, vegetables, or both, and which
37 may also contain water, sugar, salt, seasonings, preservatives,

1 binders, stabilizers, flavorings, yeast, and similar substances.
2 However, the amount of all ingredients contained in the product, other
3 than fruits, vegetables, and water, may not exceed the amount of fruits
4 and vegetables contained in the product measured by weight or volume.

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

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

8 **Sec. 304.** RCW 82.04.260 and 2009 c 479 s 64, 2009 c 461 s 1, and
9 2009 c 162 s 34 are each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (c) For the purposes of this subsection (~~(11)~~) (10), "commercial
30 airplane" and "component" have the same meanings as provided in RCW
31 82.32.550.

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

35 (e) This subsection (~~(11)~~) (10) does not apply on and after July
36 1, 2024.

37 (~~(12)~~) (11)(a) Until July 1, 2024, upon every person engaging
38 within this state in the business of extracting timber or extracting

1 for hire timber; as to such persons the amount of tax with respect to
2 the business (~~shall~~), in the case of extractors, (~~be~~) is equal to
3 the value of products, including by-products, extracted, or in the case
4 of extractors for hire, (~~be~~) is equal to the gross income of the
5 business, multiplied by the rate of 0.4235 percent from July 1, 2006,
6 through June 30, 2007, and 0.2904 percent from July 1, 2007, through
7 June 30, 2024.

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

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

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

1 (e) For purposes of this subsection, the following definitions
2 apply:

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

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

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

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

28 (v) "Timber products" means:

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

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

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

36 (vi) "Wood products" means paper and paper products; dimensional
37 lumber; engineered wood products such as particleboard, oriented strand

1 board, medium density fiberboard, and plywood; wood doors; wood
2 windows; and biocomposite surface products.

3 ~~((+13))~~ (12) Upon every person engaging within this state in
4 inspecting, testing, labeling, and storing canned salmon owned by
5 another person, as to such persons, the amount of tax with respect to
6 such activities ~~((shall be))~~ is equal to the gross income derived from
7 such activities multiplied by the rate of 0.484 percent.

8 ~~((+14))~~ (13) Upon every person engaging within this state in the
9 business of printing a newspaper, publishing a newspaper, or both, the
10 amount of tax on such business is equal to the gross income of the
11 business multiplied by the rate of 0.2904 percent.

12 **Sec. 305.** RCW 82.04.250 and 2008 c 81 s 5 are each amended to read
13 as follows:

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

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

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

35 **Sec. 306.** RCW 82.04.250 and 2007 c 54 s 5 are each amended to read
36 as follows:

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

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

13 **Sec. 307.** RCW 82.04.261 and 2007 c 54 s 7 and 2007 c 48 s 4 are
14 each reenacted and amended to read as follows:

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

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

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

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

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

34 (b)(i) The suspension of the surcharge under (a)(i) of this
35 subsection (3) (~~(shall)~~) takes effect on the first day of the calendar
36 month that is at least thirty days after the end of the month during
37 which the department determines that receipts from the surcharge total

1 at least eight million dollars during the fiscal biennium. The
2 surcharge ((~~shall be~~)) is imposed again at the beginning of the
3 following fiscal biennium.

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

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

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

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

36 (d) The surcharge ((~~shall be~~)) is imposed again at the rate
37 provided in subsection (1) of this section on the first day of the

1 following state fiscal year unless the surcharge is suspended under
2 subsection (3) of this section or adjusted for that fiscal year under
3 this subsection.

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

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

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

14 **Sec. 308.** RCW 82.04.298 and 2008 c 49 s 1 are each amended to read
15 as follows:

16 (1) The amount of tax with respect to a qualified grocery
17 distribution cooperative's sales of groceries or related goods for
18 resale, excluding items subject to tax under (~~RCW 82.04.260(4)~~)
19 section 302 of this act, to customer-owners of the grocery distribution
20 cooperative is equal to the gross proceeds of sales of the grocery
21 distribution cooperative multiplied by the rate of one and one-half
22 percent.

23 (2) A qualified grocery distribution cooperative is allowed a
24 deduction from the gross proceeds of sales of groceries or related
25 goods for resale, excluding items subject to tax under (~~RCW
26 82.04.260(4)~~) section 302 of this act, to customer-owners of the
27 grocery distribution cooperative that is equal to the portion of the
28 gross proceeds of sales for resale that represents the actual cost of
29 the merchandise sold by the grocery distribution cooperative to
30 customer-owners.

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

33 (a) "Grocery distribution cooperative" means an entity that sells
34 groceries and related items to customer-owners of the grocery
35 distribution cooperative and has customer-owners, in the aggregate, who
36 own a majority of the outstanding ownership interests of the grocery

1 distribution cooperative or of the entity controlling the grocery
2 distribution cooperative. "Grocery distribution cooperative" includes
3 an entity that controls a grocery distribution cooperative.

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

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

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

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

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

24 **Sec. 309.** RCW 82.04.334 and 2007 c 48 s 3 are each amended to read
25 as follows:

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

29 **Sec. 310.** RCW 82.04.440 and 2006 c 300 s 8 and 2006 c 84 s 6 are
30 each reenacted and amended to read as follows:

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

35 (2) Persons taxable under RCW 82.04.2909(2), 82.04.250, 82.04.270,
36 82.04.294(2), or 82.04.260 (1) (b), (c), (~~(+4+)~~) or (d), (10), or

1 (11), or (~~(+12)~~) section 302(2) of this act with respect to selling
2 products in this state, including those persons who are also taxable
3 under RCW 82.04.261, (~~(shall be)~~) are allowed a credit against those
4 taxes for any (a) manufacturing taxes paid with respect to the
5 manufacturing of products so sold in this state, and/or (b) extracting
6 taxes paid with respect to the extracting of products so sold in this
7 state or ingredients of products so sold in this state. Extracting
8 taxes taken as credit under subsection (3) of this section may also be
9 taken under this subsection, if otherwise allowable under this
10 subsection. The amount of the credit (~~(shall)~~) may not exceed the tax
11 liability arising under this chapter with respect to the sale of those
12 products.

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

20 (4) Persons taxable under RCW 82.04.230, 82.04.240, 82.04.2909(1),
21 82.04.294(1), 82.04.2404, or 82.04.260 (1), (2), (~~(+4)~~) (10), or
22 (11), or (~~(+12)~~) section 302(1) of this act, including those persons
23 who are also taxable under RCW 82.04.261, with respect to extracting or
24 manufacturing products in this state (~~(shall be)~~) are allowed a credit
25 against those taxes for any (i) gross receipts taxes paid to another
26 state with respect to the sales of the products so extracted or
27 manufactured in this state, (ii) manufacturing taxes paid with respect
28 to the manufacturing of products using ingredients so extracted in this
29 state, or (iii) manufacturing taxes paid with respect to manufacturing
30 activities completed in another state for products so manufactured in
31 this state. The amount of the credit (~~(shall)~~) may not exceed the tax
32 liability arising under this chapter with respect to the extraction or
33 manufacturing of those products.

34 (5) For the purpose of this section:

35 (a) "Gross receipts tax" means a tax:

36 (i) Which is imposed on or measured by the gross volume of
37 business, in terms of gross receipts or in other terms, and in the

1 determination of which the deductions allowed would not constitute the
2 tax an income tax or value added tax; and

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

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

9 (c) "Manufacturing tax" means a gross receipts tax imposed on the
10 act or privilege of engaging in business as a manufacturer, and
11 includes (i) the taxes imposed in RCW 82.04.240, 82.04.2404,
12 82.04.2909(1), 82.04.260 (1), (2), (~~((4))~~) (10), and (11), (~~and~~
13 ~~(12)~~) section 302(1) of this act, and 82.04.294(1); (ii) the tax
14 imposed under RCW 82.04.261 on persons who are engaged in business as
15 a manufacturer; and (iii) similar gross receipts taxes paid to other
16 states.

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

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

27 **Sec. 311.** RCW 82.04.4463 and 2008 c 81 s 8 are each amended to
28 read as follows:

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

32 (2) The credit is equal to:

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

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

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

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

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

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

25 (b) An amount equal to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 **Sec. 312.** RCW 82.08.806 and 2009 c 461 s 5 are each amended to
3 read as follows:

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

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

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

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

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

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

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

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

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

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

4 **Sec. 313.** RCW 82.32.545 and 2008 c 81 s 10 are each amended to
5 read as follows:

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

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

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

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

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

20 **Sec. 314.** RCW 82.32.550 and 2008 c 81 s 12 are each amended to
21 read as follows:

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

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

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

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

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

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

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

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

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

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

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

29 **Sec. 315.** RCW 82.32.630 and 2007 c 48 s 6 are each amended to read
30 as follows:

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

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

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

7 (i) The number of total employment positions;

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

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

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

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

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

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

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

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

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

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

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

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

33 **Sec. 316.** RCW 82.32.632 and 2009 c 461 s 6 are each amended to
34 read as follows:

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

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

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

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

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

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

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

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

12 **Sec. 317.** RCW 82.45.195 and 2007 c 48 s 7 are each amended to read
13 as follows:

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

17 **Sec. 318.** RCW 35.102.150 and 2009 c 461 s 4 are each amended to
18 read as follows:

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

27 **Sec. 319.** RCW 48.14.080 and 2009 c 535 s 1102 are each amended to
28 read as follows:

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

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

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

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

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

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

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

10 **PART IV**
11 **MISCELLANEOUS**

12 NEW SECTION. **Sec. 401.** If any provision of this act or its
13 application to any person or circumstance is held invalid, the
14 remainder of the act or the application of the provision to other
15 persons or circumstances is not affected.

16 NEW SECTION. **Sec. 402.** Section 102 of this act does not affect
17 any final judgments, not subject to appeal, entered by a court of
18 competent jurisdiction before the effective date of this section.

19 NEW SECTION. **Sec. 403.** Section 102 of this act applies both
20 retroactively and prospectively.

21 NEW SECTION. **Sec. 404.** Except for sections 101, 102, 306, and 403
22 of this act, this act takes effect July 1, 2010.

23 NEW SECTION. **Sec. 405.** Section 305 of this act expires July 1,
24 2011.

25 NEW SECTION. **Sec. 406.** Section 306 of this act takes effect July
26 1, 2011.

27 NEW SECTION. **Sec. 407.** Sections 101, 102, and 403 of this act are
28 necessary for the immediate preservation of the public peace, health,

1 or safety, or support of the state government and its existing public
2 institutions, and take effect immediately.

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